

SMBC1/2

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

PROOF OF EVIDENCE

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for

SOLIHULL METROPOLITAN BOROUGH COUNCIL

1 INTRODUCTION

- 1.1 My name is Michael John Swallow. I have a Bachelor of Science Degree with Honors in Urban Estate Surveying and have been a Member of the Royal Institution of Chartered Surveyors since 1981.

- 1.2 I have been employed by Solihull Metropolitan Borough Council (“the Council”) for over fifteen years in an estate management, valuation and development role. My current job title is Strategic Land Advisor within the Resources Directorate of the Council. I am responsible for advising the Council, as landowner, on the long term strategy for its land and property assets and take a lead role in delivering major development and redevelopment projects on behalf of the Council.

2 SCOPE AND PURPOSE OF EVIDENCE

- 2.1 Paul Watson and Gary Palmer in their evidence cover the role of the Council as local planning authority in respect of the proposed scheme for the redevelopment of Shirley town centre (“the Scheme”). They deal with national policy, local regeneration policy and the determination of the planning applications for implementation of the Scheme.
- 2.2 My evidence covers the role of the Council as landowner and development partner. It sets out the history and demonstrates how the Council has used its land holdings to promote and ensure the effective implementation of the Scheme in accordance with Council policy for the regeneration of Shirley. In this respect I explain the Council’s decision to facilitate the scheme through the use of its compulsory purchase powers.

3 THE VISION FOR AND DEVELOPMENT OF THE SCHEME

The Council's Aspirations for the Development of the Heart of Shirley

- 3.1 Consideration, by the Council as landowner, of the objectives for development in Shirley town centre commenced at the meeting of the Land and Economic Development Committee on 8th June 1999. Members, at this meeting, resolved to endorse the objectives and vision of the Shirley (Planning) Working Party in bringing forward a development within the Shirley retail centre.
- 3.2 The meeting in June 1999 approved the opening of negotiations with Miller Developments Limited ("Miller") on the possibility of entering into a development partnership with the company recognising that they had obtained an option on a small but important piece of land within the potential development site.
- 3.3 The meeting of the Committee in June 1999 also endorsed the decision of the Group Leaders to open negotiations with the Territorial Army ("T.A.") in connection with their land being included within the land proposed for the redevelopment of Shirley centre.
- 3.4 In common practice with other major town centre developments, responsibility for taking forward the development options for Shirley was delegated by the Land and Economic Development Committee to the Town Centres Sub-Committee.
- 3.5 Negotiations continued with both Miller and the T.A. and at the meeting of Land and Economic Development Committee on 7 September 2000, approval was given to terms to conclude the purchase of the T.A. site.
- 3.6 At the meeting of Town Centres Sub-Committee on 16 March 2001, members considered options for the proposed scheme including the size of the anchor food based store and viability. A report from Donaldsons, strategic land advisors to the Council, was included in the advice to members. The report also outlined the outcome of an initial marketing exercise undertaken by Miller in connection with a range of food store options. It was concluded that the inclusion of a food based store of a minimum of 75,000 sq. ft. (6,968 sq. m.) gross was of the right scale to create a town centre which would deliver the objectives of the Council and its development partner.
- 3.7 Following further marketing of the food based store opportunity, it was resolved at the meeting of Town Centres Sub-Committee on 23 November 2001 that the Council proceed on the basis of an offer from ASDA.
- 3.8 At the meeting of Town Centres Sub-Committee on 20 December 2001, approval was given to the structure and subsequent completion of the legal arrangements with the Council's development partner, Miller. At this meeting, approval was

also given, in principle, to the Council utilising its powers of compulsory purchase if required in connection with site assembly and obtaining vacant possession.

- 3.9 Negotiations continued with Miller with a view to concluding a development agreement. At the meeting of the Cabinet on 15 May 2003, however, it was reported that it had not been possible to conclude a legal agreement and the Cabinet resolved to terminate the preferred developer status of Miller.

Shirley Advance as Preferred Development Partner

- 3.10 On 17 June 2003, the Cabinet Member for Resources approved the process for the selection of a preferred development partner and agreed a short list of potential developers to be invited to submit proposals in connection with an agreed brief. The selection of ASDA as preferred food store operator was reaffirmed.
- 3.11 Following submissions received and presentations to Shirley Town Centre Developer Selection Group (comprising members, council officers and the Council's strategic land and property advisors, Donaldsons), Town Centres Sub-Committee meetings on 16 October and 27 November 2003, Cabinet Member for Resources on 27 November 2003, selected the partnership of Coltham Developments Limited ("Coltham") and Helical Bar Plc ("Helical") as the Council's preferred development partners. Donaldsons advised the Council throughout the selection process and consideration of scheme options which would deliver the Council's objectives for Shirley and the appropriate financial return to the Council.
- 3.12 Discussions continued with Coltham and Helical on the basis of a brief which included the following elements:
- Linkage of the food store and retail development to Stratford Road.
 - Land take from Shirley Park to be minimised with improvements to be secured to the retained park.
 - Massing of the Scheme having regard to the surrounding area.
 - Frontage of the Scheme to Shirley Park.
 - Treatment of the break through to Stratford Road and linkage to both sides of the road.
 - Mix of uses within the Scheme including affordable housing.
 - Service roads and service areas and the possibility of combining certain functions.
- 3.13 At the meeting of the Cabinet Member for Resources and Town Centres Advisory Forum on 2 March 2004, approval was given to a consultation strategy in connection with taking forward the concepts of the Scheme.

The Development Agreement

- 3.14 At a meeting of the Cabinet Member for Resources on 15 April 2004, approval was given to the structure of the legal agreement between the Council and Coltham and Helical (named Shirley Advance LLP ("Shirley Advance")) for the purposes of delivering the Scheme) and to the finalisation of a development agreement and agreement for lease.

Evolution of the Scheme

- 3.16 At a meeting of the Cabinet Member for Resources and Town Centres Advisory Forum on 12 October 2004 members received an update on the outcome of the consultation exercise undertaken in the summer of 2004 in respect of the concepts and evolution of the Scheme.
- 3.17 Further consideration was given to the emerging design and content of the proposed Scheme at the meeting of Cabinet Member for Resources and Town Centres Advisory Forum on 23 November 2004. It was approved at this Cabinet that discussions on the detailed design of the Scheme be progressed with Shirley Advance on the basis of a scheme anchored by a large food store in accordance with the net sales area as defined in the Agreement. This decision was the subject of a local call in but was subsequently upheld by a meeting of the Overview and Scrutiny Management Board on 22 December 2004.
- 3.18 At the meeting of the Cabinet Member for Resources on 18 January 2005, the Cabinet Member endorsed the recommendations of the Town Centres Advisory Forum, officers and professional advisors regarding ASDA's selection as the preferred food store operator. As this was recognised as a key decision, the matter was considered by the Overview and Scrutiny Management Board on 28 January 2005 who was also satisfied with the selection of ASDA and terms proposed. This decision was formerly ratified by the Cabinet at the meeting on 10 February 2005. Donaldsons continued to advise the Council throughout this process on viability and the Council's statutory obligations under section 123 of the Local Government Act 1972.
- 3.19 Further evolution of the Scheme design took place during the first half of 2005 as informed by the ongoing consultation process. Cabinet Member Resources received a report on 14 March 2005 updating him on the proposed design of the Scheme.
- 3.20 On 7 July 2005, the Cabinet received a presentation on the design proposals for the Scheme from Shirley Advance for approval by the Council as landowner in accordance with the condition imposed by the Agreement. The Cabinet considered the recommendations of the Overview and Scrutiny Management Board Meeting of 5 July 2005 in determining whether the proposals satisfied the

conditions in the Agreement. The Cabinet agreed to defer a decision until 21 July 2005.

- 3.21 On 21 July 2005, the Cabinet resolved that the proposed Scheme from Shirley Advance satisfied the requirements of the Agreement and authorised Shirley Advance to submit a planning application.

Compulsory Purchase Order

- 3.22 The Cabinet delegated to the Cabinet Member for Resources the function of determining whether it was appropriate to make a compulsory purchase order under the relevant statutory processes. Donaldsons continued to advise the Council in respect of the requirements of the Agreement in relation to the viability and design of the Scheme submitted by Shirley Advance. This decision was the subject of a local call in and upheld at a meeting of the Overview and Scrutiny Management Board on 2 August 2005.
- 3.23 On 21 July 2005, the Cabinet was addressed by Jeremy Cahill QC on behalf of GC Shirley Limited, owners of Westminster House which forms part of the land required for the Scheme. Mr Cahill indicated that GC Shirley Limited had proposals of its own for the redevelopment of the site for the proposed Scheme including Westminster House. In light of this, the Cabinet authorised officers to evaluate the proposals of GC Shirley in relation to Shirley town centre and to report back to a future meeting of the Cabinet. It was confirmed in reports to the Cabinet on 8 September 2005 and 12 January 2006 that, despite several invitations to do so, GC Shirley had failed to submit a scheme for consideration by the Council.
- 3.24 On 9th March 2006, the Cabinet received an update on the negotiations with the Council's tenants (namely Solihull Christian Fellowship, Royal British Legion and Shirley Scouts) and third parties generally. The Cabinet also received a presentation from Shirley Advance on the latest plans and elevations for the Scheme and were informed of the documents that would be submitted as part of the planning application. The Cabinet approved the plans and delegated to the Corporate Director of Resources in conjunction with the Leader of the Council and Opposition Leaders approval to the submission of the planning application for the Scheme. A separate report, in private, at the Cabinet meeting outlined the current financial appraisal and viability of the Scheme and recommendations of Donaldsons confirming that the Scheme continued to satisfy the requirements of the Agreement.
- 3.25 On 6 April 2006, the Cabinet ratified the decision of the Corporate Director of Resources in approving the submission of the planning application.
- 3.26 On 18 May 2006, the Cabinet approved that the proposed disposal of open space land required for the Scheme be subject to statutory advertising as required by

Section 123 of the Local Government Act 1972. On 21 September 2006, the Cabinet considered objections received to the notice and whether the open space disposal was justified in all the circumstances. The Cabinet resolved to approve the disposal and the decision was the subject of a local call in. Overview and Scrutiny Management Board at a meeting on 2 November 2006 upheld the decision of Cabinet.

- 3.27 On 12 December 2006 (Document CD/B/1), the Cabinet Member for Resources received an update on the acquisition and status of negotiations in connection with land and property interests required in connection with delivery of the Scheme. The Cabinet Member also received a detailed report requesting that consideration be given to the making of a compulsory purchase order to achieve the Scheme. The Cabinet Member recommended that authority should be given for a compulsory purchase order referring the decision to the full Cabinet.
- 3.28 On 21 December 2006 (Document CD/B/2), the Cabinet approved that the Council should make a compulsory purchase order and authorised the Chief Executive to take all necessary steps to secure the making of the order.
- 3.29 On 12 March 2007, the Cabinet Member for Resources received an update on progress in relation to the making of a compulsory purchase order and considered variations to the Agreement between the Council and Shirley Advance. Cabinet Member resolved to approve an extension of the long stop date of the Agreement until 12 May 2008, agreed to Shirley Advance carrying out the residential elements of the scheme and agreed a variation to the financial arrangements between the Council and Shirley Advance. In making this decision, Cabinet Member considered the advice of Donaldsons on the current scheme appraisal and viability.
- 3.30 On 21 June 2007, the Cabinet, following the undertaking of a detailed referencing exercise, resolved to make a compulsory purchase order in relation to the extent of land and property interests within the boundary of a plan submitted (Document CD/B/3).
- 3.31 The Cabinet also approved the advertising of the proposed appropriation (in accordance with Section 122(2)(a) of the Local Government Act 1972) of open space and parkland required for the Scheme. On 22 November 2007, the Cabinet, following consideration of objections received, approved the appropriation of the open space land and parkland for planning purposes on the date immediately before the Council make a vesting declaration pursuant to a confirmed CPO. This decision was the subject of local call in and upheld at a meeting of the Overview and Scrutiny Management Board at the meeting on 10 December 2007.

4. Justification for the Compulsory Purchase Order and Associated Orders

- 4.1 As set out earlier in my proof of evidence and in more detail in Paul Watson's and Robert Barnes' proofs of evidence, the policy background to the redevelopment of Shirley town centre clearly encourages a comprehensive redevelopment by the inclusion of third party interests. If those third party interests could not be acquired through negotiation then the Council resolved that consideration should be given to the making of a compulsory purchase order.
- 4.2 It had become clear by December 2006 that, despite Shirley Advance's endeavours, it would not be possible for all third party interests to be acquired. The Council therefore resolved on 21 December 2006, to make a compulsory purchase order. The report relating to that meeting (Document CD/B/2) sets out the background to the making of the order and to the Scheme itself and the land proposed to be the subject of the order. The extent of the land to be included within the order was subsequently amended and a revised resolution was obtained on 21 June 2007 (Document CD/B/3).
- 4.3 The Council has the power in section 226(1)(a) of the Town and Country Planning Act 1990 to make a compulsory purchase order for any land in their area if they think that the purchase of the land will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. Pursuant to section 226(1)(a) the Council may not exercise the power unless they think that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objectives:
- The promotion or improvement of the economic well being of the area;
 - The promotion or improvement of the social well being of the area;
 - The provision or improvement of the environmental well being of the area.
- 4.4 Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 enables the Council to acquire any new rights which will be required to enable a scheme to be completed.
- 4.5 ODPM Circular 06/2004 (Compulsory Purchase and Crichel Down Rules) (Document CD/F/6) provides guidance to acquiring authorities in England on the use of their compulsory purchase powers. It states, at paragraph 1, 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 revitalization 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”.

- 4.6 Particular guidance on orders made under section 226 of the Town and Country Planning Act 1990 is set out in Appendix A of the Circular. It states, at paragraph 2, that *“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 mean that no other single specific Compulsory Purchase power would be appropriate”.*
- 4.7 The Circular requires that a compulsory purchase order should only be made where there is a compelling case in the public interest sufficient to justify interfering with the human rights of those with an interest in the affected land. An acquiring authority should also provide information on the degree to which other bodies have agreed to make financial contributions or to underwrite the scheme and demonstrate that there is a reasonable prospect of the scheme going ahead and is unlikely to be blocked by any impediments to implementation.
- 4.8 Besides the Circular, the Council, in deciding to proceed with the compulsory purchase order, had regard to Planning Policy Statement 6 – Planning for Town Centres (Document CD/F/8) which states that *“local planning authorities should consider the scope for effective 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 utilized, such as car parks and single storey buildings, which could be redeveloped for multi storey, mixed used development”.*
- 4.9 In light of the report presented, 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 and so resolved to use such powers. In doing so, the Council had regard to the rights of property owners balanced against the significant benefits arising from the Scheme.
- 4.10 The Council considers that the compulsory purchase order is fully justified. Its resolution to make the order accords with the advice in Circular 06/2004 and PPS6 which encourages local authorities to exercise their compulsory purchase powers to ensure that sites are brought forward for development.
- 4.11 The Council believes that the compulsory purchase of the land and rights as set out in the order will facilitate the carrying out of the development, redevelopment and improvement of the site and will contribute significantly to the achievement of the promotion and improvement of the economic, social and environmental well being of Shirley.

