

**THE METROPOLITAN BOROUGH OF SOLIHULL  
(SHIRLEY TOWN CENTRE REDEVELOPMENT)  
COMPULSORY PURCHASE ORDER 2007**

**STATEMENT OF THE COUNCIL'S  
REASONS FOR MAKING THE ORDER**

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## **1. Introduction**

- 1.1 Solihull Metropolitan Borough Council (“**the Council**”) has made the Metropolitan Borough of Solihull (Shirley Town Centre Redevelopment) Compulsory Purchase Order 2007 (“**the Order**”) which it has submitted to the Secretary of State for confirmation.
- 1.2 The Order has been made to enable construction of a mixed-use redevelopment scheme within Shirley town centre, known as Parkgate (“**the Scheme**”). The Scheme is being promoted by the Council’s development partner, Shirley Advance LLP (“**Shirley Advance**”). The Scheme comprises a mixed-use development comprising an anchor foodstore, non-food retail units, basement car parking, 201 apartments (including 55 retirement living apartments), footways, service areas, revised highway junctions, new access arrangements, landscaping works to Shirley Park, demolition of properties and change of use of 63 Haslucks Green Road to B1 offices.
- 1.3 Shirley town centre is currently the second largest shopping centre in the Borough in terms of retail floorspace and it functions to provide retail and other facilities for its immediate catchment area. Over the past decade the role of the centre has been influenced by strong competition from Solihull town centre and from out-of-centre retail parks and foodstores located adjacent, or near, the A34 Stratford Road. Furthermore, increasing levels of traffic on the A34 have had an increasingly detrimental effect on its shopping environment. The Stratford Road corridor in Shirley is a ribbon development with no retail depth beyond the frontage. There is no recognisable centre to the town; car parking is fragmented and linkage to Shirley Park is poor.
- 1.4 The proposed redevelopment of Shirley town centre has been a long-standing aspiration of the Council. In the early 1990’s, the Council had growing concern that Shirley Town Centre was in decline. This position was further heightened by pressure from out of or edge of town development. This led to the Heart of Shirley concept and public engagement during the late 1990’s and, in turn, to the inclusion of a proposal for Shirley Town Centre in the Council’s Adopted Unitary Development Plan (“**UDP**”).
- 1.5 The Council and Shirley Advance have entered into a conditional Development Agreement which requires Shirley Advance to bring forward a scheme for redevelopment of Shirley town centre in order to deliver this UDP proposal. Shirley Advance has consequently applied for and obtained planning permission for the Scheme.
- 1.6 Implementation of the Scheme will bring economic, social and environmental benefits through the regeneration of the town centre. In particular, the Scheme will provide:
  - Improved shopping facilities through the introduction of a food-based anchor store and the additional non-food retail accommodation, thereby improving Shirley’s competitiveness within the regional retail hierarchy and enhancing the town’s overall prosperity and attraction;

- Additional residential accommodation including sheltered housing for the elderly and an element of affordable housing provided by housing associations;
- Improvements to Shirley Park with sympathetic integration and better links between the park and the town centre;
- New short stay public car parking for all visitors to Shirley arranged in a manner conducive to the safety and comfort of users and incorporating facilities for people with disabilities and for families;
- Comprehensive remodelling and redevelopment of the immediate locality and its integration within the town centre as a whole; and
- Raised profile of the town centre by adding to and complementing the existing retail structure through the provision of a retail arcade containing units shops commensurate with modern retailers' requirements.

1.7 Although the Council and Shirley Advance between them own the freehold interest in much of the site, implementation of the Scheme requires the acquisition of various land and property interests. Although Shirley Advance has endeavoured to acquire the necessary interests by negotiation, it has not been possible to reach agreement with all of the parties affected.

1.8 Following a request from Shirley Advance to make a compulsory purchase order, reports were presented to the Council's Cabinet on 21<sup>st</sup> December 2006 and 21<sup>st</sup> June 2007. In accordance with its powers in Section 226 (1) (a) of the Town and Country Planning Act 1990 (as amended by the Planning & Compulsory Purchase Act 2004) and in Section 13 of the Local Government (Miscellaneous Provisions) Act 1976, Cabinet resolved to make a compulsory purchase order. The Council has consequently made the Order in order to secure the outstanding interests ("the Order Land") required for the purpose of implementing the Scheme.

## **2. Location and Description of the Order Land**

2.1 The Order Land, comprising some 2.832 hectares, is located in Shirley, Solihull, adjacent to the boundary with Hall Green, Birmingham. The site falls mainly in the Shirley Town centre boundary as defined in the UDP. The Order Land is more specifically described in the schedule of interests accompanying the Order and is identified on the related Order Map.

2.2 The Order Land is bounded by the A34 Stratford Road to the East, Haslucks Green Road to the North and North West and Shirley Park to the South and South West. The area has a mix of uses including retail and offices with associated servicing space, community buildings, surface car park, public conveniences, industrial and commercial buildings together with the site of the former Territorial Army buildings.

2.3 The Order Land generally comprises the following land and property:-

- Access way, car park and footway to the rear and south of The Saracen's Head Hotel, Stratford Road.

- Meeting hall at 188a Stratford Road occupied by the Solihull Christian Fellowship to the rear of 192 to 206 (evens) Stratford Road.
- Meeting hall and car park area occupied by 1<sup>st</sup> Shirley Scout Group to the rear of 188a Stratford Road.
- Club, car park and access way used by the Shirley (Warwickshire) Royal British Legion known as 186 Stratford Road, to the rear of Westminster House, 188 and 190 Stratford Road.
- Surface public car park and public conveniences to the rear of 174 to 184 (evens) Stratford Road.
- Industrial unit and storage area to the rear of 162 to 172 (evens) Stratford Road.
- Residential property at 67 Haslucks Green Road.
- Demolished building site formerly occupied by the Territorial Army, used as storage, east of Haslucks Green Road.
- Part of the highway off Haslucks Green Road to the rear of 100-122 Stratford Road.
- Building and access way to rear of Shirley Baptist Church, Stratford Road.
- Service yard and overgrown wasteland to the rear of Shirley Baptist Church, Stratford Road.
- Service yard to the rear of 152 Stratford Road.
- Part of the public highway to the rear of 152 Stratford Road.
- Part of the service road to the rear of 154 to 160 (evens) Stratford Road.
- Part of the public highway to the north and west of 162-172 Stratford Road.
- Part of the public highway and service yard to the rear of 162 to 170 Stratford Road.
- Service Yard to the rear of 172 Stratford Road.
- Side access way to the south east of 172 Stratford Road and part of public highway known as Stratford Road.
- Part of public highway to the rear of 174 to 184 (evens) Stratford Road.
- Retail shops and service yard known as 174 to 178 (evens) Stratford Road occupied by Midlands Co-Operative Society and part of public highway known as Stratford Road, east of the premises.

- Retail shops, offices above and service yard known as 180 to 184 (evens) Stratford Road, occupied by Fill the Shoe, Going Places, Staybrite Windows and Richard Ludlow Solicitor and part of the public highway known as Stratford Road, east of the premises.
- Commercial building with offices above known as Westminster House, service yard, car park access road known as 186 to 190 (evens) Stratford Road together with advertisement hoardings to the east part of Stratford Road.

2.4 The Order Land also includes other land over which rights are needed namely the right to enter on the land referred to below in order to carry out works for and in connection with the construction of the Scheme including in each case the following works and rights:

- Land to the front, side and rear of the Saracens Head Public House and Premier Travel Inn, Stratford Road – to construct an acoustic boundary fence and a boundary wall and/or fence, to construct a new exit vehicular egress, to carry out hard and soft landscaping works and to carry out resurfacing and reinstatement works.
- Land forming the access way between 188/190 and 192 Stratford Road – to construct a boundary wall and/or fence, to carry out building and maintenance works on adjacent land and to carry out resurfacing and reinstatement works.
- Service yard and overgrown wasteland to the rear of 146 to 150 (evens) Stratford Road – to construct a boundary wall and/or fence, to carry out building and maintenance works on adjacent land and to carry out resurfacing and reinstatement works.

### **3. The Scheme**

#### Purpose of the Scheme

- 3.1 The Scheme will regenerate the heart of Shirley with new retail, residential and community space and secure an improvement to the relationship between the town centre and adjoining Shirley Park. It will deliver a town centre that no longer turns its back on the park, but will instead provide an attractive and integrated frontage.
- 3.2 The Scheme, as designed, will provide an attractive retail frontage to the existing Stratford Road which will announce arrival to a new town centre for Shirley.

#### General Description of the Scheme

- 3.3 In summary, the Scheme is a mixed use redevelopment comprising:

- Foodstore with a floor area of 7,615 m<sup>2</sup> including mezzanine floor of 1,100 m<sup>2</sup> (but excluding enclosed marshalling area of 705 m<sup>2</sup>).
- Non Food Retail Block H containing retail floor space of 7,526 m<sup>2</sup> on two floors.
- Non Food Retail Block J containing retail floor space of 4,112 m<sup>2</sup> on two floors.
- 5 Residential Blocks A to E mainly 3 and 4 storey, containing 146 apartments.
- Retirement Residential Block F up to 4 storey, with 55 apartments.
- Community uses – First Shirley Scout Group HQ to be retained and extended with other general improvements. The Royal British Legion building to be retained and extended with other general improvements.
- A new café alongside the retained Royal British Legion.
- A town square at the heart of the development with pedestrian links between Stratford Road and Shirley Park.
- A further square to the rear of Shirley Baptist Church, with pedestrian links to Haslucks Green Road and the new town square.
- Car parking for 111 cars at surface level to serve the residential apartments and a basement car park for 650 cars including 50 ‘colleague/staff’ parking spaces, with an area reserved for shopmobility and disabled parking spaces.
- Highway works in the vicinity of the proposed development to improve traffic flow along Stratford Road and in particular at the junction of Stratford Road/Haslucks Green Road/Olton Road.

3.4 The Scheme requires the demolition of certain properties. These include:-

- Meeting hall at 188a Stratford Road (‘The Bridge’).
- Industrial unit to the rear of 162 to 172 (Evens) Stratford Road.
- Residential property at 67 Haslucks Green Road.
- Retail shops and offices above at 174 – 184 (evens) Stratford Road.
- Commercial buildings with offices above at 186 – 190 (evens) Stratford Road.

#### Design Detail of the Scheme

3.5 The Development Agreement between the Council and Shirley Advance sets out the Council’s requirements for “key elements” of the Scheme:

- An anchor foodstore of at least 40,000 sq ft (3,176m<sup>2</sup>) net sales.

- At least 60,000 sq ft (5,574m<sup>2</sup>) of other retail sales.
- Residential units including affordable housing.
- At least 600 public car parking spaces.
- A town square.
- The relocation works (this requires the developer to make appropriate arrangements with the Council's existing tenants).
- Improved pedestrian links from Stratford Road to Shirley Park.
- A new frontage to Stratford Road of at least 45 linear metres.
- Appropriate Shopmobility facilities.
- Public conveniences.

Against this background the design of the Scheme evolved to include:

- a) High quality public spaces and better links with the park. The lines of new pedestrian linkages – Stratford Road, Shirley Park and Haslucks Green Road create an impressive series of new public realm spaces. The streets and squares have been designed to be clearly legible for both the casual and more familiar visitors to the scheme. The entrance to the Scheme from Stratford Road is marked by two symmetrical gateway towers with glass facades and cantilevered feature roof. This gateway will give a strong individual identity to the Scheme during both day light and night time hours and create a presence and sense of place on the Stratford Road. This entrance leads to a pedestrianised “street” with retail units on both sides with a new “town square” beyond.

The town square will create a mode of pedestrian movement towards Shirley Park, Haslucks Green Road and Stratford Road. The mix and activity of uses including new retail and café units, the foodstore entrance, access to the basement car park and integration of the retained and enhanced British Legion will create vitality and form an attractive place to spend time day and night. Towards Shirley Park, the four storey residential blocks will provide a gateway and announce arrival into the Park.

Leading from the town square to the community square is a further pedestrianised street with retail units on one side and the foodstore on the other. This quieter square is bounded by new residential apartments, the foodstore secondary access, lifts to the basement and is linked to the rear of the Baptist Church.

- b) A focal point for the centre by providing a different format of retail units.

The scheme provides commercially attractive space to attract new retailers into Shirley. The foodstore's main façade faces the public realm and is glazed

allowing views into and out of the store and beyond. It will act as a focal point drawing shoppers into the Scheme. The two storey retail spaces provide larger sized floor areas generally not currently available in Shirley.

- c) A safe, secure and well used environment.

The Scheme, including the residential apartments, has been designed to:

- Add vitality and diversity to the Scheme and Shirley, bringing new residents into the town centre with its broad range of facilities and amenities.
- Provide natural surveillance and security of the Scheme and wider Shirley area.
- Establish a formal and attractive boundary to Shirley Park.

- 3.6 Overall the layout and design of the comprehensive mix used Scheme is in accordance with government guidelines and UDP policies.

#### Scheme Layout

- 3.7 The Scheme is laid out to provide three “perimeter blocks” of development as follows:-

- A block formed by the Saracens Head, numbers 192-206 Stratford Road, new retail development in block J, the extended Royal British Legion, and the new residential development in blocks, A, B and C.
- A block formed by numbers 100-172 Stratford Road, new retail development in Block H, and new residential development in Block F.
- A block formed by the foodstore, the new residential development in blocks D and E and numbers 47-63 Haslucks Green Road.

- 3.8 The main elements of the Scheme are as follows:

- a) Foodstore

This is the principal element of the Scheme in terms of its footprint. Its overall dimensions are some 90m x 74m and incorporate a mezzanine floor 14m wide towards the rear of the store. It has a total gross floor area of some 7,615m<sup>2</sup>, with in addition a covered marshalling area adjacent to the service area which incorporates a 15m diameter turntable. Vehicular access to the service area is via an entrance off Haslucks Green Road between numbers 63 and 69 Haslucks Green Road.

Just beyond the south east corner of the store is the principal circulation core between the store (provided at grade) and the basement car parking. At this point 3 travellers, lifts and stairs provide access between levels. A secondary core and lifts is also provided at the north east corner.

The frontage of the store (facing block H) varies in height between 5m and 8m and is topped with an inverted curved roof. Curtain walling (some with a green tint and angled) is used on this elevation with a raised seem zinc roof and sedum mat 'green roof'

b) Retail block J

The eastern elevation of this block (in combination with block H) forms the street scene elevation onto Stratford Road. The block has a 34m wide frontage to Stratford Road and extends 70m into the site towards the new town square. It contains floorspace of 4,112m<sup>2</sup> and provides accommodation at ground and first floor with a maximum height of 12.5m (at the curved 'gateway tower' entrance from Stratford Road). Away from the curved corner sections, the blocks frontage appears as a series of 7m wide sections which are formed by changes in the use of materials. The materials proposed include facing brickwork, brise soleil, pressed metal projecting fascia, and glazed curtain walling.

c) Retail block H

This block appears as a near mirror image to block J, with the exception that at the town square it also has a 105m return along the pedestrianised route with the foodstore opposite. This block contains floorspace of 7526m<sup>2</sup> and provides accommodation on two levels. Its height and materials are similar to block J. The corner of this block that forms the north eastern edge of the town square is comprised of an inverted circular façade which accommodates a restaurant/café unit.

d) Residential blocks A, B and C

These 3 blocks are provided in close proximity to each other. They have a total frontage of 118m onto Shirley Park with return elevations which are 34.5m wide in respect of Block A and 33.2m in respect of Block C. These blocks accommodate 36, 28 and 27 apartments respectfully which totals 91 units. They are a mix of 3 and 4 storeys with a maximum height of 15.3m. The 4 storey elements are located towards the corners of blocks A and C and in the middle of block B.

A total of 76 car parking spaces are provided to the rear of the blocks accessed via the new vehicular entrance off Stratford Road adjacent to The Saracens Head.

A variety of materials are proposed including facing brick, render, artificial slate, a stone feature band and balconies.

e) Residential block D

This block (accommodating 21 apartments) is provided as a screening façade to the south western corner of the foodstore. It is over 3 stories with a maximum height of 11.8m. This block has a total frontage of 88.3m onto Shirley Park. Similar materials are proposed as for blocks A, B and C.

No dedicated off street car parking is provided for these apartments.

f) Residential block E

This residential block of 34 apartments is provided in an 'L' shaped form that provides a frontage onto Haslucks Green Road of some 28.4m and a 60m return frontage overlooking the ramped entrance into the car park and extending across 'community square' and up to the side of the foodstore. This block will be provided at two, three and four storey levels, with the two storeys adjacent to the existing dwellings on Haslucks Green Road, three storeys on the corner and four storeys opposite block F. The overall height varies from 8m to 14.6m.

A similar mix of materials as used on the other residential blocks are proposed. 16 car parking spaces are proposed in a rear parking area, accessed via a new road extending from the existing road to the rear of Century House.

g) Residential block F

This block is to accommodate the 55 'retirement'/sheltered apartments for the elderly in another 'L' shaped block that wraps around the corner from Haslucks Green Road (a 42.2m frontage) and on towards 'community' square. One of these apartments will be occupied by the resident manager of this facility. This will be provided over three and four storeys with the 4 storey on the corner with a maximum height of 14.5m to the peak of the pyramidal roof. 19 car parking spaces are proposed in a rear parking area, accessed via the same new road serving block E.

h) Squares and public spaces

The "town square" provided as part of the Scheme is formed by the corner of the foodstore, the corner of block H and the frontage to the extended Royal British Legion building. It is square on two sides with the other side being formed by the inverted curved façade of block H. It has maximum overall dimensions of some 32m x 27m.

The main pedestrian route to the town square is some 60m in length (from the Stratford Road frontage) and 12m wide. Beyond the square the pedestrian route continues on to the new edge of the park some 70m distant. This route is 7m at its narrowest and widens out to 30m as it fans out into the park.

Another pedestrian route from the town square runs parallel to the Stratford Road and is located between the frontage of the foodstore and block H. It connects the town square to Haslucks Green Road via a smaller square labelled as 'community square' This route is 160m long (to Haslucks Green Road) and is 7.5m at its narrowest. Community square is almost triangular in shape and is 30m x 30m. From this point the pedestrian routes split either side of the ramp that leads down to the basement car park.

i) Royal British Legion and First Shirley Scouts Group

Within the Scheme, the existing Royal British Legion and Scouts buildings are retained. The scouts building will effectively be located in the rear area of the perimeter street block that is being formed, but the Royal British Legion building will form one of the active edges to the new town square. The proposal includes extending the Royal British Legion building and providing a screening café and a new entrance and circulation core.

j) 63 Haslucks Green Road

Number 63 is presently a residential dwelling and is located adjacent to the service access to the foodstore. The proposals include provision for the building to be converted into offices, being a use falling within class B1 of the Town and Country Planning (Use Classes) Order.

k) Car park

The car park is accessed off Haslucks Green Road. After a distance of some 10m there is a ramp down to the basement level of the car park which is some 4.9m below the level of the road. The car park provides some 650 spaces (including 50 for use by the foodstore staff) and extends under the foodstore, blocks J and H, the town square and pedestrian link to Stratford Road.

l) New Junction

The existing junction between Stratford Road, Haslucks Green Road and Olton Road is replaced by an oval shaped, part signalised gyratory which will have overall dimensions of some 90m x 50m.

#### Scheme Construction Programme

- 3.9 Assuming confirmation of the Order and making/confirmation of the related orders referred to in paragraphs 7.1 and 7.2 below by Easter 2008, it is expected that work on site might commence in the late summer/autumn months of 2008. It is anticipated that the development, including the associated highway works, will be constructed over a period of approximately 24 months.

#### **4. Planning Position**

##### Background and Relevant Planning History

- 4.1 Shirley town centre, the second largest shopping centre in the Borough in terms of retail floor space, provides retail and community facilities for its immediate catchment area. The town centre has underlying weaknesses including the ribbon development format with no retail depth beyond the frontage, no recognisable centre to the town, fragmented car parking and poor linkage to Shirley Park. Furthermore, over the past decade the role of the centre has been influenced by strong competition from Solihull town centre, out of centre retail parks and foodstores located along the A34 Stratford Road out of the Shirley town centre. Increasing levels of traffic on the A34 and lack of investment in retail premises have had an increasing detrimental effect on the

shopping environment.

- 4.2 In the early 1990's, growing concern for the future of the centre led to the inclusion in the Solihull Unitary Development Plan 1997 of a proposal to undertake a study of the centre to establish how its attraction to shoppers could be improved.
- 4.3 An independent study concerning the retail health of Shirley town centre was commissioned from Hillier Parker (now C B Richard Ellis) by the Council's Planning Department in June 1996. The key conclusion of the 1996 study included the following:
- Shirley's role is as a district centre.
  - There are underlying weaknesses making it increasingly vulnerable to competition.
  - The town has no defined retail core and lacks identity.
  - There are limited opportunities to create development sites in the town but it is important that the retail core of the town is strengthened.
  - A suggested long term policy to create a focal point such as a town square within the retail core and consider options for securing new development in the retail core.
- 4.4 This study was updated in January 1998 as evidence for the ASDA planning inquiry (referred to in paragraph 4.6 below) and to take account of the then latest version of PPG6 and the relevant indicators within it to benchmark the town centre's performance. The updated study concluded that the centre remains vulnerable and "shows some underlying signs of decline. This is reflected by the increasing number of charity shops and discount retailers, often occupying units previously occupied by national multiple retailers for which there is limited demand. This reiterates the underlying loss of confidence in the centre which has resulted in a lack of significant investment in either buildings or the environment in recent years".
- 4.5 One of the key findings of the Shirley study was to identify a general location for a new foodstore on land to the rear of premises on the west side of the A34 Stratford Road (near the Baptist Church) within the heart of the centre that could strengthen and anchor it by drawing in trade. It is against this background that policy S4/1 – New Foodstore in the UDP detailed in paragraph 4.49 was formulated.
- 4.6 In 1997, the Council refused planning permission for the redevelopment of the former Powergen site (located on the north west side of Haslucks Green Road at its junction with A34 Stratford Road) to provide an ASDA foodstore. The framework for the proposals in the Shirley study for a more central site in Shirley was endorsed by the findings of the Inspector in the subsequent planning appeal by ASDA. In his report dated August 1998 his overall conclusion in not allowing the development of the Powergen site for a large ASDA foodstore was that such a proposal would be harmful to the vitality and viability of Shirley with trade being lost from the town centre. He did, however, state that the Council's alternative suggestions could "provide the basis for effective competition with the out of centre stores and so stand a reasonable

prospect of making an important contribution to Shirley's needs".

- 4.7 There have been a number of planning applications for retail-related development in recent years. Most of these applications are of a relatively minor nature. Asda Stores Ltd did submit a planning application for a retail superstore and concessions, mall entrance, associated service area and deck and ground level car parking for approximately 800 cars in January 1988 on land forming the Territorial Army Centre, but this application was subsequently withdrawn.

#### Planning Application for the Scheme

- 4.8 Against this background and history, Shirley Advance began detailed discussions with the Council, interested parties and the local community in Spring 2004 with a view to the promotion of a mixed use redevelopment scheme, incorporating a foodstore, additional non-food retail accommodation, residential units, offices and a town square with associated car parking.
- 4.9 Shirley Advance undertook various public consultations as the proposals were evolving and before any planning application was submitted. The principal purpose of this consultation was to seek the views of interested parties to enable the development of a scheme in light of comments received. The consultation exercise included public exhibitions (August/September 2004 and December 2004), the distribution of newsletters to 20,000 residential & business addresses, advertisements in the local press, a dedicated web site and a questionnaire.
- 4.10 Shirley Advance evolved its proposals in the light of these consultations and, on 4 April 2006, submitted a planning application reference number 2006/735 in respect of "Land west of Stratford Road and south of Haslucks Green Road" for a mixed use development comprising an anchor foodstore, retail units and basement car parking; 190 apartments (including 50 'retirement'); footways, service areas, revised highway junction, new access arrangements, landscaping works to Shirley Park; demolition of properties and change of use of 63 Haslucks Green Road to B1 offices; and accommodation works.
- 4.11 The following documents were submitted in support of the application:
- Full set of scaled plans
  - An A3 book of plans to a reduced scale
  - Planning support statement
  - Environmental Statement
  - A supplement to the ES detailing additional ecological surveys
  - Non-technical summary to the Environmental Statement
  - Transport Assessment & associated appendices
  - Design statement (2 volumes)

- Retail planning report (2 volumes)
- Statement of Community Involvement
- Specification for soft landscaping
- Statement on affordable housing

#### Planning Policy Framework

- 4.12 The following national, regional and local planning policies and supplementary planning guidance are relevant to the planning application.

#### ***National Policy***

##### PPS1 (Planning Policy Statement 1) - Delivering Sustainable Development

- 4.13 This Planning Policy Statement explains that the plan-led system, and the certainty and predictability it aims to provide, is central to planning and plays the key role in integrating sustainable development objectives. Where the development plan contains relevant policies, applications for planning permission should be determined in line with the plan, unless material considerations indicate otherwise.
- 4.14 PPS1 is clear that good design is indivisible from good planning. It states that design which is inappropriate in its context, or which fails to take the opportunities available for improving the character and quality of an area and the way it functions, should not be accepted.

##### PPS3 (Planning Policy Statement 3) – Housing

- 4.15 In promoting mixed uses, this planning policy statement recognises that residential development in town centres not only accommodates new households, but also brings life into town centres. In terms of density, local authorities are encouraged to seek development densities of over 50 dwellings per hectare at places with good public transport accessibility such as city, town, district and local centres or around major nodes along good quality public transport corridors.
- 4.16 The guidance explains that the Government is committed to maximising the re-use of previously-developed land and empty properties and the conversion of non-residential buildings for housing, in order both to promote regeneration and minimize the amount of greenfield land being taken for development.
- 4.17 As far as car parking is concerned, local authorities should revise their parking standards to allow for significantly lower levels of off-street parking provision, particularly for developments in locations such as town centres, where services are readily accessible by walking, cycling or public transport; or which provide housing for elderly people, students and single people where the demand for car parking is likely to be less than for family housing.
- 4.18 PPS3 aims to meet housing need and demand through improved affordability and supply in all communities, minimise the impact of housing development on climate change and to provide high quality, well designed mixed housing to support a variety

of households. The efficient use of land, maximising the use of previously developed land is encouraged.

#### PPS6 (Planning Policy Statement 6) - Planning for Town centres

4.19 This indicates that the Government's key objective for town centres is to promote their vitality and viability by:

- Planning for the growth and development of existing centres; and
- Promoting and enhancing existing centres, by focusing development in such centres and encouraging a wide range of services in a good environment, accessible to all.

4.20 In implementing the Government's objectives for town centres, local authorities should plan positively for their growth and development. They should therefore:

- Develop a hierarchy and network of centres;
- Assess the need for further main town centre uses and ensure there is the capacity to accommodate them;
- Focus development in, and plan for the expansion of, existing centres as appropriate, and at the local level identify appropriate sites in development plan documents;
- Promote town centre management, creating partnerships to develop, improve and maintain the town centre, and manage the evening and night-time economy; and
- Regularly monitor and review the impact and effectiveness of their policies for promoting vital and viable town centres.

4.21 It is not the role of the planning system to restrict competition, preserve existing commercial interests or to prevent innovation.

4.22 Through the plan led system, local authorities should identify deficiencies in provision, assess the capacity of existing centres to accommodate new development, including, where appropriate, the scope for extending the primary shopping area and/or town centre, and identify centres in decline where change needs to be managed.

4.23 In advising on development control with regard to retail development, PPS6 indicates that consideration should be given to the following:

- The need for the development.
- That the development is of an appropriate scale.
- That there are no more central sites for the development.
- That there are no unacceptable impacts on existing centres.

- That locations are accessible.
- 4.24 In terms of need, the statement indicates that it is not necessary to demonstrate the need for retail proposals within a primary shopping area. Need must be demonstrated for any application for a main town centre use which would be in an edge-of-centre or out-of-centre location and which is not in accordance with an up-to-date development plan strategy.
- 4.25 However, the scale of any in town development should relate to the role and function of the centre within the wider hierarchy and the catchment served. The aim should be to locate the appropriate type and scale of development in the right type of centre, to ensure that it fits into that centre and that it complements its role and function.
- 4.26 Impact assessments should be undertaken for any application for a main town centre use which would be in an edge-of-centre or out-of-centre location and which is not in accordance with an up-to-date development plan strategy. Where a significant development in a centre, not in accordance with the development plan strategy, would substantially increase the attraction of the centre and could have an impact on other centres, the impact on other centres will also need to be assessed.
- 4.27 The sequential approach to site selection should be applied to all development proposals for sites that are not in an existing centre nor allocated in an up-to-date development plan document.
- 4.28 In ensuring that locations are accessible, consideration needs to be given to the site's accessibility by a choice of means of transport (including public transport, walking, cycling, and the car, taking into account customers' likely travel patterns) and the impact on car use, traffic and congestion. This will include whether the proposal would have an impact on the overall distance travelled by car.

#### Planning for Town Centres: Guidance on Design and Implementation Tools

- 4.29 This guidance was published at the same time as PPS6 and deals specifically for design issues relating to planning for town centres.

It advocates that development should:

- Normally be orientated so that it fronts the street;
  - Respect building lines of the existing urban environment and, where appropriate, build up to the edge of the curtilage;
  - Maximise the amount of active street frontage;
  - Avoid designs which are inward looking and which present blank frontages;
  - Provide level access from the public realm; and
  - In the case of development in edge-of-centre locations, provide good pedestrian access to the centre.
- 4.30 The guidance goes on to state “developments with innovative layouts which maximise

the use of a site and, where appropriate, make use of multiple levels should be encouraged, having regard to local context.”

4.31 With regard to parking it states:

*“Large amounts of surface level parking are likely to detract from the overall appearance of a development and its surrounding area and are unlikely to maximise the development potential of available land.*

*Car parking and service areas should be carefully located within a development so as to minimise visual impact. Car parking should normally be located to the rear, underneath or, where appropriate, above new development.*

*Where surface car parking is proposed, this should be conceived within the overall landscape proposals for the development and link into the wider area. Multi-storey car parking should also be carefully designed and be well integrated with its surroundings. ... Where rooftop car parking is proposed, lighting should be designed sensitively to minimise the level of light pollution to the surroundings.”*

#### PPG13 (Planning Policy Guidance 13) – Transport

4.32 This PPG indicates that the availability of car parking has a major influence on the means of transport people choose for their journeys. Some studies suggest that levels of parking can be more significant than levels of public transport provision in determining means of travel (particularly for the journey to work) even for locations very well served by public transport. Car parking also takes up a large amount of space in development, is costly to business and reduces densities. Reducing the amount of parking in new development is essential, as part of a package of planning and transport measures, to promote sustainable travel choices. At the same time, the amount of good quality cycle parking in developments should be increased to promote more cycle use.

4.33 In considering levels of car parking, local authorities should not require developers to provide more spaces than they themselves wish, other than in exceptional circumstances which might include for example where there are significant implications for road safety which cannot be resolved through the introduction or enforcement of on-street parking controls; and encourage the shared use of parking, particularly in town centres and as part of major proposals. Car parking standards should be set as maxima, and an appendix to the guidance sets out standards for retail development of 1 space per 14m<sup>2</sup> for food retail and 1 space per 20m<sup>2</sup> for non-food retail.

#### PPG17 (Planning Policy Guidance 17) - Planning for Open Space, Sport & Recreation

4.34 This guidance advocates the use of local needs and opportunity assessments which allow local authorities to identify specific needs and quantitative or qualitative deficits or surpluses of open space, sports and recreational facilities in their areas. They form the starting point for establishing an effective strategy for open space, sport and recreation at the local level (tied into the local authority's Community Strategy), and for effective planning through the development of appropriate policies in plans. Good

quality assessments and audits, leading to clear strategies supported by effective planning policies, will provide vital tools for resolving the potential conflicts that arise between different uses and users of open space, sports and recreational facilities.

- 4.35 Local authorities should use the information gained from their assessments of needs and opportunities to set locally derived standards for the provision of open space, sports and recreational facilities in their areas. Local standards should include:
- Quantitative elements (how much new provision may be needed); a qualitative component (against which to measure the need for enhancement of existing facilities); and
  - Accessibility (including distance thresholds and consideration of the cost of using a facility).

- 4.36 Existing open space, sports and recreational buildings and land should not be built on unless an assessment has been undertaken which has clearly shown the open space or the buildings and land to be surplus to requirements. For open space, 'surplus to requirements' should include consideration of all the functions that open space can perform. Not all open space, sport and recreational land and buildings are of equal merit and some may be available for alternative uses. In the absence of a robust and up-to-date assessment by a local authority, an applicant for planning permission may seek to demonstrate through an independent assessment that the land or buildings are surplus to requirements. Developers will need to consult the local community and demonstrate that their proposals are widely supported by them.

#### Safer Places – the Planning System and Crime Prevention

- 4.37 Whilst PPS1 confirms that crime prevention issues should be addressed in considering the design of new development, more detailed guidance on designing out crime is found in “Safer Places – the Planning System and Crime Prevention”. It identifies 7 attributes of sustainable communities that are particularly relevant to crime prevention as follows:
- Access & movement and places with well-defined routes, spaces and entrances that provide for convenient movement without compromising security.
  - Structure: places that are constructed so that different uses do not cause conflict.
  - Surveillance: places where all publicly accessible spaces are overlooked
  - Ownership: places that promote a sense of ownership, respect, territorial responsibility and community
  - Physical protection: places that include necessary, well designed security features.

- Activity: places where the level of human activity is appropriate to the location and creates a reduced risk of crime and a sense of safety at all times.
- Management & maintenance: places that are designed with management and maintenance in mind, to discourage crime in the present and future.

### ***Regional Policy***

West Midlands Regional Spatial Strategy- Regional Planning Guidance (RPG), June 2004

#### 4.38 Policy UR3 - Enhancing the Role of City, Town and District centres.

This Policy supports enhancing city, town and district centres to lead urban renaissance programmes in order to: provide services to local communities; a sense of identity; and as drivers of economic growth. The policy sets out ways of achieving this and these include:

- Maintaining and enhancing the pattern of urban centres according to role and function.
- Developing strategies to maintain and enhance the role of urban centres to serve their local communities (including provision for retail and access to other services) and to promote a sense of identity and local distinctiveness.
- Identifying and creating development opportunities for a range of accessible services including retail and leisure.
- Strategies to encourage more people to live in or close to centres through: reuse of sites; mixed use developments and property conversions.
- Ensuring high standards of design that builds on the character/identity of existing centres and enhancing urban centres as the primary node of the public transport network.

#### 4.39 PA11 - Network of Town and City centres.

This policy defines a network of strategic centres within the Region. Solihull Town centre is a strategic centre; Shirley Town centre is not.

The strategic centres are intended to be the focus for major retail developments containing more than 10,000m<sup>2</sup> floor space (gross). This figure excludes floor space for convenience goods. Other main trip generators such as leisure and office uses are also intended to be focussed in network centres.

Policy PA11 also acknowledges that there are many 'other centres' meeting local needs and that development plans should identify and develop policies for them which best meet local needs. Local authorities are required to be proactive in encouraging appropriate development to maintain and enhance their function as town centres.

## Policy QE4 - Greenery, Urban Greenspace & Public Spaces

- 4.40 This policy supports the provision of urban green space with an emphasis on improving the overall quality of green space, especially in town centres, and maintaining and enhancing sports grounds. The supporting text recognises the importance of recreational resources to quality of life and seeks to maintain and enhance provision.

### ***Local Policy***

#### Adopted Solihull Unitary Development Plan 2006

- 4.41 Policy H4 of the UDP - Affordable Housing

This policy sets out the circumstances in which a contribution towards affordable housing will be sought which is triggered at 15 or more dwellings. Within such developments it is expected that 40% of the dwelling units on the site will be for affordable housing. In exceptional circumstances a commuted sum in lieu of on-site provision may be made. In assessing the suitability of the site and the amount of affordable housing the Council will have regard to (inter alia) existing provisions of affordable housing and local housing need in the area, proximity to services & facilities, economics of provisions (including particular costs that may threaten the viability of the site), and whether the provision of affordable housing would prejudice the realisation of other planning objectives that need to be given priority in the development of the site.

- 4.42 Policy H5 of the UDP - Density, Design and Quality of Development

In a number of respects, this policy reflects the advice in PPS3 which seeks a greater intensity of development at places with good transport accessibility. New housing development should have regard to the character, local distinctiveness and design quality of adjoining residential areas, the townscape and landscape of the wider locality and should not have an adverse effect in terms of environmental quality.

- 4.43 Policy ENV1 of the UDP - Mixed Use Development

This policy seeks to retain a mixture of uses in town centres and other areas highly accessible by public transport, in order to increase diversity and minimise the need to travel.

- 4.44 Policy ENV2 of the UDP - Urban Design

This policy promotes good quality building and urban design, seeks to protect and enhance the distinctive characteristics of the Borough's urban areas, and provides for the protection and enhancement of amenity. It sets out the criteria which the Council will use in considering proposals for new development, including the following:

- Respects the harmony and relationships between buildings, the urban environment and the landscape; Enhances the quality and attractiveness of the Borough.

- Contributes to a sense of local identity and regional diversity.
- Protects and enhances the character and local distinctiveness of the Borough's urban areas.
- Protects and enhances the amenity of existing occupiers.
- Optimises the use of the site, makes efficient and prudent use of resources, and supports local facilities and transport networks.
- Allows for ease of movement by pedestrians and cyclists and gives priority to the needs of pedestrians and
- Minimises the potential for crime and anti-social behaviour.

#### 4.45 Policy ENV3 of the UDP - Crime Prevention

Policy ENV3 seeks to ensure that new developments are designed to minimise crime and anti-social behaviour, accord with the requirements of the Crime and Disorder Act 1998, and meet the commitment in the Solihull Crime and Disorder Strategy.

#### 4.46 Policy ENV14 of the UDP - Trees and Woodlands

Policy ENV14 reads:

*“The Council will safeguard important trees, hedgerows and woodlands, encourage new and replacement tree and hedgerow planting, and will identify areas that may be suitable for the creation of new woodlands by natural regeneration or planting. Where planting takes place, priority will be given to native broad-leaved species. The Council will protect and seek to enhance those woodlands which are ancient or semi-natural because of their great variety and important natural characteristics.”*

#### 4.47 Policy S1 of the UDP – Existing Shopping Centres, S4 Shirley Town Centre and S4/1 – New Foodstore.

#### 4.48 Policy S4 of the UDP - Shirley town centre

This policy states:

*“Within the boundary indicated on the Proposals Map the Council will support proposals that will maintain or strengthen the function of Shirley Town centre as an important centre providing a wide range of convenience and comparison goods, employment, leisure and other services. Such proposals could include mixed-use developments. The Council will bring forward measures to improve the quality of its environment.”*

#### 4.49 Policy S4/1 of the UDP - New Foodstore

This policy states:

*“The Council proposes to bring forward the development of a new foodstore to support Shirley Town centre. The general location for the foodstore is land on the west of the A34 and to the south of Haslucks Green Road.”*

In support of this Policy, the UDP states that:

*“The Shirley Study identified a general location for the new shop on land to the rear of premises on the west side of the A34 Stratford Road (near the Baptist Church). The foodstore building will be contained within the Centre’s boundary but the Council recognises that some parking may need to encroach into Shirley Park where it will have a dual function of serving Town centre and park users. Accordingly, the boundary has therefore been drawn to embrace commercial and other premises that back onto Shirley Park, but excludes land in the Park itself.”*

#### 4.50 Policy S4/2 of the UDP - New Retail Units Shirley Town centre

The proposal states that:

*“The Council will encourage proposals for the redevelopment and modernisation of premises within Shirley Town centre where this will improve the attractiveness of the Centre to shoppers and retailers and will strengthen the function of the Centre within the boundary shown on the Proposals Map.”*

This policy recognises that, more generally, the centre will need to continue to respond to retailer and customer demands in order to remain viable. Modern units tend to require a greater depth than Shirley centre is generally able to offer. It is recognised that opportunities may be limited and sometimes difficult to implement because of fragmented land ownership. However, the centre is important in providing shops and services to the local community and it is therefore appropriate for the Council to continue to encourage redevelopment proposals to come forward that will add to the attractiveness of the centre and provide units that will meet modern requirements.

#### 4.51 Policy R2 of the UDP- Protection of Existing Open Space

PPG17 advises that open space and other land with recreational or amenity value should be protected unless it is clearly demonstrated that the land is surplus to requirements. The Annex to the guidance sets out a typology of the range of open spaces of value and the various functions that open space may perform. Open space should be retained where it is of particular value, or has the potential to be of value to the community, or where there is insufficient provision for a particular function or in overall terms. Policy R2 recognises the value of open space for a variety of functions, and seeks to protect valuable parks and open spaces from loss through development. Where loss is unavoidable, the Council will require development to provide appropriate compensatory measures. The policy states:

*“The Council recognises the value of open space used for recreational and other uses and will not permit the loss of existing open space through development, where it is of value for formal and informal recreation, urban quality, nature conservation, visual amenity, and strategic purposes, or as a community resource. The Council will*

*protect and enhance the character and quality of parks and public open spaces in the Borough.*

*Where development takes place, the Council will require appropriate compensatory measures for the loss of existing recreational facilities and open space.”*

#### 4.52 Policy R4 of the UDP - New and Improved Open Space

The provision of open space is an essential part of the social infrastructure for new development and contributes towards the improvement of the quality of life of urban areas. PPG17 provides guidance on the provision for new open space, and advises authorities to seek opportunities to improve the local open space network and to incorporate open space within new development on previously used sites. Policy R4 sets out the Council’s requirement for new open space, and the provision for and improvement of local recreational facilities, associated with new housing, and significant industrial and commercial development in the Borough. The policy states:

*“The Council will require provision for and maintenance of appropriate open space and recreational facilities as an integral part of all new housing developments in accordance with the following criteria:*

- (i) The provision of outdoor playing space and children’s play areas shall be in accordance with the National Playing Field Association’s minimum standard of 2.4 hectares per 1,000 population, until such time as the local standards referred to in Proposal R2/1 have been adopted. In circumstances where no provision is required for children’s play areas and for youth facilities, more generous provision than the minimum standard will be expected. Where possible, such provision should protect and enhance existing landscape features;*
- (ii) In circumstances where the provision of new open space is not appropriate and in the interests of more efficient use of urban land, provision for appropriate alternative local facilities of equivalent value, such as improvements to the quality of existing parks and open spaces;*
- (iii) In areas where there is a shortage of children’s play areas, as identified in the Play Area Strategy for Solihull, the provision of new children’s play areas, or a contribution towards their provision in the area; and*
- (iv) The provision of facilities for youth activities or a contribution towards their provision in the area.*

*In accordance with PPG17 the Council will also seek the provision of new open space as part of proposals for significant commercial and industrial development within the Borough. Where appropriate, the provision of open space and recreational facilities will be sought through the use of Section 106 Agreements.”*

#### **Other Strategies and Guidance**

#### 4.53 Solihull M.B.C. Green Spaces Strategy

This Strategy encompasses assessments of local need for green space for the range of functions set out in PPG17, and puts forward standards for provision.

The Strategy divides the Borough into zones. The application site is in Zone 3

Shirley, which comprises the three Shirley wards. The total amount of accessible green space per thousand population in this zone is 3.77 hectares. The Zone Action Plan states that the area is well served for accessibility to green spaces, although there is a need for more children's play areas, allotments and areas of accessible natural green space.

In terms of principal parks (which are defined as areas of unrestricted public access of over 8 ha) the zone action plan indicates that everyone (within the zone) has access (i.e. is within 2km) of a principal park. The priority for action is to improve the quality of existing provision.

The Strategy was the subject of public consultation in August and September 2005. Relevant representations regarding Zone 3 included Shirley Residents Association wishing to save the park and the Park Action Group commenting that funding should not rely on selling parkland. Representations and a proposed final version of the Strategy were reported to Cabinet in August 2006 where the Strategy was adopted.

#### 4.54 Vehicle Parking Standards and Green Travel Plans – Supplementary Planning Document (SPD)

The Council adopted a Vehicle Parking Standards and Green Travel Plans SPD in June 2006. The SPD reflects the advice of PPG13 and other guidance regarding the availability of parking as a major influence on the means of transport chosen for journeys.

With regard to car parking in town centres, the SPD states:

*The Council in assessing car-parking requirements for developments in Solihull Town centre, and in Shirley and Chelmsley Wood district centres, will have regard to the above PPS6 aims and the more specific guidance on parking in its supporting document. It will be the aim of the Council to manage parking to ensure that these centres are easy and convenient to access. Emphasis will be on provision of parking for the public rather than for commuters and will take into consideration:*

- *Demand for parking*
- *Existing provision for parking*
- *Capacity of the road network*
- *Potential for improvements to public transport*

*Within these 3 centres, or at edge of centre locations, the Council will consider allowing additional vehicle parking over the relevant maximum standard provided the parking will genuinely serve the centre as a whole and that agreement to this can be secured prior to grant of planning permission, that the additional parking is needed to support the vitality and viability of the centre (taking into consideration existing provision) and that it is managed to focus on the needs of shoppers. The Council will seek to ensure that the scale of parking is in keeping with the size of each centre and its character, and sits well within the local townscape.”*

The standards establish a range of maxima as follows:

Food retail	1 space per 14m <sup>2</sup>
Non-food retail	1 space per 20m <sup>2</sup> (for developments over 1,000m <sup>2</sup> )
Dwellings	An average of 2 spaces per dwelling unit (excluding integral garages), unless at accessible locations where only one space per unit will be permitted. Exceptionally, for sites in an accessible location but with a main road frontage, two spaces per unit may be required on road safety grounds.

#### 4.55 Affordable Housing Supplementary Planning Guidance (SPG)

This SPG gives more detailed guidance on the implementation of the UDP affordable housing policy. It recognises that the affordable housing requirement will be subject to discussion on a site by site basis, having regard to the overall Borough wide target. It acknowledges that the Council will adopt a flexible approach taking into account such aspects as local needs, the nature of the local residential area and site characteristics.

#### Determination of the Application

#### 4.56 The planning application was considered by the Council (through its Planning Sub-Committee) on 19 July 2006 in the context of Section 54A of the Town and Country Planning Act 1990 (as amended) which states:

“Where in making any determination under the Planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.”

#### 4.57 The report to the Sub-Committee concluded as follows.

*“The proposed development represents a major opportunity to address some of the acknowledged weakness of the town centre of Shirley. Over the past decade the role of the Centre has been influenced by strong competition from Solihull town centre and from out-of-centre retail parks and foodstores located adjacent, or near, the A34 Stratford Road. It is for this reason that policies & proposals in the UDP were adopted – in particular S4/1 which seeks to bring forward a new foodstore to the centre. The UDP Inspector noted that the advantages in providing a new anchor foodstore, helping to drawback trade and enhancing the vitality and viability of the town centre far outweigh any disadvantages. The proposed development accords with this recently approved development plan strategy.*

*The development therefore accords with both local & national retail policies.*

*In terms of open space, it is considered that the relatively small quantitative loss to the park is outweighed by the qualitative improvements that will be possible to*

*achieve through the securing of a commuted sum of half a million pounds. The nature of the layout, design & mix of uses will create a more comprehensive & cohesive centre the town will no longer turn its back on the park, instead it will provide an attractive & integrated frontage with the benefits that brings through activity & natural surveillance.*

*In highway terms, improvements to the junction of Stratford Road/Haslucks Green Road, to be implemented as part of the proposed development should enable it to operate generally with shorter queues than are presently observed.”*

4.58 The Sub-Committee consequently resolved as follows:-

For the reasons outlined above I recommend that the Secretary of State be notified that the Council is of a mind to grant planning permission for the proposed development, subject to:-

- a) The applicants entering into a Section 106 Agreement to achieve the following:-
  - i The payment of £500,000 towards park improvements.
  - ii Provision to ensure public access along the new pedestrian routes and public squares.
  - iii The management and operation of the basement car park (opening times, charging regime) be subject to the agreement of the Council.
  - iv Service yard management plans are prepared and implemented in accordance with details to be submitted.
  - v Facilities to enable the provision of services for the mobility impaired are provided in accordance with details to be submitted and approved.
  - vi That 56 units on the site excluding block F are provided as affordable housing.
  - vii That a commuted sum of £431,232 is paid in lieu of providing affordable housing in Block F.

And:

- b) Conditions 1-45 as amended.

And that subject to the Secretary of State choosing not to intervene in the determination of the application, that planning permission be granted.

4.59 The application was referred to the Secretary of State on 25<sup>th</sup> July 2006 under the Town and Country Planning (Shopping Development)(England and Wales)(Number 2) Direction 1993. The Government Office for the West Midlands subsequently confirmed, by letter dated 30<sup>th</sup> August 2006 that the Secretary of State had decided as follows:

*“Having carefully considered the relevant planning issues raised by the proposal, we have concluded that the Secretary of State’s intervention would not be justified. It does not in the Secretary of State’s view raise issues of such wider significance requiring a determination by her. The decision as to whether to grant planning permission will therefore remain with Solihull Metropolitan Borough Council.”*

4.60 Planning permission for the Scheme was granted on 20<sup>th</sup> September 2006 following completion of a Section 106 Agreement. The principal obligations in the agreement relate to:

- Improvements to Shirley Park
- Provision of Affordable Housing
- Management and maintenance of walkways
- Management of the Development
- Provision of Shop Mobility

4.61 Following evolution of the scheme and discussions with registered social landlords in relation to the affordable housing and a specialist operator in relation to the retirement block, Shirley Advance subsequently submitted a planning application with revised proposals for the residential blocks D, E and F. This application was considered by the Council’s Planning-Sub-Committee on 4 April 2007. The application was approved subject to a Section 106 Agreement in the same terms as the agreement relating to the original planning permission but with an adjustment to the provisions relating to affordable housing reflecting an increase in residential units from 190 to 202. Planning Permission was granted in respect of this application on 20 June 2007 following completion of the Section 106 Agreement.

#### Related Planning Permissions

4.62 Planning permission was granted on 20 September 2006 for a temporary car park on land within Shirley Park adjoining the Scheme to facilitate its implementation. This temporary facility will be provided prior to the closure of the existing car park for the period until the basement car park within the scheme is completed and available for use. At this point, the temporary car parking area will be reinstated as park land.

4.63 Also in connection with the Scheme, planning permission was granted on 14 June 2007, for new buildings to replace existing buildings to the rear of Shirley Baptist Church. This development dovetails with the design of the Scheme, with the new Church buildings having a frontage overlooking the new pedestrian square proposed by Shirley Advance in this location. in the locality of the church and is being accommodated by an exchange of land between the Council and the Church.

### **5. Case for Compulsory Purchase/Purpose of Acquisition**

#### Compulsory Purchase Powers

5.1 The Council has the power in Section 226 (1) (a) of the Town and Country Planning

Act 1990 (as amended by the Planning & Compulsory Purchase Act 2004) to make a compulsory purchase order for any land in their area if the Council think that the purchase of the land will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land.

5.2 Pursuant to Section 226 (1) (a) the Council may not exercise the power 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 objectives:

- 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.

5.3 It is immaterial that the development, re-development or improvement may be carried out by a third party.

5.4 Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 enables the Council to acquire new rights.

5.5 ODPM Circular 06/2004 (Compulsory Purchase and the Crichel Down Rules) (“the Circular”) provides updated and revised guidance to acquiring authorities in England on the use of compulsory purchase powers. Paragraph 1 states:

*“Ministers believe that Compulsory Purchase Powers are an important tool for local authorities and other public bodies to use as a means of assembling the land needed to help deliver social and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life. Bodies possessing Compulsory Purchase powers – whether at local, regional or national level – are therefore encouraged to consider using them proactively wherever appropriate to ensure real gains are brought to residents and the business community without delay”.*

5.6 Particular guidance on orders made by local authorities under Section 226 of the Town and Country Planning Act 1990 is contained in Appendix A, of the Circular. Paragraph 2 states:-

*“The powers in Section 226 as amended by Section 99 of the Planning and Compulsory Purchase Act 2004 are intended to provide a positive tool to help acquiring authorities with their planning powers to assemble land where this is necessary to implement the proposals in their community strategies and Local Development Documents. These powers are expressed in wide terms and can, therefore, be used by such authorities to assemble land for regeneration and other schemes where the range of activities or purposes proposed means that no other single specific compulsory purchase power would be appropriate.”*

5.7 Importantly, the Circular requires that a compulsory purchase order should only be made where there is a compelling case in the public interest.

- 5.8 A compulsory purchase order to which there are objections will require confirmation by the Secretary of State to become effective. The Circular provides that any decision by the Secretary of State about whether to confirm an order made under Section 226 will be made on its own merit but the factors which the Secretary of State can be expected to consider include:-
- a Whether the purpose to which the land is being acquired fits in with the adopted planning framework for the area;
  - b The extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area;
  - c The potential financial viability of the scheme for which the land is being acquired;
  - d Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by other means e.g. alternative proposals put forward by the owners of the land.
- 5.9 The Circular also requires the Council to have regard to the following when considering making a compulsory purchase order:-
- a that the purposes for which the order is made sufficiently justify interfering with the human rights of those with an interest in the land affected;
  - b the degree to which other bodies (including the private sector) have agreed to make financial contributions or to underwrite the scheme and on what basis such contributions or underwriting is to be made;
  - c evidence relating to financial viability;
  - d whether the scheme is likely to be blocked by other impediments to implementation.

#### The Council's support for the Scheme

- 5.10 The Council's proposals for the re-development of Shirley Town centre arise directly from approved policies and, in particular, those relevant policies contained within the UDP.
- 5.11 In March 1997, the Council's Planning Committee refused planning permission for a major foodstore proposal on the site of the former PowerGen offices at the junction of Haslucks Green Road and the A34 Stratford Road. In refusing permission, the Planning Committee resolved to establish an all party working party (The Shirley Working Party) to oversee the feasibility study of a possible new food-based store located within the prime retail area of Shirley. The applicant chose to pursue an Appeal against this refusal.
- 5.12 The Shirley Working Party subsequently recommended unanimously that, if the longer-term future of Shirley town centre was to be assured, it was crucial that such a

food-based store should be promoted within the defined boundary of the existing centre west of the A34 Stratford Road. This is in line with the outcome of the study referred to in paragraphs 4.2 to 4.5.

- 5.13 The Council's Corporate Strategy Committee on 8<sup>th</sup> December 1997 endorsed and accepted The Shirley Working Party recommendations and resolved that the principle should be further examined with a view to being included in the UDP review.
- 5.14 The Appeal relating to the major foodstore proposal on the PowerGen site was refused by the Secretary of State in November 1998, following a public inquiry. The Secretary of State considered that the proposal would harm the vitality and viability of Shirley town centre rather than enhance or sustain it and that the opportunity to bring forward a more suitable scheme within Shirley town centre should be encouraged.
- 5.15 The first Solihull UDP was adopted in April 1997 and, in the first review published in January 2002, a new policy (S4) was proposed for Shirley town centre including a proposal in Policy S4/1 for a new food-based store to support Shirley town centre in the general location which now forms the main area for the Scheme. This policy is incorporated in the UDP adopted in February 2006.
- 5.16 With a view to progressing the proposals for Shirley town centre, the Council, approved Miller Developments as "preferred developer" in June 1999.
- 5.17 It was not possible to conclude a Development Agreement with Miller Developments. Accordingly, the Council terminated Miller's preferred developer status in May 2003.
- 5.18 Following an extensive selection process during the summer of 2003, the Council, at a meeting of Cabinet Member Resources in November 2003, selected Coltham Developments Limited and Helical Bar plc (a joint venture later named Shirley Advance LLP for the purpose of delivering a Scheme for the Heart of Shirley), as the Council's "preferred developer".
- 5.19 On the 12 May 2004, the Council and Shirley Advance entered into a conditional Development Agreement (with Helical Bar Plc as Surety). This Agreement requires Shirley Advance to bring forward a scheme for re-development of Shirley town centre. When all conditions have been satisfied (including acquisition of all necessary land interests), the Development Agreement provides for the grant of a lease of the entire site by the Council to Shirley Advance.
- 5.20 Shirley Advance have secured ASDA as the anchor tenant of the foodstore. They have selected McCarthy & Stone in relation to the retirement apartments and Heart of England and West Mercia Housing Associations in relation to the affordable housing.
- 5.21 The Council and Shirley Advance have sought over the past two and a half years to assemble land ownership in the Site. Shirley Advance has been fully engaged with principal parties in accordance with the terms of the Development Agreement, affected landowners, and in a number of cases, has secured agreements which will deliver much of the land required for the Scheme.
- 5.22 As it has not been possible to secure all necessary land interest by agreement, Shirley Advance has formally requested that the Council make a compulsory purchase order

to facilitate the scheme. Shirley Advance has entered into an indemnity agreement with the Council in relation to the costs associated with a CPO and consequent compensation claims.

#### Resolution to make the Order

- 5.23 Shirley Advance's request to make a compulsory purchase order was reported to the Council's Cabinet on 22<sup>nd</sup> December 2006 and on 21st June 2007.
- 5.24 The report explained the background to the redevelopment proposals for the site, the evolution of the Scheme as promoted by Shirley Advance, the recent resolution to grant planning permission for the Scheme, the powers available to the Council to make a compulsory purchase order and related advice of the Secretary of State (as set out above) and the recommendations of officers to authorise the making of the Order.
- 5.25 Besides the advice in Circular 06/2004, attention was drawn in the report to paragraph 2.52 of Planning Policy Statement 6 (PPS6) Planning for Town centres, which states that: *"Local planning authorities should consider the scope for affected site assembly using their compulsory purchase powers, to ensure that suitable sites within or on the edge-of-centres are brought forward for development, including sites that are under utilised, such as car parks and single storey buildings, which could be redeveloped for multi-storey, mixed use development"*
- 5.26 In the light of the report the Cabinet concluded that there was a compelling case in the public interest for the use of compulsory purchase powers to acquire the land and rights, as generally described in section 2 above, and resolved accordingly.
- 5.27 In resolving to make the Order the Cabinet took into account the various factors referred to at paragraphs 5.1 – 5.9 above and also the rights of property owners under the European Convention of Human Rights ("the Convention"), as incorporated into domestic law by the Human Rights Act 1998. The Cabinet noted especially the advice of the Secretary of State in Circular 06/2004 that: *"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, having regard, in particular, to the provisions of Article 1 of the First Protocol of the European Convention of Human Rights and, in the case of a dwelling, Article 8 of the Convention."*

Article 1 protects the right of everyone to the peaceful enjoyment of possession, so that no one can be deprived of possessions except in the public interest and subject to the relevant national and international laws.

Article 8 protects private and family life, home and correspondence, so that no public authority can interfere with these rights except if it is in accordance with the law and is necessary in the interest of national security, public safety or the economic well-being of the Country.

- 5.28 In balancing the rights of the individuals affected and the interests of the public, and especially in the light of the significant benefits arising from the Scheme, the Cabinet considered that the Order should be made.

- 5.29 Following referencing work and further detailed examination of the land and rights over land required to implement the Scheme, the Council's Cabinet on 21 June 2007 resolved to approve that the compulsory purchase order be made based on a modified boundary.

#### Justification for the Order

- 5.30 The Council considers that the Order is fully justified. Its resolution to make the Order accords entirely with the advice (set out above) in Circular 06/2004 and in PPS6 which encourages local authorities to exercise their compulsory purchase powers to ensure that sites are brought forward for development.
- 5.31 The Council believes that all of the land and rights over land including in the Order are required for the Scheme to proceed. The rights, also described in paragraph 2.4 above have been identified, in conjunction with Shirley Advance, as being necessary for the implementation of the Scheme.
- 5.32 The Council does think, for the purposes of Section 226(1)(a), that the purchase of the Order Land will facilitate the carrying out of the development, redevelopment and improvement of the land the subject of the Scheme. In this respect the Council also believes, as regards Section 226(1A), that the Scheme is likely to contribute to the achievement of the promotion or improvement of the economic, social and environmental well-being of Shirley.
- 5.33 In particular, it is considered that the scheme will improve the overall experience for residents, traders and visitors by a development which includes additional requisite retail space, town centre residential accommodation including retirement space, and a significant proportion of affordable housing, a large modern accessible shoppers/visitors car park with an area allocated for shop mobility facilities, new high quality public realm and comprehensive remodelling and redevelopment of the immediate locality and integration within the town centre as a whole and improvements to Shirley Park.
- 5.34 The raised profile of the town centre by adding to and complementing the existing retail structure through the provision of retail units commensurate with modern retail requirements will improve Shirley's competitiveness within the regional retail hierarchy and enhance the towns overall prosperity and attraction.
- 5.35 The Scheme is in accordance with national, regional and local planning policies which identify the need to locate new retail development in town and city centres. Besides PPS3, PPS6 and PPG13 and Policies UR3 and PA11 of the West Midlands Regional Spatial Strategy, the Scheme is consistent with relevant policies in the Council's UDP, especially policies S4, S4/1 and S4/2. The Scheme will fulfil these policies.
- 5.36 The Scheme now represents a prime opportunity to bring forward an appropriate comprehensive redevelopment scheme for Shirley town centre. With the grant of planning permission and following an evaluation of financial information provided by Shirley Advance, the Council is satisfied that there are no planning, financial or other impediments to the implementation of the Scheme. By entering into a Development Agreement with the Council, Shirley Advance has demonstrated its commitment to

the Scheme.

- 5.37 The Council considers that there is a compelling case in the public interest for the Order to facilitate the Scheme.

## **6. Special Considerations affecting the Order Land**

- 6.1 There are no listed buildings in the order land. None of the order land is included in a conservation area.

## **7. Related Orders**

### Road Closure

- 7.1 Shirley Advance has made an application to the Secretary of State for an order to be made under Section 247 of the Town and Country Planning Act 1990 authorising the stopping up of the public highway comprising the service/access road (linking generally from A34 Stratford Road between numbers 160 – 162 and numbers 184 – 188/190 Stratford Road in order to enable the implementation of the Scheme

### Footpath Relocation

- 7.2 Shirley Advance has also made an application to the Council for an order to be made under Section 257 of the Town and Country Planning Act 1990 authorising the stopping up of the length of public footpath U26 extending from Haslucks Green Road to the point in Shirley Park where it meets public footpath U27 and the provision of a replacement length of public footpath extending from Haslucks Green Road in the locality of number 67 Haslucks Green Road to a revised point in Shirley Park where it meets public footpath U27, to enable the implementation of the Scheme. The Council published notice of the order on 25 July 2007.

### Objections

It is expected that any objections to the Section 247 and/or Section 257 Orders would be considered together at any public inquiry relating to objections to the Order.

## **8. Further Information**

- 8.1 Copies of the Order, Order Map and this Statement of Reasons can be inspected at the Council offices at The Council House, Solihull.
- 8.2 For general information regarding the Order contact Andrew Kinsey, Legal Section, Solihull MBC – tel no 0121 704 6567.
- 8.3 Owners and occupiers of properties affected by the Order who wish to discuss a sale of their property should contact Mike Swallow, Strategic Land, Solihull MBC – tel no 0121 704 6155.
- 8.4 The Council will assist, wherever practicable, occupiers of property affected by the Order to relocate to alternative premises. For further information please contact Mike Swallow, Strategic Land, Solihull MBC – tel no 0121 704 6155.

**9. Inquiries Procedure Rules**

- 9.1 This statement is not intended to be a Statement of Case for the purposes of the Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990.
- 9.2 In the event of a public inquiry the Council expect to refer to the documents listed in the appendix to this statement. The Council may also refer to other documents in order to address any objections made to the Order (and any objections to the Section 247 and 257 Orders).

## **Appendix – List of Background Documents**

1. Planning Application No 2006/735 dated 4<sup>th</sup> April 2006
2. Planning Application No 2006/919 dated 27<sup>th</sup> April 2006
3. Planning Sub Committee Report dated 19<sup>th</sup> July 2006
4. Letter from Government Office (Application No 2006/735) dated 30<sup>th</sup> August 2006
5. Section 106 Agreement (Application No 2006/735) dated 20<sup>th</sup> September 2006
6. Planning Permission No 2006/735 dated 20<sup>th</sup> September 2006
7. Planning Permission No 2006/919 dated 19<sup>th</sup> October 2006
8. Variation to Section 106 Agreement in relation to Application No 2006/735 dated 23<sup>rd</sup> February 2007
9. Planning Application No 2007/154 dated 22<sup>nd</sup> January 2007
10. Planning Sub Committee Report dated 4<sup>th</sup> April 2007
11. Section 106 Agreement in relation to Application No 2007/154 dated 20<sup>th</sup> June 2007
12. Planning Permission No 2007/154 dated 20<sup>th</sup> June 2007
13. Report to Cabinet Member Resources 12 December 2006 seeking resolution to use Council's CPO powers
14. Report to Cabinet 21 December 2006 referring decision of Cabinet Member Resources in relation to CPO resolution
15. Report to Cabinet 21<sup>st</sup> June 2007 amending the boundary of the CPO
16. Footpath Stopping Up Order Plan
17. Road Closure Order Plan
18. West Midlands Regional Spatial Strategy (RPG11) (Relevant Extracts)
19. Adopted Solihull Unitary Development Plan – 2006 (Relevant Extracts)
20. Supplementary Planning Guidance – Green Space Strategy (Relevant Extracts)
21. C B Richard Ellis Study (Relevant Extracts)
22. Development Agreement between Solihull Metropolitan Borough Council and Shirley Advance (Edited Version)