

**THE DERBY CITY COUNCIL (CASTLEWARD) COMPULSORY PURCHASE ORDER 2020
PLANNING EVIDENCE
REBUTTAL**

STATEMENT OF EVIDENCE OF MR. JONATHAN PHEASANT

ON BEHALF OF DERBY CITY COUNCIL

PUBLIC INQUIRY 26 – 29 January 2021

REBUTTAL STATEMENT – PLANNING MATTERS

1. INTRODUCTION

- 1.1. This rebuttal statement has been prepared by Jonathan Pheasant. I have previously prepared a Proof of Evidence on Planning matters (ACQ/2B) to support the Derby City Council (Castleward) Compulsory Purchase Order (2020). My qualifications and experience remain as set out in section 2 of that Proof.
- 1.2. I have been provided with a copy of a “Statement of Evidence” dated 4 January 2021, prepared by CMS Cameron McKenna Nabarro Olswang LLP and submitted on behalf of Tarmac (‘the Tarmac Statement’). Paragraph 2.1.4 of the Tarmac Statement cites one of the reasons for objection to the Order is that there has been failure to consider Planning Policy Guidance (the ‘PPG’) on safeguarding existing sites contrary to advice in the National Planning Policy Framework (February 2019) (the ‘NPPF’). This was a fundamental part of Tarmac's objection to the Order (OBJ/1) and I have responded to this in some detail in my Proof of Evidence (ACQ/2B). In particular, in section 6 of my proof, I have responded to Tarmac's planning related objections. I do not feel it necessary to rehearse my response to matters raised in Tarmac's original objection in this rebuttal and rely on the information in my Proof of Evidence.
- 1.3. However, paragraphs 4.3, 4.4 and 4.5 of the Tarmac Statement raise further issues which are relevant to the subject of my earlier evidence.
- 1.4. In this rebuttal statement, I provide a response to the new issues raised in the Tarmac Statement, which can be summarised as follows:
 - 1.4.1. The Tarmac Statement asserts (Para 4.3) that Phases 1, part of Phase 2 and Phase 3 of the Scheme were granted approval on the basis that they could be carried out while the Objector's business continued. Given that not all of these phases are actually within the Order Land, I consider Tarmac to be referring to the housing-led development of the Castleward area.
 - 1.4.2. The Tarmac Statement (Para 4.4) also refers to the fact that a noise assessment in respect of part of Phase 3 sets out mitigation which can be provided for part of the Phase 3 dwellings in relation to industrial units, including the batching plant to the west of the site.

1.4.3. The Tarmac Statement (para 4.5) then asserts that the Objector's operations and the proposed residential uses could co-exist and that it is unclear why the Objector's business must now be extinguished from the property.

1.5. These issues are addressed together below.

2. RESPONSE TO THE ISSUES RAISED IN RELATION TO PLANNING MATTERS

2.1. It is correct that Phase 1, part of Phase 2 and part of Phase 3 of the wider CUV scheme have been approved in full. Appendix ACQ/2C/8 to my Proof of Evidence (ACQ/2B) includes a map and table of planning permissions and applications which are relevant to the Order. Paragraphs 5.12 to 5.16 of my Proof explain these planning applications and permissions in further detail.

2.2. 164 dwellings, along with a boulevard, open space and commercial units have been delivered as part of Phase 1 (Map reference 2 of my appendix ACQ/2C/8) and 54 units have been delivered as part of Phase 2 (Map reference 3 of my appendix ACQ/2C/8). In determining the planning applications for these two phases, consideration was given to residential amenity and noise generally, but no specific mitigation was required in respect of adverse impacts of the operations at the Tarmac batching plant. It is notable that neither of these two sites are actually within the Order Land.

2.3. Phase 3A is within much closer proximity to the Tarmac batching plant, being on the opposite side of John Street. In particular, residential units at the northern end of this site would be directly across the road from the plant. This site is the subject of a Reserved Matters planning permission for 82 dwellings (20/00518) (CD 2.2) which was approved under the original Outline Planning Permission (05/12/00563) (CD 2.1). The Outline Planning Permission includes Condition 29 which sets out that proposals for further phases will require noise assessments and, if necessary, appropriate mitigation to be provided before any dwellings are occupied. The location of this site is indicated as Map Reference 6 of my appendix ACQ/2C/8 and can also be seen as land edged red and annotated 'Phase 3' in Appendix A to this rebuttal statement. The Reserved Matters permission has not yet been implemented and the site is part of the Order Land.

- 2.4. The potential impacts of the concrete batching plant on the amenity of residents living in the approved scheme at Phase 3A were considered in determining the Reserved Matters application and, as required by Condition 29 of the Outline Planning Permission, a noise assessment was conducted.
- 2.5. Condition 8 of the Reserved Matters Planning Permission (20/00518) states that "*The recommendations of the submitted noise assessment (Castleward Derby Area C4 - Noise Assessment Ecus Environmental Consultants Version 01, dated November 2019 Report Ref: 13773), to secure noise mitigation measures for windows and doors to protect the amenities of future occupants of the site, shall be installed within the residential units as recommended in the report before any of the units are first occupied.*"
- 2.6. The reason for this condition is cited in the decision notice as "*To protect the amenities of the future residents from any excessive noise levels in the surrounding area and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.*"
- 2.7. It is therefore accepted that the planning permission allows that residential uses at Phase 3A could co-exist in close proximity to the concrete batching plant if the appropriate mitigation is provided. It is a matter of fact that detailed planning permission has been approved for residential uses in close proximity to the Tarmac concrete plant with a condition requiring mitigation for any noise impacts from the plant.
- 2.8. However, it is highly relevant that this Reserved Matters application was approved under the Outline Planning Permission (05/12/00563) (CD 2.1) which was granted in February 2013 and allows for up to 840 dwellings and complementary uses across a significant part of Castleward, including the Tarmac batching plant. The details of the Outline Planning Permission are explained further in section 5 of my Proof (ACQ/2B), in paragraph 5.3 onwards.
- 2.9. The Design and Access Statement for the Reserved Matters planning application included a 'Castleward Masterplan Context' plan (Appendix A) which sets out how the

site will sit within the wider area of the Outline Planning Permission. This clearly shows that the long-term vision for the area is to transform it into a new residential-led neighbourhood. A similar Illustrative Site Plan (Appendix ACQ/2C/5 to my Proof) was also part of the Outline Planning Permission under which the Reserved Matters application was approved and similarly indicates plans for redevelopment and regeneration across the wider Outline Planning Permission area. This was highly material in determining the Reserved Matters application and suggests that the batching plant will be replaced in the wider redevelopment of Castleward.

2.10. Also of considerable relevance to the planning matters expressed in the Tarmac Statement, the Council's adopted Derby City Local Plan Part 1 (DCLP1) includes policies which require the transformation of Castleward from its current state into a new neighbourhood, providing a minimum of 800 new, high quality homes as part of the regeneration of this gateway into the Core Area of the City Centre. Indeed, the implementation of this policy is already underway and Phase 1 and part of Phase 2 have been delivered.

2.11. The DCLP1 policies and requirements for Castleward, including the Tarmac batching plant site are explained in detail in section 4 of my proof. In particular, paragraphs 4.20 to 4.31 explain the growth strategy and housing requirement for the City and paragraphs 4.41 to 4.49 explain the specific policy requirements for Castleward. These clearly set out a policy framework which would see the plant replaced by more appropriate uses, including housing, and set out that the Council will use Compulsory Purchase Powers to deliver the policy requirements if necessary. It is also relevant that Tarmac did not object to this part of the DCLP1.

As set out above, the Council's delivery partner, Compendium Living, has progressed to deliver the initial phases, including 218 new homes, and the Conditions applied to the Reserved Matters permission for Phase 3A allow that site to be developed in advance of the Tarmac batching plant being replaced, if necessary. However, the long-term policy requirement is clearly for the transformation of the area and Tarmac site.

3. CONCLUSION

- 3.1. Phase 1 and part of Phase 2 of the CUV have been delivered. Outline Planning Permission has been approved for a large area of the CUV and under that permission a Reserved Matters planning permission has been granted for 82 new homes on land across John Street from the concrete batching plant. The Reserved Matters permission is subject to a condition to ensure that when it is developed, measures can be put in place prior to occupation to protect the residential amenity of occupiers from the amenity impacts of the concrete plant.
- 3.2. It is acknowledged therefore that residential uses can co-exist with the existing concrete plant on the Phase 3A site if the appropriate required mitigation is provided. However, the Reserved Matters permission was granted in the context of the original Outline Planning Permission which sees the transformation of the wider area, including the concrete plant, into a new neighbourhood. This was material in determining the Reserved Matters application and is fundamental to the case for the Order.
- 3.3. The adopted Derby City Local Plan Part 1 (DCLP1) sets a strategy and specific policies to transform Castleward into a new residential-led neighbourhood and deliver a minimum of 800 new homes and complementary uses. This would mean the loss of the batching plant which would not be an acceptable use within the policy framework. The Council is therefore justified in using Compulsory Purchase powers to acquire the site, to facilitate the transformation envisaged in the policy.

4. DECLARATION

- 4.1. I confirm that the facts stated within my evidence are true.

Jonathan Pheasant

Senior Planning Officer

Derby City Council

18 January 2021

THE DERBY CITY COUNCIL (CASTLEWARD) COMPULSORY PURCHASE ORDER 2020

APPENDIX A

STATEMENT OF EVIDENCE OF MR. JONATHAN PHEASANT

ON BEHALF OF DERBY CITY COUNCIL

PUBLIC INQUIRY 26 – 29 January 2021

1.5 Castleward Masterplan Context

The Castleward masterplan consists of several phases. Phase 1 was completed in early 2017.

Phase 2 sites, A5 & C3 were put forward for planning permission in mid 2017, with site A3 following in December 2017.

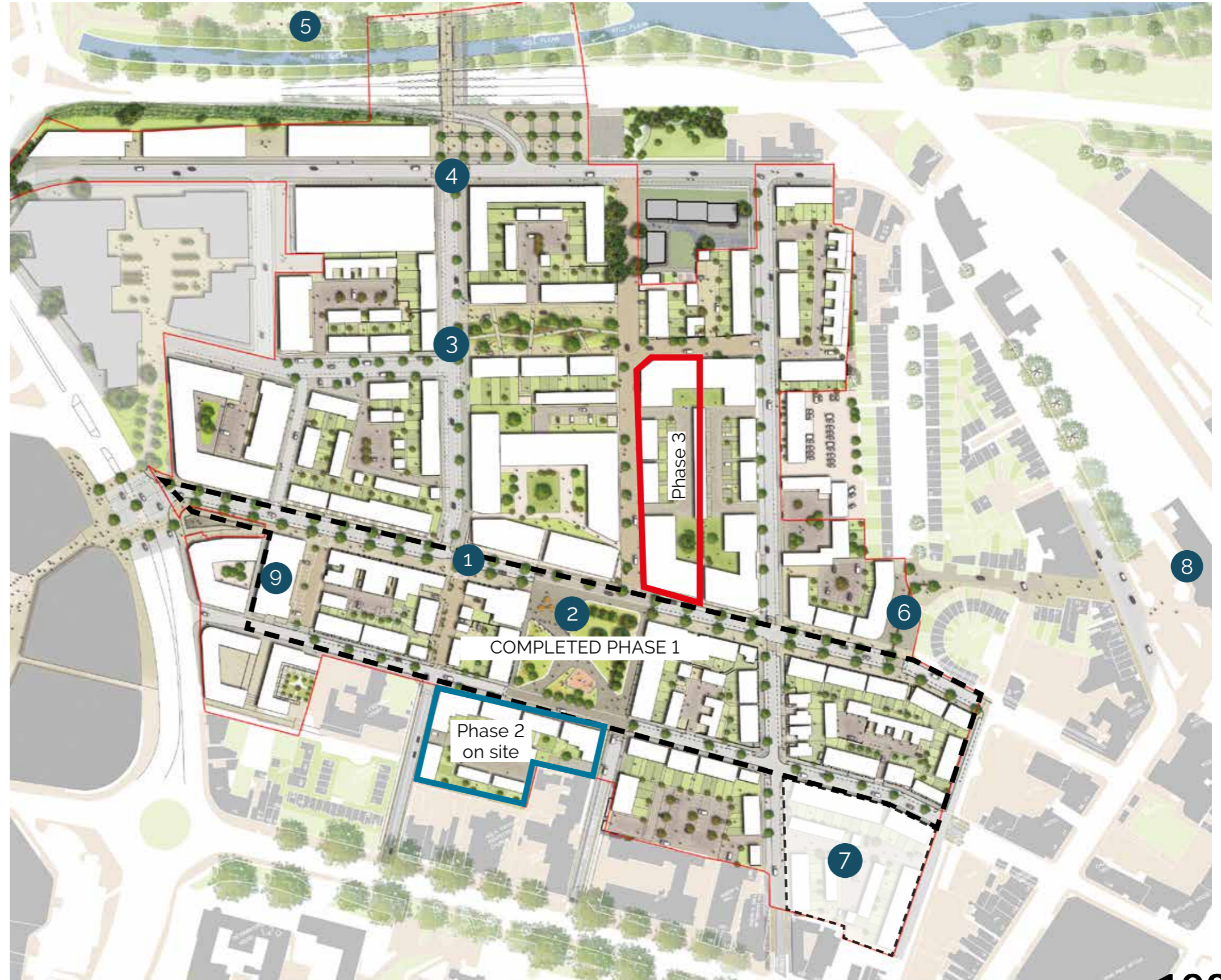
Site A3 is now on site, & comprises of 54 homes, 23 parking spaces.

- 1 The Boulevard
- 2 Central Square & cafe
- 3 Connection to Bass's Rec
- 4 New crossing over Station Approach
- 5 Schedule of improvements for Bass's Rec
- 6 Connection to Railway Conservation Area
- 7 Proposed new school relocation
- 8 Railway Station
- 9 Taller 'gateway' buildings

Application Boundary for Phase 3

Phase 2, Site A3 Boundary. On-site

Completed Phase 1 Boundary



**THE DERBY CITY COUNCIL (CASTLEWARD) COMPULSORY PURCHASE ORDER
2020
REBUTTAL**

STATEMENT OF EVIDENCE OF MS. RACHEL LISTER
ON BEHALF OF DERBY CITY COUNCIL

PUBLIC INQUIRY 26 – 29 January 2021

1. INTRODUCTION

- 1.1. This rebuttal statement has been prepared by Rachel Lister MRICS, Director at Thomas Lister Limited. I have previously prepared the Negotiations Proof of Evidence (ACQ/3B) detailing the nature, scope and extent of negotiation undertaken with businesses and investment owners at Castleward Urban Village (CUV).
- 1.2. I have been provided with a "Statement of Evidence" dated 4 January 2021 prepared by CMS Cameron McKenna Nabarro Olswang LLP on behalf Tarmac ('the Tarmac Statement'). The Tarmac Statement raises a number of issues relating to the negotiations undertaken with them and assistance provided with searches to find potential relocation properties.

2. ISSUES RAISED AND RESPONSE

- 2.1. The principal issues raised by the Tarmac Statement relevant to my evidence may be summarised as follows:
 - 2.1.1. Issue 1: The Council have stopped meaningfully engaging about relocation following the acquisition of the freehold.
 - 2.1.2. Issue 2: The Council fails to understand the Council's business operations and relocation requirements.
- 2.2. My response to these issues is provided below.
- 2.3. The Tarmac Statement also raises various miscellaneous points that I also address below, under the heading 'Other Matters'.

Issue 1 - The Council have stopped meaningfully engaging about relocation following the acquisitions of the freehold.

Paragraph 1.9 and section 7 of the Tarmac Statement

- 2.4. Following the Council's acquisition of the freehold on 6th November 2020, the Council has continued to liaise with Tarmac to discuss relocation opportunities. Meetings were held with Tarmac on the 12th and 17th of November 2020 and this included Mr Keith Wharmby of Tarmac and Mr Glenn Hall (Tarmac's agent). Details of those meetings were provided in my original Proof of Evidence at [6.22] – [6.27] (ACQ/3B pages 16-17).
- 2.5. At the last meeting, held on 7th December 2020, which I did not personally attend, I understand that the discussions were focused on the Council's proposal to terminate Tarmac's lease using provisions of the Landlord and Tenant Act 1954. I am further advised that at this meeting, Joanna Rees of the Council acknowledged that Tarmac had said that none of the sites

that the Council had suggested were suitable; however, the main concern now was more that Tarmac would be expected to fund their own relocation rather than the Council. I am told that, at this meeting, both parties agreed that the Rolls Royce site at Osmaston Road could be acceptable to Tarmac, but more work needs to be undertaken the regarding cost of facilitating a development.

- 2.6. I am also aware that, prior to the meeting between Joanna Rees and Keith Wharmby on 7th December, Tarmac had requested (via Pratima Balaghee) contact details for some of the sites that the Council had suggested be given to Tarmac, to enable them to investigate some of these sites further.
- 2.7. It has taken Pratima and Simon Kirk at Marketing Derby a little while to gather this information, given fluctuating restrictions in relation to the COVID second lockdown during November 2020, Christmas holiday and subsequent full lockdown currently in place. I note that an email update on progress was however sent to Mr Hall on 25 November 2011.
- 2.8. By 11th January 2021 Pratima had however gathered all the contact details for the respective sites requested by Tarmac and this was sent to Glenn Hall by way of email on 11th January 2021. A copy of the 25th November and 11th January email are appended to this statement as ACQ/3/2B/1.
- 2.9. It is apparent from the above that the Council remains committed to providing reasonable practical support with identifying relocation opportunities, albeit that such relocation will need to be funded by Tarmac in the absence of compulsory acquisition. The statement that the Council have stopped all meaningful dialogue with Tarmac is therefore, not correct.

Issue 2 – Failure to understand the Objector’s business operations

Paragraphs 5.1 – 5.11 of the Tarmac Statement

- 2.10. As part of the land referencing exercise for the CPO alongside the Section 16 Notice, the Council issued all affected parties with a Request for Information (RFI) questionnaire on 4th April 2019. This included Tarmac, from whom a response was received on the 17th April 2019. On the 29th May 2019, Keith Wharmby emailed Mr Adam King from Ardent requesting details on relocations. On the 13th June 2019, Thomas Lister established contact with Tarmac and discussions continued thereafter. Further to this, the Council’s land referencing agent, Ardent Management Limited, were commissioned to undertake a business intelligence exercise to understand business requirements that were not mentioned in the RFI. On the 30th of September 2019, Tarmac provided Ardent with further clarification on business requirements,

although this related to size of site only and not to be located close to residential dwellings. At this stage I confirm I had already met with Tarmac and obtained brief relocation site criteria, which additionally referred to freehold and leasehold opportunities, within a 15 to 20 mile radius. Copies of the 29th May, 13th June and 30th September correspondence, as well as two email chains from June and December 2019 relating to the 15/20 mile radius searches, are included at ACQ/3/2B/2.

- 2.11. At the very commencement of discussions with Tarmac, the search for relocation sites was agreed with Mr Keith Wharmby from Tarmac wholly in accordance with information that they provided to us at the time, as I refer to above. All of the search results that were obtained and issued to Mr Wharmby were in accordance with this information provided by Tarmac.
- 2.12. At the virtual meeting held on 26th May 2020 with Rolls Royce also in attendance with myself, Derby City Council, Keith Wharmby and Glenn Hall, Tarmac provided more detailed information for their operational requirements, including number of lorry movements, size of lorries and utilities required. This information was recorded at the meeting and circulated to all parties in attendance along with Simon Kirk from Marketing Derby. A copy of the minutes is attached at ACQ/3/2B/3. These requirements have been incorporated wherever appropriate into all other site searches, discussions with property owners and chartered surveyors, through approaches made by Simon Kirk at Marketing Derby in undertaking further investigations to identify relocation opportunities.
- 2.13. Mr Wharmby later advised that for a site to be suitable for relocation, it would need to be located within a one mile radius of the existing site. The preferred area of relocation sites was finally provided by Mr Keith Wharmby by way of email to Pratima Balaghee on 1st October 2020, some 16 months after the first relocation searches were undertaken. A copy of this email is included at ACQ/3/2B/4.
- 2.14. I consider that Tarmac are best placed to understand their own operational requirements and whether or not these could be accommodated on potential relocation sites that have been identified. Therefore, broad search parameters as agreed with Tarmac have been utilised to identify all potential relocation opportunities, which are then to be taken forward by Tarmac in discussion with site owners in terms of whether or not sites are suitable in this regard.
- 2.15. I can confirm that I have had very limited constructive feedback from Tarmac or their agent Mr Hall as to why the majority of relocation sites put to Tarmac have been dismissed. The written feedback has extended to the Glen Hall note previously provided as part of ACQ/3C/7

(see the final two pages), and a further email chain relating to a site at Victory Road, attached as ACQ/3/2B/5.

- 2.16. In the circumstances, I reject the assertion that the Council do not understand Tarmac's business requirements. The requirements utilised by the Council in assisting with the relocation search has been provided directly by Tarmac, albeit that they have changed their requirements over time.

Other Matters

- 2.17. **Unsupported statements on impact of the Order:** In section 5, Tarmac make various statements about (e.g.) their profitability (5.15), continued ability to service existing contracts (5.10), and impact on the viability of jobs within the area (5.17). I have not been provided with any evidence in support of these statements and as such am not able to comment upon them substantively. However, I note that the Council's case for the Order has been made on the assumption that the Tarmac business would be lost completely – albeit that it remains committed to seeking to ensure that is not the case.
- 2.18. For the majority of the time that I have been engaged with the Council, Marketing Derby and Tarmac in discussions about relocation sites, it was understood from Tarmac that discussions were progressing with Network Rail for Tarmac's preferred relocation site at Chaddesden Sidings. Tarmac have occupied this site in the past and were hopeful that they could negotiate a new lease with the site owners, Network Rail. However, in September 2020, Tarmac revealed that they had been unable to find the right person to contact at Network Rail with whom to discuss their interest for this site. On 7th October 2020, Joanna Rees of the Council therefore facilitated a meeting between two officers at Network Rail, John Bradshaw of Tarmac and the Project Manager of Derby's Flood Defence project as the Flood Defence project could affect the site. Whilst I was not in attendance at this meeting, I was advised that it became apparent at this meeting that this site was unlikely to be suitable for Tarmac's use and as such the Council, Marketing Derby and I along with Nick Mann, all redoubled our efforts to try and find a suitable alternative relocation site.
- 2.19. **Contact with Tarmac prior to 27th March 2019:** At paragraph 7.4, Tarmac says that the Statement of Case records first contact with it as being in 2017, but that it only has a record of contact commencing in 2019. This is correct. The contacts made relate to the plots generally. I can confirm that the dialogue undertaken in 2017 was with Mrs Rayson, the freehold owner of the site at the time. The approach taken in 2017 is discussed in detail in my original Proof of Evidence (ACQ/3B) at [5.3 to 5.11].

- 2.20. **A site visit and inspection of Tarmac's facilities has not been undertaken:** At paragraph 7.6, Tarmac refers to paragraph 15.6.4 of the Statement of Case and states that it has no record of a site visit to its premises. Tarmac are correct. The only inspection that has been undertaken is from the roadside outside of the demise of Tarmac's site. It is confirmed that an inspection was not undertaken initially because at the meeting on the 19th June 2019, Tarmac refused to grant access due to sensitivities with employees located on site, who were not at that time aware of the potential CPO.
- 2.21. A valuation of Tarmac's leasehold interest has been undertaken and was done so to inform the project cost estimate prepared for the Council's internal budgetary requirements. It was confirmed to Tarmac that the valuation had been undertaken; however details of this were not shared or discussed with Tarmac. The reason for this being that Tarmac had made it clear that they would not be disposing of their property interest until a suitable relocation site had been secured. The value of the lease itself has not yet become relevant. Therefore, all efforts have been concentrated on seeking to find a relocation site.
- 2.22. **Estimate of Relocation Costs are Similar:** At paragraph 7.7, Tarmac states that I had advised that the estimate of relocation costs received by the Council was similar to their own, and complains that the estimate has not been disclosed. Whilst I dispute the relevance of this to the matters the Inspector has to consider, I do not in any event accept that the cost estimated for relocation of the facility that I had obtained from Wood Group was similar to costs estimated by Tarmac. At the meeting on 20th June 2019, I advised that the Wood Group had estimated that the cost of relocating to a new site and acquiring new equipment, if the old equipment could not be relocated, would cost in the region of £2.5 million. From this sum we would expect deduction to be made to reflect depreciation to reflect 'value for money' given the age of equipment on the Castleward site. At that point, Mr Hall stated that the costs of relocating a concrete batching facility could be in the region of £10 million; however, this level of cost would typically be associated with a much larger concrete batching facility than that located at Castleward. Mr Hall then went on to state that the estimated costs of £2.5 million 'may not be a million miles away but they would not be expecting to make any adjustment for depreciation in relation to the age of the existing equipment on site.'
- 2.23. The Wood Group advice has not been provided to Tarmac or Mr Hall on the basis that it was prepared in May 2019 and comprised a very high level and indicative estimate of costs. The cost estimate was utilised by the Council to estimate total project costs for internal budgetary purposes at that time.

- 2.24. **The Acquiring Authority could use their compulsory purchase or other powers to acquire a suitable site, which they could then lease to the Objector:** At paragraph 7.14, Tarmac suggest that the Council has refused to use its CPO powers to acquire an alternative site for them.
- 2.25. Discussions have been held in relation to the ability for the Council to acquire an alternative site, which could then be leased to Tarmac. However, these discussions were undertaken at a time when the search for a relocation opportunity had not reached a stage where all options had been exhausted and a suitable leasehold relocation site could not be identified.
- 2.26. With regard to the Council using their compulsory purchase powers in order to acquire a site for Tarmac, I do not recall any such discussions in relation to the use of compulsory powers in this regard. However, whether this was appropriate and/or feasible would need to be considered at the time.
- 2.27. It should be remembered that the Council are under no obligation to relocate Tarmac, albeit that they wish for that outcome. Moreover, the Council's compelling case is already predicated on the loss of Tarmac's business and as such, any failure to acquire a relocation site for it does not affect the case for confirmation.
- 2.28. **Annex 5 Communication Log:** The communications logs held by Thomas Lister/the Council and Tarmac are broadly similar, albeit the level of detail provided by Tarmac is considered generally more limited. The various dates for meetings, provision of site searches and letters do generally accord between the two communication logs.
- 2.29. However, one note within Tarmac's communication log that is not accepted relates to the meeting held on 20th June 2019, which states that Thomas Lister indicates that high level advice from Wood Group indicates relocation cost similar to that of Tarmac's estimates. As noted above, this is not accepted.

CONCLUSIONS

- 3.1 I have reviewed the Tarmac Statement and strongly refute that the Council have not made serious efforts to help Tarmac find a suitable relocation site. The Council have set up a dedicated team, working alongside Marketing Derby and myself over the last 19 months, also involving Planning Colleagues to assist with this process.
- 3.2 The search for relocation sites has been undertaken in accordance with the criteria that Tarmac have provided to us, which has changed over time and as such our searches have also been changed where required.

3.3 Assistance from the Council, Marketing Derby and myself has continued to be provided, with the latest information being provided on 11th January by Pratima Balaghee. The claim made by Tarmac that meaningful assistance stopped once the Council acquired the freehold interest of Tarmac's site is therefore not correct.

4. DECLARATION

4.1. I confirm that the facts stated within my evidence are true.

Rachel Lister

18 January 2021

THE DERBY CITY COUNCIL (CASTLEWARD) COMPULSORY PURCHASE ORDER 2020

APPENDIX 1

EMAIL 25 NOVEMBER AND 11 JANUARY

STATEMENT OF EVIDENCE OF MS. RACHEL LISTER

ON BEHALF OF DERBY CITY COUNCIL

PUBLIC INQUIRY 26 – 29 January 2021

Ravinder Bhomra

From: Pratima Balaghee <Pratima.Balaghee@derby.gov.uk>
Sent: 14 January 2021 13:24
To: Glenn Hall; Keith Wharmby (keith.wharmby@tarmac.com)
Cc: Joanna Rees; Rachel Lister; David Walker; Paul Clarke; Simon Kirk
Subject: RE: Castleward - Additional potential relocation sites/Tarmac

Hi Glenn,

Happy new year to you too!

I spoke to Simon this morning and he confirmed that we do not have any further information or plans on the Balfour Beatty land. I am sure Mark from Balfour Beatty will be able to send you details of any site available.

We've also had feedback from FHP that Parcel Terrace/Slack Lane is not available anymore. It has been sold.

Simon is progressing his discussions with the agents and I will be in touch when we have further updates.

Thank you

Kind regards,
Pratima

Pratima Balaghee | Regeneration Manager | Regeneration & Major Projects | Communities and Place Directorate | The Council House, Corporation Street, Derby DE1 2FS Tel: 01332 64 7910 | Mob: 077 1754 0064 | Minicom 01332 640 666 | www.derby.gov.uk

Following Government guidance the City Development and Growth Team are working remotely. We will still be available by email and phone. Further information and advice on coronavirus including symptoms, latest guidance and signposting to more support can be found on the Council website - <https://www.derby.gov.uk/health-and-social-care/public-health/coronavirus/>

From: Glenn Hall <Glenn@dlwalker.net>
Sent: 12 January 2021 14:40
To: Pratima Balaghee <Pratima.Balaghee@derby.gov.uk>; Keith Wharmby (keith.wharmby@tarmac.com) <keith.wharmby@tarmac.com>
Cc: Joanna Rees <Joanna.Rees@derby.gov.uk>; Rachel Lister <rachel.lister@thomaslister.com>; David Walker <david@dlwalker.net>; Paul Clarke <paul@dlwalker.net>; Simon Kirk <simon.kirk@marketingderby.co.uk>
Subject: RE: Castleward - Additional potential relocation sites/Tarmac

CAUTION: This email originated from outside of the organisation. Do not reply, click links or open attachments unless you recognise the sender and know the content is safe.

Hello Pratima,
Happy New Year and hope you and yours are keeping well.
Thank you for responding.
We will contact Mark Barltrop at Balfour Beatty and await further information regarding feedback from FHP.
Do you have a plan or further details re the Balfour Beatty land please ?

Best regards,
Glenn

From: Pratima Balaghee <Pratima.Balaghee@derby.gov.uk>
Sent: 11 January 2021 11:04
To: Glenn Hall <Glenn@dlwalker.net>; Keith Wharmby (<keith.wharmby@tarmac.com>
<keith.wharmby@tarmac.com>
Cc: Joanna Rees <Joanna.Rees@derby.gov.uk>; Rachel Lister <rachel.lister@thomaslister.com>; David Walker <david@dlwalker.net>; Paul Clarke <paul@dlwalker.net>; Simon Kirk <simon.kirk@marketingderby.co.uk>
Subject: RE: Castleward - Additional potential relocation sites/Tarmac

Good morning Glenn and Keith,

Hope you are both well.

Apologies for the delay in sending the information below. Simon has been in discussions with the developers and estate agents to seek the relevant contact details and to identify any further opportunities at the sites below. However he has struggled to get the relevant information due to several people being unavailable and due to offices being closed over the festive period. He has chased them again this week and we will provide you with an update when we hear back from them.

The contact details for each site are listed below.

Alfreton Road	Feedback from David Brown is that it is unlikely for the client to consider Tarmac for this site. Michael Green 01332 200 232 mgreen@davidbrownproperty.com
Part of Balfour Beatty Site, Raynesway	Please contact Mark Barltrop Senior Property Manager Balfour Beatty Group M: +44 (0)7791 926 854 E: mark.barltrop@balfourbeatty.com
Land around Megaloughton lane/Holmes Lane (This includes the site owned by Severn Trent Water)	Nick Hosking (Innes England) believes it is unlikely. However he will talk to the developers. Simon is waiting for an update from Nick. Nick Hosking 01332 362244 nhosking@innes-england.com
Parcel Terrace / Slack Lane	Simon is waiting for feedback from FHP. Tim Richardson 07876 396007 timr@fhp.co.uk
Vacant land, Wincanton Close / Ascot Drive	Simon is waiting for feedback from FHP. Tim Richardson 07876 396007 timr@fhp.co.uk
Vacant Land, Goodsmoor Road	Nick Hosking (Innes England) believes it is unlikely. However he will talk to the developers. Simon is waiting for an update from Nick. Nick Hosking 01332 362244 nhosking@innes-england.com

Please do not hesitate to get in touch with me if you would like further information.

Thank you

Kind regards,
Pratima

Pratima Balaghee | Regeneration Manager | Regeneration & Major Projects | Communities and Place Directorate | The Council House, Corporation Street, Derby DE1 2FS Tel: 01332 64 7910 | Mob: 077 1754 0064 | Minicom 01332 640 666 | www.derby.gov.uk

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From: Glenn Hall <Glenn@dlwalker.net>
Sent: 25 November 2020 15:08
To: Pratima Balaghee <Pratima.Balaghee@derby.gov.uk>; Keith Wharmby (keith.wharmby@tarmac.com) <keith.wharmby@tarmac.com>
Cc: Joanna Rees <Joanna.Rees@derby.gov.uk>; Rachel Lister <rachel.lister@thomaslister.com>; David Walker <david@dlwalker.net>; Paul Clarke <paul@dlwalker.net>
Subject: RE: Castleward - Additional potential relocation sites/Tarmac

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Thanks Pratima,
By way of an update...

- We have not received any response from Ivygrove Developments (via Scargill Mann & Co).
- Trebor Investments have indicated that they may have a suitable site/building available however the asking rent is £244,874.50pa (which is still probably less expensive than Tarmac's claim for total extinguishment will be)
- We have spoken to Amy Hemus at the Leavesley Group who would be prepared to consider an RMX plant on their land but Derby CC planning policies would not, in our view, support this form of development

We continue our search...
Best regards,
Glenn

From: Pratima Balaghee <Pratima.Balaghee@derby.gov.uk>
Sent: 25 November 2020 14:32
To: Glenn Hall <Glenn@dlwalker.net>; Keith Wharmby (keith.wharmby@tarmac.com) <keith.wharmby@tarmac.com>
Cc: Joanna Rees <Joanna.Rees@derby.gov.uk>; Rachel Lister <rachel.lister@thomaslister.com>; Dan Walker <dan@dlwalker.net>; David Walker <david@dlwalker.net>
Subject: RE: Castleward - Additional potential relocation sites/Tarmac

Good afternoon Glenn and Keith,

Just thought I would give you an update on the review you have undertaken of the sites suggested by Planning. I have sent this information to my colleague Simon at Marketing Derby to obtain the details you requested below.

Simon is working on this and as soon as we have further information, I will send this on.

Thank you

Kind regards,
Pratima

Pratima Balaghee | Regeneration Manager | Regeneration & Major Projects | Communities and Place Directorate | The Council House, Corporation Street, Derby DE1 2FS Tel: 01332 64 7910 | Mob: 077 1754 0064 | Minicom 01332 640 666 | www.derby.gov.uk

Following Government guidance the City Development and Growth Team are working remotely. We will still be available by email and phone. Further information and advice on coronavirus including symptoms, latest guidance and signposting to more support can be found on the Council website - <https://www.derby.gov.uk/health-and-social-care/public-health/coronavirus/>

From: Glenn Hall <Glenn@dlwalker.net>
Sent: 13 November 2020 11:30
To: Pratima Balaghee <Pratima.Balaghee@derby.gov.uk>; Keith Wharmby (keith.wharmby@tarmac.com) <keith.wharmby@tarmac.com>
Cc: Joanna Rees <Joanna.Rees@derby.gov.uk>; Rachel Lister <rachel.lister@thomaslister.com>; Dan Walker <dan@dlwalker.net>; David Walker <david@dlwalker.net>
Subject: Castleward - Additional potential relocation sites/Tarmac

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Hi Pratima,

As discussed in our MS Teams call yesterday I attach information relating to sites where Tarmac have made enquiries that also appear on the list of sites that you suggest may be suitable as relocation sites for Tarmac. Tarmac would like to be certain that they have identified the same sites and have contacted the correct land owner/agent. As I think Joanna pointed out yesterday, some of the sites are quite large and it is quite possible that there may be more than one land owner/agent involved. Could you review and confirm that these are the same sites and land owner/agent please or if not provide a site plan and contact details please.

1. Alfreton Road (<https://www.primelocation.com/to-rent/commercial/details/51890211>)
Tarmac contacted David Brown Commercial - Michael Green - 07597 985 509 – to be told that “Client wouldn’t accept this use on the site”
2. Stores Road (Trent Barton site) (<https://www.ng-cs.com/property/solex-55-stores-road-derby/>)
Tarmac contacted NG Surveyors - Sunny Landa – 0115 958 8599 – to be told that the site was already let
3. Chaddesden Sidings , Chequers Road – Tarmac understand that Derby CC proposed flood alleviation works will prevent relocation to this site
4. Part of Balfour Beatty site, Raynesway – Tarmac have not made any enquiries direct with Balfour Beatty, could you please provide further details and a contact name/number
5. Land around Megaloughton lane/Holmes Lane (This includes the site owned by Severn Trent Water) – Tarmac understand that Severn Trent Water are not in a position to discuss relocation to this site. Could you please provide further details of other owners that you may be aware of
6. Parcel Terrace / Slack Lane - Tarmac have not made any enquiries regarding this site, could you please provide further details and a contact name/number
7. Former light alloy foundry, Russell Street/Osmaston Road (owned by RR) – Tarmac understand that Rolls Royce do not wish to discuss relocation to this site unless there are other parties also interested in the site
8. Vacant land, Wincanton Close / Ascot Drive - Tarmac have not made any enquiries regarding this site, could you please provide further details and a contact name/number
9. Vacant land, Goodsmoor Road - <https://harworthgroup.com/wp-content/uploads/2016/05/Sinfin-Commercial-Park-Open-Storage-Brochure.pdf>)

Tarmac contacted Chris Wright at Innes England – 01332 362244 - to be told that “owner cannot accommodate Tarmac’s requirements”

I attach a list of sites that Tarmac have investigated (without success to date).

I have also contacted the developers you suggested with the following results to date:

1. Ivygrove Developments - 01332 207 720 (Through Scargill Mann & Co) – message left awaiting call back
2. Morgan Industrial Properties - 01332 832424 – nothing available
3. Trebor Investments - 0121 222 5480 - message left awaiting call back
4. Cedar House Investments - 01332 227670 – nothing available

I have also contacted Amy Hemus at the Leversley Group regarding the land at Raynesway that Joanna mentioned and am awaiting a call back.

As mentioned yesterday Tarmac anticipate that they will need around 12 months to obtain planning and other necessary consents, order, build, commission a plant including civils works etc so the need to find a suitable site is becoming very urgent in my view. Tarmac therefore propose to also investigate existing buildings and design & build opportunities in the hope that land owners will be more accepting of an RMX plant in a building that they won't accept on a bare site. This will of course have implications for Tarmac's compensation claim.

Best regards,
Glenn

Glenn Hall BSc MSc MRICS
RICS Registered Valuer
David L Walker Ltd
Albion House, 89 Station Road, Eckington, S21 4FW
Tel 07584 121709

From: Pratima Balaghee <Pratima.Balaghee@derby.gov.uk>
Sent: 11 November 2020 11:17
To: Wharmby, Keith <keith.wharmby@tarmac.com>
Cc: Glenn Hall <Glenn@dlwalker.net>; Joanna Rees <Joanna.Rees@derby.gov.uk>; rachel.lister@thomaslister.com
Subject: Castleward - Additional potential relocation sites/Tarmac

Dear Keith,

We have had several meetings with colleagues from the Council's Planning Department over recent weeks to try and identify potential locations and sites within your search area, that may be acceptable in principle (from a planning perspective) for a concrete plant.

We have collectively produced a list of potential relocation sites within the city, below, and their general locations are illustrated on the attached map.

1. Alfreton Road
2. Stores Road (Trent Barton site)
3. Chaddesden Sidings , Chequers Road
4. Part of Balfour Beatty site, Raynesway
5. Land around Megaloughton lane/Holmes Lane (This includes the site owned by Severn Trent Water)
6. Parcel Terrace / Slack Lane

7. Former light alloy foundry, Russell Street/Osmaston Road (owned by RR)
8. Vacant land, Wincanton Close / Ascot Drive
9. Vacant land, Goodsmoor Road

The merits of each site would need to be investigated further to understand overall suitability in planning terms.

There are some sites on the list which you are already aware of – for example : Stores Road, Megaloughton Lane , Osmaston Road and the Chaddesden Sidings. We thought it would be useful to outline all the sites that were suggested by our colleagues, for completeness.

Your team may be able to carry out land registry searches or contact commercial estate agents to obtain further information on these sites, but should you need help with this please let me know as I am aware that Thomas Lister can carry out a search to identify the owners of the sites.

We also thought that it would be useful if you were aware of the developers who we know are active within Derby. They may be able to advise on upcoming sites which may become available in the near future.

These are:

1. Ivygrove Developments - 01332 207 720 (Through Scargill Mann & Co)
2. Morgan Industrial Properties - 01332 832424
3. Trebor Investments - 0121 222 5480
4. Cedar House Investments - 01332 227670

Thank you

Kind regards,
Pratima

Pratima Balaghee | Regeneration Manager | Regeneration & Major Projects | Communities and Place Directorate | The Council House, Corporation Street, Derby DE1 2FS Tel: 01332 64 7910 | Mob: 077 1754 0064 | Minicom 01332 640 666 | www.derby.gov.uk

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THE DERBY CITY COUNCIL (CASTLEWARD) COMPULSORY PURCHASE ORDER 2020
APPENDIX 2
CORRESPONDENCE

STATEMENT OF EVIDENCE OF MS. RACHEL LISTER
ON BEHALF OF DERBY CITY COUNCIL

PUBLIC INQUIRY 26 – 29 January 2021



Keith Wharmby <keith.wharmby@tarmac.com>

The Castleward Urban Village Regeneration Scheme, Derby.

Keith Wharmby <keith.wharmby@tarmac.com>
To: adamking@ardent-management.com

17 April 2019 at 14:58

Dear Mr King, Please find attached a completed questionnaire and associated plan both signed as required. A copy is also in the post.

The Company will assist in this matter but would like to clarify at this stage that it would be looking to maintain its presence in the area and therefore look to be relocated as part of the CPO process.

With regard to this I would be grateful for advice with regard to instructing consultants to act on the Companys behalf in this matter. When would you suggest this is progressed and from what date would associated costs need to be recorded for repayment purposes as I believe these would be covered by the City Council. Clarification appreciated.

Regards, Keith

Keith Wharmby

Property Estates Manager- Asset Management

D +44 1509 622001

M +44 774 056 3212

keith.wharmby@tarmac.com

Meeting Street, Quorn, Loughborough, LE12 8EX, United Kingdom

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3 attachments



Derby Rmx CPO questionnaire.pdf
1332K



Derby Rmx CPO questionnaire plan.pdf
462K



Derby Rmx, John St Derby Lease dated 24th December 1996.pdf
3797K

Ravinder Bhomra

From: John Gilman <John.Gilman@derby.gov.uk>
Sent: 29 May 2019 12:01
To: keith.wharmby@tarmac.com
Cc: Rachel Lister; Peter Mills; Matthew Wilson; Joanna Rees
Subject: RFI response, Castleward Urban Village Regeneration

Good morning Keith,

I am Principal Regeneration Manager for Derby City Council and have overall responsibility for the Castleward Regeneration scheme.

I am kindly in receipt of your letter dated 28th May 2019 to our Land Referencing Specialist Consultants, Ardent Management Ltd, requesting clarity with respect to payment by the Council of your reasonable consultant's costs incurred during a relocation process.

The Council's Property advisors Thomas Lister will be able to provide more advice as to timing, categories and necessary approval of reasonable costs that are incurred (and I have copied Rachel Lister for this purpose); but my understanding is that costs / fees are payable from the point of your commission being accepted providing they are directly related to the task of finding and securing alternative accommodation and negotiating the cost of relocating any qualifying plant and machinery.

In the first instance could you provide details of a proposal from your consultant for the Council's consideration?

Thanks and regards

John

John Gilman | Principal Regeneration Manager | Regeneration and Major Projects | Communities and Place Directorate | The Council House, Corporation Street, Derby DE1 2FS | Tel: 01332 641 836 | Mob: 07812 300 362 | Minicom 01332 640 666 | www.derby.gov.uk



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Ravinder Bhomra

Subject: FW: Derby John St - Readymixed concrete plant- impact of CPO proposals. Castleward Urban Village Regeneration

From: Wharmby, Keith <keith.wharmby@tarmac.com>
Sent: 13 June 2019 08:35
To: Rachel Lister <rachel.lister@thomaslister.com>
Subject: Derby John St - Readymixed concrete plant- impact of CPO proposals. Castleward Urban Village Regeneration

Rachel, please forgive me for contacting you direct on this matter but I having received an e-mail fro John Gilman of Derby City Council, towards the end of last month, was anticipating hearing from either yourself or a colleague.

With the CPO on the horizon I would be grateful to receive advice in connection with the process surrounding the proposed CPO which will impact on the Companys current business affected by the proposed redevelopment of the area it is located within. I am keen to understand what is required, what help the City Council can offer both in terms of compensation and/or relocation of business ie an alternative site and in terms of early stages what costs of employing consultants/ advisors will be covered by the process.

I look forward to hearing from you to if possible set up a meeting to cover these points.

Regards, Keith.

Keith Wharmby
Property Estates Manager- Asset Management

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M +44 774 056 3212
keith.wharmby@tarmac.com

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Ravinder Bhomra

From: Rachel Lister
Sent: 13 June 2019 08:58
To: Wharmby, Keith
Cc: Simon Hurrell; Matthew Wilson; John Gilman
Subject: Re: Derby John St - Readymixed concrete plant- impact of CPO proposals. Castleward Urban Village Regeneration

Dear Keith

Thank you for your email and I apologise for no communication from me - I had understood that you would contact me as and when you wanted to discuss matters.

I agree a meeting is the best way to discuss the CPO and process going forward.

I assume you would want to meet in Derby? I could meet on Wednesday, Thursday or Friday next week and hope one of these days is convenient.

Regards

Rachel Lister

Sent from my iPhone

On 13 Jun 2019, at 08:35, Wharmby, Keith <keith.wharmby@tarmac.com> wrote:

Rachel, please forgive me for contacting you direct on this matter but I having received an e-mail fro John Gilman of Derby City Council, towards the end of last month, was anticipating hearing from either yourself or a colleague.

With the CPO on the horizon I would be grateful to receive advice in connection with the process surrounding the proposed CPO which will impact on the Companys current business affected by the proposed redevelopment of the area it is located within. I am keen to understand what is required, what help the City Council can offer both in terms of compensation and/or relocation of business ie an alternative site and in terms of early stages what costs of employing consultants/ advisors will be covered by the process.

I look forward to hearing from you to if possible set up a meeting to cover these points.

Regards, Keith.

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Property Estates Manager- Asset Management

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Ravinder Bhomra

From: Wharmby, Keith <keith.wharmby@tarmac.com>
Sent: 21 June 2019 17:39
To: Nick Mann
Subject: Re: CoStar Land Availability Search

Nick, thanks for that. Had an albeit only cursory look and I think we are struggling on the rental front , the sites for sale are more useful in terms of location but difficult to 'visualise' - I need to have a proper look. Once done and having taken advice from colleagues I will get back to you.

Regards, Keith

Keith Wharmby
Property Estates Manager- Asset Management

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keith.wharmby@tarmac.com

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From: Nick Mann <nick.mann@thomaslister.com>
Sent: 21 June 2019 15:56
To: Wharmby, Keith
Cc: Rachel Lister
Subject: CoStar Land Availability Search

Good afternoon Keith,

Further to yesterday's meeting, please find attached results from the CoStar search for availability search for land to let and for sale within a 15 mile radius of Derby. I limited the size of the search to sites extending over 0.5 – 2 acres.

There doesn't appear to be many sites to let at present it seems, but there may be some potential opportunities highlighted within the land for sale search – see attached.

Please let me know if there are any additional searches you require.

Have a good weekend.

Kind regards

Nick Mann BSc (Hons), MSc

Graduate Surveyor

Thomas Lister Ltd

11 The Courtyard

Buntsford Gate

Bromsgrove

B60 3DJ

Tel: 01527 889222

Mobile: 07762 112607

Email: nick.mann@thomaslister.com

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Ravinder Bhomra

From: Wharmby, Keith <keith.wharmby@tarmac.com>
Sent: 30 September 2019 15:29
To: Michael Kenny
Subject: Re: Derby Castleward scheme

Michael, sorry not forgotten . This information has already been provided I thought to Thomas Lister Ltd . We have even met up with representatives of Thomas Lister Ltd to discuss and considered sites . I have completed the responses in red below. May need to

Keith Wharmby
Property Estates Manager- Asset Management

D +44 1509 622001
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keith.wharmby@tarmac.com

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From: Michael Kenny <MichaelKenny@ardent-management.com>
Sent: 30 September 2019 14:12
To: Wharmby, Keith <keith.wharmby@tarmac.com>
Subject: FW: Derby Castleward scheme

Good afternoon Keith,
I was just wondering if you've had the chance to take a look at the email I sent below?
Any queries, please do not hesitate to get in touch.
Kind regards,
Michael



Michael Kenny BSc (Hons) | Senior Land Referencer
Ardent | 1st Floor, 2 Snow Hill, Birmingham, B4 6GA
Tel: +44 (0)121 231 3142 | Mobile: +44 (0)7458 132 995
E: michaelkenny@ardent-management.com | W: www.ardent-management.com



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From: Michael Kenny
Sent: 23 September 2019 16:48
To: 'keith.wharmby@tarmac.com' <keith.wharmby@tarmac.com>
Subject: Derby Castleward scheme

Good afternoon Keith,
Further to our phone call, please see the questions below of which I would appreciate an answer to. Please note, this information is being gathered to get an updated picture on the current nature of businesses and their investment in the area.

- 1- What is the nature of your business? **Production and distribution of Ready mixed concrete.**
- 2- How many employees work at this location? (Both full time and part time) . **Full time - 2 + 4 site based drivers.**
- 3- What are the sites opening hours? **Not restricted by planning but generally work 7 to 5 M to F and 7 to 12 Saturdays +night work as required.**
- 4- Do you wish to relocate your business? If so what are the business requirements? E.g. Where? What type of building etc. **Surfaced land of around an acre, slightly smaller if**

- 4- Do you wish to relocate your business? If so what are the business requirements? E.g. Where? What type of building etc. **Surfaced land of around an acre, slightly smaller if regular shaped. Secure and fully serviced with good access to road network. Not located near to residential devpt better on an industrial estate.**
- 5- Will you be instructing or have you instructed any professional representation? **Already in place, Glenn Hall of David L Walkers. Payment of initial fees already approved with City Council - John Gilman.**

Glenn Hall BSc MSc MRICS
RICS Registered Valuer
David L Walker Limited, Albion House, 89 Station Road, Eckington, Sheffield, S21 4FW
Tel: 01246 431749
Fax: 01246 431863
Mobile: 07584 121709
Email: Glenn@dlwalker.net
Please visit our website: www.davidlwalkerlimited.co.uk

Regards, Keith

Please note:

Marketing Derby offer support in the form of a property search for businesses interested in relocation. Contact: Simon.Kirk@marketingderby.co.uk. 01332 201860.

The Council will be able to pay reasonable fees for professional representations and recommend making contact with the project team to discuss. Contact: Matt Wilson, Regeneration Manager on 01332 641589 or 07812 301650.

If you have any other comments you would like us to note, please feel free to say. Thank you in advance for your cooperation.

Kind regards,
Michael



Michael Kenny BSc (Hons) | Senior Land Referencer
Ardent | 1st Floor, 2 Snow Hill, Birmingham, B4 6GA
Tel: +44 (0)121 231 3142 | Mobile: +44 (0)7458 132 995
E: michaekenny@ardent-management.com | W: www.ardent-management.com



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Ravinder Bhomra

From: Nick Mann
Sent: 02 December 2019 17:46
To: Wharmby, Keith
Cc: Rachel Lister
Subject: RE: Updated CoStar Availability Search

Hi Keith,

Not a problem, if there are any additional searches that you require please don't hesitate to contact me.

Kind regards

Nick Mann BA (Hons) MSc
Graduate Surveyor
Thomas Lister Limited
11 The Courtyard
Buntsford Gate
Bromsgrove
B60 3DJ

D: 01527 889 222
M: 07762 112 607
O: 01527 871 640
E: nick.mann@thomaslister.com

From: Wharmby, Keith <keith.wharmby@tarmac.com>
Sent: 02 December 2019 17:28
To: Nick Mann <nick.mann@thomaslister.com>
Cc: Rachel Lister <rachel.lister@thomaslister.com>
Subject: Re: Updated CoStar Availability Search

Nick, thanks for that, very useful. Regards, Keith

Keith Wharmby
Property Estates Manager- Asset Management

D +44 1509 622001
M +44 774 056 3212
keith.wharmby@tarmac.com

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www.tarmac.com



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From: Nick Mann <nick.mann@thomaslister.com>
Sent: 02 December 2019 17:17
To: Wharmby, Keith <keith.wharmby@tarmac.com>
Cc: Rachel Lister <rachel.lister@thomaslister.com>
Subject: Updated CoStar Availability Search

Good afternoon Keith,

Further to your conversation with Rachel, please find attached an updated CoStar search for land within a 20mile radius of Derby.

Kind regards

**Nick Mann BA (Hons) MSc
Graduate Surveyor**

Thomas Lister Limited

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THE DERBY CITY COUNCIL (CASTLEWARD) COMPULSORY PURCHASE ORDER 2020

APPENDIX 3

MINUTES OF MEETING 26 MAY 2020

STATEMENT OF EVIDENCE OF MS. RACHEL LISTER

ON BEHALF OF DERBY CITY COUNCIL

PUBLIC INQUIRY 26 – 29 January 2021

MEETING NOTES



Date of Meeting:	26 May 2020 - 2.00pm
Project:	Relocation Opportunity Site in Osmaston in the Ownership of Rolls Royce
Client:	Castleward
Location:	Microsoft Teams Meeting
Attendees:	Robert Orgill – Rolls Royce Joanna Rees – Derby City Council Pratima Balaghee – Derby City Council Keith Wharmby - Tarmac Glen Hall – DL Walker Chartered Surveyors Rachel Lister – Thomas Lister

1. INTRODUCTION

Formal introductions were made along with role and responsibility of the various parties.

2. PURPOSE OF THE MEETING

RL outlined the position with the Castleward urban village development, the position with the CPO now being made with objections being lodged and pending public enquiry. The situation arising therefore is that a number of occupiers including Tarmac require relocation through previous discussions with RO, RL advised that Rolls Royce potentially had land that may be available to accommodate relocations and this meeting was therefore to explore this as an opportunity in the first instance with Tarmac.

3. ROLLS ROYCE LAND

RO provided the following summary of the land which may be suitable for relocations:

- RO advised that the Rolls Royce business is currently on hold subject to a review of the business as documented within the press as a result of the COVID-19 pandemic. This should not however prevent any discussions being undertaken in relation to Rolls Royce's site and exploring this as a potential relocation opportunity.
- The site is situated in Osmaston in between the railway line and Russell Street, access via London Road and Osmaston Road.
- The site was part of a wider Rolls Royce land holding, part of which is subject to a disposal to keep for residential development, with a further area of land subject to discussions with another third party for residential use.
- The subject site extends to circa 10 acres and currently accommodates the old tram sheds and Rolls Royce's heritage.
- Part of the land is proposed to be leased to Bombardier for temporary car parking whilst their existing facility is subject to expansion work and they are likely to be on site for 12-18 months.

- The site is allocated in the local plan for industrial use.
- The land used to be operated by Rolls Royce as a light alloy foundry around 5 – 10 years ago, prior to that the site was used for tram sheds.

KW queried whether the surrounding proposed for residential development may pose a restriction on use for the subject site for operations such as Tarmac. RO stated that the past uses of the site, and planning allocation should not present any restrictions in this regard.

4. TARMAC'S REQUIREMENT

KW advised they were seeking a site between 0.7 – 1 acre to accommodate their ready mixed concrete facility from the centre of Derby. Essentially sand, gravel and cement were brought to site, mixed and then transported away.

- Tarmac initially wanted to acquire freehold land; however due to the current economic climate would now prefer to lease a site. RO confirmed that a leasehold position would be acceptable to Rolls Royce.

KW also specified that other requirements for sites are that they could accommodate traffic movements which could ebb and flow subject to demand for product.

RO queried the likely number of traffic movements and typical size of trucks.

KW advised that trucks typically transport 30,000 metres cubed of product in 8 metre trucks with an average estimate of vehicle movements being around 28 per day with products coming in and cement going out.

To be a joint piece of work to be commissioned in due course.

KW advised that Tarmac were considering another site at Chaddesden Sidings in the ownership of Network Rail however, no decision had been made in respect of this site at this time.

5. ACTIONS GOING FORWARD

It was agreed that RO and KW would liaise separately after the meeting in order to have more detailed discussions as to how the subject site can be explored in further detail.

It was also agreed that KW would send to RO addresses of other Tarmac operation sites so that RO could obtain a more detailed understanding of the nature and extent of operations that would be potentially undertaken on this site.

6. ANY OTHER BUSINESS

JR raised with RO that there could potentially be other businesses that might be interested in this site as a relocation opportunity. RO advised that he would be happy to have further discussion with the council and any other parties at the appropriate time.

Issues in terms of services, particularly water supply and drainage would need to be ascertained and RO suggested that this needs to be marked private & confidential not for general circulation.

The meeting ended.

THE DERBY CITY COUNCIL (CASTLEWARD) COMPULSORY PURCHASE ORDER 2020

APPENDIX 4

EMAIL 1 OCTOBER 2020

STATEMENT OF EVIDENCE OF MS. RACHEL LISTER

ON BEHALF OF DERBY CITY COUNCIL

PUBLIC INQUIRY 26 – 29 January 2021

Ravinder Bhomra

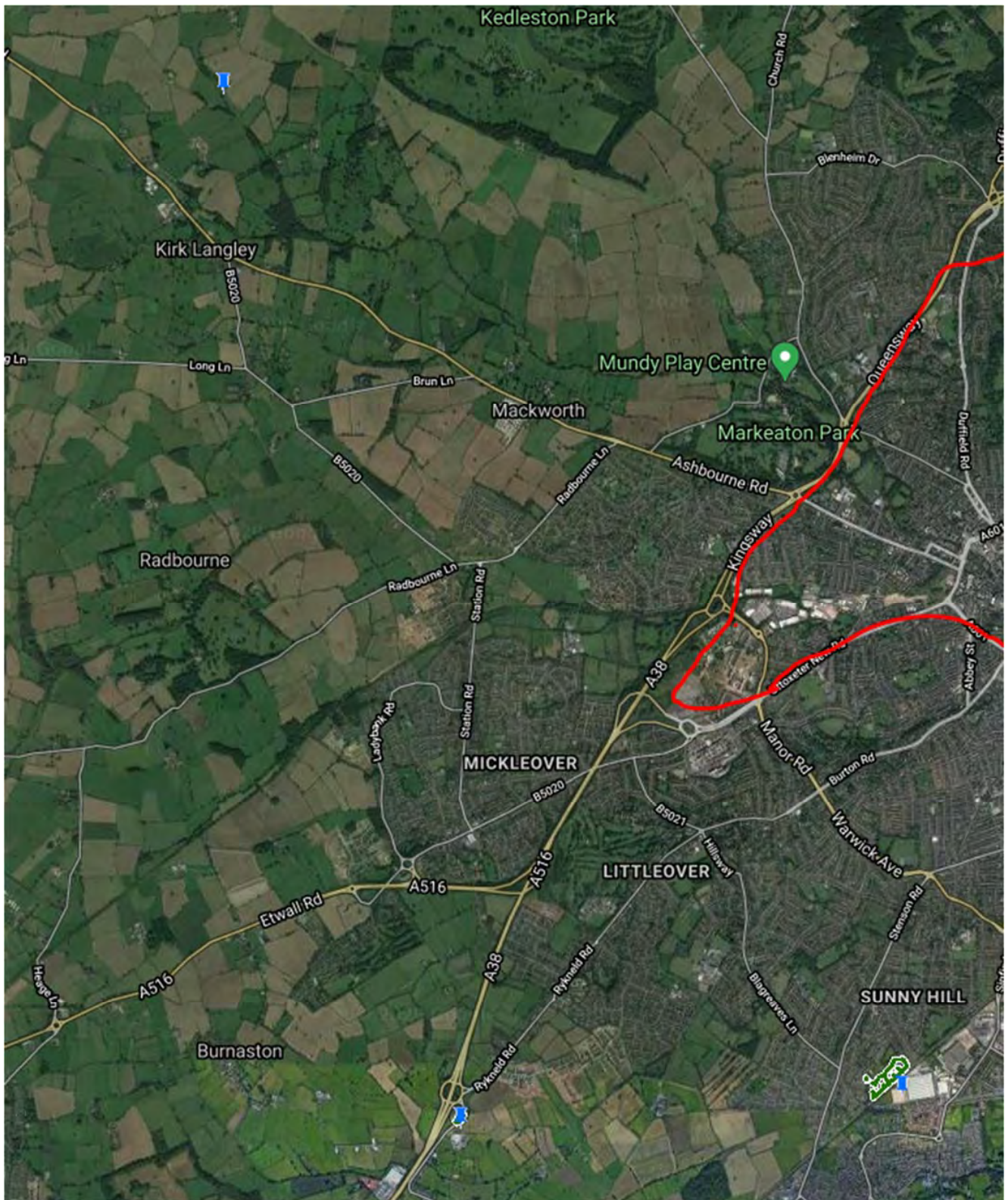
From: Wharmby, Keith <keith.wharmby@tarmac.com>
Sent: 01 October 2020 10:33
To: Pratima Balaghee
Subject: Fw: Derby CPO - John St Relocation area of search

CAUTION: This email originated from outside of the organisation. Do not reply, click links or open attachments unless you recognise the sender and know the content is safe.

Pratima, Have been through consideration with colleagues and arrived at the area of search outlined in red, it can be open to a little movement of the boundary but it does cover the more industrialised areas where it is likely that a planning consent for our particular use would be forthcoming. This is the preferred search area considered appropriate to maintain the current market .

Let me know if you need anything further at this time.

Regards, Keith



Keith Wharmby
Property Estates Manager- Asset Management

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THE DERBY CITY COUNCIL (CASTLEWARD) COMPULSORY PURCHASE ORDER 2020

APPENDIX 5

EMAIL CHAIN

STATEMENT OF EVIDENCE OF MS. RACHEL LISTER

ON BEHALF OF DERBY CITY COUNCIL

PUBLIC INQUIRY 26 – 29 January 2021

Ravinder Bhomra

From: Wharmby, Keith <keith.wharmby@tarmac.com>
Sent: 04 September 2020 10:18
To: Nick Mann
Subject: Re: 13 & 15 Victory Park

Nick, just to keep you up to speed with our land search in relation to the above Glenn received the following response from the agents to his enquiry:

"Unfortunately, we are not going to be able to accommodate your client's requirement on Victory Park as construction of Unit 14 and Unit 15 is well underway, with Unit 13 to follow."

We are continuing to look at alternatives, Regards, Keith

From: Nick Mann <nick.mann@thomaslister.com>
Sent: 28 August 2020 13:03
To: Wharmby, Keith <keith.wharmby@tarmac.com>
Subject: RE: 13 & 15 Victory Park

Hi Keith,

If you think that this site could be of serious interest as a potential relocation option based on location/accessibility etc then I will undertake further research and will contact the agents again.

But if the enquiry is just out of interest perhaps Glen can follow this up?

Kind regards

Nick Mann BA (Hons) MSc
Graduate Surveyor
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D: 01527 889 222
M: 07762 112 607
O: 01527 871 640
E: nick.mann@thomaslister.com

From: Wharmby, Keith <keith.wharmby@tarmac.com>
Sent: 28 August 2020 11:54
To: Nick Mann <nick.mann@thomaslister.com>
Subject: Re: 13 & 15 Victory Park

Nick, thanks for this latest opportunity information. I think its a little bit too far out for us but if at all possible could you just obtain an idea of what the likely rental might be - just to give a flavour of what might be being asked. You mention the unit not being delivered but interesting to know if the selling

agents will be basing its value on open land -which is what we would be looking at it as, or with its potential for built devpt.

Regards, Keith

Keith Wharmby
Property Estates Manager- Asset Management

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From: Nick Mann <nick.mann@thomaslister.com>
Sent: 28 August 2020 11:39
To: Wharmby, Keith <keith.wharmby@tarmac.com>
Cc: glenn@dlwalker.net <glenn@dlwalker.net>; Pratima Balaghee <Pratima.Balaghee@derby.gov.uk>
Subject: FW: 13 & 15 Victory Park

Good morning Keith,

I trust you are well.

Please see attached marketing particulars for a site which is currently being partly delivered off Victory Road.

I understand that Unit 14 to the northeast corner on the plan on the 3rd page isn't actually being delivered now and currently comprises a vacant plot extending over 1 ¼ acres, the site is accessed directly off Victory Road.

Please can you review and let me know if this might be of interest?

Kind regards

Nick Mann BA (Hons) MSc
Graduate Surveyor
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Buntsford Gate
Bromsgrove
B60 3DJ

D: 01527 889 222
M: 07762 112 607
O: 01527 871 640
E: nick.mann@thomaslister.com

From: Will Speed <WSpeed@salloway.com>
Sent: 28 August 2020 11:16
To: Nick Mann <nick.mann@thomaslister.com>
Subject: 13 & 15 Victory Park

Hi Nick,

Please find attached the particulars for 13 & 15 Victory Park.

If you have any further questions or queries please don't hesitate to get in contact.

Kind regards,

William Speed BA (Hons)

Graduate Surveyor

Tel: [01332 298000](tel:01332298000)

Mob: [07950 157824](tel:07950157824)

Email: wspeed@salloway.com

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**THE DERBY CITY COUNCIL (CASTLEWARD) COMPULSORY PURCHASE ORDER 2020
FUNDING AND DELIVERY EVIDENCE
REBUTTAL**

STATEMENT OF EVIDENCE OF MR. DAVE BULLOCK
COMPENDIUM REGENERATION LIMITED

ON BEHALF OF DERBY CITY COUNCIL

PUBLIC INQUIRY 26 – 29 January 2021

REBUTTAL STATEMENT TEMPLATE

1. INTRODUCTION

- 1.1. This rebuttal statement has been prepared by Dave Bullock. I have previously prepared a Proof of Evidence (ACQ/4B), in relation to Funding and Delivery. My qualifications and experience remain as set out in section 1.1 of that Proof.
- 1.2. I have been provided with a copy of a “Statement of Evidence” dated 4 January 2021, prepared by CMS Cameron McKenna Nabarro Olswang LLP and submitted on behalf of Tarmac (‘the Tarmac Statement’). Paragraphs 8, 9 & Annexure 1 of the Tarmac Statement address matters relevant to the subject of my earlier evidence.
- 1.3. In this rebuttal statement, I provide a response to the issue raised in those paragraphs of the Tarmac Statement, which can be summarised as being that the Order is premature as a result of the claim that “The Property is manifestly not needed now”.
- 1.4. This issue is addressed below.

2. Prematurity

- 2.1. Our current indicative programme assumes that a planning application for Phase 4, which includes the Tarmac site, will be made in 2022 or 2023. Vacant possession will be required ahead of securing planning approval, and ideally demolition/site investigations will have been carried out before the reserved matters application to inform proposals. In any event, the programme remains indicative because, for example, we may need to pull Phase 4 ahead of Phase 3B for land assembly or other reasons.
- 2.2. As set out in greater detail in the evidence of Mr Pheasant, planning approval for the site never envisaged long term occupation of industrial uses alongside residential for reasons of sound transmission, highways usage and general attractiveness for residential occupiers, whose willingness to buy homes in the area is a critical success factor of the development. This willingness may have critical viability implications. Phase 3A will be constructed in 2021/22 (in parallel with the Elevate development on the other side of John Street) and as such the impact of Tarmac’s business activities will be felt within the next year. Highway usage by Tarmac vehicles may clash directly

with residential vehicle use once the new residential units on John Street are completed.

2.3. The Council's letter of 2 March 2020 (ACQ/3C/4, page 84 of PDF bundle) indicated that 'vacant possession for land within Phase 4a is currently not expected to be required until 2022'. Further, 'our message to all affected owners and occupiers is that it remains the Council's preference to acquire land by mutual agreement, with compulsory purchase used as a last resort. In addition, arrangements for continued occupation beyond acquisition could be available where immediate vacant possession is not required'. The development phasing plan was indicative and subject to change.

2.4. Annexure 1 is an extract from the Homes England Funding Agreement and remains indicative and subject to review. What it does show is a planning permission being secured in March 2023, following an application in 2022 and assumes vacant possession, demolition and site investigations being carried out ahead of the planning application.

2.5. This reinforces our contention that the Order is not premature, rather that a reasonable programme is in place to secure property in a timely fashion to facilitate the appropriate surveys and investigations to be carried out ahead of requisite planning applications to enable continued compliance with Homes England's funding conditions and our own requirement for timely and efficient development.

2.6. In any event, I understand that s.17 of the Housing Act 1985 (CD 5.1) only requires that land is needed within ten years of the date of confirmation. Plainly the Tarmac land is required well within that period.

3. CONCLUSION

3.1. The Tarmac Statement does not cause me to change my original conclusions as set out in my Proof of Evidence dated 4th January 2021.

4. DECLARATION

4.1. I confirm that the facts stated within my evidence are true.

Dave Bullock

Managing Director

Compendium Regeneration Limited (trading as Compendium Living)

18 January 2021

**THE DERBY CITY COUNCIL (CASTLEWARD) COMPULSORY PURCHASE ORDER 2020
COMPELLING CASE EVIDENCE
REBUTTAL**

STATEMENT OF EVIDENCE OF MR. JOHN GILMAN

ON BEHALF OF DERBY CITY COUNCIL

PUBLIC INQUIRY 26 – 29 January 2021

1. INTRODUCTION

1.1. This rebuttal statement has been prepared by John L Gilman. I have previously prepared a Proof of Evidence (ACQ/5B) in relation to evidencing the Council's compelling case for making and promoting the CPO (Compelling Case Proof). My qualifications and experience remain as set out in section 1 of that Proof.

1.2. I have been provided with a copy of a "Statement of Evidence" dated 4 January 2021 prepared by CMS Cameron McKenna Nabarro Olswang LLP and submitted on behalf of Tarmac ('the Tarmac Statement'). Paragraphs 3, 4 and 8 of the Tarmac Statement raise issues relevant to the subject of my earlier evidence.

1.3. In this rebuttal statement, I provide a response to the issues raised in the Tarmac Statement:

1.3.1. In summary the Tarmac Statement asserts that:

1.3.1.1. the Council has failed to adequately explain why the Property (The Tarmac land) is included within the Order notwithstanding the Council's intention, as Tarmac's landlord, to exercise powers under the Landlord and Tenant Act 1954 and not renew Tarmac's lease (see paragraphs 3.2 and 8.5-8.7 of TAR/1B) **(ISSUE 1)**;

1.3.1.2. the Council has failed to demonstrate why Tarmac should be deprived of its interest in the Property (the Tarmac land) without adequate compensation (see paragraph 3.1 of TAR/1B) **(ISSUE 2)**; and

1.3.1.3. that there is no compelling case in the public interest for the acquisition of Tarmac's land (see paragraph 4 of TAR/1B) **(ISSUE 3)**.

1.4. Each of these issues is addressed in turn overleaf.

2. ISSUE 1

2.1. In accordance with the Guidance the Council has from the outset sought to acquire all of the interests in the Order Land by agreement. The Objector has the benefit of the leasehold interest only. The freehold is in separate ownership. As described in the evidence of Ms Lister (see paragraph 5.14, ACQ/3B) the Council initially approached the freehold owner in November 2019 with a view to acquiring the freehold interest but at that stage they did not indicate a willingness to sell.¹ Following the making of the CPO a further attempt was made to acquire the freehold interest by negotiation in October 2020. This further attempt was successful and the Council was able to acquire the freehold interest by way of a transfer of a going concern on 6th November 2020. This process was carried out in accordance with the Guidance and, in effect, avoided the possible need to exercise compulsory purchase powers in the event the CPO is confirmed.

2.2. In my proof of evidence at paragraphs 12.3 (ACQ/5B) I address why it is that Tarmac's land is included in the Order Land. In summary the Council requires the certainty of knowing that it can deliver the Scheme and bring about the quantitative and qualitative improvement in housing within the CUV. This cannot be achieved by acquiring land in a fragmented way. A fragmented approach would also undermine the Council's strategic vision for Castleward, which is to create a high quality residential-led mixed-use neighbourhood. Retaining a concrete batching plant, a widely recognised 'bad neighbour' industrial use, in its midst, would be wholly inconsistent with that vision and the Council's wider objectives for the area. This point is addressed further in the Proof and Rebuttal Statement of Mr Pheasant.

2.3. The Council and its developer partner also need certainty that it will be able to acquire the land within a particular timescale. The timing of the need for the Tarmac land is addressed further in the Rebuttal Statement of Mr Bullock.

2.4. The Council is entitled to adopt all available and lawful options open to it to secure the acquisition of the Tarmac interest. The Council, as Tarmac's landlord, is entitled to rely,

¹ An approach had previously been made to Mrs Rayson in 2017, but this was by Compendium, the Council's developer partner.

as it would in any other circumstances and as any other landlord would, on the provisions of the Landlord and Tenant Act 1954 to not extend or renew a lease which would otherwise expire by the effluxion of time.

2.5. However, in the event it is not successful in relying on the provisions of the Landlord and Tenant Act 1954, either in the requisite time frame or at all, the Council needs to know that it will be able to exercise powers pursuant to the CPO to acquire Tarmac's interest compulsorily. It may therefore still be necessary, as a last resort, to rely on the exercise of those powers.

2.6. In respect of Tarmac's suggestion that the Council should be required to wait until the Landlord and Tenant Act 1954 procedure has failed before it can bring forward a compulsory purchase order for Tarmac's interest, I note the contents of paragraphs 2 and 17 of the Guidance, which refer to the potential for, and benefits of, proceeding with compulsory purchase procedures in parallel with negotiations. Although these are expressly dealing with the ability and appropriateness of an acquiring authority bringing forward a compulsory purchase order in parallel with voluntary negotiations, I consider that the intention is clear: the Government does not expect acquiring authorities to have to wait until other means of acquiring land have been exhausted before commencing compulsory purchase procedures. Tarmac's approach is therefore contrary to the spirit of the Guidance.

3. ISSUE 2

3.1. The Council has a fiduciary duty to manage financial matters prudently and seek to minimise expenditure where it is reasonable and practicable to do. Where a situation affords the Council the opportunity of either paying compensation based on the compulsory purchase compensation code or a lesser sum based on the Landlord and Tenant Act 1954, then it is duty bound to take the most cost-effective option.

3.2. The compensation that has been offered by the Council is more than the Landlord and Tenant Act 1954 prescribes. In any event I do not accept that the compensation payable is inadequate, it is what the law prescribes and in the absence of the exercise of compulsory purchase powers is what would typically be payable to a person with Tarmac's interest.

3.3. In the event that the CPO is confirmed, and the Council had the need to exercise the powers granted to it by the CPO with respect to the Tarmac interest, it would of course fully meet its obligation to pay compensation pursuant to the compulsory purchase compensation code.

3.4. As further detailed in Ms Lister's Proof and Rebuttal Statement, the Council remains committed to taking reasonable steps to assist Tarmac in relocating their business elsewhere and to facilitate this the Council has offered to grant Tarmac a short term lease to allow Tarmac to continue operating from their current location until such time as a relocation site can be secured.

4. ISSUE 3

4.1. The compelling case for making the Order is set out comprehensively in my original Proof of evidence and I do not repeat it here.

4.2. In that Proof, I acknowledge the risk that Tarmac's business will not be relocated and that it will be lost to Derby. Whilst it has not yet been demonstrated that this is the case, and whilst the Council remains keen to see that business retained, the Council's assessment is that the housing and regeneration benefits that will arise from the implementation of the Scheme outweigh the disadvantages associated with the loss of the existing businesses in the area should that loss materialise.

5. CONCLUSION

5.1. My original conclusions contained within my proof of evidence remain unaltered further to considering the Tarmac Statement.

6. DECLARATION

I confirm that the facts stated within my evidence are true.

John Gilman

Principal Regeneration Manager

Derby City Council

18 January 2021

APP/PCU/CPOH/C1055/3249056

THE DERBY CITY COUNCIL (CASTLEWARD) COMPULSORY PURCHASE ORDER 2020

REBUTTAL STATEMENT

ON BEHALF OF

TARMAC TRADING LIMITED

CMS Cameron McKenna Nabarro Olswang LLP

1 – 3 Charter Square

Sheffield S1 4HS

United Kingdom

TARMAC TRADING LIMITED

THE DERBY CITY COUNCIL (CASTLEWARD) COMPULSORY PURCHASE ORDER 2020

REBUTTAL STATEMENT

1. INTRODUCTION

1.1 The purpose of this rebuttal statement is to respond to a number of assertions made in the Statements of Evidence submitted on behalf of the Acquiring Authority with which Tarmac Trading Limited (the “**Objector**”) disagrees or takes issue.

1.2 This rebuttal statement adopts the defined terms used in the Statement of Evidence on behalf of Tarmac Trading Limited dated 4 January 2021 (the “**Objector’s Statement**”).

Status of correspondence marked “Without Prejudice”

1.3 As a preliminary point, the Objector notes that the Acquiring Authority has referred in its evidence to correspondence which was expressed to be “Without Prejudice”. By referring to correspondence marked “Without Prejudice” in the open forum of the evidence to a public inquiry we understand the Acquiring Authority to have waived the without prejudice nature of the correspondence and the Objector has proceeded to refer to such correspondence where appropriate within this rebuttal statement.

Receipt of correspondence sent by or on behalf of the Acquiring Authority

1.4 In this rebuttal statement the Objector has identified certain correspondence that it has no record of receiving during its interactions with the Acquiring Authority. Whilst the Objector acknowledges that correspondence sent since March 2020 may have been impacted by the coronavirus (COVID-19) pandemic, dialogue with the Acquiring Authority and its representatives has been possible via email and videoconference during that period.

2. REBUTTAL OF ACQ/3B – NEGOTIATION PROOF

- 2.1 The Acquiring Authority submitted a Negotiation Proof (reference ACQ/3B) dated 4 January 2021 in the form of the Statement of Evidence of Ms. Rachel Lister of Thomas Lister Limited (the “**Negotiation Proof**”).
- 2.2 The Objector refutes the following statements made in the Negotiation Proof and / or makes the following observations against the corresponding paragraph numbering used in the Negotiation Proof.
- 2.3 **Paragraph 1.2:** The first contact received by the Objector in connection with the Order was on 27 March 2019 as identified at paragraph 7.4 of the Objector’s Statement.
- 2.4 **Paragraph 4.8:** In the Objector’s view, there have been no negotiations to acquire its interest in the Property under the compulsory purchase regime. The Acquiring Authority has made one “Without Prejudice” offer, which was tabled by Joanna Rees on 25 November 2020, which is appended at **Annexure 1** and referred to later in this rebuttal statement (the “**Without Prejudice Offer**”).
- 2.5 **Paragraph 4.11:** This statement is disputed for the reasons set out above at paragraph 2.4.
- 2.6 **Paragraph 5.2:** The Without Prejudice Offer did not refer to the Order or make an offer under the Compensation Code but instead offered modified terms based on the entitlement to compensation under the Landlord and Tenant Act 1954 (the “**54 Act**”).
- 2.7 **Paragraphs 5.3 to 5.12:** The contents of these paragraphs do not support the Acquiring Authority’s assertion that initial contact was made with the Objector in 2017, which the Objector denies. However, the Objector does note that valuation estimates were provided to several property owners affected by the Scheme at this early stage; it is unfortunate that similar valuation information was not provided to the Objector in relation to the Property.
- 2.8 **Paragraph 5.14:** The absence of early contact from the Acquiring Authority regarding the Objector’s interest in the Property is curious, and at odds with its view that Plot 15

was a key site to acquire. When the Acquiring Authority did engage with the Objector it was only with lists of possible relocation sites; there was no discussion of the sums that might be necessary to secure such relocation. A clear impression is given that the Acquiring Authority did not have any intention of treating with the Objector but instead simply intended to wait until it had acquired the freehold so that it could serve a '54 Act s.25 Notice on the Objector paying only statutory compensation under the '54 (leaving the Objector to bear all the costs of relocating from its current premises to a new site or forcing it to extinguish the business carried out on the Property).

2.9 **Appendix 2; meeting notes dated 13 January 2020:** These state that “*PR (Phil Randle (Salloway Property Consultants)) noted that it is **near impossible** to currently find similar replacement properties within Derby, and even within the wider area, including Nottingham*” (emphasis added). From this it is clear that the Acquiring Authority was all too aware of the difficulties that would be faced by owners and occupiers in seeking to find suitable replacement industrial land at the time and the discussions with the Objector regarding possible relocation sites appears to have been a delaying tactic.

2.10 **Appendix 2; meeting notes dated 23 January 2020:** These state that “*However, PM (Peter Milner (Milner Commercial)) made it clear that Mrs Rayson’s [the Objector’s landlord’s] preference is not to sell her interest and is content with the secure income she receives from Tarmac as tenant. ... PM confirms he has a meeting with the tenant’s agent next week in order to fully understand Tarmac’s timetable in relation to vacating the site. Additionally, it was noted that discussions from this meeting might have an impact on if/when Mrs Rayson opts to treat.*”

2.11 The Objector contends that in fact no negotiations took place between it and the Acquiring Authority regarding a timetable for relocation and it is clear from these minutes that in the absence of the Scheme Mrs Rayson was content to continue receiving rent under the lease arrangements with the Objector.

2.12 **Paragraph 5.15:** The Objector does not have any record of receipt of the letter described and it would appear the Acquiring Authority cannot provide evidence of delivery.

2.13 **Paragraph 5.16:** The letter states *“In accordance with the Compendium Living development programme, this land forms part of Phase 4a. Vacant possession for land within Phase 4a is currently not expected to be required until 2022. Our message to all affected owners and occupiers is that it remains the Council’s preference to acquire land by mutual agreement, with compulsory purchase used as a last resort. In addition, arrangements for continued occupation beyond acquisition could be available where immediate vacant possession is not required.”*

The Objector has seen little evidence of the Acquiring Authority's "preference" to acquire by mutual agreement.

2.14 **Paragraph 5.17:** This is strongly disputed by the Objector as it has always been willing to negotiate with the Acquiring Authority to facilitate the Scheme provided that its own interests were adequately protected. It has not ever been, and is not now, the Objector’s intention to derail the Scheme; it has only ever objected to the Scheme and the Order due the likely adverse impacts on its business that the Acquiring Authority has failed to mitigate in any meaningful way. In this regard, the Objector put forward draft valuations prepared in accordance with the Compensation Code for consideration by the Acquiring Authority (as set out in the Objector’s Statement) to which no response was received. This was despite the Objector’s understanding that the Acquiring Authority had received its own valuation advice, but which it decided not to disclose it to the Objector. As far back as June 2019, Thomas Lister Limited did allude to indicative costs of relocating the Objector’s plant totalling circa £1.5million (as advised by Wood plc) but no formal terms were offered by the Acquiring Authority to assist in meeting this cost.

2.15 **Paragraph 6.2:** In relation to this paragraph, the Objector would merely comment that the meeting notes are not dated, Rachel Lister was not present at the meeting, and there is no mention of the Objector’s interests in the notes.

- 2.16 **Paragraph 6.5:** As outlined above, the Acquiring Authority has not offered compensation under the Compensation Code.
- 2.17 **Paragraph 6.7:** The Objector makes the following observations:
- 2.17.1 *Item 1:* The Objector has no record of receipt;
- 2.17.2 *Item 2:* The Objector has no record of receipt;
- 2.17.3 *Item 3:* The Objector has no record of receipt;
- 2.17.4 *Item 4:* The Objector has no record of receipt but in any event the “Top Up” grant scheme is only applicable to small businesses and charities, which means that the Objector’s business does not qualify for such a grant;
- 2.17.5 *Item 6:* The Objector’s business did not have to close therefore the contents of this correspondence was not regarded as applicable to the Objector.
- 2.18 **Paragraph 6.15:** Mr Wharmby’s response was not uncooperative but rather reflected the fact that he did not consider that a meeting would be productive on that occasion given that the Acquiring Authority had not tabled any new matters / options to discuss.
- 2.19 **Paragraph 6.16:** The Objector would suggest that its intentions with regards the Property as a result of the Order have been misunderstood by the Acquiring Authority. The Objector strongly refutes the suggestion that it, at any time, indicated that it might seek to cease operations at the Property for any reason other than ones related to the Scheme and the Order. The Objector has firmly maintained the position, throughout its dealings with the Acquiring Authority, that total extinguishment of its business might be necessary if it was not possible to find a suitable relocation site but that it would always seek to mitigate its losses as required by the Compensation Code. It was made clear by Mr Wharmby in email correspondence to Mr Adam King (Ardent Management) on 17 April 2019 that the Objector “*would be looking to maintain its presence in the area and therefore look to be relocated as part of the CPO process*”. Furthermore, the importance of the operations at the Property to the Objector’s business is amply demonstrated by the fact that the operations on the Property only closed due to

the effects of COVID-19 for a period of 5 weeks in April through to May 2020. The Objector has continued to maintain a viable business at the Property.

2.20 **Paragraph 6.18:** The Objector re-emphasises that it was the landowner’s commercial decision not to enter into further discussions with the Objector regarding its potential relocation as the landowner was seeking to secure a critical mass of occupiers, which was not available at the time.

2.21 **Paragraph 6.21:** It is understood that the Acquiring Authority's and the Environment Agency’s proposals for flood defence works at the Chaddesden site have resulted in uncertainty for the landlord; such that it is unable to commit its site to being used for relocation of the Objector’s business operations.

2.22 **Paragraph 6.22:** The Objector believes that Rachel Lister may have misunderstood the context of the conversation that took place between her and Mr Glenn Hall¹. The Objector has always been aware of its duty to mitigate its losses under the compulsory purchase regime and it also acknowledged the challenges that it had experienced in repeated unsuccessful attempts to find a suitable “open” relocation site (in no small part due to potential landlords' reluctance to accommodate a ready-mixed plant in the open). Therefore, in order to meet that duty, it had considered and suggested to the Acquiring Authority (via its conversation with Rachel Lister) that housing the ready-mixed plant inside a building might prove to be a more acceptable proposition to potential landlords. However, it was made clear to the Acquiring Authority that this would result in a greater cost forming part of the Objector’s compensation claim pursuant to the compulsory purchase regime. The Objector also proposed that another option might be for the Acquiring Authority to use its powers to acquire land which it would then lease to the Objector. This approach has proved successful in similar circumstances involving the

¹ Experience of Glenn Hall BSc MSc MRICS RICS Registered Valuer

- Chartered Minerals and Chartered Environmental Surveyor and RICS Registered Valuer
- 46 years specialist technical and 37 years management experience
- Last 11 years in consultancy
- Previous 19 years with Valuation Office Agency – Deputy Head of Mineral Valuer specialist department (responsible for the valuation of concrete batching plants)
- Visited circa 100 concrete batching plants.

Objector elsewhere in the UK. The Objector reiterates that it has maintained that a claim for total extinguishment would be the last resort. However, the Acquiring Authority has not provided a substantive response to this.

- 2.23 **Paragraph 6.23:** Further correspondence was received from Pratima Balaghee on 11 January 2021 however, this simply serves to reiterate that the Objector has been active in seeking to identify and secure a replacement site but there are very few options open to it. The Objector has responded to this correspondence and will continue to discuss matters with landowners regarding potential relocation.
- 2.24 **Paragraph 6.25:** The Objector would merely re-state that there were, and still are, serious difficulties identifying a suitable relocation site; an issue which does not only affect the Objector but also other parties as accepted by Phil Randle (Salloway Property Consultants) in the meeting notes dated 13 January 2020 contained in Appendix 2 of the Negotiation Proof.
- 2.25 **Paragraphs 6.27 and 7.2:** The Without Prejudice Offer was the first time that the Acquiring Authority had attempted to negotiate a settlement and was expressed to be made on a “Without Prejudice” basis. The Without Prejudice Offer offered compensation based on ’54 Act compensation principles and is therefore, at most, only a tiny percentage of the compensation that the Objector would receive under the Compensation Code if it were being relocated (or extinguished) pursuant to the Order.
- 2.26 **Paragraph 7.3:** At the first meeting with Thomas Lister Limited on 20 June 2019, the Objector provided initial compensation estimates. These were subsequently refined and sent to Rachel Lister on 9 July 2020. The only response received to date was the Without Prejudice Offer. The Objector has never received a response to the information on compensation it provided.
- 2.27 **Paragraph 8.3(ii):** Whilst it is acknowledged that the Acquiring Authority has made some limited attempts to assist the Objector in identifying potential relocation sites it is also the case that the Acquiring Authority has completely failed to understand the Objector's fundamental requirements for a suitable replacement site which requires it to

be within Derby to serve its customers. As such, many of the sites suggested have been in unsuitable remote locations, comprise land that is unlikely to be granted planning permission to operate a ready-mixed plant, and / or are sites that are only available for purchase rather than to let.

2.28 **Appendix 8:**

2.28.1 *Correspondence dated 2 December 2019:* The Objector reiterates its submissions at paragraph 2.22 of this rebuttal statement;

2.28.2 *Correspondence dated 9 July 2020:* The Objector would question whether the cost estimate provided by it was in fact ever reviewed by the Acquiring Authority and if so, the conclusion reached. Furthermore, the Objector reiterates that the Acquiring Authority has resisted disclosure of its initial valuation estimate.

3. CONCLUSION

3.1 The operations on the Property are and have been profitable for several years and the Property has been an important site for the Objector's wider business operations for 24 years. Furthermore, the Objector's business has been operated with the benefit of a protected tenancy under the '54 Act in the expectation that the business would continue after the expiry of the current term.

3.2 The Objector has used all reasonable endeavours to identify a suitable relocation site to enable it to continue its operations in Derby without success. Firstly, it sought to identify "open" relocation opportunities to another site within Derby. There have been a large number of communications between the Acquiring Authority (including representatives acting on its behalf) and the Objector in this regard, but none have resulted in the conclusion of terms.

3.3 Having been unsuccessful in its search and further investigations, in the majority of the cases as a result of the landowner being unwilling to allow the siting of a ready-mixed plant, the Objector raised with the Acquiring Authority whether any appropriate surplus

land in the Acquiring Authority's ownership could be leased to the Objector or even whether the Acquiring Authority could acquire land compulsorily for the same purpose.

3.4 As this proposal was not entertained by the Acquiring Authority, the Objector explored the possibility of housing the ready-mixed plant inside a building or under cover on the basis that this might prove to be a more acceptable proposition to potential landlords (whilst making it clear that this would likely lead to an increase costs in compensation terms). Again, the Acquiring Authority failed to meaningfully engage with the Objector for it to consider this a viable alternative.

3.5 All of the above searches and investigations were undertaken by the Objector in good faith and on the basis that the Acquiring Authority was willing to pay proper compensation in accordance with the Compensation Code to assist with relocation and disturbance to the business.

3.6 In the circumstances, the Objector has also had to consider the possibility of total extinguishment as a last resort. The Objector now finds itself amid the compulsory purchase process without a viable site to which to relocate its operations. The freehold interest in the Property has been acquired by the Acquiring Authority resulting in the single offer made to acquire the Objector's interest by reference to '54 Act principles which would not be sufficient to meet the cost of relocation.

3.7 From the outset of becoming aware of the Order, the Objector has acted in good faith and sought to be proactive regarding potential relocation on the understanding that the Acquiring Authority's offer to assist it in such relocation opportunities was to be backed up by an appropriate compensation package. If relocation was unsuccessful, it was always the Objector's case that a claim for total business extinguishment would be the last resort.

3.8 In all of the circumstances, it would seem that the Acquiring Authority has maintained a strategy of appearing to assist the Objector with relocation (without making any formal commitment to assist with the costs of such relocation) whilst its principal focus has been on the acquisition of the Objector's landlord's interest so that it may seek to secure

possession of the Property without paying compensation under the Compensation Code. This strategy has been pursued in full knowledge that the Objector has few, if any, relocation options if its interest in the Property is brought to an end, whether pursuant to the Order or under the lease.

- 3.9 In the event that the Council is successful in securing possession under the lease (as per the Without Prejudice Offer) the Council is likely to cause the extinguishment of the Objector's business without adequate compensation.

CMS Cameron McKenna Nabarro Olswang LLP

12 January 2021

ANNEXURE 1 THE WITHOUT PREJUDICE OFFER

From: Joanna Rees [REDACTED]
Sent: 25 November 2020 10:15
To: keith.wharmby [REDACTED]
Cc: Glenn Hall [REDACTED]; rachel.lister [REDACTED]
Subject: John Street, Derby

Without Prejudice & Subject to Contract

Dear Keith

I refer to our meeting on 17 November when we discussed the possible relocation sites for your operation in John Street, and when we also mentioned the Council's intention, as your landlord, to obtain vacant possession of the premises at John Street at the expiry of Tarmac's current lease.

We repeated our requirement for the John Street site that you occupy to be available for redevelopment in 2022, and said that at this time we cannot be more precise in giving you a date, but that we anticipate that it will be early in the year 2022. We recognise that you are concerned that you may need more time to find an alternative site from which to service your Derby business.

When we met it was agreed that the Council would put a proposal to you. We should be grateful if you could consider the following offer, which we hope would allay your fears about the timing and which would also give you a greater payment than the statutory compensation to which you are entitled under the Landlord & Tenant Act 1954.

In order to adhere to the phasing plan for the Castleward Urban Village development, the Council, and its Developer partner, require your site early in 2022, however, it is possible that the plan could be adjusted to postpone that phase. This would only be possible by bringing forward another phase and this may not be achievable, but we are prepared to look at whether this could be done.

1. Tarmac to surrender its lease as soon as possible but, by 8 December 2020;
2. Immediately upon the surrender, Derby City Council to grant to Tarmac a new 18 month lease, excluded from the 1954 Act, with a tenant's rolling break, operable upon three months' notice;
3. Upon the lease surrender, Derby City Council pays to Tarmac statutory compensation of £74,000 which would have been payable upon the Council's refusal to grant Tarmac a new lease upon the expiry of the current lease;
4. At the same time, Derby City Council pays to Tarmac an additional £26,000, making the total payment £100,000;
5. Tarmac withdraws its objection to the Castleward CPO;
6. Derby City Council is open to paying Tarmac's legal & surveyor's costs in this, subject to a further conversation.

We should welcome an opportunity to discuss this with you and once you have had a chance to consider the above, please could you contact me to arrange a meeting?

Thank you very much,

Joanna

Please Note: I am not currently contactable via telephone. Please email instead. If you do need to speak with me, please forward me your telephone number and I will call you.

Joanna Rees | Senior Valuer | Estates and Property Review | Corporate Resources Directorate | Council House, Corporation Street, Derby, DE1 2FS | Telephone 01332 643329 | Mobile 07812301940 | Minicom 01332 640666 | www.derby.gov.uk

let's do the right thing for Derby



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THE DERBY CITY COUNCIL (CASTLEWARD) COMPULSORY PURCHASE ORDER 2020

SUPPLEMENTAL STATEMENT

ON BEHALF OF

TARMAC TRADING LIMITED

CMS Cameron McKenna Nabarro Olswang LLP

1 – 3 Charter Square

Sheffield S1 4HS

United Kingdom

TARMAC TRADING LIMITED

THE DERBY CITY COUNCIL (CASTLEWARD) COMPULSORY PURCHASE ORDER 2020

SUPPLEMENTAL STATEMENT

1. OBJECTOR'S FURTHER COMMENTS

1.1 The purpose of this supplemental statement is to provide final remarks on behalf of Tarmac Trading Limited (the “**Objector**”) following the receipt of further evidence from the Acquiring Authority.

1.2 This supplemental statement adopts the defined terms used in the Statement of Evidence on behalf of Tarmac Trading Limited dated 4 January 2021 (the “**Objector's Statement**”).

1.3 The Objector disagrees with a number of points raised by the Acquiring Authority in its rebuttals on a factual basis but also contends that the Acquiring Authority has not acted in accordance with the spirit of the Guidance and has treated the Objector in a prejudicial manner so as to deprive it of proper compensation.

Rebuttal Evidence of Jonathan Pheasant (ACQ/2/2A)

1.4 In relation to the concluding paragraph 3.3 of this rebuttal we would simply re-iterate the Objector's previously stated position that it would not be objecting to the proposals if it was being fairly compensated for the loss of its business due to the implementation of policy DCLP1.

1.5 The strategy of the Acquiring Authority to achieve the objectives of policy DCLP1 is unfair and will cause disproportionate loss to the Objector whose business will be extinguished without adequate compensation in the event the Acquiring Authority secures possession under the '54 Act.

Rebuttal Evidence of Rachel Lister ACQ/3/2A

1.6 In relation to paragraph 2.18 the Objector has been quite clear why the suggested relocation sites were not taken forward.

- 1.7 There is no value in a list of relocation sites if:
- 1.7.1 they are not physically suitable,
 - 1.7.2 they do not allow the relocated business to serve its clients (because it is too far away),
 - 1.7.3 the owner of the land will not grant a lease, or
 - 1.7.4 planning permission would not be granted for the intended use.
- 1.8 In relation to paragraph 2.19 it is unclear how the Acquiring Authority's dialogue with Mrs Rayson in 2017 is an answer to why the Acquiring Authority did not approach the Objector until 2019.
- 1.9 It is very surprising that the Acquiring Authority made only one attempt to inspect the Property (paragraph 2.20) and considered that it could learn all it needed to know about the operations on the Property from the pavement outside. Nevertheless, it is not only the site operations that are important to understand to identify a suitable relocation site for the Objector's business. The importance of the Property's location and the way in which this operates alongside the Objector's other regional operations is fundamental. The Objector also currently operates sites to the east in Nottingham, to the south on the M1 near Lockington, to the north in Chesterfield and to the west in Stoke. However, the Property has widespread market coverage to the north and west, which when considered alongside the location of its supply of constituent materials (sand and gravel) from the south, the site's ideal location is close to Derby city centre.
- 1.10 The explanation given for not sharing the Acquiring Authority's valuation information with the Objector (paragraph 2.21 – 2.23) does not make sense and appears to re-iterate that the Acquiring Authority had no intention of compensating the Objector in respect of the costs of relocation or extinguishment.
- 1.11 The assertion at paragraph 2.27 that *"the Council's compelling case is predicated on the loss of Tarmac's business"* goes some way to explaining why the Acquiring Authority has given the Objector so little priority in discussions.

1.12 The concluding paragraphs confirm that the true intent of the Acquiring Authority was to merely offer the Objector assistance in finding relocation sites. It is now obvious that, notwithstanding the discussions with the Objector, there was no real intention to mitigate the impact of the Acquiring Authority's development proposals on the Objector and instead the Acquiring Authority appears to have considered it equitable to require the Objector itself to meet the cost of relocation or extinguish the business.

Rebuttal Evidence of David Bullock ACQ/4/2

1.13 The evidence here appears to suggest that the phasing is far from certain, and that there are many issues upon which the phasing is contingent including approval of detailed planning permission.

1.14 At paragraph 2.1 the following statement is made, which suggests that the phasing may be being adjusted in order to lend support to a redevelopment ground to resist a continuation of the Objector's existing Lease.

"we may need to pull Phase 4 ahead of Phase 3B for land assembly or other reasons"
(emphasis added).

Rebuttal Evidence of John Gilman ACQ/5/2

1.15 Paragraph 2.2 does not explain why, having acquired the freehold, and having previously asserted that the Acquiring Authority has grounds to resist a new lease, it remains necessary to include the Objector's leasehold interest in the Order.

1.16 It is instructive that the Acquiring Authority describes the Objector's use as a "bad neighbour".

1.17 Contrary to the assertion at paragraph 2.4, the Lease would not expire "by the effluxion of time" in the absence of the Order. The Lease is a protected tenancy under the '54 Act and will continue until the Lease is brought to an end by agreement or following court proceedings. In the absence of the Acquiring Authority's acquisition of the freehold, in the shadow of the Order, there is no reason to bring the Lease to an end. It should be

remembered that the agent of the Objector's longstanding former landlord of 24 years (Mrs Rayson) stated that she was "...content with the secure income she receives from Tarmac as tenant".

- 1.18 In relation to paragraph 2.6 it is denied that the Objector's approach is contrary to the spirit of the Guidance. The Acquiring Authority has asserted that it has secured an interest in Plot 15 that enables it to secure vacant possession of the leasehold interest without the use of compulsory purchase powers. Having secured that position, it is no longer necessary to include the Objector's interest in the Order. The Guidance is clear that compulsory purchase is a last resort – in this case the Acquiring Authority has other means to acquire the Objector's interest – and it should be excluded from the Order.
- 1.19 Paragraph 3.1 refers to the Acquiring Authority's "*fiduciary duty to manage financial matters prudently and seek to minimise expenditure where it is reasonable and practicable to do so*". However, the Objector submits that the Acquiring Authority is also expected to act fairly and consistently in all of its dealings and pro-actively taking steps that would have the effect of extinguishing a business without compensation would not appear to be reasonable on any objective measure.
- 1.20 It is also notable that the Acquiring Authority is in a development arrangement with a private developer (Compendium). Whilst the terms of the joint venture have not been disclosed it is reasonable to assume that the private developer will expect to make a profit. It is also reasonable to assume that if the Acquiring Authority's land acquisition costs under the Order are reduced, the profit in the joint venture will increase. By extinguishing the Objector's business without proper compensation, the Acquiring Authority is increasing the joint venture's profit at the Objector's expense. That is clearly inequitable.

CMS Cameron McKenna Nabarro Olswang LLP

20 January 2021