

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**

Inquiry commencing: 17 January 2023

OPENING SUBMISSIONS IN SUPPORT OF THE CPO AND THE SUOs

Abbreviations

1. The following abbreviations are used in these Opening Submissions:

<i>Approved Funder/HRL</i>		Hill Holdings Limited in its role as approved funder
<i>CCCAP</i>		Coventry City Council City Centre Area Action Plan, December 2017 [DR3.10]
<i>CCS</i>	-	Coventry City Centre South, being the area of Coventry which is to be redeveloped by the Scheme
<i>Coventry Market</i>		The Grade II listed market located at Queen Victoria Road, Coventry CV1 3HT
<i>CPO</i>	-	The Council of the City of Coventry (City Centre South) Compulsory Purchase Order 2022, made on 11 January 2022 [DR1.1]
<i>CPO Guidance</i>		Guidance on Compulsory Purchase Process and the Crichel Down Rules, issued by the Department for Levelling Up, Housing and Communities (as it is now known), July 2019 [DR1.9]
<i>Council</i>	-	The Council of the City of Coventry, the acquiring authority (“AA”) and local planning authority (“LPA”)
<i>DA</i>		The development agreement entered into on 21 March 2019 between the Council, SPRL and SPG
<i>DR</i>	-	Inquiry core document + Number
<i>HRL</i>		Hill Residential Limited, the development partner selected by SPG for the Scheme.
<i>LGA</i>	-	Local Government (Miscellaneous Provisions) Act 1976
<i>Local Plan</i>		Coventry City Council Local Plan, December 2017 [DR3.9]
<i>Lower Precinct</i>		The shopping centre known as Lower Precinct, Corporation St, Coventry CV1 1NQ
<i>NPPF</i>	-	National Planning Policy Framework [DR3.8]
<i>Order Lands</i>	-	The properties included within the Order

PCPA 2004	-	Planning & Compulsory Purchase Act 2004
Planning Permissions	-	Outline planning permission for the Scheme dated 27 January 2022 [DR3.2], together with associated listed building consents [DR 3.4] [DR3.5] as amended by s.96A non-material amendment dated 11 October 2022 [DR3.6] and s.73 permission dated 9 January 2023 [DR3.29].
RCF		The revolving credit facility agreement made between HHL, National Westminster Bank, HSBC UK Bank Plc, Lloyds Bank Plc, Santander UK Plc and others with an overall available commitment of £220 million.
RL Head Lease		The lease dated 22 October 2010 made between (1) the Council and (2) Scottish Life (Coventry) Property Limited (on behalf of the Coventry (SL) Limited Partnership) pursuant to which Royal London holds the head leasehold interest in (inter alia) Lower Precinct and Coventry Market.
Royal London	-	Royal London Mutual Insurance Society Ltd
SPG		Shearer Property Group Limited, the Council's development partner for the Scheme
SPRL		Shearer Property Regen Limited, the special purpose vehicle established to deliver the Scheme
SUOs	-	The three draft orders seeking authority for the stopping up of Rover Road and Queen Victoria Road (part) (order ref WM5256) [DR4.2], stopping up of Warwick Row part) (order ref WM5257) [DR4.3], and Queen Victoria Road (part) (order ref WM5258) [DR4.1]
s. 106	-	The Scheme s. 106 Agreement dated 26 January 2022 [DR3.2(b)] and varied on 13 January 2023
Scheme	-	The Scheme for the redevelopment of the Order Lands pursuant to the Planning Permissions
Secretary of State	-	The Secretary of State for Levelling Up, Housing and Communities
TCPA	-	Town & Country Planning Act 1990
WMCA		West Midlands Combined Authority

Introduction

2. This Scheme offers a once in a generation opportunity to regenerate Coventry City Centre South, which is one of the most tired and outdated parts of Coventry. The need to regenerate CCS has been recognised for some time. The CCCAP describes the regeneration of CCS as a flagship scheme, catalysing high-quality development and building on the city's strengths and combatting its weaknesses. There is a compelling case to confirm the CPO to enable these objectives to be achieved. The comprehensive scheme proposed for the Order Lands will provide a vibrant mix of uses which include new homes, shops, food and drink, leisure, community, and health, set in new and reimagined open space. It will represent major public and private sector investment in Coventry city centre, and a strong show of

confidence in the city and in the West Midlands. The city centre will be hugely enhanced, with new retail provision to meet modern needs, and a new residential community which will strengthen the sense of place and promote activity.

3. Coventry is the 11th largest city in the UK, with the fastest rate of population growth of any UK city recorded between 2012 and 2019. It has two universities with 60,000 students in total, and is home to major employers including Jaguar Land Rover, Severn Trent, Rolls Royce, Sainsburys and Geely. Yet despite this vibrant and growing population, the city centre has been in decline for a number of years. That is evident simply from walking around the area. Vacancy rates in the city centre have been higher than national averages since 2013, and that position has only been made worse by the Covid-19 pandemic, with Coventry experiencing the 6th highest number of insolvencies of any UK city during that time.¹ The city centre is now characterised by vacant units, falling retail rates and a poor retail stock, with Coventry's retail and leisure offer lagging behind comparator locations such as Nottingham, Reading and Solihull.²
4. The physical environment of the city centre has become degraded, with the post-war design – focusing on a pedestrian core surrounded by vehicle parking and service areas – now presenting an unwelcoming environment for the modern visitor, as well as providing poor linkages between the city centre and surrounding areas. The city centre also lacks conventional residential uses, which leads to a reduced footfall and reduces support for the evening and night time economy. These challenges are firmly recognised in planning policy and are not in dispute before the Inquiry.
5. The need for regeneration of CCS has been recognised since 2008/2009 when the Jerde Masterplan set out the principles and aspirations to regenerate the southern part of the primary shopping area within the city centre [DR3.26]. The Council granted outline planning permission for the comprehensive regeneration of CCS on 31 May 2012 [DR3.1] based on a Masterplan prepared by Benoy Architects. Permission was granted for a mixed use scheme built around a large anchor department store, with leisure uses including a potential cinema and up to 40 one and two-bedroom apartments. That permission has now lapsed.

¹ PoE Alex Morton [DR2.5], para 6.1.

² PoE Adam Markwell [DR2.3], para 3.1.

6. Since 2014 the Council has made a concerted effort to find a way to deliver its policy aspirations for CCS. As the Inquiry will hear, the appointment of SPRL to develop the Scheme, together with the Council's concerted land assembly strategy, took the Scheme to the grant of outline planning permission in 2022. In 2022, The Hill Group came to the Scheme and recognised the potency of the proposition. It now sits as the funder and developer, with exactly the development pedigree needed to deliver the Scheme. The Scheme has now been refined to meet the post-Covid needs of the city. Allies and Morrison, one of the country's greatest architectural practices, has arrived to refine and take forward a masterplan and detailed proposals. Further planning consents under sections 96A and 73 TCPA have amended the parameters of the permitted Scheme to deliver those refinements.
7. The context for those amendments, and the features of the Scheme as permitted, will be discussed and the Council will demonstrate that there is no planning (or other) impediment to the Scheme's delivery. At the outset it is notable that:
 - a. CCCAP Policy 19 identifies that the regeneration of the southern part of the Primary Shopping Area within the city centre will be promoted, encouraged and supported. The detail and criteria of that policy reflect the Benoy Masterplan provided as part of the application for the 2012 permission.
 - b. Local Plan Policy R2 set out an ambition to continue to develop and regenerate the city centre to ensure it is a truly world class city centre, leading in design, sustainability and culture.
 - c. Local Plan Policy H1 requires provision of a minimum of 24,600 additional dwellings between 2011 and 2031 in the Local Plan area.
8. In these Opening Submissions we address:
 - a. The identity of the participants in the delivery of the Scheme.
 - b. The Scheme itself.
 - c. The purpose of the Scheme
 - d. The legal and policy tests for confirmation of the CPO.
 - e. The SUOs.

Background and participants in the delivery of the Scheme

Approved funder and development partner

9. SPG was appointed as the Council's development partner for the Scheme in January 2017. SPRL is a subsidiary of SPG and is the developer of the Scheme. The Council, SPG and SPRL entered into the DA in March 2019. The DA secures the delivery of the Scheme. The relevant key terms of the DA are referred to further in the evidence of Andy Fancy (DR2.4) and Alex Morton (DR2.5). Revisions to the DA, to reflect the refinement of the Scheme, are to be concluded soon [DR6.3].
10. The DA provides for SPRL to propose a party to take on the role of "Approved Funder". In January 2022, SPRL identified HHL as its preferred funding partner and HRL, a subsidiary of HHL, as its development partner for the Scheme. The Council approved the appointment of HHL as approved funder on 3 March 2022. The process surrounding the appointment of HHL as Approved Funder and HRL as development partner, and the contractual arrangements between the relevant parties, is referred to in the evidence of Tony Parker [DR2.10], Andy Fancy [DR2.4] and Alex Morton [DR2.5].

WMCA

11. The Council has entered into a grant funding agreement with the WMCA to provide funding of up to £98.9m for the Scheme. The grant funding agreement is also in the process of being varied to take into account the adjustments to the Scheme as a result of the section 96A and section 73 permissions. In his letter to the Inquiry dated 11 January 2023, the Mayor of the West Midlands, Andy Street, states that the delivery of the Scheme is a key priority for the WMCA and confirms that all the key commercial terms concerning variations to the grant funding agreement have been agreed between the Council and the WMCA [DR6.3].

Council as funder

12. Under the terms of the DA, SPRL is entitled to request a financial contribution from the Council to reflect a base profit on cost position following the grant of outline planning permission for the Scheme. That request was made in October 2022 following an assessment of the Scheme's viability based on the amended proposals set out in the s.96A and s.73 applications, in particular the provision of affordable homes as part of the Scheme. The Council subsequently approved that request and will be providing up to £32.75m of funding towards the Scheme, to be utilised alongside the WMCA grant. The Council's

involvement in the Scheme as funder is discussed in the evidence of Alex Morton [DR2.5] and Tony Parker [DR2.10].

CCS and the Order Lands

13. The Scheme comprises the comprehensive redevelopment of the Order Lands for a mix-use scheme through the demolition of existing buildings/structures and the erection of new buildings/structures to provide a range of town centre uses. The Planning Permissions also cover the provision of related infrastructure including open space and public realm, car parking, and highways and servicing arrangements. The detail of the Scheme authorised by the Planning Permissions will be brought forward through reserved matters applications.
14. The evolution of the Scheme following the initial grant of outline permission in January 2022 is covered in the evidence of Richard Brown [DR2.1], Robert Maxwell [DR2.2] and Alex Morton [DR2.5]. The appointment of one of the country's finest architectural practices (Allies and Morrison) as scheme architect has allowed a renewed examination of the masterplan for CCS. In summary, the amendments to the Scheme following the grant of outline permission include:
 - a. Alterations to the approved development parameters to improve the design of the Scheme and introduce additional flexibility which allows the Scheme to provide for a greater variety of uses than originally consented.
 - b. A decrease in the maximum and minimum quanta of commercial space and increase the maximum number of residential units, together with the introduction of affordable housing. The amendments ensure a mixed-use regeneration scheme which responds to changes in consumer shopping patterns following the Covid-19 pandemic and makes a substantial contribution to Coventry's housing needs.
 - c. Retention of the HMV Empire building, which was vacant at the time of the application for outline permission for the Scheme but has subsequently been brought back into use as a live music venue.
15. Further applications have been made to facilitate the delivery of the scheme. On 15 December 2022, SPRL's application for the relocation of the existing ShopMobility facility to land at Salt Lane Car Park, which is outside but near to the Order Lands, was validated by the LPA. The application is currently pending determination. The progress on these fronts further demonstrates that this a Scheme which is ready to be delivered.

Legal basis for the CPO

16. S. 226(1)(a) TCPA empowers a local authority, where authorised by the Secretary of State, to compulsorily acquire land in its area which it thinks will facilitate the carrying out of development, re-development or improvement on or in relation to the land.
17. S. 226(1)(a) is subject to subsection (1A) which provides that the Council, as an acquiring authority, must not exercise the power unless it thinks that the proposed development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of one or more of the economic, social or environmental well-being of its area.
18. The purpose of the CPO is set out in detail in the Statement of Reasons [DR1.5]. The Council made the CPO to facilitate the redevelopment of the Order Lands in order to effect social, economic and environmental regeneration of the Order Lands and the wider CCS. The CPO plays an essential role in allowing the Scheme to be implemented. In summary, the CPO would provide:
 - a. Powers for the compulsory purchase of land. The relevant land is located within the city's post-war retail core, which is dominated by buildings constructed in the 1950s or 1960s which are mainly in retail use or are vacant. 99% of this land is within the Council's ownership, with the remaining 1% comprising predominantly unregistered land in unknown ownership. The Council will need to acquire this land in order for the Scheme to be implemented. The land within this area is also subject to occupational interests in retail premises which will need to come to an end before commencement of the development. The CPO gives the Council the power to acquire those interests if agreement cannot be reached with the current occupiers to ensure vacant possession.
 - b. Powers for the grant of rights over land. In order to carry out the building works, the Council will require rights over properties immediately surrounding the Order Lands. Those rights include the right to oversail cranes, to access and survey the relevant land, and to remain on the land for general construction purposes.
19. Quite plainly, the Council thinks that the Scheme is likely to contribute to the well-being of the area, and rightly so. The planning case for the Scheme is compelling. The Council also made the CPO under s. 226(3)(a) TCPA so far as the CPO authorises the acquisition

of adjoining land for the purpose of executing works or facilitating the development of the land. The Council also relies upon its powers under s. 13 LGA to acquire new rights to enable the Scheme to be carried out and brought into beneficial use. In his evidence, Graeme Lawes [DR2.8] explains why the relevant land and rights are required to implement the Scheme.

Policy requirements

20. The statutory requirements are applied in conjunction with the CPO Guidance which sets out the approach to be taken in deciding whether to make, or confirm, any CPO. The overarching consideration for the Secretary of State is set out in paragraph 12 of the CPO Guidance which states:

A compulsory purchase order should only be made where there is a compelling case in the public interest.

An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.

21. The Secretary of State will require the Inspector to report on the issues set out in paragraphs 12 to 15 and paragraph 106 of the CPO guidance. The relevant issues are as follows:
- a. whether the purpose for which the land is being acquired fits with the adopted Local Plan for the area;
 - b. the extent to which the proposed purpose will contribute to the achievement of the promotion and/or improvement of the economic, and/or social, and/or environmental well-being of the area;
 - c. whether the purposes for which the proposed Order Lands are to be acquired could reasonably be achieved by any other means within a reasonable timeframe;
 - d. the potential financial viability of the Scheme and
 - e. any impediments to the Scheme going ahead.

22. The compelling case in the public interest which justifies the making and confirmation of the CPO is set out in the evidence to be presented to the Inquiry. In summary, as to the requirements of the CPO Guidance, the evidence demonstrates that:

- a. The Scheme is compliant with the current planning framework (see in particular the evidence of Richard Brown [DR2.1] and Liam D’Onofrio [DR2.6]).
- b. The Scheme will contribute to the promotion and improvement of the economic, social and environmental well-being of the area (see in particular the evidence of Richard Brown [DR2.1]).
- c. There are no reasonable alternatives. There is no alternative location for the delivery of the Scheme and piecemeal redevelopment is unlikely to come forward. An alternative location or piecemeal approach would not be consistent with the planning framework which has long identified the CCS area for regeneration (see in particular the evidence of Robert Maxwell [DR2.2] and Richard Brown [DR2.1]).
- d. There is at the very least a reasonable prospect of delivery. SPRL has access to sufficient funding to deliver the Scheme: from HHL as Approved Funder, from the Council and from WMCA. Those obligations are secured by the DA and the Grant Agreement, with variations to those agreements being at an advanced stage (see in particular the evidence of Andy Fancy [DR2.4], Alex Morton [DR2.5] and Tony Parker [DR2.10]).
- e. There are no impediments to delivery of the Scheme. The Planning Permissions have been granted and the Inquiry will hear evidence on the SUOs required to implement the Scheme (see in particular the evidence of Richard Brown [DR2.1], Russell Vaughan [2.7] and Liam D’Onofrio [DR2.6]).

23. These matters are considered further below.

Compliance with the Local Plan

24. The Scheme complies with – and indeed furthers – national, regional and local policy. The detailed planning case has been articulated and accepted in the context of the Planning Permissions. There is no substantial challenge to the Scheme’s compliance with the planning framework.

25. The Scheme not only fits with the planning framework, but is strongly supported by it. We briefly consider each element of the planning framework.

NPPF

26. At the national level, the social, economic and environmental benefits of the Scheme support the presumption in favour of sustainable development set out in the NPPF. Richard Brown explains the detailed application of the relevant NPPF policies in his evidence [DR2.1]. The key policies are as follows:

- a. The Scheme accords with the emphasis placed at paragraph 86 of the NPPF in supporting the role town centres play at the heart of their communities and the need to take a positive approach to their growth and adaptation.
- b. The extensive residential element of the scheme meets the objective set out in paragraph 60 of the NPPF of significantly boosting the supply of homes. Indeed, the proposed maximum residential quantum would satisfy over 6% of the Council's housing need as identified in the Local Plan (Policy H1).
- c. The Scheme promotes sustainable transport, as required by paragraphs 104, 111 and 112 of the NPPF, by its highly sustainable city centre location which provides residents with excellent access to public transport options. The Scheme seeks to prioritise pedestrian movement whilst ensuring that demand for car parking is met.

27. As Richard Brown [DR2.1] and Liam D'Onofrio [DR2.6] explain in their evidence, careful consideration has also been given to the national policy requirements concerning the preservation of the heritage character of the area and heritage assets located within the Scheme, as required by paras 199 and 201 – 203 of the NPPF. The differing levels of harm to those heritage assets have been weighed against the substantial public benefits of the Scheme, as set out above. Those benefits include enhancements for certain heritage assets, including the relocation of the Three Tuns mural and securing the optimum viable use of Coventry Market. Ultimately, those benefits outweigh any harm in accordance with the criteria set out in the NPPF.

The development plan

28. At the local level, the Scheme complies with planning policies and other material considerations.

29. The Local Plan and the CCCAP, at policies R2 and CC1 respectively, set out an ambition for the city centre to continue to be developed and regenerated. Policy CC19 of the CCCAP is specific to CCS. It supports the regeneration of CCS predominantly for comparison shopping with associated residential, leisure, office and hotel use, providing for:

- a. an increase of at least 10,000 sq.m gross retail floor space;
- b. a range of shop sizes that reflect market requirements;
- c. high quality entrances from the Precinct, Queen Victoria Road and Bull Yard;
- d. the redevelopment of the Barracks car park and the relocation of the parking spaces as part of a new multi storey car park incorporated within the development;
- e. the relocation of the listed mural situated in Bull Yard to a new and prominent site situated within the new development;
- f. the retention of the listed market building, with improvements made to its setting and connectivity to Queen Victoria Road and Market Way;
- g. associated residential provision of at least 40 homes as part of upper floors above retail uses; and
- h. complementary leisure, office and hotel uses as part of upper floors above retail uses.

30. As Richard Brown explains in his evidence [DR2.1], Policy CC19 was informed by the evidence base submitted in support of the 2012 planning permission. Following that date, there has been a structural shift in retail which has been exacerbated by the Covid-19 pandemic. The Scheme reflects these current prevailing market conditions, particularly the shift in on-line shopping and greater flexibility for high streets reflected in Use Class E, in order to secure a positive enhancement of the city centre's leisure and retail offer. That is in accordance with the regeneration objectives of Policy CC19.

31. In addition, the residential element of the Scheme – which makes provision far beyond that contemplated by Policy CC19 - is a wholly supported by local planning policy. In order to achieve the continuing development and regeneration of the city centre, Local Plan Policy R2 identifies the need to include a variety of places to live which cater for different needs. As Richard Brown explains in his evidence [DR2.1], the Scheme accords with Local Plan policies concerning the provision of residential development. The provision of affordable

housing as part of the delivery of residential development will be achieved through a viability review mechanism.

32. The evidence from the Council will demonstrate that the Scheme is the type of development contemplated by local planning policy, in order to ensure the regeneration of CCS. That alone is a compelling reason for the CPO to proceed.

Promotion and/or improvement of economic, social and/or environmental well-being of the Council's area

33. The evidence of Richard Brown [DR2.1] and Robert Maxwell [DR2.2] explains how the Scheme will promote the economic, social and environmental well-being of the area. In terms of the direct contribution of the Scheme to well-being, the following are of particular note:

- a. Bringing an underutilised part of the city centre back into productive use, maximising the use of brownfield land and renewing the built environment.
- b. Creation of up to 1,090 full time jobs on completion, supporting economic activity more broadly in Coventry in stark contrast to the high level of vacancy in the office and retail units within the CCS area at present.
- c. Provision of high-quality homes in a sustainable city centre location, including a mix of market and affordable homes which will increase housing choice and support the needs and aspirations of Coventry residents. Those homes will also make a significant contribution to meeting Coventry's housing needs.
- d. Creation of up to 2.4 hectares of open space, with the public realm being designed as a place for residents and visitors to socialise, relax and dwell in.
- e. The provision of open space, together with rooftop planting, allowing the Scheme to far exceed the 10% increase in biodiversity net gain which will be required by the Environment Act 2021.
- f. Improved surveillance by removal of inactive frontages and servicing areas and through the introduction of a new residential populations on-site.
- g. Enhancements to the setting of designated heritage assets, in particular Coventry Market which will be enhanced by facing onto one of the new public squares as part of the Scheme.

34. The Scheme will also act as a catalyst to other improvements to the environmental, social and economic well-being of Coventry by:

- a. Drawing more footfall into the retail core of the city centre, which will benefit businesses within the Scheme and those in the surrounding area and giving shoppers a reason to visit Coventry city centre.
- b. Providing enhancements to the surrounding area through investment in public realm and through making a significant contribution to public transport infrastructure.
- a. Generating a range of other economic benefits, through increased spending and additional revenues (including business rates and council tax).
- b. An overall enhancement of the City centre which will improve external perceptions of Coventry as a place to live, work and visit.

35. In its objection before the Inquiry, Royal London raise several issues concerning the impact of the Scheme on Lower Precinct, Coventry Market and the wider City centre: see proofs of evidence of Keith Hardman and Alec Philpott. Those objections, and the Council's response, may be summarised as follows:

- a. The Scheme is insufficiently comprehensive because it fails to incorporate Lower Precinct and Coventry Market. The failure to include these two sites would lead to their decline, preventing the wider social and economic benefits which a comprehensive approach would support. As Mr Brown explains in his rebuttal [DR6.1]:
 - i. The regeneration of Lower Precinct and Coventry Market have never been part of the principle of regeneration of the city centre in local planning terms. In fact, Policy CC19 expressly identifies the need to retain Coventry Market.
 - ii. Lower Precinct, in particular, is different in character to the Order Lands and is not in the same generally poor condition. Its regeneration is not required to deliver the objectives set out in planning policy.
 - iii. The Council has undertaken a series of public realm and other improvements in recent years, which include investment aimed at restoring legibility from Broadgate down through Upper Precinct to Lower Precinct.

The Scheme will add to those improvements by maintaining the shopper access arrangements to each site, as shown on the diagram appended to Mr Brown's rebuttal, and ensuring separate improvements to the setting of Coventry Market.

- iv. Shoppers are more likely to use the Lower Precinct MSCP and the market roof top car park following completion of the Scheme, given the removal of other public car parking located within the Order Lands, providing further potential to enhance the use of the Lower Precinct and Coventry Market.
- b. There is a risk of displacement of occupiers from Lower Precinct to new units in the Scheme. As Mr Brown explains in his rebuttal proof:
- i. Both sites stand to benefit from the Scheme and the increased footfall it will undoubtedly provide to the City centre, together with improvements to the public realm.
 - ii. Alongside this overall boost in the number of shoppers in the City centre, Mr Markwell explains in his evidence [DR2.3] that the intention is for the Scheme to target independent and/or high end brands and therefore fill a "gap in the market" for Coventry. To that extent, the intention is that the Scheme will not be competing with Lower Precinct on a like-for-like basis.
 - iii. In any event, in planning terms an enhancement to the "vitality" of town centres does not prevent other retail propositions from coming into the centre, and competition between businesses is not a material consideration.
- c. The Scheme would have an unacceptable impact on the servicing arrangements for the Lower Precinct and Coventry Market. Those objections are addressed in the rebuttal proof of Russell Vaughan [DR6.2]. The service management plan outlined in Mr Vaughan's proof of evidence [DR2.7] was developed following discussion with Royal London and sought to address many of the concerns raised by Mr Philpott. It is clear that satisfactory servicing arrangements can be achieved.

36. If the Scheme does not proceed, there would be serious detriment to the CCS area, the wider city centre and Coventry as a whole. It would result in a significant missed opportunity to regenerate the city centre, and risk Coventry falling further behind other UK cities in its retail offer and financial strength. The Scheme has the potential to revolutionise

the experience of Coventry town centre by its introduction of a significant residential element to an area which is currently without any residential development. That will fundamentally change the atmosphere, safety and vibrancy of the City centre area for the better.

Achieving the purposes by any other means within a reasonable timeframe

37. It is clear from the matters explained above that the comprehensive regeneration of CCS cannot be achieved without the wholesale regeneration of the Order Lands.
38. Para 17 of the CPO Guidance requires acquiring authorities to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted. In accordance with the CPO Guidance, negotiations with all relevant parties have proceeded in tandem with the formal process of pursuing the CPO. Given the large number of interests in the Order Lands this is the only realistic way in which to proceed. In some instances, negotiations have been fruitful and in others negotiations have and will continue. The detail of the negotiations, where objection has been raised, has been addressed in the evidence of Graeme Lawes [DR2.8].
39. Two objectors – Royal London and Queenhart Ltd seek to argue before the Inquiry that the requirements of the CPO Guidance concerning negotiation have not been met. Graeme Lawes reiterates in his rebuttal proof [DR6.5] the efforts made by the Council in entering into negotiations and providing assistance with relocation, as appropriate.
- a. Royal London’s objection on this ground appears to be that a variation of its lease with the Council could have been agreed which would secure the rights which the Council seeks under the CPO. As Mr Lawes explains, the Council proposed variations to the lease in April 2022, but only received a response from Royal London on 15 December 2022. The Council will continue to seek to acquire the relevant land and rights by agreement.
 - b. Queenhart Ltd object on the basis that they have been provided with inadequate assistance with relocation and that the Council has made insufficient attempts to negotiate. Mr Lawes reiterates the efforts made by the Council on both points in his rebuttal proof [6.5].

Financial viability

40. This question is a principal issue raised by Royal London in its objection to the Scheme. It is important at the outset properly to understand the relevant policy test. The policy demands consideration of the *potential* viability of the Scheme in the context of assessment whether there is a “*reasonable prospect* that the scheme will proceed” (para 106). A “*general indication* of funding intentions, and of any commitments from third parties will usually suffice” in this regard. Further, the policy requires evidence the necessary resources are “*likely* to be available” (para 13). However, the policy tests set out in the CPO Guidance do not end there. The Guidance caters for situations where there is a degree of uncertainty about financial viability, noting that the greater such uncertainty, “the more compelling the other grounds for undertaking the compulsory purchase will need to be”. It is not the case that a CPO must be accompanied by a full viability appraisal – or indeed that it can be demonstrated to be viable at the time of confirmation at all. The question for the Inspector is whether there is a reasonable prospect of the Scheme proceeding.
41. In his proof of evidence on behalf of Royal London, Robert Fourt considers the question of the viability of the Scheme in the context of the CPO Guidance and the decision in The London Borough of Barking and Dagenham Council (Vicarage Field and surrounding land) CPO 2021.³ In that case, the viability assessment for the Scheme showed that the Scheme would be fundamentally unviable. That is simply not the case here. As Alex Morton explains in his rebuttal proof [DR6.3], the Scheme is manifestly viable. There is a clear route to its delivery. The developer is ready to make a start.
42. The Council would therefore invite the Inspector to consider the debate over viability issues firmly in the appropriate policy context and to weigh any uncertainty which is alleged by objectors to exist against the compelling reasons for the promotion of the CPO in the context of the very substantial benefits of the Scheme.
43. In any event, the Inspector and the Secretary of State can be satisfied as to the viability of the Scheme and that it will be delivered:
- a. HHL has access to significant funding resources, as detailed in the evidence of Tony Parker [DR2.10].

³ Case reference: APP/PCU/CPOP/Z5060/3278231.

- b. HHL is committed to the Scheme, as is clear from the evidence of Andy Fancy [DR2.4] and Tony Parker [DR2.10]. Its commitment is further demonstrated by deeds executed by HHL in favour of the Council by which HHL agreed to underwrite the costs of SPRL in satisfying the conditions precedent under the DA and to observe and perform developer obligations under the DA and indemnify the Council for all costs required to achieve site assembly.
 - c. SPRL is committed to the Scheme, as is clear from the evidence of Adam Markwell [DR2.3]. It intends to proceed with the Scheme on the basis of the current anticipated level of return (12.3%, and anticipates that its return can be further improved during the course of construction. Indeed, as Alex Morton explains in his evidence [DR2.5], SPRL is in a good position to maximise the efficiency of the Scheme to improve the anticipated profit based on its previous schemes. Efficiency can also be maximised by using the contracting arm of HHL to undertake construction works and realising interest on the equity funding provided by HHL.
 - d. The funding available from the Council pursuant to the terms of the DA and WMCA pursuant to the terms of the Grant Agreement may be utilised towards a range of early works, including demolition and infrastructure works, which will significantly reduce the need to call upon developer equity and debt during the early stages of development.
 - e. WMCA is committed to the Scheme, as demonstrated by the letter from Andy Street, and there is no reason to doubt that the requisite variations to the Grant Agreement will be completed.
 - f. The Council, through the scrutiny of Deloitte, has satisfied itself that the Scheme is viable and has reasonable prospects of delivery. Alex Morton explains in his evidence [DR2.5] how he has reached that conclusion. There is no reason for the Inspector and the Secretary of State not to be satisfied with and to adopt Mr Morton's conclusion.
44. The thrust of Royal London's evidence is that that the Scheme is unviable, on Mr Fourt's own appraisal. As Mr Morton explains in his rebuttal [DR6.3], the evidence presented by Mr Fourt and Mr Hardman does not give reason to doubt the viability of the Scheme as analysed in Mr Morton's proof of evidence [DR 2.5]. In summary, the key differences in the appraisals of Mr Morton and Mr Fourt arise from the cost and value assumptions made

by Mr Fourt and, in particular, a misunderstanding of the grant funding and developer financing arrangements in place. Mr Morton's rebuttal is supplemented by the rebuttal proof of Tony Parker [DR6.4], which addresses the finance costs associated with the Scheme and provides further evidence concerning private sales revenue and affordable housing revenue which has informed SPRL's viability assessment. As Mr Parker confirms in his rebuttal, the approach taken by SPRL is robust. It cannot be said that the public sector funding for the Scheme is uncertain. Approximately £15m of funding has already been expended from the WMCA grant to date, and the Council's contribution has been approved by its Cabinet and Full Council.

45. The Scheme is manifestly viable, and both SPRL and HHL are firmly committed to its delivery. The requirements of the CPO Guidance are clearly met.

No impediments to delivery of the Scheme

46. The Secretary of State requires that there be no obstacles to the implementation of a CPO if it is confirmed. Para. 15 of the CPO Circular provides:

The acquiring authority will also need to be able to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation. These include:

- the programming of any infrastructure accommodation works or remedial work which may be required; and*
- any need for planning permission or other consent or licence.*

47. In his proof of evidence on behalf of Royal London, Mr Murray points to two alleged impediments to the Scheme.

- a. An alleged failure by the Council to secure a right of access for all purposes in respect of a certain area of land within the control of Royal London represents a serious practical impediment to the scheme delivery. That is a misinterpretation of the rights contemplated by the CPO, as Graeme Lawes explains in his rebuttal proof [DR6.5].
- b. An alleged failure by the Council to secure a right of access over part of the land required to service the Scheme. As Mr Lawes explains in his rebuttal proof [DR6.5], the Council has rights under the RL Head Lease (together with its licensees and tenants) to access and use the necessary service areas. The Council also

acknowledges that it will be necessary to grant rights back to Royal London to allow the proposed servicing arrangements to be implemented.

Compelling case in the public interest

48. The final and overriding question which arises is whether there is a compelling case in the public interest of the compulsory acquisition. For the reasons explained above, a clear and compelling case in the public interest exists for the confirmation of the CPO, sufficient to justify the use of compulsory acquisition.

The SUOs

49. The SUOs relate to three areas of highway within the Order Lands.

50. The relevant statutory test is in s.247(1) TCPA 1990 which provides:

(1) The Secretary of State may by order authorise the stopping up or diversion of any highway outside Greater London if he is satisfied that it is necessary to do so in order to enable development to be carried out—

(a) in accordance with planning permission granted under Part III or section 293A , or

(b) by a government department.

51. The evidence of Russell Vaughan [DR2.7] explains why stopping up of each of the three sections of highway is required for development. In essence, each of the SUOs is required to allow the proposed development to be built and to allow rationalisation of the highway and the public realm as part of the development, in each case in accordance with the Planning Permissions. Liam D’Onofrio explains in his evidence [DR2.6] that the Council as LPA and Local Highway Authority are content that the SUOs are necessary for the Scheme to be implemented.

52. The objections to the SUOs are considered in the evidence of Graeme Lawes [DR2.8]. The Council believes that the outstanding objections to the SUOs are, or will be, adequately addressed through:

- a. Completion of wayleave agreements with the relevant utilities providers;
- b. Meetings with the relevant objectors to explain the position and, in the case of Royal London, agreement in relation to a service and access solution for Coventry Market;
- c. Completion of the surrender of the leasehold interest of Coventry Urban Regeneration Ltd.

53. Accordingly, the Council will invite the Inspector to recommend that the SUOs are confirmed.

Conclusions

54. These submissions have sought to set out the fundamental reasons why the CPO should be confirmed, along with the context for the determination of objections.

55. For all the reasons set out above and in the evidence to be presented to the Inquiry:

- a. There is a compelling case in the public interest for the confirmation of the CPO which justifies the acquisition and overriding of private rights.
- b. There are no material impediments to the implementation of the Scheme other than the confirmation of the CPO.
- c. No alternatives to the Scheme as a whole exist. The planning framework requires a comprehensive approach to be taken.
- d. The legal requirements of s. 226(1) TCPA are satisfied.
- e. There are no new material considerations which would justify a different approach to be taken to that of the Council in granting planning permission.
- f. The policy requirements in the CPO Guidance for the confirmation of the CPO are satisfied.
- g. The confirmation of the CPO would be entirely consistent with, and not breach, the NPPF and development plan.
- h. The confirmation of the CPO would be consistent with, and not breach, the human rights of the landowners affected;

56. The Scheme presents the only present possibility of meeting the requirements of planning policy for the CCS area. It will deliver transformational economic benefits for local people and businesses, acting as a significant stimulus for Coventry city centre, whilst ensuring that the City centre is a place where people want to live and work. In SPG and HHL, it is backed by two experienced retail developers and operators with a proven track record of delivery.

57. There is a compelling case for making the CPO to allow the Scheme to be delivered. The Scheme's benefits are clear and profound. This is a once in a generation opportunity.

37. The Inquiry will necessarily concern itself with, and carefully consider, the objections to the CPO. But it is important to recall why we are here: to deliver the Scheme and with it great economic, social and environmental benefits to Coventry. We will therefore be inviting the Inspector to confirm this CPO.

Richard Turney

Rebecca Sage

Landmark Chambers

17 January 2023

ANNEX TO OPENING SUBMISSIONS

Relevant statutory provisions

Section 226 TCPA

226.— Compulsory acquisition of land for development and other planning purposes.

- (1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area [...]1 —
 - (a) if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land; or
 - (b) is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.
- (1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects—
 - (a) the promotion or improvement of the economic well-being of their area;
 - (b) the promotion or improvement of the social well-being of their area;
 - (c) the promotion or improvement of the environmental well-being of their area.
- (2A) The Secretary of State must not authorise the acquisition of any interest in Crown land unless—
 - (a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and
 - (b) the appropriate authority consents to the acquisition.
- (3) Where a local authority exercise their power under subsection (1) in relation to any land, they shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily—
 - (a) any land adjoining that land which is required for the purpose of executing works for facilitating its development or use; or
 - (b) where that land forms part of a common or open space or fuel or field garden allotment, any land which is required for the purpose of being given in exchange for the land which is being acquired.
- (4) It is immaterial by whom the local authority propose that any activity or purpose mentioned in subsection (1) or (3)(a) should be undertaken or achieved (and in particular the local authority need not propose to undertake an activity or to achieve that purpose themselves).
- (5) Where under subsection (1) the Secretary of State has power to authorise a local authority to whom this section applies to acquire any land compulsorily he may, after

the requisite consultation, authorise the land to be so acquired by another authority, being a local authority within the meaning of this Act.

- (6) Before giving an authorisation under subsection (5), the Secretary of State shall—
- (a) if the land is in a non-metropolitan county in England, consult with the councils of the county and the district;
 - (b) if the land is in a metropolitan district, consult with the council of the district;
 - (bb) if the land is in Wales, consult with the council of the county or county borough; and
 - (c) if the land is in a London borough, consult with the council of the borough.
- (7) The Acquisition of Land Act 1981 shall apply to the compulsory acquisition of land under this section.
- (8) The local authorities to whom this section applies are the councils of counties, county boroughs, districts and London boroughs.
- (9) Crown land must be construed in accordance with Part 13.

Section 13 Local Government (Miscellaneous Provisions) Act 1976

13.— Compulsory acquisition by local authorities of rights over land.

- (1) A local authority which may be authorised by a Minister of the Crown, by means of a compulsory purchase order, to purchase any land compulsorily for any purpose may be authorised by that Minister, by means of such an order, to purchase compulsorily for that purpose such new rights over the land as are specified in the order; and in this subsection “new rights” means rights which are not in existence when the order specifying them is made.
- (2) The Compulsory Purchase Act 1965 shall have effect with the modifications necessary to make them apply to the compulsory purchase of rights by virtue of the preceding subsection as they apply to the compulsory purchase of land so that, in appropriate contexts, references in those Acts to land are read as referring, or as including references, to the rights or to land over which the rights are or are to be exercisable, according to the requirements of the particular context.
- (3) Without prejudice to the generality of the preceding subsection, in relation to the purchase of rights in pursuance of subsection (1) of this section—
- [(a) – *repealed*]
- (b) Part I of the said Act of 1965 shall have effect with the modifications specified in Part II of Schedule 1 to this Act; and
- (c) the enactments relating to compensation for the compulsory purchase of land shall apply with the necessary modifications as they apply to such compensation.
- (4) Nothing in the preceding provisions of this section shall authorise the purchase of any rights by an authority for a purpose for which there is power by virtue of section 250 of the Highways Act 1980 (which relates to the compulsory acquisition of rights by highway authorities) to authorise the authority to acquire the rights.

- (5) In this section “compulsory purchase order” has the same meaning as in the Acquisition of Land Act 1981, and Schedule 3 to that Act shall apply to the compulsory purchase of rights by virtue of subsection (1) above.

Section 247 TCPA

247. Highways affected by development: orders by Secretary of State

- (1) The Secretary of State may by order authorise the stopping up or diversion of any highway outside Greater London if he is satisfied that it is necessary to do so in order to enable development to be carried out—
- (a) in accordance with planning permission granted under Part III[or section 293A]2, or
 - (b) by a government department.
- (2) Such an order may make such provision as appears to the Secretary of State to be necessary or expedient for the provision or improvement of any other highway outside Greater London.
- (2A) The council of a London borough may by order authorise the stopping up or diversion of any highway within the borough, or within another London borough if the council of that borough consents, if it is satisfied that it is necessary to do so in order to enable development to be carried out—
- (a) in accordance with planning permission granted under Part III[or section 293A]2, or
 - (b) by a government department.
- (2B) Such an order may make such provision as appears to the council to be necessary or expedient for the provision or improvement of any other highway within the borough.
- (3) An order under subsection (1) or (2A) may direct—
- (a) that any highway provided or improved by virtue of it shall for the purposes of the Highways Act 1980 be a highway maintainable at the public expense;
 - (b) that the Secretary of State, a strategic highways company,]6 or any county council, county borough council, metropolitan district council or London borough council specified in the order or, if it is so specified, the Common Council of the City of London, shall be the highway authority for that highway;
 - (c) in the case of a highway for which the Secretary of State or a strategic highways company is to be the highway authority, that the highway shall, on such date as may be specified in the order, become a trunk road within the meaning of the Highways Act 1980.
- (3A) An order under subsection (2A) may not provide that—
- (a) the Secretary of State,
 - (aa) a strategic highways company,
 - (b) Transport for London, or

- (c) a London borough other than the one whose council is making the order,
 shall be the highway authority for a highway unless the Secretary of State, the
 strategic highways company, Transport for London or the council, as the case may
 be, so consents.
- (4) An order made under this section may contain such incidental and consequential
 provisions as appear to the Secretary of State or the council of the London borough to
 be necessary or expedient, including in particular—
 - (a) provision for authorising the Secretary of State or the council of the London
 borough, or requiring any other authority or person specified in the order—
 - (i) to pay, or to make contributions in respect of, the cost of doing any work
 provided for by the order or any increased expenditure to be incurred which is
 attributable to the doing of any such work; or
 - (ii) to repay, or to make contributions in respect of, any compensation paid by the
 highway authority in respect of restrictions imposed under section 1 or 2 of the
 Restriction of Ribbon Development Act 1935 in relation to any highway
 stopped up or diverted under the order;
 - (b) provision for the preservation of any rights of statutory undertakers in respect of
 any apparatus of theirs which immediately before the date of the order is under, in,
 on, over, along or across the highway to which the order relates.
- (5) An order may be made under this section authorising the stopping up or diversion of
 any highway which is temporarily stopped up or diverted under any other enactment.
- (6) The provisions of this section shall have effect without prejudice to—
 - (a) any power conferred on the Secretary of State or a London borough by any other
 enactment to authorise the stopping up or diversion of a highway;
 - (b) the provisions of Part VI of the Acquisition of Land Act 1981; or
 - (c) the provisions of section 251(1).