

BIRMINGHAM CITY COUNCIL
BIRMINGHAM CITY COUNCIL (BRICKFIELD ROAD TYSELEY) COMPULSORY
PURCHASE ORDER 2019

THE TOWN AND COUNTRY PLANNING ACT 1990

AND

THE ACQUISITION OF LAND ACT 1981

STATEMENT OF REASONS FOR MAKING THE ORDER

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Birmingham City Council

Birmingham City Council (Brickfield Road Tyseley) Compulsory Purchase Order 2019

Statement of Reasons for Making the Order

1 Introduction

- 1.1 This is the Statement of Reasons of Birmingham City Council for making a compulsory purchase order entitled the Birmingham City Council (Brickfield Road Tyseley) Compulsory Purchase Order 2019 ("the Order"). The Order is made pursuant to Section 226 (1)(a) of the Town and Country Planning Act 1990. In this Statement of Reasons, Birmingham City Council is referred to as "the Council" and the land included within the Order is referred to as "the Order Lands". This Statement of Reasons has been prepared in compliance with the Ministry for Housing, Communities and Local Government 'Guidance on Compulsory purchase process and The Crichel Down Rules' dated February 2018 ("the Guidance").
- 1.2 This Statement describes the Order Lands in Section 2. The Statement goes on to describe the background to the proposals, the proposed development ("the Scheme") itself, the Council's purpose and justification for the use of compulsory purchase powers, and the planning position and policy context within which the City Council's decisions have been taken in sections 3 to 9. Other matters referred to in this Statement include other special considerations and human rights in sections 10 and 13 respectively.
- 1.3 The Council is both the planning and highways authority for the City of Birmingham and hence for the land which is the subject of this Order. The Order includes all of the interests in the Order Lands, save for interests already in the ownership of the Council.
- 1.4 The Order is being made and submitted to the Secretary of State for Housing, Communities and Local Government ("the Secretary of State") for confirmation.

2 Description of the Order Lands, Location and Current Uses

- 2.1 The Order Lands are located within the Tyseley and Hay Mills ward of the Yardley Constituency of Birmingham and are located approximately 4.8 miles (7.7 kilometres) east of Birmingham City Centre. Tyseley is a predominantly industrial area interspersed with pockets of older terraced housing and more recent local authority housing. Much of the area was developed during the rapid growth of the City from the start of the 20th Century. The A45 Coventry Road to the north of the site is a busy dual carriageway linking the City Centre to the airport and the motorway network as well as being a major public transport corridor served by a number of key bus routes.

The nearest rail station is Tyseley Rail Station approximately 1 mile to the south west of the site. It is also proposed that the A45 is the route for a SPRINT rapid transit route between Birmingham City Centre and the airport and proposed HS2 Interchange Station to the east of Junction 6 of the M42 within Solihull Metropolitan Borough Council's administrative area.

- 2.2 East Birmingham has been and continues to be a focus for regeneration and new development. A number of local centres have already benefitted from regeneration including the Swan Centre Yardley and Shard End Crescent and there has been significant investment in housing regeneration including the delivery of new homes in Sattley and at Shard End Urban Village. The Council has also promoted economic development and regeneration in East Birmingham, both through grants and other support for existing businesses and the Tyseley area generally (see paragraph 2.3 below). Much of this work has been lead and delivered by the Council working in partnership with local communities and other delivery organisations some within the private sector.
- 2.3 Tyseley is one of Birmingham's main industrial areas and is identified as a Core Employment Area within the Birmingham Development Plan. The area is also identified within the Birmingham Development Plan as Tyseley Environmental Enterprise District (TEED) which is being marketed by the Council towards industries from the 'environmental technologies' sector with a view to creating a wider environmental enterprise area capable of providing a hub for resource recovery and energy production. As such the TEED area will become the principle location for the City's 'low carbon' economy. A location plan is provided at BCC4.
- 2.4 The Order Lands are located off Brickfield Road to the south of Coventry Road and measure approximately 1.6ha shown on the Order Plan (BCC2). The site is set back from the road, and from view from the public highway, by a landscape strip that provides a substantial screen on the site's southern and western boundaries. The nearest residential properties to the site are located on Ada Road to the north and Speedwell Road to the south west with the rear boundaries of these properties located approximately 35 metres away from the site boundary.
- 2.5 The Order Lands are known as Phoenix Business Park and has been sub-divided into up to 16 smaller plots which incorporate a number of occupiers and a range of uses including but not limited to the storage of vehicles; the storage of building materials; the storage of scaffolding and waste management. At the current time there is no current planning approval for the uses on the site.
- 2.6 Both the Council and the Environment Agency have received complaints regarding the nature of activities on the site which are currently the subject of on-going investigation. A number of photographs showing the existing site are provided at BCC5.

- 2.7 The Order Lands are surrounded by industrial and commercial uses including the Euro Packaging facility which is situated to the immediate east of the site with offices overlooking the site at a higher level.

3 Background and Purpose of the Order

- 3.1 The Council's purpose in seeking to acquire the third party interests in the Order Lands is to facilitate its regeneration, by way of new construction for general industrial, manufacturing, warehouse and distribution purposes together with the construction of additional vehicle access, associated car parking and landscaping and other associated works ("the Development").
- 3.2 The Scheme will be financed and occupied by Euro Packaging. Euro Packaging produce and supply bespoke packaging products to a range of customers, including many of the world's leading retailers, and are a significant employer with in excess of 1,500 employees globally. Their global HQ is located at 20 Brickfield Road in Tyseley and incorporates manufacturing, distribution, research and development, and offices. At the current time 480 people are employed at the Tyseley HQ making Euro Packaging a significant employer in East Birmingham.
- 3.3 Due to the success of the company and the need to diversify into new business areas Euro Packaging have a pressing need to expand at their Tyseley site. Expanding the existing business onto the Order Lands would create up to 302 new jobs. Euro Packaging has estimated that the new investment will be between £14 – 15 m.
- 3.4 Euro Packaging identified the Order Lands as the most appropriate site to meet their future business needs given it abuts their existing site and would enable their operations to be reconfigured and expanded in the most efficient and cost effective way. Having considered other sites within the City, Euro Packaging has concluded that if they cannot expand onto the Order Lands the company would have to relocate their business outside of the city which they state is "a measure that we do not want to contemplate (although ultimately we may be forced to do so)" (extract from BCC6).
- 3.5 The freehold of the Order Lands is owned by the Council with a long leasehold of 125 years from 10th December 1998 which has been assigned to the current lessee, O'Reilly Contract Scaffolding Limited. The site is managed by the company's Director, Philip O'Reilly, and Company Secretary, Vicky Brewster who operate a scaffolding business from the site. Parts of the site are also occupied by a range of other businesses.
- 3.6 Euro Packaging has held discussions with the lessee since 2016 regarding the acquisition of the long leasehold interest of the site to facilitate their expansion. These discussions included a formal offer for the site in November 2016. Euro Packaging understood at the time that the offer had been received favourably and

heads of terms were subsequently forwarded to the lessee's solicitors. However matters have since stalled. As a result on 13th March 2017, Euro Property Investments Limited (part of the Euro Packaging group) requested the Council to use its compulsory purchase powers to acquire the site and facilitate the expansion of the business (BCC6).

- 3.7 The Council's Cabinet at its meeting of 24th May 2018 resolved to approve the making of a compulsory purchase order on behalf of Euro Property Investments Limited to enable them to acquire the long leasehold interest in the Order Lands in order to consolidate and expand their business operations (see Cabinet Report at BCC7). Cabinet's approval was subject to the completion of an Indemnity Agreement to cover costs between the City Council and Euro Packaging and upon Euro Packaging obtaining planning permission for their proposed scheme on the site. Euro Packaging subsequently obtained planning permission for their proposals on 19th July 2018 (2018/01359/PA) (BCC8) and the Indemnity Agreement was completed on 9th November 2018.

4 **Description of the Proposal**

- 4.1 On 19th July 2018 Euro Packaging obtained outline planning permission with some matters reserved (save for access, scale, appearance) for the erection of a building for general industrial/warehouse and distribution purposes (Use Classes B2 and B8). A copy of the decision document is included at BCC8.
- 4.2 The proposals are for a building of 3,585 sqm of floorspace that would comprise 870sqm of general industrial floorspace and 2,715sqm of warehouse and distribution floorspace. The building would have a height of 24m to eaves on the monopitch roof (with the maximum roof height up to 30m) and would then step down to the northern boundary of the site. The depth of the building would be approximately 68m. The building would be approximately 70m wide. An illustration of the proposed Development is provided at BCC8.
- 4.3 The building would be of flat roof construction and would be constructed of powder coated frames. The outer envelope would be clad in Kingspan industrial panels in Silver, Grey and Anthracite Grey. Glazing would be installed to the lobby / reception area of the building. Roller shutters would be provided on the south elevation of the building to operate as loading bays for heavy goods vehicles ("HGV").
- 4.4 The Development proposes the provision of 40 car parking spaces for staff at the facility, alongside 7 HGV loading bays. The parking spaces are proposed to be located around the perimeter of the building, with the HGV loading bays located on the southern elevation. The HGV route through the site would be along the south eastern elevations to an egress located in the north of the site on to Brickfield Road. The car route would be along the north western elevations to the same egress of the

site. The proposed access to the site would be located in the south western corner of the site off Brickfield Road.

- 4.5 The Development would result in the creation of 5,685 construction employment hours based on a 12 month build programme for the construction of the Development. It is proposed that the Development would result in the creation of up to 302 jobs, with these being provided in the third year of the Development. The first year post construction would be likely to see 98 jobs on the site, rising to 196 jobs after two years post construction and the full 302 jobs at 3 years post construction. The total number of jobs that would be delivered at the expanded Euro Packaging plant would be 782.
- 4.6 Euro Packaging has confirmed that funding is in place and that they are committed to delivering the proposal (BCC9).

5 The Case for Compulsory Acquisition

- 5.1 The Council considers that there is a clear case for compulsory acquisition of the Order Lands which is consistent with both legislation and government guidance. The Council also has a long and successful track record of using its compulsory purchase powers to bring forward a wide range of developments such as City Centre schemes (New Street Station, the Cube, and the Axis Building) and local regeneration schemes in East Birmingham including at the Swan Centre Yardley on behalf of Tesco and at Shard End. This has comprised both the Council's own schemes (often in partnership with the private sector) and using its powers on behalf of other parties in the public interest and where this facilitates growth. The Council's case for the use of its powers is set out in more detail below.

Section 226 (1) (a) Town and Country Planning Act 1990 (as amended)

- 5.2 The powers provided in the amended section 226(1)(a) enable acquiring authorities to exercise their compulsory acquisition powers if they think that acquiring the land in question will facilitate the carrying out of development, redevelopment or improvement on, or in relation to, the land being acquired. The acquisition of the long leasehold interest in the Order Lands will allow redevelopment to take place and will facilitate the expansion of the adjacent business, Euro Packaging.
- 5.3 The wide power in section 226(1)(a) is subject to subsection (1A) which provides that the acquiring authority must not exercise the power unless they think that the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social and/or environmental well-being of the area. The proposed redevelopment of the Order Lands will contribute to all three of these objectives in the following ways:

- Economic – The acquisition of the Order Lands will facilitate the expansion of the adjacent business, Euro Packaging, and enable the business to diversify into new business areas. Overall Euro Packaging has estimated that the new investment in the site as a result of the expansion will be between £14 – 15m.
- Social – Euro Packaging are a successful company and major employer who have been based in the Tyseley area for the last 40 years; a part of the city which has high levels of unemployment. The expansion of the business will directly create up to 302 new jobs as well as jobs during the construction of the new building. The ability to expand the business also helps to sustain the existing 480 jobs that are located at Tyseley – the company has indicated that if they cannot expand at Tyseley then they will have to look outside Birmingham. There are current businesses that operate at Phoenix Business Park – these are mainly storage businesses (cars, building materials, scaffolding etc) and although no breakdown of jobs on the site has been provided it is considered that there may be between 50 and 100 jobs on the site. The Council has sought (and will continue to seek) detailed information relating to the existing occupiers.
- Environmental – The Order Lands are located on a landfill site (the former Bayliss Brickworks) and the proposals from Euro Packaging will incorporate the appropriate remediation of the site. The site is currently used for a variety of storage uses and the Council has received a number of complaints regarding the condition and activities on the site over recent years. The proposed redevelopment of the Order Lands will clear up the site and incorporate a new building on the site which will enhance the quality of the local environment and has received the support of other businesses and landowners in the area.

Ministry of Housing, Communities and Local Government; Guidance on Compulsory purchase process and the Crichel Down Rules; February 2018

- 5.4 Government guidance advises acquiring authorities in the preparation and submission of compulsory purchase orders and the matters that the Secretary of State can be expected to take into consideration when reaching a decision on whether to confirm an order.
- 5.5 Paragraph 1 of the guidance recognises that compulsory purchase powers are an important tool to use as a means of assembling the land needed to help deliver social, environmental and economic change. Used efficiently, they can contribute towards effective and efficient urban and rural regeneration, essential infrastructure, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life.
- 5.6 The guidance states that acquiring authorities should use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest (paragraph 2).

The expansion of and diversification of Euro Packaging's business will bring substantial economic benefits to the local area, not least the creation of up to 302 new jobs in addition to construction jobs during the construction phase. The Minister confirming the order has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those with an interest in the land that it is proposing to acquire compulsorily and the wider public interest. The Council considers that there is a comprehensive justification for the acquisition of the land in the public interest. Where entitled, the individual owners of the site will receive financial compensation for their interests and the Council will work to relocate affected businesses in accordance with the compensation code.

- 5.7 The guidance provides that compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. Nevertheless it is recognised that valuable time will be lost if the acquiring authority waits for negotiations to break down before starting the compulsory purchase process. It is also noted that initiating the compulsory purchase process will make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations. To date, negotiations to acquire the property voluntarily have been unsuccessful which has resulted in Euro Packaging approaching the Council to use its compulsory purchase powers. The Council has attempted to facilitate a voluntary acquisition but in the absence of agreement to date the Council is promoting the Order. The Council will endeavour to acquire the interests within the Order voluntarily before it implements compulsory purchase powers.
- 5.8 At paragraph 13 the guidance states that the acquiring authority should have a clear idea of how it intends to use the land which it is proposing to acquire. In this regard Euro Packaging have clearly set out their proposals for the site to the Council and have recently acquired outline planning permission (2018/01359/PA) for the erection of a building for general industrial / warehouse and distribution uses (Use Classes B2 and B8).
- 5.9 Paragraph 14 goes on to state that the acquiring authority should be able to show that all necessary resources are likely to be available to achieve its proposals within a reasonable timescale. Euro Packaging has confirmed that they have the resources to implement the proposals on the site and that they intend to proceed with the Development as soon as practicably possible. To date the obstacle has been their inability to reach agreement for the acquisition of the long leasehold interest in the site. The report to Cabinet (BCC7) also incorporated authority for the Assistant Director Property to negotiate and agree the terms for a new lease with Euro Property Investments Limited (part of the Euro Packaging Group) in order to facilitate their development proposals.

- 5.10 At paragraph 15 the acquiring authority is also required to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation. Section 6 of this Statement sets out the planning and policy support for the proposal for which outline planning approval has been secured. There is no reason to suggest that the outstanding reserved matters and the planning conditions attached to the outline approval cannot be met and a lease cannot be agreed. Therefore, subject to the acquisition of the site, Euro Packaging has indicated that there is no further impediment to the implementation of their proposals.

6. Planning Policy and Other Policy Considerations

- 6.1 The proposals which are the subject of this Order are consistent with both national and local planning policy as set out below.

National Planning Policy

- 6.2 The National Planning Policy Framework 2018 (NPPF) sets out the Government's planning policies for England and how these should be applied. It provides a framework within which locally-prepared plans for housing and other development can be produced.
- 6.3 Section 2 of the NPPF at paragraph 7 confirms that the purpose of the planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.
- 6.4 Paragraph 8 sets out the three overarching and interrelated economic, social and environmental objectives of the planning system. It is stated that the economic objective is to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure. The Euro Packaging proposals will allow this important local business to both grow and diversify which is consistent with the NPPF's emphasis on promoting economic growth.
- 6.5 Section 2 concludes by stating that so that sustainable development is pursued in a positive way, at the heart of the NPPF is a **presumption in favour of sustainable development**. The Euro Packaging proposals are sustainable as they are for the expansion of an existing employer on a brownfield site in a highly accessible part of the City. As set out above, the Council has granted planning permission for the Scheme on the basis that it comprises sustainable development.
- 6.6 Section 6 of the NPPF deals with building a strong, competitive economy and paragraph 80 sets out that planning policies and decisions should help create the

conditions in which businesses can invest, expand and adapt. It is stated that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development; this is the case with regard to Euro Packaging's proposals.

6.7 Paragraph 81 goes on to state that planning policies should:

“a) set out a clear economic vision and strategy which positively and proactively encourages sustainable economic growth, having regard to Local Industrial Strategies and other local policies for economic development and regeneration;

b) set criteria, or identify strategic sites, for local and inward investment to match the strategy and to meet anticipated needs over the plan period;

c) seek to address potential barriers to investment, such as inadequate infrastructure, services or housing, or a poor environment; and

d) be flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices (such as live-work accommodation), and to enable a rapid response to changes in economic circumstances.”

The Order is consistent with these objectives as it seeks to promote the expansion of Euro Packaging and overcome the barriers to this investment.

6.8 Section 9 promotes sustainable transport and paragraph 103 outlines that significant development should be focussed on locations which are or can be made sustainable which is the case with the proposed expansion of Euro Packaging which is located in one of the most accessible transport corridors in the City.

6.9 The NPPF emphasises at Section 11 that planning should make effective use of land in meeting the need for homes and other uses. It goes on to state at paragraph 117 that strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land. This is the case with the Birmingham Development Plan which identifies Core Employment Areas to ensure that the city has a sufficient supply for employment uses and support the needs of business going forward. The Order Lands (and the wider Tyseley area) are identified as a Core Employment Area.

6.10 Paragraph 118 at point (c) states that planning policies and decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land. The Order Lands are brownfield land and the Euro Packaging proposals include mitigation measures to address the fact that the site is a former landfill site.

- 6.11 Finally paragraph 119 states that “*local planning authorities, and other plan-making bodies, should take a proactive role in identifying and helping to bring forward land that may be suitable for meeting development needs, including suitable sites on brownfield registers or held in public ownership, using the full range of powers available to them. This should include identifying opportunities to facilitate land assembly, supported where necessary by compulsory purchase powers, where this can help to bring more land forward for meeting development needs and/or secure better development outcomes*”. This is clearly the case with the Order Lands where the Council proposes to use its compulsory purchase powers to facilitate the expansion and diversification of the Euro Packaging business.

Local Policy

- 6.12 The proposals are also consistent with local planning policy including the Birmingham Development Plan 2017, the Birmingham Unitary Development Plan Saved Policies (2005) and a number of Supplementary Planning documents and other local policies.

Birmingham Development Plan 2017

- 6.13 The Birmingham Development Plan (BDP) was adopted in 2017 and is the City’s statutory planning framework guiding decisions on all development and regeneration activity to 2031. It is projected that Birmingham’s population will increase by 156,000 by 2031 and that in order to provide employment for the City’s growing population and reduce existing levels of unemployment and worklessness that an additional 100,000 jobs will need to be created. The BDP sets out how and where these new homes, jobs, services and infrastructure will be delivered and the type of places and environments that will be created.
- 6.14 The Euro Packaging proposals accord with the BDP and the objective to create a prosperous, successful and enterprising economy with benefits felt by all. The Development is consistent with the policies and proposals for the economic growth of the city and the creation of jobs set out in the BDP.
- 6.15 The BDP identifies a number of key growth areas which include Bordesley Park (Policy GA7) and the Eastern Triangle (Policy GA8) to the west and north east of Tyseley respectively. Bordesley Park will deliver 750 new homes, enhanced connectivity, an improved environment and new employment generating activity. The Eastern Triangle will deliver around 1000 new homes and improvements to local centres focussed on the Meadway, Stechford and Shard End.
- 6.16 Paragraph 7.1 of the BDP recognises that Birmingham is one of the most important employment areas within the UK and states that strengthening this position and ensuring that the City has a successful and prosperous economy will require the City to provide for a wide range of opportunities for economic development and job

creating activity. Policy TP17 states that provision will be made for a portfolio of 'readily available' employment land and that in addition to Regional Investment Sites (Policy TP18) a 5 year minimum reservoir of 96ha will be maintained throughout the plan period.

- 6.17 Paragraph 7.12 of the BDP states that in order to ensure that the city has a sufficient supply of land for employment uses to support the needs of businesses and meet the challenging targets set out in Policy TP17, the City will need to retain and recycle its limited reservoir of good quality employment land in employment use. A significant proportion of the City's employment land lies within established employment locations which have been identified as core employment areas. The Brickfield Road site is identified as core employment land with such land identified as being the focus of economic regeneration activities and additional development opportunities likely to come forward during the plan period (Policy TP19).
- 6.18 Paragraph 7.2 notes that the projected growth in Birmingham's population will require the City to plan for the creation of a significant number of jobs. The increase in employment will need to meet the City's growing population and help reduce the levels of unemployment and worklessness that currently exist. Paragraph 7.46 reinforces this point and states that one of the key challenges the City faces in the future is ensuring significant jobs are created and that new employment opportunities are accessible to the local population. In accordance with Policy TP26 the Council will work closely with Euro Packaging to identify and promote job training opportunities for local people and encourage the use of the local supply chain to meet the needs of new development.
- 6.19 The Brickfield Road site and Euro Packaging's current premises both fall within the Tyseley Environmental Enterprise District (TEED) which is identified within Policy TP15 as an area which has the potential to accommodate new waste and sustainable energy technologies, including recycling, Combined Heat and Power and waste recovery. Paragraph 6.91 states that the TEED has the potential to cluster complementary waste and sustainable energy uses. It then goes on to add that the Council will actively encourage and promote appropriate recycling and CHP schemes in this location.
- 6.20 The BDP also sets out in the Implementation section the Council's willingness to use its compulsory purchase powers to assemble sites as one of the mechanisms to ensure delivery of the policies and proposals within the plan. Again the use of the Council's compulsory purchase powers to facilitate the expansion and diversification of Euro Packaging's business is consistent with this approach. Indeed paragraph 10.24 refers to the use of compulsory purchase powers and how these are an important tool to help deliver social and economic change. It sets out that the Council has a strong track record in utilising these powers to support urban regeneration schemes and the delivery of infrastructure and will continue to do so to enable

comprehensive schemes that will deliver economic, social and/or environmental benefits.

Other Policy Guidance

Tyseley Environmental Enterprise District - Local Development Order (LDO) 2017

- 6.21 As outlined above the BDP and Tyseley Environmental Enterprise District (TEED) Economic Zone has identified the Tyseley industrial area as a principal location in Birmingham for CO2 reduction as part of a low carbon, low waste economy through encouraging recycling, energy production and renewables including manufacturing and supply chain development. To promote such activities and to provide clear planning guidance for the area the Council has adopted a Local Development Order for Tyseley. The primary aim of the Local Development Order (LDO) is to increase flexibility within the LDO area by allowing certain changes of use without the need for specific planning permission. The expansion and diversification of Euro Packaging's business is consistent with the objectives of the Tyseley LDO.

Places for All

- 6.22 Places for All (Supplementary Planning Guidance adopted in 2001) sets out principles of good urban design. The proposals are consistent with the key elements of this document.

Birmingham Connected, Moving Our City Forward, Birmingham Mobility Action Plan, White Paper, November 2014

- 6.23 Birmingham Connected, the Council's transport strategy, was published in November 2014. This sets out the long term vision for transport and connectivity in the city linking directly with the strategies and policies set out in the BDP. It highlights the importance of investing in integrated transport to offer choice and support sustainable growth, and of doing so in a collaborative and participatory way. It specifically identifies the delivery of Sprint bus rapid transit along the A45, as well as opportunities to improve rail infrastructure, and to provide new cycle routes.

Birmingham City Council Plan 2018-2022

- 6.24 The proposed expansion of Euro Packaging contributes to the Council's Plan 2018-2022 and the aim to be a city of growth in every respect. In terms of what the Plan is seeking to achieve, Outcome 1 identifies Birmingham as an entrepreneurial city to learn, work and invest in. Furthermore under Outcome 1 Priority 2 states that *"we will strive to maximise the investment in the city and engage local employers to create quality jobs and opportunities for citizens"*.

Employment Land Availability Assessment 2018

- 6.25 The Council regularly monitors and reviews the availability of employment land within Birmingham. The most recent assessment published in 2018 concludes that:

“The level of completions on employment land in 2017-18, is above the 10 year average, demonstrating the importance of employment land to the health of the wider economy of not just Birmingham, but also the West Midlands. However, while this success is very welcome the currently very limited readily available supply in both the Best Quality and Good Quality sub markets is a cause for concern. It will be particularly important to ensure that all opportunities are taken to move land from the not readily available supply to the readily available supply to ensure that the businesses wishing to expand or locate in Birmingham are not prevented from doing so due to a lack of suitable sites”.

East Birmingham and North Solihull Strategy

- 6.26 The East Birmingham and North Solihull initiative has recently been established to tackle the challenges and opportunities in the area. A Strategic Board, including the Leaders and Chief Executive of Birmingham City Council and Solihull MBC and the Mayor of the West Midlands Combined Authority has been established to provide cross-boundary co-ordination and leadership. Beneath this is an East Birmingham Board to deliver this vision, bringing together representatives from across the public sector to develop a strategy focussing on three key themes of health, employment and skills and infrastructure. Members of the Board include the City Council, Solihull MBC, WMCA, Transport for West Midlands, Homes England, Government Office, Job Centre Plus, West Midlands Police, the NHS and the local Hospital Trust.

Greater Birmingham and Solihull Local Enterprise Partnership (GBSLEP)

- 6.27 The GBSLEP’s Strategic Economic Plan 2016 – 2030 sets out the region’s ambition and priorities for growth. It sets out a vision and strategy for delivering smarter, more sustainable, and more inclusive growth for the benefit of the area, the wider West Midlands region and the UK as a whole. The Plan sets out the ambition to become a top global city region by 2030 as well as the major driver of the UK economy outside of London. To realise this vision it focuses on the following objectives to:
- Increase business and workforce productivity and competitiveness – particularly by raising skill levels and stimulating demand-led innovation.
 - Increase private sector investment, including overseas investment.
 - Increase business survival and growth.
 - Increase exports particularly amongst Small and Medium Sized Enterprises (SMEs).
 - Enable more inclusive growth that delivers benefits more widely and reduces unemployment – particularly in areas of Birmingham and North Solihull with high unemployment rates.
- 6.28 The Plan also sets out the need to increase the supply of viable housing and employment land, and ensure that delivery meets needs and aspirations (page 46). This includes the recognition that high quality employment land is vital to attracting greater investment and encouraging more businesses to start and grow in the region.

This is the case with Euro Packaging who are an indigenous business who wish to grow and expand in the area.

West Midlands Combined Authority (WMCA)

- 6.29 The WMCA's Strategic Economic Plan (SEP) sets out the WMCA's vision for improving the quality of life of everyone in the West Midlands. The SEP shows how the WMCA will use devolved powers and resources to deliver a stronger West Midlands with a focus on skills, innovation, transport and inward investment.
- 6.30 Section 3 of the SEP incorporates the challenges faced by the West Midlands including that the area's good track record of securing inward investment is in danger of being constrained by an impending shortage of large strategic sites with significant costs in land remediation and assembly needed in order to bring forward a pipeline of sites for employment use. This challenge is addressed in Section 8 which identifies a series of priority actions to strengthen the competitive advantage of manufacturing businesses in the West Midlands including that the WMCA will ensure the availability of a small number of major strategic sites, maintaining a pipeline of smaller sites across the area and taking the action on land assembly and / or remediation that is necessary to bring them forward for developing. The Order is therefore consistent with these aspirations as it utilises the City Council's compulsory purchase powers to bring forward the expansion of a major employer on a brownfield site.

Planning History

- 6.31 The most recent planning history for the Order Lands are set out in Appendix 1 below. The current uses on the site do not have an extant planning permission. The Euro Packaging proposals secured planning approval on 19th July 2018 as set out in Section 4 of this statement.
- 6.32 To conclude the scheme is entirely consistent with the planning framework, has planning approval and there are no planning impediments to the scheme.

7. Delivery and Funding

- 7.1 The Council has a strong track record of using its compulsory purchase powers to deliver major regeneration and capital projects over many years. These include housing, with Birmingham Municipal Housing Trust (part of the Council) being one of the largest housebuilders in the city, and transport infrastructure such as New Street Station/Birmingham Gateway, as well as working with private developers and businesses to deliver their schemes where it is in the public interest.
- 7.2 Euro Packaging is a successful local business of 40 years standing. It needs to expand and is committed to staying in the city if it can do so. It is clear that the company is fully committed to delivering the Scheme.

7.3 As set out above, Euro Packaging has secured planning permission for the Scheme. Euro Packaging has confirmed that finance is in place to bring forward the proposed Development (see BCC9). Euro Packaging has also gone out to tender to appoint a construction partner for the Development – this appointment will be confirmed and final contracts signed once the land which is the subject of this Order is acquired. In conclusion Euro Packaging has consistently stated that they wish to bring forward the Development as soon as possible to expand their business and take advantage of new and existing market opportunities and has put in place the necessary measures, as far as possible at this stage, to do so.

8 Factors for the Secretary of State to consider on Confirmation

8.1 Section 1 of the guidance at paragraph 106 sets out factors to which the Secretary of State can be expected to consider when deciding whether to confirm an order made under section 226(1)(a). These include:

- Whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area. While the Birmingham Development Plan (BDP) does not include any site specific proposals for the Order lands, they are identified as Core Employment Area (BDP Policy TP19) with such land identified as being the focus of economic regeneration activities and additional development opportunities likely to come forward during the plan period. The Development proposals also accord with the objective within the BDP to create a prosperous, successful and enterprising economy with benefits felt by all. Overall the proposals are consistent with the policies and proposals for the economic growth of the city and the creation of jobs set out in the BDP. The proposals would also bring an under-utilised site (where the current uses do not have planning permission) into productive use (with the proposed scheme having planning permission) as well as improving the local environment in the Brickfield Road area.
- The extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area. The redevelopment has potential to deliver with respect to each of these elements as outlined above - see paragraph 5.3.
- Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. Euro Packaging have explored whether they can expand within their existing site but have indicated that their current site is fully utilised and cannot be reconfigured in order to accommodate the extent of operations and investment in the business proposed. The company has stated that if they cannot expand at Tyseley then they will look outside Birmingham and therefore the proposed investment and jobs will be lost to the city. The current long leaseholder of Phoenix Business Park has sought to regularise the use of the site (at the current time there is

no planning approval in place for the current uses on site) and objects to the proposed use of the Council's powers to facilitate Euro Packaging's proposals. However it is considered that overall the proposals from Euro Packaging will generate more significant benefits for the area.

- The potential financial viability of the scheme for which the land is being acquired. Euro Packaging has confirmed that they have both sufficient funding and are committed to implementing the scheme (see BCC9).

8.2 The Council has also considered Human Rights and in taking a balanced view between the intentions of the acquiring authority, the concerns of those with an interest in the land and the wider public interest it is considered that the making of the Order can be justified. Further details on Human Rights issues are set out in Section 13 of this Statement.

8.3 In conclusion there is a compelling case in the public interest for the Order. The proposed Development would bring about the development, redevelopment and improvement of the site by facilitating the expansion of a successful local firm, generate up to 302 jobs and improve the local environment in this part of Tyseley. This will contribute towards the promotion and improvement of the economic, social and environmental well-being of the area and East Birmingham as a whole.

9 Consultation and Negotiations

9.1 It is necessary to demonstrate in line with paragraph 2 of the Guidance that CPO is a last resort – that the scheme being promoted is the only way to deliver the proposals, and that acquisitions are necessary. There have been a number of meetings with the owner of the long leasehold in the site prior to the making of the Order and proactive approaches have been and will continue to be made to acquire the site.

9.2 Euro Packaging initially made a direct approach to the lessee, however after initial optimism, agreement could not be reached (the lessee had agreed to sell and solicitors were instructed by both parties but then the lessee ceased to engage on the matter). Euro Packaging then approached the Council in March 2017 to request that the City Council consider the use of its compulsory purchase powers to help facilitate the expansion of its business.

9.3 In taking a report to the Council's Cabinet officers approached the lessee who stated that in principle they did not object to disposing of their interest to Euro Packaging but that agreement could not be reached on price or the related issue of securing a relocation site for the businesses currently located on the site. They also stated that they objected to the City Council's use of its compulsory purchase powers in this instance. This objection was reported in the Cabinet Report. Following representations on behalf of the lessee, a request was also made to the City Council's Economy and Skills Overview and Scrutiny Committee for the report to be

called in. After consideration at its meeting on the 6th June 2018, the Overview and Scrutiny Committee decided not to call in the Cabinet Report.

- 9.4 The Council has continued to liaise with the lessee and it was agreed that surveyors representing both parties hold a technical meeting to explore whether an approach to the valuation of the site could be agreed. Unfortunately their representatives have informed the lessee that they can no longer act for them and therefore this proposed approach has not progressed. Nevertheless Euro Packaging and their representatives, Harris Lamb, have confirmed their willingness to continue to meet the lessee in order to progress the voluntary acquisition of the site. The Council has had initial discussions with the lessee and carried out its own valuation of the relevant interest and continues to make attempts to arrange discussions regarding the acquisition and relocation.
- 9.5 To date all contact has been with the lessee who have indicated in discussions that they could provide vacant possession of the site if agreement was reached. However it is noted that there are a number of other occupiers on the site although it is not known what is the exact nature and legal basis of their occupation despite service of statutory notices. Nevertheless the City Council, as the acquiring authority, will work with the affected businesses on the site in terms of the businesses and jobs affected.
- 9.6 Finally a number of the planning policy documents supporting this Order, particularly the Birmingham Development Plan 2017, have been the subject of extensive public consultation. Public consultation was also undertaken on Euro Packaging's planning application (2018/01359/PA). The lessee objected to the application, the grounds of which were reported to Planning Committee. They also spoke against the application at Planning Committee's meeting of the 19th July 2018 when the application was considered and ultimately approved.

10 Special Considerations

- 10.1 There are no ancient monuments or statutorily listed buildings within the Order Lands.
- 10.2 The Order Lands are not within an Area of Outstanding Natural Beauty, Site of Importance for Nature Conservation, Site of Local Importance for Nature Conservation, or Conservation Area. Likewise there are no Tree Preservation Orders ("TPO") that affect the Order Lands.
- 10.3 The Order Land does not contain any Consecrated Land.
- 10.4 The Order Lands are part of a former landfill site, the former Bayliss Brickworks.

11 Views of Government Departments

- 11.1 No government department or agency has expressed any views on the proposed Order.

12 Related Applications, Appeals and Orders

- 12.1 There are no related applications, appeals and orders which will require a co-ordinated decision by the Secretary of State.

13 Human Rights and Equalities

- 13.1 Section 6 Human Rights 1998 Act prohibits public authorities from acting in a way that is incompatible with the European Convention on Human Rights (“The Convention”).

Relevant Articles

- 13.2 The main articles of the Convention which are of importance in connection with the Order are Article 1 of the First Protocol – the protection of property, and Article 6 – the right to a fair and public hearing in determining a person’s civil rights and obligations.

Article 1 of the First Protocol states,

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law”.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

- 13.3 Here, the Order is being promoted under the Town and Country Planning Act 1990 and the related compulsory purchase legislation. The Order is being pursued in the public interest as required by Article 1 of the First Protocol, and the public benefits are set out earlier in this statement. The Council considers that the Order will strike a fair balance between the public interest in the implementation of the Development and those private rights which will be affected by the Order.
- 13.4 The Council also considers that the Order is proportionate. Without the Order, the objective of redeveloping the Order Land and realising the public benefits cannot be achieved.

- 13.5 In pursuing the Order, the Council has had to carefully consider the balance to be struck between individual rights of those affected and the wider public interest having regard also to the availability of compensation for compulsory purchase under compulsory purchase legislation. Those whose interests are acquired will be compensated in accordance with the law.

Guidance

- 13.6 The approach to be taken to give effect to rights under The Convention is also reflected in paragraph 12 of the Guidance:

“A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention”.

- 13.7 The European Court of Human Rights has recognised in the context of Article 1 of the First Protocol that *“regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole”*, i.e. compulsory purchase must be proportionate. Both public and private interests are to be taken into account in the exercise of the Council’s powers.

Considerations

- 13.8 Any decision to deprive a person of possessions (which includes land) must strike a fair balance between the public interest and the private rights which are being taken.
- 13.9 The Council has been conscious of the need to strike a balance between the rights of the individual and the interests of the public. In the light of the significant public benefit that would arise from the implementation of the proposed redevelopment the Council has concluded that it would be appropriate to make the Order. It does not regard that the Order as constituting an unlawful interference with individual property rights.
- 13.10 Article 6 of the Convention provides that in determining a person’s civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Those affected by the Order will be notified and if objections are made, the Secretary of State will hold a public inquiry to consider the case for the Order and the objections. An affected party also has the right to challenge the confirmation of the Order on legal grounds, by way of challenge in the High Court.
- 13.11 The opportunity has been given to landowners to make representations regarding the Council planning policies and the planning application submitted for the scheme that underpin the proposed Order. Objections may be made to the making of the Order.

Further representations can be made in the event of any Public Local Inquiry that the Secretary of State may decide to hold in connection with the Order. Those directly affected by the Order will be entitled to compensation under the compensation legislation, equivalent to the loss that they incur as a result of the acquisition.

Equalities

13.12 Paragraph 6 of the CPO Guidance provides that:

“All public sector...acquiring authorities are bound by the Public Sector Equality Duty as set out in Section 149 of the Equality Act 2010. Throughout the compulsory purchase process acquiring authorities must have due regard to the need to (a) eliminate unlawful discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. In performing their public functions acquiring authorities must have due regard to meet these 3 aims of the Equality Act 2010”.

13.13 An Equalities Assessment (EA) was carried out as part of the report to the City Council's Cabinet seeking authority to make the Order. A copy of the Executive Summary is incorporated within the report to Cabinet (BCC7). The Equalities Assessment concluded that from the available information it is considered that the CPO process will not give rise to any illegal discrimination and will support equality of opportunity by optimising the site's economic growth potential. The proposed redevelopment of the site is considered to provide potential benefits that will include opportunities that can be shared by potential job-seekers. The CPO, by bringing a step closer the commencement of the Development, has the potential to impact on the business owners and employees who currently operate on the site. However the proposed approach of supporting businesses to relocate is expected to minimise this impact. It is considered that this approach should enable many of the businesses to successfully relocate. The timely exercise of CPO powers and measures to inform business owners about the CPO process, will contribute to keeping them informed about this stage prior to commencement of the Development. It concludes that as the Order progresses its impact will continue to be reviewed.

14 Contacts for Further Information

14.1 The following officers of Birmingham City Council can be contacted for further information:

General enquiries about the development proposals

Doug Lee
Planning & Development

Birmingham City Council
PO Box 28
B1 1TR
Tel.: 0121 464 9858
Email: doug.lee@birmingham.gov.uk

General Enquiries about compensation and valuation issues

Azmat Mir
Birmingham Property Services
Birmingham City Council
PO Box 16255
B2 2WT
Tel: 0121 303 3298
Email: azmat.mir@birmingham.gov.uk

Enquiries about legal issues

Fatima Chandoo
Legal and Governance Department
Birmingham City Council
P. O. Box 15992
Birmingham
B2 2UQ
Tel: 0121 303 9087
Email: fatima.chandoo@birmingham.gov.uk

Further Advice and Assistance

14.2 Those who own land within the CPO, as well as those served with Notice of CPO by reason of a Table 2 interest, may wish to appoint a solicitor or a surveyor to help understand how the CPO affects you and negotiate your compensation entitlement.

14.3 The Council will pay reasonable surveyor/legal fees relating to the acquisition of property of those affected. Appropriate surveyors can be found at:

<http://www.rics.org/uk/>

<http://www.ricsfirms.com/>

Or suitable solicitors firms can be found at:

<http://solicitors.lawsociety.org.uk/>

15 Inspection of Order Documentation and Plans

- 15.1 Copies of the Order, plans and related documents can be inspected at the following offices during normal opening hours.

Birmingham City Council
Reception
1 Lancaster Circus
Birmingham
B4 7DJ

Tel: 0121 303 4669 / 303 4903

Mondays to Thursdays 8.45 to 17.15
Fridays 8.45 to 16.15

OR

South Yardley Library
Yardley Road
Birmingham
B25 8LT

Tel: 0121 464 1944 / 464 0156

Mondays 9.00 to 13.00 and 14.00 to 17.00
Tuesdays 9.00 to 13.00 and 14.00 to 17.00
Thursdays 11.00 to 13.00 and 14.00 to 19.00
Fridays 9.00 to 13.00 and 14.00 to 17.00
Saturdays 9.00 to 13.00 and 14.00 to 17.00
(Wednesdays and Sundays Closed)

- 15.2 The Order and related documents can also be viewed at the City Council's website at www.birmingham.gov.uk/brickfieldroadcpo

16 Inquiries Procedure Rules

- 16.1 This Statement of Reasons is not intended to be a Statement of Case in accordance with the Compulsory Purchase (Inquiries Procedure) Rules 2007, but a list of documents which may be referred to at an Inquiry is set out below. The Council reserves the right to introduce such other additional documents as may be relevant to any public inquiry and any statutory third parties of any such documents as soon as possible prior to the opening of such public inquiry.

17 List of Background Documents

CPO Documents

- BCC1 The Order
- BCC2 Order Plan
- BCC3 Statement of Reasons for making the Order

Background Documents

- BCC4 Location Plan
- BCC5 Photographs of the Order Lands
- BCC6 Letter from to the City Council from Euro Property Investments Limited (on behalf of the Euro Packaging Group) requesting the City Council use its compulsory purchase powers (13th March 2017).
- BCC7 Cabinet Report of Birmingham City Council and Appendices: Phoenix Business Park, Brickfield Road, Tyseley – Proposed Compulsory Purchase Order (24th May 2018)
- BCC8 Phoenix Park, Brickfield Road, Birmingham, B25 8HF - Outline planning application (2018/01359/PA) with some matters reserved (save for access, scale and appearance) for the erection of a building for general industrial / warehouse and distribution purposes (Use Classes B2 and B8). Planning Committee Report Decision Document and Plans.
- BCC9 Evidence of Euro Packaging funding and commitment to scheme

Policy Documents

- BCC10 National Planning Policy Framework (MHCLG, 2018)
- BCC11 Birmingham Development Plan (BCC, 2017)
- BCC12 Birmingham Unitary Development Plan Saved Policies
- BCC13 Places for All (BCC 2001)
- BCC14 Birmingham Connected, Moving Our City Forward, Birmingham Mobility Action Plan, White Paper November 2014 (BCC, 2014)
- BCC15 Birmingham City Council's Plan 2018 - 2022(BCC)
- BCC16 Employment Land Availability Assessment (BCC 2018)

- BCC17 Greater Birmingham & Solihull Local Enterprise Partnership, A Greater Birmingham for a Greater Britain, Strategic Economic Plan 2016-2030
- BCC18 West Midlands Combined Authority Strategic Economic Plan, Making Our Mark...The West Midlands, The Best Region In The UK To Do Business.

Appendix 1 – Planning History of the Order lands

Leasehold Owners of Phoenix Business Park

- **2006/00735/PA:** Subdivision of site into 16 plots and change of use from external storage of scaffolding to external storage of: Plot 1) Building materials, plant & vehicles. Plot 3/8-9) Scaffolding, plant & vehicles including siting of portable buildings, container & storage enclosure. Plot 4) Skips & vehicle/s. Plot 5) Building materials & vehicle/s including siting of portable building & containers. Plot 6) Stones, gravel & sand, plant and vehicles including siting of portable building & container. Plot 7) Plant & vehicles including siting of portable building & containers. Plot 10) Scaffolding & vehicles. Plot 11/12) Cars awaiting repair & associated vehicles. Plot 13) Skips & vehicles including siting of portable building & container. Plot 14) Vehicles. Plot 15) Building materials & vehicles including siting of portable building & containers. Plot 16) Stones, plant & vehicles including siting of container, and siting of 3 portacabins for use as cafe (Plot 2). **27 April 2006 - temporary approval for a period of three years.**
- **2010/01231/PA:** Retention of communal office building. **Approved 27 September 2010.**
- **2015/0930/ENF:** Enforcement investigation into unauthorised uses and subdivision of site. Investigated and found to be in non-compliance. Site owner advised to submit planning application to regularise uses on site.
- **2015/08931/PA:** Subdivision of site into 16 plots for a variety of industrial and waste uses. **Application withdrawn 8 January 2016.**
- **2016/06923/PA:** Subdivision of site into 16 plots for a variety of industrial and waste uses. Application refused as 'The application has not demonstrated by means of air quality assessment (dust and odour), full details and specifications of plant and machinery, clarification of all waste types, annual throughput and waste origins, clarifications on use classes sought and a sufficient Transport Statement (TS) that the proposal would not have an adverse impact upon visual amenity, neighbour amenity and highway safety. As such, the Local Planning Authority is therefore unable to undertake a proper assessment of the planning application'. **Application refused 7 October 2016.**
- **2016/10590/PA:** Change of use and subdivision of site into 16 plots to be used as open storage and car parking. Application refused as 'The application has not adequately demonstrated by means of a sufficient Transport Statement (TS), containing information on specific storage types, typical levels of vehicle movements and a HGV turninghead within the site, that the proposal does not adversely impact upon highway safety. As such the proposal would be contrary to Policies PG3 and TP44 of the Birmingham Development Plan 2017 and the National Planning Policy Framework.' **Application refused 20 July 2017**

Euro Packaging

- **2018/01359/PA:** Outline planning application with some matters reserved (save for access, scale and appearance) for the erection of a building for general industrial / warehouse and distribution purposes (Use Classes B2 and B8). **Application approved 19th July 2018.**