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

REBUTTAL PROOF OF EVIDENCE

**RELATING TO THE OBJECTIONS OF
GC SHIRLEY LIMITED AND
THE ROYAL BRITISH LEGION**

Michael John Swallow BSc. Hons MRICS

for

SOLIHULL METROPOLITAN BOROUGH COUNCIL

1 INTRODUCTION

- 1.1 This rebuttal proof has been prepared in response to points made in the Proof of Evidence from Mr. Stanley Edwards on behalf of GC Shirley Limited and to the witness statement from Mr. Stewart Almond on behalf of the Royal British Legion.

2 GC SHIRLEY LIMITED

Council's Process

- 2.1 In his Proof of Evidence, Mr. Edwards questions the exercise by the Council of its powers in pursuing and making a compulsory purchase order (pursuant to the Town and Country Planning Act 1990) and appropriating public open space (pursuant to the Local Government Act 1972). He also raises the issue of the applicability of section 19 of the Acquisition of Land Act 1981.
- 2.2 These issues have been raised previously by GC Shirley's solicitors (Appendices 1 and 3), to which the Council's solicitors have responded (Appendices 2 to 4). I can confirm that the Council has taken and followed legal advice throughout the making of the compulsory purchase order ("the CPO") and the disposal and appropriation of the public open space. As set out in the Council's response, the Council is entirely satisfied that it has exercised its powers in an appropriate manner.

Public Engagement and Community Involvement

- 2.3 In sections 7.4 to 7.7 of his Proof of Evidence, Mr. Edwards questions the Council's overall approach to the CPO process, including the level of public engagement and community involvement.
- 2.4 The decision of the Council to make the CPO was taken following consideration of a series of reports to Cabinet. This included consideration of the rights of property owners balanced against the significant benefits arising from the scheme. Paragraphs 3.22 to 3.24 of my main Proof of Evidence highlight the early consideration undertaken by the Council in relation to the making of the CPO (as set out in paragraphs 3.27 to 3.29 of my main Proof of Evidence).
- 2.5 Against the background of consideration given to the making of the CPO, key Cabinet meetings were held prior to the making of a resolution to make the CPO on 21 December 2006 and 21 June 2007. Section 4 of my main Proof of Evidence sets out the matters considered by the Council and basis upon which the Cabinet made the decision to make the CPO.

Public Open Space

- 2.6 In paragraph 7.7.6 of his Proof of Evidence, Mr. Edwards states that the Council has not demonstrated that the park land and open space to be used in connection with the scheme is no longer required as public open space.
- 2.7 Mr. Palmer, in his main Proof of Evidence, deals with the benefits to the scheme of including the areas of open space and park land. Paragraphs 3.26 and 3.31 of my main Proof of Evidence confirms that the Cabinet took the decision, on balance and having regard to objections received, to proceed with the disposal of the public open space land required as part of the Scheme and appropriation of that land for planning purposes.

Alternative Schemes

- 2.8 Mr. Edwards also claims the Council, in progressing with the CPO, has failed to consider alternative schemes.
- 2.9 This is not the case. Paragraphs 3.6, 3.11 and 3.17 of my main Proof of Evidence states that, from an early stage, the Council has considered options for the proposed scheme. This was prior to, during and post the selection of Shirley Advance as the Council's development partner.
- 2.10 Furthermore, at the meeting of the Cabinet on 21 July 2005, GC Shirley were specifically invited by the Cabinet to submit alternative scheme proposals but declined to do so. Indeed, despite this invitation being repeated on several occasions, no alternative has been put forward.
- 2.11 Mr. Edwards himself claims that a smaller, more appropriate scheme could be implemented without the need to take any park land and/or public open space. However, he submits no such scheme.
- 2.12 The Council in determining the scale and content of the scheme has had regard to the scheme required to deliver its objectives for Shirley. Commencing in March 2001 (paragraph 3.6 of my main Proof of Evidence), the Council considered options for the proposed scheme including the size of the anchor food based store. Options for the scheme were considered as part of the developer selection process and scheme evolution undertaken by Shirley Advance and approved by the Council. As set out in Mr. Williams' evidence the Council has also had regard to the benefit of a mixed use scheme and creation of good urban design.
- 2.13 Ultimately, after lengthy consideration, the Council resolved that the approved scheme best delivers the Council's aspirations for the redevelopment of Shirley town centre. In the Council's view, the benefits arising from the scheme far outweigh the small loss of the park land and open space.

3 THE ROYAL BRITISH LEGION

- 3.1 At paragraph 15 of his statement, Mr. Almond requests that the Royal British Legions premises be entirely taken out of the order.
- 3.2 The scheme for which planning permission has been granted includes retention and extension of the Royal British Legion within the development. The inclusion of the entire premises within the CPO is required to ensure that the works to the Legion building and revised servicing arrangements can be implemented as part of the wider scheme.
- 3.3 Significant progress has been made towards documenting an agreement with the Royal British Legion which will address the Legion's concerns.
- 3.4 In brief, the agreement will provide for the surrender of part of the land leased to the Legion (to accommodate the Heart of Shirley scheme) and an extension of the leased area elsewhere (for the purposes of an extension to the existing building). In conjunction with the construction of this extension the Council has agreed to procure other works to the exterior of the building including provision of a new porch, lift, cladding, resurfacing and landscaping. The cost of these works, together with other works to the interior of the building, will ultimately be met by Shirley Advance under the terms of its development agreement with the Council.
- 3.5 In my view, the Legion will benefit tremendously from the scheme being carried out. They will have a significantly improved building which will meet all of their needs. In addition, the building will be fully integrated into Shirley town centre.

Appendix 1

Advice dated submitted on behalf of GC Shirley Limited

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

ADVICE

INTRODUCTION

1. I have been asked to advise in relation to the above named order ("the Order") with special reference to the powers / duties resting on The Metropolitan Borough of Solihull ("MBS") as promoting authority.

2. In particular, I am asked to advise whether the provisions of Section 19 (1) of the Acquisition of Land Act 1981 ("ALA '81") apply in relation to the proposed use of part of Shirley Park to accommodate the scheme for which planning permission has been obtained ("the Scheme"). ALA' 81 has special provisions relating to the compulsory acquisition of "Open Space "land as will be seen below.

THE SCHEME

3. MBS' Statement of the Council's reasons for making the Order (24 July 2007) defines "the Scheme" in Section 3. It includes, inter alia,

"... Foodstore with floor area of 7,615 m² including mezzanine floor of 1,100 m²..."

"...5 Residential Blocks A to E mainly 3 and 4 storey, containing 146 apartments..."

4. My Instructions include a scheme Masterplan (which I understand relates to the planning permission obtained for the Scheme) which shows the new foodstore and the apartment blocks. Some of the apartments and a substantial part of the new foodstore lie outside the red line area identified in the Order. Accordingly not all of the land required for the Scheme is incorporated in the CPO land. This may not matter if MBS owns the land within the Scheme but outwith the CPO land *and* if there are no impediments to the development of the land. As will be seen below there appear to be impediments to the development of the land.

5. Another MBS document, namely a Report of Chief Executive and Corporate Director of Resources to Cabinet dated 21 June 2007 relating to the Order asked for Cabinet decision in a variety of issues, including

"(iv) If the CPO is confirmed, to the extent that it is not already held for such purposes, the Council's land within the land shown edged red on the plan at Appendix 2 and shown hatched on the plan at Appendix 3 of the report be appropriated for planning purposes as described in Section 226 of the Town and Country Planning Act 1990 (as amended) on the date immediately before the Council make a vesting declaration pursuant to the confirmed CPO, such land being then no longer required for the purpose for which it is currently held;

(v) That the Chief Executive be requested to now serve any statutory public notices required under Section 122 (2A) of the Local Government Act

1972 (appropriation of land consisting of or forming part of an open space)."

6. This clearly suggests that MBS does not regard the land as free for them to use how they wish. (It also begs a question as to whether the park land is "no longer required for the purpose for which it is currently held"; I suspect there are those in Shirley who oppose the scheme who would disagree with that observation.) Appendix 3 attached to this Report illustrates: "Open Space Land at Shirley Town Centre" which is shown cross hatched blue. This land appears to be outside the red line area of the Order but when compared with the Masterplan shows that a substantial part of the foodstore and much of the apartment scheme will be located on "Open Space Land".

7. The Report explains the basis upon which authorisation is sought for steps (iv) and (v) set out in para 5 above (at para 1.3.7) which records

"Cabinet is also asked to approve the appropriation of the Council's Land within the revised CPO boundary and the open space land shown hatched on the plan at Appendix 3 for planning purposes. This is to enable any rights which may exist over the land to be overridden on the implementation of the Scheme by virtue of Section 237 of the Town and Country Planning Act 1990. Authority is also sought for the Chief Executive to issue any statutory public notice required under Section 122 (2A) of the Local Government Act 1972 (appropriation of land consisting of or forming part of an open space) in respect of the land shown hatched on the plan at Appendix 3."

MBS STATEMENT OF CASE

8. MBS has served a Statement of Case which states, inter alia,

- the Order was made pursuant to powers contained in Section 226 (1) of the Town and Country Planning Act 1990 (para 1.2);
- "the site" is described in Section 3.1 but it does not include a description of the area of the Open Space (para 3.1)
- the scheme is described and the description includes elements of development which lie outside the site and in Open Space (para 4.1);
- planning permission 2006/735 in relation to "land west of Stratford Road and south of Haslucks Green Road" was granted on 20 September 2006 (para 5.17). As stated above, I understand the Masterplan I have seen relates to this planning permission.
- MBS claims to be following advice in Circular 06/2004 in relation to promotion of the Scheme (paras 9.5, 9.17 etc.).

DISCUSSION

9. MBS relies on Section 226 (1) to justify the making of the Order. However, Section 226 (7) makes clear that

"The Acquisition of Land Act 1981 shall apply to the compulsory acquisition of land under this section."

10. The Acquisition of Land Act 1981 has special procedures and requirements where land to be acquired is open space.

Section 19 (1) provides

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

- (a) that there has been or will be given in exchange for such land, other land, not being less in area and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that the land given in exchange has been or will be vested in the persons in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attached to the land purchased or,*
- (aa) that the land is being purchased in order to secure its preservation or improve its management, or*
- (b) that the land does not exceed 250 square yards in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway and that the giving in exchange of other land is unnecessary, whether in the interest of the persons, if any, entitled to rights of common or other rights or in the interests of the public,*

and certifies accordingly."

11. Section 19 (4) defines "open space" as

"In this section-

...

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

12. This special status of "open space" is acknowledged in 06/2004 at Appendix L where it states

"1. *Certain special kinds of land are afforded some protection against compulsory acquisition (including compulsory acquisition of new rights across them) by provision that the confirmation of a compulsory purchase order including such land may be subject to special parliamentary procedure. The 'special kinds of land' are those set out in Part III of, and Schedule 3 to, the 1981 Act (see also Appendix U, paragraph 17):*

(a) ...

(b) ...

(c) ...

(d) *land forming part of a common, open space, or fuel or field garden allotment (section 19 and Schedule 3, paragraph 6)."*

13. MBS does not appear to have followed any of the relevant procedures in relation to the Open Space Land, in particular

- there was no application for a certificate when the order was submitted for confirmation (06/2004, Appendix L para 17)
- there has been no detailed description of the Open Space land (ibid, paras 18 and 21)
- no exchange land has been identified (para 18).

14. In so far as MBS may rely on the fact that the Open Space land has been excluded from the Order so that the requirements of Section 19 ALA '81 do not arise I believe that would be erroneous for these reasons

- (i) the Cabinet Report of 21.6.07 makes clear that powers under Section 226 will be relied upon (if the CPO is confirmed) in respect of the Open Space Land;
- (ii) the Open Space Land clearly forms part of the Scheme as defined in *WATERS v. WDA* [2004] UKHL 19 at para 58 in the speech of Lord Nicholls of Birkenhead

"I turn, then, to the question of how the extent of a scheme should be identified in today's conditions. A scheme essentially consists of a project to carry out certain works for a particular purpose or purposes. If the compulsory acquisition of the subject land is an integral part of such a scheme, the Pointe Gourde principle will apply accordingly. Both elements of a project, the proposed works and the purpose for which they are being carried out, are material when deciding which works should be regarded as a single scheme when applying the Pointe Gourde principle to the subject land."

- (iii) the Report itself states (at para 1.3.) that the Cabinet is being asked

"... to approve the appropriation of the Council's land within the revised CPO boundary and the Open Space Land shown hatched on the plan at Appendix 3 for planning purposes."

This suggests this land should have been included in the CPO in the first place. Note also the advice in 06/2004 at Appendix U para 12 when acquiring

