Rebuttal Statement of
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Dated: January 2023

ROYAL LONDON MUTUAL INSURANCE SOCIETY LIMITED AS OWNERS OF THE LONGLEASEHOLD INTEREST IN LOWER PRECINCT AND THE RETAIL MARKET, COVENTRY

IN RESPECT OF

THE COUNCIL OF THE CITY OF COVENTRY (CITY CENTRE SOUTH) COMPULSORY PURCHASE ORDER 27 APRIL 2022

Contents

Appendices

1 Introduction

1.1 This statement is in rebuttal of evidence in the reports of Andy Fancy, Adam Markwell, Tony Parker, Alex Morton, and Robert Brown. Each is dealt with in turn in the following sections.

1.2 This does not imply that anything contained in those reports is agreed if it is not specifically rebutted.

1.3 In my statement I refer to the consented scheme as the “Scheme” and the Section 73 Application Scheme as the “Refined Scheme”.

1.4 At the date of this report a considerable amount of information is awaited from the City Council which is critical to my report. I have highlighted much of this in my rebuttal and the extent to which this limits my ability to make informed opinions on aspects which I consider to be of material importance to the Inquiry.

2 Rebuttal of the Evidence of Adam Markwell

2.1 In his 3.2 Mr Markwell submits that a number of major retailers in the city centre including British Home Stores, Debenhams and Ikea have recently closed. Mr Markwell adds that this under performance demonstrates the need to improve the quality of Coventry's retail and leisure offer and deliver the scheme. Whilst I concur with Mr Markwell that there is a need to improve the quality of Coventry's retail and leisure offer, it is misleading to assert that Coventry's under performance led to the closure of British Home Stores and Debenhams as both retailers suffered financial collapse and as a result, closed their stores throughout the United Kingdom. In the case of Ikea, the store which opened in 2007 in Coventry was one of very few in town outlets. At the time of the closure in Coventry, a statement issued to the press cited that operating costs were the reason for the closure. The statement referenced that the location, size of the land available at the time the store was built over seven levels resulted in a significant impact on the operation costs of the store and the shopping experience for customers. It added that changing behaviour of customers in the area who preferred to shop in retail parks and online resulted in a fall in visitor numbers being substantially lower and expected to decrease over time. A copy of the press statement is attached in Appendix 1.

2.2 At 3.4 Mr Markwell refers to a report from CACI which was commissioned by SPRL and in 3.5 Mr Markwell refers to that report, highlighting that the city does not provide a higher end or premium offer and that the Scheme could potentially help fill this gap. A copy of the CACI report has been requested and at today's date, is currently awaited.

2.3 At 3.12 Mr Markwell refers to the improvements undertaken to Upper Precinct aimed at restoring legibility from Broadgate to The Precinct to Lower Precinct. Mr Markwell provides no evidence to support his claim that the investment in Upper Precinct has encouraged quality occupier investment into the shops and more repeat visitor trips to the city centre, nor to support his claim that The Precinct remains a successful shopping attraction. To the contrary, evidence within Lower Precinct portrays the opposite trend despite the improvements, with the loss of key anchor tenants including T J Hughes (vacated in May 2021), Next (vacated November 2022), whilst H&M and New Look are currently seeking to considerably downsize their units. This underlines the challenges facing Coventry and the importance of a comprehensive approach in order to ensure that the improvement of one area within the city centre isn't at the expense of, or cause of, the decline of another.

2.4 In 3.23 and 3.24 Mr Markwell refers to Promis reports however, these are not provided. Copies have been requested and at today's date, these are awaited.

2.5 In 4.4 Mr Markwell refers to the Refined Scheme creating a new quarter to complement the existing retail pitches in Broadgate, The Precinct and Lower Precinct. I agree with Mr Markwell's reference to the scheme recreating the existing commercial circuit linking into the established pitch by Market Way and Hartford Street however, this along with the pedestrianisation works around the six outward facing entrances to the Market Hall reinforces my opinion that the Scheme and the Refined Scheme will combine to divert footfall away from Lower Precinct to the detriment of Lower Precinct and in turn, the wider city centre. Mr Markwell's 4.6 reinforces my concern for Lower Precinct with the reference to pedestrian circulation between the main squares outside The Market and The Wave.

2.6 At 4.4 Mr Markwell refers to the Refined Scheme being complimentary to the established retail pitches including Lower Precinct due to creating a vibrant environment catering for independent retailers and restaurants. However, Mr Markwell provides no evidence such as existing requirements or results from soft market testing to support the level of demand from such independent retailers and restaurants, or details of a marketing strategy that will specifically target those types of operators. To the contrary, due to the adverse impact on Lower Precinct, there is an elevated risk that better quality retailers from Lower Precinct will be enticed into the Scheme bringing the potential for value enhancement to the developer whilst at the same time, furthering the decline of Lower Precinct and the adverse impact that this will have on Coventry city centre.

2.7 Within 4.8 Mr Markwell refers to the opportunity to create a new quarter in Coventry's city centre which integrates with and complements the existing offer. However, neither the Scheme nor the Revised Scheme physically integrate with Lower Precinct. The pedestrianisation and other works including the active frontages surrounding six of the seven entrances to The Market, risk diverting footfall away from the single entrance to Lower Precinct and in doing so the Scheme and the Revised Scheme do not complement but detract from Lower Precinct. In doing so there is a high risk that Lower Precinct will decline and as the largest covered shopping centre forming part of the existing city centre offer, this will adversely affect the vitality and appeal of Coventry City centre as a retail destination.

2.8 Mr Markwell refers in his 4.9 to the overarching aim of the Scheme being to revitalise Coventry city centre south and create a 21st Century regional destination. I do not believe however that the Scheme or the Revised Scheme will positively change or fundamentally alter the perception of Coventry as a destination due to the lack of a comprehensive approach which integrates both Lower Precinct and The Market. The focus on Coventry City Centre South will be to the detriment of Lower Precinct and The Market, leading to their decline and the risk that this will have a negative impact on the perception of Coventry city centre as a regional destination, which will do little to stem the leakage to competing nearby centres.

2.9 At 4.11 Mr Markwell refers to new public open spaces including high quality retail that will link into the existing retail core. As the largest covered shopping centre in the existing retail core, the linkages with Lower Precinct are not enhanced or improved, to the contrary both the scheme and the Refined Scheme do very little to reinforce Lower Precinct's position and carry the risk that footfall will be diverted away, thus furthering the decline of this retail area, to the detriment of Coventry City Centre. The enhancements proposed as part of the Scheme and the Revised Scheme including the creation of active frontages and pedestrianisation facing the six entrances to The Market, will divert and reduce footfall away from the single entrance from Lower Precinct via Sherbourne Arcade. If truly comprehensive the Scheme and the Revised Scheme would be designed to include amongst other aspects, additional linkages with Lower Precinct, an extension of the residential into the shopping centre and improvements to The Market. The design changes would be supported by a leasing strategy with the aim of preserving and enhancing the existing tenant mix, to the benefit of the enlarged scheme.

2.10 For the reasons I give in 2.9, I do not hold the view expressed by Mr Markwell at 4.12 that the Scheme will help "complete the jigsaw" and improve the overall perception of Coventry as a City and place to visit . To the contrary, the absence of a comprehensive approach which includes Lower Precinct and

The Market carries the significant risk that that the Scheme and the Refined Scheme will lead to the decline of this retail area to the detriment of the City Centre.

2.11 At 5.2 Mr Markwell references a strategy to introduce a more premium offer for existing visitors, endorsed by the CACI report. The report has been requested and in the absence of the report I wish to reserve further comment on this aspect until the document is to hand. There is, however, a contradiction with Mr Markwell's 5.3 in which Mr Markwell refers to SPRL's intention to appoint letting agents and develop a detailed leasing strategy in due course. He also adds that marketing will not properly commence until between 3-4 years from today (12-18 months before Phase 1 opens in 2028). In the absence of bespoke research and evidence of soft market testing, there remains a significant risk that retailers who are either currently represented or might in due course, seek representation in, Lower Precinct, choose to locate to the new Scheme. Mr Markwell offers no assurances or safeguards over how this displacement would be prevented. In contrast a comprehensive approach incorporating Lower Precinct and The Market as part of the Scheme, provides a very good opportunity to create a holistic, joined-up, letting strategy which would address competitive tensions and better serve the wider City Centre. In doing so this would positively shape the perception of Coventry as a retail and leisure destination.

2.12 Mr Markwell at 5.3 also references the need for the Scheme on opening to be impactful rather than opening piece meal. This is at odds with the phasing proposals which provide for the Scheme to be delivered in two principle phases although I note from Mr Morton's evidence at 6.13 that Phase 1 is likely to be split into two smaller sub-phases, to be defined within the updated Development Agreement. This piece meal approach is reinforced through the proposed headlease structure where despite references to a single 250-year headlease, there are references to individual headleases being granted in respect of each block (see 7.8 in Mr Fancy's evidence). At the date of my report a copy of the Development Agreement and the proposed variations thereto is awaited. In the absence of both documents I am therefore unable to comment upon the extent to which the developer is compelled to develop the entire Scheme. The reference to multiple headleases however, raises some doubt that the developer will not be so compelled and the risk that the scheme would only be partly completed to the detriment of Lower Precinct and the wider City Centre.

2.13 In the absence of a detailed leasing strategy or any pre-letting activity, the comments Mr Markwell makes in his 5.4 around the dealing of uses in different parts of the Scheme and rents in different pitches vary, appears to be premature. I make a similar observation in relation to Mr Markwell's 5.5 in which Mr Markwell refers to up to 30% of the total floorspace offering a range of food & beverage and grab & go units as being similarly premature in the absence of a letting strategy.

2.14 At 6.3 Mr Markwell references the West Midlands Combined Authority funding of up to £98.8M to be utilised against various enabling costs including land assembly and demolition. Information has been requested on the WMCA grant and details of the City Council's funding along with grant funding from Homes England (Mr Morton 7.10) as the amounts of public funding vary between the reports prepared by Mr Fancy, Mr Parker, Mr Morton and Mr Markwell. These inconsistencies raise questions over the amount of public funding actually required to support the Scheme and over the availability of the funding.

2.15 At 6.8 Mr Markwell refers to the process for selecting a funder based on the consented Scheme and the decision in consultation with the Council, to move to a shortlist of four parties in July 2021. Coincidental with the granting of Planning Permission in January 2022, the developer identified Hill Residential Limited as its preferred partner (Mr Markwell's 6.12). At 6.13 Mr Markwell refers to Hill Residential Limited being approved by the Council as the approved funder under the terms of the Development Agreement (approval given by the City Council on 3 March 2022 – Parker 3.2). In the intervening period of eight months between Hill Residential Limited being selected as preferred partner and the S73 Application being submitted, the Scheme for which they were initially selected has been abandoned in favour of the Refined Scheme. There is no evidence of any further marketing being undertaken to secure an alternative funder or seek other funding interest in relation to the Refined Scheme. In the absence of this and any competitive tension with other funders, there is a risk that decisions surrounding the provision of public funding (WMCA, Coventry City Council and Homes England) may be challenged. If successful a challenge could lead to the loss of the funding and further undermine the viability and deliverability of the scheme.

2.16 At 7.3 Mr Markwell concludes that the site along with other key schemes contribute to the holistic regeneration of Coventry. Whilst I do not dispute that some of the other key schemes will contribute to the regeneration of Coventry, I do not believe that the Scheme or the Refined Scheme will contribute in the way Mr Markwell suggests. To the contrary, through the lack of a comprehensive approach which integrates Lower Precinct and The Market, there is a significant risk that both assets will decline and as the largest covered shopping centre prime retail core, this decline will detract from the vitality and appeal of the City Centre. In consequence the City Centre will not achieve the "step change" it requires and that in doing so it will fail to capitalise on the regenerative benefits other key schemes would otherwise bring.

2.17 At 7.5 Mr Markwell references the need to stem the leakage of shoppers to competing centres at to capture existing premium spend in the city identified in the CACI report (a copy of this is awaited). The reference to targeting quality independent operators in smaller multiples in 7.7 by Mr Markwell and his view that this will not complete but be complementary to the established pitch between Broadgate and Lower Precinct is made without the benefit of marketing advice from agents and the full detailed leasing strategy to be developed in due course, which Mr Markwell references at 5.3. In the absence of a strategy and moreover any form of contractual restriction which prevents the developer from negotiating lettings with existing tenants, particularly those in Lower Precinct, the risk of occupier displacement from Lower Precinct and the decline of the shopping centre remains high.

2.18 At 7.8 Mr Markwell insists that the appointment of Hill Holdings Limited as approved funder brings all funding required to deliver the Scheme as being in place. This is not correct or consistent with Mr Parker's statement at 2.6 as it neglects to reference the importance and significance of the Public Sector funding (WMCA, Coventry City Council and Homes England) which is required to support the Scheme. Mr Parker at 2.6.2 also refers to funding being provided from pre-sale Agreements for Affordable Housing and Build to Rent operators and at 2.6.4 Revenue generated from sales and lettings of commercial units. I have not seen any evidence of such pre-sale agreements and in the absence of concluded agreements both for the Public Sector funding and the funding with Hill Holdings Limited, it is premature to say that funding to deliver the Scheme is in place. Moreover, I expect both types of funding to be conditional and in the case of Public Sector funding, the subject of clawback.

We have requested copies of the various funding agreements along with supporting documents and at the date of this report, this information is awaited.

3 Rebuttal of the Evidence of Andy Fancy

3.1 At 5.2 Mr Fancy refers to the Development Agreement (DA) as a conditional contract which provides for the grant of a long lease of 250 years to the developer. We have requested a copy of the DA and the long lease which at the date of this report is awaited. Accordingly, I reserve the right to make further comment upon receipt of this information.

3.2 At 5.2.6 Mr Fancy refers to a requirement that the approved funder indemnifies the Council for all costs in connection with the site assembly above the “site assembly cap”. Notwithstanding the absence of the DA, it is not clear whether the cost indemnity takes account i.e. nets off, the contribution WMCA make to land assembly costs. The “site assembly cap” is referred to in Mr Morton’s report at 5.1 as being £27,968,789. This is important as it helps to understand how the viability of the scheme is impacted by the WMCA and other public sector funding.

3.3 At 5.2.7 Mr Fancy refers to a viability condition whereby the developer is required to prepare an updated appraisal once all other conditions have been satisfied. If the appraisal shows a profit in excess of 16.50% the developer is to proceed. I note that the developer also has the ability to proceed at a lower level of profit at its discretion. Without the DA to hand it is unclear whether the viability condition is in respect of the entire Scheme or if separate viability tests are carried out for each phase of development. If it is the latter, this raises the significant concern that the developer could carry out only part of the Scheme and in doing so, compound the absence of a comprehensive approach incorporating Lower Precinct and The Market to an even greater extent.

3.4 At 5.2.8 Mr Fancy states that the funding condition and funding security condition are to be satisfied shortly although it is unclear whether this relates to the entirety of the Refined Scheme or an individual phase of development. If the latter, this serves to compound the uncertainty over delivery and the detrimental impact that a partially completed Scheme would have on Lower Precinct, The Market, and the vitality of the wider city centre.

3.5 At 5.4 Mr Fancy lists some of the variations to the DA which are in the process of being negotiated. Amongst these at 5.4.2 and 5.4.4 Mr Fancy references variations to key times and phasing of the Scheme along with variations to headleases. In the absence of the DA and of the proposed variations, I am unable to comment fully on the substance of these and their implications for the deliverability of the Refined Scheme. Nevertheless, the phased nature of the Refined Scheme supported by individual headleases raises serious concerns over whether the entire Refined Scheme will be delivered and similar concerns to those I’ve expressed in 3.3 and 3.4.

3.6 At 6.11 Mr Fancy makes reference to Coventry Market and the focus on the importance of The Market and its interaction with the Scheme. There is no reference however, to Lower Precinct and the importance of the shopping centre to Coventry City Centre or any tangible measures which are proposed to support the viable future of Lower Precinct and the significance of its position in supporting the vitality of Coventry City Centre. A comprehensive approach incorporating Lower Precinct and The Market would address these deficiencies for the benefit of the City Centre.

4 Rebuttal of the Evidence of Tony Parker

4.1 At 2.6 Mr Parker outlines four funding sources for the Scheme, which includes funding from the Hill Residential Limited (HRL) along with Public Sector funding (WMCA and Coventry City Council). Other funding is to be provided from pre-sale agreements for affordable housing and build-to-rent operators along with revenue generated from sales and lettings of residential and commercial units. Information has been requested on the precise amounts and conditions relating to the public funding and at the date of my report this information is awaited. Mr Parker provides no indication of the expected financial contributions from presale agreements for affordable housing and build-to-rent operators or whether they include any interim finance. At the same time there is no indication that HRL is committed to fund the entire development from its own resources alongside the funding anticipated from the Public Sector.

4.2 At 4.1 Mr Parker refers to heads of terms for funding being approved by the Council in June 2022. A copy of the heads of terms has been requested and these are awaited. The City Council's funding along with other public sector funding is key to the viability and deliverability of the Scheme and the Refined Scheme. Pending receipt of the heads of terms I reserve the right to comment further or modify my opinions accordingly.

4.3 At 4.2 Mr Parker states HHL will provide all funding necessary for the development of CCS , however, in 4.3 and 4.4 Mr Parker also refers to the development benefitting through funding from pre-sales to other operators and investors and how the combination of these will ensure that the capital requirements of CCS are funded throughout the delivery of the scheme. This raises the uncertainty that, in the absence of such pre-sales, HHL may not fund the whole development and that as a result, progress with the scheme would stall. This uncertainty is compounded by the further layer of public funding from Homes England referred to by Mr Parker in 7.10. Details of the Homes England funding has been requested and is awaited.

4.4 At 6.1 and 6.3 Mr Parker refers to the request for funding of £32,750,000 from Coventry City Council arising from a viability gap to support the delivery of CCS, in order to support a base profit on cost. It is unclear whether this level of base profit is the same 16.50% referred to by Mr Parker in 7.1 or if the request was made based on the scheme profit of 12.30% referenced at 7.24.

4.5 Similarly in Mr Parker's viability summary at 7.24 public sector funding is shown as £71.90m (sum of WMCA Grant of £39.1m and Council Grant of £32.8m) . I assume this amount is the "full utilisation of those elements of the WMCA grant", referred to in the Minutes of the Coventry City Council Cabinet meeting on 15 November 2022 (see extract 5.1.2 from Section 7, attached as Appendix 2). Further information on the funding from CCC and WMCA has been requested and is awaited.

4.6 The uncertainty surrounding the profit margin and the questions over the robustness of the grounds for a) the request for financial support from CCC and b) the need for the full extent of the WMCA funding referred to above, is further compounded by Mr Parker's statement in 7.25 that SPRL intends to proceed if required with a 12.30% profit return. The commitment to proceed at a profit of 12.30% is further reinforced by Mr Parker in 7.28 as representing a very significant sum in the context of the Scheme sitting within Hill Group's range of targets.

4.7 Considering the questions I have raised surrounding the public funding in 4.5 and 4.6 above, and in the absence of further information on the funding from CCC, WMCA, Homes England and evidence of the presales to operators and investors, I have reservations over Mr Parker's assertion in 8.1 that the scheme is funded.

5 Rebuttal of the Evidence of Alex Morton

5.1 At 3.11 Mr Morton refers to a commitment in principle to fund the construction and delivery of the scheme, subject to meeting all pre-conditions. Over and above the reservations I have raised surrounding the funding (see 4.5, 4.6 and 4.7 above), details of the funding arrangements including pre-conditions have been requested and are awaited. In the absence of this information, I am unable to comment further on whether this addresses the funding concerns I have expressed, or if they compound the uncertainty surrounding the viability and deliverability of the scheme.

5.2 At 5.1 Mr Morton refers to the Development Agreement (DA) as a conditional contract which provides for the grant of a long lease of 250 years to the developer. Whilst copies of both documents have been requested and are currently awaited, Mr Morton makes no reference to the proposals to grant individual long leases for different blocks within the development phases, referred to at 7.8 in Mr Fancy's report, where Mr Fancy states *"A set of milestones is being agreed as part of the DA variations which provide the Council with security that each Block is being delivered, prior to SPRL being able to drawdown the Headlease for another Block*". This revised tenancy structure represents a significant deviation from the single headlease referred to by Mr Morton and it raises questions and concerns over a) the Council's exposure arising from partial delivery of the scheme facilitated by the multiple headlease structure, b) the adverse impacts partial delivery would have on Lower Precinct, The Market and the wider City Centre c) the provision of the grant from WMCA and other Public Sector funding, due to a failure to meet the terms on which this funding has been and is intended to be further provided d) the robustness of the City Council's decision to transfer its land holding in the Revised Scheme for nil on the basis that it will meet its Statutory obligations through the overage arrangement Mr Morton summarises at 9.9 and 9.10 (see my comments in 5.10 and 5.18 below).

5.3 At 5.1 Mr Morton provides details of the Site Assembly Cap being £27,968,789 including costs in relation to CPO compensation. It is unclear whether this amount includes the value of the Council's land interest and whether the developer has made adequate provision for the potential liability of an excess of the amount specified. Mr Morton also refers to the funding condition at 5.1 which requires an exchange of a funding agreement between the developer and the approved funder, providing for full and sufficient financing for the developer's financial obligations under the DA. The uncertainty I have expressed surrounding Mr Parker's evidence in relation to funding (see 4.5, 4.6 and 4.7 above), again raises questions over whether the developer's financial obligations under the DA can be satisfied. The position on this may become clearer once the documentation relating to the DA and the funding arrangements have been made available for my consideration.

5.4 At 6.7 Mr Morton refers to independent retail reports provided by the developer which I assume are the CACI and Promis reports which have been requested (see 2.2 above). Other than the paper appended to Mr Morton's report, prepared by KLM Real Estate which comments on rental values, yields and leasing terms, Mr Morton's report provides no independent commentary on the validity of the claims made by the developer surrounding leasing strategy, tenant mix and the impact the Scheme would have on Lower Precinct and The Market. This raises the question over the extent to which the City Council has received independent advice on the commercial merits of the Scheme covering its impacts on the existing retail provision, Lower Precinct as the City's largest covered shopping area in the prime retail core and the effects on the City Centre.

5.5 At 6.12 Mr Morton refers to the Council and SPRL committing to agreeing a “meanwhile” use strategy. Mr Morton provides no comment however on the significance of the interim use of the site or the site’s impact on Lower Precinct and the wider city centre, to allow the Council to make an objective assessment over the commercial implications of this for Lower Precinct, The Market and Coventry City Centre.

5.6 At 6.13 Mr Morton refers to the phasing of the Scheme and the likelihood that Phase 1 will be split into two smaller sub-phases. There is no commentary on the mechanism which will be used to ensure the developer completes the entire Scheme and the safeguards which the Council has sought to reduce the risk of partial completion and the adverse impact this would have on Lower Precinct, The Market and the wider City Centre. Mr Morton refers to the phases being defined within the updated DA, a copy of which has been requested and is currently awaited.

5.7 At 7.1 Mr Morton refers to the Full Business Case supporting the WMCA grant of £98.8m and in 7.2 and 7.3 Mr Morton comments on how the grant is to be utilised against various enabling costs including land assembly and demolition and moreover the importance of the WMCA grant. Mr Morton acknowledges that without the WMCA grant the prospects for delivery would be considerably reduced. The impact is understated based on the viability summary provided by Mr Parker at 7.24 and summarised by Mr Morton at 8.12, where without the stated £39.1m of WMCA grant alone (i.e. assuming the Coventry City Council funding remained in place, which in large part is provided from additional funding from WMCA), the profit on net development cost would reduce to £4.4m. a return of 1.14% on Net Development Costs. Neither the Scheme or the Revised Scheme are viable and deliverable without the WMCA funding. The Full Business Case and in particular the outputs, outcomes and clawback arrangements have been requested and the date of this report, details are awaited. Further information is also awaited in relation to the “Change Request” and the update to the original Full Business Case (referred to by Mr Morton at 7.5 and 7.6).

5.8 At 7.7 Mr Morton details the WMCA approvals being subject to Coventry City Council approvals, the commercial terms and grant structure being agreed, and associated Subsidy Control review being approved. Information on these various matters has been requested and is currently awaited. I therefore reserve the right to make further comment once the information is to hand. Given the importance of the WMCA and Coventry City Council funding streams to the Revised Scheme, the terms and the Subsidy Control review are especially important as a failure to reach an agreement, or any breach of Subsidy Control regulations would cause the loss of public funding support and undermine the viability and deliverability of the Scheme and the Revised Scheme .

5.9 At 8.1 Mr Morton comments on the funding to be provided by Hill Holdings Limited. Mr Morton references that the Revolving Credit Facility (RCF) to be deployed by Hill Group will require security in the form of a first charge over each phase headlease. Mr Morton provides no commentary on the implications of the charging arrangement in terms of the impact on the Council’s position as principal landholder or how the charging arrangement might impact on funding to be provided by both the Council and WMCA. The importance of this should not be underestimated since in the event of developer default, the charging arrangements may prevent the Council from securing control of the site, with the risk that this would have a materially detrimental impact on the development prospects for the remainder of the CCS site and compound the detrimental impact on Lower Precinct and the remainder of the city centre. The position on this may become clearer once the documentation relating to the DA and the funding arrangements have been made available for my consideration

5.10 At 8.10 Mr Morton refers to the Council's intention to transfer its land for a nil premium. Details of this proposed transfer particularly in the context of Subsidy Control regulations, are to be considered once I have had sight of the Subsidy Control review presented to the Council at its Cabinet Meeting on 15th November 2022. I highlight the significance of the Subsidy Control review in 5.8.

5.11 At 8.2 Mr Morton refers to advice taken from a colleague in Deloitte's debt advisory business and in 8.5 Mr Morton confirms that Deloitte LLP reported to the Council that it is satisfied the funding arrangements meet the requirement stipulated within the Development Agreement. In the absence of a copy of the Development Agreement and a copy of the proposed changes to the Agreement, I reserve the right to make further comment once those documents are to hand. It remains unclear whether a) the views presented by Mr Morton's colleague, Mr Holmes, are expressed in relation to the existing Development Agreement or take account of the proposed changes and b) if Mr Holmes also gave a view over the absence of any market testing from other potential funding sources for the Refined Scheme, particularly since Hill Residential Limited were selected as development/funding partner for the Scheme.

5.12 Mr Morton's viability review contained in 8.13 – 8.19 inclusive has been considered in detail by Mr Fourt. My overall observation of Mr Morton's conclusions at 8.19 is that they are based Mr Morton's replica of SPRL appraisal appended to his report, and provided in summary form without for instance, any detail over how finance costs have been derived or how the sales valuation figure for the non-residential elements have been derived using both rental values and yields. The latter is particularly important in the light of the KLM Real Estate advice provided to Deloitte (Appendix 3 to Mr Morton's report). Mr Morton at 8.19 (e) refers to the retail rents adopted by the developer as being consistent with what KLM retail have advised and the incentive allowances and investment yield adopted by SPRL as potentially optimistic. Mr Morton dismisses this as not being a significant concern due to the relatively small contribution the retail elements make to the overall GDV, but Mr Morton doesn't provide any comment on how the differences affect the important measure of viability, the developer's profit. To illustrate, by adopting KLM's rental value and yield this would result in a loss in sales value of £5m compared to the developer's figures and a corresponding reduction in the profit shown in Mr Morton's replica appraisal to £43.50m.

5.13 In the absence of a detailed appraisal from Mr Morton using the independent advice received on build costs, rental and capital values provided along with Mr Morton's assumptions on the phasing of the Scheme, the assumptions around the timing of public sector funding and a cashflow supporting the finance cost calculation, I have concerns over the robustness of the financial case to support the scale of public funding both from the City Council and WMCA.

5.14 At 8.27 Mr Morton indicates that the ability to improve the gross to net efficiency of the residential buildings from 73% to 77% would be sufficient to generate a profit of over 16.5% if all other inputs remain unchanged. This is based on Mr Morton's experience of other schemes, however, no evidence of the other schemes is provided to make a meaningful comparison. Mr Morton's observations are also made without the benefit of architectural drawings or other evidence provided by the developer. As such Mr Morton's comments over the possibility of increasing the profit through improving the gross/net efficiency, should be appropriately qualified.

5.15 At 8.30 Mr Morton refers to funding commitments being in place both from the public sector partners and Approved Funder, which I assume is Hill Holdings Limited. I regard this statement a premature in the absence of a contractual funding agreement being in place with Hill Holdings Limited and Hill Group (as provider of the Rolling Credit Facility), and similar contractual arrangements being in place in relation to the WMCA and Coventry City Council funding, along with the other proposed pre-sale funding sources specified at 2.6 in Mr Morton's report. Mr Morton's comment is also made without reference or comment upon any of the conditions attached to both the Public Sector funding, the funding being provided from Hill Holdings Limited and Hill Group or the importance of the other funding sources stated In Mr Parker's Evidence, namely the pre-sale agreements with Affordable Housing and Build to Rent operators, and revenue generated from sales and lettings of residential and commercial units (respectively stated at 2.6.2 and 2.6.4 of Mr Parker's report).

5.16 At 8.32 Mr Morton refers to the masterplan flexibility particularly in relation to ground floor units and the ability for these to be configured in a number of different ways to take account of the dynamic nature of the retail market. I concur with Mr Morton's view that in doing this it highlights the ability of the developer to configure units but add that this will enhance the ability to attract tenants from Lower Precinct in particular, with the risk of declining footfall within Lower Precinct adding to the tenants' relocation incentive.

5.17 At 8.33 Mr Morton refers to the developer's ability to raise additional financial returns through its use of the contracting arm of Hill and for the developer to also realise an interest rate on equity funding. Mr Morton refers to a developer profit and contractor profit and I question the relevance of the latter as I would typically expect the developer in selecting a contractor, to demonstrate best value particularly considering the scale of public funding, with no certainty that Hill's contracting arm will be the appointed for any of the phases. Furthermore, I would expect the construction arm to require a profit discretely from the development company in the same way they would if undertaking construction for any other organisation. In the absence of a detailed analysis behind the finance cost calculation at £3.8m, it is unclear whether a finance rate has been adopted on the proposed equity element to be provided by Hill Residential Limited or whether this is an additional cost which is not currently taken into account in the financial appraisal. As equity is to make up 40% of the funding (Mr Parker at 2.7) the inclusion of a return on equity to reflect the opportunity cost of this capital, would be a reasonable development cost. If this additional cost isn't included the profit figure is, as a result, overstated, or put another way, the profit isn't sufficient as it doesn't cover the return on equity.

5.18 At 9.9 and 9.10 Mr Morton outlines the overage mechanism as the basis upon which the City Council achieves best consideration having disposed of its land interests in the Refined Scheme for nil. Mr Morton refers to overage assessed above a predefined threshold however, in the absence of a copy of the Developer Agreement and the proposed changes which are in the process of being agreed, I reserve the right to comment further on this aspect once these documents are made available.

5.19 At 9.10 Mr Morton refers to overage arising at the end of Phase 1 being carried forward into subsequent overage calculations with a distribution of overage only occurring once all costs and revenues are known. It is unclear whether the overage calculation is made in relation to completion of Phase 1 in its entirety or if the calculation is made at each sub-phase (see 5.6) above. Similarly, Mr Morton provides no indication as to whether any developer's profit which is crystallized on completion of Phase 1 follows the same pattern as the overage i.e., that it too is rolled forward to support the viability and deliverability of subsequent phases. This is important because the retention of profit rolling forward into future phases provides a meaningful incentive for the developer to carry out the entire Refined Scheme and it reduces the risk of “cherry picking” where the more viable elements are prioritised with the risk that later phases are abandoned. I reserve the right to amend or make further comment once the Development Agreement and proposed changes to the Agreement are provided.

5.20 At 9.12 Mr Morton states that the WMCA grant agreement includes provision for the grant funding to survive for a period of up to five years if the Development Agreement is terminated. As the grant agreement is currently being revised and in the absence of information on the terms or conditions surrounding the provision of the WMCA grant, Mr Morton’s unqualified comment appears premature. I reserve the right to change my opinion on this once the WMCA grant agreement and details of the proposed changes are provided.

6 Rebuttal of the Evidence of Robert Brown

6.1 At 5.24 Mr Brown states a key objective of the Refined Scheme has been to ensure that any changes were of a scale and nature that could be dealt with as a “minor material amendment” to the Consented Scheme. The objective is reinforced in Mr Brown’s 5.25. The developer’s focus on expediency without taking the opportunity to consider how Lower Precinct and The Market could be integrated within the Scheme is a missed opportunity and gives rise to the serious risk that the Refined Scheme will significantly detract from the viability, and the vitality of Lower Precinct, to the detriment of Coventry City Centre. The importance of the consideration over how Lower Precinct and The Market could be integrated is underlined by the significant changes in the retail market highlighted by Mr Thomas in his report appended to Mr Brown’s report as Appendix RB1.

6.2 At 5.54 Mr Brown references a very low number of objections to the Refined Scheme proposals in response to the Section 73 Application. Instead of the number, it would be more appropriate to focus on the substance of the objections notably from Royal London as owner of Lower Precinct and The Market, the largest covered shopping centre in the prime core. This focus is particularly required as the Scheme and the Refined Scheme carry the significant risk that the vitality and viability of Lower Precinct and The Market will decline and that this will in turn, be to the detriment of Coventry City Centre.

6.3 In Table 6.1 at 6.4 Mr Brown references areas where the Scheme and the Refined Scheme seek to address policies R2 and CC1 of The Development Strategy for the City Centre. Through the absence of a comprehensive approach which includes Lower Precinct and The Market, no account is taken of the adverse impact that the loss of viability and vitality caused by the Scheme and the Refined Scheme to Lower Precinct and The Market will have on the wider city centre.

6.4 At 6.13 and 6.14 Mr Brown refers to continuing changes in retail since the Scheme was granted planning consent and I concur with Mr Brown’s sentiment that “the world has moved on” in terms of high street retail since the adoption of the Local Plan. An important consequence of this for the future viability and vitality of Coventry City Centre is to ensure that the existing prime retail offer is safeguarded and enhanced. Through the absence of a comprehensive approach which includes Lower Precinct and The Market, the Scheme, and the Refined Scheme neglect to do this. As a result, they give rise to the significant risk through a combination of uncertainty, lack of linkages, tenant displacement and changes to footfall patterns, that both will decline, and this will have a detrimental impact on the appeal of Coventry as a retail destination. As such I similarly do not agree with Mr Brown’s statement that the Refined Scheme will make major qualitative improvements to the retail provision of the area nor that it would encourage and promote comparison and other forms of retailing necessary regenerate the area and create a vibrant city centre.

6.5 At 6.18, Mr Brown’s reference to Table 6.2 and specifically the main policy issue of “regeneration of the area for predominantly comparison shopping will be promoted…”, does not take account of the likely adverse impacts that the Scheme and the Revised Scheme will have on Lower Precinct and the extent to which this detracts from this regeneration objective. Integration of Lower Precinct and The Market is key to safeguarding and enhancing the scale and diversity of the comparison retail offer, as it removes the risk of occupier displacement, the further decline of Lower Precinct, and the otherwise likely detriment to the vitality and viability of the wider City Centre.

6.6 I do not agree with Mr Brown's comments at 7.2.3 that the Refined Scheme will support improved city centre vitality and viability, due to the negative impact it will have on the viability and vitality of Lower Precinct and the impact this decline will, in turn, have on the wider City Centre. Whilst I agree that the Refined Scheme stands to attract residents into the City Centre, there is a risk that the decline of Lower Precinct and its impact on the wider City Centre will mean that the comparison spend of the new residents is lost to other competing centres and out of town locations.

6.7 For the same reasons I have provided in 6.6 above, I have a serious concern that the Revised Scheme will not improve perceptions of the area in the manner Mr Brown describes in 7.3.6.

6.8 I agree with Mr Brown's comments in 8.3, 8.4 and 8.5 in so far as they relate to a comprehensive approach being taken within the boundary of the City Centre South Site in accordance with planning policy. I disagree however, that the Refined Scheme delivers a commercially comprehensive approach in the context of the wider City Centre as it risks causing significant damage to the viability and vitality of Lower Precinct, through the prospects of reduced footfall and the displacement of tenants at a time when the retail market continues to face significant challenges and uncertainty. These risks and challenges are highlighted by Mr Brown's retail colleague, Mr Thomas (Appendix RB1 to Mr Brown's evidence at 3.7, 3.8 and 5.10) and directly evidenced by the closure within the past 2 years of major anchor stores within Lower Precinct including TJ Hughes (vacated May 2021), Next (vacated November 2022), whilst H&M and New Look are currently seeking to considerably downsize their stores. The closures and prospective downsizings have served to compound the falling returns from Lower Precinct, with existing and prospective tenants seeking large capital incentives and reduced rentals, thereby undermining the viability of further investment in Lower Precinct and the Market Hall. The absence of a commercially comprehensive approach which integrates Lower Precinct and The Market, will exacerbate this position. As the largest covered shopping centre in Coventry's prime retail area, the deterioration of Lower Precinct through lack of investment, will detract from appeal of the wider City Centre and reduce the prospects for the City to capitalise on the regeneration benefits that the additional spend power associated with an increase in the City Centre residential population, would otherwise bring.

Signed:

Date: January 2023

Name: **Keith Hardman** **Position:** **PARTNER**

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