

THE WELSH MINISTERS (THE CHESTER TO BANGOR TRUNK ROAD IMPROVEMENT (A55)
(JUNCTIONS 16 AND 16A IMPROVEMENT REALIGNMENT AND SLIP ROADS) COMPULSORY PURCHASE
ORDER 202- , THE CHESTER TO BANGOR TRUNK ROAD (A55) (JUNCTIONS 16 AND 16A
IMPROVEMENT REALIGNMENT AND SLIP ROADS (SIDE ROADS) ORDER 202- AND THE CHESTER TO
BANGOR TRUNK ROAD (A55) (JUNCTIONS 16 AND 16A IMPROVEMENT REALIGNMENT AND SLIP
ROADS) ORDER 202-

COMMERCIAL DEVELOPMENT PROJECTS LIMITED, LAND AT , AND
CONWAY ROAD, PENMAENMAWR, NORTH WALES, LL34 6PR

SUMMARY EVIDENCE OF C CHARLES HUBBARD FOR THE PUBLIC INQUIRY COMMENCING ON
TUESDAY 21ST SEPTEMBER 2021

RESPONDENT ID: J16-R0004

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1. INTRODUCTION AND BACKGROUND

1.1 Commercial Development Projects Limited ("CDP"), lodged objections on the 30th April 2021 to the draft Compulsory Purchase Order(CPO), the draft Side Roads Order and the draft Slip Roads Order (the "Draft Orders") in respect of . (CDR004). CDP seeks the modification of the Draft Orders.

1.2 The plots identified for possible compulsory purchase form part of a larger area of land totalling about 4047 m2 (an acre), see Plan CDP 1 attached and CDR004. It was acquired in 2018 to undertake a residential development.

1.3 Permission for development was granted on 28th April 2020, and all conditions discharged with a revised decision notice reissued by Conwy County Borough Council (Application No 0/46556) for 14 dwellings, access and associated works dated 28th May 2021. The permission has no obligations regarding any new cycleway. The Council made no suggestion that the

Scheme might impact on CDP's development. Until the Draft Orders were received, at the end of March 2021, CDP proposed to commence development on 01.06.2021 and complete it by 01.06.2022.

1.4 The Scheme would (i) render impossible the south facing private gardens to the fourteen houses proposed and (ii) place the Scheme's cycleway and retaining wall in the gardens unacceptably close to the south facing windows of the houses. A cycleway of the scale proposed in the Scheme along the frontage would require it to be raised to the level of the Conway Road with a retaining wall abutting the south facing elevations of the new houses. With the working space taking about half of each plot, it renders the approved housing undeliverable. The Scheme would involve the loss of the rear south facing private gardens. See plan CDP 2 attached to CDP's objection (CDR004)

1.5 The Scheme renders CDP's Planning Permission incapable of implementation. The whole would have to be radically revisited. CDP consider there is no prospect of achieving acceptable levels and density of development over the remainder of its site.

1.6 WG's approach to this part of the Scheme has failed to follow policies laid down in WG advice on Compulsory Purchase Orders. The Scheme cycleway proposal along Conway Road do not reflect the appropriate wider considerations to be analysed before making the decisions on powers to expropriate privately owned land. Whether there is a provable compelling need in the public interest must reflect all relevant policies, not just Highways.

1.7 The approach by the AA is contrary to the guidance in the Welsh Government's Circular 003/2019 (CD4.01.173). If the WG's team had followed policy they would have identified the delivery of 14 houses should have been a priority over 118m of cycleway along Conway Road terminating at the western end of CDP's site. That there can be no compelling need in the public interest for this section of the CPO as should have been identified through a proper approach to prior engagement under Circular 003/2019. This lapse blighted CDP's development proposal.

2. NON COMPLIANCE WITH WELSH GOVERNMENT CIRCULAR 003/2019 (October 2020) ("The Circular")(CD4.01.173), NO PROPER INVESTIGATIONS IN RELATION TO THE CDP LAND PRIOR TO DESIGNING THE SCHEME, NO PROPER CONSULTATIONS AND NO PRIOR ATTEMPTS TO NEGOTIATE AN ACQUISITION

2.1 WG made no offers to acquire by private treaty CDP's interest in _____, or all of CDP's development land. This is in breach of the requirements and advice to the AA imposed by the Circular including, in particular or in general terms, paras 10, 13, 16, 17, 26, 27, 29, 30, 31, 40, 42, 52, 53, 56, 57, 62, and 63. If the AA's team observed the requirements of the Circular they would have been aware of CDP's plans and could have properly reflected this in the Scheme design. The blight of the CPO could have been avoided.

2.2 On 28th July 2020 the AA _____, at a single and only "virtual" meeting with CDP prior to the making of the Draft Orders, promised an overlay of the Scheme showing its impact on CDP's development. The AA were aware of CDP's proposals from that time. The plan was provided six weeks later. CDP warned the AA that the Scheme made it impossible to develop and requested the Scheme be revisited. The AA had the opportunity to refine the CPO Scheme and yet proceeded with a design which they were aware could stop CDP's housing development.

2.3 WG's response to CDP's objections dated 4th August 2021, Appendix CCH C, states that decisions related to housing supply are outside the remit of this Scheme. This is wrong as the determination as whether there is a provable compelling need in the public interest must consider all relevant public policy matters. A further inadequacy is the description of CDP's land as "scrubland" when the AA knew that it was a 14 unit housing site.

2.4 There was no further contact with CDP by the AA until receipt of the Draft Orders and associated documents on 24th March 2021. This does not reflect appropriate "constructive engagement" to find a resolution pursuant to paragraphs 26 and 31 of the Circular. Paragraph 27 states that the Welsh Ministers will expect AA's to demonstrate they have taken steps to acquire all the land and rights by agreement wherever possible. Mr Healey in his evidence (CD1.01.02 para 6.4) states that Mr Bayliss's evidence proposes modifications to the CPO but none are identifiable. No offers have been received by CDP for a private sale of the land and the AA is unable to satisfy this requirement.

2.5 The AA cannot have made an objective balanced decision as to a compelling case in the public interest to CPO. Whether 118 linear metres of cycleway, which cannot continue further to the west would outweigh the of the public benefit of early housing development has not been considered by the AA, let alone proven. This is not addressed by Shan Wyn Jones in evidence dealing with the CDP objection. (CD1.04.02 section 4.) CDP's aim to provide housing on available underutilised land in an area of shortfall, is aligned with the public interest.

2.6 WG's planning policy background and weight to be given to housing land supply against provision of a short section of cycleway to meet highway policy and Active Wales aspirations of the AA are considered in Mr Landor's evidence..

2.7 A Teams "meeting" on the 26.06. 2021 discussed CDP's objection. Draft Minutes are attached with correspondence. All members of the CDP team distinctly recall one of the WG team say to the effect that;" I am worried about the prospect of getting this aspect of the Scheme proposals through a Public Inquiry. I think we should discuss the proposals and the objection further internally".

2.8 CDP's team believe these, or similar words, were used by James Healey of the WG, but given media used that was unclear. The draft Minutes failed to record that, after the above statement, the CDP team left the meeting to the AA team alone. Section 4, records elements of the private AA session. My e-mail of the 13.07.2021 records CDP's corrections. The WG did not accept all CDP's corrections. CDP's response of the 22nd July reconfirmed the position.

2.9 It seemed that some in the AA team felt that Circular 003/2019 had not been properly observed. Steps taken by the AA team have not followed the Circular's good practice and the AA do not demonstrate by any strong evidence a compelling need in the public interest to include the subject strip of CDP's land in this CPO.

2.10 The AA on 24.06. 21 focussed on the 30 mph sign at the southwest corner of the site as justification for this section of cycleway. The AA were reluctant to accept that CDP's development would expand the urban area of Penmaenmawr east. David Roberts explores this further in his evidence.

2.11 James Healey responded for the WG 04.08.21(Appendix CCH C) including a Discussion Draft Plan CDP3, reducing the acquisition strip to 0.5 metres for a shared 3 m foot/cycleway. A retaining wall would support the path reflecting the slope. The Discussion Plan also requires

a working area to construct the foot/cycleway taking up to about the mid line of the houses to be included in the CPO. Such approach would not be acceptable to CDP as it would blight the land indefinitely. If CDP were to build the retaining wall and foot/cycleway as part of their development works, at the cost of the WG, the draft plan could work.

2.12 CDP responded to the draft on 17.08 2021(Appendix CCH C) confirming that CDP could undertake to construct the AA's compromise foot/cycleway, as part of its development. It points out the need for approval by the LPA and that the AA must remove from the Draft CPO. A response to CDP's letter is awaited at the time of writing of this evidence.

3. MATERIAL DETRIMENT TO BE CAUSED TO CDP'S RETAINED LAND AND THE POTENTIAL EXTRA COSTS OF ACQUISITION OF CDP'S WHOLE DEVELOPMENT SITE

3.1 CDP consider that it would be impossible to design a project for the retained land, were the draft CPO approved. Section 8(1) of the Compulsory Purchase Act 1965, and whether "the retained land is less useful or less valuable in some significant degree" would need to be considered. The Scheme has the potential to wholly sterilise CDP's retained land. The AA could be required to acquire the whole of CDP's undeliverable development land under the "material detriment" provisions.

3.2 The budgetary impact of such must be a factor which any AA should have regard in its assessment of whether or not there would be a provable compelling need in the public interest to CPO. Increased costs of acquisition would also be a consideration in assessing "compelling need". The AA has been aware since 28.07.2020 of CDP's consented 14 houses project and that this could be rendered incapable of implementation by the Scheme.

4 . COMMENCEMENT OF THE FULLY AUTHORISED DEVELOPMENT IS NOW WHOLLY PREJUDICED BY THE DRAFT SCHEME AND CPO

4.1 The blight of the CPO could have been avoided by proper observance of Circular 003/2019. Housing supply in accordance with policy is suspended by the AA's lapses. The AA were asked to revise their design proposals for this element of the Scheme on the 28th July 2000 to avoid delaying the delivery of 14 houses.

4.2 The AA letter of the 4th August 2021 (Appendix CCH C) claims there is no blight. It is a matter of fact that 14 houses are not currently being built because of the Scheme. Purchasers could not fund or buy with the CPO threat from the Scheme. The wide working area acquisition line running along the ridgelines of the houses adds to that blight. Developers cannot risk development which is unsaleable because of blight from the Scheme and the defective titles.

5 . SCHEME AND CPO SHOULD BE MODIFIED BY THE REMOVAL OF

5.1 The AA's 4th August 2021 Draft for Discussion Plan has a combined 3m foot/cycleway which requires the CPO of a 0.5m wide land strip. There is no need for such works in the AA's Scheme as CDP, in its letter of 17th August (Appendix CCH C), confirms that, subject to planning permission, it would provide the foot/cycleway with the retaining wall. This would be subject to the AA bearing the additional costs. CPD wish to progress the housing promptly and the presence of the CPO, and the working area, impose an indeterminate delay.

5.2 Edward Landor's evidence clarifies that the provision of this cycleway is not a strict requirement while housing land supply has a higher priority.

5.3 CDP, subject to Contract, is willing to enter into an agreement to provide the 0.5m for a footway/cycle track and the retaining wall as part of its development, should the LPA grant planning permission and the WG meeting the costs of this proposal. This position demonstrates the lack of any compelling case in the public interest for the draft CPO.

6. CONCLUSIONS

6.1 In the setting of CDP's evidence, there is no proven compelling need in the Public Interest to CPO the subject frontage strip of CDP's development land. Approving the draft CPO with the working area would wholly prejudice the delivery of 14 houses by CDP. Delivery of this housing is already delayed by the AA's approach. Scant regard has been paid to the clear and prudent Welsh Government policy set out in Circular 003/2019.

6.2 I would respectfully request that the Draft CPO be modified by the removal of and the related working area. No compelling need in the public interest has or can be proven for this land being acquired compulsorily in connection with the wider road improvement Scheme.

7. STATEMENT OF TRUTH

7.1 I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true.

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31.08.2021

C Charles Hubbard BSc FRICS
Consultant
Matthews & Goodman LLP
Exchange Station
Tithebarn Street
Liverpool
L2 2QP