

**THE KENT COUNTY COUNCIL (A28 STURRY LINK ROAD) (COMPULSORY PURCHASE)
ORDER 2023**

THE KENT COUNTY COUNCIL (A28 STURRY LINK ROAD) (SIDE ROADS) ORDER 2023

OPENING SUBMISSIONS ON BEHALF OF THE ACQUIRING AUTHORITY

PRELIMINARY

Abbreviations

The Kent County Council (A28 Sturry Link Road) Compulsory Purchase Order 2023 is referred to as the “CPO”

The Kent County Council (A28 Sturry Link Road) (Side Roads) Order 2023 is referred to as the “SRO”

Kent County Council is referred to as the “Council”

The Secretary of State for Transport is referred to as the “SoS”

INTRODUCTION

1. The purpose of the CPO and SRO is to deliver a Link Road running from the A28 Sturry Road over the River Great Stour and the railway line as a key part of a wider Relief Road and an associated local widening of Shalloak Road. The delivery of the Link Road Scheme as part of the wider Relief Road will provide a range of transport improvements including, significantly, addressing existing traffic congestion issues on the A28 corridor, in particular over the Sturry railway level crossing.
2. The delivery of the Link Road Scheme as part of the wider Relief Road is also critical for unlocking growth in the Canterbury area through the Canterbury District Local Plan

(July 2017), which identifies in Policy T14¹ that Canterbury City Council will seek to implement a Sturry Relief Road. In supporting text to the policy, it states:

“New mixed use development sites have been allocated at Sturry/Broad Oak and Hersden which lie within the A28 corridor. The A28 through Sturry suffers from congestion due the high levels of traffic and the operation of the level crossing at Sturry. Whilst sustainable modes like walking, cycling and public transport will be provided for by these new sites, it is accepted that the new development will still create additional traffic. Any further significant development in this area will be required to improve and mitigate the effects of this additional traffic by provision of/or proportionate contribution to a Sturry Relief Road that avoids the level crossing with a new road bridge, including a bus lane over the railway line or other associated improvements to the A28 corridor. The City Council will enter into appropriate legal agreements with the relevant site owners/agents to ensure that the Sturry relief road is delivered at an appropriate point with fair and proportionate contributions from all relevant developments.”²

3. In these opening submissions, the Council focuses on the main matters identified in the Inspector’s pre-inquiry note³ in respect of which the SoS will need to be satisfied, in order to confirm the CPO. These issues reflect key parts of the Government’s ‘Guidance on Compulsory Purchase Process and The Crichel Down Rules’ (the “CPO Guidance”). These are:

- The Council has a clear idea of how it is intending to use the land it seeks to acquire (Section A);
- The Council can show that all Necessary Resources (including funding) to carry out its plans are likely to be available within a reasonable timescale (Section B);
- The Scheme is unlikely to be blocked by any impediment to implementation (Section C);
- There is justification for interference with the human rights of those with an interest in the land affected (Section H);

¹ Doc 7.5.

² Doc 7.5, para. 5.54.

³ Doc 1.12.

- There is a Compelling Case in the Public Interest for the CPO (Section H).

4. In these submissions, the Council also covers:

- Efforts to Acquire by Agreement and Outstanding Objections (Section D);
- The SRO (Section E);
- Proposed Modifications to the CPO and SRO (Section F);
- The Public Sector Equality Duty and the Equality Impact Assessment (Section G).

A. CLEAR IDEA OF HOW IT INTENDS TO USE THE LAND

5. Tier 1, Paragraph 13 of the CPO Guidance states that if the acquiring authority does not have a clear idea of how it intends to use the land which it is proposing to acquire then it will be difficult to show that the compulsory acquisition is justified in the public interest.
6. The Council has a very clear idea of what it intends to do with the CPO land. It has detailed planning consent for the Scheme⁴, and awarded the Design and Build contract for its construction earlier this year.⁵ It is committed to delivering this vital piece of strategic infrastructure for the benefit of both existing and new residents of the local and wider area.
7. The Sturry Relief Road will consist of a new 1.5 km single carriageway road located, in part, to the north of the Canterbury to Ramsgate railway line in an east-west direction to join the A291 Sturry Hill in the east and Shalloak Road in the west, and in a north-south direction over the railway and across the flood plain of the Great Stour to join the A28 in the south. The east–west section of the Relief Road will be provided by the

⁴ The planning consent is at doc 11.2.

⁵ Richard Shelton Proof of Evidence para. 6.11.

developer of the Land at Sturry development. The Council is taking responsibility for the delivery of the section of the Relief Road between the A28 Sturry Road in the south and the crossing of the railway line, as well as the approach to the proposed roundabout that sits within the land at Sturry development site (the Link Road), and the improvements to Shalloak Road.⁶

8. The Scheme has detailed planning consent, and, as Mr Shelton will explain, the Council anticipates commencing construction in Spring 2026.⁷ The Land at Sturry development also has planning consent, with detailed consent for the delivery of its section of the Relief Road.⁸
9. As Mr East will explain, the A28 through Sturry suffers from congestion due to the high volumes of traffic and the operation of the Sturry level crossing.⁹ The Sturry Relief Road will provide an alternative route away from the level crossing and through Sturry village and will address existing traffic congestion issues on the A28 corridor as well as supporting the delivery of the wider Local Plan, including the Land at Sturry development site and other allocated housing developments. Other transport benefits of the Scheme include improving journey quality for cyclists, pedestrians and local traffic, reduced 'rat-running' through Broad Oak village, and providing road space for a dedicated bus lane.¹⁰
10. Mr East will explain that the traffic modelling shows that without the Sturry Link Road scheme by the 2031 forecast year with the planned developments included in the Local Plan (many of which now have planning consent), there would be significant network congestion with journey times increasing significantly. The Sturry level crossing provides a significant constraint on network capacity which the Scheme addresses by reducing traffic over the level crossing.¹¹

⁶ Richard Shelton Proof of Evidence para. 3.2.

⁷ Richard Shelton Proof of Evidence para. 4.23.

⁸ Richard Shelton Proof of Evidence para. 3.7.

⁹ Jonathan East Proof of Evidence para. 2.2.

¹⁰ Jonathan East Proof of Evidence para. 3.8.

¹¹ Jonathan East Proof of Evidence para. 3.23.

11. The Link Road Scheme is a vital part of the overall Relief Road. As Mr East will explain, in the absence of the Sturry Link Road and the widening of Shalloak Road, the development of Land at Sturry and Broad Oak could still take place and the east-west section of the Relief Road could still be delivered in accordance with the planning consent¹² and s. 106¹³. The Relief Road alone without the Link Road Viaduct would not be able to accommodate the future forecast growth resulting from planned housing developments without severe impact on the network.¹⁴

B. FUNDING – SOURCES AND AVAILABILITY

12. Tier 1, paragraph 14 of the CPO Guidance states that the acquiring authority should address the sources of funding and the timing of funding when justifying the CPO.

13. With regard to sources of funding, the CPO Guidance states that substantive information should be provided as to the sources of funding for both acquiring the land and implementing the scheme, and an indication of how any funding shortfalls are to be met.

14. As to timing, it advises:

“funding should generally be available now or early in the process. Failing that, the confirming minister would expect funding to be available to complete the compulsory acquisition within the statutory period...following the operative date...”¹⁵

15. Tier 1, paragraph 13 states that unless an acquiring authority is able to show that necessary resources are likely to be available within a reasonable timescale, it will be difficult to show that compulsory acquisition is justified in the public interest.

¹² Doc 9.1.

¹³ Doc 9.3.

¹⁴ Jonathan East Proof of Evidence paras 3.20-3.22

¹⁵ In other words, funding should be available for land acquisition before the expiry of the three-year period for powers of acquisition under a confirmed CPO.

16. As Mr Shelton will explain, the necessary resources to deliver the Scheme are either already available or will be available within a reasonable timescale. The Council estimates that the delivery of the Link Road and associated elements of the Scheme (including land acquisition) will cost £41.6m, based on a start date in April 2025. Although a start in April 2026 is now anticipated, as Mr Shelton will explain, an inflationary cost increase on the budget should be offset by the increased funding provided by the indexation on s. 106 developer contributions that are yet to come forward.¹⁶
17. The funding for the Scheme will come from two sources – SELEP funding and funding from developers through s. 106 funds.
18. The Council is already in receipt of the SELEP funding of £5.9m.¹⁷
19. The remainder of the funding is to be provided by the Land at Sturry, Land at Broad Oak Farm, Hoplands Farm, Chislet Colliery, Land to the North of Hersden, Land North of Popes Lane, and Herne Bay Golf Club developers under s. 106 planning obligations. Mr Shelton’s evidence provides a summary of each of the s. 106 contributions, the status of the development in terms of planning consent and whether it is already being built out, the contribution being made to the Link Road Scheme, and whether that contribution has already been received in full, in part or at all.¹⁸
20. Indexation of the s. 106 contributions is relevant to the funding position. All of the s. 106 contributions are index linked from a date specified in each agreement. As Mr Shelton will explain, any risk of increases in the budget estimate due to delay should be offset by the increase in the developer contribution due to the indexation. The indexation is generally based on the difference in the ‘The Building Cost Information Service (BCIS) General Civil Engineering Cost Index’ between the base date, generally

¹⁶ Richard Shelton Proof of Evidence para. 6.6.

¹⁷ Richard Shelton Proof of Evidence para. 6.18.

¹⁸ Richard Shelton Proof of Evidence paras. 6.22-6.55.

the date of signing the s. 106 agreement, and the date that the instalment is paid by the developer.¹⁹

21. As at June 2024, £10.6m of the £41.6m estimated Scheme cost had been received by the Council.²⁰

22. With regard to the timing of funding in the CPO Guidance, not all of the external funding for the Scheme is available now but the Council intends to forward fund the Scheme whilst further s. 106 contributions are awaited in order to ensure that it can proceed without delay. The project line for the Relief Road within the current KCC 24/25 budget book²¹ illustrates the likely anticipated spend by year, based on the current delivery programme and timing of the funding contributions.

23. As already stated, the Council is committed to delivering the Link Road and ensuring that the full Relief Road is achieved. As Mr Shelton will explain, if it emerges that there is a funding shortfall in the years ahead, additional developer contributions from developments identified in the emerging Local Plan and other grant funding streams will be pursued, if necessary, to meet the overall cost of delivering the construction of the Link Road.²²

C. IMPEDIMENTS

24. Paragraph 15 of Tier 1 of the CPO Guidance advises that the Acquiring Authority need to show that the Scheme will be unlikely to be blocked by any physical or legal impediments to implementation.

25. As Mr Shelton will explain, the Scheme is unlikely to be blocked by any such impediments.

¹⁹ Richard Shelton Proof of Evidence para. 6.56.

²⁰ Richard Shelton Proof of Evidence para. 6.57.

²¹ Doc 12.9.

²² Richard Shelton Proof of Evidence para. 6.61.

26. The Link Road has detailed planning consent and the Council is progressing the discharge of pre-commencement planning conditions. Although there are various approvals and consents still required in order to deliver the Link Road²³, the Council does not consider that they are likely to present an impediment to delivery. As well as the discharge of planning conditions, the consents/approvals that are still to be secured include track possession agreements with Network Rail, environmental permits from the Environment Agency, a demolition notice for the demolition of the derelict house at Shalloak Road, and a Non-Material Amendment to the Link Road planning consent to reduce the number of spans for the viaduct.

27. There is a practical interdependence and interaction between the Link Road and the Land at Sturry development in terms of delivering the full Relief Road. As already stated, the Land at Sturry development has planning consent, including detailed consent for the Relief Road. The consent was granted in 2021 but progress has since been delayed because of the emerging guidance from Natural England on Nutrient Neutrality. An acceptable nutrient solution has now been found and in February 2024 Canterbury City Council adopted a new Appropriate Assessment for the Sturry site, which was approved through consultation with Natural England. In 2024, the first reserved matters application was approved and that extends the validity of the planning consent by two years, until February 2026. The promoter still has further reserved matters applications to submit for approval and environmental licences to secure, and the Council anticipates that the development will be implemented in late 2025 or early 2026, which is in advance of the Council's intended start date on site for the Link Road.²⁴

D. EFFORTS TO ACQUIRE BY AGREEMENT AND OUTSTANDING OBJECTIONS

28. Paragraph 2 of Tier 1 of the CPO Guidance states that the acquiring authority is expected to show that they have taken reasonable steps to acquire all of the land and

²³ As set out at para 7.7 of Richard Shelton Main Proof of Evidence

²⁴ Richard Shelton Proof of Evidence paras 5.7-5.11.

rights included in the CPO by agreement. Paragraph 17 of Tier 1 states that acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted.

29. The Council has made significant efforts to acquire all of the land by agreement and negotiate and come to terms with objectors.
30. The Council's approach has been effective. It has secured the withdrawal of objections from South Eastern Power Networks (by letter dated 23 September 2024) as well as the Environment Agency, Southern Gas Networks and National Grid.²⁵ It has also already agreed heads of terms and compensation with a commercial landowner, Valencia, who owns the land (Plots 29, 30, 32 and 33) required for the widening of Shalloak Road.²⁶
31. There are two remaining objectors to the CPO (Network Rail and Mr Horsham), as well as one objector to the SRO (Mr Horsham).
32. With regard to Network Rail, there has been positive and constructive engagement between the Council and Network Rail in the lead up to the inquiry. The Council is hopeful that the parties will reach agreement in short order, and that Network Rail will subsequently withdraw its objection and its representation to the Department for Transport made under s. 16 and Schedule 3 Part 11 of the Acquisition of Land Act 1981.
33. Pending any agreement reached, the Council, through Mr East, will explain in evidence its response to Network Rail's objection. The objection is made on the grounds that the CPO/SRO will adversely affect operational railway land or interests. As Mr East will explain, the SRO has no impact at all on Network Rail's land and the CPO seeks the acquisition of rights only at Plots 20, 21 and 22. This will have a limited impact on the operational railway during construction and no impact during operation following the

²⁵ See Richard Shelton Proof of Evidence paras. 8.7-8.9.

²⁶ Ibid, para. 8.11.

scheme construction. In respect of the test under Schedule 3 Part 11 of the 1981 Act²⁷, the CPO will not cause any serious detriment to the carrying on of the railway undertaking.²⁸

34. Mr East will also explain that the concerns raised by Network Rail regarding the CPO/SRO's impact on the Broad Oak level crossing are unfounded.²⁹ The widening of a short section of Shalloak Road to the north of the Broad Oak level crossing arose from the outcome of a level crossing risk assessment carried out jointly between Network Rail and the Council. This followed concerns over 'blocking-back' of traffic over the crossing caused by vehicles slowing down to safely negotiate the narrowness of the road. Proposals for widening Shalloak Road are intended to improve safety at the crossing and mitigate the potential for increased traffic during peak hours because of the Sturry Relief Road. Neither the CPO nor the SRO themselves facilitate additional traffic over the crossing. It is instead the Land at Sturry development that will create the main section of the Relief Road that will provide a connection between A291 Sturry Hill and Shalloak Road and which will deliver additional dwellings and occupants who will use the transport network, as well as other new residential development in the area. The absence of the Link Road would worsen the situation at Broad Oak level crossing and the Sturry level crossing.

35. In respect of Mr Horsham, the owner of Perryfield Farm (plots 4, 11, 12, 14, 15), the Council has engaged with him and his wife over a long period of time (since 2017)³⁰ and has worked hard to seek to resolve their concerns and limit the impact of the CPO and delivery of the Link Road on their land where it is possible to do so. The Council has carefully considered whether it can make amendments to the CPO. Following receipt of Mr Horsham's proof of evidence, Mr Shelton prepared a supplementary proof of evidence³¹ which explains the Council's up to date position in respect of each of Mr Horsham's plots. The Council considers that the position set out in Mr Shelton's

²⁷ Section 16 is not relevant because it relates to acquisition of land rather than rights. It is Schedule 3 Part 11 that relates to acquisition of rights.

²⁸ See Jonathan East Supplementary Proof of Evidence paras. 7-13 and Proof of Evidence section 5.

²⁹ Jonathan East Supplementary Proof of Evidence paras. 14-19.

³⁰ Richard Shelton Proof of Evidence para. 8.15.

³¹ Doc 1.15.

supplementary proof of evidence to a very large extent resolves the concerns that Mr Horsham has raised that relate to the CPO/SRO.

36. The Council has continued to seek to engage with Mr Horsham in the days and weeks running up to the inquiry to discuss his concerns and the Council's response to them, but has received no response to its recent request to meet³².

E. THE SIDE ROADS ORDER

37. The SRO is made under ss. 14 and 125 of the Highways Act 1980. S. 14 provides a power to improve, raise, lower or otherwise alter a highway that crosses or enters the route of the classified road and s. 125 provides that a s. 14 order may authorise the highway authority to stop up private means of access to premises and to provide new means of access to premises.

38. The SRO seeks to improve Shalloak Road and the A28 Sturry Road.³³

39. As Mr Shelton and Mr East will explain, the improvement made to the A28 Sturry Road is to facilitate the construction of the roundabout on the north side of the road between the Canterbury Wastewater Treatment Works and Perryfield Farm, which will involve the local realignment of the approaches to and exits from the roundabout.

40. As Mr Shelton and Mr East will explain, the SRO shows the improvement of Shalloak Road, which will be locally widened to help mitigate the problem of two large vehicles having difficulty passing each other to the north of Broad Oak level crossing, causing 'blocking back'.

41. The SRO seeks to stop up two private means of access to premises and to provide new means of access to those premises, specifically Mr Horsham's land at Perryfield Farm

³² Doc 1.14 Letter of 14 September 2024.

³³ Statement of Case section 23.

and access to a field allocated under policy EMP1 of the Canterbury District Local Plan for 'Future Employment Use Land'.³⁴

42. The private means of access to Perryfield Farm is not physically affected but its location is considered to be too close to the exit from the roundabout for safety reasons. A new means of access will be provided as a connection to the roundabout. The access will also serve as the maintenance access to an adjacent drainage basin. As Mr Shelton will explain, the Council has offered to leave the Horshams' access physically in place, albeit it will be stopped up, so as to allow waste bins to be wheeled out to the main road for collection.³⁵

43. As Mr Shelton will explain, for both accesses to be stopped up, another reasonably convenient means of access to the premises will be provided and therefore the SRO complies with s. 125(3)(b) of the Highways Act 1980.

F. PROPOSED MODIFICATIONS TO THE CPO AND SRO

44. The Council requests that the Inspector recommends to the SoS that modifications be made to the CPO and SRO. These are set out in a summary table in the inquiry documents (Doc 1.17). The proposed amended CPO Order, Schedule and Map are at Docs 1.18-1.21. The amendment proposed to the SRO plan is included in the appendix to Mr East's supplementary proof of evidence³⁶. The proposed modifications have largely arisen as a result of discussions with Mr Horsham, where the Council has reflected on the nature of land take/acquisition of rights in the CPO and, as will be explained by Mr Shelton, has judged that it can deliver the Scheme with a lesser interference with Mr Horsham's land, in part through design amendments to the Scheme. The proposals, in summary are:

- Delete Plot 4 from the CPO;

³⁴ Statement of Case section 23.

³⁵ Richard Shelton Supplementary Proof of Evidence para. 13.

³⁶ Doc 1.16.

- Amend Plot 11 to convert parts of the proposed permanent acquisition of land to the acquisition of rights (two alternatives proposed for Mr Horsham’s consideration);
- Convert Plot 14 from a permanent acquisition of land plot to an acquisition of rights plot.

45. In the case of Network Rail, a minor amendment is proposed to the CPO Schedule to reflect a reduction in Plot 22 (a rights plot) from 552 square metres to 550 square metres. This is to seek to align the CPO with Network Rail’s own asset information mapping.³⁷

46. It is also proposed that the SRO map be modified to remove approximately 3 metres from the southern limit of the ‘improved highway’ at Shalloak Road. This is to make clear that the improvement does not extend onto the local ramps up to the Broad Oak level crossing that have ‘keep clear’ marking. This is public highway and in the Council’s ownership but the modification is proposed for the purposes of clarification.³⁸

G. THE PUBLIC SECTOR EQUALITY DUTY AND THE EQUALITY IMPACT ASSESSMENT

47. Paragraph 6 of Tier 1 of the CPO Guidance gives advice on how the public sector equality duty (“PSED”) should be taken into account by acquiring authorities in compulsory purchase. It advises that acquiring authorities must have due regard to the effect of any differential or disproportionate impacts of the CPO on groups with protected characteristics. The Council has discharged its duties in respect of s. 149 of the Equality Act 2010 in accordance with the CPO Guidance. It has produced and updated an equalities impact assessment³⁹, which has been considered by the

³⁷ See para. 13.1.4 of the Statement of Case (Doc 1.6).

³⁸ See paragraph 6 of Mr East’s supplementary proof of evidence (Doc 1.16).

³⁹ Doc 13.1.

Council’s senior officers and Members when taking the decisions between 2015 and 2023 for the delivery of the Scheme, including the use of CPO powers.⁴⁰

48. The PSED also applies to the SoS in respect of the decision as to whether or not to confirm the CPO and SRO. It imposes a procedural requirement to “have due regard” to various specified considerations when taking decisions. The duty does not require a particular substantive result in respect of the CPO/SRO and the impacts of it on those with protected characteristics.

49. The position that the SoS is invited to take into account when discharging the public sector equality duty is set out in the equalities impact assessment. In summary, the EqiA identified long-term positive impacts for those with the protected characteristics of age, disability, gender and pregnancy and maternity in terms of improved safety of routes through improved pedestrian crossings, highways and paths, and improved transport connectivity. Temporary negative impacts are identified during the construction phase for broadly the same groups but with mitigation measures intended to be put in place such as ensuring diversions are well lit, this will result in little or no residual adverse impact.

H. HUMAN RIGHTS AND COMPELLING CASE IN THE PUBLIC INTEREST

50. Consideration of European Convention rights issues, in this instance Article 1 Protocol 1 (the right to peaceful enjoyment of property) and Article 8 (the right to a private and family life), is reflected in the CPO Guidance at Tier 1, paragraph 2, which states that *“the purposes for which the compulsory purchase order is made [must] justify interfering with the human rights of those with an interest in the land affected”*.⁴¹ The courts have considered Convention rights in the context of CPOs on a number of occasions and have recognised that the “compelling case in the public interest” test is not materially different to the decision making required in the context of Convention

⁴⁰ Richard Shelton Proof of Evidence para. 13.3.

⁴¹ See also paragraph 12 of Tier 1 of the CPO Guidance.

rights, on the basis that the “compelling case” approach necessarily involves weighing the individual's rights against the public interest⁴². The balance between the public interest and private rights is therefore not only a requirement of the CPO Guidance but also reflects the position under the Human Rights Act 1998 and the ECHR.

51. The only residential property impacted in this CPO is Perryfield Farm, Mr Horsham’s property. All other land required is held for existing or potential commercial, employment or utility company use. The effect of this is that whilst all affected parties have Article 1 Protocol 1 rights, it is only Mr and Mrs Horsham whose Article 8 rights are engaged. The Council has sought to limit land take insofar as it has been possible to do so.

52. The Council’s submission is that the public benefits provided by the Scheme in securing the transport improvements and the consequential unlocking of significant housing development justifies the interference with individual rights.

CONCLUSION

53. In due course, the Council will submit that there is a compelling case in the public interest to justify the confirmation of the CPO. It will also submit that the SRO should be confirmed. Taking these steps will deliver transport improvements and unlock a significant amount of new housing in the Canterbury district area.

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1 October 2024

⁴² See e.g. *Bexley LBC v. Secretary of State* [2001] EWHC Admin 323 at [46] and *R (Hall) v. First Secretary of State* [2008] JPL 63 at [15].