

Local Government (Miscellaneous Provisions) Act 1976

Town and Country Planning Act 1990

Acquisition of Land Act 1981

Inquiry into:

The Council of the City of Coventry (City Centre South) CPO 2022

**Proof of Evidence of Keith Murray FRICS
of**

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On matters relating to

The Justification for the Use of Compulsory Purchase Powers

In respect of

**The Leasehold Interest in Land and Premises Comprising
Lower Precinct Shopping Centre, Coventry Market and vacant land
known as Victoria Buildings**

27 December 2022

Reference : ENV/3303076 – APP/PCU/CPO/U4610/3299063

Public Inquiry Commencing : 17 January 2023

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1.0 Name and Qualifications

- 1.1 My name is Keith Donald Kenneth Murray. I am a Fellow of the Royal Institution of Chartered Surveyors. I qualified as an Associate in 1974 and in 1987 was elected a Fellow. Since April 2000 I have practised on my own account specialising in providing advice in relation to compulsory purchase and compensation matters to private clients, other surveying practices and acquiring bodies.
- 1.2 Prior to commencing practise on my own account I was an equity partner of Edwin Hill; now Altus Edwin Hill Chartered Surveyors. Whilst with Edwin Hill I was head of their Specialist Services Department which was primarily concerned with providing advice to clients in connection with all aspects of compulsory purchase. Prior to joining Edwin Hill in 1984, I was employed continuously by the then District Valuer's Office of the Board of Inland Revenue as a Chartered Surveyor from 1974 having commenced training with them as a surveyor in 1970. During the course of that employment I was closely involved with all aspects of compulsory purchase since, at that time, the District Valuer's Office was the primary source of advice to authorities possessing compulsory purchase powers.
- 1.3 During the course of my 40 years post qualification experience, I have advised and acted in respect of compulsory purchase matters on behalf of local authorities, private and public companies ranging from the largest multi-national corporations to the smallest individual traders and individuals.
- 1.4 I confirm that I meet the requirements of the RICS Professional Statement "*Surveyors advising in respect of compulsory purchase and statutory compensation*".

2.0 Instructions

- 2.1 I am instructed by Royal London Asset Management to advise and give evidence on behalf of The Royal London Mutual Insurance Society Limited ('Royal London'), part of which society's leasehold interests in Lower Precinct Shopping Centre, Coventry Market and land known as Victoria Buildings is included within The Council of the City of Coventry (City Centre South) Compulsory Purchase Order 2022 ('the Order'). I was first instructed to act on behalf of Royal London in June 2021.
- 2.2 My instructions are to advise Royal London on the justification for the Order and whether or not in my opinion Coventry City Council ('the Council') has met the

requirements set out by the Department for Levelling Up, Housing and Communities in its '*Guidance on compulsory purchase process and The Crichel Down Rules*' ('the Guidance') dated July 2019 with particular regard to the factors that the confirming authority will have to consider in accordance with Paragraphs 12 to 15 of the Guidance when deciding whether or not to confirm the Order.

2.3 In order to prepare this Proof of Evidence, I have inspected the area identified within the Order. I have read the Outline Statement of Case and the Statement of Case ('the SoC') prepared by the Council and had regard to the content of documents forming part of Royal London's submissions as necessary. In particular I have had regard to the content of the Guidance which, although having no statutory authority, provides a clear indication to a body promoting a compulsory purchase order ('CPO') of the principles that that body will need to address in order to succeed in having a CPO confirmed. It is implicit within the Guidance that if a proposed CPO does not meet the principles set out therein, that CPO should not be confirmed.

2.4 In this Proof of Evidence, having now set out the nature and extent of my instructions I first give attention to the matters, or perhaps more accurately the hurdles, the Council has to clear before the Order can be confirmed. I then address those matters raised in the SoC that are within my expertise. Finally I draw my own conclusion as to whether or not there is a compelling case in the public interest which justifies the confirmation of compulsory purchase powers. In reaching my conclusion, I draw from:

The evidence in respect of comprehensive development given by Mr Keith Hardman of Cushman and Wakefield,

The evidence in respect of viability given by Mr Robert Fourt of Gerald Eve LLP,

The evidence of Mr Alec Philpott of Mayer Brown Limited in respect of the effect of the proposed development on the operations of both Coventry Market and the Lower Precinct Shopping Centre with regard to servicing matters.

The evidence presented by myself,

and from the Core Documents lodged in support of the Council's case.

3.0 Introduction

- 3.1 In order to justify the confirmation of the Order, it is for the Council to satisfy the confirming authority that '*there is a compelling case in the public interest*' (Para 12 of the Guidance) for the various parts of the leasehold interest of Royal London to be expropriated. This is a two-stage requirement; the case has to be 'compelling' and 'in the public interest'.
- 3.2 'Compelling' implies that the reason for expropriating a person's land, thereby breaching Article 1 of the First Protocol to the European Convention on Human Rights, is that without doing so there would be no other reasonable or realistic manner in which the objectives of the proposed Order could be achieved. 'In the public interest' implies that the purpose of the Order is to bring about some wider public benefit overall which without the Order could otherwise not be achieved.
- 3.3 In order to demonstrate that there is a compelling case for the Order, the Council first has to prove that there is a case for it. In order to demonstrate that there is a case the Council has to show that it has gone through a reasonable and logical process in order to identify the land which it considers to be appropriate for the scheme that is the subject of this inquiry and that there is no reasonable alternative but to compulsorily acquire the lands identified in the Order to bring about the purpose of the scheme. Once the case is established to this extent, it is then a question of demonstrating there is a compelling case; is there an over-riding need in the public interest to implement the Council proposals which demands that the Royal London lands are expropriated. Finally, it must be demonstrated that the use of compulsory purchase powers would be proportionate to the infringement of human rights suffered by any landowner whose interest in land is identified for acquisition.
- 3.4 In order to make out a compelling case in the public interest an acquiring authority should be sure that the purposes for which it is making the order sufficiently justify interfering with the human rights of those with an interest in the land affected. If there is doubt about the potential viability or deliverability of the scheme a compelling case in the public interest is unlikely to be made out.
- 3.5 In considering proportionality, it would not be proportionate to confirm a compulsory purchase, if the landowner was willing to grant rights to the acquiring authority which enabled the acquiring authority to achieve their purposes equally well.
- 3.6 Having outlined the criteria that the Council must satisfy in order to justify the confirmation of the Order, I now consider whether or not the Council has done so.

4.0 Background

- 4.1 On 11 January 2002 the Council resolved to make the Order, which Order was made on 22 April 2022.
- 4.2 On 25 May 2022 Royal London served notice of objection to the Order and as the Order seeks to acquire an interest in land from Royal London is therefore a relevant objector.

5.0 The Order scheme

- 5.1 The extent of the Order scheme ('the Scheme') is identified in Paragraphs 5.1 to 5.13 of the SoC and in summary comprises:

The removal and relocation of the William Mitchell mural, this being a listed structure,

The removal of the bridge link between the Coventry Market ('the Market') rooftop car park and the rooftop parking over the existing retail units on Market Way together with subsequent associated reinstatement works to the Market car park surface and balustrade.

The removal of the existing ramp leading from Rover Road down to the basement of the Market and the creation of a replacement ramp from Queen Victoria Road into the Market basement,

The removal of the pedestrian ramp into the Market off Rover Road.

Works to the retaining wall to the north-east of the Market.

Following the completion of these works then will follow the demolition of the buildings on the land that is to be developed and the subsequent redevelopment of the cleared site.

- 5.2 The Scheme is intended to provide a comprehensive new mixed use regeneration scheme comprising residential, non-residential including Class E, Class F1 and sui generis uses, hard and soft landscaping and new public open spaces, sustainable urban drainage systems; car parking; new pedestrian and vehicle access provisions. In addition there is potential for hotel use.

- 5.3 Given that Royal London is prepared to enter into a variation of its Lease with the Council which will grant the rights necessarily required for access to the Council, my evidence will be to the effect that the case for compulsory acquisition is far from compelling. In which case, given that the case for confirming the Order is far from compelling, the test of proportionality demands that the proposed Order be not confirmed.

6.0 The Case for the Objector

- 6.1 The Order seeks to acquire all interests of Royal London in Plots 4, 6, 8, 9, 39, 54, 233a to 233g.
- 6.2 Plot 4 is vacant land being the site of the former Victoria Buildings. Royal London owns the 150 year headlease interest in the site however the occupational interest is held by Coventry Urban Regeneration Limited via a 150 year, less 3 days, underlease. Royal London therefore has no practical grounds to oppose the acquisition of Plot 4 in accordance with the Order.
- 6.3 Plot 6 forms part of the access ramp leading down to the basement area of the Market. Plot 8 is part of the adopted highway known as Rover Road. I address these Plots when addressing Plot 39.
- 6.4 Plot 39 provides circulation space and access to surrounding properties, together with the entrance/exit ramp leading down to the basement of the Market, from which stallholders supply their stalls at ground floor level above, whilst Plot 9 is the site of an electricity sub-station within this circulation space. All of these plots form part of the leasehold interest dated 22 October 2010 granted by the Council to Scottish Life (Coventry) Property Ltd, now held by Royal London, for a term of 240 years. The extent of the demise is shown on the drawing at my Appendix KM 1).
- 6.5 The Scheme proposes the closure of Rover Road and the existing ramp to the basement of the Market with a new ramp being formed via Plot 4 to provide a vehicle entrance/exit to the basement of the Market (see my Appendix KM 2). As a comparison of my Appendices KM 1 and KM 2 and the Order map show, should the Order be confirmed and the Scheme be implemented, the Market will remain within the leasehold demise of Royal London however vehicular access to and from the basement area and at ground floor level will no longer be under the control of Royal London. Effectively, in terms of vehicle access, Royal London will no longer be able to provide access to the Market as Royal London's leasehold interest in the Market

follows therefore that Royal London will no longer be able to control access of any form, ie neither pedestrian nor vehicular, to the Market.

- 6.6 To overcome this issue, the Council proposes to implement a Delivery and Servicing Management Plan ('DSMP') whereby access to the Service Yard to the south of the Market is to be controlled; those wishing to take access being required to book a specific time at which they can deliver. However there is a fundamental difficulty with this proposal in that whilst Royal London will still control the Market by virtue of its lease, it will not have control of the arrangements set out in any DSMP because that will have to be implemented on land outside of Royal London's control and there is no mechanism, either via the Order or by any other legislative means, whereby Royal London can be required to implement and operate a DSMP on land not within Royal London's control.
- 6.7 Nevertheless, a DSMP has been prepared on behalf of the Council by Transport Planning Practice ('TPP') and in order both to assist in respect of the future operation of the Market should the Order be confirmed and because if the Order is confirmed and a DSMP is implemented there are potential consequences for Royal London in respect of its Service Yards to the north of the Market, Royal London has instructed Mr Alec Philpott of Mayer Brown Ltd to review the TPP DSMP proposal. On being examined by Mr Philpott on behalf of Royal London however the TPP prepared DSMP is considered to be inadequate in that:

It proposes to restrict access to the area to the south of the Market which traders use currently in order to service their stalls within the Market to between the hours of 06.00/07.00 to 10.00 whereas at the present time usage of this area out of these hours is un-regulated.

In order to attempt to manage the Market delivery traffic it relies upon implementing a booking system whereby deliveries will pre-book a specific time at which they are to arrive for the purpose of unloading stock for a particular Market stall.

- 6.8 In the event that such measures are imposed, it will clearly necessitate greater management involvement both in timetabling service deliveries via a booking system and the necessary enforcement which will undoubtedly be required. As is equally important however, as Mr Philpott notes (at his Para 4.15), the assessment prepared by TPP concludes that any migration of vehicles from this area outside of the designated hours of delivery will be solved in part by those displaced using the Lower Precinct Shopping Centre ('LPSC') Service Yard to the north of the Market which in turn will necessitate greater supervision and control of that yard.

- 6.9 Plot 54 is to be acquired in order to provide for the construction of and to facilitate servicing of the proposed residential Block A2 of the redevelopment for which the Order has been promoted. However as Mr Philpott concludes in Paras 5.60 to 5.67 of his report, in respect of the servicing of Block A2 the proposed location conflicts with both pedestrian activity associated with the Market and also with emergency vehicle routing and consequently the proposed strategy for servicing Block A2 is considered to be unsafe.
- 6.10 A further concern identified by Mr Philpott in respect of the acquisition of Plot 54, at his Paras 5.1 to 5.5 is that part of the area to be acquired is necessary in order to allow large HGV's to manoeuvre both for unloading and so as to leave the Service Yard to the north of the Market in a forward direction. The permanent acquisition of this part of Plot 54 gives potential for restrictions to be imposed at any time in the future to the detriment of the ability to properly service the retail units of the LPSC that have the right to use this particular service yard area.
- 6.11 Plots 233a to 233e comprise five individual market stalls that form part of the Market but face outwards. The purpose of this acquisition is stated to be to enable the Scheme to be constructed, accessed and serviced etc efficiently.
- 6.12 Plot 233f comprises part of the basement service area that services the Market at ground floor level and is to be acquired in order to create a new vehicular access to the basement of the Market, thereby enabling the existing ramp access via Rover Road to be closed.
- 6.13 I now consider the New Rights that the order seeks in relation to land in respect of which Royal London has an interest.
- 6.14 Plots 228, 229, 230, 231, 232 and 233 provide, amongst other rights, the right for the Council together with its various lessees etc:

'To pass and re-pass across the land at all times with or without vehicles, machinery, equipment and materials for all purposes in connection with, and to carry out works for, the demolition, construction, maintenance, use, renewal, repair, reinstatement, removal, replacement or alteration of vehicular servicing accesses on or adjacent to or abutting the land and the right from time to time to manage access to the land to accord with safe working practices.'

My understanding of this right sought by the Council is that the closing words being *'and the right from time to time to manage access to the land to accord with safe*

working practices’ have to be read in conjunction with the words that precede them being *‘to carry out works for, the demolition, construction, maintenance, use, renewal, repair, reinstatement, removal, replacement or alteration of vehicular servicing accesses’* which in turn means that the Council would only have the ability to control access when whatever work it is undertaking presents a risk to pedestrians, vehicles etc that might pass by at that time. It does not give the Council the right to make access generally available to any third party that it chooses to.

6.15 Additionally in respect of Plot 233, the Order seeks the right:

‘to swing the jib of a crane loaded or unloaded through the airspace over properties’.

Whilst there is less objection to allowing the jib of an unloaded crane to swing through the airspace above occupied properties, indeed whilst not in use such jibs have to be left to swing free so as not to risk being toppled in strong winds, there is no reason why a crane jib should be allowed to swing over occupied properties when loaded. This is inherently dangerous, because it is not unknown for a load that is being carried to fall due to the anchoring point on the load to be lifted failing, particularly as an alternative type of crane is available for use. In the alternative a crane with a luffing jib, which is a type of crane that can operate solely within the confines of a development site, should be used therefore the Order should not be confirmed to allow the swing of a loaded jib through airspace above any occupied properties.

6.16 Plots 233g, 233h and 233i similarly seek the right to *‘swing the jib of a crane loaded or unloaded, through the air space above the land’* but for the reason that I have given in respect of Plot 233 at my Para 6.15, this right should not be confirmed.

6.17 Plot 234 comprises two Service Yards which form part of the leasehold interest of Royal London and service the LPSC. In respect of this plot similar rights to facilitate the development proposed by the Order are sought including the right to swing the loaded jib of a crane through the air space above these yards. For the reasons that I have previously given, this particular right should not be confirmed by the Order in respect of this plot.

6.18 In respect of Plot 234 I would also draw attention to the fact that whilst the rights sought include the right *‘from time to time to manage access to the land to accord with safe working practices’* which I have commented upon previously, no specific right is sought by the Order to enable the Council to grant a right of access for any purpose whatsoever to any third party to whom the Council might choose to grant

such a right; this being of particular importance in the context of the proposed DSMP. As noted by me in my Para 6.8, TPP concludes that any migration of vehicles from the service yard to the south of the Market outside of the designated hours of delivery will be solved in part by those displaced using the LPSC Service Yard to the north of the Market. But unless those that seek to do so have a specific entitlement to do so by virtue of a lease that they hold, they will not be allowed entry to these yards which are under the direct control of Royal London.

7.0 The Council's Statement of Case

- 7.1 I now comment upon the Council's Statement of Case in respect of matters therein which relate to the leasehold interest of Royal London.
- 7.2 The Statement of Case states at Paragraph 2.3 (SoC Para 2.3) that the Scheme proposed by the Order if implemented will facilitate the regeneration of '*one of the most tired and outdated areas of Coventry city centre*'. As Mr Hardman has evidenced on behalf of Royal London, because the development proposed by the Order does not form part of a comprehensive development of the city centre, the likely result will be that whilst the Order lands may well benefit, in terms of the total retail offer of the City Centre this is likely to be at the expense of the surrounding retail areas, including Lower Precinct which is the largest covered shopping centre within the city centre.
- 7.3 SoC Para 3.6 notes that the pink land to be acquired, in this case part of Plot 54, forms part of the service yard to the LPSC; this being part of Royal London's leasehold interest. As Mr Philpott notes however, the acquisition of part of this service area is likely to be detrimental in terms of the use of this Service Yard in that it could further restrict the size of vehicles able to enter and depart from what is already a service area restricted in terms of that capability.
- 7.4 SoC Para 3.18.3 notes that the Order seeks the right '*to swing the jib of a crane loaded or unloaded through the air space over properties*' however as I have noted previously in reviewing the rights sought over Royal London's leasehold interest, transporting loads over areas of land from which the general public have not been specifically excluded is inherently dangerous and an alternative method of transportation, i.e. a tower crane with a luffing jib, should be employed.
- 7.5 SoC Para 5.13 states, '*Both the consented Scheme and the Refined Scheme envisage a comprehensive mixed use regeneration scheme within the city centre.....*'. however a Scheme cannot be comprehensive unless it relates to the entirety of uses identified

within a particular locality. Taking the proposed new retail development by way of example, in what is at present Hertford Street the Order will result in new, stylish retail outlets on the west side of Hertford Street facing a melange of styles of units of varying ages on the east side of Hertford Street; not indicative of a comprehensive approach at all. As has been noted previously (SoC Para 2.3) the Council states that the Scheme is intended to '*facilitate regeneration of one of the most tired and outdated areas of Coventry city centre*' however as Mr Hardman states in his evidence, the Scheme the subject of the Order cannot therefore be considered to be comprehensive and is only likely to result in the decline of retail offerings in adjacent retail areas such as Lower and Upper Precinct.

- 7.6 SoC Para 6.2 notes that '*The existing Development Site is characterised by a high level of vacancy in the retail and office units...*' however this statement needs to be interpreted in its true context. At SoC Para 3.8 the Council confirms that it '*owns the freehold interest in approximately 99% of the Pink and Green Land*', ie it owns the freehold interest in the majority of the Order lands. For some 12 years the Council has been advocating a regeneration scheme of this nature and acting as a prudent landlord with an eye to future redevelopment has adopted a policy of only making vacant space available on short-term, contracted-out tenancies so as to enable possession to be re-taken without the need to compensate occupiers. But such letting policies by their very nature tend to lead to higher than typical levels of vacancy as few retailers are willing to incur the cost of fitting out premises which might be reclaimed by a landlord on relatively short notice.
- 7.7 Section 8 of the SoC addresses the delivery, viability and funding of the proposed Scheme and concludes (SoC Para 8.9) that '*Overall, there is a reasonable prospect of Scheme delivery...*'. It is necessary to consider the advice in paragraph 106 of the Guidance together with the advice in paragraph 13. Paragraph 13 of the Guidance states that if an acquiring authority '*cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale*' it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making. It is important to note that, in paragraph 13, the word 'reasonable' applies to the time-scale, not to the fact of the resources being available in order to implement the proposed Scheme. A requirement in respect of the latter, in applying the advice in paragraph 13, is that they are 'likely' to be available.
- 7.8 On the basis of Mr Fourt's evidence it cannot properly be concluded that the Scheme is financially viable. As noted by the Inspector who considered objections to The London Borough of Barking and Dagenham Council (Vicarage Field and surrounding

land) Compulsory Purchase Order 2021¹ no developer or financial services company would invest in a product that was not going to make a return (paragraph 176). As the Scheme is not financially viable it would not be reasonable to conclude that the necessary resources are likely to be available and therefore a compelling case in the public interest is not made out. Further, there is no reasonable prospect that the Scheme will proceed.

- 7.9 SoC Paras 12.36 to 12.45 seek to address Royal London's objection to the Order. Paras 12.36 to 12.38 are factual and warrant no comment except that to clarify Para 12.37, the LPSC itself does not include Coventry Retail Market, the market is a separate building and situated some way to the south of the shopping centre.
- 7.10 SoC Para 12.39 declares that *'the relevant tests set out in the CPO Guidance have been satisfied'* and therefore there is a clear and compelling case for the Order to be confirmed. SoC Section 7 gives consideration to Alternatives to Compulsory Purchase and identifies Paragraph 106 of the CPO Guidance which states that amongst other factors, one factor that the Secretary of State can be expected to consider when determining whether to confirm an Order is:

"whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means".

with Para 7.2 concluding that there are no alternatives. At Para 12.45 the Council then refers to its engagement with Royal London in an endeavour to acquire the land and rights required for the Scheme by negotiation; including reference to Heads of Terms being issued, which Heads of Terms were issued on a 'without prejudice' basis.

- 7.11 The Council is Royal London's landlord consequently it would be possible by agreement between Royal London and the Council to vary the terms of the lease by which Royal London holds LPSC and Coventry Retail Market and thereby enable the Council to resume possession of the land it seeks to acquire and secure the necessary rights it requires without resorting to the use of compulsory purchase powers; this being a manner in which the purpose for which the Council is promoting the Order could be achieved without resorting to compulsion. At no time prior to the making of the Order however did the Council explore this avenue consequently I do not see how the Council could conclude that in the case of Royal London there is no alternative but to promote the Order.

¹ Case Ref: APP/PCU/CPOP/Z5060/3278231

- 7.12 SoC Para 12.40 makes reference to the Scheme's deliverability. Mr Fourt concludes that both the Order Scheme and the Alternative Scheme the subject of the Section 73 planning application are significantly unviable, even after undertaking sensitivity analysis of both to take account of possible variances in values and costs, and as a result neither scheme is capable of delivery.
- 7.13 In response to SoC Para 12.41 it is accepted that the Council has put forward alternative servicing arrangements in respect of the Market. However, as Mr Philpott has evidenced, the arrangements that have been proposed are impractical and consequently, although Royal London will have no on-going responsibility for arranging access to the Market on account of it having no control over the land lying between the public highway and the Market, Royal London has put forward alternative proposals as a suggestion of how arrangements could be made to allow servicing of the Market, although recognising that any such scheme will not provide the same level of servicing as at present, and may not be acceptable to market traders..
- 7.14 SoC Para 12.42 addresses the acquisition of rights in relation to the Blue Land however I am advised that those sought in respect of Plot 234 are potentially inadequate in which case therefore there is risk of a clear impediment to the Scheme's delivery in this respect.
- 7.15 The rights sought in respect of Plot 234 commence:

"The right for the Acquiring Authority and its lessees, licensees, successors in title, assigns, and those authorised by any of these to enter upon and use all interests in approximately 2304 square metres of land being service access and loading bays, car parking spaces and dustbin areas, excluding footbridge, to the north of Coventry Retail Market to:...."

and thereafter follows a list of what I would describe as construction, maintenance, repair etc uses. Significantly, no mention is made of a right to grant rights of access to any third party not falling within those categories stated above.

- 7.16 As I note at my Para 6.9, Plot 54 which is located to the north of the market is to be acquired in order to provide for the construction of and to facilitate servicing of the proposed residential Block A2 of the redevelopment once Block A2 has been completed and is occupied, with Plot 234 provide the means of access to the servicing area of Block A2. As Mr Fourt estimates at Para 8.15 of his evidence, Block A2 is likely to provide 212 residential units which in turn, having regard to current online shopping habits, would suggest a regular flow daily of delivery vehicles seeking access to the Block A2 residential units. Access to the service areas that comprise Plot

234 is via a barrier-controlled access from Queen Victoria Road under the control of Royal London.

- 7.16 The headlease from the Council to Royal London reserves the following rights to the Council, its licensees, lessees and tenants:

“To use and to gain access to for all proper purposes (including but not limited to servicing for the adjoining shops at all times) Service Area 2 and Service Area 3.”

Service Area 2 and Service Area 3 encompassing Plot 234. There are additional reservations however none are relevant to the point I wish to make.

I am further advised that the language of the reservation is wide enough that it could extend to future tenants of the Council who are not retail tenants, ie the residential occupiers of Block A2. However, if the use by those future residential tenants was so significant that it changed the character of the reservation and was materially different from that reasonably contemplated by the parties when the reservation was granted, then there could be an argument that the use was not “proper” and thus not permitted.

- 7.17 It will ultimately be for the Courts to decide whether or not the Council seeking to grant a right of access via the Royal London controlled access to these service areas, at the cost of Royal London, because it is they that monitor requests for access and monitor the access once taken, for an additional 212 residential units might be construed as ‘proper’ but until that happens, the Council cannot guarantee that Block A2 can be properly serviced and so the failure of the Council to secure a right of access for all purposes, which it could have done under the Order, would indicate a serious practical impediment to the Scheme’s delivery.
- 7.18 SoC Para 12.43 warrants no comment from me and in the preceding paragraphs I have addressed the content of SoC Para 12.44.
- 7.19 In my preceding Para 7.10 I made reference to the Guidance indicating that when considering whether or not to confirm an Order the Secretary of State can be expected to consider:

“whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means”.

In my following Para 7.11 I made reference to the fact that the Council is Royal London’s landlord which in turn means that by agreement between the two parties it

would be possible to vary the terms of the lease by which Royal London holds LPSC and Coventry Retail Market and thereby enable the Council to resume possession of the land it seeks to acquire and secure the necessary rights it requires without resorting to the use of compulsory purchase powers.

- 7.20 As the Council confirms at SoC Para 12.45, it has '*sought to engage....regarding the acquisition of the land and new rights required..*'. At no time however has the Council engaged with a view to varying the terms of its lease with Royal London, despite being made aware of Royal London's willingness to do so. What is clear from this is that the purpose for which the Council seeks to acquire land and rights through the Order can be achieved by other means which in turn means that can be no justification for confirming the Order in respect of the acquisition of either land or rights forming part of Royal London's leasehold interest.

8.0 Conclusions

- 8.1 In respect of the future servicing requirements of the proposed development Mr Philpot concludes that:

The acquisition of Plot 54 and its proposed future use is likely to compromise pedestrian safety and impose constraints on deliveries to existing retailers within LPSC.

Without significant improvement of the present service yard management the development proposed by the Order is likely to have an unacceptable impact on existing retailers and likely result in unacceptable impacts on the public highway surrounding the Order lands.

That the only way to manage servicing would be to implement a booking system but this may well be unenforceable in respect of some existing lease arrangements.

That the proposed servicing strategy for Block A2 would be unsafe.

- 8.2 Mr Hardman acknowledges that the city centre requires substantial redevelopment but concludes that to achieve the level of transformation required a fundamentally more comprehensive approach is required by embracing both LPSC and the market. Because in the absence of doing so, there is a serious risk that both will suffer increased vacancy rates which in turn will lead to the decline of both to the detriment of the wider city centre.

- 8.3 Mr Fourt concludes that both the Order Scheme and the Alternative Scheme the subject of the Section 73 planning application are significantly unviable, even after undertaking sensitivity analysis of both to take account of possible variances in values and costs, and as a result neither scheme is capable of delivery.
- 8.4 As I note in Paras 7.16 and 7.17, due to the failure of the Council to secure a right of access for all purposes in respect of Plot 234, the Council cannot guarantee that Block A2 can be properly serviced which in turn represents a serious practical impediment to the Scheme's delivery.
- 8.5 As I further note in Paras 7.19 and 7.20, a reasonable and acceptable alternative to the compulsory acquisition of both land and rights from Royal London exists in that due to the landlord and tenant relationship that exists between the Council and Royal London a variation of the existing lease could be agreed which would enable the Council to secure the same objectives as it wishes to secure under the order. And as I further note, Royal London has made it known to the Council that it is prepared to agree an appropriate lease variation.
- 8.6 I would also comment that by way of agreeing a lease variation the Council would avoid the potential difficulty I identify in Paras 7.14 to 7.17 which is that as the Council has not sought in the Order an unfettered right of access for all purposes over Plot 234, there is a risk that Block A2 cannot be adequately serviced which in turn means that one objective of the Order cannot be guaranteed.
- 8.7 Having regard to the conclusions of my expert colleagues when taken in conjunction with the matters I address in this report, in my opinion the Order should not be confirmed. As noted by the Inspector who considered objections to The London Borough of Barking and Dagenham Council (Vicarage Field and surrounding land) Compulsory Purchase Order 2021² no developer or financial services company would invest in a product that was not going to make a return (paragraph 176). As neither the Order Scheme nor the Alternative Section 73 Scheme are financially viable it would not be reasonable to conclude that the necessary resources are likely to be available and therefore a compelling case in the public interest is not made out.

² Case Ref: APP/PCU/CPOP/Z5060/3278231

9.0 Statement of Truth

- 9.1 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.

10.0 Declaration

- 10.1 I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
- 10.2 I confirm that I understand and have complied with my duty to the Inspector of this Inquiry as an expert witness which overrides any duty to those instructing or paying me, that I have given my evidence impartially and objectively, and that I will continue to comply with that duty as required.
- 10.3 I confirm that I am not instructed under any conditional or any other success-based fee arrangements.
- 10.4 I confirm that I have no conflicts of interest.
- 10.5 I confirm that I am aware of and have complied with the requirements of the rules, protocols and directions of the Inspector.
- 10.6 I confirm that my report complies with the requirements of the RICS – Royal Institution of Chartered Surveyors, as set down in the RICS practice statement “*Surveyors acting as expert witnesses*” 4th edition, as amended August 2020.

Signed.....

Keith Murray F.R.I.C.S

Dated 27 December 2022