



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

**INSPECTORATE REFERENCE
APP/PCU/CPO/U4610/3299063**

**APPENDICES TO REBUTTAL PROOF OF
EVIDENCE OF ALEC PHILPOTT IN
RESPECT OF SERVICING**

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Job code:	RLAMCorporationSt.1
Prepared by:	Alec Philpott
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**The Council of the City of Coventry (City Centre South) Compulsory Purchase
Order 2022. APP/PCU/CPO/3299063
Appendices to Rebuttal Proof of Evidence of Alec Philpott in Respect of
Servicing**

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APPENDIX AP1: RPS Planning Note

CITY CENTRE SOUTH, COVENTRY
COMPULSORY PURCHASE ORDER 2022
NOTE ON REVISED SERVICING SCHEME (JANUARY 2023)

1. INTRODUCTION

It is noted that references are made in the proofs of evidence of both Russell Vaughan (RV) and Robert Maxwell (RM) to a revised Market servicing scheme. Notably, paragraphs 6.11 – 6.15 and 7.5 of RV's evidence and paragraph 5.7 of RM's evidence.

As described by RV, the revised Market servicing plan has been designed in response to Royal London's objection. The revised Market servicing solution provides a new dedicated Market servicing area within the ground floor area of Block A1. There will no longer be a need to provide vehicular access via a ramp into the basement from Queen Victoria Road.

For information, this revised Market servicing scheme is not referred to in the proofs of evidence of the two planning witnesses, i.e. Richard Brown (RB) and Liam D'Onofrio (LD).

2. PLANNING PERMISSION

A part full, part outline planning permission for the City Centre South scheme was granted by the City Council on 27 January 2022 (ref: OUT/2020/2876). Referred to by the two planning witnesses as the 'consented scheme.'

The description of development (DoD) for the 'full application' part of the permission includes the 'creation of new Coventry Market basement ramp from Queen Victoria Road and associated works to Coventry Market basement.'

3. NMA / S73 APPLICATION

An application for a non material amendment (NMA) (Section 96A application) to the January 2022 permission was approved by the City Council on 11 October (ref: NMA/2022/2523). The NMA did make changes to the wording of the DoD to the 'outline' part of the application, but no change was made to the wording of the DoD to the 'full' part of the application. Changes were also made to the wording of a number of conditions.

Following on from the NMA approval, an application was made for a minor material amendment (MMA) to the scheme (Section 73 application) in November 2022 (ref: S73/2022/3160). This application proposes to change a number of elements of the scheme by amending conditions, including a change to defined maximum and minimum floorspace figures. At the time of writing, this application remains undetermined. The Section 73 application does not seek to amend the DoD of the planning permission. Nor would it be possible to do so. Accordingly, the DoD for the 'full' part of the planning permission continues to include the words 'creation of new Coventry Market basement ramp from Queen Victoria Road.'

Both planning witnesses refer to the NMA / Section 73 proposals as the 'refined scheme.'

4. ANALYSIS

The proposal to provide for a revised Market servicing plan and in particular the removal of the vehicular access via a ramp from Queen Victoria Road is a departure from the City Centre South planning permission. The DoD of the full part of the permission expressly sets out the proposal to create the new basement ramp.

The documents submitted with the new Section 73 application are on the Council's website. The documentation does not include any drawings which show the revised Market servicing plan. Notably, there are no drawings which show changes to the Market basement access arrangements from Queen Victoria Road. On this point, Page 61 of the Planning and Affordable Housing Statement confirms that the relevant plan (i.e. basement market ramp proposal – interim situation 0905) is a 'resubmission with no amendments proposed.' Likewise, Appendix RB8 of RB's evidence confirms that the relevant plan is not proposed to be amended. Accordingly, the current Section 73 application does not seek to change the Market servicing arrangements.

In any event, it will not be possible to change the Market servicing arrangements via a Section 73 application. It cannot be dealt with by way of a change to a condition. Rather such a change, which will require an amendment to the DoD, will need the submission of a new planning application.

There is case law which clearly demonstrates this principle:

a. **R v Coventry City Council ex parte Arrowcroft (2001) PLCR 7 – para 33**

'Thus the council is able to impose different conditions upon a new planning permission, but only if they are conditions which the council could lawfully have imposed upon the original planning permission in the sense that they do not amount to a fundamental alteration of the proposal put forward in the original application. I bear in mind that the variety superstore was but one element of a very large mixed use scheme, nevertheless it is plain on the evidence that it was an important element in the mix and this is reflected in the retail implications of its removal.'

b. **Finney v Welsh Ministers (2019) EWCA Civ 1868**

'15. Some further points are, I think, uncontroversial:

i) In deciding on its response to an application under section 73, the planning authority must have regard to the development plan and any other material consideration. The material considerations will include the practical consequences of discharging or amending conditions: Pye at 85B.

ii) When granting permission under section 73 a planning authority may, in principle, accede to the discharge of one or more conditions in an existing planning permission; or may replace existing conditions with new conditions. But any new condition must be one which the planning authority could lawfully have imposed on the original grant of planning permission.

iii) A condition on a planning permission will not be valid if it alters the extent or the nature of the development permitted: Cadogan v Secretary of State for the Environment (1992) 65 P & CR 410.'

c. R (Parkview) v Chichester DC (2021) EWHC 59 – para 47

‘47. In my judgment the s. 73 Permission infringes the Arrowcroft principle since the restriction imposed by the new condition 2 (reading the description of Class A4 correctly as agreed) is inconsistent with the description of the development in the Original Permission as repeated in the operative parts of the s. 73 Permission. It is clear from Finney that the operative terms of a permission cannot be changed pursuant to s. 73 and although the s. 73 Permission does not purport to amend the operative words, contrary to the ratio in Finney, it seeks to create the same effect by imposing conditions inconsistent with it and to a more significant extent than the original restriction on takeaway food. Had the application been made as an ordinary planning application, the issue could have been dealt with simply by granting planning permission for a drinking establishment and imposing a condition preventing change within the UCO if that were considered justified.’

Based on the above, it is clear that a condition which requires development to be carried out without providing a new basement ramp could not be imposed as it would be inconsistent with the DoD. In light of the above, neither the current planning permission nor the proposals contained in the Section 73 application would allow satisfactory servicing to be provided.

Danny Simmonds

12 January 2023

**APPENDIX AP2: Submission to National Casework Team - Objection to
Stopping Up (22nd December 2022)**

Our ref: JCG24416

20 Farringdon Street
London, EC4A 4AB
T +44 20 3691 0500

Date: 22 December 2022

Ms F McDermott
National Transport Casework Team
Tyneside House
Skinnerburn House
Newcastle Business Park
Newcastle upon Tyne
NE4 7AR

Dear Ms McDermott

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 247 PROPOSED STOPPING UP OF
HIGHWAY AT ROVER ROAD, COVENTRY, CV1 3HT
OBJECTION BY ROYAL LONDON MUTUAL INSURANCE SOCIETY LIMITED (REF:
NATTRAN/WM/S247/5256)**

I refer to your email dated 20 December in connection with the objection by Royal London Mutual Insurance Society Limited (Royal London) to the proposed Stopping Up Order at Rover Road, Coventry (ref: NATTRAN/WM/S247/5256).

You have advised that the Secretary of State has decided to hold a public inquiry, which will be held in conjunction with the CPO inquiry. You have also advised that it will be helpful if written statements can be submitted to your office by 26 December or as soon as possible.

The main purpose of this letter is to request an extension in time for the submission of the written statement until Tuesday 10 January 2023. Owing to the lack of working days before the seasonal break, ideally Royal London require more time to prepare their statement. Also, as you will appreciate Royal London are currently preparing proofs of evidence to meet submission deadlines for the CPO inquiry. However, it is not anticipated the Stopping Up Order written statement will be lengthy. Accordingly, we do not consider that any party will be prejudiced if the statement is submitted a week in advance of the inquiry. In effect, the statement will be an elaboration of the points made below, as contained in the objection letter of 9 December.

To repeat, Royal London object for the following reasons:

1. If Rover Road is stopped up, Royal London lose access to the Indoor Coventry Retail Market. In effect, the Market becomes landlocked.
2. The result of the Stopping Up Order is to deprive Royal London of providing access to the Indoor Market. It also will prohibit the legitimate servicing of the Indoor Market.
3. Royal London request that a replacement access to the Indoor Market is provided. The replacement access should provide for equivalent rights and should not be restricted to certain times of the day.
4. Any replacement should be made immediately, prior to the stopping up of the highway.
5. For the avoidance of doubt, the new ramp from Queen Victoria Road is not a sufficient replacement.

By way of additional background, the yard to the south of the Coventry Indoor Retail Market provides servicing access to the Market, as well as to City Arcade and Market Way. Royal London's interest is in the Indoor

Our ref: JCG24416

Market. At present, traders and retailers benefit from free access via Rover Road (i.e. the area proposed to be stopped up) at any time of the day and for any purpose. Activities include not only servicing, but also waste collection, pick up and drop off activity and the parking of vehicles in accessible bays. In other words, the area to be stopped up is fundamental to enabling all of these activities at the present time.

Even, allowing for the redevelopment proposals, subject of the CPO, the southern service yard is to be retained, where all legitimate servicing activities will be permitted, subject to time restrictions. Accordingly, access is required through Rover Road, i.e. through the area to be stopped up, in the future, in the event that the redevelopment proposals proceed.

To reiterate the point made in the 9 December objection letter, Royal London require access through Rover Road in order to provide access to, and to service, the Coventry Indoor Retail market.

For information, you should be aware that Royal London are preparing a detailed proof of evidence that deals with servicing and related highways matters. This will be of relevance to the implications of the stopping up order and the servicing of the Indoor Market and the consequential impact of servicing of the Lower Precinct shopping centre.

Once again, I would be grateful if you could agree to an extension in time for the preparation of the written statement until 10 January.

Yours sincerely,
for RPS Consulting Services Ltd



Danny Simmonds
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