

# Compulsory Purchase Order decision

Inquiry held on 17, 18 and 20 January 2023

Site visit made 19 January 2023

by **Phillip J G Ware BSc DipTP MRTPI**

Inspector appointed by the Secretary of State

Decision date: 18 April 2023

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**Case Ref: APP/PCU/CPO/U4610/3299063**

**The Council of The City of Coventry (City Centre South) Compulsory Purchase Order 2022**

- The Compulsory Purchase Order was made under s226(1)(a) of the Town and Country Planning Act 1990 and s13 of the Local Government (Miscellaneous Provisions) Act 1976, by The Council of The City of Coventry.
  - The purpose of the Order is to facilitate the regeneration of one of the most tired and outdated areas of Coventry city centre, to improve the mix of uses and to introduce a residential population.
  - The main grounds of objection relate to the alleged lack of a compelling case in the public interest, insufficient viability evidence, impact on existing servicing, property considerations, and lack of consideration of diversity in the Order Lands.
  - When the inquiry opened there were 11 Remaining Objections, 6 were withdrawn during the inquiry and a further 1 was withdrawn after the inquiry.
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## Decision

1. For the reasons given below and having regard to all matters raised I confirm the Compulsory Purchase Order.

## Procedural matters

2. On 12 July 2022 the Secretary of State confirmed that the decision in this case had been delegated to an appointed Inspector.
  3. The inquiry sat for three days, as detailed above.
  4. The Acquiring Authority confirmed at the inquiry that all the statutory formalities had been complied with.
  5. A Stopping Up Order under the Town and Country Planning Act, intended to facilitate the Scheme underpinning the CPO, was considered at the same inquiry. A report is being submitted on that matter to the Secretary of State for Transport.
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6. The Order Lands include five areas which potentially fall within the definition of open space to which s19(1) of the Acquisition of Land Act potentially falls. The Secretary of State has issued a certificate under that section.

## **Reasons**

### ***The Order Lands and the surrounding area***

7. The Order Lands are situated in the southern part of the city centre between the current retail core and the railway station. In that sense they form a gateway into the commercial/retail heart of the city. They are bounded by Upper Precinct and Broadgate to the north, Hertford Street to the east, Warwick Row and Greyfriars Road to the south and Queen Victoria Road to the west and is largely pedestrianised. The area generally comprises buildings dating from the post-war reconstruction in the 1950s and 1960s.
8. There are two Grade II listed structures in or very close to the Order Lands. The first is the William Mitchell mural at the former Three Tuns public house building in Bull Yard – this would be relocated as part of the Scheme. The second is the Grade II listed Coventry Market. There are further Grade II listed buildings where new rights are to be created and acquired.
9. The area proposed to be compulsorily acquired comprises around 6.36 hectares and is principally formed of retail buildings at ground and first floor levels. It includes parking and service yards, including those areas serving the Coventry Market (which is affected by the proposal but is not to be compulsorily acquired.)
10. Unusually the Council owns the freehold of around 99% of the land, although there are a number of leasehold and occupational interests.

### ***The background to the CPO and the Scheme***

11. The reason for the CPO is to enable the obviously much-needed redevelopment of the City Centre South area through comprehensive redevelopment. The proposal underlying the CPO is intended to improve the mix of uses currently on the site, by improving the quality of the retail and commercial offer, and importantly by introducing a substantial amount of residential accommodation – which is notably lacking in the city centre as a whole. The tired appearance of the area, including the public realm, is in need of radical refreshment. These objectives have been part of the Council's aspiration and policy for decades.
12. After a number of initial concepts and false starts, a comprehensive mixed-use development was established by an outline planning permission granted by the Council in May 2012. This comprised a comprehensive redevelopment of the City Centre South area. However that scheme was not progressed due to changes in the retail market, as was clearly explained at the inquiry. In particular the department store concept, which had anchored retail developments for many years was no longer the current model. In addition the growth of online retailing and the demand for more varied leisure and retail experiences made the approved scheme unsuited to modern requirements. Furthermore there was a clear shift in popularity towards inner city living which the approved scheme did little to reflect.
13. After 2012 there were also a number of important changes which fed into the more recent 2022 development (to which I will return below). As can be seen in

the wider city centre area, a number of developments and other changes have gone a long way towards transforming the city centre. Most notably these include the demolition of Coventry Point and a substantial programme of public realm improvements, most recently to the north of the Order Lands at Upper Precinct, Market Way and Smithford Way. The public realm has been substantially improved in the central area but that has had the unintended consequence of highlighting the downmarket buildings and public land in the Order Lands.

14. In January 2022 planning permission was granted by the Council for a hybrid redevelopment proposal, with non-material amendments approved later that year. Even that approval has undergone changes to reflect improvements (including a s73 variation in January 2023) and will doubtless change in detail in future. However these elements comprise a Scheme which fully reflects the requirement of planning policy and guidance, which I will discuss below, and is the underlying Scheme for the purposes of the CPO.

### ***Local Plan and other policy***

15. The development plan includes the Coventry City Council Local Plan (LP)(2017) and the Coventry City Council Action Area Plan (AAP)(2017). In addition there is a wide range of Supplementary Planning Guidance and Documents.
16. The policy dealing with the city centre as a whole is LP policy R2, with echoes in AAP policy CC1. The development strategy for the broader city centre is set out, and the general approach is that the city centre will continue to be developed and regenerated to ensure it is a truly world class centre, leading in design, sustainability and culture. The policy sets out a wide range of factors by which the approach is to be delivered, all of which would be achieved by the Scheme underpinning the CPO. In particular the comprehensive regeneration would include a significant residential element, flexible retail/leisure space, a sensitive approach to heritage assets and the views of the 'Three Spires', much improved servicing arrangements and considerable improvements to the public realm.
17. AAP policy CC19 'Primary Shopping Area regeneration – South' is specific to the area including the Order Lands. It is obviously therefore highly relevant to the Scheme and the CPO. It provides that the southern part of the main shopping area will be regenerated for predominantly comparison shopping, and sets out a series of criteria which should be met by any development. Most of these criteria are fully met by the Scheme and, particularly in relation to the provision of residential accommodation, the policy requirements are far exceeded in many instances.
18. However I am aware that two of the criteria in CC19 are not met by the Scheme, for good reason in both cases. The criteria in CC19 refer back to the 2012 permission, and much has moved on since that time, such that some of the criteria are no longer relevant.
19. One of the criteria seeks a retail increase of at least 10,000 sq.m. – but, as previously mentioned, there has been a significant change in the pattern of retailing since the adoption of the policy, and this particular requirement is no longer directly relevant.

20. The second CC19 criteria which is not complied with is the provision of a new multi-storey car park to replace the area lost by the redevelopment of the Barracks car park. However the Salt Lane car park has been constructed and the need in transportation terms for the Scheme to provide spaces has been superseded.
21. Overall, the essential regeneration elements of CC19 are met and, taken as a whole, the Scheme is compliant with that policy.
22. Other development plan policies have been referenced by the Council, and there is no suggestion that the Scheme or the CPO is otherwise than in accordance with the development plan.
23. A range of other Supplementary Planning Guidance and Supplementary Planning Documents have been referenced by the Council. Mention should also be made of the One Coventry Plan Annual Performance Report 2020-2021 which states that the Scheme is a key regeneration priority for the city centre and will transform seven hectares of the city. Again, there is no suggestion that the Scheme/CPO is out of step with any of these documents.
24. The National Planning Policy Framework (NPPF) is obviously not part of the development plan but is an important material consideration. The Scheme underpinning the CPO accords with NPPF policies related to the importance of the objectives of sustainable development. The NPPF also recognises the need to bring forward land that may be suitable for meeting development needs - if necessary using compulsory purchase powers.
25. The conclusion is that the Scheme which underpins the CPO is in accordance with the development plan for the area.

***Economic, social, and/or environmental well-being***

26. The Order Lands and the surrounding area are characterised by high levels of vacancy, although I appreciate that some of this can probably be ascribed to the effects of the Scheme itself, low average sales volume and generally poor retail performance.
27. In terms of the economic position, the average economic activity amongst the working-age population is significantly depressed. The Scheme is estimated to produce 180 f/t equivalent jobs during the 10 year construction period, with 1,090 jobs on completion. In addition the estimated 3,660 new residents will significantly improve the vitality and viability of the retail/leisure offer and generate an increased local spending power. Given the economic state of the area at present, it is no exaggeration to state that the Scheme would bring transformational economic benefits.
28. Turning to the social benefits, these are equally self-evident. The Scheme underlying the CPO will deliver a very substantial number of residential units, more than would be required to be policy compliant, in a highly sustainable location which currently does not have a residential population.
29. The delivery of a large number of new homes is significant in both a city-wide and city centre context. The Scheme will increase the variety of provision in the local housing market, including the potential to deliver affordable housing.

30. The Scheme will also deliver substantially increased permeability and remove what is currently a difficult area for pedestrians to understand and navigate, with greatly improved passive surveillance. The introduction of a substantial resident population would improve public safety.
31. Overall the Scheme underpinning the CPO would deliver significant social benefits.
32. In environmental terms, the Scheme would reduce pressure on greenfield land and reuse a considerable amount of brownfield land in a highly sustainable central location. In place of the current sporadic and ill-defined areas of public open space, the Scheme would significantly increase the quality and quantity of public areas. A legible series of servicing arrangements would segregate that activity from the public realm, thereby enhancing both activities.
33. The Scheme would reintroduce historic routes across the city centre and improve the legibility of circulation routes for pedestrians. The replacement of the existing tired townscape with well-designed modern buildings would be a major benefit. In particular the Scheme would enhance the situation of Coventry Market relative to the core retail area and the public realm - enabling its value as a designated heritage asset to be better experienced.
34. Overall the Scheme underpinning the CPO would deliver significant environmental benefits.
35. Taken together, the Scheme which underpins the CPO will deliver significant contributions to the improvement of the economic, social and environmental well-being of the area.

### ***Achievement by any other means***

36. One of the factors in considering whether to confirm a CPO is if the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals/locations put forward by others.
37. This matter can be dealt with very briefly. In order to achieve the policy objectives set out above, the development obviously has to take place on the Order Lands and their surroundings. No alternative scheme has been put forward which would meet the policy objectives and the comprehensive regeneration of the Order Lands is clearly essential. Given the Council's very significant landholdings, it is entirely unsurprising that no objector or other party is in a position to suggest an alternative proposal.
38. It is therefore clear that the purpose for which the Council is proposing to acquire the land cannot be achieved by any other means.

### ***Financial viability***

39. National guidance on compulsory purchase states that the potential viability of a Scheme should be considered in the context of an assessment as to whether there is a "...reasonable prospect that the scheme will proceed....A general indication of funding intentions and of any commitments from third parties will usually suffice." The necessary resources should be "likely" to be available.

40. The contractual arrangements focus on the Development Agreement (2019) between the Council, Shearer Property Regen Limited and Shearer Property Group. This Agreement sets out a series of conditions and a timescale for demolition and delivery, over a 10 year period. The evidence to the inquiry was that the conditions are conventional and that their satisfaction is well advanced. I understand that variations to the Development Agreement have recently been agreed between the Council and the developer partner, covering updated matters as discussed at the inquiry. It is clear that there is a strong likelihood of delivery and that there is a robust arrangement between the Council and the developer.
41. Public sector funding is partly from the West Midlands Combined Authority, who have recently reconfirmed their support in the light of the need for the grant agreement to be updated to reflect the evolution of the Scheme. A significant amount of this funding has already been utilised. The Council itself has agreed to provide funding support as of 2022. With those two uncontested sources of funding confirmed, it is clear that public sector financial support is in place.
42. The funding arrangements have been set out in considerable detail, and the funder who will provide at least 40% of the working capital is evidenced to be financially robust, well capitalised and committed. The cost of the funding has been fully accounted for. A bespoke appraisal covering private residential sales, affordable housing, build to rent, commercial units, construction costs, fees and finance costs has been prepared.
43. The Council has independently scrutinised all this evidence, and has concluded that the developer has a credible and demonstrable basis of funding. This scrutiny looked at all the inputs to the developer's appraisal.
44. It should be noted the current appraisal shows a profit on net costs of 12.3%, which is less than the 16.5% in the Development Agreement. However that is subject to a developer waiver, and the inquiry heard that the developer intends to proceed at that level (and why) and that the viability condition will be waived.
45. Overall there is ample evidence that there is at the very least a reasonable prospect of the Scheme proceeding.

#### ***Impediments to the Scheme***

46. National guidance provides that the scheme should be unlikely to be blocked by any physical or legal impediment. This can include the programming of infrastructure work and the need for planning permissions or other consents.
47. Planning permissions have been granted and evidence was given to the inquiry as to the phasing of the development and the feasibility of servicing arrangements during the construction period. No objector has raised any evidenced concerns about the progress of the development and it is concluded that there are no impediments to the delivery of the Scheme.

#### ***Outstanding objections***

48. As previously stated, the Council owns a very substantial proportion of the Order Lands. The remaining parts of the land yet to be acquired are various leasehold and occupational interests, mainly held by retail occupiers in respect of individual shop units.

49. The inquiry was presented with very substantial and uncontested evidence of the efforts to relocate and assist occupiers. That these efforts have been largely successful gives weight to the argument that the authority has been highly proactive, in accordance with national guidance.

50. At the time of writing this decision, there are four remaining objectors.

A Sushi Ltd (Plot 173)

51. The objector raises issues related to the financial viability of the scheme, which are addressed above. The objector also comments on the ethnic variety of the Order Lands, which is dealt with below. The objector is seeking alternative premises and the Council has put various properties to the objector.

New Look Retailers (Plots 228, 229)

52. The CPO seeks the acquisition of new rights only. A deed of undertaking has been prepared to assure the objector in relation to those rights, but as far as I am aware the objection has not been withdrawn.

Poundland Ltd (Plots 235, 257)

53. Again, the objection relates to new rights, and a deed of undertaking has been prepared. But as far as I am aware the objection has not been withdrawn.

Warren James (Plot 93)

54. The objection relates to the suggestion that the Council's ownership of the city centre has allowed it to become run down. This does not tally with the evidence of the considerable efforts which the authority has made in recent years to improve the vitality and viability of the centre. In any event the objector holds a lease from the council which the authority can determine at three months' notice, and the Council has indicated that it will do so, and that CPO powers are not likely to be needed.

55. Overall, none of the remaining objections, even taken together, come close to indicating that the CPO should not be confirmed.

***Human Rights and Equality issues***

56. It is accepted by the Council that the European Convention on Human Rights (ECHR) would be engaged by the confirmation of the CPO. In particular this relates to the provisions of Article 1 of the First Protocol to the ECHR which provides that no one should be deprived of possessions except in the public interest. However this is not an unqualified right and interference may be justified in accordance with the law, providing that interference is proportionate to the public interest being achieved. The public interest in this case has been set out above and it is considered that there is a fair balance between the public interest and the private rights which will be affected by the Order. The implementation of the scheme underlying the CPO justifies the interference with the human rights of those with an interest in the land.

57. In addition Article 6 of the ECHR provides that everyone is entitled to a fair and public hearing. This has been met by the procedures for objection and confirmation of the CPO.
58. Overall, interference with human rights does not represent a reason for not confirming the CPO.
59. The Public Sector Equality Duty (s149 Equality Act 2010) applies in this case. Good practice is to undertake an Equalities Impact Assessment (EIA) which identifies how proposed actions will impact upon those with protected characteristics and enables consideration of mitigation. This has been undertaken by the Council in March 2022.
60. One remaining objection refers to the ethnic diversity of the existing shops, but did not provide any further evidence. The EIA survey dealt with the ethnicity of respondents and concluded that the impact would be neutral. In addition, the evidence before the inquiry clearly showed the efforts made on behalf of the Council to assist with suitable relocation.

### **Conclusion**

61. The scheme underpinning the CPO is wholly in accordance with the development plan and has the benefit of planning permission. There are no alternative proposals and the evidence is that resources are in place to ensure timely delivery.
62. It is clear that the Council has made considerable efforts to acquire the Order Lands by agreement, and that the CPO has progressed alongside separate negotiations. This is evidenced by the number of objectors with whom an agreement, leading to the withdrawal of the objection, has been achieved. The outstanding objections are not sufficient to lead to the CPO being rejected or amended, and seem to have the potential for resolution even at this stage.
63. Overall it is concluded that there is a compelling case in the public interest for the CPO to be confirmed, and that there are no impediments to the regeneration of the Order Lands. There is a good prospect of the Scheme being delivered within a reasonable time scale and there is no realistic prospect of the Scheme being realised without the CPO.
64. For the reasons given above and having regard to all matters raised I therefore confirm the Compulsory Purchase Order.

*P. J. G. Ware*  
Inspector



**APPEARANCES**

Richard Turney and Rebecca Sage of Counsel, instructed by the solicitor to the Council	
He called:	
Robert Maxwell RIBA	Partner, Allies and Morrison
Richard Brown BSc (Hons) MRTPI	Director, CBRE
Liam D'Onofrio BA DipTP MRTPI	Principal town planner, Coventry City Council
Russell Vaughan BSc BEng	Director, Transport Planning Practice
Adam Markwell BSc(Hons) MRICS	Director, Shearer Property Group
Alex Morton BA MSc MRICS	Deloitte LLP
Andy Fancy BSc(Hons)	Managing Director, Special Projects, Hill Residential Ltd
Tony Parker BSc FICA	Finance Director, Hill Residential Ltd
Graeme Lawes BSc MRICS RV	Senior Director, Deloitte LLP

Neil Cameron KC, instructed by Beechcroft DAC	
Acting for Royal London Mutual Insurance Society Ltd	
(Objection withdrawn on Day 1 of the Inquiry)	

**INQUIRY DOCUMENTS**

Doc 1	Acquiring Authority opening submission
Doc 2	DA Key Amendments Summary Core Document with Appendix
Doc 3	Acquiring Authority closing submission
Doc 4	Letter (13 April 2023) confirming variations to the DA

**CORE DOCUMENTS**

	<b>COMPULSORY PURCHASE ORDER</b>
1.01	The Council of the City of Coventry (City Centre South) Compulsory Purchase Order 2022
1.02	The Council of the City of Coventry (City Centre South) Compulsory Purchase Order 2022 Map
1.03	Report to Cabinet dated 11 January 2022 (pursuant to which the CPO was made)
1.04	Equalities Impact Assessment March 2022
1.05	Statement of Reasons
1.06	Outline Statement of Case
1.07	Full Statement of Case on behalf of Acquiring Authority December 2022
1.08	Coventry City Council's Site Assembly Strategy – Information for Businesses 2022

1.09	The Government Guidance on Compulsory Purchase Process and The Crichel Down Rules (2019)
	<b>COUNCIL PROOFS OF EVIDENCE</b>
2.01	Proof of Evidence of Richard Brown
2.01-S	Summary Proof of Evidence of Richard Brown
2.02	Proof of Evidence of Robert Maxwell
2.02-S	Summary Proof of Evidence of Robert Maxwell
2.03	Proof of Evidence of Adam Markwell
2.03-S	Summary Proof of Evidence of Adam Markwell
2.04	Proof of Evidence of Andy Fancy
2.04-S	Summary Proof of Evidence of Andy Fancy
2.05	Proof of Evidence of Alex Morton
2.05-S	Summary Proof of Evidence of Alex Morton
2.06	Proof of Evidence of Liam D'Onofrio
2.06-S	Summary Proof of Evidence of Liam D'Onofrio
2.07	Proof of Evidence of Russell Vaughan
2.07-S	Summary Proof of Evidence of Russell Vaughan
2.08	Proof of Evidence of Graeme Lawes
2.08-S	Summary Proof of Evidence of Graeme Lawes
2.09	CCS Proofs Glossary
2.10	Proof of Evidence of Tony Parker
2.10-S	Summary Proof of Evidence of Tony Parker
	<b>PLANNING</b>
3.01	Outline planning permission granted by the Council on 31 May 2012 in respect of application reference OUT/2012/0575
3.02-a	Outline planning permission granted by the Council on 27 January 2022 pursuant to a hybrid planning application reference OUT/2020/2876
3.02-b	Section 106 agreement dated 26 January 2022 between The Council of the City of Coventry and Shearer Property Regen Limited
3.03	Planning officer's report to planning committee held on 22 April 2021
3.04	Listed building consent LB/2020/2857
3.05	Listed building consent LB/2020/2860
3.06	Non-material amendment to planning permission OUT/2020/2876, reference NMA/2022/2523, granted on 11 October 2022
3.07	Section 73 application reference S73/2022/3160 on-line portal confirmation of validation date
3.08	National Planning Policy Framework
3.09	The Coventry City Council Local Plan adopted December 2017 (excluding appendices save for Appendix 5)
3.10	Coventry City Council City Centre Area Action Plan adopted December 2017
3.11	Air Quality Supplementary Planning Document adopted August 2019
3.12	Coventry Connected (Transport and Accessibility) Supplementary Planning Document adopted Jan 2019
3.13	Delivering a More Sustainable City Supplementary Planning Document adopted Jan 2009
3.14	Design Guidance for New Residential Development Supplementary Planning Guidance adopted Jan 1991
3.15	Green Space Strategy 2019-2024 Supplementary Planning Document
3.16	Open Spaces Supplementary Planning Document adopted March 2022

3.17	Affordable Housing Supplementary Planning Document adopted March 2022
3.18	Affordable Housing Supplementary Planning Document adopted March 2022
3.19	Tall Buildings Design Guide & Three Spires View Management Framework draft Supplementary Planning Document June 2022
3.20	Design Guidance for New Residential Development draft Supplementary Planning Document June 2022
3.21	Biodiversity Net Gain draft Supplementary Planning Document June 2022
3.22	Coventry View Management Framework
3.24	Coventry City Wide Shopping and Centres Study, 11 December 2014 prepared by Nathaniel Lichfield and Partners
3.25	Report to Cabinet dated 22 September 2009
3.26	Coventry City Centre Masterplan produced by Jerde (2008/2009)
3.27	CCC Energy Supplementary Planning Document March 2022
3.28	Trees and Development Guidelines for Coventry SPD
3.29	S73/2022/3160 Decision Notice December 2022
3.30	S73/2022/3160 Report to Planning Committee 2022
3.31	Financial Viability Assessment Executive Summary December 2022
3.32	Deed of Variation between CCC and Shearer Property Regen Limited January 2023
3.33	Revised Market Servicing Strategy - Planning Note January 2023
3.34	City Centre South Funding and Delivery - Cabinet Public Report November 2022
3.35	Planning and Affordable Housing Statement
3.36	Minutes (Council Cabinet Meeting) - 15 November 2022
3.37	Public Reports Pack (Council Cabinet Meeting) - 15 November 2022
3.38	Public Reports Pack - 6 December 2022
3.39	Drawing 0905
3.40	Vicarage Field Decision Letter
3.41	Development Principles December 2022
3.42	Minutes of the Council Meeting held on 6 December 2022
3.43	Transport Assessment submitted in support of planning application OUT/2020/2876
3.44	Addendum Transport Assessment submitted in support of the s73 application
3.45	Addendum Transport Assessment - Appendix 8.1A
	<b>(STOPPING-UP ORDER)</b>
	<b>OPEN SPACE</b>
5.01	Section 19 Certificate
5.02	Plan showing open space for inclusion in section 19 certificate
5.03	Plan showing exchange land for inclusion in section 19 certificate
	<b>COUNCIL REBUTTALS</b>
6.01	Rebuttal Proof of Richard Brown
6.02	Rebuttal Proof of Russell Vaughan
6.03	Rebuttal Proof of Alex Morton
6.04	Rebuttal Proof of Tony Parker
6.05	Rebuttal Proof of Graeme Lawes