

**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 closing: 20 January 2023

CLOSING SUBMISSIONS IN SUPPORT OF THE CPO AND THE SUOs

Introduction

1. Coventry is the UK's 11th largest city and home to a young population, two universities, and dynamic businesses. The City's centre is steeped in history; largely destroyed in 1941 but rebuilt to an ambitious modernist post-war masterplan. It since has been the subject of concerted regeneration and change, revitalising the pedestrian environment for much of the City and delivering new office and education provision, and refreshed retail and leisure opportunities.
2. Nonetheless, the area identified as City Centre South has lagged behind. The buildings are tired and under-occupied, and much space is taken up with car parking and servicing yards. Poor use is made of highly accessible land with strong linkages to the rest of the centre. The listed Coventry Market is largely hidden from view, rather than celebrated as a dynamic place of small business activity. The city centre lacks a resident population, and falls quiet once shoppers, workers, and students head home in the evenings. The retail offer does not cater for the whole of the market, pushing shoppers to other centres for a more vibrant and mixed shopping environment that meets their needs in the post-pandemic world. The Council has done its best to date by improving the surrounding area insofar as it can do. But the city is ready for – and needs – radical change.
3. This Scheme can provide that change, and in doing so elevate the city centre to where it should be: doing justice to its size, importance, and people. It will deliver a comprehensive mixed-use redevelopment of the Order Lands including new homes, health uses, a variety of flexible retail uses including shops and food and drink establishments, leisure and

community uses, new open space, new pedestrian and vehicular access and car parking across a site of approximately 6.4 hectares. That redevelopment is necessary in order to comprehensively regenerate the CCS area and bring it up to the standards which Coventry expects and deserves. In turn, the CPO is necessary to achieve that aim.

4. At this Inquiry, the Council has asked the Inspector to confirm the CPO and to recommend that the SUOs are confirmed. Following conclusion of the Inquiry, the Council considers that it has demonstrated a compelling case in the public interest justifying the interference with the outstanding private rights to which the CPO would give rise, and that there are no legal or physical impediments to the delivery of the Scheme. The CPO should therefore be confirmed. Similarly, the Council has demonstrated that the SUOs are necessary in order to allow the Planning Permissions to be implemented and therefore invites the Inspector to recommend that the SUOs are confirmed.
5. In these Closing Submissions we address:
 - a. The detail and evolution of the Scheme.
 - b. The Order Lands.
 - c. The legal and policy tests for confirmation of the CPO.
 - d. The SUOs.
6. These Closing Submissions should be read along with the Council's Opening Submissions.

Detail and evolution of the Scheme

7. The participants in the delivery of the Scheme are explained in the Opening Submissions. The Inquiry has heard from Adam Markwell and Andy Fancy, both of whom emphasised in their oral evidence the commitment and enthusiasm of SPG and Hill Group, respectively, to the Scheme and to Coventry.
 - a. In his oral evidence, Mr Markwell highlighted the work which SPG has undertaken in Coventry to date. He points to SPG's improvement of the Cathedral Lanes quarter, which has led to a 17% increase in footfall in the area, and its involvement in public realm improvements to the Precinct area which have led to new lettings to operators such as Holland & Barrett, Coventry Building Society and the Fraser group. He explained that work builds upon other improvements which the Council

has undertaken to the city centre area, such as pedestrianising the area in front of Cathedral Lanes.

- b. In his oral evidence, Mr Fancy also emphasised the desire to build upon the regeneration work that has been undertaken in Coventry to date. He has explained that the Hill Group has already invested around £4m into preparation for the Scheme, including undertaking surveys and de-risking the Scheme as far as possible, with the Group CEO giving the project his full support. The plan is to commence demolition work in the autumn of 2023. Significant thought has been put into ensuring that the city stays open during construction works, with meanwhile uses providing opportunities for local businesses to start and grow.
8. The design of the Scheme has been carefully considered and revised following the application for outline permission for the Scheme in 2020. The evolution of the Scheme from a planning perspective, and the drivers for those changes, will be considered below. At the outset, however, it is important to appreciate way in which the design has progressed during the past 18 months. That process was described in the evidence of Robert Maxwell, a partner at Allies and Morrison with extensive experience in the design and delivery of mixed use developments, including masterplanning Friargate in Coventry. Allies and Morrison were appointed by the Hill Group in 2021 to work on their bid to be the approved funder for the Scheme, and they have continued to work on the refinement of the Scheme following HHL's appointment as approved funder. Those refinements reflect the desire to establish a residential identity made up of a range of tenures and to design a development which reflects a post-pandemic lifestyle (Maxwell Proof, section 2).
9. In his evidence, Mr Maxwell described the evolution of the six blocks of the Scheme, which he explained to the Inquiry with reference to Figure 25 of his proof of evidence. In summary:
 - a. Block A1 will occupy a corner site on the junction between Queen Victoria Road and Rover Road, abutting the Lower Precinct multistorey car park on its northern boundary and the Coventry Market on its eastern boundary. The site is currently vacant. A strip of land on the northern edge was allocated for a new vehicular ramp to serve the basement of Coventry Market. The ground floor plan has now been amended to incorporate a new self-contained vehicular service area dedicated to Coventry Market, in lieu of the ramp to its basement. The building footprint has

also been adjusted from an L-shape to a T-shape resulting in an increased distance between the facades of A1 and Block D (Maxwell Proof 5.6 to 5.8).

- b. Block A2 lies immediately to the east of Coventry Market, with the former Woolworths building to the north. The permitted height of the block is restricted by the former Woolworths building. Block A2 will provide residential accommodation on the upper floors over six storeys with a seventh floor opening onto a large roof terrace. The ground floor will contain a mixture of retail, food and beverage uses. Compared to the original designs, the footprint will move further away from Coventry Market, opening up this part of the Market facade (Maxwell Proof 5.9 to 5.10).
- c. Block B is the largest single plot. The western and eastern edges form the building lines onto Market Way and Hertford Street respectively and its southern edge faces onto the proposed retail pavilion (Block E). The indicative scheme for the original outline permission provided for the overall building footprint to be subdivided into two distinct parts laid out to either side of a new retail street, with mixed-use blocks of up to eleven storeys. The retail and commercial street would be entered from Hertford Street at its northern end or via a series of stairs from the public realm beside Block E (Maxwell Proof 5.20 to 5.22). Mr Maxwell described in his oral evidence that the design has been modified by adding a new east-west pedestrian route crossing the garden landscape at the centre of the block and by introducing private gardens behind the perimeter buildings for the residents of the Block. The Block will contain seven buildings serviced from underneath and behind by an integrated retail/residential service yard cut into the existing topography, thereby increasing the space available in the public realm. There will be gaps between the buildings, and the buildings will vary in height, to maximise the strategic views of Christchurch Spire.
- d. Block C is a C-shaped perimeter block with its southern leg abutting the listed Reform Club on Warwick Row, its main frontage facing onto the retail pavilion in Block E and its western frontage onto Lower Market Way. Retail uses at ground floor will be delivered with residential above. As the scheme has evolved, the footprint of Block C has been enlarged, creating space for a private residents' garden and integrating a rear service yard for the retail units. The northern frontage

onto Block B will be fully pedestrianised and space to the south of Block C made available for accessible soft and hard landscape features (Maxwell Proof 5.25 to 5.26).

- e. Block D comprises three buildings (D1, D2 and D3) arranged around the perimeter of the plot. The revised scheme provides extended retail and leisure frontages on Rover Road, an integrated rear service yard for the retail and leisure units, secure landscape amenities for the residential apartments, and an east/west pedestrian and cycle permeability across the site. The healthcare facilities are moved to the Queen Victoria Road frontage to provide a more visible and active frontage (Maxwell Proof 5.27 to 5.29).
- f. Block E originally comprised a single retail pavilion located between Block B to the north and Block C to the south. This design has been developed through replacing the sole retail pavilion with two of a smaller size, which promotes circulation between the two principal public squares and allows a stronger direct visual connection between two listed heritage assets: the Christchurch Spire and Coventry Market. Furthermore, the reduction in the overall footprint of the pavilions enables the enlargement of the footprints of Blocks B and C, and maintains appropriate separation (Maxwell Proof 5.23 to 5.24). Mr Maxwell confirmed in his oral evidence that this would create an entirely new view of two heritage sights, as modelled in figure 42 of his Proof on page 34.
- g. The public realm as originally designed consisted largely of a hard landscape – necessary for vehicular access and servicing arrangements – with street trees, planting beds and several sculpted raised lawns with edge seating. The servicing strategies have now been modified to increase the proportion of vehicle free public realm and enrich the hard landscape with planting beds and water features (Maxwell Proof, Fig 34). In the new central square in front of Coventry Market there will be a large green lawn and seating area (Maxwell Proof 5.31 to 5.33). That will improve the outlook of the Market which, as Mr Maxwell confirmed in his oral evidence, is at the core of the design of the Scheme. Mr Maxwell also confirmed that at present a mere 2.3% of the Order Lands is green space, going up to 5% in the scheme as permitted by the outline permission, and 9.2% in the current scheme as permitted by the Planning Permissions. The existing statutory and non-statutory heritage

assets will be identified, recorded and relocated within the redevelopment (Maxwell Proof 5.33).

10. These considered amendments to the Scheme reflect not only the changes to the retail and residential drivers behind the Scheme as set out above, but also the commitment of those involved in the Scheme to alight upon the optimum design to ensure the comprehensive regeneration of the CCS in a manner which will benefit Coventry for decades to come.

The Order Lands

11. By making the CPO, the Council sought to bring the Order Lands into single ownership and obtain vacant possession in order to secure delivery of the Scheme. The boundary of the Order Lands is shown edged in red on the map which accompanies the CPO [DR 1.02]. The land to be acquired (comprising 226 plots) is coloured pink and land over which rights to be acquired (comprising 39 plots) is coloured blue. The Order Lands are a mixture of freehold and leasehold land.
12. Graeme Lawes has been advising the Council on land acquisition and compulsory purchase since 2020 (Proof, 1.5) and, as he explained in oral evidence, has longstanding familiarity with the CCS having investigated potential land acquisition costs in 2016. Mr Lawes set out in his evidence to the Inquiry that an extensive process has been undertaken to identify the relevant land and rights and ensure that only land which is reasonably required for the Scheme has been included in the Order Lands (Lawes Proof, 3.4).
13. The Council is in an unusual – and beneficial – situation. It already owns 99% of the freehold interests in the Order Lands, with the balance being in unknown ownership. Further, the majority of leasehold interests in the Order Lands are short-term leases which may be brought to an end by the Council as landlord without the need for compulsory acquisition. Those interests comprise 96 of the 112 leasehold interests included within the Order Lands (Lawes Proof, Table GL2). That fact reflects the Council's long-term commitment to regeneration of the CCS area, in which it has sought to balance the possibility of regeneration in the short to medium-term with the need to maximise occupancy of units which are relatively unattractive to the modern retailer. This further minimises the extent of interests which are likely to be acquired using powers in the CPO.

Overview of legal basis for the CPO

Statutory requirements

14. The statutory requirements for the CPO were set out in the Opening Submissions (and Annex) and are summarised here for completeness.

- a. 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.
- b. 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.
- c. 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.

15. In addition, section 19(1) ALA 1981 provides that where a compulsory purchase order authorises the purchase of any open space, the Secretary of State must be satisfied that one of the criteria set out in section 19(1) are met and provide a certificate accordingly. The Order Lands include five areas which potentially fall within the definition of open space contained in ALA 1981. An application for a certificate under s.19(1) was made at the same time as submission of the CPO to the Secretary of State for confirmation and has since been issued (Lawes Proof 3.11 – 3.13, CD 5.01).

Policy requirements

16. 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.

17. 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.

18. The evidence presented to the Inquiry has demonstrated the compelling case in the public interest which justifies the making and confirmation of the CPO. That evidence is considered further below.

The compelling case in the public interest

Compliance with the Local Plan

19. The Local Plan and the CCAP are the relevant parts of the statutory development plan, and together form the key elements of the planning framework (at a local level) within which the Planning Permissions have been decided. That framework establishes the principle of development and regeneration not only within the broader city centre, but also in relation to the CCS area. The application of the development plan to the Scheme and the grant of the Planning Permissions has been addressed in the written and oral evidence of Richard Brown, who has been involved with the CCS site since around 2011 and has advised SPRL on the Planning Permissions, and Liam D’Onofrio, a Principal Town Planner at the LPA who was the case officer who dealt with the Planning Permissions.

20. Policy R2 of the Local Plan sets out a development strategy for Coventry city centre, stating that the city centre will continue to be developed and regenerated to ensure it is a truly

world class city centre, leading in design, sustainability and culture. An equivalent policy is contained in the CCAP at Policy CC1. The policy goes on to set out sixteen factors by which that strategy is to be achieved.

21. The Scheme's compliance with those sixteen factors, insofar as they are relevant, is considered by Mr Brown (Brown Proof, Table 6.1).¹ Mr Brown highlighted in his oral evidence the following aspects of the Scheme which are particularly relevant in demonstrating compliance with Policy R2 and Policy CC1:

- a. The comprehensive regeneration of the CCS area, including provision for a mixture of residential, commercial and other uses, making a significant positive contribution to the ambition for Coventry to be a national and international destination to live, work and play. The introduction of significant residential use will contribute to the vitality and viability of the CCS area, whilst the retail element of the scheme aims to draw the affluent part of the local population which has not yet been catered for, as discussed further below.
- b. The Scheme includes both retail and leisure elements which have been designed flexibly to allow a range of shop sizes reflecting market requirements; further, the Scheme's leisure offer has only improved as it has been refined, particularly in relation to the retention of the HMV Empire as a live entertainment venue and the Catch-22 nightclub.
- c. The Scheme has the flexibility to provide a range of workspace functions to complement the retail, community, health and leisure uses to be provided.
- d. The Scheme introduces up to 1,500 new homes in the CCS area which are intended to include a range of housing types and tenures, including build to rent and affordable housing. The s. 106 agreement provides for a viability review mechanism to secure affordable housing, but in the grant funding discussions it has been agreed that 20% of the homes will be delivered as affordable housing and tenders have already been received from Registered Providers. This ensures that the Scheme will cater for the different needs of Coventry's population. The residential elements of

¹ As Mr Brown explained at the Inquiry, the relevant scheme is now the "Refined Scheme", following grant of permission under s.73 TCPA in January 2023.

the Scheme also increase footfall and contribute to the development of a vibrant and attractive night-time economy in Coventry city centre.

- e. The Scheme places a clear emphasis on preserving the historic character and setting of heritage assets, with particular reference to the improvement of the setting of Coventry Market, the enhancement of views of the “Three Spires”, and the careful relocation of the Three Tuns mural.
- f. By its improvements to servicing arrangements for the CCS area and introduction of pedestrianised open space, together with the relocation of the existing Shopmobility facility from Barracks Way car park to Salt Lane car park, the Scheme provides accessibility for all and a safe environment for pedestrians and motorists.
- g. The major improvements to the public realm, accessibility and legibility of the area will provide opportunities to improve health and wellbeing by improving dwell times and promoting social interaction.
- h. The Scheme has been designed with Coventry’s future public transport needs in mind and considers the possibility for future proposals for Very Light Rail through the city centre.

22. The development plan also contains a specific policy governing the CCS: Policy CC19, contained within the CCAP. That policy states that the regeneration of the southern part of Primary Shopping Area (3) for predominantly comparison shopping will be promoted, encouraged and supported, and that regeneration should be delivered in accordance with a Masterplan which supports the “approved planning permission” or replacement document. The Primary Shopping Area (3) is the area marked (3) on Plan 17b of the CCAP [DR3.10]. It broadly aligns with the boundary of the Scheme. The principle of redevelopment of the CCS is therefore strongly supported by the development plan.

23. The policy goes on to specify the criteria which the planning permission or its replacement must meet. Mr Brown has considered the Scheme’s compliance with these criteria in detail (Brown Proof, Table 6.2). As both Mr Brown and Mr D’Onofrio made clear in their oral evidence before the Inquiry, the criteria set out in Policy CC19 are either met by the Scheme or, where they are not, they do not represent a planning objection to the Scheme. In terms of the criteria which are met by the Scheme:

- a. The Scheme will provide a flexible range of retail uses, including those for comparison shopping, together with a range of shop sizes to reflect market requirements. As Adam Markwell explained in his oral evidence, SPG seeks to attract independent retailers who offer a greater range of more interesting products which are not necessarily available online. This represents an opportunity to “tap into” a demographic who are not currently being served by the offering in the CCS area. That demographic has been identified by data company CACI as living in the suburb/edge of city locations to the south of the city (Markwell Proof 3.4-3.5).
- b. The work undertaken by the Council around the CCS area to date has already improved the entrances to the Scheme. As Liam D’Onofrio explained in his oral evidence, the removal of Coventry Point has transformed the area. Additionally, the Nationwide building formerly located at the wide undercroft area by the Grade II listed Broadgate House was removed to open up the street to Broadgate Square.
- c. The relocation of the Three Tuns mural is secured by conditions attached to the Planning Permissions and the section 106 agreement.
- d. Coventry Market will be retained and enhanced, with the Scheme complementing the improvements which have already been undertaken to Market Way.
- e. The Scheme’s residential provision far exceeds the low policy expectation for 40 homes, presenting an opportunity for a step-change to the area in terms of footfall and local spend.
- f. The Planning Permissions include the potential for hotel use, which may be brought forward as the Scheme progresses.

24. However, matters have moved on in relation to two of the criteria contained within Policy CC19: the quantum of retail floorspace (Policy CC19 envisages an increase of at least 10,000 sqm) and the provision of a new multistorey car park as part of the redevelopment with re-provision of all the parking spaces lost arising from the redevelopment of the Barracks multistorey car park. As Mr Brown explains (Proof 6.10-6.16), Policy CC19 refers to the earlier planning permission for the redevelopment of the CCS which was granted in 2012 and with which Mr Brown was involved (Proof 1.4). That permission formed the basis for the requirements set out in Policy CC19. It was granted over ten years

ago. The CCAP was adopted in 2017 and was informed by an evidence base which included a Coventry City-Wide Shopping and Centres Study from 2014 [CD3.24].

25. During the intervening period:

- a. There has been a structural shift in high street retail, exacerbated by the Covid-19 pandemic, together with a trend towards city centre living. The detail of that structural shift is explained by Chris Thomas of CBRE in his report (Brown proof, Appendix RB1). More recently, and following the application for outline permission for the Scheme in 2020, the retail market has continued to restructure in response to inflationary pressures whilst the introduction of Use Class E has provided more flexibility for town centre units (Brown Proof, 6.13). These factors mean the requirement for an uplift in retail floor space of 10,000 sqm is out of kilter with the current retail environment and the expectations and demands of those who wish to live and shop in the city centre.
- b. The Salt Lane car park has been constructed in the city centre, close to the Scheme. As Mr Vaughan explained in his oral evidence to the Inquiry, having undertaken surveys to understand the use of the various car parks in the city centre, he is confident that the construction of the Salt Lane car park means that parking which is currently located in the Barracks car park can be redistributed within the existing network. Therefore, there is no need in transport terms for any redevelopment of the CCS area to re-provide the car parking spaces which will be lost as a result of the redevelopment of the Barracks car park. Instead, the focus within the Scheme has instead been on ensuring adequate residential and operational parking spaces are provided, together with electric vehicle charging points and the potential allocation of a number of bays to car clubs to facilitate more sustainable travel and reduce car ownership (Vaughan Proof 3.14 – 3.19). That focus is in accordance with Policy EM7 of the Local Plan [DR 3.9] and other material considerations, namely the Coventry Connected SPD [DR 3.12] and the Air Quality SPD [DR 3.11].

26. It is important to note that neither Mr Brown nor Mr D’Onofrio consider that Policy CC19 is out of date (Brown Proof 6.14; D’Onofrio Proof 4.7). The regeneration objectives of the policy and the majority of its criteria are relevant and appropriate. However, the two aspects of the policy set out above do not reflect the current position in relation to the town centre retail market which has changed in significant, and unexpected, ways following adoption

of the CCAP. With its flexible retail offering and significant residential component, the Scheme provides a modern solution to the issues which Policy CC19 seeks to address. It follows that the Scheme complies with Policy CC19 when it is read as a whole, and indeed there is compliance with the development plan when taken as a whole.

27. As we have suggested above, this substantial compliance is further bolstered by other development plan policies and material considerations. Mr Brown explained in his evidence that the housing policies contained within the Local Plan are particularly relevant to the Scheme, with the delivery of 1,500 residential units enabling Coventry to meet over 6% of its minimum housing target specified in Policy H1 of the Local Plan (Brown Proof 6.22). Whilst Policy H6 expects developments of 25 dwellings or more to provide 25% of new dwellings as affordable homes, the potential for up to 20% affordable housing, secured by the viability review mechanism in the s106 agreement accompanying the Planning Permissions (D’Onofrio, 5.8-5.11) represents a significant additional benefit and an improvement to the Scheme following the grant of outline planning permission in January 2022. That is particularly the case given the persistent under-supply of affordable housing in Coventry, with the Council falling short of its minimum average level of affordable housing provision by almost 100 units per year between 2011 and 2021 (Brown Proof 7.3.3).
28. Finally, the Scheme is strongly supported by the key relevant policies of the NPPF (Brown Proof, Table 6.3). Of these criteria, we draw particular attention to the Scheme’s residential element, its highly sustainable city centre location, its sensitive approach to heritage assets² (particularly concerning the enhancements to the setting of Coventry Market and the relocation of the Three Tuns mural within the Scheme) and to Mr Maxwell’s evidence concerning the significant amount of work undertaken to ensure the design of the Scheme responds to its surroundings and achieves a design-led regeneration of the CCS.
29. What the NPPF does not require is an assessment of the impact on the vitality and viability of the city centre outside the CCS; that is applicable only to out-of-town retail and leisure developments (Brown rebuttal, 1.7 – 1.9). Nonetheless, the regeneration of the CCS will transform the wider city centre, increasing footfall to existing businesses and improving the

² Whilst heritage harm has been recognised, it has been found to be outweighed by both heritage benefits, and the wider substantial public benefits of the Scheme (D’Onofrio Proof 5.5; Brown Proof 7.7).

setting of Coventry Market. It can only be said to enhance the overall vitality and viability of the city centre as a whole.

30. In conclusion, therefore, there is a clear basis for the Inspector to conclude that the Scheme is in accordance with the development plan for the Council's area. In reaching that conclusion, the Inspector can give great weight to the agreement of two planners, one engaged by SPRL and the other a Principal Town Planner at the LPA, as to the planning basis for the Scheme.

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

31. Mr Brown explained in his written and oral evidence to the Inquiry that the Scheme makes a substantial contribution to the economic, social and environmental well-being of the Council's area (Brown proof, section 7). It is worth briefly putting these benefits into context.

32. The overall state and condition of the CCS has already been described. It is characterised by high levels of vacancy rates; as at Q2 2022, the vacancy rate is around 26%, which is significantly higher than the 18% average for Coventry city centre (Lawes Rebuttal, 3.13). At present, Coventry is identified in Property Market Information Service ("PROMIS") reports as having below average sales volumes and quality of retail provision: it is currently ranked 70th in the UK in terms of its non-food retail score (Markwell proof 3.23-3.27). That ranking is at odds with the size and affluence of the potential shopping population in the area. And as has already been explained, the CCS lacks a residential population, leading to it feeling empty and uninviting at night.

33. In his oral evidence to the Inquiry, Mr Brown drew attention to the following key benefits of the Scheme:

- a. Economic: 180 full time equivalent construction jobs are expected to be created per year over a 10-year construction period, with 47 of these jobs envisaged to be taken up by the local community within the Council's area, and up to 1,090 full time jobs on completion. That is significant when compared to the relatively low levels of economic activity within the working age population at present. As Mr Fancy explained in his oral evidence, the Hill Group intend to establish a regional presence in Coventry which further (indirectly) bolsters the potential for the Scheme to

provide employment benefits to the Council's area. In addition, the introduction of up to 3,660 new residents will improve vitality and viability of the city centre, increasing spending power and attracting further footfall within the area.

- b. Social: The Scheme provides new homes, in a mix of tenures, within a sustainable city centre location. The affordable housing element of the Scheme is being committed and will be secured by the DA variations and reflected in the S106 viability review. Further, the design of the open space contributes to the overall well-being of those who live, work and play in the CCS area, both by providing leisure space and improving surveillance and public perceptions of the area.
- c. Environmental: The Scheme will overall enhance the setting of designated heritage assets, particularly Coventry Market and the Grade II listed NatWest Bank building. The Market stands to benefit in particular from the design of the Scheme, where enhancements will be achieved by situating a new public square adjacent to the Market, increasing its prominence when compared to its relatively hidden location at present. More generally, the Scheme will renew an often poor quality urban environment, make efficient use of excellently located but currently under-utilised brownfield land dominated by low-rise buildings, and deliver opportunities for a substantial greening of the environment with associated gains in biodiversity.

34. It is clear from the evidence presented to the Inquiry that Scheme offers a significant overall improvement to the economic, social and environmental well-being of the Council's area. This is an opportunity to achieve a transformation of an important part of the Council's area.

Achieving the purposes by any other means within a reasonable timeframe

The Council's approach

35. Paragraph 17 of the CPO Guidance provides:

Undertaking negotiations in parallel with preparing and making a compulsory purchase order can help to build a good working relationship with those whose interests are affected by showing that the authority is willing to be open and to treat their concerns with respect. This includes statutory undertakers and similar bodies as well as private individuals and businesses. Such negotiations can then help to save time

at the formal objection stage by minimising the fear that can arise from misunderstandings.

Talking to landowners will also assist the acquiring authority to understand more about the land it seeks to acquire and any physical or legal impediments to development that may exist. It may also help in identifying what measures can be taken to mitigate the effects of the scheme on landowners and neighbours, thereby reducing the cost of a scheme. Acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where land ownership is unknown or in question.

36. The Council has taken a proactive approach to negotiations throughout the CPO process in tandem with the making of the CPO and, indeed, the course of this Inquiry. Mr Lawes set out in his written evidence the status of negotiations for acquisition of the 12 occupational leasehold interests which cannot be brought to an end by the Council as landlord (Lawes Proof, Table GL3). As Mr Lawes explained in his oral evidence to the Inquiry, the Council has reached agreement in relation to four of these interests, whilst two further leaseholders – in relation to the HMV Empire and Catch-22 nightclub – will now remain in occupation. Negotiations are continuing with the remaining six leaseholders.
37. 12 objections were originally received. As Mr Lawes emphasised in his oral evidence to the Inquiry, the low number of objections reflect the thorough, comprehensive and successful way in which the Council has engaged in the land assembly process. The Council has also sought to engage with objectors to progress discussions and secure the withdrawal of the relevant objections following the making of the CPO. As Mr Lawes emphasised in his oral evidence, the availability of WMCA funding for land acquisition allows the Council to be more flexible than it might otherwise be, which has facilitated the resolution of a significant proportion of the objections.
38. Prior to the Inquiry, the objection made by Coventry Urban Regeneration Ltd was withdrawn. The Council has continued to negotiate with objectors, resulting in the withdrawal of objections from Royal London, Queenhart Ltd, Glamis Estates Ltd, Adult Corporate Entertainment Limited, Unicorn Bars Warwickshire Ltd t/a Catch 22 and Western Power Distribution (East Midlands) plc during the course of the Inquiry.
39. The position for the remaining objectors to the CPO has been set out by Mr Lawes in his oral evidence to the Inquiry and will be considered in detail below. However, the position

in relation to Royal London merits some introductory comment. Royal London's objection to the CPO and the SUOs was withdrawn on the first day of the inquiry, following an agreement being reached between the Council and Royal London. Royal London had prepared proofs of evidence from four witnesses, and rebuttals had been produced by Royal London and the Council's witnesses in relation to the relevant matters forming part of Royal London objection. In the event, given its withdrawal of its objection and withdrawal from the Inquiry, Royal London did not call its witnesses or cross-examine the Council's witnesses. The Council's response to the key matters raised by Royal London is set out in its Opening Submissions, and in its rebuttal evidence. In light of the withdrawal of Royal London's objection they are not addressed comprehensively here.

40. None of the remaining objectors appeared at the Inquiry, and the status of negotiations in relation to each of them is outlined below. Mr Lawes has also provided a summary of the status of negotiations to the Inquiry as at today's date.

A Sushi Ltd

41. The objector owns a leasehold interest over the ground and first floor of 43 Hertford Street. The objection raised issues concerning the financial viability of the Scheme, the diversity of the Order Lands (with reference to the use of Hertford Street by businesses serving the ethnic community) and a request for the buildings at the western side of Hertford Street to be excluded from the CPO. These matters have been addressed in the evidence of Mr Morton and Mr Lawes. The proprietor continues to look for alternative premises, and the Council (via Mr Lawes) is in regular contact and has put various offers to the proprietor.

Boots UK Limited

42. The properties which are demised to Boots UK Limited, being 49 The Precinct and 2-8 Market Way (the latter of which is let to third party occupiers), are subject to the acquisition of rights only. In this objection, concerns were raised about the impact of the CPO on (inter alia) the rights relating to access and servicing. The terms of deed of undertaking which seeks to provide comfort in relation to these rights has been agreed and it is expected that the objection will be resolved on completion of that undertaking.

New Look Retailers Ltd

43. Like Boots, New Look Retailers Ltd at 91 – 101 Lower Precinct are included in the CPO in relation to the acquisition of rights only. Again, the objector raised concerns about the

impact of the new rights granted by the scheme. The terms of deed of undertaking which seeks to provide comfort in relation to these rights has been agreed and it is expected that the objection will be resolved on completion of that undertaking.

Poundland Ltd

44. The position of Poundland Limited, at 10-12 Market Way and 63 Hertford Street, is essentially the same as Boots and New Look. Again, the objector raised concerns about the impact of the new rights granted by the scheme. The terms of deed of undertaking which seeks to provide comfort in relation to these rights has been agreed and it is expected that the objection will be resolved on completion of that undertaking.

Warren James

45. The objector, which holds a leasehold interest in 9 Shelton Square, raised concerns about whether the CPO is in the best interests of the occupiers of the city centre and considered that the Council's ownership has caused the city centre to become run-down. The objector's lease is for a term of three years from 7 July 2021 and can be determined by three months' notice from either party at any time after 1 July 2022. The Council intends to exercise this right (if required) at the appropriate time, such that it is not necessary to acquire this interest by compulsory purchase.

Financial viability

46. As explained in opening, the CPO Guidance indicates that the Inspector should consider the *potential* viability of the Scheme in the context of an 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 that the necessary resources are "*likely* to be available" (para 13). The CPO Guidance expressly 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". In addressing these issues we address the following points:

- a. The contractual arrangements for Scheme delivery
- b. The availability of public sector funding
- c. The developer's route to delivery

- d. The Council's expert evidence in respect of the financial deliverability of the Scheme
- e. The experience and commitment of the developer to the Scheme.

(i) *Contractual arrangements*

47. The delivery of the Scheme is secured through the DA. The DA was entered into in 2019 between the Council and SPRL. Modifications to the DA are in the process of being agreed and are expected to be concluded soon. As Mr Morton explained in his written and oral evidence, the DA is subject to a series of conditions. Once those conditions are fulfilled, the DA establishes a timeframe for:

- a. Demolition of the existing buildings; then
- b. Delivery of blocks A1, A2, B, C and E subject to longstop dates which reflect twice the estimated construction period; finally
- c. Delivery of block D thereafter, again subject to longstop dates.

48. The overall DA programme extends to 10 years. If the developer (SPRL) fails to meet the longstop dates it will lose the right to continue with the development. As Mr Morton explained in oral evidence, there is a considerable commercial incentive to build out the whole development in accordance with the DA, not least because Blocks C and D are identified as giving a strong commercial return.

49. The conditions applicable to the DA are considered in Mr Morton's proof at paragraph 5.1. As he explained orally, these conditions are entirely conventional and as would be expected in a contract of this nature. The satisfaction of those conditions is well-advanced:

- a. Ground survey condition. As Mr Fancy explained, the developer has already considerably advanced its understanding of the ground conditions, including through completing ground-penetrating radar surveys. There is no indication that there are any adverse conditions which would lead to a material variation in costs.
- b. Planning condition. Again this position is well-advanced. Outline planning permission has been granted, and a further permission under s. 73 TCPA was granted on 9 January 2022. The developer's team are working on the first reserved matters submission, which is expected to be made in mid-April. Mr D'Onofrio

confirmed that the Council was expecting to receive that application in that timescale.

- c. Highways condition. This condition will be satisfied if the SUOs are confirmed.
- d. Site assembly condition. This condition will be satisfied if the CPO is confirmed and the land/rights vested thereunder.
- e. Funding condition. This condition has been satisfied.
- f. Funding security condition. This condition has been satisfied.
- g. Viability condition. As explained below, a viable scheme is being progressed and the developer has indicated an intention to waive the viability condition and proceed with the Scheme on the current assessment of viability.

50. The Inspector can therefore conclude that there are robust, and conventional, contractual arrangements between the Council and the developer to ensure the delivery of the Scheme. In this respect there is strong likelihood of delivery. The DA is subject to amendments to reflect the refined Scheme, the principle of which was agreed by the Council's Cabinet on 15 November 2022 (CD 3.36, p 6). The Council has confirmed, through the letter from its Director (Property Services & Development) (Morton Rebuttal App AM5), "from the Council's perspective that the key terms are agreed and are now with the lawyers for documenting" and that the variation is anticipated "within a matter of weeks".

(ii) The availability of public sector funding

51. The delivery of the Scheme depends on public sector funding. As the evidence to the Inquiry makes clear, the extent of that funding has been agreed.

52. First, the WMCA has agreed to funding of up to £98.8m and a grant agreement has been in place since February 2018 (Morton Proof paragraph 7.1). The commitment of WMCA is made clear by the fact that a proportion of that funding has already been utilised – c. £15m to date. The grant agreement needs to be updated to reflect the evolution of the Scheme, but the principal of that change has been approved by the WMCA's Investment Committee and Investment Board, and the documentation of that change is at an advanced stage (Morton 7.7-8). Andy Street, the Mayor of the West Midlands, makes clear in his letter to the Inquiry that (Morton Rebuttal App AM4):

The scheme's delivery is a key priority for the [WMCA] which is evidenced by the significant grant support being provided by the WMCA. Our commitment to the Scheme is further evidenced by a formal set of Decisions being taken by the WMCA's Investment Board on the 17th October 2022 which has authorised the restructuring of elements of the grant funding to further optimise and support Scheme delivery. This is being captured through formal Variations to the Grant Agreement and I am advised that all key commercial terms are agreed between the City Council and the WMCA.

53. Second, the Council has agreed to provide funding support for the Scheme of up to £32.75m. This decision was made by the Full Council³ on 6 December 2022 (CD 3.42). This funding acts as a viability contribution under the terms of the DA.

54. Accordingly, the Inspector can record that these two sources of public funding are agreed.

(c) *The developer's route to delivery*

55. The DA requires SPRL to identify an approved funder. It also required SPRL to identify any need for a viability contribution from the Council. As described above, such a contribution has been agreed by the Full Council following the acceptance of the developer's appraisal of the Scheme.

56. The developer's funding of the Scheme is summarised by Mr Morton (Proof 8.1) and explained in more detail by Mr Parker. The Inspector can record as follows:

- a. HHL will provide equity to fund at least 40% of the working capital required for the Scheme. It is in a very strong financial position to do so. As Mr Parker (a Chartered Accountant and Finance Director of HRL) explained, the Hill Group is financially robust and well capitalised, being the second largest privately owned housebuilder in the UK. The Group's balance sheet sits at over £300m, including a net cash position of £100m. The Group reinvests the significant majority of its annual profits back into the business. The Council has undertaken a review of HHL's financial standing and is satisfied that it can fulfil its obligations under the DA and related Funding Security Deed (Morton Proof, 8.6);

³ Following a recommendation to that effect from the Cabinet on 15 November 2022 (CD 3.36).

- b. HHL has access to the RCF, which is currently unutilised, and provides funding of up to £220m. This can provide sufficient working capital for the Scheme to meet further funding requirements as necessary during the lifetime of the project;
- c. Together these sources of funding, when taken with the public sector funding referred to above, are sufficient to demonstrate that the Scheme will be fully funded to completion.

57. Through Mr Morton and Mr Parker, the Inquiry also heard that the rate of interest on the funding reflects (a) an agreed 5% interest charge on equity and (b) an assumed 7% interest rate on the RCF, which assumes that base rates remain at their predicted peak for the entirety of the period when funding is required. Accordingly the cost of funding has been fully (and likely conservatively) accounted for.

58. These sources of funding feed through into the developer's appraisal of the Scheme. This is a bespoke appraisal which has been the subject of extensive consideration and dialogue with the Council, as Mr Morton explained. The key points are these:

- a. Private residential sales are assumed to generate £191.9m. Mr Parker explains why he considers this assumption to be robust (Proof 7.6-8). Further, in his Rebuttal, Mr Parker exhibits confirmation from Savills' Head of Residential Sales and Investment to confirm its support for the sales values (TP1); and from Hill's Group Sales and Marketing Director that the figures are "appropriate and justified" (TP2). The figures are also supported by comparable transactions (see e.g. Mr Parker's Rebuttal at para 2.8);
- b. Affordable housing is assumed to generate £62.5m. As Mr Fancy and Mr Parker explained, the developer has already engaged with and received tenders from Registered Providers, and has now shortlisted two of them. The value of the affordable housing is based on that process. As HRL's strategic advisor on affordable housing matters explains in his letter (Mr Parker's Rebuttal, App TP3), the values assumed are consistent with that which would be expected and are supported by those (confidential) offers;

- c. Build to Rent is assumed to generate £112.2m⁴. Again, this figure is supported by advice from Savills' Head of Residential Sales and Investment (TP1) who confirms that the figures relied upon are reasonable;
- d. Commercial units are assumed to generate £31.3m⁵. These figures are derived from the advice of SPG. As Mr Markwell explained, SPG has a long track record in commercial lettings, in both Coventry and elsewhere. Mr Markwell's own experience in the field spans over 35 years;
- e. The construction costs (£408.3m) are derived from Hill Partnerships Limited, which is part of the Hill group and the intended contractor for the Scheme. As Mr Parker explained, HPL constructs c. 2,000 homes a year (Proof 7.17). Mr Fancy – who himself has vast experience in the construction industry – explained that the pricing of the Scheme involved a careful process including contractor engagement. The Group Chief Executive has interrogated the costs involved. This is a real-world pricing of the construction costs of the Scheme;
- f. Planning/design fees (£6m) and sales and marketing costs (£8m) are based on typical allowances;
- g. Finance costs (£3.8m) reflect the funding arrangements described above. These costs reflect the injection of public sector funding, which can be utilised for early works (thus reducing the time over which other sources of funding need to be drawn down), the actual finance rates summarised above, and the cashflow required through the development of the Scheme (see e.g. Mr Parker's Rebuttal, paragraph 2.13).

59. Based on these figures, the profit on net development costs is some £43.5m, or 12.3%. SPRL has explained that it intends to proceed with the Scheme on the basis of this level of return, and the Chief Executive and principal shareholder of the Hill Group has made clear his personal commitment to the Scheme. On this basis, the Inspector can record that there is a reasonable prospect of the Scheme proceeding.

(d) The Council's expert evidence in respect of the financial deliverability of the Scheme

⁴ Mr Fourt took the view that a higher value could be attributed to BTR sales. See e.g. Parker Rebuttal Table 1.

⁵ Mr Fourt took the view that a higher value could be attributed to the commercial space. See e.g. Parker Rebuttal Table 1.

60. The developer's appraisal has been the subject of careful examination by the Council, through Mr Morton. Mr Morton is a Chartered Surveyor and a specialist in real estate development appraisal and the assessment of development feasibility. He has worked on the Scheme since 2014 and possesses, on behalf of the Council, a clear and detailed knowledge of the viability considerations applying to it. His ultimate conclusion – that the developer has a credible and demonstrable basis of funding the Scheme and there is a reasonable prospect that the Scheme will proceed – has informed the Council's decision to support the Scheme both through this CPO and through the provision of £32.75m in grant funding.
61. In summary, Mr Morton and his team have carefully scrutinised each of the inputs to the developer's appraisal, and sought further specialist advice where necessary. He has then replicated the developer's appraisal in standard development appraisal software (Argus) to ensure that the developer's own appraisal is sound. His conclusion is that it is a sound basis upon which to proceed. The inputs to the appraisal have been verified in the following ways:
- a. Private sales values have been confirmed to be reasonable based on comparable sales and a reasonable "regeneration premium" (Rebuttal 2.27);
 - b. BTR values are at the lower end of what Mr Morton would have expected (Proof 8.19(c));
 - c. Affordable housing values are based on actual market data, namely tenders from Registered Providers (Proof 8.19(d)) and verification by Deloitte's affordable housing team;
 - d. Retail rents are reasonable and consistent with external advice received from KLM Real Estate (Proof App AM3);
 - e. Construction costs have been verified by specialist costs consultants, WT (Proof App AM2);
 - f. Design and marketing costs are in line with expectations (Proof 8.19(h));
 - g. The finance costs have been verified through input from the head of Deloitte's debt advisory business (Proof 8.2).

62. Mr Morton's assessment is accordingly thorough and robust, drawing on a wealth of expertise. It is important to recall that his advice to the Council has worked "both ways" since he has been required to confirm that the grant contribution is required (i.e. that the developer has not *understated* the viability of the Scheme) and that the Scheme has a reasonable prospect of delivery (i.e. that the developer has not *overstated* the viability of the Scheme). Thus, the Inspector can properly give great weight to Mr Morton's analysis, and adopt his conclusion that there is a reasonable prospect of delivery.

(e) *Developer's commitment to the Scheme*

63. Finally, as noted above the current and verified appraisal for the Scheme shows a profit on net costs of 12.3%, which is less than the 16.5% in the DA, though that is subject to developer waiver. Mr Morton explained in oral evidence that the 16.5% figure was agreed before the Scheme and had been substantially de-risked through the planning process. The developer has clearly indicated to the Inquiry through Mr Parker that it intends to proceed at this level of profit, and will waive the viability condition.

64. Mr Morton explained why this was a sound commercial decision for the developer. The profit on costs is not the only relevant measure. Hill will also receive a return on its reinvested equity, and will profit from the construction contract being granted to HPL. Overall, this represents a commercially attractive deal, and one to which Hill is committed.

65. That commitment is further bolstered by Hill's clear commitment to the Scheme. Before the DA becomes unconditional, Hill will have invested £8m in the Scheme. It has assembled a substantial internal and external team – totalling now over 70 people – to progress the Scheme. It has appointed Allies and Morrison to progress the Masterplan, and now the first (and largest) RMA. Mr Brown has been instructed to make that RMA application in mid-April.

66. The commitment and enthusiasm of Hill for the Scheme was palpable in Mr Fancy's evidence. He is getting ready to start on site in the autumn of this year. He has moved key and experienced personnel from his London office to Coventry to deliver the Scheme. He has engaged with local suppliers, as well as existing occupiers such as the market traders. He will start to recruit to his team from the local area. Hill – together with its retail-specialist partners in SPG – has the track record to deliver a Scheme of this nature and an unambiguous commitment to do so. SPG as the other partner in SPRL has evidenced a similar commitment through Mr Markwell's evidence.

67. In summary, 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

68. Paragraph 15 of the CPO Guidance 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.*

69. The Council has demonstrated that there are no impediments to delivery of the Scheme.

- a. The Planning Permissions have been granted, with reserved matters applications expected to come forward in mid-April 2023.
- b. As Mr Fancy and Mr Maxwell explained in their evidence, the phasing of the Scheme has been carefully thought through to ensure that there will be no physical impediments to construction of the blocks forming part of the Scheme.
- c. Mr Vaughan has set out the detailed servicing arrangements which are proposed both for the Scheme and for Coventry Market following completion. Those servicing arrangements have been carefully designed to ensure that the rights of those who use the servicing areas surrounding the Market at present are taken into account and are compatible with the terms of the CPO (Vaughan rebuttal, sections 5,7; Lawes rebuttal, 3.11-3.12). The existing servicing arrangements for the Lower Precinct will be maintained, and a new service yard for the Market will be constructed. As Mr Vaughan confirmed in his oral evidence, he considered that the servicing arrangements represent a robust scenario for the Scheme and that no further mitigation is required.

70. There are no remaining objections which raise any further impediments to the Scheme. Therefore, the Council has provided ample evidence for the Inspector to conclude that there are no impediments to the delivery of the Scheme.

Human rights and Public Sector Equality Duty

71. In addition to the overarching consideration set out above, paragraph 12 of the CPO Guidance provides:

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.

72. The Council has given careful consideration to the human rights implications of the CPO, with particular regard to the risk of interference with affected persons' rights under Article 6 (right to a fair trial) and Article 1 of the First Protocol (right to peaceful enjoyment of possessions). Article 1 is a 'qualified' right, which may be infringed provided certain conditions are satisfied – namely where the deprivation of possessions is “*in the public interest and subject to the conditions provided for by law and by the general principles of international law*”.

73. The CPO has been extensively publicised and consultation has taken place with the community and key stakeholders, as explained by Graeme Lawes (proof, 6.10 and 6.12). All those affected by the CPO have been notified and had the opportunity to submit objections, with the landowners whose objections have not been withdrawn having additionally had the opportunity to be heard at this Inquiry. Those statutory processes are in compliance with Article 6 of the Convention.

74. The CPO will, if confirmed, provide the power to deprive owners and occupiers of the Order Lands of their relevant property/interest. This will be done in accordance with the law and, as Mr Lawes has explained, a rigorous exercise has been undertaken to limit the extent of the Order Lands to the minimum required in order to deliver the Scheme. The interference with private interests to the extent proposed by the CPO is proportionate to the compelling public interest associated with the Scheme, as set out above. Further, those whose interests are acquired under the CPO will be entitled to compensation.

75. Therefore, the Council has had appropriate regard to the human rights implications of the CPO and paragraph 12 of the CPO Guidance is accordingly satisfied.

76. The Council has also carried out an Equalities Impact Assessment to inform its decision to make the CPO. This is set out at CD 1.4 and shows that due regard has been had to the matters set out in s 149 Equality Act 2010.

The SUOs

77. The Council has made three SUOs in relation to highways within the Order Lands.

- a. Stopping Up of Rover Road and Queen Victoria Road (part) (Draft Order Ref: WM5256) [DR4.2]
- b. Stopping Up of Warwick Row (part) (Draft Order Ref: WM5257) [DR4.3]
- c. Stopping Up of Queen Victoria Road (part) (Draft Order Ref: WM5258) [DR4.1]

78. The relevant 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.*

79. As Russell Vaughan has set out in his written and oral evidence, the SUOs are necessary to allow the Scheme to be developed and to allow rationalisation of the highway and public realm in accordance with the Planning Permissions (Vaughan Proof, section 7).

- a. The stopping up of Rover Road and Queen Victoria Road (in part) (ref WM5256) is necessary to allow Block A1 to be constructed. Additionally, stopping up is necessary to rationalise the existing highway following the reconfiguration of the area, ensuring the back of the highway aligns with the Lower Precinct Car Park to provide a continuously straight frontage.
- b. The stopping up of Warwick Row (in part) (ref WM5257) is necessary to allow Block C to be constructed. Additionally, stopping up is necessary to rationalise the public realm by fully integrating the pedestrianised area with the public realm improvements which surround the area.

- c. The stopping up of Queen Victoria Road (in part) (ref: WM5258) is necessary to allow Block D to be constructed and to allow a continuous frontage to be provided along Queen Victoria Road.

- 80. Liam D’Onofrio confirmed in his written and oral evidence that the Council, as LPA and as Highways Authority, is content that the SUOs are necessary for the Scheme to be implemented (D’Onofrio Proof, 7.3).
- 81. Six parties submitted objections to the SUOs (Lawes Proof, section 8). In his oral evidence, Mr Vaughan confirmed that the Council is currently negotiating wayleave/asset protection agreements with Cadent Gas and Virgin Media and expects the objections to be withdrawn when those agreements are concluded.
- 82. The objections on behalf of the Council and Coventry Urban Regeneration Limited were withdrawn prior to commencement of the Inquiry, whilst Royal London withdrew their objection to the SUOs together with their objection to the CPO on the first day of the Inquiry. In his oral evidence, Mr Lawes provided further details concerning engagement with Mr Rafakat Hussain, the remaining objector, who operates 8 Limbs Muay Martial Arts at 40 City Arcade. He explained that concerted efforts had been made to contact Mr Hussain by attending the relevant property and calling the telephone number advertised at the property. However, these efforts have proved unsuccessful. Consequently, no agreement has been reached and the objection remains outstanding. Mr Lawes clarified the objection necessarily falls away because the Council as landlord intends to acquire Mr Hussain’s leasehold interest, which is located within the Order Lands, by terminating the lease at the requisite point. Thus by the time that the SUOs take effect, Mr Hussain will no longer occupy the premises.
- 83. Accordingly, the Council invites the Inspector to recommend that the SUOs are confirmed. The statutory tests are satisfied and there is no reason to believe that the objections will not be resolved.

Conclusion

- 84. The Scheme is in accordance with the statutory development plan, which seeks to achieve regeneration of the CCS area with a focus on achieving a vibrant city centre with a mix of uses. It is also in accordance with national policy. These positive attributes of the Scheme are reflected in the grant of the Planning Permissions, most recently the permission under

s.73 TCPA 1990. Further, there are no material planning or other impediments likely to hinder progress of the Scheme.

85. There is no realistic prospect of the benefits of the Scheme being realised without compulsory purchase. The Council owns 99% of the freehold interests in the Order Lands and is therefore the party which is best-positioned to achieve their redevelopment. No other individual landowner has the resources or ability to achieve the necessary regeneration. But the Council cannot do so until it has acquired the remaining 1% of the freehold land, together with the long leasehold interests which it cannot terminate as landlord.
86. The Scheme has evolved following the appointment of SPG as the Council's development partner. That is understandable, given the significant – and unexpected – changes in the retail environment since 2017 (as per evidence of Brown, Markwell and Morton) and the involvement of HHL as approved funder under the DA. That Scheme evolution has been one of overall improvement, as explained by Mr Maxwell. The Scheme has been the subject of three planning applications during its evolution, resulting in the Planning Permissions and, as Mr Fancy, Mr Parker, Mr Markwell and Mr Morton explained in their evidence, has been thoroughly considered, tested and de-risked at each stage. Phasing has been carefully considered and reflected in the DA, with preparatory work having already started on-site. The Scheme is capable of delivery within a reasonable time scale.
87. There is no reason to doubt that the Scheme is financially viable. Mr Morton has explained how the developer's viability assessment has been independently analysed, whilst Mr Parker and Mr Fancy have provided details concerning the values which underpinned that assessment, supported by expert advisory evidence. Further, the funding required for the Scheme is already in place. In HHL, the Scheme has a committed funder with significant cash reserves and access to further finance via the RCF. The WMCA have provided funding for the preliminary stages of the development, including land acquisition, and have resolved to enter into the necessary amendments to the grant agreement to reflect the evolution of the Scheme. The Council has similarly approved the further funding required following the viability gap assessment process under the DA. The affordable housing and build to rent components provide additional forward and early cash flow funding. This further assists HHL's funding position and will ensure a steady cash flow as the development of the Scheme progresses. Mr Parker explained the strong financial confidence in the delivery of the Scheme in his evidence.

88. The Council has made considerable efforts to acquire the Order Lands by agreement, and the CPO has progressed alongside negotiations which will continue following close of the Inquiry. The efforts of the Council are recognised by the withdrawal of several objections prior to and during the course of the Inquiry and there are now five objections to the CPO remaining. Most of these have the potential for resolution and that potential is enhanced by the funding already available from WMCA. As Mr Lawes emphasised in his evidence before the Inquiry, in his view the Council could not have done any more to resolve the outstanding objections by this stage. It has made demonstrable, consistent and comprehensive efforts to acquire the relevant interests.
89. The public interest in the Scheme is clearly compelling. It provides an opportunity to regenerate the CCS area as part of a comprehensive redevelopment which will transform Coventry as a place to live, work and play. The private rights affected by the CPO – which represent a very small proportion of the CCS area – must be balanced with that significant public interest. That balance is a fair one and means the implementation of the scheme underlying the CPO justifies the interference with the human rights of those with an interest in the Order Lands.
90. Therefore, there is a compelling case in the public interest for the CPO to be confirmed, there are no material impediments to implementation of the Scheme, and there is clearly a reasonable prospect of the Scheme being delivered within a reasonable timescale.
91. As far as the SUOs are concerned, the statutory tests are met. The Council expects shortly to conclude the wayleave agreements with the two objecting utilities providers which will allow the relevant objections to be resolved. Whilst one objection remains outstanding, the Council has not been able to contact the objector, despite considerable efforts, and will have the power (by virtue of the CPO) and the right (as landlord under the lease) to terminate the relevant lease where required.
92. For all these reasons, the Council invites the Inspector to confirm the CPO and recommend that the SUOs are confirmed by the Secretary of State.

Richard Turney

Rebecca Sage

Landmark Chambers

20 January 2023

Abbreviations

The following abbreviations are used in these Closing Submissions:

<i>ALA 1981</i>	Acquisition of Land Act 1981
<i>Approved Funder/HHL</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>HPL</i>	Hill Partnerships Limited, the construction arm of the Hill Group
<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>NPPF</i>	National Planning Policy Framework [DR3.8]
<i>Order Lands</i>	The properties included within the Order
<i>Planning Permissions</i>	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].
<i>RCF</i>	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.
<i>Royal London</i>	Royal London Mutual Insurance Society Ltd
<i>SPG</i>	Shearer Property Group Limited, the Council’s development partner for the Scheme
<i>SPRL</i>	Shearer Property Regen Limited, the special purpose vehicle established to deliver the Scheme
<i>SUOs</i>	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]
<i>s. 106</i>	The Scheme s. 106 Agreement dated 26 January 2022 [DR3.2(b)] and varied on 13 January 2023
<i>Scheme</i>	The Scheme for the redevelopment of the Order Lands pursuant to the Planning Permissions
<i>Secretary of State</i>	The Secretary of State for Levelling Up, Housing and Communities
<i>TCPA</i>	Town & Country Planning Act 1990
<i>WMCA</i>	West Midlands Combined Authority

ANNEX TO CLOSING SUBMISSIONS

Further relevant statutory provisions

Section 19 ALA 1981

19.— Commons, open spaces etc.

(1) In so far as a compulsory purchase order authorises the purchase of any land forming part of a common, open space or fuel or field garden allotment, the order shall be subject to special parliamentary procedure unless the Secretary of State is satisfied—

(a) that there has been or will be given in exchange for such land, other land, not being less in area and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that the land given in exchange has been or will be vested in the persons in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attach to the land purchased, or

(aa) that the land is being purchased in order to secure its preservation or improve its management.

(b) that the land does not exceed 250 square yards in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway and that the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public,

and certifies accordingly.

(2) Where it is proposed to give a certificate under this section, the Secretary of State shall direct the acquiring authority to give public notice of his intention so to do, and—

(a) after affording opportunity to all persons interested to make representations and objections in relation thereto, and

(b) after causing a public local inquiry to be held in any case where it appears to him to be expedient so to do, having regard to any representations or objections made,

the Secretary of State may, after considering any representations and objections made and, if an inquiry has been held, the report of the person who held the inquiry, give the certificate.

(2A) Notice under subsection (2) above shall be given in such form and manner as the Secretary of State may direct.

(3) A compulsory purchase order may provide for—

- (a) vesting land given in exchange as mentioned in Subsection (1) above in the persons, and subject to the rights, trusts and incidents, therein mentioned, and
- (b) discharging the land purchased from all rights, trusts and incidents to which it was previously subject

except where the Secretary of State has given a certificate under subsection (1)(aa) above.

(4) In this section—

“common” includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green,

“fuel or field garden allotment” means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act,

“open space” means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground.