

Sections 239, 240, 246 and 260

Highways Act 1980

Acquisition of Land Act 1981

**THE WARRINGTON BOROUGH COUNCIL (OMEGA TO
BURTONWOOD ACCESSIBILITY IMPROVEMENTS)
COMPULSORY PURCHASE ORDER 2019**

REFERENCE:

NATTRAN/NW/LAO/194

Proof of evidence of

KATHRYN LOUISE OKELL

(Land Assembly and Ongoing Negotiations)

1 INTRODUCTION AND QUALIFICATIONS

- 1.1 I am Kathryn Louise Okell and I became a member of the Royal Institution of Chartered Surveyors (RICS) in 2007, after having obtained a MSC in Commercial Property Management in 2004. I am a RICS Registered Valuer and a member of the Compulsory Purchase Association.
- 1.2 I have over fifteen years' experience in compulsory purchase surveying, having begun my career at Keppie Massie in 2004 and, then Lambert Smith Hampton (LSH), where I was an Associate Director (2011-2015), a Senior Surveyor (2009-2011), Surveyor (2007-2009) and Graduate Surveyor (2005-2007). In 2015, I became an associate partner of Axis Property Consultancy LLP, where I specialise in providing CPO and Land Assembly advice to a range of public and private sector organisations. My compulsory purchase work includes undertaking valuations and negotiating compensation claims. I have experience in acting for both acquiring authorities and claimants in the context of Compulsory Purchase Orders and I have prepared expert witness reports in this regard.
- 1.3 I am instructed by Warrington Borough Council ("the Council") to advise and negotiate compensation payable to the landowning parties for the acquisition of interests in the 13 plots of land around Burtonwood Road and Clay Lane ("the Order Land"), which are subject to the Warrington Borough Council (Omega to Burtonwood Accessibility Improvements) Compulsory Purchase Order 2019 ("the Order").
- 1.4 My instructions, which commenced in June 2018, involved undertaking a site inspection, producing a Land Cost Estimate and entering into negotiations with landowners to acquire the land required for delivery of the Scheme by agreement.
- 1.5 I confirm that I undertake my instructions and give this evidence in accordance with the RICS Professional Standards and Guidance, *Surveyors Advising in Respect of Compulsory Purchase and Statutory Compensation* (1st Edition, April 2017).

Scope of Evidence

- 1.6 This proof of evidence has been prepared regarding land assembly and negotiation matters relating to the Order [**document 1** to the Council's Statement of Case ("SoC")] for the improvement of Burtonwood Road and Clay Lane to widen the existing highway to include a cycle way with a pedestrian right of way of foot. The Order was made by the Council on 18 April 2019 and submitted to the Secretary of State for Housing, Communities and Local Government on 25 April 2019. The Order is now due to be considered by an inspector at a Public Inquiry scheduled to open on Tuesday 5 November 2019. This proof of evidence has been prepared in connection with that Inquiry.
- 1.7 I confirm that the evidence that I have prepared in respect of this Inquiry is given in accordance with the guidance of my professional institution and I can confirm that the opinions expressed are my true and professional opinions.
- 1.8 The purpose of my evidence is to explain the efforts that have been made to assemble the land required for the Scheme, together with the coordination of negotiations carried out with affected landowners, together with addressing the objection of the statutory objector ("the Statutory Objector").
- 1.9 My evidence includes an overview of the Scheme; a description of the Order Land; a summary of the approach to negotiations with affected landowners to endeavour to acquire that land by agreement; a summary of the nature of the statutory objection so

far as they relate to matters of negotiation; a summary of how negotiations with the current landowners have progressed and are continuing to progress; and my conclusions on the justification for seeking confirmation of the Order with respect to reasonable efforts to acquire the Order Land by agreement.

- 1.10 My proof of evidence should be read in conjunction with other separate but interrelated proofs of evidence submitted on behalf of the Council, including:
 - 1.10.1 Technical Highways Engineering prepared by Keith Sanders of Warrington Borough Council;
 - 1.10.2 Scheme Development, Transport Planning, and Compulsory Purchase Justification prepared by John Nichol of Warrington Borough Council; and
 - 1.10.3 Impact on School Students prepared by Catherine Thompson of Warrington Borough Council.

2 THE SCHEME AND ORDER LAND

Introduction

- 2.1 This section of my proof of evidence provides a brief overview of the Scheme, alongside a brief description of the Order Land required to facilitate the Scheme and the reasons why the plots included in the Order are required.

Overview of the Scheme

- 2.2 The Order is being made to assemble the land required for the Scheme. The Scheme, including the background to the need for the Scheme, is described in detail in the proof of evidence of John Nichol and the Statement of Reasons [**document 4** to the Council's SoC]. In brief it will facilitate the improvement of an existing highway at Burtonwood Road and Clay Lane to create a cycleway with a pedestrian right of way on foot to improve accessibility and safety of journeys between Burtonwood village and the Omega development.
- 2.3 The Order Land is required for the Scheme to be implemented and achieve the Council's aim of addressing safety concerns and to improve accessibility between the village of Burtonwood and employment areas of Omega/Gemini. This is described in more detail in the proof of evidence of John Nichol.
- 2.4 A Certificate of Lawfulness ("the Certificate") [**document 10** to the SoC] was granted by the Council pursuant to Section 192 of the Town and Country Planning Act 1990 (as amended) and issued on 2 May 2019. As such, there are no planning impediments to the Scheme. Further details of the planning position can be found in the proof of evidence of John Nichol.

Description of the Order Land

- 2.5 The boundary of the Order Land is shown on the plan which accompanies the Order ("the Order Map") [**appendix 1** to the Council's Statement of Reasons ("SoR")]. The land to be acquired ("the Order Land") is shown on the Order Map edged in red and numbered as plots 1-12 (subject to proposed modification in line with **documents 6 and 7** to the SoC), which are described below.
- 2.6 Plots 1 and 1(a) comprise garden and agricultural land, private access, pond and hedgerow fronting Clay Lane Farm. These plots of land immediately abut the existing highway boundary.
- 2.7 Plot 2 comprises agricultural land and hedgerow to the west of Clay Lane Farm. This land benefits from a dropped kerb to the public highway.
- 2.8 Plot 3 comprises agricultural land. This plot immediately abuts the existing highway boundary.
- 2.9 Plot 4 comprises agricultural land, trees and scrubland which immediately abuts the existing highway boundary. It should also be noted that Plot 4 also includes part of public footpath 25. There is also a dropped kerb to the public highway.
- 2.10 Plots 5, 6, 10 and 11 comprise agricultural land, grass verge and scrubland. These plots are adjacent to the current highway boundary.
- 2.11 Plots 7, 8 and 9 comprise agricultural land, garden land, hedgerow and boundary wall which forms part of, or is adjacent to, a residential dwelling known as Fingerpost Farm. This property is in the process of re-development and is currently vacant.

- 2.12 Plot 12 comprises agricultural land.
- 2.13 The Order Land is currently held in separate ownerships as described in more detail below.

Plot 1 (Plots 1 and 1a, as revised)

- 2.14 Plot 1 and 1a are held by way of a freehold interest in favour of Lui Jiao Ye and Shun Kai Ye and is registered at HM Land Registry under Title Number CH542957 [**document 11** to the SoC].

Plot 2

- 2.15 Plot 2 is held by way of a freehold interest in favour of Wing Hong and Wing Say Ye and is registered at HM Land Registry under Title Number CH657425 [**document 12** to the SoC], with reputed ownership by way of access rights in favour of Mr Steve Holding and Ms Sharon Wilson, and a is used, in part, for access purposes by Carol Addison who is the tenant farmer of Plots 3 and 4.

Plot 3

- 2.16 Plot 3 is held by way of a freehold interest in favour of Mr Steve Holding and Ms Sharon Wilson and is registered at HM Land Registry under Title Number CH586415 [**document 13** to the SoC]. Plot 3 is subject to a tenancy in favour of Carol Addison.

Plot 4

- 2.17 Plot 4 is held by way of a freehold interest in favour of Mr Steve Holding, Ms Elizabeth Holding and Ms Sharon Wilson and is registered at HM Land Registry under Title Number CH586446 [**document 14** to the SoC]. Plot 4 is subject to another tenancy in favour of Carole Addison

Plot 5, 6, 10 & 11

- 2.18 Plots 5, 6, 10 and 11 are held by way of a freehold interest in favour of Gillian and James Ditchfield, as executors to Keith James Ditchfield and are registered at HM Land Registry under Title Number CH136701 [**document 15** to the SoC]. Third party rights exist over the land in favour of known parties.

Plots 7, 8 & 9

- 2.19 Plots 7, 8 and 9 are held by way of a freehold interest in favour of Mr Sean Artess or Arterior Development Ltd (Mr Artess's company) and is registered at HM Land Registry under Title Numbers CH136982 and CH136983 [**documents 16 and 17** to the SoC].

Plot 12

- 2.20 Plot 12 is held by way of a freehold interest in favour of Homes England and is registered at HM Land Registry under Title Number CH509156 [**document 18** to the SoC].

Reason for Acquisition

- 2.21 Plots 1, 1a and 2 are required in order to accommodate the extended highway to facilitate the development of the integral cycleway with a right of way of foot, highway drainage and the required construction space. The private access way will be set back on its current alignment and no new private access is required. There is a dropped kerb access to Plot 2 which will be set back and retained as part of the Scheme
- 2.22 Plots 3 and 4 and are required in order to accommodate the extended highway to facilitate the development of the integral cycleway with a right of way of foot, highway drainage and the required construction space. There is a dropped kerb access to Plot 4 which will be set back and retained as part of the Scheme.
- 2.23 Plots 5 and 6 are required for the same purpose as Plots 3 and 4.
- 2.24 Plots 7, 8 and 9 are owned by Mr Artess or Arterior Developments Ltd (Mr Artess's company) and form land at Finger Post Farm or open land adjacent to Finger Post Farm. Plot 8 includes the garden wall of the property and the driveway entrance, both of which will need to be set back in order to accommodate the extended and improved highway.
- 2.25 Plots 10 and 11 are also owned by the Ditchfield Estate and consist of agricultural land, hedgerow, scrubland and grass verge. These plots are required in order to accommodate the extended highway to facilitate the development of the integral cycleway with a right of way of foot, highway drainage and the required construction space.
- 2.26 Plot 12 is required in order to accommodate the extended highway to facilitate the development of the integral cycleway with a right of way of foot, highway drainage and the required construction space.
- 2.27 As such, the entirety of the Order Land is required to facilitate the delivery of the Scheme, as further detailed in the proof of evidence of John Nichol.

3 NEGOTIATIONS WITH AFFECTED OWNERS

- 3.1 This Section of my evidence relates to the process that has been undertaken regarding those parties affected by the Order [**document 1** to the SoC]. Further information in relation to those parties who have objected to the Order is included in Section 4.

Council's Approach to Acquisitions

- 3.2 The Council first approached affected parties in March and April 2017. The nature of those discussions is set out in the statement prepared by Nigel Poole, as exhibited as **Appendix 1** to this proof of evidence.
- 3.3 Discussions between the Council and the Landowners and first began in March and April 2017, when the landowning parties were first identified, and continued until Axis' appointment in June 2018.
- 3.4 The Council undertook public consultation exercises for the Burtonwood Transportation Study [**appendix 5** to the Council's SoR] in December 2014 and March 2015, as further described in the proof of evidence of John Nichol. This included holding public exhibitions within the local area and providing plans relating to the Scheme on the Council's website, whilst at the same time offering people the opportunity to comment on these proposals.
- 3.5 The efforts made by the Council during the preparation and making of the Order (as described above) demonstrate that it has considered and complied with the 'Guidance on compulsory purchase process and the Crichel Down Rules' published by the Ministry of Housing, Communities and Local Government and subsequently updated in July 2019 ("the Guidance"); specifically paragraphs 2, 3, and 17, which relate to the acquisition of land by agreement. Extracts from these paragraphs are set out below:

Para 2. *Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:*

- *plan a compulsory purchase timetable as a contingency measure; and*
- *initiate formal procedures*

This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

Para. 3. *In order to reach early settlements, 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 17. *Undertaking negotiations in parallel with preparing and making a compulsory purchase order can help to build a good working relationship with those whose interests are affected by showing that the authority is willing to be open and to treat their concerns with respect. This includes statutory undertakers and similar bodies as well as private individuals and businesses. Such negotiations can then help to save time at the formal objection stage by minimising the fear that can arise from misunderstandings.*

- 3.6 The Council has undertaken to meet the reasonable professional fees and costs incurred by those parties with whom it has been negotiating and those affected land owners and occupiers with whom the Council has invited to treat.
- 3.7 The Council has met (or has offered to meet) with land owners and occupiers to provide more detail and has answered queries on technical matters where requested to do so.
- 3.8 The Council has entered into agreements in advance of the Order where it has been possible to do so. It has also reached provisional agreements where possible to do so. Details of these agreements are set out below.

Axis' Efforts to Acquire the Order Land by Agreement

- 3.9 In accordance with the Guidance, the Council has been making all reasonable efforts to progress negotiations to acquire the Order Land by agreement and, in June 2018 it appointed Axis Property Consultancy LLP ("Axis") (a subcontractor to LSH) to negotiate the land acquisitions on its behalf.
- 3.10 All owners and occupiers affected by the Order were contacted by Axis between June 2018 and September 2018 and were invited to enter into discussions with a view to agreeing appropriate terms for acquisition and/or for payment of compensation.
- 3.11 The Council, via Axis, continues to seek to agree private acquisitions of land and interests prior to, and following, confirmation of the Order, until such time as the Council decides to exercise its powers under the Order.

The Ye Family – Plots 1 (Plots 1 and 1a, as revised) & 2

- 3.12 The Ye Family are the owner occupiers of Clay Lane Farm. The Council, through its appointed Surveyor, wrote to Mr & Mrs Ye in September 2018 and a meeting took place on 30 October 2018. This was followed by an offer to acquire the land that is required for the Scheme in December 2018.
- 3.13 In January 2019, Mr & Mrs Ye raised queries relating to access, boundary treatments and the impact of the Scheme on the existing pond. Responses were duly provided by the Council. Further attempts to progress matters were made by the Acquiring Authority during February, March and April 2019, with little success.
- 3.14 In May 2019, the Landowner appointed a Surveyor and submitted a formal objection to the CPO [**document 19** to the SoC]. Details of all actions since the objection was lodged are set out below in Section 4.

Mr Holding & Ms Wilson – Plot 3 & 4

- 3.15 The Council, through its appointed Surveyor, wrote to the Landowners in September 2018. Further written attempts to make contact were made thereafter, without success.
- 3.16 In February 2019, contact was made with the Landowners and in March 2019, a Surveyor was appointed to act on their behalf. Shortly afterwards, a meeting took place on site and concerns were raised in relation to drainage and access. A response to these queries was provided in April 2019.

- 3.17 The Landowner raised a formal objection to the CPO in May 2019 [**document 20** to the SoC] and a formal response was provided in June 2019. The objection was formally withdrawn on 1 October 2019 [**appendix 2** to the proof of evidence of John Nichol].

The Ditchfield Family – Plot 5, 6, 10 & 11

- 3.18 The Acquiring Authority first wrote to the Landowner in September 2018 and further letters were sent thereafter, without success. Contact was made in December 2018 and a meeting took place in January 2019. A written offer to acquire the land was made thereafter.
- 3.19 The Landowner appointed a Surveyor in February 2019 and dialogue continued with a further meeting taking place in April 2019. During this meeting, concerns were raised in relation to access and drainage and responses were provided accordingly.
- 3.20 Since this time, an updated offer has been made in respect of the land required for the Scheme and dialogue is ongoing in relation to the terms of acquisition. The Acquiring Authority will continue to work with the Landowner to acquire the land by agreement.

Mr Artess & Arterior Developments Ltd – Plots 7-9

- 3.21 The Acquiring Authority commenced discussions with the Landowner in June 2018 and, following a period of negotiation, terms were agreed for the acquisition of the land required for the Scheme. The matter is now being progressed through to legal completion.

Homes England – Plot 12

- 3.22 The Acquiring Authority first wrote to the Landowner in September 2018 however, it was not until March 2019 that active dialogue commenced. Following initial discussions, the Acquiring Authority made an offer for the land and a period of negotiation has subsequently taken place. At the time of writing, terms are provisionally agreed and the matter is now being progressed through to legal completion.

Summary

- 3.23 The Order proposals have been extensively publicised and consultation has taken place with the communities that will be affected by the Order. All those directly affected by the Order have been notified. The Council has actively engaged with landowners and others in an effort to secure interests by agreement, and remains committed to pursuing those efforts. Any disputes as to compensation payable in relation to the acquisition of the relevant interests will be determined by the Upper Tribunal (Lands Chamber).

4 OBJECTIONS TO THE ORDER

4.1 The Secretary of State received three objections to the Order; two statutory objections ("the Statutory Objections") and one non-statutory objection ("the Non-Statutory Objection"). Since submission of the Statement of Case, the objection from Mr Holding and Ms Wilson was formally withdrawn on 1 October 2019 [appendix 2 to the proof of evidence of John Nichol]. As such, I do not consider this objection any further in this proof of evidence.

4.2 I have set out in the following paragraphs a summary of the grounds of the Statutory Objection relevant to my evidence. The Non-Statutory Objection does not raise any issues of land and property and so is not addressed in this section.

The Ye Family

4.3 The Statement of Objection was submitted by Paul Johnson of Frank Marshall & Co, Surveyor, on behalf of The Ye Family on 16 May 2019 [document 19 to the SoC].

4.4 The principal Ground of Objection is that no satisfactory reinstatement works have been offered that will protect the Ye family's retained property and smallholding and this is discussed in more detail below.

4.5 The second Ground of Objection relates to alternative schemes being available, which would deliver the same objectives as the Council's Scheme. Despite a written request, no information has been provided to substantiate this position, nor has it been raised as an issue in meetings. No alternative schemes have ever been submitted or proposed by the Ye family.

4.6 In terms of the principal Ground of Objection, the Council has met with the Ye family and their Surveyor on two occasions to discuss their concerns in more detail. At the first meeting, Mr and Mrs Ye's main issues were as follows:

- a) Impact of the works in relation to their pond; and
- b) Loss of hedgerow which will impact on visual amenity, privacy and security.

4.7 Following this meeting, the Council subsequently undertook a review of the Scheme and agreed to:

- a) Reduce its land requirements so that Mr and Mrs Ye's pond is excluded from the permanent land requirements. The 'pond area' is now only required on a temporary basis for working space purposes; and
- b) Construct a Mobaline 'living fence', this being a pre-cultivated, living, ivy screen which will provide a ready-made green perimeter solution.

4.8 Full details of the proposed accommodation works and modifications to the Scheme are included in the proof of evidence of Keith Sanders.

4.9 During July 2019, further discussions took place and a second meeting took place in August 2019. Here, new concerns were raised in respect of livestock containment. On 22 August 2019, the Acquiring Authority offered revised accommodation works which, in addition to the Mobaline fence, included the planting of sapling hedges and the installation of post and high tensile stock fence (as per Manual of Contract Documents for Highway Works, Vol 3 H1) with woven wire mesh.

- 4.10 Following further consideration in September 2019, the Council also offered a revised option in relation to accommodation works, as follows:
- a) Provision of a 1.6m pre-grown hedge, or, installation of a Mobilane fence. This will address the concerns in relation to loss of visual amenity, privacy and security;
 - b) Provision of a tensile stock sheep fence in front of the pre-grown hedge or mobaline fence. This will address the livestock containment concerns; and
 - c) Planting of saplings along boundary area, which in time will mature and contribute to the visual amenity and privacy afforded by the pre-grown hedge or Mobaline fence.
- 4.11 Copies of relevant correspondence are included at **Appendix 2** to this proof of evidence.
- 4.12 At the time of writing, no agreement with the Ye family has been reached but the Council is content to modify the Scheme to take account of the landowner's concerns, and is confident that the Scheme as modified is still viable, deliverable and justified as set out in the proof of evidence of Keith Sanders.
- 4.13 As at the date of this Proof of Evidence this Statutory Objection remains outstanding. However, the Acquiring Authority continues to work with the landowner to acquire the land by agreement.

Summary

- 4.14 The Statutory Objection remains outstanding and unresolved at the time of writing this proof of evidence, with negotiations to resolve issues and conclude agreements being active and ongoing. These negotiations will continue in parallel to the compulsory purchase process up to the implementation of the Order, should it be confirmed, with powers of compulsory purchase being used as a matter of last resort in order to facilitate the delivery of the Scheme.

5 CONCLUSION

- 5.1 In summary, based on my understanding of matters from Nigel Poole and my own experience, it is my opinion that significant efforts have been made to reach agreement with the landowners in advance of the Council resorting to compulsory purchase, and that such efforts are ongoing at the time of submission of my proof of evidence.
- 5.2 These efforts will continue in parallel with the advancement of the Order through the statutory process right up to implementation of powers, with a view to compulsory purchase only being used as a matter of last resort where private negotiations fail, in order to ensure the delivery of the Scheme in the public interest.
- 5.3 As such, it is my professional view that the Council has made more than reasonable efforts to acquire the Order Land by agreement.

6 STATEMENT OF TRUTH AND DECLARATION

- 6.1 I confirm that, insofar, as the facts stated in my proof evidence are within my own knowledge, I have made clear what they are and I believe them to be true and that the opinion I have expressed represent my true and complete professional opinion.
- 6.2 I confirm that my proof of evidence includes all facts that I regard as being relevant to the opinions that I have expressed and that attention to drawn to any matter which would affect the validity of those opinions
- 6.3 I confirm that my duty to the Inquiry as an expert witness overrides any duty to those instructing or paying me, and I have understood this duty and complied with it in giving my evidence impartially and objectively, and I will continue to comply with that duty as required.
- 6.4 I confirm that, in preparing this proof of evidence, I have assumed that same duty that would apply to me when giving my expert opinion in a court of law under oath or affirmation. I confirm that this duty overrides any duty to those instructing or pay me, and I have understood this duty and complied with it in giving my evidence impartially and objectively, and I will continue to comply with that duty as required.
- 6.5 I confirm that I am not instructed under any conditional fee arrangement.
- 6.6 I confirm that I have no conflicts of interest of any kind other than those already disclosed in this proof of evidence.
- 6.7 I confirm that my report complies with the requirements of RICS – Royal Institution of Chartered Surveyors, as set down in the RICS practice statement '*Surveyors acting as expert witnesses*'.

KATHRYN LOUISE OKELL

October 2019