

**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**

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

**Keith Murray Consultants**

**The Paddocks, 2 Foxtowns Green, Kirtlington, OX5 3JW**

**In respect of relevant matters arising in the various Proofs of Evidence of  
expert witnesses on behalf of the Council of the City of Coventry**

**In respect of**

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

**11 January 2023**

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

**Public Inquiry Commencing : 17 January 2023**

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## **1.0 Introduction**

- 1.1 This rebuttal evidence is given on behalf of the Royal London Mutual Insurance Society Limited ('Royal London') in response to certain matters arising in the Proofs of Evidence submitted by the witnesses appearing on behalf of the Council of the City of Coventry ('the Council').
- 1.2 The fact that I neither comment on each individual paragraph of any particular Proof of Evidence that I address, nor indeed even comment on other Proofs of Evidence spoken to on behalf of the Council, does not signify that I either agree with or accept what is written in those paragraphs or Proofs of Evidence that I do not address.

## **2.0 The Proof of Evidence of Mr Russell Vaughan**

- 2.1 In addressing access to the Scheme in general for cars and service vehicles Mr Vaughan states at Paragraph 3.5 of his Proof of Evidence ('RV PoE Para 3.5') that one of the routes for cars and service vehicles will be:

*“via the existing service route to the north of Coventry Market via the Lower Precinct service yard”.*

He further states in relation to Block A2 specifically (at RV PoE Para 3.29) that:

*“Block A2 will be serviced via the Lower Precinct service area to the north of Coventry Market. This route is already used to service this area and the eastern side of the Market. This route provides unrestricted service access.”*

Both statements would appear to be based on assumptions either that the Order will grant these rights of access or that they already exist, neither of which is necessarily the case.

- 2.2 The 'Lower Precinct service area to the north of Coventry Market' is identified as Plot 234 in the Order. As I identify at Para 6.18 of my Proof of Evidence ('KM PoE Para 6.18') in respect of Plot 234, whilst the rights sought by the Order include the right 'from time to time to manage access to the land to accord with safe working practices' 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.

- 2.3 As I further identify (KM PoE Para 7.15) the rights sought by the Order 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.

- 2.4 Plot 234 forms part of the interest in land demised by the Council to Royal London under a headlease, which headlease 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.

- 2.5 As I have stated previously (KM PoE Para 7.16) I am 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 agreed, then there could be an argument that the use was not “proper” and thus not permitted. And as I further identify, based on the evidence of my colleague Robert Fourt, 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; which would suggest to me a significant increase in the usage of this service yard and an increase that ultimately might well be held to be not ‘proper’.

- 2.6 In respect of taking access via Plot 234 Mr Vaughan concludes by stating:

*“This route provides unrestricted service access”.*

Whilst access via Plot 234 might be unrestricted in terms of having capacity to handle deliveries by HGV's it is not unrestricted in terms of gaining access to the service yards in question. Access to these service areas is via a barrier-controlled access from Queen Victoria Road under the control of Royal London.

- 2.7 In his evidence Mr Vaughan makes no mention of either having considered the issues that I have referred to for himself or having taken advice in respect of them. It seems to me therefore that at the present time 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 the possibility of a serious practical impediment to at least this part of the Scheme's delivery.
- 2.8 In relation to the Coventry Retail Market ('the Market'), at RV PoE Para 6.11 Mr Vaughan introduces a significant variation to the Scheme as first proposed and as set out in the Order. Whereas the Scheme envisaged by the Order proposed that the existing ramp access to the basement unloading area of the Market be replaced by a new ramp access located on and constructed in land comprising part of Plot 4 of the Order lands, it is now proposed that an unloading area for the Market be provided at ground floor level on land forming part of Plot 4 thereby removing the need to provide the proposed replacement vehicular ramp access to the basement (as confirmed by Mr Vaughan at RV PoE Para 6.12).
- 2.9 Whilst in terms of servicing the Market this proposal is likely to be welcomed by the Market traders, it does not assist Royal London in terms of Royal London's ability to manage the vehicular traffic that deliveries generate.
- 2.10 Should the Order be confirmed and the Scheme be implemented, the Market will remain within the leasehold demise of Royal London however as I identified at KM PoE Para 6.5, access to and from the Market will no longer be under the control of Royal London. Effectively, in terms of access in general, Royal London's leasehold interest in the Market will be landlocked. It follows therefore that Royal London will no longer be able to control access of any form, ie neither pedestrian nor vehicular, to the Market.

### **3.0 The Proof of Evidence of Mr Adam Markell**

- 3.1 In addressing the need to improve the retail offer of Coventry city centre, Mr Markwell states at Paragraph 3.2 of his Proof of Evidence ('AM PoE Para 3.2'):

*"There have been a number of major retailers in the City Centre that have recently closed, including British Homes Stores, Debenhams and IKEA. This underperformance demonstrates the need to improve the quality of Coventry's retail and leisure offer and deliver the Scheme".*

With respect to Mr Markwell, this is perhaps mis-representing the actuality.

- 3.2 British Home Stores and Debenhams closed on a nationwide basis as a result of corporate collapse, corporate collapses not driven by events in Coventry. So far as IKEA is concerned, I am advised that the Coventry store was somewhat experimental in that it was the first IKEA to open on a multi-level concept which, however, subsequently proved to be unattractive to shoppers. It cannot therefore be said that the closure of these three outlets was in anyway indicative of the need for Coventry city centre as a whole to improve its retail offer.
- 3.3 Mr Markell subsequently returns to this theme albeit to a lesser degree (AM PoE Para 3.26) and concludes that:

*"The high level of vacancy in the retail units on the Site represents a lost opportunity to support economic activity and jobs."*

However as I have stated previously (KM PoE Para 7.6) 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, which 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. On balance therefore, I do not think that Mr Markwell can rely upon the existing occupancy level of the Site to justify the need for this Order.

- 3.4 Mr Markwell then expresses the view (AM PoE Para 4.4) that:

*"The Refined Scheme will create a new quarter to complement the established retail pitches in Broadgate, The Precinct and Lower Precinct."*

but goes on to state (AM PoE Para 5.4):

*“The different streets and ‘pitches’ around the new retail circuit allow for themed uses to be grouped together in different parts of the scheme. Rent in the different pitches will vary, reflecting the diverse categories ability to pay.”*

- 3.5 Whilst setting rental levels having regard to the ‘*ability to pay*’ can be seen as laudable, what this tends to do is to draw occupation away from adjacent retail areas; this in turn generating a decline in those areas or exacerbating an existing decline, something which Lower Precinct has experienced in any event over recent years. Pursuing a policy of ‘*ability to pay*’ is not therefore compatible with viewing the Scheme development as being comprehensive in the context of the city centre retail as a whole.

#### **4.0 Viability**

- 4.1 I address viability in general given that this highly relevant aspect is touched on to some degree in the Proofs of Evidence of Mr Andy Fancy, Mr Alex Morton and Mr Tony Parker.
- 4.2 Mr Fancy (at AF PoE Para 5.2.7) sets out the viability condition of the Development Agreement which requires:

*“the Developer to prepare an updated appraisal once all the other conditions have been satisfied. If the resultant appraisal shows a profit in accordance with a pre-stipulated target return, the Developer is to proceed. The Developer may opt to proceed with a lower level of project profit at its discretion.”*

As is very clear from this statement, only ‘If’ the appraisal shows a pre-stipulated target return is the Developer required to proceed.

- 4.3 Mr Morton (at AM PoE Para 8.21) informs that the target return is 16.5%, that the current assessment of return (based on including grant funding as a negative cost as opposed to a revenue) is 12.3% (at AM PoE Para 8.20) and in summarising states (at AM PoE Para 8.23) that:

*“the current Scheme calculated profit is agreed to be 12.3%. SPRL intends to proceed on that basis but is seeking to improve the profit level up to 16.5%. The likely range is therefore between 12.3% and 16.5% and the Council anticipates that SPRL will proceed within that range.”*

As is clear from this statement, at present there is only an intention that SPRL will proceed on which basis all the Council is able to do is to anticipate that the Scheme will go ahead.

- 4.4 Mr Morton then (at AM PoE Para 8.25 (a)) introduces a letter from Mr Andy Hill Group Chief Executive of Hill Group Limited stating:

*“whilst the appraisal submitted to the Council does not achieve its ‘desired hurdle rate’, that SPRL ‘remain confident that [it] will be able to improve scheme viability’ and to ‘reiterate SPRL’s continued commitment to the Coventry City Centre South Scheme”*

from which Mr Morton derives reassurance of an intention that the Scheme will go ahead.



- 4.5 Finally, in the context of viability, Mr Parker states (TP PoE Para 7.25) in respect of the present calculated profit of 12.3% that “*SPRL intends to proceed on this basis if required, with a 12.3% profit return still representing a very significant sum in the context of the Scheme.*”
- 4.6 Paragraph 106 of the CPO Guidance together with the advice in Paragraph 13 of the CPO 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. However, in none of the extracts from the Proofs that I refer to above can I discern any positive declaration that the Scheme will go ahead; it is all very much a case of *possibly* which in my opinion falls some way short of the requirements of the CPO Guidance, to establish that there are sufficiently compelling reasons for the Order to be confirmed.

## **5.0 The Proof of Mr Graeme Lawes**

- 5.1 As Mr Lawes states correctly (GL PoE Para 6.1) the CPO Guidance requires the Council to:

*“...demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement.”*

But this does not necessarily imply that the Council has to have *purchased* all interests in the Order lands. As Paragraph 106 of the CPO Guidance states one of the factors that the Secretary of State, or in this case the Inspector, will take into consideration in deciding whether or not to confirm the Order is:

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

- 5.2 In his subsequent paragraphs (GL PoE Paras 6.2 to 6.5) Mr Lawes identifies the various interests to be acquired, the interest of Royal London being identified in his Para 6.5 as a Category 1b interest in respect of which Mr Lawes states:

*“In the absence of agreement, compulsory purchase will be required to acquire the... ..Category 1b interests.....”.*

- 5.3 However as I have previously identified (KM PoE Para 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 the Lower Precinct Shopping Centre and the 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. However at no time prior to the making of the Order has the Council seen fit to explore this avenue.

- 5.4 On 15 December last, on the instructions of Royal London a ‘without prejudice’ offer to surrender Royal London’s headlease to the Council was made by me to the Council, via Mr Lawes. This offer was accompanied by a suite of the documents, in draft form, considered necessary to bring this about. On 27 December last, this ‘without prejudice’ offer was followed up by an open offer in similar form. To date, no response has been received from the Council however Royal London remains open to take forward discussions with the Council on this basis.

- 5.5 From Para 7.42 onwards of his Proof of Evidence Mr Lawes addresses the various grounds of objection raised by Royal London, these being summarised in Para 7.44.
- 5.6 At Para 7.45 Mr Lawes concludes that a clear and compelling case has been made for confirmation of the Order but as I and others have explained, for the reasons given in the Rebuttals of myself and others, the Council's case is far from compelling. And in relation to the evidence of Mr Morton and Mr Fancy (GL PoE Para 7.46) given the evidence of Mr Fourt the prospect of the delivery of the Scheme is far from certain.
- 5.7 As stated by Mr Lawes at Para 7.47, there has been a continuing dialogue between the respective transport planners of the Developer and Royal London. At Para 7.50 Mr Lawes makes reference to service management solutions seeking to:

*“lessen any intrusion on the interests of the objector”*

and in concluding with the words:

*“No alternative proposals have been made by the objector”*

seeks to give the impression that the only service management plan put forward to date has been put forward by the Developer.

- 5.8 At the outset of the making of the Order, Transport Planning Practice ('TPP') on behalf of the Developer put forward a Delivery Service Management Plan ('DSMP') designed to demonstrate how the Market could be adequately serviced following the alterations proposed by the Order to the existing arrangements. On examination by Mayer Brown, on behalf of Royal London, the proposals of TPP were considered to be inadequate in many respects and a revised DSMP was provided to TPP by Mayer Brown to address the perceived deficiencies of the original TPP DSMP proposal. We now have before us, a revised Scheme whereby the original DSMP proposal has been abandoned. Indeed the whole concept of servicing the Market from the basement, upon which the Order has been formulated, has been abandoned to be replaced by a proposal to service the Market from ground floor level; a significant departure from the Scheme envisaged by the Order as made originally. To state therefore that '*No alternative proposals have been made by the objector*' is not correct.

- 5.9 At Para 7.48 Mr Lawes states that the Council has:

*“carefully considered the extent of the new rights required”*

in respect of '*the Blue Land*'. The Blue Land includes Plot 234 which forms part of the leasehold interest of Royal London and comprises Service Area 2 and Service Area 3

of the Lower Precinct service areas to the north of the Market which Mr Vaughan (at RV PoE Para 3.29) says will be available to service Block A2. However, as I have previously explained in my preceding Paras 2.3 to 2.5 it is by no means certain that the Council by virtue of its freehold interest can provide the right of access that Mr Vaughan envisages exists whereas had the Council provided specifically for such a right of access within the Order, the position would be certain given confirmation of the Order. Mr Lawes cannot therefore draw the conclusion that the rights sought by the Order will enable the Scheme to be built.

5.10 At his Para 7.50 Mr Lawes again refers to the discussions held between the respective transport consultants. In view of what I state in my preceding Paras 5.7 to 5.8, I consider that no further comment is necessary on my part.

5.11 Mr Lawes has indeed sought to engage with Royal London but to engage solely in respect of the acquisition of the, in my opinion, limited requirements of the Order rather than seeking to engage in a manner which would positively assist in enabling the Scheme to come forward, ie a variation of the lease that exists at the present time between Royal London and the Council. In doing so, in my opinion neither Mr Lawes nor his instructing Council has had any regard to the provisions of Para 106 of the CPO Guidance ie:

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

which in my further opinion represents a significant failure on the part of the Council in its justification for the making of the Order.

## **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*” 4<sup>th</sup> edition, as amended August 2020.

Signed.....

Keith Murray F.R.I.C.S

Dated 11 January 2023