

CHALGROVE AIRFIELD

SUMMARY OF ADVICE to Homes England from DAVID ELVIN QC

- 1 Counsel advised that as Martin-Baker had not accepted the offer, Homes England should proceed with preparing the planning application for the Site with a view to using its CPO powers to acquire the Martin-Baker (MB) leasehold interest whilst also continuing to try to negotiate to acquire the land by private treaty with MB.
- 2 Counsel confirmed that Homes England was treating MB's business as a local employer and a provider to the military globally carefully by offering to safeguard the requisite land for MB to remain on site, incorporating a new runway and allowing for future expansion.
- 3 Homes England may start to prepare to use its CPO powers. To comply with policy it will need certainty of planning delivery of the development either by securing planning permission for a scheme or by adoption of the local plan with Chalgrove as an allocated site. The agency should work with South Oxfordshire District Council (SODC) to seek their support for the use of CPO powers and granting permission for the scheme.
- 4 The CPO can be prepared concurrently with submitting a planning application.
- 5 Counsel noted that the Government is looking to streamline the CPO process for delivery of housing and Homes England may benefit from this new policy if it is implemented in time for submission.
- 6 Counsel advised that the whole of MB's interest should be acquired under CPO with a transfer back to MB of the freehold title to the land which it is proposed that MB remain on and which will not be developed by Homes England.
- 7 Counsel advised that given that MB have refused Homes England's offer that Homes England can reference in their planning application that they will use their CPO powers to deliver development of the site to demonstrate that the site is deliverable. Counsel cited the Court of Appeal's recent St Modwen case (St Modwen v SSCLG & ERYC [2018] J.P.L. 398), in the context of the calculation of the available housing land supply in the NPPF (para 47 and footnote 11) which held that it does not have to be proven that the development will be delivered just that it is capable of being delivered and that the CPO powers can demonstrate this.
- 8 Counsel advised that in the context of the local plan the fact that the methodology for calculating housing need was changing should not preclude an application based upon existing numbers.
- 9 Counsel also advised that as between the Chalgrove site and sites at Culham and Berinsfield, if the new housing numbers methodology were to be adopted and units were to be lost and the amount of housing to be delivered under the local plan was lowered then of the three sites Culham would be the obvious one to remove because it is green belt rather than brownfield land. The Chalgrove site is brownfield land.

- 10 In relation to the planning permission, Counsel advised that an outline planning application be made applying the *Rochdale* principles in relation to the environmental impact assessment and fixing parameters for the development alongside an illustrative master plan. Access would be fixed but the remainder of the application would be outline to provide for future flexibility.
- 11 The proposed new runway should be included as part of the planning application. This demonstrates Homes England's commitment to providing MB with a new runway. If MB do not want a runway a section 73 planning application or a fresh application should be applied for at a later stage in relation to phase 4. Also the first three phases provide for approximately 3000 houses and we would not want to apply for more than is allocated in the local plan at this time.

David Elvin QC

Landmark Chambers

8 May 2018