

# Shaftesbury

## **THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION**

This document contains information relating to certain of the resolutions to be voted on at the Annual General Meeting to be held on 8 February 2019. If you are not sure about any of the proposals or the action you should take, you should consult with a stockbroker, bank manager, solicitor, accountant or other independent financial adviser authorised under the Financial Services and Markets Act 2000 if you are in the United Kingdom (or, if not, with another appropriately authorised financial adviser). If you have sold or transferred all your shares in Shaftesbury PLC, please forward this document to the purchaser or transferee, or to the stockbroker, bank or other agent who arranged the sale or transfer.

29 January 2019

Dear Shareholder

### **Statement circulated at the request of Mr Samuel Tak Lee**

Mr Samuel Tak Lee has requested that the attached statement be circulated to all shareholders.

Mr Lee has a beneficial interest of approximately 26% in the issued share capital of the Company. He is a major, neighbouring landowner in London's West End, through his control of The Langham Estate, a 1.3 million sq. ft. mixed-use property portfolio located in an area between Oxford Street and Euston Road.

The attached statement notifies Mr Lee's intention to vote against three resolutions at the 2019 AGM which give the Directors the authority to allot shares, and to enable them, in certain circumstances, to do so on a non pre-emptive basis. He voted against resolutions seeking these authorities at the 2018 AGM, having written a similar statement to shareholders in advance of that meeting. At that time, Mr Lee's declared interest in the Company's issued share capital was 25.02%. At the 2018 AGM, over 70% of shareholders voted in favour of the relevant resolutions, representing more than 96% of the shares voted, excluding Mr Lee's shares.

In the attached statement, Mr Lee raises a number of points, upon which we comment below. Many of these points are the same as he made twelve months ago, in particular relating to a share placing undertaken by the Company in December 2017, on which the Board has already responded fully.

### **Background to the 2017 placing**

The Board keeps under review the Group's capital structure and future financing needs to ensure sufficient committed resources are available to invest in, and grow the Group's portfolio, whilst maintaining a prudent balance between equity and debt which it considers to be appropriate for a public company.

On 6 December 2017, the Company announced a non pre-emptive share issue of 27.86 million shares, equivalent to 9.98% of the then issued share capital, at 952 pence per share, which raised c. £260 million, net of expenses. The Board's decision followed financial commitments for property purchases and associated capital expenditure in the preceding six months of £162 million. The remainder of the proceeds were raised to provide financial capacity for further acquisitions and to fund value-enhancing schemes (including £12 million to complete schemes already then underway).

## **Response by the Board to statements made by Mr Lee**

### ***Placings generally***

Placings are a commonly used method of raising equity on a non pre-emptive basis in the UK listed market. Between 2011 and 2017, UK listed companies carried out over 400 non pre-emptive issues raising c. £40.5 billion.

The Pre-emption Group Statement of Principles 2015 confirm that special resolutions to disapply pre-emption rights will be supported by institutional shareholders where the resolutions seek authority to issue non pre-emptively for cash:

- up to 5% of issued share capital in any one year whether or not in connection with an acquisition or specified capital investment; and
- a further 5% of issued share capital for use in connection with an acquisition or specified capital investment which is announced at the same time as the issue of shares or which has taken place in the six month period prior to the issue and is disclosed in the announcement of the issue.

UK public companies routinely obtain annual authorities from shareholders which follow these requirements of the Pre-emption Principles and which permit directors to issue shares on a non pre-emptive basis in certain circumstances. The Company is seeking such annual authorities at the 2019 AGM.

Mr Lee's statement refers to the guidance issued by the Pensions and Lifetime Savings Association Corporate Governance Policy and Voting Guidelines and quotes one element of these Guidelines only. Importantly, Mr Lee's statement does not go on to say that the Guidelines confirm that a vote against resolutions to disapply pre-emption rights would be appropriate where the resolutions "*...are not consistent with the Pre-emption Principles without a satisfactory explanation.*"

The Company's resolutions at its AGMs (including those proposed at the forthcoming meeting) have been (and are) consistent with these principles.

### ***2017 placing***

The 2017 placing was carried out under authorities granted at the 2017 AGM. At that time, Mr Lee's beneficial interest stood at 17.01%, but he did not vote on any resolutions proposed at that meeting. The resolutions granting authority to the Board to allot shares on a non pre-emptive basis were supported by more than 99% and 96%, respectively, of those shareholders voting at that meeting.

Mr Lee states that the placing was motivated by a desire to dilute his interest in Shaftesbury. This is not true. In fact, Mr Lee was invited to participate in the placing and he received an allocation of 98.4% of the shares for which he applied (representing an allocation pro rata to his existing percentage ownership, subject only to a minor scaling back, even though the offer was substantially over-subscribed). Mr Lee continued to buy shares in the market following the placing.

In our 2018 annual results, announced on 27 November 2018, the Company reported that:

- acquisitions and capital expenditure for the financial year totalled c. £193 million;
- the £260 million raised in the 2017 placing had been spent or earmarked for investment; and
- actual and prospective gearing had been maintained at appropriate, prudent levels.

This clearly confirms that the Board's decision to carry out the placing reflected the financial needs of the business.

Mr Lee refers to the dilutive effect of the equity issue. The placing reduced the Group's EPRA net asset value per share by 1.7 pence, equating to 0.18%.

### ***90-104 Berwick Street***

Mr Lee's statement refers to the acquisition of 90-104 Berwick Street, which was a forward-purchase of a long leasehold interest undergoing a major redevelopment that we announced in August 2017, and alleges that shareholders have not been kept properly apprised about this project and that the placing was not required to finance this acquisition.

- ***Financing of 90-104 Berwick Street and the timing of the placing***

Mr Lee refers to statements made by the Company at its annual results presentation in November 2017 concerning the availability of finance to fund the 90-104 Berwick Street acquisition.

The Company's 2017 annual results were announced on 27 November 2017. At that time negotiations were in progress for the potential acquisition of 72 Broadwick Street. However, it was uncertain whether the transaction would proceed and our statements regarding finance capacity for 90-104 Berwick Street at the presentation to analysts were correct.

On 4 December 2017, the Group secured the acquisition of 72 Broadwick Street, which, together with estimated refurbishment costs, represented a financial commitment of c. £112 million. This had a material impact on the Board's view on financing requirements and, importantly, the projected levels of debt and leverage if the business was to continue to grow and invest in its portfolio. This formed a key part of the Board's decision to undertake the placing.

- ***Keeping shareholders apprised of progress***

In August 2017, when we announced the forward-purchase of 90-104 Berwick Street, we explained that the vendor expected that their redevelopment scheme, and the sale to the Company, would be completed in late 2018. Due to subsequent construction problems, over which the Company has no influence, completion of the scheme has been delayed.

In spring 2018, the Company first became aware of potential delays to the completion of the scheme and, in April 2018, the Company was formally advised by the vendor of a delay until spring 2019. Shareholders were advised of this delay in the Company's interim results announcement on 22 May 2018.

During the summer of 2018, the Company was advised by the vendor of a further delay to completion and that this was now expected to take place in summer 2019. Shareholders were advised of this latest delay in the Company's annual results announced on 27 November 2018.

Your Board is satisfied it has kept shareholders properly informed at each stage.

Like Mr Lee, the Board is frustrated by this delay, which is completely beyond the Company's control and could not have been foreseen in August 2017 nor at the time the placing was announced in December 2017. However, it remains committed to this strategic acquisition.

### ***Mr Lee's dialogue with Shaftesbury's Board***

Mr Lee states that the Board has been reluctant to engage with him in writing.

Over the past 14 months, we have responded promptly and appropriately to numerous letters from Mr Lee's lawyers. Further, we have received a number of Data Subject Access Requests under Data Protection legislation from Mr Lee's lawyers, mainly in connection with the placing, requiring extensive investigation and production of material.

In parallel, Mr Lee made an application to the High Court for pre-action disclosure of documentation relating to the placing. That application was heard in June 2018 and was rejected by the Court.

Disappointingly, however, at no time, and despite our repeated offers, have we had any direct engagement with Mr Lee.

### **Mr Lee's voting intentions at the 2019 AGM**

The attached statement from Mr Lee states that he intends to vote against three resolutions:

- **Resolution 18** – this is an ordinary resolution authorising the Directors to allot shares in the capital of the Company; and
- **Resolutions 19 and 20** – these are special resolutions authorising the Directors to allot shares in certain circumstances on a non pre-emptive basis.

Resolution 18 is conditional upon receiving approval of over 50% of votes cast on the resolution, and so cannot be blocked by Mr Lee acting alone. If this resolution is not passed, the Board will not have the power to issue shares without seeking a new specific approval from shareholders in a general meeting. The requirement to hold separate general meetings of the Company would be time-consuming and costly.

Resolutions 19 and 20 require the approval of at least 75% of votes cast on the resolution. If Mr Lee votes against these resolutions, they will not be passed and the Company will not be able to issue shares on a non pre-emptive basis (irrespective of the outcome of resolution 18).

As stated in the notice of meeting for the 2019 AGM, the Directors have no present intention of using the power under these authorities but, as in previous years, if passed, they would have the flexibility to act in the best interests of the Company should the Board see a clear need to raise equity.

### **Conclusion**

The highest standards of corporate governance and behaviour are embedded in the Company's culture and the day-to-day running of its business. Our experienced board of executive and non-executive Directors is fully aware of its fiduciary duties and seeks always to act in the best interests of all shareholders. The long-term promotion of the business for the benefit of all stakeholders, including shareholders, rather than short-term considerations, is paramount in decision-making.

The Board continues to be satisfied that the placing was conducted properly in accordance with authorities provided by shareholders to the Directors at the 2017 AGM and in compliance with all legal and regulatory requirements.

The Board also considers that it acted properly in undertaking the placing. It was decided upon by the Board for entirely proper purposes, namely the prudent financial management and long-term funding needs of the Company. Furthermore, it is for the Board to determine the funding strategy of the Company, which it has done so, based on its judgement as to what is in the best interests of the Company as a whole.

The Board does not agree with the statements made and sentiments expressed by Mr Lee in the attached statement to shareholders, but respects his right and stated intention to vote against certain resolutions being proposed at the forthcoming AGM.

#### **Recommendation of the Board**

**The Board continues to consider that all of the resolutions proposed in the Notice of AGM are in the best interests of the Company and its shareholders as a whole and they unanimously recommend that shareholders vote in favour of them.**

Yours faithfully

A handwritten signature in black ink, appearing to read 'J Nicholls', written in a cursive style.

Jonathan Nicholls  
Chairman

**ATTACHMENT**

**THE BOARD HAS NOT INDEPENDENTLY VERIFIED THE ACCURACY OF THE  
FOLLOWING STATEMENT**

24 January 2019

## **SHAFTESBURY PLC ANNUAL GENERAL MEETING – 8 FEBRUARY 2019**

Dear Shaftesbury Shareholder,

I write as the ultimate beneficial owner of approximately 26 per cent. of the issued share capital of Shaftesbury PLC ("**Shaftesbury**"). I wrote to you this time last year and, as then, I am concerned to ensure that Shaftesbury is managed in the best interests of all its shareholders.

Since January 2018, I have continued engaging with Shaftesbury's Board through my lawyers to express my ongoing concerns around the non-pre-emptive share issue undertaken in December 2017 (the "**Placing**") and Shaftesbury's strategy.

I continue to believe that an equity fundraising was unnecessary in December 2017 and certainly not in the amount raised.

As I explained last year, I believe share issues of this nature are inequitable and prejudicial as:

- shares are not offered to all existing shareholders pro rata to their existing shareholdings;
- when shares are issued at a discount to the prevailing market price, the only shareholders who benefit are those who are invited to, and able to, participate; and
- the extremely short timeframe within which such offerings are conducted makes them very challenging for non-institutional investors, even if they are given the opportunity to participate.

### **Merits of the Placing**

I believe that at the time of the Placing:

- Shaftesbury was not under any financial strain;
- Shaftesbury had more than sufficient liquidity through the combination of available cash and debt facilities to fund the specific elements of its investment programme detailed in the announcement of the Placing;
- available debt financing was inexpensive compared to the cost of equity; and
- even if Shaftesbury's Board felt some form of equity financing was justified, there was no rationale for raising as much as £265 million.

As a result of the Placing, Shaftesbury's pre-existing shareholders collectively suffered a significant and immediate loss in value of their shareholdings by virtue of the direct equity raising costs, the dilutive effect of the issue and Shaftesbury's resulting less efficient capital structure.

My concern is not whether other companies undertake fundraisings of this nature, but rather whether the Board acted properly in undertaking the Placing.

The relevant resolutions passed at the 2017 AGM only permitted a share issue to finance or refinance an acquisition or other capital investment. The Board attempted to justify the Placing by claiming it was (in part) to finance the acquisition of 90-104 Berwick Street. Only one week earlier, Chris Ward, Shaftesbury's Finance Director, informed analysts that existing cash and debt facilities were sufficient to fund the Berwick Street acquisition. Furthermore, payment in respect of that project has still not been made 13 months later, and in light of reported delays, it remains unclear whether the funds will ever be applied. This risk should have been apparent to the Board all along, given the history of that particular development. Given my concerns that the Board has failed to keep shareholders properly apprised about the project I have authorised an urgent investigation, which remains ongoing.

I firmly believe that the Placing was motivated by a desire to dilute my interest in Shaftesbury. In that process, other shareholders who were not able to, or did not, take up their due proportion of shares, also suffered dilution of their interests.

## Dialogue with Shaftesbury's Board

During my ongoing correspondence with the Shaftesbury Board through their legal advisers, I have asked a number of specific questions regarding the Placing to try to understand the Board's actions, but the responses received have not satisfied my concerns. Shaftesbury's 2018 Annual Report stated that the Board's efforts to engage with me have only resulted in an acknowledgement by me of their letters. That is simply not true. My lawyers have communicated extensively on my behalf regarding the reasons behind my voting at the 2018 AGM.

Despite the Board's contention that it has an open culture that encourages regular dialogue with shareholders, my experience has been that the Board remains reluctant to engage with me in writing to explain the rationale for specific strategic decisions which I do not believe were in the best interests of Shaftesbury's shareholders or value enhancing (and which were, in fact, value destructive).

## My voting intentions

I do not believe Shaftesbury's Board can be relied upon to consider the best interests of shareholders when undertaking future share issues. I again refer to the Pensions and Lifetime Savings Association Corporate Governance Policy and Voting Guidelines which only support disapplication of pre-emption rights:

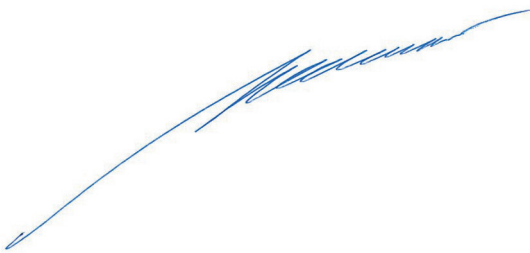
*"where a clear case is made for these not being applied in the context of the best interests of all of the owners of the company concerned."*

For the reasons set out above, I do not consider that a proper case was shown for the Placing in December 2017. I do not believe the Board should be given the ability to conduct a share issue in future without asking shareholders for specific authority. If the relevant resolutions are rejected at the forthcoming AGM, the Directors would remain free to revert to shareholders for specific authority if a valid need to issue shares arises; all shareholders could then examine the case set out by the Directors and decide whether to give their approval.

Accordingly, at Shaftesbury's forthcoming AGM, the shareholders that I ultimately own will vote against **resolutions 18, 19 and 20**, which propose to grant the Board the right to undertake further issues of shares, whether on a pre-emptive basis or otherwise.

As you know, I have been interested in the shares of Shaftesbury for a considerable period of time. I am determined to see that Shaftesbury is successful and operates for the benefit of all its members. I encourage all shareholders to join me in this process and take steps to preserve and enhance the value of their Shaftesbury shares by voting against **resolutions 18, 19 and 20** at the forthcoming 2019 AGM.

Yours faithfully



Samuel Tak Lee