The Cornwall Council (Langarth Garden Village, Threemilestone) Compulsory Purchase Order 2022

and

The Cornwall Council (Truro Northern Access Road) (Classified Road) Side Roads) Order 2022

Inquiry Commencing: 23 January 2024

OPENING SUBMISSIONS BY THE ACQURING AUTHORITY

Abbreviations according to the Glossary at CD 6.17

Introduction

1. The CPO and SRO have been made to enable the delivery of a sustainable mixed-use community known as Langarth Garden Village. This Scheme will make an enormous contribution to meeting the strategic housing target for Truro and Threemilestone by providing 3,800 new market and affordable homes for estimated population of 8,000.

2. That acute housing need, together with the suitability of the Site to meet it, have been recognised in both planning decision-making and plan-making for well over a decade. Yet not one new house has been built. That explains why, in late 2017, the Council intervened to turn established planning policy objectives into real, high-quality homes for Cornish people to enjoy in an exemplary sustainable community.[1]

3. The CPO is necessary to assemble the land required to facilitate delivery of the NAR and other associated infrastructure required to:

   (1) directly control delivery of 68% of the development by housing units, both school sites, the SANG and the Park & Ride extension; and

   (2) facilitate the coherent delivery of the remaining mixed use landscape-led community to be known as Langarth Garden Village.

4. The CPO also creates new rights required for these purposes:

   (1) the right to enter onto land adjacent to the Site to facilitate the installation and future maintenance of new surface water drainage infrastructure; and

   (2) the right for surface water to drain across adjacent land to reach the watercourse.

5. The Council's evidence explains that there is a compelling case for the confirmation of

[1] See Mason proof para 5.17 for a summary of the key Council decisions preceding the Hybrid Application.

the CPO and SRO which will deliver significant public benefits.

6. These opening submissions deal with these topics:

   (1) the strategic planning and transport context;

   (2) the Site and the Scheme;

   (3) the identity of the participants in the delivery of the Scheme;

   (4) the legal basis for the CPO; and

   (5) compliance with the CPO Guidance.

The strategic planning and transport context

7. The Scheme's location explains why it is so important in strategic planning and transport terms.

8. First, there is a pressing and significant need for new market and affordable housing in this area. The development site for the Scheme is on the edge of the city of Truro which is the main administrative centre of Cornwall with a population of circa 23,000 people. A short distance along the A390 is Threemilestone which has a population of circa 3,000. Both Truro and Threemilestone have undergone significant population growth since 2011. As Phil Mason explains,[2] the economic performance and draw of Truro far exceeds its available housing stock for the workforce required and there is a long-standing need for new housing. Policy 2a of the Cornwall Local Plan (Strategic Policies) 2016 therefore sets a target for 3,900 new homes in Truro and Threemilestone and the Scheme is intended to meet the lion's share of this need.

9. Secondly, the principle of significant residential development in this location was established by the grant of a patchwork of planning permissions anchored by large retail stores to a disparate group of unconnected landowners and developers between 2012 and 2016 at a time when there was a planning policy vacuum. Later, the development plan reflected that planning history, for example the Policy Map for the Truro and Kenwyn Neighbourhood Plan 2016 relied on the Site to deliver its share of the strategic housing target for Truro and Threemilestone. Now, Policy H3 of the Truro and Kenwyn Neighbourhood Plan 2023 identifies the Site for development as a sustainable community comprising a mix of high quality housing, public and private spaces and supporting infrastructure and facilities.

10. Whilst the principle of a new community in this location is well-established through the planning history and the statutory development plan, the market has failed to deliver a single new dwelling. The complexity of landownerships, the complexity of the mishmash

[2] Mason proof para 5.2.

of competing planning permissions and the lack of any mechanism to coordinate delivery of infrastructure all contributed to a decade of inertia.[3] The Council did try a lighter touch intervention to steer delivery via the 'Land North of the A390 Truro/Threemilestone Development Brief', but this had no effect.[4] That is perhaps not surprising given the difficulties involved in bringing forward piecemeal development on a site of this size and scale which requires significant upfront infrastructure. As you will have seen from viewing the Site, the topography presents challenges in terms of providing road, energy and drainage infrastructure. Without agreement between the various landowners for granting the necessary land rights and apportioning the costs of the sitewide infrastructure, delivery will be unlikely. These constraints to delivery underscore the need for the comprehensive and coordinated approach that the Council has taken in promoting the Scheme.[5]

11. The Scheme provides a holistic transport solution that will connect individual development plots, manage traffic flows and coordinate sustainable travel options much more effectively than relying on independent developers each designing and delivering their own major junction with the A390 with no coordinated internal road linking the developments.[6]

12. Thirdly, as Phil Mason explains, in spatial planning terms the Site is relatively sustainable and well suited to deliver the quantum and range of development proposed in the Scheme.[7] The Langarth Park & Ride is a central sustainable transport node in the area. The Hybrid Application included the Park & Ride within its red line boundary and the Scheme will facilitate the extension of that important facility. The Site is also located next to the Treliske Industrial Estate, Retail Park, Truro College, Health and Wellbeing Innovation Centre and Cornwall's only acute hospital, the Royal Cornwall Hospital. The Scheme also integrates effectively with its surrounding area.

13. Finally, the NAR will not only unlock development in this important strategic location, it will also reduce congestion and journey times on the A390 and help address the imbalance of people commuting to Truro for work by linking the major new housing allocation with adjoining communities whilst providing and supporting sustainable transport options.

The Site and the Scheme

14. The Site comprises around 175 hectares of land consisting mostly of unregistered

[3] See Mason proof para 5.3-5.15.

[4] Mason proof para 5.7.

[5] Mason proof para 5.15.

[6] Wood para. 3.1.

[7] See Mason proof paras 4.9-4.10.

existing highway or previously undeveloped farmland in diverse ownerships.

15. The Order seeks to acquire land and new rights[8] for the purpose facilitating delivery of the Scheme comprising:

    (1) up to 3550 dwellings including a policy compliant quantum and mix of affordable housing;

    (2) 200 extra care units and 50 units of student/health worker accommodation;

    (3) five local centres comprising local retail (use class E), offices (E), restaurants and cafes (E), drinking establishments (sui generis), hot food takeaway (sui generis), health and community facilities (F1 and E);

    (4) a local care health centre (E);

    (5) a blue light centre for emergency services (sui generis);

    (6) up to two primary schools (F1);

    (7) business and commercial floorspace (E);

    (8) brewery / public house (sui generis);

    (9) areas of open space to include a suitable alternative natural greenspace (SANG), other strategic open space and a community farm/allotments;

    (10) public realm;

    (11) renewable energy provision and energy centre;

    (12) Park & Ride extension (of up to 600 spaces or 2.73 ha);

    (13) delivery of a new central access road with cycle lanes together with utility supplies, access junction arrangements on the A390, new junctions to quiet lanes and associated earthworks and retaining and boundary features (know as the Northern Access Road or NAR) providing vehicular, pedestrian and cycle connectivity through Langarth Garden Village and linking the new community to the A390, established adjoining residential and commercial/industrial areas and also the Royal Cornwall Hospital at Treliske.

16. Tim Wood's evidence provides a detailed technical description of the NAR and explains the land required to construct, operate and maintain it.[9] In summary:

    (1) the NAR will be a single carriage urban distributor road about 4 km long serving residential areas with a 20 mile an hour speed limit and a segregated cycleway. It

[8] The new rights required under s.13 of the Local Government (Miscellaneous Provisions) Act 1976 are explained at Hector proof para. 3.16.

[9] Wood proof Section 6 & 7.

will also be a bus route;

(2) the NAR will be served by two primary junctions on the A390: one at West Langarth and the other at Maiden Green (the Eastern Junction);

(3) at the eastern end of the NAR the existing private road owned by the Hospital will be improved and dedicated as public highway to ensure that the NAR provides a continuous public highway link;

(4) the NAR has a 3.4m wide segregated cycleway along the entire northside in accordance with the Government's local transport note 1/20;[10]

(5) the NAR gradient is limited to 6% in order to promote cycling as part of the Council's target to reduce short trips by private vehicle;

(6) the NAR design uses sustainable drainage methods to maintain rainwater run-off to no greater than Greenfield rates. It also seeks to return water to the water table at the earliest point i.e. to infiltrate water into the ground rather than collect it, run it via pipes to ponds and then to watercourses as the previous planning permissions proposed. The design creates swales alongside the NAR rather than verges.[11] There are also several ponds or basins along the NAR. They require access tracks to allow for future maintenance and where possible these tracks have been integrated with stub junctions to facilitate future development. The NAR ponds have been designed for a 1 in 100 year storm event plus 50% capacity for climate change allowance (the new modern standard);[12]

17. The Council has acquired many of the necessary property interests through private treaty. Since 2019, the Council has by agreement acquired 47 of the plots required permanently for the Scheme which represents 90% of the Order Land.[13] The extent of those acquisitions as at the date of the evidence is set out in Andrew Hector's proof of evidence.[14]

The identity of the participants in the delivery of the Scheme

18. The Scheme will be delivered by the Council together with its master developer LGV Property Holdings LLP ("LGV LLP"). It will be supported by significant grant funding provided from the Government via Homes England.

19. The Council has considerable experience of delivering major infrastructure and housing

[10] CD 2.14.

[11] Wood proof para. 7.17.

[12] See further Valvona proof Sections 3 & 4 on the drainage and utilities strategy for the Scheme.

[13] Hector proof para. 4.5.

[14] Hector proof paras. 5.12 & 5.19

projects, for example the Duchy of Cornwall's urban extension scheme at Nansledan near Newquay and Cornwall's other designated Garden Village, at West Carclaze near St Austell.

20. The Council decided it needed to appoint a separate master developer because:[15]

    (1) standard local government accounting policies would have fettered the ability of the Council to deliver the Scheme itself and dispose of the development land to private sector developers. The Localism Act 2011 allows local authorities to carry out commercial activity in partnership through a Limited Liability Partnership to avoid these problems and this structure has been successfully employed by other local authorities;[16]

    (2) creating a separate master developer helps to simplify both the making and implementation of day-to-day decisions;

    (3) creating a separate master developer overcomes the difficulty otherwise in securing s.106 obligations where the local planning authority and developer are the same legal entity.

21. The Council evaluated a range of options for the delivery structure.[17] The LLP option which was chosen allows for the public infrastructure such as the NAR and schools to remain with the Council to deliver which is appropriate because this is a traditional Council Activity and the completed assets are intended to remain within the public sector. The structure also allows for the development land i.e. the land for building houses and commercial units to transfer to the LLP.

22. LGV LLP is a partnership between the Council (which holds 98% of the profit shares) and Treveth Holdings LLP ("Treveth) (which holds the remaining 2%).[18] Treveth is itself a partnership between the Council which holds 99% of the profit share and Corserv Limited which holds the other 1%. Corserv Limited is a company limited by shares with the Council's sole shareholder.

23. Treveth is a Council backed developer with a good track record in delivering schemes of the size and importance of Langarth Garden Village.[19] Treveth specialises in delivering new homes and commercial development to benefit people who live and work in Cornwall. It is a Cornish company that returns profits to its partner, the Council. Harry

[15] Lewis proof Section 4.

[16] Lewis proof para 4.6.

[17] Lewis proof paras. 4.3-4.7.

[18] Lewis proof para. 5.2.

[19] Lewis Proof para. 3.5 and Appendix HL1.

Lewis's evidence explains the four schemes across Cornwall that Treveth is delivering.[20]

24. Harry Lewis explains the governance of LGV LLP,[21] and the respective roles of LGV LLP and the Council.[22] LGV LLP will:

    (1) take on the role of the planning applicant for the delivery of the Scheme;

    (2) if appropriate, oversee long-term stewardship implementation including acting as the manager of the community infrastructure created as part of the Scheme;

    (3) lead and co-ordinate development activity, potentially via subsidiary vehicles;

    (4) where appropriate, facilitate partnership development arrangements to bring forward housing and employment opportunities as part of the Scheme, including joint ventures with other organisations;

    (5) where appropriate, hold and manage residential, commercial, agricultural and/or industrial land and buildings forming part of the Scheme before, during and following project delivery (as applicable);

    (6) lead and co-ordinate the delivery of such infrastructure works as are necessary as part of delivering the Scheme;

    (7) commission any necessary professional services relating to either the Council's objectives for the Scheme and/or the business objectives of the LGV LLP; and

    (8) carry out such trading activities as will be identified in the LGV LLP's business plan (which will be subject to periodic update/review/approval).

25. The Council will remain closely involved as current landowner, budget holder/funder and majority owner of the master developer. The Council will retail a role:

    (1) in ensuring the place-making ambitions for the Scheme are realised, for example by appropriate strategic oversight of LGV LLP's business plan and performance against key performance indicators (KPIs) to ensure that the aims of the comprehensive masterplan are achieved

    (2) in land assembly (including use of compulsory purchase powers where appropriate);

    (3) as contracting authority for sitewide strategic infrastructure such as the NAR, schools and certain sitewide utilities infrastructure such as sewers, water and power;

[20] Lewis Appendix HL1.

[21] Lewis proof para 5.3 and Appendix HL2.

[22] Lewis proof paras. 5.5-5.6.

(4) as retained landowner for certain strategic infrastructure and assets such as the NAR, the first school and green infrastructure (where not transferred to the Stewardship Organisation); and

(5) in planning and transport decisions (via its local planning authority and highway authority functions).

26. In terms of delivery strategy, Harry Lewis's evidence explains that:[23]

(1) LGV LLP will manage, and be accountable for, the programme in relation to phasing, viability, risks and satisfaction of the s.106 obligations;

(2) the Scheme will be delivered on an 'infrastructure first' approach which will result in serviced parcels of land that can then be marketed and sold to developers under contracts ensuring that agreed obligations are met across the Scheme. As master developer, LGV LLP will oversee and coordinate development to ensure that the vision for Langarth is realised in line with the design principles and parameters of the Hybrid Planning Permission. The 'infrastructure first' approach will also benefit the owners of development land within the redline boundary of the Hybrid Planning Permission, but outside the Order Lands;

(3) LGV LLP will oversee the long-term stewardship of the Scheme -most likely by creating a subsidiary vehicle;[24]

(4) the Scheme will be delivered in phases according to the approved Phasing Parameter Plan and associated land-use schedule showing proposed areas and numbers for development within each phase;[25]

(5) the delivery programme for the Scheme spans about 25 years. Of the 3,800 homes permitted across the Site by the Hybrid Planning Permission, around 2,600 will be located on land that is, (or subject to confirmation and implementation of the CPO) will be, owned by the Council. In a policy compliant quantum and mix of affordable housing is expected to be delivered consistently within each residential phase throughout the life of the Scheme. The expectation is that the local housing market will absorb around 150 units per year throughout the lifetime of the Scheme, with 35% of those being affordable units and around 100 units being private sales per year;

(6) the current development programme envisages housing construction to commence in Phase 1a in 2024/25,[26] with the first delivery of homes from 2026.

[23] Lewis proof Sections 6 & 7 and the Delivery Strategy at CD 1.11.

[24] See further Lewis proof paras. 7.25-7.36.

[25] CD 3.2.

[26] Infrastructre and enabling works are due to start this year and reserved matters applications for the houses will be

The first three form entry primary school (in Parcel B1) is expected to open in September 2026;

(7) the social infrastructure, including new schools and community centres, will be provided in line with the anticipated needs of the growing population at Langarth Garden Village;

(8) the Scheme comprises approximately 48% green space (excluding gardens) which will be provided as plots and phases are delivered. That said, the SANG at Governs Park will be delivered early as part of Phase 1;

(9) the new Energy Centre will act as the local distribution hub for the Scheme's power;

(10) South West Water will deliver a new pumping main gravity trunk sewer to the Site and individual collector servers that connect to the gravity sewer will be delivered as each phase requires. South West Water will also provide water to the Site on a phase by phase basis;

(11) a sitewide Sustainable Urban Drainage Solution model was approved as part of the Hybrid Planning Permission and LGV LLP will coordinate provision of the strategic SUDs requirements;

(12) as far as possible new utilities and services will be laid within the NAR corridor and this will be forward funded by the Council.[27]

Legal basis for the CPO

27. The CPO has been made under the power contained in s. 226(1)(a) TCPA 1990 which provides that the Council may acquire land compulsorily for "*development and other planning purposes*" if that acquisition will facilitate the carrying out of development, redevelopment or improvement in relation to that land.

28. In exercising its power under s. 226(1)(a) TCPA 1990 the Council must have regard to s. 226(1A) TCPA 1990 which provides that the power must not be exercised unless the Council think that the development, redevelopment or improvement is likely to contribute to the promotion of the economic, social or environmental well-being of their area.

29. The purpose of the CPO is set out in detail in the Statement of Reasons.[28] The Council made the CPO for the purpose of the facilitating delivery of the Scheme. As explained

submitted by individual housebuilders.

[27] Wood proof para. 4.2 and Mason proof para. 6.1

[28] CD 4.6 at Section 8.

below, the Council considers that the Scheme is likely to deliver significant benefits to Cornwall in terms of its economic, social and environmental well-being.

30. While there is no longer a requirement in s.226 TCPA 1990 to consider the Development Plan or other material planning considerations, the adopted planning framework falls to be considered under the CPO Guidance (see below). But this does not enable the planning merits of a scheme that already has planning permission to be re-considered. Indeed, even in the context of the original version of s.226 TCPA 1990 where there was formerly a requirement to consider the Development Plan or other material planning considerations, Collins J held in ***Alliance Spring Co Ltd & Others v First Secretary of State*** [2005] 3 P.L.R. 76, that:

> "16. [The Secretary of State] recognised that the Inspector could properly have regard to the planning aspects: indeed, s. 226(2)(c) of the 1990 Act makes it clear that he should. But he noted that those matters were taken into account in the grant of planning permission. In those circumstances, it is not in my view appropriate for an Inspector to take a different view on planning considerations which have already been considered unless there is fresh material or a change of circumstances. Clearly if there is evidence to show that particular matters were not taken into account or were not fully considered, a fresh view can properly be taken." (emphasis added)

31. In this case the Hybrid Planning Permission has been granted for the Scheme and it has not been challenged. As Gavin Smith and Terry Grove-White explain in their proofs of evidence, the decision to grant planning permission was taken in accordance with the planning framework after full public consultation. Accordingly, it is unnecessary for the planning considerations to be reassessed at this Inquiry. The planning *benefits* of the Scheme are, however, an important part of the justification for the Scheme and so they do fall to be considered.

Policy requirements

32. The statutory requirements are applied alongside the policy in the CPO Guidance[29] which sets out the approach to be taken in deciding whether to make, or confirm, any CPO. I will deal with these matters:

(1) **Planning**:

(a) whether the need for planning permission or other consent represents an impediment to implementation of the Scheme (para.15); and

(b) whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area, or where no such up-to-date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework (para. 106);

[29] CD 5.4.

(2) **Funding and deliverability**:

(a) acquiring authorities should be able to show that all the necessary resources are likely to be available within a reasonable time-scale (para. 13);

(b) the acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme for which the land is required (para. 14);

(c) specific advice in relation to CPOs under s.226(1)(a) TCPA 1990 provides that a general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed (para. 106); and

(d) the acquiring authority will also need to be able to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation, including the programming of any infrastructure accommodation works or remedial work which may be required (para. 15).

(3) **Wellbeing**: the extent to which the proposed purposes will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area (para.106);

(4) **Alternatives**: whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired (para. 106);

(5) **Negotiations**

(a) the confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement (para. 2);

(b) public sector organisations should make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues and mitigation and accommodation works where relevant (para. 3);

(c) acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted (para. 17); and

(d) steps should be considered to help those affected by a compulsory

purchase order, such as to funding landowners' reasonable costs of negotiation (para. 19).

(6) **Human Rights**: whether the purposes for which the Order is made justify any interferences with the human rights of those with an interest in the Order Land (para. 2); and

(7) **Equalities**: whether confirmation of the Order would be in accordance with the Council's duties under the Equalities Act 2010.

33. Before addressing those policy tests, it is important to note that despite the scale of the Scheme there were few objections lodged and very little opposition to the principle of the CPO.

34. Indeed, it is worth reflecting on some of the key matters which are not disputed now that objections have been withdrawn:

(1) nobody challenges the credentials of the Council to deliver the Scheme either within a reasonable timescale or at all;

(2) nobody even questions the financial viability of the Scheme or the availability of the necessary funding;

(3) nobody challenges the principles of the masterplanning or the concept of the Scheme;

(4) nobody questions the design of the NAR;

(5) nobody disputes the evidence of Gavin Smith and Terry Grove-White that the Scheme fully complies with the adopted planning framework for the area; and

(6) none of the affected landowners now criticises the Council's approach to negotiations, or alleges an infringement of their human rights.

35. The lack of initial opposition and the withdrawal of all objections is indicative of several matters:

(1) the Scheme is critical to Cornwall's future and makes a significant contribution to delivering the urgently needed new housing for Truro and Threemilestone;

(2) the Scheme has very strong and up-to-date policy support;

(3) the Council has undertaken the making and promotion of the CPO with considerable care to ensure that the Scheme is properly planned, understood and justified;

(4) the Council and its Master Developer have a significant track record of delivering high quality and challenging development schemes for the benefit of the Cornish people; and

(5) the level of meaningful engagement by the Council with the current

occupiers/owners of the CPO Lands.

36. Turning then to the main issues raised by the CPO Guidance:

(1) Planning

37. There is no challenge to the Scheme's compliance with the planning framework. As Gavin Smith and Terry-Grove White explain, planning permission and listed building consent have been granted for the Scheme. The relevant consents are as follows:

    (1) the Hybrid Planning Permission (5 April 2022);[30] and

    (2) Listed Building Consent to relocate listed milestone.[31]

38. None of those consents was subject to legal challenge and they remain extant and capable of implementation. As set out in Terry Grove-White's appendices, the consents are subject to typical conditions which are all capable of being discharged within the required timeframes.[32]

39. Considerable progress has been made in terms of discharging conditions and obtaining reserved matters approval. This demonstrates a lack of impediments and a firm intention to deliver the Scheme.[33]

    (1) Planning Permission.

40. Gavin Smith's evidence explains in detail, with reference to the Hybrid Planning Permission, why the purposes for which the CPO Lands are being acquired fits with the planning framework which consists of:[34]

    (1) the Cornwall Local Plan 2016-2030;[35]

    (2) the Truro and Kenwyn Neighbourhood Plan 2023[36] (replacing the former Truro and Kenwyn Neighbourhood Plan 2016[37] which was extant when the Hybrid Planning Permission was granted);

    (3) the NPPF;[38] and

    (4) a number of development plan documents and supplementary planning documents,

[30] CD 3.1.
[31] CD 3.12.
[32] See
[33] Grove-White proof Section 11.
[34] See Appendices GS2-GS5 and also paragraphs 8.1-8.58 of the Council's Combined Statement of Case CD 4.5.
[35] CD 2.03.
[36] CD 2.07.
[37] CD 2.04.
[38] CD 2.01 (NPPF 2021) and CD 2.02 (NPPF 2023).

most notably the Climate Emergency Development Plan Document (21 February 2023).[39]

(2) Funding, deliverability and viability

41. Phil Mason's evidence provides substantive information as to the sources of funding available both for acquiring the land (including paying statutory compensation) and implementing the scheme for which the land is required.[40] The funding is to be drawn from two sources:

    (1) in June 2019, the Government awarded the Council £47.45 million to build the NAR and included Langarth Garden Village in its Garden Communities programme. The HIF estimate in 2019 included several assumptions to cover the likely design development of the NAR including risk, inflation, contingency and optimism bias. Those factors are reviewed on a monthly basis to ensure the project is being delivered within budget;[41] and

    (2) in November 2020 the Council approved £109m of Council investment (funded from borrowing).[42] The Council's capital will remain invested over a significant period and will eventually be repaid (along with the cost of financing) when the development facilitated by the Scheme is finally completed. The Council will recover its investment through a combination of its own development activities, sale of serviced parcels of land to third party developers and s.106 and CIL contributions.[43] The detail of how income will be generated thought the sale of serviced parcels of land to third party developers and s.106 contributions is explained in Harry Lewis's evidence.[44]

42. Phil Mason's evidence therefore goes beyond the general indication of funding intentions, and any commitment from third parties, that "*will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed*" according to para. 106 of the CPO Guidance. Accordingly, his evidence satisfactorily demonstrates that all the necessary resources are likely to be available within a reasonable time-scale.

43. In terms of deliverability, the Scheme is being delivered a Council and Master Developer who are extremely well-versed in the delivery of large infrastructure and housing projects. Moreover, as Phil Mason and Harry Lewis explain, there is a clear delivery

[39] CD 2.10.

[40] Mason proof paras. 6.1-6.5.

[41] Wood proof para. 4.1.

[42] See Cabinet Report at CD 1.8.

[43] Mason proof paras. 6.3-6.4 and Lewis proof paras. 7.36-7.44.

[44] Lewis proof paras. 7.36-7.44.

structure in place which includes robust governance arrangements. The project programme anticipates completion of the first houses and the opening of the first primary school as part of Phase 1 of the Scheme in 2026.[45] Pat Valvona's evidence explains the drainage utilities strategy for the Scheme in detail and concludes that there are no drainage or utilities infrastructure related impediments to delivery of the Scheme.[46]

44. The fact that the Council is ready, willing and able to proceed is clear from its evidence. Commitment to the Scheme is demonstrated by the Council's investment in the promotion of the CPO Scheme, the acquisition of many property interests to date, the progress discharging conditions and reserved matters, and most obviously by the actually construction work on the NAR and Energy Centre which has already commenced. Key steps taken by the Council to deliver the Scheme include:[47]

    (1) in 2020 obtaining planning permission[48] for the Interim Link Road as construction access to the Site and completing that development;[49]

    (2) in 2021 obtaining planning permission for the Energy Centre[50] which will provide low-cost green power to residents of the Scheme and substantially carrying out that development already;

    (3) in 2022 obtaining the Hybrid Planning Permission and related Listed Building Consent for the relocation of a listed milestone;[51]

    (4) in February 2023, obtaining reserved matters approval for the SANG at Governs Park and associated access road;[52]

    (5) in May 2023, South West Water obtaining planning permission for two foul water pumping stations to serve the Scheme;[53]

    (6) submitting reserved matters applications for the Phase 1 green infrastructure and utilities as well as the first primary school;[54]

    (7) submitting applications to discharge the Neighbourhood Design Code conditions

[45] Lewis proof para. 7.7.
[46] Valvona proof Section 5.
[47] Mason proof para 6.10.
[48] CD 3.14.
[49] See Mason Figure 12.
[50] CD 3.13.
[51] CD 3.12.
[52] CD 3.15.
[53] CD 3.18 & 3.19.
[54] Grove-White proof paras. 11.20-11.26.

to the Hybrid Planning Permission for the first development phases;[55]

(8) submitting the reserved matters application for the Eastern Junction following positive pre-application advice received in April 2023; and

(9) completing construction of the Interim Link Road and making substantial progress on the construction of the NAR and Energy Centre.

45. Not only will the Scheme be delivered in a timely way, the benefits will also be safeguarded by the stewardship arrangements that will be secured. In March 2023, the Council approved the Outline Business Case for the establishment of a stewardship organisation for managing and maintaining the green infrastructure, for the Scheme and resolved to progress to Full Business Case and establish such a stewardship organisation.[56]

46. Consequently, there are no physical or legal impediments to the delivery of the Scheme. The Hybrid Planning Permission and other related consents are extant and capable of implementation. Nobody alleges that there are any impediments capable of genuinely impeding the delivery of the Scheme.

47. Anthony Lee's evidence explains that the Scheme has been demonstrated to be financially viable.[57] The Council has adduced evidence from an independent RICS Registered Valuer not because there is any doubt about the Scheme's viability, but because that is the 'gold standard' in terms of demonstrating compliance with the CPO Guidance. As recognised by the Inspector in the recent Vicarage Field CPO decision,[58] where (as will usually be the case) commercial confidentiality prevents an acquiring authority from providing a CPO inquiry with an open book viability appraisal, it is possible and indeed helpful for the acquiring authority's appraisal to be subject to a 'data room' exercise carried out by an independent viability expert under a non-disclosure agreement. As the Inspector in that case said it would provide "*an independent and clear indication that the scheme was viable when assessed by an expert in the field*" (para.146).

48. The facts of the Vicarage Field CPO decision were unusual and not comparable to the present case. Briefly:

(1) the viability appraisal for the outline planning application 6 years before the CPO inquiry in that case found the scheme to be "*substantially unviable*" (para. 132);

(2) the viability appraisal said delivery of the scheme depended on growth of residential and commercial values in Barking town centre in the future, but the

[55] Grove-White proof para. 11.27.

[56] CD 1.12.

[57] Lee proof Section 7.

[58] Lee Appendix 1, see especially at paras. 131-155 and 175-178.

consultants had significant concerns about whether the necessary 62% growth on current values would be achieved (paras. 135-136);

(3) the acquiring authority provided no updated appraisal and did not explain how the developer's approach to viability assessment was so different that it would lead to a substantially different conclusion (para.131 & 142-143); and

(4) in those circumstances, unsurprisingly, the Inspector found there was "*simply insufficient substantive information presented to convince or reassure me that the scheme is financially viable*" (para. 177).

49. By contrast, in the present case, Anthony Lee has carried out a independent viability appraisal in line with national planning policy and guidance which shows that the Scheme generates a surplus of circa £54 million when assessed on a conservative basis, indicating that it is clearly financially viable. Importantly, that figure is calculated assuming affordable housing will be delivered fully in accordance with Policy 8 of the Cornwall Local Plan i.e. 35% affordable housing with a tenure mix of 70% rented and 30% intermediate.[59] Simply varying the tenue mix to 50% social rented and 50% shared ownership would increase the present day surplus from £54 million to £89 million thereby providing considerable flexibility to improve viability were that to prove necessary.

50. Further confidence in the Scheme's financial viability is provided by Anthony Lee's sensitivity analysis which applies a 'place making premium'[60] and which factors in the impact of general market growth and inflation on costs. That sensitivity analysis shows that the surplus increase from circa £54 million to £222 million.

51. Anthony Lee's independent peer review of the Scheme's viability concludes that "*the Proposed Development is clearly financially viable*" and that he is "*satisfied that the Council will be able to meet all its statutory compensation liabilities*".[61] As such, you can be confident that the requirements of para. 106 of the CPO Guidance in relation to viability are met.

(3) Contribution to the economic, social and environmental well-being of the area

52. The evidence of Phil Mason, Tim Wood, Gavin Smith and Terry-Grove White explains how the Scheme will promote the economic, social and environmental well-being of the area. Even when objections remained, there appeared to be no serious dispute that the Scheme would promote these matters.

53. As Phil Mason explains, the Scheme will directly or indirectly support most aspects of

[59] Lee proof para. 6.17.

[60] See also Lewis proof paras. 7.41-7.42.

[61] Lee proof para. 8.7.

the Council's agreed outcomes for Thriving and Sustainable Communities.[62] The following benefits are of particular note:

(1) the Scheme will provide an expected 3,800 new homes for a projected population in excess of 8,000 meeting the strategic housing needs set out in the Local Plan and Truro and Kenwyn Neighbourhood Plan 2023;

(2) the Scheme will include a policy compliant 35% affordable housing, together with specialist housing;

(3) the NAR will deliver significant highways and sustainable transport benefits, including:[63]

    (a) it will attract approximately one third of the traffic that would otherwise run on the A390 thereby reducing congestion and improving journey times;

    (b) encourage and support pedestrians and cyclists thereby reducing traffic flow overall;

    (c) provide a secondary access for Treliske Industrial Estate which will reduce traffic congestion at the A390 Treliske roundabout by allowing traffic from the Royal Cornwall Hospital and Treliske Industrial Estate to enter and exit the site from the West via the NAR rather than the A390;

    (d) provide a secondary access for the Hospital which will avoid the Hospital being reliant on a single access to the A390 primary road network, improving the resilience of the Hospital and affording an additional access for emergency vehicles as well as for deliveries, staff and visitors. It should be noted that the Hospital strongly supports the Scheme;[64]

    (e) it is a considerable improvement on the previous position whereby, landowners adopted the principle of the linking spine road across the Site but their individual development proposals were not well integrated in transport terms, they relied on piecemeal delivery, there were disconnections in the spine road route at site boundaries, the road and footway widths differed along the route, and each development proposed its own primary junction with the A390;[65]

(4) the Scheme represents a comprehensive and masterplanned approach to development;

(5) the Scheme will be a high quality Garden Village informed by the Government's

[62] Mason proof para. 1.8.

[63] Wood proof paras. 5.1-5.6.

[64] Grove-White Appendix TGW2.

[65] Wood proof para 3.3.

Community qualities and locally set principles developed and adopted by the Langarth Stakeholder Group;[66]

(6) the Scheme provides a mix of non-residential uses aimed at creating a self-sustaining connected community and helping to address an imbalance of people commuting to Truro from elsewhere for work, which imbalance has grown over the last 20 years;

(7) the Scheme promotes linkages to adjoining communities and effective integration to adjoining centres, facilities and employment sites to support the comprehensive planning of the area, including through facilitating extension of the existing Park & Ride;

(8) the Scheme coordinates and accelerates infrastructure delivery;

(9) the Scheme provides effective habitat/recreation mitigation via SANG;

(10) the Scheme provides a network of strategic green infrastructure (GI) to support a landscape led development;

(11) the Scheme provides at least policy-compliant levels of Biodiversity Net Gain;

(12) the Scheme provides economic benefits in terms of construction and end-user period employment, including job opportunities which minimise the need for commuting;

(13) the energy strategy for the Hybrid Planning Permission will help the Scheme to support the delivery of an exemplar development to showcase low carbon living in line with the Council's commitment to tackling climate change;

(14) the Scheme delivers vastly superior planning outcomes compared to the previous planning permissions on the Site.[67]

54. However if the Scheme were not to proceed there would be a significant risk:

(1) to the funding and delivery of the remaining section of the NAR, together with the Eastern Junction and the connecting link road between the NAR and the A390;

(2) to the delivery of a substantial proportion of the Council's planned housing delivery for the Truro area to the significant detriment of the thousands of Cornish people in need of that new housing; and

(3) that the substantial social, economic and environmental benefits of the Scheme will not be realised, representing a huge missed opportunity to meet strategic housing need in a truly sustainable and vibrant new community.

[66] Grove-White proof paras. 4.6-4.9.

[67] Mason proof paras. 5.11-5.12.

(4) Alternatives

55. The rationale for the boundary for the CPO stems from the need to meet the identified engineering and design requirements of the Scheme.[68] All of the CPO Land is permanently required in order to facilitate delivery of the NAR and other associated infrastructure required to:

    (1) directly control delivery of 68% of the development by housing units, both school sites, the SANG and the Park & Ride extension; and

    (2) facilitate the coherent delivery of the remaining mixed use landscape-led community to be known as Langarth Garden Village.[69]

56. There are no reasonable alternatives and none has been suggested.

(5) Negotiations

57. In accordance with the CPO Guidance, negotiations have proceeded in tandem with the formal process of pursuing the CPO. Given the large number of interests in the CPO Lands this is the only realistic way in which to proceed. In many instances negotiations have been fruitful and in others negotiations have and will continue. The detail of the negotiations will be addressed in the evidence of Andrew Hector.

58. As Andrew Hector explains the following approach has been adopted in relation to the acquisition of interests in the CPO Lands: [70]

    (1) prior to making the CPO the Council acquired properties by agreement;

    (2) care was taken to establish the facts of the complex web of ownerships and interests by engaging a specialist land referencing firm;

    (3) initial contact was made with occupiers to provide details of the Scheme and encourage property owners to obtain independent professional advice whose reasonable fees and costs the Council would pay;

    (4) the Council has made reasonable financial offers to acquire all interests in the CPO Lands in accordance with the CPO Guidance;

    (5) the Council actively kept those affected informed about the Scheme and the CPO in addition to the consultation that took place in relation to the planning applications; and

    (6) the Council took a very flexible and pragmatic approach towards the

[68] See Valvona proof Section 6 explaining the need for land to be included in the CPO for utilities and drainage, and Wood proof Section 7 for an explanation of the land required for the NAR.

[69] Hector proof para. 3.5.

[70] Hector proof paras. 5.8-5.11.

negotiations.[71]

59. Andrew Hector's evidence demonstrates that the Council has fully complied with the CPO Guidance because it has:

    (1) taken reasonable steps to acquire all of the land and rights included in the Order by agreement;

    (2) made reasonable initial offers, and been prepared to engage constructively with claimants;

    (3) undertaken meaningful attempts at negotiation; and

    (4) taken steps to help those affected by the CPO, including funding landowners' reasonable costs of negotiation.

60. The results of this constructive engagement speak for themselves. Since its formal decision to become proactively involved in delivery of the Scheme, the Council has acquired a significant proportion of the Site.[72] In particular, prior to making the CPO, the Council had acquired:

    (1) Land at West Langarth, Langarth Farm Phases 1 and 2 and parts of Phases 3, 4 and 5, Pollards Field and land known as Biondi Field (Spring 2020);

    (2) 'The Willows' and 'East Langarth' (Autumn 2020); and

    (3) the remaining part of 'The Willows', the land known as Governs Farm and Langarth Farm Phases 3, 4 and 5 (Spring/Summer 2021).

61. The Council had also successfully completed many agreements to release restrictive covenants, surrender leases and options and to modify covenants.[73]

62. Since making the CPO, the Council has also:

    (1) competed an agreement with the Royal Cornwall Hospital Trust for a licence to facilitate the construction of Stage 5 of the NAR, together with agreement for the Trust to dedicate its interest in the existing access road as public highway; and

    (2) acquired West Langarth Farm in order to facilitate delivery of the Bosvisack Corridor (strategic valley cycle route).

63. Those pre and post CPO acquisitions and agreements mean the Council owns the majority of the land required for the construction of the NAR, the two primary schools, the Park & Ride extension, the Energy Centre, key utilities, housing as well as the green

[71] Hector proof para. 5.10.

[72] See Mason proof para 6.6 and Figure 10.

[73] Hector proof para. 5.12.

infrastructure and community spaces. The third party land included in the CPO is required to deliver the remaining section of the NAR and associated highways, sustainable transport and drainage infrastructure.[74]

64. The absence of any remaining objections is testament to the fact that the Council has conscientiously complied with the requirements of the CPO Guidance in relation to negotiations.

65. Despite that (as one would expect with a Site as large and with as many affected interests as this) there is no reasonable prospect of the Council acquiring the remainder of the CPO Lands within a reasonable period of time and so the use of CPO powers is necessary.

(6-7) Human rights and equalities

66. Consideration of human rights issues, principally with respect to Article 8 and Article 1 of the First Protocol ECHR adds little, if anything, to the approach set out in the CPO Guidance and by the UK courts.[75] In all cases, the making of a compulsory purchase order to acquire private interests in land must be shown to be justified in the public interest. The balance between the public interest and private rights is not only a requirement of the CPO Guidance, and English law, but reflects the position under the HRA 1998 and the ECHR. See Annex 1 to these Opening Submissions for detailed legal submissions on this issue.

67. The Council's submission is that the very significant public benefits that the Scheme justifies the interference with individual rights. Those public benefits, including the wellbeing contribution of the Scheme, are considered in the evidence of Phil Mason. As noted above, these substantial benefits do not appear to be the subject of any real dispute. Moreover, none of the affected landowners complains about a breach of their human rights in circumstances where the vast majority have been professionally advised throughout the CPO process.

68. Furthermore, the requirements of Article 6 ECHR are satisfied. Any person with an interest in the Order Lands has the opportunity to make a representation or objection and to appear at this public inquiry, before the Secretary of State decides whether to confirm the Order.

69. In relation to Article 8, no issue arises because none of the land to be acquired includes a residential dwelling. As Andrew Hector explains, the Council took a proportionate

---

[74] See Mason proof para 6.8 and Figure 10.

[75] See e.g. ***Chesterfield Properties PLC v Secretary of State*** (1997) 76 P & CR 117, ***Tesco Stores Ltd v Secretary of State & Wycombe District Council*** (2000) P & CR 427 at 429 and ***Bexley LBC v Secretary of State*** [2001] EWHC Admin 323. The approach in these cases was approved by the Court of Appeal in ***Hall v First Secretary of State*** [2008] J.P.L. 63, *per* Carnwath LJ at para 15.

approach to defining the CPO boundary to ensure that no more land is included within the CPO than required to deliver the Scheme and achieves the public benefits that are its objectives.

70. In relation to the Equality Act 2010, the Council has taken the provisions of the Act into account at all stages of the process, including when formulating its planning policies, when granting the Hybrid Planning Permission and related consents, and when making the CPO. There are clear equality benefits of the Scheme. The Scheme will provide thousands of new market and affordable homes, 200 extra care units and community facilities that will benefit the local population, including those with protected characteristics. Additionally, the NAR footway solution was designed following detailed consultation between Cormac and disAbility Cornwall which represents a number of disabled interests including mobility impaired and blind and partially sighted people. The footways were widened to 2.0m between curbs (effectively widening the road corridor by 0.3m) to better respond to the needs of people with those protected characteristics.[76]

Compelling Case in the Public Interest

71. The final and overriding question that arises is whether there is a compelling case in the public interest for the compulsory acquisition. The Council submits that there is a compelling case in the public interest for confirmation. The benefits of the Scheme are manifold and substantial and they will be realised with relatively little disbenefit to anyone -so much so that nobody objects to the Scheme now. The case for confirmation is overwhelming and unopposed.

Special considerations

72. As Andrew Hector explains,[77] there are no special considerations in this case because:

    (1) none of the Order Land is owned by another local authority, by the National Trust, nor does it form part of a common, open space land or fuel or field garden allotment;

    (2) none of the gas, water and electricity undertakers and telecommunications operators with interests in the Order Land to whom s.16 of the Acquisition of Land Act 1981 would apply has objected. The Council has approach each undertaker seeking to reach agreement with them as to the relocation of any existing apparatus within the Site, or the removal or amendment of rights over the Site were needed to implement the Scheme;

[76] Wood proof para. 7.5.

[77] Hector proof paras. 3.22-3.26.

(3) no issue arises in relation to Crown land:

(a) On 6 June 2023, the Royal Cornwall Hospital Trust agreed to grant the Council a licence over Plots 645, 655, 660, 665, 666, 675, 680, 685 and 690 to allow for the construction of the Scheme and the Trust will then dedicate its interests in this land as public highway. The Trust did not object to and in fact positively supports the Scheme;

(b) The dedication agreement with the Trust means that the Council will not need to implement the CPO in relation to Plot 690 in which the Department for Health and Social Care ("DHSC") has a right of access across. Implementation of the Scheme will also not impact upon the DHSC's right to construct and maintain a water drain across Plot 620;

(c) The British Pipeline Agency has confirmed that there is nothing to prevent an abandoned aviation fuel pipe from being removed during the Scheme works;

(4) in terms of the two heritage assets within the Order Land:

(a) the Council has obtained Listed Building Consent to relocate the listed milestone currently within Plot 60;[78] and

(b) as the local planning authority concluded when granting the Hybrid Planning Permission, the setting of the scheduled monument in Plot 585 (the Penventinnie Round at Governs Farm) will be safeguarded by the provision of a substantial landscape setting as part of the proposed SANG at Governs Farm and proposed management in the future via the abovementioned stewardship arrangements.

The SRO

73. The SRO is required to support the Scheme in order to:

(1) create new public highway i.e. the NAR, access tracks two ponds, new side roads and bridleways;

(2) make changes to the existing public highway where it is severed by the NAR and is reconnected in order to maintain access for highway users; and

(3) amend existing private means of access where they are affected by the NAR in order to provide reasonably convenient alternative accesses to private property.

74. Section 14(6) of the Highways Act 1980 provides that highways shall not be stopped up

[78] CD 3.12.

unless another reasonably convenient route is available or will be provided.

75. Section 125(3) of the Highways Act 1980 provides that no means of access to premises shall be stopped up unless another reasonably convenient means of access to the premises is available or will be provided.

76. As explained by Tim Wood, and as set out at paragraphs 10.20-10.23 of the Council's Statement of Case:[79]

    (1) another reasonably convenient route is available, or will be provided, before each length of highway being stopped up pursuant to the SRO is stopped up; and

    (2) another reasonably convenient means of access is available or will be provided, before each length of private means of access being stopped up pursuant to the SRO is stopped up.

77. All of the objections to the SRO have been withdrawn and there is no evidence before the Inquiry to contradict the Council's evidence that the statutory tests are fully met.

Conclusions

78. These submissions have sought to summarise the fundamental reasons why the CPO and SRO should be confirmed along with the context for making the decisions on confirmation.

79. Having presented its evidence, and answered your questions, the Council will respectfully request that the CPO and SRO be confirmed as sought.

Richard Moules

Landmark Chambers

23 January 2024

[79] CD 4.5.

ANNEXES TO OPENING SUBMISSIONS

Annex 1: Detailed Legal Submissions

1. Copies of the authorities can be supplied if required.

Human Rights

2. Consideration of human rights issues, principally with respect to Article 1 of the First Protocol, adds little, if anything, to the approach required by the Secretary of State in the CPO Guidance and by the UK courts. In all cases, the making of a compulsory purchase order to acquire private interests in land must be shown to be justified in the public interest.

3. The balance between the public interest and private rights is not only a requirement of the Secretary of State (in the CPO Guidance) and English law (see below) but reflects the position under the Human Rights Act 1998 ("HRA 1998") and the European Convention on Human Rights ("ECHR").

4. The pre-HRA approach is set out in ***R v. Secretary of State for Transport ex parte de Rothschild*** [1989] 1 All E.R. 933 and ***Chesterfield Properties PLC v. Secretary of State*** (1997) 76 P. & C.R. 117.

5. As Laws J held in ***Chesterfield***:

> "To some ears it may sound a little eccentric to describe, for example, Kwik Save's ownership of their shop in Stockton as a human right; but it is enough that ownership of land is recognised as a constitutional right, as Lord Denning said it was. The identification of any right as 'constitutional', however, means nothing in the absence of a written constitution unless it is defined by reference to some particular protection which the law affords it. The common law affords such protection by adopting, within *Wednesbury*, a variable standard of review. There is no question of the court exceeding the principle of reasonableness. It means only that reasonableness itself requires in such cases that in ordering the priorities which will drive his decision, the decision-maker must give a high place to the right in question. He cannot treat it merely as something to be taken into account, akin to any other relevant consideration; he must recognise it as a value to be kept, unless in his judgment there is a greater value that justifies its loss. In many arenas of public discretion, the force to be given to all and any factors which the decision-maker must confront is neutral in the eye of the law; he may make of each what he will, and the law will not interfere because the weight he attributes to any of them is for him and not the court. But where a constitutional right is involved, the law presumes it to carry substantial force. Only another interest, a public interest, of greater force may override it. The decision-maker is, of course, the first judge of the question whether in the particular case there exists such an interest which should prevail."

6. Under the ECHR, Article 1 of the First Protocol provides:

> "**Article 1 Protection of property**
>
> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems

> necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

7. An interference with private property rights must be justified in the public interest. In Strasbourg terms what is described as a "fair balance" must be struck between the public reason for acquisition and private property rights. The "fair balance" is one of the forms of "proportionality" i.e. the requirement that the decision to expropriate must be justified on the facts of the case. In ***James v. UK*** (1986) 8 EHRR 123 at [50]:

> "Not only must a measure depriving a person of his property pursue, on the facts as well as in principle, a legitimate aim "in the public interest", but there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised ... This latter requirement was expressed in other terms in the *Sporrong and Lönnroth* judgment by the notion of the "fair balance" that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (… para. 69)."

8. The ECtHR has always accorded a wide "margin of appreciation" to public authorities exercising compulsory powers. The ECtHR has refused to involve itself in detailed consideration of the merits of policy judgments. In the context of expropriation, the Court said in ***James v. UK*** at [46]:

> "46. … the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues on which opinions within a democratic society may reasonably differ widely. The court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is 'in the public interest' unless that judgment be manifestly without reasonable foundation."

9. The ECtHR does not require there to be no alternative to a particular scheme in issue in order to justify compulsory purchase. See ***James v. UK***, at [51] which, although expressed in the context of the Leasehold Reform Act 1967 (which forced landlords to sell the freehold or a long lease to certain tenants), the same reasoning applies to CPOs:

> "The availability of alternative solutions does not in itself render the leasehold reform legislation unjustified; it constitutes one factor, along with others, relevant for determining whether the means chosen could be regarded as reasonable and suited to achieving the legitimate aim being pursued, having regard to the need to strike a "fair balance". Provided the legislature remained within these bounds, it is not for the Court to say whether the legislation represented the best solution for dealing with the problem or whether the legislative discretion should have been exercised in another way …"

10. Strasbourg considers the availability of compensation to be a relevant consideration although not an absolute requirement. See ***James v. UK*** at [54][80] (emphasis added):

> "Like the Commission, the Court observes that under the legal systems of the Contracting States, the taking of property in the public interest without payment of compensation is treated as justifiable only in exceptional circumstances not relevant for present purposes. As far as Article 1 is concerned, the protection of the right of property it affords would

[80] See also ***Lithgow v. UK*** (1986) 8 EHRR 329 at paras. 120-122 which follows the same approach and in which an attack on the means of assessing compensation was singularly unsuccessful.

> be largely illusory and ineffective in the absence of any equivalent principle. Clearly, compensation terms are material to the assessment whether the contested legislation respects a fair balance between the various interests at stake and, notably, whether it does not impose a disproportionate burden on the applicants ...
>
> The Court further accepts the Commission's conclusion as to the standard of compensation: the taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference which could not be considered justifiable under Article 1. Article 1 does not, however, guarantee a right to full compensation in all circumstances. Legitimate objectives of "public interest", such as pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value. Furthermore, the Court's power of review is limited to ascertaining whether the choice of compensation terms falls outside the State's wide margin of appreciation in this…"

11. Indeed, Strasbourg will only find breach of A1P1 where there is an *extreme disparity* between the compensation awarded and value: see ***Vistins v. Latvia*** (2014) 58 EHRR 4 at [110]-[119].

12. It follows that, depending on the circumstances, the ECHR does not even require that market value (which is secured by the compensation rules under UK legislation for CPOs) be given in order for it to be sufficient. This underlines the fact that compensation is looked at by Strasbourg in broad terms. In the UK legal system the compensation code, generally based on market value and the principle of equivalence, provides compensation for losses which will be suffered by those whose interests are compulsorily acquired: see e.g. the Land Compensation Act 1961.

13. Under the "principle of equivalence" a person whose property is acquired is entitled to recover no less (and no more) than the losses suffered: this includes not only the value of the land acquired but directly related consequential losses (i.e. disturbance). As Lord Nicholls expressed the principle in ***Director of Buildings & Lands v. Shun Fung Ironworks Ltd*** [1995] 2 W.L.R. 404 at 411-412 (emphasis added):

> "The purpose of these provisions… is to provide fair compensation for a claimant whose land has been compulsorily taken from him. This is sometimes described as the principle of equivalence. No allowance is to be made because the resumption or acquisition was compulsory; and land is to be valued at the price it might be expected to realise if sold by a willing seller, not an unwilling seller. But subject to these qualifications, a claimant is entitled to be compensated fairly and fully for his loss. Conversely, and built into the concept of fair compensation, is the corollary that a claimant is not entitled to receive more than fair compensation: a person is entitled to compensation for losses fairly attributable to the taking of his land, but not to any greater amount. It is ultimately by this touchstone, with its two facets, that all claims for compensation succeed or fail."

14. This approach was confirmed by the House of Lords in ***Waters v. Welsh Development Agency*** [2004] 1 W.L.R. 1304 at para 1 where Lord Nicholls stated:

> "1. Compulsory purchase of property is an essential tool in a modern democratic society... Hand in hand with the power to acquire land without the owner's consent is an obligation to pay full and fair compensation. That is axiomatic: *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] 2 AC 111, 125."

15. The English provisions for compulsory purchase and compensation accordingly plainly

satisfy the requirements of the ECHR.

16. It has been expressly recognised by the Courts that English CPO law and procedure complies with the ECHR. In ***Tesco Stores Ltd v. Secretary of State & Wycombe District Council*** (2000) P & CR 427 Sullivan J. held at p. 429:

> "I am not persuaded that either the Convention or the principle of proportionality add any new dimension to the pre-Convention jurisprudence that is applicable to the present case.
>
> In very broad terms, the Convention requires that a fair balance must be struck between the public interest, in the present case in securing much needed redevelopment of the Western Sector of the town, and an individual's right to the peaceful enjoyment of his possessions. Any interference with that right must be necessary and proportionate.
>
> Although the Human Rights Act 1998 does not come into force until October 2, I am satisfied that for present purposes the Secretary of State's policy as set out in Circular 14 of 94 that a Compulsory Purchase Order should not be made unless there is 'a compelling case in the public interest' fairly reflects that necessary element of balance."

17. In ***Bexley LBC v. Secretary of State*** [2001] EWHC Admin 323, following the coming into force of the HRA, Harrison J. followed *Tesco* and held at para. 46 (emphasis added):

> "It was accepted on behalf of the Secretary of State that, by virtue of section 22(4) of the Human Rights Act 1998, he was required to act in accordance with the European Convention on Human Rights when making his decision on 17 August 2000. It was therefore accepted that Article 1 of the First Protocol to the Convention applied in the same way as it applied to the Secretary of State's decision in the *Tesco Stores* case. The right of an individual to peaceful enjoyment of his possessions under that Article is a qualified, rather than an absolute, right and it involves a balancing exercise between the public interest and the individual's right whereby any interference with the individual's right must be necessary and proportionate. Like Sullivan J in the *Tesco Stores* case, I am not persuaded that there is anything materially different between those principles and the principles applied by the Secretary of State under Circular 14/94 whereby a compulsory purchase order is not to be made unless there is "a compelling case in the public interest". Such an approach necessarily involves weighing the individual's rights against the public interest."

18. The Court of Appeal has agreed with this approach. In ***R. (Hall) v First Secretary of State Potter v. Hillingdon LBC*** [2008] J.P.L. 63 Carnwath LJ held (citing the predecessor to para. 17 of the CPO Circular in the 2003 CPO Circular):

> "The courts have accepted that this principle fairly reflects the necessary balance required by the Convention (see *R(Clays Lane Housing) v Housing Corporation* [2005] 1WLR 2229 , 2236). Where the balance depends on judgments of planning policy, the Secretary of State's decision will not be open to challenge save on conventional judicial review grounds."

19. Further, in ***R. (Clays Lane Housing Cooperative Ltd) v. Housing Corp*** [2005] 1 W.L.R. 2229 Maurice Kay LJ rejected the view that approach in CPO cases was displaced by the ***Samaroo*** approach of the "least intrusive option":

> "20 The centre piece of the Strasbourg jurisprudence on this point is *James v United Kingdom 8 EHRR 123*. The European Court of Human Rights, at para 51, plainly rejected a test of "strict necessity" and emphasised "the need to strike a 'fair balance'" in relation to article 1 of the First Protocol. The speech of Lord Steyn in *Daly's* case [2001] 2 AC 532, para 27, adopts the language of "no more than ... necessary to accomplish the objective".

Although *Daly's* case concerned article 8 it was no doubt because it has been authoritatively applied more generally, and specifically to article 1 of the First Protocol (see *International Transport Roth GmbH v Secretary of State for the Home Department* [2003] QB 728, per Simon Brown LJ, at para 51) that Mr Stanley accepted in the course of his submissions that "necessity" is a requirement of proportionality in the present case. His point is that "necessity" is a more flexible concept than the "strict necessity" that was rejected in *James v United Kingdom*. In particular, he submits, it does not compel and is not to be equated with the least intrusive option. To this extent, he seeks to distinguish *Samaroo's* case [2001] UKHRR 1150, another article 8 case.

21 That Samaroo's case is not of universal application has been accepted by this court in *Lough v First Secretary of State* [2004] 1 WLR 2557, which was concerned with the application of article 8 and article 1 of the First Protocol to a grant of planning permission. Pill LJ said, at para 49:

"The concept of proportionality is inherent in the approach to decision making in planning law. The procedure stated by Dyson LJ in *Samaroo's* case [2001] UKHRR 1150 ... is not wholly appropriate to decision making in the present context in that it does not take account of the right, recognised in the Convention, of a landowner to make use of his land, a right which is, however, to be weighed against the rights of others affected by the use of land and of the community in general. The first stage of the procedure stated by Dyson LJ does not require, nor was it intended to require that, before any development of land is permitted, it must be established that the objectives of the development cannot be achieved in some other way or on some other site. The effect of the proposal on adjoining owners and occupants must, however, be considered in the context of article 8, and a balancing of interests is necessary ... Dyson LJ stated, at para 26: "It is important to emphasise that the striking of a fair balance lies at the heart of proportionality.'"

Keene LJ agreeing, said, at para 55:

> "the process outlined in *Samaroo's* case, while appropriate where there is direct interference with article 8 rights by a public body, cannot be applied without adaptation in a situation where the essential conflict is between two or more groups of private interests. In such a situation, a balancing exercise of the kind conducted in the present case by the inspector is sufficient to meet any requirement of proportionality."

I interpret this as signifying that what is "necessary" is driven by the balancing exercise rather than by a "least intrusive" requirement.

22 There is nothing new about interpreting the word "necessary" in a less than absolute way. In *Handyside v United Kingdom* (1976) 1 EHRR 737, para 48, the European Court of Human Rights observed that, in the context of article 10(2), "the adjective 'necessary ' ... is not synonymous with 'indispensable'". It compared the position with that arising under article 6(1) where the words are "strictly necessary" and article 2(2) ("absolutely necessary"). It seems to me that it was these more rigorous tests that were rejected by the court in *James v United Kingdom* 8 EHRR 123 in the context of article 1 of the First Protocol.

23 As the word adopted by Lord Steyn in *Daly's case* [2001] 2 AC 532 was "necessary" and not "strictly necessary", I conclude that there is no real inconsistency between Daly's case and *James v United Kingdom*. They both allow "necessary", where appropriate, to mean "reasonably", rather than "strictly" or "absolutely" necessary. Everything then depends on the context because, as Lord Steyn reminds us, at para 28: "In law context is everything." In the present context, I do not regard what Lord Hope said in *Shayler's* case [2003] 1 AC 247 as having been intended to go further than Lord Steyn had gone in *Daly's* case.

24 I therefore focus on the context in this case. It is not a case of naked property deprivation. It is common ground that the decision of 24 June 2002 that there should be a transfer by reason of mismanagement of CLHC is unassailable. The context is one wherein

a statutory regulator, HC, having unobjectionably decided upon a transfer, then had to choose between two alternatives, Peabody or TFHC. It chose Peabody.

25 In my judgment, the task in which HC was engaged was wholly different from the task of the Secretary of State in *Samaroo's* case [2001] UKHRR 1150. Having lawfully decided that there would have to be a transfer, the decision was then one between two proferred alternatives. Although not in every respect the same as a planning decision, it approximated to what Keene LJ was describing in *Lough v First Secretary of State [2004] 1 WLR 2557*, para 55, namely "a situation where the essential conflict is between two or more groups of private interests". I conclude that the appropriate test of proportionality requires a balancing exercise and a decision which is justified on the basis of a compelling case in the public interest *and* as being reasonably necessary but not obligatorily the least intrusive of Convention rights. That accords with Strasbourg and domestic authority. It is also consistent with sensible and practical decision making in the public interest in this context. If "strict necessity" were to compel the "least intrusive" alternative, decisions which were distinctly second best or worse when tested against the performance of a regulator's statutory functions would become mandatory. A decision which was fraught with adverse consequences would have to prevail because it was, perhaps quite marginally, the least intrusive. Whilst one can readily see why that should be so in some Convention contexts, it would be a recipe for poor public administration in the context of cases such as *Lough v First Secretary of State* and the present case."

20. Accordingly, there is no breach of the HRA or ECHR in considering and, if the submissions and evidence put forward in support of the CPO are found to be soundly based, confirming the CPO. As the former CPO Circular para. 19 advised:

> "Parliament has always taken the view that land should only be taken where there is clear evidence that the public benefit will outweigh the private loss. The coming into force of the Human Rights Act has simply served to reinforce that basic requirement."

Annex 11: Relevant statutory provisions

1. Section 226 of the Town and Country Planning Act 1990 provides:

226.— Compulsory acquisition of land for development and other planning purposes.

(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area —

(a) if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land; or

(b) which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

(1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects–

(a) the promotion or improvement of the economic well-being of their area;

(b) the promotion or improvement of the social well-being of their area;

(c) the promotion or improvement of the environmental well-being of their area.

(2A) The Secretary of State must not authorise the acquisition of any interest in Crown land unless–

(a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and

(b) the appropriate authority consents to the acquisition.

(3) Where a local authority exercise their power under subsection (1) in relation to any land, they shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily—

(a) any land adjoining that land which is required for the purpose of executing works for facilitating its development or use; or

(b) where that land forms part of a common or open space or fuel or field garden allotment, any land which is required for the purpose of being given in exchange for the land which is being acquired.

(4) It is immaterial by whom the local authority propose that any activity or purpose mentioned in subsection (1) or (3)(a) should be undertaken or achieved (and in particular the local authority need not propose to undertake an activity or to achieve that purpose themselves).

(5) Where under subsection (1) the Secretary of State has power to authorise a local authority to whom this section applies to acquire any land compulsorily he may, after the requisite consultation, authorise the land to be so acquired by another authority, being a local authority within the meaning of this Act.

(6) Before giving an authorisation under subsection (5), the Secretary of State shall—

(a) if the land is in a non-metropolitan county in England, consult with the councils of the county and the district;

(b) if the land is in a metropolitan district, consult with the council of the district;

(bb) if the land is in Wales, consult with the council of the county or county borough; and

(c) if the land is in a London borough, consult with the council of the borough.

(7) The Acquisition of Land Act 1981 shall apply to the compulsory acquisition of land under this section.

(8) The local authorities to whom this section applies are the councils of counties, county boroughs, districts and London boroughs.

(9) Crown land must be construed in accordance with Part 13.

2. Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 provides:

13.— Compulsory acquisition by local authorities of rights over land.

(1) A local authority which may be authorised by a Minister of the Crown, by means of a compulsory purchase order, to purchase any land compulsorily for any purpose may be authorised by that Minister, by means of such an order, to purchase compulsorily for that purpose such new rights over the land as are specified in the order; and in this subsection *"new rights"* means rights which are not in existence when the order specifying them is made.

(2) The Compulsory Purchase Act 1965 shall have effect with the modifications necessary to make them apply to the compulsory purchase of rights by virtue of the preceding subsection as they apply to the compulsory purchase of land so that, in appropriate contexts, references in those Acts to land are read as referring, or as including references, to the rights or to land over which the rights are or are to be exercisable, according to the requirements of the particular context.

(3) Without prejudice to the generality of the preceding subsection, in relation to the purchase of rights in pursuance of subsection (1) of this section—

…

(b) Part I of the said Act of 1965 shall have effect with the modifications specified in Part II of Schedule 1 to this Act; and

(c) the enactments relating to compensation for the compulsory purchase of land shall apply with the necessary modifications as they apply to such compensation.

(4) Nothing in the preceding provisions of this section shall authorise the purchase of any rights by an authority for a purpose for which there is power by virtue of section 250 of the Highways Act 1980 (which relates to the compulsory acquisition of rights by highway authorities) to authorise the authority to acquire the rights.

(5) In this section *"compulsory purchase order"* has the same meaning as in the Acquisition of Land Act 1981, and Schedule 3 to that Act shall apply to the compulsory purchase of rights by virtue of subsection (1) above.

3. Section 14 of the Highways Act 1980 provides:

14.— Powers as respects roads that cross or join trunk or classified roads.

(1) Provision may be made by an order under this section in relation to a trunk road or a classified road, not being, in either case, a special road, for any of the following purposes:—

(a) for authorising the highway authority for the road—

(i) to stop up, divert, improve, raise, lower or otherwise alter a highway that crosses or enters the route of the road or is or will be otherwise affected by

the construction or improvement of the road;

(ii) to construct a new highway for purposes concerned with any such alteration as aforesaid or for any other purpose connected with the road or its construction, and to close after such period as may be specified in the order any new highway so constructed for temporary purposes;

(b) for transferring to such other highway authority as may be specified in the order, as from such date as may be so specified, a highway constructed by the highway authority in pursuance of the order or any previous order made under this section;

(c) for any other purpose incidental to the purposes aforesaid;

and references in this section, with respect to an order made thereunder, to *"the road"* and *"the highway authority"* are references to, respectively, the trunk road or, as the case may be, classified road to which the order relates and the highway authority for that road.

(1A) Subsection (1) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).

(2) The provision that may be made pursuant to subsection (1)(c) above in an order under this section that provides for the stopping up or diversion of a highway, includes provision for the preservation of any rights—

(a) of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across the highway to be stopped up or diverted;

(3) An order under this section—

(a) in relation to a trunk road for which he is the highway authority shall be made by the Minister, and

(b) in any other case shall be made by the highway authority and confirmed by the Minister.

(4) Parts I and III of Schedule 1 to this Act have effect as to the making of an order under this section; and Schedule 2 to this Act has effect as to the validity and date of operation of any such order.

(5) Subject to subsection (4) above, an order under this section relating to a trunk road may come into operation on the same day as the order under section 10 above relating to that road.

(6) No order under this section authorising the stopping up of a highway shall be made or confirmed by the Minister unless he is satisfied that another reasonably convenient route is available or will be provided before the highway is stopped up.

(7) An order under this section may provide for the payment of contributions—

(a) by the highway authority to any other highway authority in respect of any additional liabilities imposed on that other authority in consequence of the order or of any previous order made under this section;

(b) to the highway authority by any other highway authority in respect of any liabilities so imposed on the first-mentioned authority that would otherwise have fallen to be discharged by that other authority;

and may also provide for the determination by arbitration of disputes as to the payment of such contributions.

4. Section 125 of the Highways Act 1980 provides:

125.— Further powers to stop up private access to premises.

(1) Subject to subsection (2) below an order under section 14 or 18 above (orders for certain purposes connected with trunk, classified or special roads) and an order under section 248 of the Town and Country Planning Act 1990 (order by Minister or London Borough to stop up or divert highway that crosses etc. a main highway) may authorise the appropriate authority—

(a) to stop up any private means of access to premises adjoining or adjacent to land comprised in the route of the relevant road, or forming the site of any works authorised by the order or by any previous order made under the same enactment;

(b) to provide a new means of access to any such premises.

(2) For the purposes of subsection (1) above—

(a) the appropriate authority in the case of an order under section 248 of the Town and Country Planning Act 1990 is the highway authority for the main highway, and in any other case is the authority by whom the order is made; and

(b) the relevant road is the trunk road, classified road, special road or, as the case may be, main highway to which the order relates.

(3) No order authorising the stopping up of a means of access to premises shall be made or confirmed by the Minister by virtue of subsection (1)(a) above unless he is satisfied—

(a) that no access to the premises is reasonably required, or

(b) that another reasonably convenient means of access to the premises is available or will be provided in pursuance of an order made by virtue of subsection (1)(b) above or otherwise.

(4) Section 252 of the Town and Country Planning Act 1990 (procedure for making certain orders) in its application to an order under section 248 of that Act which by virtue of subsection (1)(a) above authorises the stopping up of a private means of access to premises has effect as if the persons on whom the Minister or, as the case may be, the council of a London borough is required by section 252(2), (3), (10) and (11) to serve certain documents relating to the order included the owner and the occupier of those premises. In this subsection *"owner"* in relation to any premises, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple in the premises, whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits of the premises under a lease the unexpired term of which exceeds 3 years.