

## Appendix 3

### **JUSTIFICATIONS FOR COMPULSORY PURCHASE ORDER**

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

1. The powers provided in the amended section 226(1) (a) enables 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 and it is not certain that they will be able to acquire it by agreement. The acquisition of the long leasehold interest in Phoenix Business Park on Brickfield Road will allow redevelopment to take place and will facilitate the expansion of the adjacent business, Euro Packaging.
2. The wide power in section 226(1)(a) is subject to subsection (1A) as amended by Section 99 of the Planning and Compulsory Purchase Act 2004. This 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 or environmental well-being of the area. The proposed redevelopment of Phoenix Business Park will contribute to all three of these objectives in the following ways:
  - Economic – The acquisition of the site 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 within the Tyseley area; a part of the city which has high levels of unemployment. The expansion of the business will directly create up to 300 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 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. As matters progress the City Council, as acquiring authority, and Euro Packaging will work with the affected businesses on the site in terms of relocation of the businesses and jobs affected.
  - Environmental – Phoenix Business Park is 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 City Council has received a number of complaints regarding the condition and activities on the site over recent years. Some of these complaints related to the storage of waste and the burning of material on the site – activities which the current owners have stated will cease on site (although the site continues to be monitored by Planning Enforcement). The proposed redevelopment of the site will incorporate a new building on the site which should enhance the quality of the local environment.

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

3. 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.
4. 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. The expansion of and diversification of Euro Packaging's business will bring substantial economic benefits to the local area, not least the creation of 300 new jobs. 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. Accordingly the City Council considers that it can present a comprehensive justification for the acquisition of the land in the public interest. The individual owners of the site will receive financial compensation for their interests and Euro Packaging and the City Council will work to relocate affected businesses in accordance with the compensation code.
5. 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 City Council to use its compulsory purchase powers. The City Council will endeavour to acquire the interests within Appendix 1 voluntarily before it implements compulsory purchase powers.
6. 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 City Council and have recently submitted a planning application (2018/01359/PA) to the City Council for the erection of a building for general industrial / warehouse and distribution uses (Uses Class B2 and B8).
7. Paragraph 13 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 possible.
8. 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. Appendix 4 sets out the planning and policy support for the proposal and a planning application for the development has been submitted in February 2018 and is expected to be determined in May 2018. Subject to the grant of planning consent and acquisition of the site Euro Packaging have indicated that there is no further impediment to the implementation of their proposals.

9. Section 1 of the guidance at paragraph 76 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:
- (i) Whether the purpose for which the land is being acquired fits in with the adopted planning framework. While the Birmingham Development Plan (BDP) does not include any site specific proposals for Phoenix Business Park the proposals accord with the objective to create a prosperous, successful and enterprising economy with benefits felt by all. 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 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).
  - (ii) 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 2 of this Appendix for detail.
  - (iii) 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 leaseholders of Phoenix Business Park have sought to regularise the use of the site for open storage and car parking and object to the proposed use of the City Council's powers to facilitate Euro Packaging's proposals. However it is considered that overall the proposals from Euro packaging will generate more significant economic and other benefits for the area.