

DR 6.5

Town and Country Planning Act 1990

Acquisition of Land Act 1981

Local Government (Miscellaneous Provisions) Act 1976

Inquiry into:

**THE COUNCIL OF THE CITY OF COVENTRY (CITY CENTRE SOUTH) COMPULSORY
PURCHASE ORDER 2022**

and

Town and Country Planning Act 1990

Stopping-up of public highway

Rebuttal Proof of Evidence

of

Graeme Lawes

Senior Director at Deloitte

On behalf of the Council of the City of Coventry

12 January 2023

In response to the proofs of evidence submitted by:

- **Sanjay Lodhia as Director of Queenhart Ltd**
- **Keith Murray on behalf of Royal London**

1. INTRODUCTION

1.1 My name is Graeme Lawes. Details of my qualifications and experience are set out in my main proof of evidence (DR2.8).

1.2 In this further proof of evidence ("first rebuttal") I adopt the same references and abbreviations as I used in my first proof, document DR2.8 (my "main proof"). This first rebuttal has been prepared to respond to:

1.2.1 The proof of evidence submitted by Sanjay Lodhia as director of Queenhart Ltd.

1.2.2 The proof of evidence submitted by Keith Murray on behalf of Royal London.

in respect of the CPO.

1.3 This is not intended to be an exhaustive rebuttal of the contentions made in the evidence listed in paragraph 1.2 above. This document only deals with certain points where it is considered appropriate and helpful to respond in writing. Where specific points have not been dealt with, this does not mean that those points are accepted and that they may be dealt with further at the inquiry and/or in writing.

2. QUEENHART LTD

Proof of evidence submitted by Sanjay Lodhia

2.1 The letter from Mr Lodhia makes three numbered points, and this first rebuttal responds to the first two of these points.

Inadequate Assistance with Relocation

2.2 Mr Lodhia states "*From the first notice that we have received from the Council and it's Agents, we have not received any assistance with relocation*". The efforts made by the Council to acquire land interests by agreement are set out at Section 6 of my main proof. Appendix GL2 to my main proof sets out a chronology of contact with each objector, which includes (as Objector no. 8) a summary of correspondence, meetings and other engagement that Deloitte has had with Mr Lodhia.

2.3 Paragraph 6.13 of my main proof refers to the Availability Schedule prepared and circulated by Holt Commercial, a local firm of commercial property agents. Mr Lodhia states that, in the listing he received from Holt Commercial, "*nearly all... were units that we[re] affected by the scheme and therefore did not resolve the issue of relocation*". Mr Lodhia does not make any date references, but the instructions given by the Council to Holt Commercial were to exclude any properties within the Order Land. At Appendix GL1 to my main proof I enclose a copy of the most recent Availability Schedule (December 2022) which does not include any properties located within the Order Land.

Insufficient Attempts to Negotiate

2.4 As referred to above, Appendix GL2 to my main proof sets out a chronology of contact with each objector, which includes (as Objector no. 8) a summary of correspondence, meetings and other engagement that Deloitte has had with Mr Lodhia. Since our initial correspondence to Queenhart Ltd, sent on 4 June 2021, we have engaged with Mr Lodhia with a view to agreeing terms for the acquisition of their leasehold interest.

2.5 In our discussions with Mr Lodhia, we have requested copies of the company accounts¹ in order to consider the value of the business although, to date, Mr Lodhia has declined to provide this information. Therefore, whilst Mr Lodhia's assertion that the financial offer made

¹ Micro company accounts are publicly available from Companies House, but these show assets and liabilities only, not profitability.

“has not taken into account the trading of the business and the value of the goodwill of the business” is correct, this is due to the absence of the necessary supporting information being provided by Mr Lodhia. In any event, if the business is able to relocate locally, I would expect some, if not all, of the goodwill value of the business to be retained.

- 2.6 My main proof refers, at paragraph 7.41, to a without prejudice financial offer being made on 27 September 2022. As identified in Appendix GL2 to my main proof, which provides a full chronology of engagement, this date reference should have been to 28 November 2022.
- 2.7 It will also be noted from Appendix GL2 that I confirmed to Mr Lodhia's agent on 2 August 2022 that the Council is willing to be flexible in their approach to the acquisition of the lease held by Queenhart Ltd. This could, for example, involve an agreement to acquire and pay compensation in accordance with the statutory provisions at a later date (when actual costs and losses are known), or to agree an up-front commercial sum to be payable for the acquisition. This flexible approach to engagement has resulted in the Council progressing and concluding various other acquisitions in the Order Land by agreement.
- 2.8 Attempts to acquire the leasehold interest of Queenhart Ltd by negotiation will continue in parallel with the compulsory purchase process.

3. ROYAL LONDON

Proof of evidence submitted by Keith Murray

- 3.1 Mr Murray covers a number of topics, many of which relate to matters covered by other witnesses. In relation to the matters that I address in my main proof, he considers the willingness for Royal London to enter into a variation of its Lease (at paragraphs 5.3, 7.11 and 7.20); the ability for the Council to implement a Delivery and Servicing Management Plan (“DSMP”) on land being permanently acquired (at paragraph 6.6); the definition of the new rights sought over Plots 228-233 inclusive (at paragraph 6.14); the requirement for new rights to swing the jib of a crane (paragraphs 6.15 to 6.17 and 7.4); the nature of rights sought over Plot 234 (at paragraphs 6.18 and 7.14 to 7.17); and the existing vacancy levels in the Order Land (at paragraph 7.6).

Willingness for Royal London to enter into a variation of its Lease

- 3.2 The efforts made by the Council to acquire land interests by agreement are set out at Section 6 of my main proof. Appendix GL2 to my main proof sets out a chronology of contact with each objector, which includes (as Objector no. 9) a summary of correspondence, meetings and other engagement with Royal London.
- 3.3 As will be noted in Appendix GL2, on 7 April 2022, I issued to Mr Murray proposed Heads of Terms for an Agreement and Undertaking relating to those areas in the Lower Precinct and Market to be included in CPO. These Heads of Terms included provision for variations to the existing lease between (1) the Council and (2) Royal London of the Lower Precinct shopping centre and the Market (the “Head Lease”) and other matters which, if legally completed, would mean compulsory acquisition would not be required.
- 3.4 Despite my regular requests for a reply, as summarised in Appendix GL2, a substantive (without prejudice) response to this letter was not received until 15 December 2022. The Council's response to this is currently being finalised and is intended to be issued shortly. Whilst the Council will continue to engage with Royal London in parallel with the compulsory purchase process to seek an acquisition of the land and new rights by agreement, there is no certainty that this will be achieved within a reasonable timetable.

Ability for the Council to implement a Delivery and Servicing Management Plan (“DSMP”) on land being permanently acquired

- 3.5 The Council acknowledges it will be necessary to grant back rights to Royal London to enable the DSMP to be implemented. The principle of this set out in my letter to Mr Murray dated 12

December 2021 (see Appendix GL2) in which I also confirm the provision of a service management plan can be set out in a form of Undertaking that the Council is willing to provide.

Definition of the new rights sought over Plots 228-233 inclusive

3.6 At paragraph 6.14 of his Proof of Evidence, Mr Murray raises concerns regarding the drafting of the new rights sought over Plots 228 to 233 of the CPO.

3.7 The drafting of the new rights contained in the CPO was prepared in conjunction with the Council's legal advisors. With my emphasis, there are two associated parts to the new right sought over these plots, which will enable the Council together with its various lessees etc.:

"To pass and repass 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."

3.8 The right will therefore allow the Council, together with those authorised on its behalf, to pass and repass over the relevant plots for the purposes stated. The right will additionally allow the Council to restrict the movement of others (i.e. those who also enjoy rights over the relevant plots in addition to the Council or those authorised on its behalf) over the relevant plots where needed to accord with safe working practices. I there do not agree with Mr Murray's reading of the description of the rights sought over Plots 228-233.

The requirement for new rights to swing the jib of a crane

3.9 At paragraph 6.15 of his Proof of Evidence, Mr Murray states that allowing a crane jib to swing over occupied properties when loaded is "*inherently dangerous*". I have sought comment from SPRL's Health and Safety Director on this issue, and he has advised that all crane use will be subject to a detailed lift plan, a trained lifting team and an electronic zoning system. He has also advised that a live load will not be used over any occupied property, with only the jib end potentially sailing over occupied property. An Undertaking to this effect can be provided if necessary.

3.10 My Murray goes on to state at paragraph 6.15 of his Proof of Evidence that, in the alternative, a luffing jib, operating solely within the confines of the development site, should instead be used. I am advised by SPRL's Health and Safety Director that these cranes are slower to erect and dismantle, use more power (which goes against green reduction targets) and have extra height (which can cause issues with the Civil Aviation Authority). I am also advised that luffing jibs are slower to operate, have a lower lifting capacity, and have base loadings that are significantly higher than a conventional fixed jib. I do not consider that there is a health and safety objection to crane oversailing rights.

The nature of rights sought over Plot 234

3.11 At paragraph 6.18 of his Proof of Evidence Mr Murray queries whether or not the new rights sought over Plot 234 are sufficient to allow the Council to implement the proposed DSMP.

3.12 The leasehold interest held by Royal London over Plot 234 referred to by Mr Murray is subject to the reservation of rights to the Council (as Landlord) together with its licensees, lessees and tenants regarding access to and use of the two service yard areas within Plot 234 including (but not limited to) the servicing of adjacent retail premises.

The existing vacancy levels in the Order Land

- 3.13 As identified at paragraph 3.7.3 of Chris Thomas's report which is provided as Appendix RB1 to the Proof of Evidence of Mr Brown (DR2.1), information obtained from PROMIS identifies that, as at Q2 2022, the vacancy rate for retail units in Coventry City Centre was 18%. My analysis, from an exercise undertaken for the Council in November 2022, shows the vacancy rates of the retail units in the Order Lands to be about 26%, as set out in Table GL1 below:

Table GL1

| Retail Area | Number of Retail Units | Number of Occupied Units | Number of Vacant Units | Vacancy Rate |
|--------------------|-------------------------------|---------------------------------|-------------------------------|---------------------|
| City Arcade | 39 | 30 | 9 | 23% |
| Shelton Square | 15 | 10 | 5 | 33% |
| Market Way | 14 | 12 | 2 | 14% |
| Bull Yard | 13 | 10 | 3 | 23% |
| Hertford Street | 21 | 13 | 8 | 38% |
| Total | 102 | 75 | 27 | 26% |

- 3.14 It is not a deliberate policy of the Council that has resulted in the vacancy levels in the Order Land being higher than in the City Centre as a whole. Whilst the prospect of regeneration has influenced the Council's estate management strategy, lease terms that are more flexible to a landlord will typically attract a lower rent, therefore potentially being financially viable to tenants who might not otherwise be able to afford to occupy. From the Council's perspective, having tenants in occupation of premises but paying a low rent (but keeping the premises secure and paying business rates) would be preferable to the premises being vacant.

4. STATEMENT OF TRUTH AND DECLARATION

Statement of Truth

- 4.1 I confirm that I have made clear which facts and matters referred to in this rebuttal proof of evidence 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.

Declaration

- 4.2 In preparing this rebuttal proof of evidence, I confirm that:
1. I have drawn attention to all material facts which are relevant and have affected my professional opinion;
 2. I understand and have complied my duty to the Inquiry as an Expert Witness which overrides any duty to those instructing or paying me, that I have understood this duty and complied with it in preparing my evidence impartially and objectively, and I will continue to comply with that duty as required;
 3. I am not instructed under any conditional or other success-based fee arrangement;
 4. I have no conflicts of interest;

5. I am aware of and have complied with the requirements of the rules, protocols and directions of the Inquiry; and,
6. my rebuttal proof of evidence complies with the requirements of the Royal Institution of Chartered Surveyors Practice Statement and Guidance Notes set out in the publication "*Surveyors acting as expert witnesses*" (4th edition, amended August 2020).



Graeme Lawes

12 January 2023