

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 CONWAY ROAD,
PENMAENMAWR, NORTH WALES, LL34 6PR

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

RESPONDENT ID: J16-R0004

CONTENTS

1. Introduction and Background
 2. Non Compliance with WG Circular 003/2019
 3. Material Detriment to be Caused to CDP's Retained Land
 4. Commencement of Fully Authorised Development Would be Prejudiced
 5. Scheme and CPO Should be Modified by Removal of
 6. Conclusions
 7. Statement of Truth
- Appendix CCH A - CC Hubbard CV
- Appendix CCH B - Unagreed Minutes 24.06.21 and correspondence Appendix
- CCH C - Letter of 04.08.21 from J Healey and reply of 17.08.21

1. INTRODUCTION AND BACKGROUND

1.1 The Directors of Commercial Development Projects Limited ("CDP"), support the principles behind the general road improvement scheme (the "Scheme"), but lodged formal objections on the 30th April 2021 to the draft Compulsory Purchase Order and the draft Side Roads Order and Slip Roads Order (as defined above) (the "Draft Orders") as prepared and published by The Welsh Government in respect of (and also intended to include of 10m2 covered by the Inset Map) identified in the Draft Orders. CDP seeks the modification of the Draft Orders. (CDR004.)

1.2 CDP are a well established property development company with a good track record of developing much needed new housing developments to assist in satisfying housing need and demand. The subject identified for possible compulsory purchase in the Draft Orders, form part of a larger area of land totalling about 4047 m2 (an acre), shown on the attached Plan CDP 1. This area of land was acquired by CDP in 2018 with a view to undertaking a residential development project to be designed to meet identified demand in the locality. Significant planning and design development work has since been undertaken by CDP and its consultants.

1.3 Full planning permission for CDP's land was issued 28th April 2020 and the final revised decision notice was issued by Conwy County Borough Council (the "Council") (Application No 0/46556), following discharge of all conditions on 28th May 2021 (the "Planning Permission"), see Edward Landor's evidence for more detail on the planning process. The Planning Permission, subject to conditions and to a Section 106 Agreement, has no obligations regarding any new cycle track provision on the subject section of the route planned under the Scheme. The Council, during the long drawn out application process, made no suggestion that the Scheme might impact on CDP's development plans proposed under the Planning Permission. Until the Draft Orders and associated documents were received, at the end of March 2021, CDP had proposed to commence the development on or about the 01.06.2021 with a view to completion by about 01.06.2022 which would have helped meet the Welsh Government's (WG) housing supply targets and helped to satisfy, to a degree, unsatisfied market demand.

1.4 The Scheme and Draft Orders, as currently drafted, would (i) remove virtually all the land for the south facing private gardens to the fourteen houses proposed under the Planning Permission, and (ii) place the Scheme's new wide cycleway and a retaining wall on the garden

areas unsociably and unacceptably close to the south facing windows of the proposed houses. There is a significant gradient across the whole CDP development site, with Conway Road being the high point and the parking/internal access road to the proposed development along the north side of the site being the low point. To provide the cycleway of the scale proposed in the Scheme along the Conway Road frontage of the CDP land would require the cycleway land to be raised to the level of the Conway Road with a significant retaining wall structure which would abut and be unreasonably close to the south facing elevations of the authorised proposed new houses. With the working space required for the Scheme under the CPO, which takes about half of each house plot, it renders the fully approved housing development wholly undeliverable. As the WG does not have powers under the Draft Orders to take any part of the land on a temporary basis, the impact of the Scheme upon the approved development must be assessed on the basis of all of the land comprised within being acquired, including the working space. The Scheme would make it impossible to provide the rear garden wall along the Conway Road frontage, proposed in the approved development plans to create for the new houses south facing private gardens. The restricting and constraining impact of the proposed cycleway under the Scheme on CDP's proposed development, fully consented under the Planning Permission, is illustrated tinted pink on the plan CDP 2 attached to CDP's objection (CDR004.)

1.5 This demonstrates that simply the presence of the draft Scheme proposals renders the Planning Permission currently incapable of implementation. It is clear that the design of the whole, and fully approved housing, development would have to be radically revisited to reflect the Scheme. However, the Directors of CDP consider that there is little prospect of achieving acceptable levels and density of development over the remainder of CDP's development site which would be left should the CPO be authorised to proceed as presently drafted. It is considered highly unlikely that any viable alternative development could be redesigned and approved reflecting the draft Scheme's current potential impact on CDP's fully approved development proposals.

1.6 This evidence will focus primarily on the way in which the WG's design development process for the Scheme has failed to follow properly the policies laid down in current WG advice in relation to Compulsory Purchase Orders. It endeavours to demonstrate that there has been a complete lack of adequate and appropriate proper prior contact and consultation and liaison between the Acquiring Authority (AA), the Council as local planning authority, and CDP as the developer and landowner. This is demonstrated by the inappropriate draft Scheme design and Draft Orders for this element of the Scheme cycleway proposal along Conway Road not reflecting properly and fully the appropriate wider considerations which must be analysed before making the very serious decisions to provide powers to expropriate privately owned land. Whether or not there is a provable compelling need in the public interest must of course reflect all relevant policies, not just Highway considerations, which does not appear to have been done in the setting of CDP's housing development land holding on Conway Road.

1.7 The approach taken by the AA is wholly contrary to the guidance given in the Welsh Government's Circular 003/2019 (CD4.01.173) particularly given the existence of the full Planning Permission for the CDP wider site, the application for which I understand was initially submitted in August 2019 – see the evidence of James Marshall for a detailed summary of the planning application process. If the WG's team had followed policy, they would have readily identified that the delivery of 14 houses to meet housing land undersupply should have been a priority over a short section of cycleway along the site's approximately 118 linear metres of the Conway Road frontage, which would in any case have to terminate at the western end of CDP's site. There can be no compelling need in the public interest for this small section of the

proposed CPO and that should have been identified through adopting the proper approach to prior engagement advised in Circular 003/2019 before the CPO was drafted. This lapse has immediately blighted CDP's development proposal and stopped the early delivery of otherwise wholly approved housing supply.

2. NON COMPLIANCE WITH WELSH GOVERNMENT CIRCULAR 003/2019 (October 2020) ("The Circular") 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 Up to the preparation and issue of the Draft Orders, and to date, the Welsh Government, its officers and advisers made no firm or clear offers to acquire by private treaty CDP's interest in [redacted], the subject property, or the whole of CDP's development land. This omission is in direct 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. It is clearly not appropriate to repeat all the relevant content of the Circular here and it is to be taken as read. If the AA's team had observed the requirements and advice of the Circular prior to the design of this part of the Scheme they would have been properly aware initially of the pending planning application and of CDP's now fully consented development proposals (in April 2020) and could have properly and fairly reflected this in the emerging designs for the Scheme. The blighting impact of the CPO on the early delivery of this housing supply could have been avoided.

2.2 On 28th July 2020, I am instructed, the AA's first and only contact with CDP was a single "virtual" meeting with CDP's representatives when they promised CDP to prepare an overlay of the Scheme showing its impact on the CDP development proposals. The AA's representatives were aware of the housing development proposals from that time. That promised plan was, I understand, only provided about six weeks later after further enquiries from James Marshall, (see his evidence). At that time CDP warned the AA that the Scheme would make it impossible to develop the CDP land as proposed and requested the design of the cycleway on this section of Conway Road be revisited. The AA had the opportunity therefore of a significant period of time to refine this aspect of the CPO Scheme and yet clearly chose to proceed with a design which they were fully aware would blight and stop the construction of a much need residential development.

2.3 Mr James Healey in a letter of response to CDP's formal objections to the draft Orders dated 4th August 2021 (para; Ground 3), see Appendix CCH C, states that decisions related to housing supply are outside the remit of this scheme. This must be wrong as the decision as to whether there is a provable compelling need in the public interest must properly take into consideration all public policy matters and balance those. A further lack of "joined up thinking" in this regard is demonstrated by the description by the AA in the supporting CPO papers of the CDP subject land as "scrubland", when the AA already knew that it was an important housing development site with potential for full planning permission for 14 houses. It should have been properly described in the CPO documents as the description as scrubland might generally be seen to further justify and support the AA's Scheme design. A fairer and more considered description of the land would read. "A consented residential development site for 14 dwellings owned freehold by an active developer, CDP Limited which proposes to commence development early in 2021."

2.4 There was no further contact with CDP by the AA until receipt of the Draft Orders and associated documents at the end of March 2021. This approach certainly does not reflect appropriate "constructive engagement" with the landowners to find an alternative resolution

pursuant to paragraphs 26 and 31 of the Circular. Paragraph 27 of the Circular states that the Welsh Ministers will expect acquiring authorities to demonstrate that they have taken steps to acquire all of the land and rights included in the CPO by agreement wherever possible. Mr James Healey, in dealing briefly with objections in his Statement of Need, (CD1.01.02) in para 3.9 states that a modification of the CPO is proposed but simply cross refers to Jonathan Bayliss's evidence (CD1.05.02) There is no clear or acceptable modification proposed in Mr Bayliss's para 6.4. At the date of drafting this evidence, absolutely no offers have been received by CDP, or its representatives, in relation to a voluntary sale of the land subject to the CPO and the AA must be unable to satisfy this requirement in relation to the CDP lands.

2.5 It is difficult to believe that the AA and its team can have properly considered, and made an objective and balanced decision, as to whether there could be a compelling case in the public interest to CPO the subject land from CDP. Whether the provision of about 118 linear metres of new cycleway, which physically cannot be continued any further to the west along Conway Road because of existing, and some very recent, development would outweigh the loss of CDP's private interests and the public benefit of additional early housing development does not seem to have been considered by the AA, let alone proven. Shan Wyn Jones in evidence (CD1.04.02) in para 3.54 in dealing with objections makes no reference to CDP's objection or to the balance between housing and other planning policies in making the assessment of compelling public need under Circular 003/2019. CDP's interest, which is primarily aimed at providing much needed housing supply on otherwise available and underutilised land in a location where there is a significant shortfall, is wholly aligned with the public interest too.

2.6 Expert evidence from Edward Landor MRTPI considers the WG's wider planning policy background and the balance and weight to be given to housing land supply issues and the relationship of these to the provision of a very limited section of "idealistic cycleway" only aimed to meet highway policy and Active Wales aspirations of the AA.

2.7 A relatively unproductive Teams "virtual meeting" was held on the 26th June 2021 to discuss CDP's formal objection and Draft Minutes for this meeting are attached as Appendix CCH B with related correspondence. Apart from various minor errors in two iterations of these Minutes, prepared by the AA's consultant Ramboll, all members of the CDP professional team who attended the virtual meeting distinctly recall one of the WG team say words to the effect that; "I am very worried about the prospect of getting this aspect of the Scheme proposals through any Public Inquiry. I think we should discuss the proposals and the objection further internally".

2.8 The CDP team believe that these, or similar words to this effect, were said by James Healey of the WG team, but given the nature of a Teams conference call that was a little unclear. The draft Minutes also failed to record that, shortly after the above statement was made, the CDP team left the meeting solely to the AA team alone and Section 4, it is believed, records elements of what in fact was the private AA session. My e mail of the 13th July 2021 to Jenny Bringlee of Ramboll records CDP's request to correct the draft Minutes. Her reply of the 16th July did not accept all CDP's proposed amendments to the draft minutes and our response of the 22nd July reconfirmed the CDP position and stated that the Minutes and the related correspondence (see Appendix CCH B) would be adduced as evidence at any Inquiry.

2.9 It appears to the CDP Team from the comment that there may well have been an acceptance by some in the AA team that the provisions on policy in 003/2019 Circular had not been fully and properly observed. I do not believe that steps taken by the AA team can be

demonstrated to have followed the Circular guidance or to reflect good practice and I do not consider that the AA could in the circumstances properly demonstrate by “strong evidence” that there is a compelling need in the public interest to include the subject strip of CDP’s land in this CPO.

2.10 The AA team, at the virtual meeting on 24th June 2021, focussed on the presence of a 30 mph sign located on Conway Road at the western corner of the site as the principal justification for the cycleway along the front/south boundary of CDP’s land, and thereby the CPO. The AA representatives were reluctant to accept that CDP’s development would, through building along its frontage along Conway Road, extend the built up area of Penmaenmawr eastwards and that the 30 mph signs could, following the completion of the development, be readily moved by the Local Highway Authority to close to the south eastern corner of CDP’s development land. David Roberts of SCP Transport’s addresses this, among other matters, in his expert evidence.

2.11 The response promised to CDP at the 24th June 2021 virtual meeting eventually arrived in the letter of the 4th August 2021 from James Healey on behalf of the WG (see Appendix CCH C and CDR004)). Accompanying that response was a Discussion Draft Plan reducing the proposed permanent acquisition strip along the Conwy Road frontage to only 0.5 metres width. This would enable the provision of a shared 3 m wide footway and cycle track along CDP’s site frontage, but it would require a new retaining wall to be constructed to support the widened pathway reflecting CDP’s sloping site. However, the Draft Discussion Plan still appears to require a temporary working area to construct the retaining wall and widened footpath/cycleway. This would reach well into CDP’s development land, actually up to about the mid line of all the consented housing units. Such an arrangement has not been explained by the AA in any detail, or discussed, but would not be acceptable to CDP as it would, at the least, continue the current blight from the Scheme indefinitely until it is executed and completed. CDP see some potential for the proposal however if they are able to construct the retaining wall and new footpath as part of their development works, with the AA contributing to the additional costs of this for their development.

2.12 CDP’s response to Mr Healey’s proposal was set out in a letter dated 17th August 2021, a copy of which forms part of my Appendix CCH C. This explains why CDP cannot accept the proposal but counters with confirmation that, Subject to Contract, CDP would be prepared to undertake the works to construct the AA’s compromise combined footpath and cycleway, as part of implementing its otherwise fully consented development plans. It also points out the need for the amended combined footpath cycleway proposal to be approved by the LPA and that the AA should agree to remove [redacted] from the Draft CPO. A response is awaited from the AA at the date of drafting 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 As at the date of drafting these objections it appears, to the Directors of CDP and its development team, to be most unlikely that it would be legally, physically and economically possible to formulate a revised development scheme for the potentially retained wider area of development land owned by CDP, were the draft CPO in its current form to be approved. In the setting of Section 8(1) of the Compulsory Purchase Act 1965, the issue of whether “the retained land is less useful or less valuable in some significant degree” would need to be considered. As the Scheme acquisitions as proposed appears to have the potential to sterilise the development potential of CDP’s retained land, the AA could be required to acquire the

whole area of land held by CDP for now undeliverable development to be acquired under the “material detriment” provisions. Under these provisions, compensation could be payable reflecting fully the value of all the “development ready” CDP land with its full Planning Permission.

3.2 The budgetary impact of such happening must be a factor which any AA should have to have regard to in making the difficult, but required, prior assessment of whether or not there would be a justifiable and provable compelling need in the public interest to apply a CPO to the subject plots. Such could open up the AA to significantly increased costs of acquisition and be a very relevant consideration in assessing “compelling need in the public interest”. The AA has been actually fully aware for a considerable period of time of CDG’s proposed and fully consented 14 unit housing development project and that this would be rendered incapable of implementation by the Scheme and the CPO as currently drafted.

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

4.1 The commencement of CDP’s fully approved development of fourteen new dwellings on its wider holding of land, which had been planned to start in June 2021 has been rendered impossible by the published draft Scheme and CPO as funding, development and disposals cannot be progressed while the uncertainty brought by the Scheme remains. The blight of these CPO proposals could have been reasonably avoided by the proper observance of the provisions of Circular 003/2019. The provision of much needed housing supply authorised in accordance with planning policy is, for the time being, suspended by the AA’s lapse in proper consultations and investigations. The AA were, I understand, asked to review and revise their design proposals for this element of the Scheme at the virtual meeting held with CDP on the 28th July 2020, in order that early delivery of the then proposed housing units could be ensured following the approvals of reserved matters all of which have subsequently been approved.

4.2 Mr Healey, for the AA, in his letter of the 4th August 2021 under “Ground 4” (Appendix CCH C) disagrees that the Scheme has occasioned any blight. I cannot accept or understand that assertion. It is simply a matter of fact that the now fully consented development of 14 new dwellings, which would otherwise have been started on site earlier this year, has not been able to be started because of the presence of the Scheme and the Draft CPO. This is a clear case of blight in the wider sense of the word. Potential purchasers of, and funders of, the yet to be developed houses would not be able to fund or contract for purchases with the clear pending CPO threat presently applicable over the development from the Draft Orders and the Scheme. The “working area” CPO acquisition line running approximately along the ridgelines of the proposed new houses in an East – West direction across the site also adds very significantly to that blight. No developer could risk proceeding with a fully consented development such as is proposed where the product would be unsaleable because of the readily apparent blight from the draft CPO and Scheme and the potentially defective titles of all the housing units to be developed.

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

5.1 The AA, following CDP’s representations, eventually put forward only on the 4th August 2021 a Draft for Discussion scheme showing a combined 3m wide footpath cycleway along the CDP site frontage which would only require the acquisition of a 0.5m wide additional land strip. This is similar to counter proposals advocated over the last year or more on behalf of

CDP. The Draft for Discussion does however still also show a large and blighting working area over which we assume the AA would want temporary rights. It should be noted that the AA does not have power under the Draft Orders to acquire the land temporarily. Furthermore, there is no need for such works to be part of the Scheme being promoted by the AA. CDP has, confirmed in its letter of the 17th August (Appendix CCH C) that that it would, subject to planning permission being granted by Conwy BC, be willing itself to provide such a widened combined footpath/cycleway as part of its development and including the appropriate and required retaining wall, subject to AA bearing the additional costs of that. CPD wish, wholly reasonably, to progress their proposed housing development as soon as possible and the continued presence of the Draft CPO, and the working area proposal would militate against that by imposing an indeterminate period of delay.

5.2 In the setting of the policy evidence from Edward Landor, it is clear that the provision a cycleway in the subject location is not a strict requirement while housing land supply has a high priority. The Local Planning Authority (LPA) have not, in their application of policy, required a cycleway along CDP's development site frontage in this location. These background factors clearly further demonstrate that there is no provable compelling need in the public interest for a CPO on .

5.3 CDP would, subject to Formal Contract, be willing in principle to enter into an agreement to provide a 0.5m wider footway/cycle track and the appropriate new retaining wall as part of its development should the LPA wish such and grant planning permission for it and subject to the WG meeting the costs of these works. This position again demonstrates the lack of any compelling case in the public interest for the draft CPO and that the AA, had they engaged properly in accordance with all the policies in Circular 003/2019, should have identified early on in the design process that these plots should not have been included in the draft CPO.

6. CONCLUSIONS

6.1 In the setting of this evidence and that of James Marshall of CDP, of Edward Landor and David Roberts it is clear there is absolutely no provable or proven compelling need in the Public Interest to CPO the subject frontage strip of CDP's development land, the draft CPO . Approving the draft CPO, with the proposed working area would completely prejudice the early delivery of 14 much need housing units by the landowner and developer CDP. Delivery of this housing supply is already being delayed by the AA's badly thought through proposals. These have been designed and promoted with scant regard to the clear and prudent Welsh Government policy set out in Circular 003/2019 regarding early discussions, negotiations and engagement with all potentially affected parties.

6.2 I therefore would respectfully request that the Draft CPO be modified by the removal of including the working area identified on the CPO Plans. 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. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I understand that proceedings for

contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

.....

31.08.2021

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

Appendices

Appendix CCH - A	C C Hubbard Curriculum Vitae
Appendix CCH – B	Unagreed draft Minutes of 24.06.2021 and related correspondence
Appendix CCH - C	Letter of 4 th August 2021 from James Healey at the AA responding to the CDG objections and reply dated 17 th August 2021 on behalf of CDP
Plan – CDP 1	Approved development scheme with Cycle Track CPO overlay
Plan – CDP 2	CPO Plot Plan with CDP housing scheme overlay
Plan – CDP 3	Discussion Draft Plan accompanying WG’s letter of 4 th August 2021