

**PUBLIC INQUIRY INTO
THE WEST SUSSEX COUNTY COUNCIL (A284 LYMINSTER BYPASS
(NORTH)) COMPULSORY PURCHASE ORDER 2020
AND
THE WEST SUSSEX COUNTY COUNCIL (A284 LYMINSTER BYPASS
(NORTH) CLASSIFIED ROAD) (SIDE ROADS) ORDER 2020**

**CLOSING SUBMISSIONS
ON BEHALF OF THE ACQUIRING AUTHORITY**

Compelling case in the public interest

1. West Sussex County Council (**'WSCC'**) submits that the evidence before the inquiry overwhelmingly demonstrates a compelling case in the public interest for confirming the compulsory purchase order (**'CPO'**) and side roads order (**'SRO'**) to facilitate the A284 Lyminster Bypass (North) (**'the Scheme'**).
2. The principal reasons for that conclusion are essentially twofold: first, the Scheme's significant highways benefits; secondly, facilitating housing and economic growth and development plan ambitions for the area. These matters are unchallenged by any remaining objector to this inquiry. Indeed, there could be no credible or arguable challenge to them. The issues that have been raised by the one remaining objector are, in WSCC's submission, unsubstantiated and in any event clearly not such as to outweigh the benefits set out above.
3. These closing submissions will deal with those two key matters before turning to other requirements of legislation and guidance and the issues raised by the remaining objector to the CPO.

Issues with the existing A284

4. The starting point is to understand, as explained in Mr Parfect's written and oral evidence, the A284 in its strategic context in West Sussex as an important north-south link, which provides a principal access to Littlehampton, connects to the A259 providing access to Rustington, East Preston and Climping, and to the north connects to the national Strategic Road Network at the A27 for longer-distance traffic.
5. The A284 through Lyminster is not fit for this purpose at present. The Arun Local Plan 2011-31 recognises this, specifically noting that

"The District is lacking in strong north-south links between the main towns of Littlehampton and Bognor Regis and the A27" (15.1.2), and safeguarding the Lyminster Bypass route as a solution to this issue at Littlehampton (Policy T SP1(c); T SP3).

6. The problems are obvious and significant:
 - a. **Geometry of the road.** The existing road is substandard, as explained by Mr Burrows. There are four 90 degree bends in a short stretch of road, which create safety issues, and impact on the attractiveness of the route and its ability to cope with high volumes of traffic.
 - b. **Traffic volumes.** These are very significant, particularly for a road of this nature, with average daily weekday two-way flows of over 13,000 vehicles observed in 2018 (including 11.7% LGVs and 5.2% HGVs). The flows are forecast to increase: the Lyminster Bypass Forecasting Report 2017 forecast around 1023 PCU/hr in the AM peak hour and 1169 in the PM peak hour in 2019, rising to 1405 in the AM peak hour and 1336 in the PM peak hour in 2034 (Parfect proof p.16-17 Tables 4 – 5). As Mr Parfect explains, these flows are above the capacity of a road with average lane widths of 3.5m in the centre of Lyminster (reducing to 3.15m), let alone four 90 degree bends (proof 4.2.6 and oral evidence).
 - c. **Local environment.** All this traffic is going through the Lyminster Conservation Area and directly past listed buildings and street facing residential properties. It significantly harms the attractiveness of Lyminster for walking and cycling. The A284 / A259 Wick roundabout is identified in the Arun Local Plan as a 'First Priority Location' indicating high levels of exposure to noise (para 21.2.5; supporting document no.16).
 - d. **The Wick level crossing.** As explained in Mr Parfect's oral evidence, there are regularly eight or more trains movements per hour giving rise to frequent barrier closures of unpredictable duration (for example if two movements overlap to a greater or lesser extent), which leads to delays and unreliable journey times. The Transport Assessment estimates closures amount to approximately 30% of the AM and PM peak hours, which it describes as a "significant capacity constraint" (para 3.5.9; composite proof appendix I). Journey time survey data from a variety of routes across the wider Littlehampton area shows the A284 to consistently have significantly greater journey time variability in both the AM and PM peaks than other routes, which is indicative of delays and makes it unattractive (statement of case p.11-12 including Table 4-1).

- e. **Accidents.** There are a high number of accidents recorded on this short stretch of road, with the Transport Assessment explaining that "*Analysis of collisions during the study period highlights that there have been a number of collisions at tight bends in Lyminster, particularly in bad weather or at night*" (para 3.9.21, composite proof appendix I), as elaborated on by Mr Parfect in oral evidence.

The benefits of the Lyminster Bypass

7. The new bypass will significantly alleviate these issues and bring substantial benefits. In particular:

- a. **Safety.** The bypass will be built to modern standards of highway design compliant with DMRB, with only limited departures (which have been justified and approved, and which are unavoidable where the new bypass ties into the existing road) (Burrows proof 3.18 – 22, 5.11, and oral evidence). It will provide a safe route and address the safety issues of the large volumes of traffic using the current A284 through Lyminster.
- b. **Traffic volumes and local environment in Lyminster village.** The bypass will dramatically reduce the volume of traffic going through the village, with the forecast to be 318 PCU/hr in the AM peak and 586 in the PM peak in 2034, down from 1300 – 1400 PCU/hr without the bypass.
- c. **Sustainable travel.** Due to the reduction in traffic, the village and Conservation Area will become more attractive for walking and cycling. The provision of a footpath / cycleway along the bypass will also make the bypass attractive for walking and cycling, such that there is a double benefit in terms of walking and cycling.
- d. **Delays.** The modelling shows that journey times will generally reduce between 20 – 30% as a result of the bypass in 2034 compared to the 2034 baseline (Parfect proof p.26 Table 7).
- e. **The emerging A27 scheme.** A scheme for an A27 Arundel Bypass has been emerging for some time and a preferred route has now been announced. On announcing the preferred route in October 2020, Highways England stated that it anticipated starting main construction work in 2023 / 2024, subject to submission of an application for a development consent order; the application is expected to be submitted to PINS in Q4 2021 / Q1 2022 (proof appendix O, summary document p.11). The modelling for the A27 scheme indicates a significant increase of traffic using the A284, such that, as

observed by Mr Parfect *"Without the Lyminster scheme in place the environmental conditions in Lyminster and Wick could become intolerable along with the adverse impacts to the safety of cyclists and pedestrians and of the Lyminster Road level crossing, from increased flows from the A27 of this scale"* (proof para 5.10.5). The A27 Arundel Bypass is not yet a committed scheme, but given that it has reached a fairly advanced stage and the need for it has long been recognised, it should attract some weight and it further supports the case for the A284 Lyminster Bypass.

Wider benefits: supporting growth

8. The Scheme is an important part of the infrastructure needed to facilitate and support economic and housing growth in area.
9. Most directly, significant new development has been granted planning permission at North Littlehampton – 1,260 dwellings and 13,000sqm of employment floorspace and associated development (ref. LU/47/11) – which is being built out. The Scheme will provide an appropriate north-south access to that development, rather than the unsatisfactory Mill Lane route and the problems of the existing A284. Policy EMP SP3 of the Local Plan also allocates 2ha of additional employment land at this location (site 6: North Littlehampton) (Parfect proof 3.4.7 – 3.4.8).
10. More widely, there is an acknowledged infrastructure deficit on this part of coast which the Scheme, along with the rest of the bypass and the A259 corridor improvements, will help address. As noted above, the Arun Local Plan 2011-31 explains that the District is lacking in strong north-south links between Littlehampton and the A27 (15.1.2), and the Lyminster Bypass route is safeguarded accordingly (Policy T SP1(c); T SP3). The difficulties in accessing Littlehampton and surrounding areas makes Littlehampton a less attractive location for homes and jobs. Most of Littlehampton suffers from above average levels of deprivation, and there are concentrated pockets which fall in the worst 10% in England in terms of income deprivation (Arun Local Plan 2011-2031 para 3.23; Statement of Case para 4.52). The Local Transport Plan 2011-2026 observes that *"The economic performance of Coastal West Sussex is below the rest of the County and is of most concern in Arun and Adur"*, and that there is *"an infrastructure deficit which causes poor connectivity within Coastal West Sussex, and to the wider region, which inhibits economic growth"* (1.3, p.22).
11. The Scheme will assist in addressing these issues, providing access to jobs and services and encouraging investment. Its cumulative impact along with other highway improvements in the area also

needs to be recognised. It links into the rest of the Lyminster Bypass, i.e. the Lyminster Bypass South which is being constructed as part of the Persimmon Homes scheme and the Fitzalan Link Road, the first phase of which has already been built. It also ties into the A259 corridor improvements, which provide east-west enhancements to complement the north-south ones provided by the Lyminster Bypass. Without the Lyminster Bypass North there would be a large hole in this comprehensive and interlinked set of improvements to the local highway infrastructure.

Policy support

12. The Scheme is embedded in planning policy. Realising policy ambitions is a significant benefit of the Scheme.
13. The West Sussex Local Transport Plan 2011-2026 notes that the A284 is "*an important link road*" but identifies that "*The Wick level crossing causes delays for traffic in both directions, which can affect the operation of the junction with the A259*" (1.4.1, p.29, supporting document 20). The LTP's aims include "*Generating opportunities through new development to secure the delivery of the Fitzalan Link Road Extension and Lyminster Bypass to improve safety, accessibility and contribute to regeneration in Littlehampton and Bognor Regis*"
14. The Arun District Council Local Plan (adopted July 2018) safeguards the bypass (policy T SP3) and supports the Scheme, noting that (15.3.4, p180, supporting document 16):

"The proposed Lyminster Bypass will connect to the committed southern section which will run between Toddington Nurseries and the A259 and the Fitzalan Link. The bypass will improve north-south access from the A27 to Littlehampton by reducing the delays associated with the existing A284 Lyminster Road and the Wick level crossing. The scheme is expected to make the A284 Lyminster Road quieter and encourage walking and cycling on the route."
15. The Coast to Capital Local Enterprise Partnership's Strategic Economic Plan 2014 recognises the economic, social and environmental benefits of the Scheme (Annex p.126 – 127, supporting document 24). The LEP is providing £3m of funding accordingly.
16. The Littlehampton Neighbourhood Plan 2014 "*supports the long-term commitment of the local highway authority to delivering a bypass for the village of Lyminster*" (4.7.5 and Policy 19; supporting document 47).
17. At a higher level, the Scheme is supported by national policy in the National Planning Policy Framework, in particular facilitating housing

and economic growth. It directly responds to the new focus in the July 2021 version of the NPPF on the fact that planning should “*align growth and infrastructure*” (paragraph 11a). In tying into the North Littlehampton development and wider growth plans, the Scheme is designed to do precisely this.

18. This policy support at all levels reflects the fact that the need for a bypass in this location has been recognised for at least 30 years, with a version of the Scheme approved by the Highways Committee in 1992 (supporting documents 14 – 15).

The Transport Business Case for the Scheme

19. The Outline Transport Business Case (“**TBC**”), the latest version of which is dated January 2021 (composite proof appendix Y), brings together and quantifies many of the benefits of the Scheme. It presents a compelling picture of the benefits of the Scheme, set out under each of the five cases in accordance with Department for Transport guidance: Strategic; Economic; Financial; Commercial; and Management.
20. Before dealing with each of those in turn, it is important to note that the DfT has sufficient confidence in the merits of the Scheme to award it grant funding of £11.792m, as explained in the DfT’s letter of 7 June 2021 (composite proof appendix S). The Scheme has been entered in the Major Road Network programme accordingly. A final business case is required in due course, but the fact that the DfT letter expressly records that Ministers have agreed this significant funding weighs heavily in favour of a finding that a compelling case in the public interest exists for the Scheme. As Mr Martin explained, it recognises the strategic importance of the Scheme.
21. Mr Martin explained that the full business case is due to be submitted by the end of this year, and in advance of that Mr Parfect in discussion with the project team has produced an estimate of the updated BCR in light of increased scheme costs. Mr Parfect further explained that the updated BCR, as discussed below, was still high and there was no reason to think that it would affect scheme funding.
22. The significant funding being provided by the LEP (£3m – see below) is also evidence of the recognised strategic importance of the Scheme.
23. The **Strategic Case** is based on the support which the Scheme will provide for the growth of one of the underperforming areas of the West Sussex economy. It will support the North Littlehampton development and thus contribute directly to the delivery of 1,260 new homes and 700 new jobs, provide vehicles with a shorter and less congested route with reduced journey times, improve local

environmental quality and road safety, and do so while providing good value for money.

24. The **Economic Case** is made out because of the Scheme's high value for money. The January 2021 TBC forecasts benefits worth £53.177m in its core analysis. As against the updated Scheme cost of £27.334m, that results in a benefit cost ratio ("**BCR**") of 3.0 for the core analysis and of 4.8 when off-peak and weekend benefits are included, as explained in Mr Parfect's supplementary proof of evidence (para 3.10). That puts the Scheme in the 'high' or 'very high' value for money category on the DfT's scale (TBC, p.31 Table 4-12). Mr Martin explained in oral evidence that the DfT in discussion with WSCC were primarily focused on the core analysis but also took into account the additional off-peak and weekend benefits.
25. The **Financial Case** is made out because the Scheme is fully funded. Of the total scheme cost of £27.334m (Mark Martin proof section 11):
- a. The Council is funding £20.573m;
 - b. The Coast to Capital LEP is funding £3m;
 - c. The remainder of £3.761m comes from s.106 contributions. The Council has confirmed that it will allocate capital funding in advance of s.106 receipts in the short term until all s.106 monies are received.
26. The DfT funding will take the place of part of the Council funding. Accordingly, the Scheme does not depend on the DfT funding. The statement from Katherine Eberhart, WSCC's Director of Finance & Support Services, confirms that the total £27.334m required is available and budgeted for (composite proof appendix R).
27. Mr Martin confirmed in answer to the Inspector that while the impact of delay would be inflationary, this risk has been built into the budget.
28. The **Commercial Case** (which concerns procurement) and the **Management Case** (which concerns management procedures to be adopted) are also satisfied for the reasons set out in the Outline TBC (composite proof appendix Y, p.5 – 6, para 1.6 – 1.7).

Consultation, public support and approvals

29. The Scheme has been consulted upon, including direct consultation on the Scheme in 2014 which revealed significant support for the Scheme, with 61% of respondents in favour and 30% against (Martin proof section 9). Concerns were raised regarding the environmental impacts of the Scheme, which have been addressed through the planning application process and the Scheme has found to be acceptable in planning terms. There has also been consultation on the Scheme through consultation and examination of the Arun Local

Plans, in which the Scheme is safeguarded, and through publicity and consultation on the planning application in 2019.

30. The Scheme has been through the required democratic process and received the necessary approvals from Council members (Martin proof para 5.4).

Need and justification for CPO and SRO

31. The need and justification for compulsory purchase and the SRO is a combination of: (a) the pressing need for the Scheme itself, as set out at length above; and (b) the need for compulsory purchase as the only feasible way to acquire all the lands and rights necessary. In light of the number of landowners from whom land or rights are required (34 plots, a number of which have multiple interests), the need to assemble all the land in a timely and coordinated way without being held to ransom, and the need to have certainty about land acquisition, compulsory purchase is required. Timely acquisition of the land is important because of the pressing need for the Scheme and also to ensure that funding is available when required. As Mr Godden states, *"it is unlikely that the Scheme could be developed to achieve the Council's objectives without the availability of compulsory purchase powers. In order to implement the Scheme the Council needs certainty that land and interests can be acquired simultaneously"* (para 10.4).

Compliance with the tests in legislation and guidance

32. The requirement in the Guidance on Compulsory Purchase Process and The Crichel Down Rules (July 2019) to show **a compelling case in the public interest** is made out by the need and benefits examined above.
33. There is also compliance with the other aspects of the CPO Guidance, in particular that:
- a. **The purposes for which the Order is made justify interfering with the human rights of those with an interest in the land affected.** In light of the compelling case outlined above, this is satisfied. In particular, whilst owners of CPO land may be deprived of parts of their property such that Article 1 of the First Protocol of the European Convention on Human Rights (as given effect by the Human Rights Act 1998) is engaged, Article 1 allows for compulsory acquisition "in the public interest". Article 1 requires a balance to be struck between private and public interests and in the present case WSCC considers that the evidence shows that the balance comes down firmly in favour of compulsory acquisition. The need for and benefits of the Scheme are very significant, the

interference with land interests is limited and has been mitigated so far as is reasonably possible, and compensation will be payable in accordance with the compensation code.

- b. **The AA has a clear idea of how it intends to use the land which it is proposing to acquire.** WSCC has a very clear idea of how it will use the land, given that the Scheme is worked up in significant detail and has been granted planning permission. As is clear from the detailed combined planning drawings (composite proof appendix U), the Scheme requires all the land and rights which are the subject of the CPO. A high-level timetable for delivery of the Scheme is set out in Mr Martin's proof of evidence (p.9), which shows completion by October 2023.
- c. **The AA can show that all the necessary resources, including funding for both acquiring the land and implementing the scheme, are likely to be available to achieve that end within a reasonable time-scale.** As set out above, the scheme is fully funded.
- d. **The scheme is unlikely to be blocked by any physical or legal impediments to implementation, including the need for planning permission.** The Scheme is free from impediments. The Scheme has planning permission, granted on 9th May 2019 (Statement of Case document 34) and conditions are already in the process of being discharged. Further, the Scheme is safeguarded in the 2019 Local Plan, as set out above. Such further permits, licences or orders as are required have been considered and no issues are anticipated in obtaining them in a timely manner (Martin proof section 12).
- e. **Genuine and meaningful negotiations have taken place with landowners.** Such negotiations with landowners have been diligently undertaken by WSCC, as explained in Mr Godden's proof at section 7. Indeed it is powerful evidence of the Council's diligent and thorough approach in this respect that all remaining objections have been withdrawn with only one exception.

SRO tests

34. The SRO complies with the tests in ss.14(6) and 125(3) (read with s.129) of the 1980 Act, whereby:

s.14

"(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.”

s.125

“(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.”

35. In terms of s.14 and the stopping up of Bridleway 2163 where it crosses the new bypass, the Pegasus crossing clearly provides “another reasonably convenient route” in accordance with s.14, as explained by Mr Burrows.

36. In terms of s.125, three private means of access are being stopped up.

- a. The vehicular private right of way over bridleway 2163 is being replaced by a vehicular crossing alongside the Pegasus crossing, which is clearly “another reasonably convenient means of access” in compliance with s.125(3)(b).
- b. Private means of access B, at the southern end of plot 2a, is being stopped up and replaced with an access off the new bypass which is significantly superior given its wider bellmouth and set back gate, so avoiding vehicles having to stop on the highway, as explained in Mr Burrows’ proof (3.17, 5.6-8 and figures 3.1 – 3.2).
- c. Private means of access A, at the northern end of plot 2a adjacent to Brookfield Stream, is being stopped up and not directly replaced, because safety fencing needs to be provided in this location in light of the 2m drop in the stream, and any replacement access in near proximity would involve significant land take from the landscaped and wooded garden of Brookfield, as explained by Mr Burrows (proof 3.27, 5.40, fig 3.3 – 3.4). There is compliance with s.125 because other reasonably convenient means of access to Brookfield are available, including at the main entrance 200m or so north along the A284 (which is a safer access than the overgrown gate adjacent to Brookfield Stream in any event), at the north of the property on Caldecote Lane, and via the new access to

the south (as it is possible to cross over the stream in the fields), all as shown on Mr Burrows' fig 5.6.

Remaining objection: T&L Crawley No.2 LLP

Introduction

37. T&L Crawley No.2 LLP ("T&L") objected to the CPO (not the SRO) by letter dated 26th October 2020 and sent a further letter of objection dated 1st July 2021. T&L have submitted no statement of case and no proofs of evidence.

38. T&L has an interest in plots 10a and 10b, which adjoin the proposed route of the bypass. Plots 10a and 10b are needed for temporary use for construction and working space.

39. T&L's objection is made under three broad headings, which these closing submissions will deal with in turn: impact on T&L's landholding; negotiations; and human rights.

Impact on T&L's landholding

40. T&L's objection under this heading is focused on T&L's intentions to promote residential development on plot 10b. Plot 10b forms part of what is referred to as parcel B in T&L's 26 October 2020 letter (including the plan on p.2). T&L are concerned about the Scheme impacting on residential development proposals for plot 10b and have proposed that WSCC alter how they intend to construct the Scheme to avoid use of plot 10b.

41. This objection should not carry significant weight, for at least six reasons, which these closing submissions will deal with in turn:

- a. It is not practical to amend the construction proposals to avoid use of plot 10b.
- b. T&L purchased the land when the Scheme proposals for plot 10b were public knowledge. The prejudice to T&L from those proposals is accordingly limited when T&L chose to purchase land that was subject to them.
- c. T&L do not have planning permission for their proposals for residential development and the evidence is that planning permission is unlikely to be obtained.
- d. It is unclear whether and in what timescale T&L is pursuing its proposals.
- e. WSCC seek only temporary use of the land.
- f. The interference with T&L's interest is offset to a significant extent by the increased attractiveness in the market which the bypass gives to the allocation for commercial development on T&L's land.

42. **As to the first issue**, the expert design, construction and engineering evidence of Andrew Burrows and Tony Symonds has comprehensively shown why T&L's suggestions of how plot 10b might be avoided are not achievable.

43. Plot 10b is to be used as a construction compound. It cannot be moved to parcel C (as shown in T&L's 26 October 2020 objection letter and in the overlay in fig. 5.1, p.9 of Mr Symonds proof), on the east side of the road, for various insuperable reasons:

- a. First, there are to be drainage features on the east side of the road – attenuation crates, from which water is piped to a pond (see the combined planning information drawing sheet 1 of 4 at composite proof appendix U). As Andrew Burrows explained orally, those need to be constructed early to deal with water run off from the road whilst under construction. Moving the compound to parcel C would be incompatible with these drainage proposals.
- b. Secondly, Plot 10a is not big enough for the compound. The compound would have to go outside the current red line, for which there is no planning permission and no evidence as to whether it can be obtained.
- c. Thirdly, the compound needs to be on the same side of the road as the main construction area for the bypass, including the haul road for crawler crane lifting and movements, and the 30m x 30m large crane pad further north in the flood plain. As Mr Symonds explained, the crane pad must be on the west side because of the angle of the viaduct when it crosses Black Ditch (proof 4.2). Further, as also explained by Mr Symonds and shown on drawing SK-0001 rev P01 (supporting document 103), vehicles need to enter the compound, turn around, and then reverse down the significant level difference into the flood plain to unload materials for construction and storage, and also to access the crane pad, before driving back up out of flood plain in forward gear. For health and safety and logistical reasons, this turning and reversing needs to take place rather than vehicles simply driving straight into the flood plain. As Mr Symonds explained, health and safety also means that these movements need to take place in an area fully under the control of the contractor (i.e. a compound). The turning and reversing movements are also significantly responsible for the sizing of the compound, along with the fact that significant numbers of HGV movements are required (c.2,900: Symonds proof 4.9.1).

44. Nor can plot 10b be freed up by moving the compound north into the flood plain:

- a. First, the land in the flood plain is not suitable for a compound. As Mr Burrows described in oral evidence, it is “unbelievably poor”, and a vehicle would risk sinking into it unless the ground was built up. The ground is being built up close to the bypass as shown on drawing SK-0001, but a compound would require ground raising over a much wider area, as shown in drawing SK-0003 rev P01 (composite proof appendix W).
- b. Secondly, the Environment Agency have advised against having a compound in the flood plain, as set out in the EA emails in Appendix W. Having occupied structures such as cabins in a flood plain is obviously undesirable and quite different to the uses that are proposed in the flood plain, namely routing HGVs, storing some materials and using the area adjacent to the bypass for crane operations. The ground raising also raises issues of displacing flood storage capacity as noted by the EA, who explain that further assessment would be necessary in this respect. As Mr Symonds indicated in light of his involvement in the initial flood modelling, it is far from clear that any further ground raising would be acceptable.
- c. Thirdly, there are significant ecology issues with moving the compound into the flood plain, as explained in the email from Verity Dickie, principal ecologist, of 18 February 2021 at Appendix X-2, including: increased risk of run-off and impact on protected species including water vole and fish; need for further ecological surveys over the compound area; and the potential need for a further licence covering water vole displacement.

45. These design matters and their implications in terms of flood risk and ecology were properly considered through the planning application. If any party wanted to take issue with them or propose alternatives, that was the appropriate point to do so. The fact that T&L purchased their land later cannot entitle them to require WSCC to re-design a scheme which is being promoted in the public interest.

46. T&L’s proposals also do not take account of the fact that 360 degree excavator works are required adjacent to the embankment, which requires working space intruding into plot 10b, as shown in drawing SK-0004 rev P01 (supporting document 104; Symonds proof 5.3.5).

47. It is important to note that the inquiry has no contrary evidence, expert or otherwise, to contradict the detailed expert evidence of Mr Burrows and Mr Symonds. Further, it is also notable that once a detailed explanation was provided to T&L on these issues, in

December 2020 in respect of the proposal to move the compound to parcel C, and then in February 2021 in respect of the proposal to move the compound to the flood plain, T&L did not come back with any rebuttal. The proper approach would have been for T&L to withdraw their October 2020 objection at least in so far as it related to the compound. T&L have given no good reason for not doing so.

48. **As to the second issue**, T&L purchased the land in May 2019 (as stated in their 26 October 2020 objection letter)¹. Planning permission for the Scheme was granted on 9 May 2019, but even if the purchase pre-dated that, T&L purchased the land when the Scheme was already well advanced, with the Planning Committee having resolved in favour of granting the Scheme planning permission on 26th March 2019. Plots 10a and 10b were included within the red line of the planning application and clearly shown as part of the Scheme in the application plans, including an annotation of plot 10b as “temporary working area” and “site compound”.²

49. T&L’s 26 October 2020 objection letter states that the land “is subject to an over-arching outline planning permission granted in 2013” (for B1 use). That is right, but T&L singularly fail to mention that the land is also subject to a further planning permission: i.e. the planning permission for the A284 Lyminster Bypass (North) scheme. Further, the 2013 permission is only an outline one, whereas there is full planning permission for the Scheme.

50. **As to the third issue**, at the time of T&L’s first objection letter T&L had apparently agreed terms for the sale of plot 10b (along with other land) to a registered housing provider (who intended to construct 154 affordable homes, subject to planning permission). T&L are proposing speculative development on plot 10b: Plot 10b is allocated and has outline planning permission for B1 use, not residential use. While T&L may of course apply for planning permission for residential use, Arun District Council have given clear pre-application advice that T&L’s proposal would be unacceptable in principle: statement of case supporting document no.105. As Mr Godden explained, T&L have been marketing the land but do not

¹ T&L’s covenant with Persimmon is dated 15 May 2019, as noted in T&L’s Heads of Terms, which indicates that the purchase took place on this date, but this is not expressly stated.

² See respectively: dwg A284LY-CAP-HGN-DR-C-0146 rev P03 - site plan sheet 1 of 2 (in appendix B of the Transport Assessment at composite proof appendix I); and dwg A284LY-CAP-HGN-00-DR-C-0190 rev P02 - combined planning information sheet 1 of 4 (at composite proof appendix U). Both of these were approved plans, as shown in condition 3 of the planning permission dated 9th May 2019 (statement of case document 33).

themselves have development scheme; the potential impact of the Scheme is on when T&L can bring the site to market.

51. **As to the fourth issue**, it is unclear whether the particular proposal for 154 units is being pursued any longer: see email of 6th April 2021 at the Council's Appendix G-92 at point 2.
52. **As to the fifth issue**, the Council only propose temporary use for T&L's land. The programme indicates that the bypass is due to be complete by October 2023 (Martin proof para 5.10). Given the necessary time to obtain and implement any planning permission (particularly given the LPA's in principle objection to T&L's current proposals), it is unclear whether T&L could get on site significantly in advance of that date. T&L in their email of 6 April 2021 (Appendix G-92) specifically observe that planning permission is typically subject to a condition that it is implemented in three years, such that it appears they are envisaging implementation may not occur until after the bypass is completed. In any event, the period of use is relatively limited and would appear unlikely to be capable of significantly interfering with medium or long term proposals for the site.
53. **As to the sixth issue**, the bypass will enhance the attractiveness in the market of the allocation for commercial development on T&L's land, including by better road frontage, as noted by Mr Godden in oral evidence. The temporary interference with T&L's interest is offset to a significant degree by this enhancement. The enhancement is no doubt why T&L support the Scheme, as stated in both its letters of objection and most effusively in an earlier letter of 8th July 2019: "*T&L Crawley No.2 LLP wishes to formally record its fullest support for the construction of the A284 Lyminster Bypass which it considers to be a much needed infrastructure initiative of local and regional significance, ...*" (Statement of Case supporting document no.87). T&L are seeking to have their cake and eat it: they purchased the land presumably in part because of the enhancement that the bypass would provide, but in now objecting to the use of the land for the construction of the bypass they are seeking to take advantage of the upside of the bypass whilst refusing to accept the necessary short term impact.
54. Finally in respect of the impact on T&L's landholding, T&L's second objection letter of 1 July 2021 observes that T&L have the benefit of a covenant with Persimmon Homes which obliges Persimmon to undertake works to T&L's land to ensure it is capable of development by 31 December 2021. T&L express concern that WSCC's use of the land could negatively impact that enabled state. As set out below, WSCC have made quite clear that they will agree to reinstate the

land to the condition in which they received it. Further, in any event, any such impact can be compensated for.

Negotiations

55. T&L's suggestion that the Council have not adequately engaged or negotiated with T&L is unfounded. T&L's letters of objection also present a significantly incomplete and misleading picture in this respect.

56. The Council have been in very frequent communication with T&L since shortly after T&L's acquisition of its land interest, as documented in the Council's compendious Appendix G³. The following non-exhaustive examples illustrate this:

- a. A meeting took place on 8 October 2019, the agreed notes of which discussed both CPO and acquisition by negotiation, with an action for T&L to discuss which would be their preferred route further with their solicitors, DWF (G-15-1).
- b. On 19 May 2020, T&L's position changed, with T&L in an email to the Council explaining that in light of their negotiations with a proposed purchaser they wanted the Council to move the compound to parcel C (G-27).
- c. After some correspondence, there was a further meeting on 10 September 2020 at which this proposal was discussed (as recorded in the email at G-44).
- d. After further correspondence (including detailed queries from Mr Martin on 21 October 2020 (G-50) and the provision of plans to T&L on 22 October 2020 (G-55)), a detailed response was provided on 2 December 2020 by Mr Martin (G-67). This identified "fundamental issues" with T&L's suggestion of moving the compound to parcel C. These included the impact on the drainage features of the eastern side of the road and the fact that the compound needed to be on the same side of the road as the haul road, i.e. the west side. Drawing SK-0001 was provided to T&L, which had been produced specifically to explain the difficulties arising and is evidence of the Council's serious engagement with T&L's concerns.
- e. In response, T&L came up with the new suggestion of moving the compound into the flood plain, including potentially combining it somehow with the haul road (email of 9 December 2020 at G-71). Again, the Council gave conscientious consideration to this suggestion. A further drawing showing the compound located in the flood plain was

³ Including pages G-110-1 and 110-2.

produced – SK-0003 as included in composite proof appendix W. This proposal was discussed with Jacksons, the EA and the WSP ecologist in January and February 2019, as set out in the emails in appendices W (with the EA) and X (with Verity Dickie). Having received expert advice that this option was not feasible either, the Council shared this conclusion (along with the drawing and the reasons) in a detailed and technical email to T&L on 19 February 2021 (G-110). Drawing SK-0004 showing the excavator working room (supporting document 104) was also shared with T&L and the logistical and safety implications were explained in the same email. As Mr Godden explained, after these emails of December 2020 and February 2021, there was a shift in the correspondence away from the relocation options which the Council had shown to be unacceptable and towards agreeing mitigation.

- f. In reply to T&L's repeated suggestions that insufficient information had been provided, Mr Godden explained in an email of 26 February 2020 (G-80) how this was simply not the case. Mr Martin followed this up on 8 March 2021 (G-84). T&L's response was hostile and unconstructive, unfairly describing the Council as "dilatatory & dismissive" and stating that the Council's approach was "laughable" (email of 9 March 2021 at G-85).
- g. After further correspondence including regarding mitigation, Mr Godden explained that WSCC was "reviewing the programme of work to identify ways of vacating as quickly as possible" (email of 22 April 2021 at G-96). T&L on 30 April 2021 (G-98) made requests regarding the preparation and agreement of a schedule of condition prior to occupation and subsequent reinstatement.
- h. In response Mr Godden on 21 May 2021 (G-99) provided an indicative programme, which had been adjusted to allow vacation of plot 10b 17 weeks earlier than would otherwise be the case (as also explained in Godden proof 7.11(iii)). In the same email Mr Godden also agreed to enter into an agreement recording the site condition. All this is significant evidence of attempts to resolve matters by agreement.
- i. After further correspondence, WSCC provided a draft legal agreement on 2 July 2021 (G-107 and G-107-1) and invited T&L to comment on it. This was followed up with a detailed email on 5 July 2021 (G-109) and a meeting on 8 July 2021 (Godden proof 7.12.5).

57. Subsequently, Mr Godden sent further emails on 23 and 28 July, again seeking comments on the draft agreement (G-111 to G-116). T&L stated that they would come back to WSCC on the draft agreement, first on 5 July 2021 (G-108), and then on 23 July 2021, stating *"I have discussed with my client's lawyer who is currently adding track changes to the proposed Agreement, taking into account your comments. I hope to be able to provide you with a copy of this early next week"* (G-114).
58. T&L failed to provide comments. Instead, on Monday 9th August 2021, the day before the inquiry, T&L sent a new 'Heads of Terms' document directly to the Programme Officer. This had not been sent to the Council previously, contrary to T&L's suggestion in their covering email to the Programme Officer (09:29) that "We are currently awaiting a response from the Council". Indeed the Council were not copied in to that email, such that the Council only received it when the Programme Officer forwarded it.
59. The Council team was inevitably very busy on Monday 9 and Tuesday 10 August preparing for and then participating in the inquiry, such that it has obviously been impossible to progress matters in this time. The Council's position, as articulated by Mr Godden in oral evidence, is that it will continue to seek to reach agreement with T&L to avoid the exercise of compulsory purchase powers, but that it is essential that the CPO is confirmed, particularly given that T&L have repeatedly proposed certain matters which are fundamental stumbling blocks to agreement and which may not be overcome. In particular:
- a. T&L seek a time-limited period of use. That is inappropriate and unacceptable. The Council has produced a high level programme but as explained by Mr Martin in his proof (5.10) and orally, timescales can change. The time which the Secretary of State will need to issue any decision confirming the Orders is unknown, and ecological works can only take place at certain times. Bad weather can affect works in the flood plain. There are broader uncertainties, as Covid has shown in the last year. The project should not be put at risk by the insertion of long stop dates in occupation agreements. Mr Godden was at pains to explain these points in his email of 28 July 2021 (G-116), but T&L's Heads of Terms simply ignore and do not engage with those reasons.
 - b. T&L seek a bond to secure the performance of the Council's obligations. That is unnecessary: the Council is a public body whose finances can be relied on accordingly, and there is no reason why the usual contractual indemnities should not be

sufficient. This again has already been explained by Mr Godden (in his email of 22 July 2021: G-113), whose explanation T&L do not engage with.

- c. T&L seek to enable Persimmon Homes to be able to undertake any of its existing obligations under the deed of covenant, notwithstanding WSCC's occupation. To have a third party able to access the land in this way is plainly incompatible with the use which WSCC will need to make of the land. Mr Godden acknowledges that the Persimmon Homes deed of covenant needs to be considered and has proposed an alternative way of dealing with it as set out in his email of 22 July 2021 (G-113), i.e. a potential tripartite agreement, under which the Council could undertake any remediation works on plot 10b rather than Persimmon (which Persimmon retaining its obligation in respect of T&L's wider land holding). Again, T&L have not engaged with this suggestion.

Human rights

60. T&L's 26 October 2020 letter suggests that a compelling case in the public interest has not been made out, such that there is insufficient justification to interfere with T&L's rights under Article 1 of the First Protocol. That objection is without substance. The compelling case in the public interest is well-evidenced, as set out at length above, and the purposes for which the CPO is made clearly justify the limited and temporary interference with T&L's rights.

Conclusion on T&L's objection

61. T&L's objection does not begin to justify non-confirmation of the order. Originally T&L's objection was an attempt to have the Council re-design the Scheme so as to improve the chances of T&L getting an early financial return on plot 10b, notwithstanding that T&L had purchased the land against the background of the Scheme which was incompatible with short term aspirations of this sort. Once the Council had gone to significant lengths to provide the technical evidence to show why the Scheme could not be redesigned in this way, the parties then moved to discussing mitigation, but T&L failed to sufficiently engage in order to reach agreement. At the 11th hour before the inquiry, T&L proposed an agreement with various terms which the Council had already explained were unacceptable.

62. The Council's diligent and meaningful engagement with T&L since T&L came on the scene in 2019 clearly constitutes compliance with the CPO Guidance that "*Acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted*" (paragraph 17). There is no obligation to reach agreement. In light of the matters set out above,

the fact that agreement has not been reached in the present case should plainly not present a bar to confirmation of the CPO which would facilitate an important and much needed Scheme.

Conclusion

63. In light of all of the above reasons, the Council submits that the tests in legislation and guidance for confirming the CPO and SRO are made out. There is a clear and pressing need for the Scheme, for which funding and the necessary Council approvals are in place, which has planning permission, and which does not suffer from any impediments. There is a compelling case in the public interest for confirming the CPO and SRO. WSCC invites the Inspector to recommend confirmation to the Secretary of State, subject to the modifications proposed in the updated table of modifications.

HUGH FLANAGAN
Francis Taylor Building
Inner Temple
11 August 2021