

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

**REBUTTAL EVIDENCE
RELATING TO THE OBJECTIONS BY (WILSON UK) LIMITED,
THE ROYAL BRITISH LEGION AND GC SHIRLEY LIMITED**

prepared by

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birchwooddevelopments

on behalf of

Shirley Advance LLP

Ref: SMBC2/3

Shirley
advance

1 INTRODUCTION

This rebuttal evidence is prepared in response to the evidence recently submitted by the following objectors to The Metropolitan Borough of Solihull (Shirley Town Centre Redevelopment) Compulsory Purchase Order 2007 ("CPO"):

- Wilson (UK) Limited
- The Royal British Legion
- GC Shirley Limited

2 WILSON (UK) LIMITED

- 2.1 I refer to the Proof of Evidence of Stephen Hemming of Lambert Smith Hampton together with the letter of objection dated 3rd August 2007 signed by Andrew Cook of Lambert Smith Hampton.
- 2.2 As indicated by Mr Hemming, discussions have been ongoing for some time between Shirley Advance and Wilson (UK) Limited to address the concerns set out in their letter of objection.
- 2.3 Wilson (UK) is concerned about the effect that the acquisition of its service yard will have on the shops trading from its property. It consequently sought that its entire property be acquired, the necessary rights be acquired or an adjustment be made to the design of retail Block H so as not to require the acquisition of their property.
- 2.4 Shirley Advance responded positively to the suggestion made within paragraph 4 of the letter of objection dated 3rd August 2007 and made adjustments to the design of Block H service area to address the practical concerns raised by Wilson (UK).
- 2.5 Shirley Advance and the Council are consequently in the process of negotiating an agreement with Wilson (UK) on the basis that they will only acquire part of land included in the CPO thereby ensuring that Wilson (UK) retain a private area to provide their tenants with the ability to both service their units and to park staff cars in this retained area. In addition, the Council and Shirley Advance will provide Wilson (UK) with all necessary rights to access and utilise the new service yard to be provided partly on the land to be acquired. Wilson (UK) will therefore have all of the benefits of the new service yard as set out in Mr Ojeil's rebuttal evidence.
- 2.6 The proposed agreement with Wilson (UK) envisages that they retain part of the land included in the CPO but if there is any default on the part of Wilson (UK) notably in relation to the transfer of the agreed area of land to Shirley Advance for the purposes of the development then Shirley Advance in conjunction with the Council would still be able to rely on the CPO to the full extent of the land included in the CPO. Consequently the Secretary of State is not being invited to modify the CPO in any way.

3 THE ROYAL BRITISH LEGION CLUB LIMITED

- 3.1 I refer to the Proof of Evidence issued by Michael Orlik of Ladders Solicitors LLP together with the Witness Statement issued by Stewart Almond in his capacity as Chairman of The Royal British Legion.
- 3.2 I confirm that Shirley Advance and the Council have been in negotiations with the Legion for several years. A number of alternative solutions to their concerns have been considered in that time including several potential sites for their relocation.
- 3.3 Throughout the negotiations Shirley Advance and the Council have always recognised the importance of The Royal British Legion as a major 'community' user within Shirley Town Centre.
- 3.4 The proposal to retain The Royal British Legion within their existing premises and as part of the Scheme was arrived at only after all other possibilities had been exhausted. It provides all parties with a satisfactory solution.
- 3.5 As set out in my Proof of Evidence, Shirley Advance has agreed to fund and carry out significant improvement works to the Legion's existing premises.
- 3.6 Detailed Heads of Terms have been agreed and lawyers have been instructed by all parties to document the arrangement. Over the past few weeks I believe that significant progress has been made towards reaching an agreement.
- 3.7 In the event that the legal agreement is not concluded prior to commencement of the Inquiry I confirm that Shirley Advance will continue to negotiate with the Legion with a view to reaching a final agreement with them, to reflect the Heads of Terms that have been agreed, the details of which are summarised in Mr Swallow's rebuttal evidence.

4 GC SHIRLEY LIMITED

- 4.1 I refer to the Proof of Evidence submitted by Stanley Edwards of Evocati Consultancy on behalf of his client, GC Shirley.
- 4.2 Shirley Advance has tried very hard over the past four years to reach agreement with this objector. Unfortunately, despite our efforts, we have been unable to agree terms and this remains the situation today.
- 4.3 In his Proof of Evidence, Mr Edwards objects to the process and procedures followed by the Council in progressing and making the CPO. In this respect, I refer to the rebuttal evidence of Mr Swallow.
- 4.4 In addition, Mr Edwards questions the consultation that has taken place to date in respect of the proposed scheme and the CPO.
- 4.5 Mr Palmer sets out, in his main Proof of Evidence, the consultation undertaken in respect of the planning application for the proposed scheme.
- 4.6 Mr Swallow, in his main Proof of Evidence, notes that comments on the proposed scheme received from GC Shirley at the Cabinet meeting of 21st July 2005 were considered by the Council before the CPO was progressed. In particular, when G C Shirley indicated that it had its own proposals for the redevelopment of the site, the Council invited them to submit it for consideration. This invitation was reiterated again following receipt of the objection from GC Shirley. No alternative scheme has been put forward by GC Shirley for the Council's consideration.
- 4.7 As indicated above, since 2004, there have also been extensive negotiations with GC Shirley for the acquisition of their land. GC Shirley was aware during that time that, should negotiations fail, then a compulsory purchase order would follow.
- 4.8 GC Shirley completed their purchase of the freehold interest in Westminster House ("the Property") on 8th April 2004 at a purchase price of £2.65 million.
- 4.9 On behalf of Helical Bar Plc and Coltham Developments Limited, I had submitted a bid to the previous owners of the Property in the sum of £2.5 million which reflected our thoughts at that time in respect of the highest possible investment value of the Property. The bid was rejected in favour of the GC Shirley bid.
- 4.10 Representatives of GC Shirley immediately requested a meeting with senior officers of the Council to discuss their acquisition of the Property, relative to 'The New Heart for Shirley' redevelopment proposals, thereby demonstrating in my view that they had bought the subject property in the full knowledge of the likely redevelopment proposals.
- 4.11 As the Council's development partner for the proposed 'The New Heart for Shirley' redevelopment ("the Scheme"), Shirley Advance was invited by the Council officers to attend that meeting.

- 4.12 From the discussions that took place at the meeting, it became clear, in my view, that GC Shirley had acquired the Property in an attempt to become directly involved with the Scheme and, in the event that they did not become so involved, that they intended to frustrate the Council and Shirley Advance in our combined pursuit of the Scheme.
- 4.13 They suggested that the Council should 'deselect' Shirley Advance as preferred development partner and should instead progress the Scheme with GC Shirley. The Council did not act on this suggestion and subsequently proceeded to complete the Agreement with Shirley Advance on 12th May 2004.
- 4.14 Shortly thereafter I attended a further meeting with GC Shirley and a deal was agreed whereby Shirley Advance/GC Shirley would enter into a conditional contract to buy/sell the freehold interest in Westminster House at a purchase price of £4 million.
- 4.15 That deal was conditional itself upon the agreement between Shirley Advance and the Council. Heads of Terms were produced and respective lawyers were instructed during the course of the summer/winter months of 2004. However, by the first quarter of 2005, it became apparent that GC Shirley were not progressing the deal.
- 4.16 As a result, I attended a further meeting GC Shirley and we were told that they were no longer prepared to progress the deal as previously agreed on a conditional basis and that we would have to proceed unconditionally, albeit at the same purchase price of £4 million.
- 4.17 After some discussion Shirley Advance agreed to proceed with the purchase of Westminster House, as requested, on an unconditional basis at a purchase price of £4 million. Respective lawyers were instructed to proceed accordingly.
- 4.18 However, in July 2005, GC Shirley indicated that it was no longer prepared to proceed with the deal at a purchase price of £4 million. Instead, GC Shirley indicated that they would now only be prepared to sell at a price of £5 million on an unconditional basis.
- 4.19 GC Shirley also required a further £1 million in the event that Shirley Advance became involved in the redevelopment of the former PowerGen site at any time in the future.
- 4.20 Shirley Advance subsequently confirmed that it was prepared to increase the total purchase price to £5 million, with an initial unconditional payment of £4 million and a further conditional payment of £1 million. Shirley Advance would not agree to enter into any further financial commitment in respect of the former PowerGen site.
- 4.21 GC Shirley agreed to proceed with our revised proposal and respective lawyers were instructed accordingly.

- 4.22 By March 2006, it had become apparent that GC Shirley would not agree to the conditionality provisions relating to the additional payment of £1 million despite having previously agreed this revised deal.
- 4.23 As a result, Shirley Advance and GC Shirley agreed that the deal would not be progressed on the previously agreed basis. However, it was agreed that Shirley Advance would buy and GC Shirley would sell the Property on an entirely unconditional basis at a total purchase price of £5 million at a time that suited Shirley Advance relative to the overall development project.
- 4.24 It subsequently became clear that there was some confusion between Shirley Advance and GC Shirley about the terms agreed. Shirley Advance and GC Shirley met on 20 November 2006 in order to resolve this confusion.
- 4.25 In the meeting GC Shirley indicated that it had taken formal advice at the 'highest level possible' from GVA Grimley ("GVAG") in London. They indicated that the outcome of that advice was that the Property would achieve a value of £6 to £6.5 million in accordance with the Compensation Code at compulsory purchase stage.
- 4.26 Shirley Advance once again proposed terms on the basis of an unconditional deal, with a delayed completion, at a purchase price of £5 million. This was the very best deal that Shirley Advance could offer at that time.
- 4.27 This was clearly not acceptable to GC Shirley and Shirley Advance was left with the view that a compulsory purchase order would be required in order to secure control of the Property to implement the Scheme.
- 4.28 Whilst Shirley Advance believed at the time that GC Shirley was merely trying to extract more money from Shirley Advance, it is now clear that GC Shirley was in November 2006 already in the process of gearing up to challenge any subsequent CPO. This is evident from the involvement of Stanley Edwards as early as the month before, in October 2006, as referred to within his Proof of Evidence.
- 4.29 Despite the breakdown in negotiations, Shirley Advance continued to try and reach agreement with GC Shirley.
- 4.30 At the same time, Shirley Advance reported the latest situation to senior officers at the Council and they subsequently sought formal resolution from Cabinet to the use of compulsory purchase powers in order to acquire the necessary interests to deliver the Scheme. This initial resolution was secured on 12th December 2006.
- 4.31 Within 48 hours of that Cabinet meeting, I received a telephone call directly from GC Shirley during which a further meeting was proposed. Given the history, I initially resisted the request for a meeting and indicated that Shirley Advance was in the process of seeking compulsory purchase valuation advice from CB Richard Ellis.

- 4.32 A meeting between our respective compulsory purchase valuation experts was proposed by me but not acted upon. Similarly meetings between Shirley Advance and GC Shirley were proposed without success.
- 4.33 Eventually, having made no progress over the telephone and having been unable to arrange a further meeting, I wrote a letter to GC Shirley on 7th February 2007 (Appendix 1). In response, GC Shirley Limited in a letter dated 14th February 2007, confirmed their agreement to a direct dialogue between GVAG (on behalf of GC Shirley) and CB Richard Ellis ("CBRE") (on behalf of Shirley Advance).
- 4.34 GVAG initially indicated that it was without detailed instructions and therefore a meeting was subsequently arranged for 3rd April 2007. Shirley Advance agreed to pay GC Shirley's reasonable fees and costs dependant upon a commitment that meaningful negotiations would follow.
- 4.35 It became clear from the meeting that the separate valuations of the Property undertaken by CBRE and GVAG differed significantly. CBRE valued the Property at circa £3 million and GVAG valued the Property in excess of £4 million.
- 4.36 A further meeting was arranged between CBRE and GVAG on 24th May 2007. At that meeting, CBRE confirmed an offer to GVAG on behalf of Shirley Advance in the amount of £3.25 million to include all 'compensation code extras'.
- 4.37 Despite several exchanges and chasers from Shirley Advance, no response to the offer was received.
- 4.38 Subsequently and in order to progress the negotiations, CBRE contacted GVAG on 15th June 2007 requesting acceptance or refusal of the offer by a certain date. Shirley Advance also suggested that consideration be given to referring the matter for determination by a third party. The latter suggestion was rejected by GVAG.
- 4.39 On 21st June 2007 GVAG confirmed that GC Shirley were still in the process of considering the difference between the advice they had received in terms of the market value of the Property and the most recent offer that had been made by Shirley Advance.
- 4.40 Despite the downward adjustment in the performance of all property markets that was evident at that time, in October 2007, Shirley Advance reiterated its previous offer to acquire the Property at the same financial level set out previously within the 25th May 2007 offer i.e. at a total of £3.25 million including compensation code extras.
- 4.41 Nothing further was heard from GVAG on behalf of GC Shirley until 5th November 2007. GVAG then indicated that GC Shirley was not prepared to proceed with a sale of the Property at any of the financial levels previously discussed between GVAG and CBRE.

- 4.42 A meeting was arranged to take discussions forward on 30th November 2007. Little progress was made at that meeting and subsequently Shirley Advance confirmed its commitment to progress the deal in accordance with its most recent proposal as set out above.
- 4.43 Eventually, on 17th January 2008, GVAG acting for GC Shirley rejected the offer from Shirley Advance. Shirley Advance were informed that GC Shirley had instructed GVAG not to continue negotiations with CBRE on value compensation related matters and that all GC Shirley's attention was being averted to the CPO Inquiry scheduled for May 2008.
- 4.44 There was no further direct contact between Shirley Advance/CBRE and GC Shirley/GCAG after that date until Shirley Advance and GC Shirley met (in accordance with the Inspector's request) on 2nd April 2008 with a view to establishing any areas of 'common ground' between the parties.
- 4.45 Following the meeting on 2nd April 2008, GC Shirley met with Shirley Advance to discuss the possible acquisition of the Property. Shirley Advance subsequently wrote to GC Shirley setting out the terms on which it is prepared to acquire the Property (Appendix 2). To date, there has been no response from GC Shirley.
- 4.46 I therefore refute the suggestion in respect of this objector that there has been a lack of consultation. In respect of the public, for the reasons already explained, there has been adequate consultation.

5 CONCLUSION

- 5.1 I believe that significant progress has been made with all of the outstanding objectors to the CPO and confirm that Shirley Advance remains intent, where possible, to reach final agreement with all parties to reflect the terms already agreed with them.
- 5.2 In particular, as set out in this and my main Proof of Evidence, significant progress has been made with Wilson (UK) Limited and The Royal British Legion to address the issues raised by them in their letters of objection.
- 5.3 As for GC Shirley, Shirley Advance has for some time endeavoured to negotiate with them for the acquisition of the Property. Unfortunately, GC Shirley has been and continues to be unwilling to commit to progress those negotiations.
- 5.4 Once again, I would take this opportunity to confirm that Shirley Advance remains committed to the delivery of this important regeneration project and that we will be able to make very real progress towards this in the event that the CPO is confirmed.

Appendix 1

