

Bundle 5 Inquiry Bundle

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From: Waterfield, Stephen <stephen.waterfield@planninginspectorate.gov.uk>
Sent: 22 January 2021 14:12
To: John Porter <jjporterengland@mail.com>
Cc: Matthew Wilson <Matthew.Wilson@derby.gov.uk>; Nathan Holden <Nathan.Holden@freeths.co.uk>
Subject: FW: Application to speak and submission of evidence to the Castleward Public (virtual) Enquiry

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Dear Mr Porter

The Inspector thanks you for the representations in your email below, along with the photographs and a map. These have been forwarded to the Council as cc'd into this email.

Although it is very late in the CPO process to be raising an new issue, the Inspector recognises your concern. He will raise this matter at the start of the Inquiry, and will also ask for the Council's views as to how this matter can be most fairly dealt with.

I will send you the joining instructions for the event in a separate email.

Regards
Steve

Stephen Waterfield

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From: John Porter <Jjporterengland@mail.com>

Sent: 21 January 2021 18:42

To: Waterfield, Stephen <stephen.waterfield@planninginspectorate.gov.uk>

Subject: Application to speak and submission of evidence to the Castleward Public (virtual) Enquiry

Dear Stephen

I James Porter and on behalf of my daughter Marai at 42 Calvert Street Derby would like to thank the Home Secretary for their decision to appoint Mr Phillip Ware to conduct a Public Enquiry on their behalf into the Castleward Compulsory Purchase Order Title APP/PCU/CPOH/C1055/3249056.

We will be objecting to Derby City Councils Compulsory Purchase Order on technical points but mostly over a matter of grave public safety concerns .

So I would be very grateful if I could be considered to speak or at the very least Mr Ware would consider my pre enquiry submission as part of his decision making process.

Yours Sincerely
James Porter.

Submission To The Public Enquiry Chairperson

MR Phillip Ware

The Castleward Development Compulsory Order Enquiry

APP/PCU/CPOH/C1055/3249056

I would like to draw the Chairpersons attention to some very important issues with Derby City Councils Compulsory Purchase Order for this area .In my opinion Derby City Council are exceeding their statutory powers, as they are trying to obtain property that is not specified with the supporting legislation.The various Acts declare that the Compulsory Purchase Powers can only be used to acquire Land and Buildings.There is no provision within the legislation surrounding these powers, to compulsory purchase Canals ,Watercourses or

Rivers. In my opinion a Canal or Watercourse can either be covered or uncovered. In the description of lands and rights to be acquired, there is no inclusion of The Bemrose Spur Canal. In my estimates this Canal does run through the area that Derby City Council proposes to acquire. This Canal also known as The Derby Canal was created in 1825, to bring cargo to an Iron works, Silk Throwing Mill and to the Basement of Bemrose and Sons Printers on the far side of present day Park Street in Derby. At some point in time the Canal became disused and was covered over in its this area, with a two course brick arch. I can confirm this from senior eyewitnesses and from pictures taken by locals, when machinery collapsed part of this archway a few years ago on Park Street.

In the description of lands to be obtained, there is no provisions or mention of preserving the historic and substantial brick walls of the Old Silk Throwing Mill. These walls which form a part of the boundary of the application, date from the 1800s, are in good condition, and are valuable remnants of Derbys once famous Silk Industry.

In the rights to be acquired section of the Compulsory Purchase Order, there is provision to include the right to use unspecified types of heavy Cranes, and to swing the jib's of such Cranes over the airspace, surrounding the area to be obtained. In light of the Crane accident at Bowe East London in 2019, in which one person tragically died and four were seriously injured, and with the knowledge that there are undisturbed cellars and pit works, plus a weakly covered over canal, I am objecting on very serious potential Site and Public safety concerns. In my opinion even if the mobile or fixed Crane appears safe, the Crane base reactions, together with the load case assignments and load combinations, could combine and cause a sudden and complete uncontrollable collapse of the whole Crane structure. This together with the Jib could potentially cause fatalities and injuries both inside and outside the construction site area. This is because of the numerous possibilities for potential collapses within the proposed area to be purchased by Derby City Council. The buildings currently being erected in this area are on a combination of mixed foundation types, of bored concrete piles and shallow foundations. In this writers opinion the heights of these proposed developments could easily be extended in the near and far future. The issue is that if there are any sudden subsidences, or if a whole section of the Canal bank moves, then whole structure could collapse. There could also be a domino effect as neighbouring tall structures collapse into other surrounding structures.

So dear Chairperson I would urge you to seriously consider these points when you are in session during this very important Public Enquiry.

I enclose with the submission pictures and a map of the aforementioned Bemrose Spur Canal.

yours respectfully

James Porter

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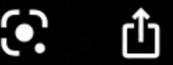
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APPLICATION FOR CONFIRMATION OF THE DERBY CITY COUNCIL
(CASTLEWARD) COMPULSORY PURCHASE ORDER 2020

OPENING STATEMENT ON BEHALF OF THE ACQUIRING AUTHORITY

Defined terms are as per the Glossary (CD 4.1).

Bundle references are to the relevant volume and page number(s) of the electronic bundles in the formal B[vol]/[pages].

Introduction

1. This is an inquiry into the case for confirmation of the Derby City Council (Castleward) Compulsory Purchase Order 2020 ('the Order') (CD 1.1). The Order was made by Derby City Council ('the Council') pursuant to the powers contained in section 17(1) of Housing Act 1985 (CD 5.1).
2. Pursuant to both section 17(1) HA 1985 and Government policy as set out in *MHCLG's Guidance on compulsory purchase and the Crichel Down Rules* (July 2019) ('the Guidance'), the Council is required to demonstrate to the Secretary of State (via his Inspector) that:
 - a. the confirmation of the Order would result in either a quantitative or qualitative housing gain; and
 - b. there is a compelling case in the public interest for the making of the Order, justifying the interference with the private rights to which the Order would give rise.
3. Following the making of the Order in March 2020, seven parties within an interest in the Order Land objected to it. However, in the period that has

followed, the objections of four of those parties, including the only two statutory undertaker objectors, have been resolved and the objections withdrawn.¹

4. There are therefore just three outstanding objections from relevant objectors requiring to be considered at the inquiry. The remaining objections² are those from Tarmac (OBJ/1), Midcastle (OBJ/2), and DAES (OBJ/3).
5. A summary of the nature of their outstanding concerns, and the Council's response to them, is provided further below. An update on progress with negotiations will also be given by Ms Lister during the course of the inquiry.
6. Following the notification of the inquiry to members of the public, three further persons without any known interest in the Order Land have indicated an intention to attend the inquiry without stating a position upon it, or have submitted an objection to it.
7. In the case of Mr Owusu and Ms Tang, who have indicated an intention to attend the inquiry, it is not known whether they are for or against the Order. No prior indication has been given to the Council of any objection and the Council reserves its position as to how this should be dealt with if one is made during the hearing.
8. The third person, Mr Porter, has very recently expressly stated that he objects to the making of the Order, on three grounds:

¹ Liversidge St (Derby) Ltd & John St (Derby) Ltd (OBJ/4), Hawkins & Shepherd (OBJ/5), WPD and Centurylink. Withdrawal letters can be found at B3/43-56.

² For the purposes of section 13A of the Acquisition of Land Act 1981.

- a. That the Order is *ultra vires* insofar as it covers land that comprises a disused Canal, which he considers to be outwith the scope of the Housing Act powers relied on by the Council;
 - b. That the Order covers land comprised in the historic brick walls of the Old Silk Throwing Mill, without provision being made for their protection; and
 - c. Concerns about danger arising from the use of cranes pursuant to the oversailing rights concerned by the Order.
9. The Council will deal with these points in its evidence and closing submissions. Respectfully, they are not well-founded, for the following reasons:
- a. A small area of disused canal is covered by Plot 44. However, the definition of the 'land' which may be acquired includes the disused Canal;
 - b. The Order does not need to make provision for the protection of the heritage asset, that area being subject only to powers to acquire oversailing rights, and the protection of such assets in any event being governed by the planning regime; and
 - c. The safety of cranes is also governed by other regimes, which must be assumed to be effective.

The Nature of the Remaining Objections

10. None of the remaining objections challenges the Council's case that the Order will deliver both a quantitative and qualitative housing gain for Derby. As such, it is undisputed that the Council can satisfy the statutory test for utilising the

Housing Act powers for compulsory acquisition (subject to Mr Porter's incorrect *vires* challenge).

11. Moreover, none of the remaining objections seriously challenges the principle of the Scheme, i.e. that delivering housing on the Order Land is an appropriate intervention *per se*. Although Tarmac's original objection stated that the Council does not have an adequate case for displacing the current commercial occupiers (B3/3 at section 4), they have in their more recent statements disavowed having concerns outside of the implications of the Scheme for their own business. For example, in their last two submissions they have said:

"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 to the likely adverse impacts on its business that the Acquiring Authority has failed to mitigate in any meaningful way." (B4/177 at [2.14]); and

"...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..." (B4/186 at [1.4]).

12. The focus of the remaining objections is, fundamentally, upon the (perfectly understandable) concerns of the objectors about the impact of the Order or other processes open to the Council upon their individual businesses, and the amount of compensation available.

13. The Council's written evidence has sought to comprehensively address these concerns, drawing on the democratic decision taken through the planning process to change the nature of the area, the many attempts that it has made to assist those affected with relocation (in the case of Tarmac, over a period of

19 months), and the fact that where losses are suffered as a result of displacement pursuant to the Order, they will be compensated in accordance with the statutory compensation code.

14. In this regard, it is very important for the Secretary of State to be clear about the distinction between displacement pursuant to the Order and displacement pursuant to other legal means open to the Council. It will be apparent that much of Tarmac's case is directed to the perceived inadequacy of the compensation it will receive if its leasehold interest is terminated pursuant to the provisions of the Landlord and Tenant Act 1954, as the Council intends. Respectfully, that is not a matter with which the Secretary of State is entitled to concern himself.

15. If the Council's application to determine Tarmac's tenancy succeeds, that will not be a consequence of the Order, but solely a consequence of rights available to the Council in its capacity as a landowner with a superior interest. The compensation payable in that event will be the compensation that Parliament has prescribed. Any perceived disadvantage to Tarmac if this eventuality arises is therefore not something that could lawfully justify or contribute to justifying a refusal to confirm the Order. The Secretary of State must therefore be careful not to be led into error by Tarmac's submissions, which seek to confuse the two separate processes.

16. It may also be noted that it is in fact the Council's adherence to the Guidance, and the requirement that it seek to acquire land by agreement, that led it to acquire the freehold of the Tarmac land, which has put it in the position where it should be able to utilise the 1954 Act process to determine Tarmac's interest.

The case for the Order in a nutshell

17. Against that background, and mindful that most (if not all) attending the inquiry will have read the Council's Statement of Reasons, Case and/or evidence, the Council's case can be summarised as follows.

18. The city of Derby, like the rest of England, has a real and acute need for more housing. Its objective needs are in fact considerably greater than can be accommodated on the land that is or can be made available for such development in the area on a sustainable basis. That makes particularly important delivering housing on the land that has been identified through the planning process as being so available.

19. The need for more housing also includes the need for more affordable housing. Thousands of people to whom the Council owes a duty are not able to live in the homes that they require. On the basis of the present level of lettings, they may have to wait many years before they are housed in accordance with their needs. One of the few options available to the Council to enhance its supply is to use its land assembly powers to bring forward the redevelopment of sites where affordable housing can viably be delivered (either on its own terms or with the assistance of grant funding).

20. The quality of homes that people live in is also extremely important. The Council wishes to improve the opportunities available within its area for people to have access good quality, safe and secure homes of a decent size, with access to adequate public and private amenity areas and which are sustainable in the long-term.

21. Enabling the redevelopment of the Order Land therefore represents a real opportunity for the Council to be facilitate the provision of more and better

homes on a brownfield site in a highly sustainable location. Doing so will not only provide a direct benefit to those people who will be able to own or occupy one of the (minimum) 512 new homes that will be built, but it will also benefit the City more widely, through *inter alia*: improvements to the image and perception of the City in the eyes of residents, visitors and investors, optimising the use of land in an important City Centre fringe location, and advancing the regeneration and placemaking benefits associated the delivery of Castleward Urban Village as a whole.

22. This opportunity can be seized, should the Order be confirmed. There is an extant outline planning permission in place, with reserved matters for the next phase (3a) having been granted. The Council's developer partner, Compendium, has a clear timetable for action in place, and there is sufficient funding in place now (the HIF element of which is time-limited and must be spent if it is not to be lost) to deliver the Scheme.

23. The cost of this opportunity is, of course, that existing commercial occupiers will be displaced against their choosing, and there is not yet certainty that all of them can be relocated. Rights to property are, plainly, engaged.

24. To date, however, around half of the 179 FTE jobs potentially at risk have already been relocated. The Council has also put in place a team dedicated to providing practical support with identifying relocation opportunities for those who still remain. Of the outstanding objectors, it is **only Tarmac's business** that is considered challenging to relocate. Even so (and contrary to the suggestions contained in the Statement of Evidence they submitted), the Council continues to liaise with them in relation to such opportunities as may arise.

25. Where they are ultimately acquired pursuant to the Order, those affected will be compensated financially, in accordance with the principle of equivalence, for their interests and for other related losses. Statute also ensures that eligible persons receive a payment for having to sell at a time not of their choosing.
26. It is recognised that delivering the Scheme pursuant to the Order does place a burden on a small number of affected persons, and results in an interference with their property rights. However, that burden is one which is clearly justified by the prospect of providing access to high quality homes to a much greater number of people (in both the private and affordable markets), and to facilitating the long-planned democratic vision for the area – a vision to which all those affected had opportunity to contribute.

REBECCA CLUTTEN

Francis Taylor Building

26 January 2021

INTRODUCTION

Qualifications and experience

1. My name is John R Green. I hold a Bachelor of Science Honours degree in Urban Land Economics from Sheffield Hallam University, and am both a member of the Royal Institution of Chartered Surveyors and a Registered Valuer.
2. I have been the Estates Manager at Derby City Council since July 2017, whereby I am responsible for the operational day to day management of the City Council's property portfolio. As part of this remit, I have been assisting the City Council's Regeneration and Major Projects Team with the Castleward Urban Village regeneration initiative.
3. I have over 20 years' experience in Local Government having worked for various district and city councils whereby I have been involved in several compulsory purchase schemes; most recently the Development Consent Order for the A38 Derby Junctions.

Involvement with the Scheme

4. My involvement with Castleward Urban Village was initially one of assisting in providing technical advice for the purposes of developing the business case for the compulsory purchase order and providing help and support in progressing all the subsequent stages to date. Following my later appointment as the Project Manager for Acquisitions, I have also been overseeing negotiations and claims for compensation with relevant landowners whom we have already acquired, or where we are in the process of acquiring their interests by mutual agreement. I further attended an information event held at Castleward in October 2019, whereby in addition to providing affected parties with an update of the Scheme, was required to present an outline of their rights to compensation as a result of the Scheme on their businesses.

THE COMPELLING CASE FOR THE CPO

5. Mr Gilman has had to step back from attending the inquiry. In view of this, I have been asked to give the evidence for the Council in relation to the compelling case for the making of the Order.

6. I can confirm that I have read and understood both the Proof of evidence of Mr Gilman (together with its summary and appendices, ACQ/5A/C), and also his Rebuttal Statement ACQ/5/2).
7. I adopt the contents of those documents as my own.

DECLARATION

8. I believe the facts stated in the documents referred to in paragraph 6 above are true to my best knowledge and belief.

A handwritten signature in black ink, appearing to read 'JR Green', with a stylized flourish underneath.

John R Green

Estates Manager (Derby City Council)

20th January 2021

APPLICATION FOR CONFIRMATION OF THE DERBY CITY COUNCIL
(CASTLEWARD) COMPULSORY PURCHASE ORDER 2020

CLOSING STATEMENT ON BEHALF OF THE ACQUIRING AUTHORITY

Introduction

1. These are the closing submissions of the acquiring authority, Derby City Council ('the Council') in support of its application for confirmation of the Derby City Council (Castleward) Compulsory Purchase Order 2020 ('the Order') (CD 1.1).
2. In summary, the Council considers that it has demonstrated:
 - a. that the confirmation of the Order would result in both a quantitative and qualitative housing gain for the city of Derby, in accordance with the requirements of section 17 of the Housing Act 1985 ('HA 1985') (CD 5.1); and
 - b. a compelling case in the public interest, justifying the interference with private property rights to which the Order would give rise.
3. As such, the Order should be confirmed.
4. The structure followed by these closing submissions is to set out, in brief, a description of the Order Land and surrounds, and the proposed development, and then to consider the application for confirmation by reference to the matters of which the Inspector must be satisfied.

5. Defined terms used in these closing submissions are the same as set out in the Glossary (CD 4.1).

The Order Land and Surroundings

The Order Land and Surroundings

6. The Order Land comprises approximately 4 hectares of brownfield land in an area known as Castleward, which is a key gateway location in Derby City Centre. The Order Land is made up of 51 plots, 43 of which relate to land and the remaining 8 of which relate to new rights.
7. The Order Land is bounded by Liversage Street to the northwest, Siddals Road to the north, Canal Street to the southeast and Castleward Boulevard to the south, as shown on the Order Map (CD 1.2). It is intersected by two public vehicular highways, with John Street dissecting the site in a north/south direction (cul-de-sac at the south end joining Castleward Boulevard) and New Street from west to east (connecting from John Street to Canal Street).
8. The Order Land is in wholly commercial use, predominantly providing secondary and tertiary accommodation for a range of activities. The buildings within the Order Land are characterised by purpose-built commercial units and depots generally dating from around the 1970s, although some are older. There is a considerable amount of surface level car parking.
9. The overall quality of the built environment within the Order Land is low, and the use of the land is inefficient, meaning that the area is not contributing as much as it could to the City in social, economic and environmental terms, given its highly sustainable location in the City Centre and proximate to the Railway Station.

10. The Order Land forms part of a wider area earmarked for regeneration, known as the Castleward Urban Village ('CUV'). This larger area (shown on the plan at ACQ/5C/1, B2/593) extends to approximately 12 ha and is also brownfield. The CUV is intended to be an attractive and high quality residential-led development.
11. The condition of the Order Land is such that the need for its regeneration has been recognised by the Council for more than a decade, with the Castleward area being specifically identified for the same in successive planning policy documents, as shown in the timeline at ACQ/2C/3, B2/196.
12. It is a notable feature of this case that no party suggests that there is no need for the Order Land, and the wider Castleward area, to be regenerated.

Scope of the Order

13. It is acknowledged that the Order takes in land that formerly comprised part of a now disused and covered over canal. This area is limited in extent, comprising the 'nub' on the south-eastern edge of Plot 44 (CD 1.2). Contrary to the submission of Mr Porter¹, that does not prevent the Council from acquiring it pursuant to the Order.
14. Section 17(1) HA 1985 (CD 5.1) empowers the Council to acquire "land" for various housing purposes. "Land" is not defined in that Act, and so pursuant to section 5 of the Interpretation Act 1978, the definition contained in Schedule 1 to that Act applies. The definition of "land" contained in Schedule 1 provides that it *"includes building and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land"*. This broad

¹ Raised for the first time in an email to the Planning Inspectorate dated 21 January 2021 (INQ/1).

definition covers land over and comprising a disused canal, which would either be categorised as 'land' or (arguably) a 'structure'.

15. In this regard, it is noteworthy that the Department for Environment, Food and Rural Affairs has recently confirmed a CPO that confers powers of acquisition and new rights over an 'in-use' canal, the Manchester Ship Canal: the United Utilities (Eccles Wastewater Treatment Works) Compulsory Purchase Order 2016. That order was made under section 155 of the Water Industry Act 1991, which also relies on section 5 and Schedule 1 of the Interpretation Act 1978 for the definition of the "land" that may be acquired. The Secretary of State in that case was therefore satisfied that a canal was "land" for the purposes of that provision.

16. The fact that the Order includes land that is comprised in a disused canal does not mean that the Order is one that includes any 'special category land'. 'Special category land' is land falling within sections 16-19 of the Acquisition of Land Act 1981, i.e. statutory undertaker's land, commons/open space, or National Trust Land. Although some canals may be comprised in a statutory undertaking (as is in fact the case for the Manchester Ship Canal), this depends on the identity of the landowner and the purpose for which the land is held. The land referencing exercise carried out by Ardent (a specialist consultancy with considerable experience in that field) identified Plot 44 as being in the ownership of Compendium, and Compendium is not a statutory undertaker.

17. Insofar as it may be suggested that any heritage value attaching to the disused Canal brings it within the definition of 'special category land', that suggestion is incorrect. There is a separate requirement for acquiring authorities to submit a Protected Asset Certificate with their Order, but this only applies in respect

of land that is or would qualify to be on the statutory list; buildings subject to preservation notices; and scheduled monuments (see the Guidance at section 22, CD 3.10, B1/740). The disused and covered canal would not fall within any of these categories (and no one has suggested otherwise).

18. The Order Land also takes in land on which the Old Silk Throwing Mill is located. This is a locally listed heritage asset, but it is not on the statutory list. The Order does not empower the Council to acquire title to the Old Silk Throwing Mill land; only new rights may be taken over it (see the land tinted blue on the Order Plan, CD 1.2, B1/63). Those rights do not confer upon the Council any power to make any changes to the fabric of the Old Silk Throwing Mill.

19. Further and in any event, the Order is neither required nor able to make provision for the protection of this heritage asset. Any changes to it would be governed by the planning regime, whether pursuant to permitted development rights or an express planning permission.

Proposed Development

20. The Scheme underlying the Order comprises the delivery of new residential development on the Order Land. Although the Scheme will result in the delivery of further phases of the wider CUV, it will nonetheless provide a coherent residential development in its own right and will provide a high level of amenity for occupiers without reliance on the development of any future phases.

21. Pursuant to the funding agreement with Homes England, the Scheme will provide a minimum of 512 new homes in a desirable and highly sustainable location, being within a few minutes' walk of the Railway Station, the City Centre's primary shopping area, and workplaces both in the City Centre and on Pride Park, as well as the bus station, Bass' Recreation Ground and the

banks of the River Derwent. A map showing the location of the Scheme in the context of the City Centre was provided by Mr Pheasant (ACQ/2C/2, B2/194).

22. The Scheme is proposed to be delivered pursuant to the Outline Planning Permission granted in February 2013 (CD 2.1), which provides for up to 840 new homes across the wider CUV (including the Order Land).

23. Phases 1 and 2A of the development of the wider CUV (consented by the Outline Planning Permission and the further freestanding planning permission² respectively) are already complete, having been capable of delivery without the need for the Council to exercise its powers of compulsory acquisition. The development of the new primary school that was required by a planning condition attached to the Outline Planning Permission is also underway, supported by funding from Homes England. It is due to open in September 2021. The Order will therefore facilitate the continued successful transformation of this area.

24. None of the objectors (remaining or otherwise) are known to have objected to the planning application that led to the Outline Planning Permission. The Inspector can take from this that none of those parties have in-principle objections to the nature or quality of the Scheme being promoted by the Council.

² Mr Bullock confirmed in XC that a separate full planning application had to be pursued in respect of Phase 2A owing to a failure to meet a four year time limit imposed on reserved matters approval for that phase. The delay resulted from ongoing discussions about the location of the new school (now under construction). No other phases are subject to constrained timetables for reserved matters approval; there is only an overall 20 year timeframe for submission of all remaining phases. Phase 3A was recently consented under the Outline Planning Permission.

25. Although the minimum number of new dwellings to be delivered under the Scheme is 512, the actual figure is currently expected to be higher. There is capacity for a further 676 new dwellings pursuant to the Outline Planning Permission, with the exact number of dwellings to be constructed within each future phase depending upon the detailed design and prevailing market conditions at the time. The benefits of the Scheme presented by the Council are however based on the conservative assumption that only the minimum number of new dwellings are delivered.

The Case for the **Acquiring Authority's Order**

Delivery of quantitative and qualitative housing gain

Quantitative housing gain and the related need for housing

26. As noted previously, the Order Land is currently in exclusively commercial use.

There is no residential use of the land (lawful or otherwise). As such, the delivery of a minimum of 512 new dwellings will necessarily give rise to a quantitative housing gain.

27. The public interest in delivering at least that number of new homes is however driven by the extent of housing need, both nationally and more particularly in Derby itself. The case that the Council has presented through the evidence of Mr Gillie (ACQ/1B) is unchallenged by any party and can be summarised as follows.

28. At a national level there is a chronic shortage of housing. A minimum of 300,000 dwellings per annum are now required to meet national housing requirements. 240,000 homes were completed in 2019, the highest total since the previous peak in 2007/2008, but this is still insufficient to meet increasing

demand and to remedy long-term under delivery. The 300,000 dpa figure has been established and supported by successive Government policy documents over the last five years.

29. As a result of this acknowledged need, Government planning policy is that steps must be taken to *"significantly boost the supply of new homes"*, with local authorities such as the Council being asked to *"...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...[including]...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."* (see the NPPF (2019) at [59] and [119] (CD 3.9, B4/556 & 574). Comparable policies were also included in the earlier version of the NPPF (CD 3.11).

30. The Council has taken steps to meet this requirement through the preparation and adoption of its Local Plan, DCLP1. DCLP1 establishes that the City's Objectively Assessed Housing Need is for 16,388 new dwellings over the Plan period of 2011 to 2028. However, the City has capacity for only 11,000 of these, which figure has therefore been adopted as its housing requirement (see Policy CP6, CD 3.2, B1/280).

31. Mr Gillie's proof confirmed that, as at March 2020, a net increase of 4,909 new homes had been delivered. This is a material undersupply compared to the number of dwellings that ought to have been delivered to date in order to achieve the DCLP1 requirement. It increases the annual requirement to 761

dwellings over the remaining life of the Plan period if the requirement is to be met. Mr Gillie further confirmed in XC that this represents a c.40% increase on average delivery rates over the Plan period to date.

32.DCLP1 specifically envisages that some of the City's housing needs should be met in Castleward. The allocation set out in policy AC6 requires the wider CUV to deliver a minimum of 800 homes by 2028 to help contribute to Derby's housing need (CD 3.2, B1/301). This is one of the largest allocations in the Local Plan (see supporting text to Policy CP6, Table 2 B1/280).

33.As of November 2020, a total of 218 homes had been delivered through the development of the first two phases of the CUV, together with 12 commercial units, open space and public realm. There is a pipeline of 340 dwellings within the CUV which have planning permission or are subject to a live planning application, leaving a minimum of 242 further dwellings to be delivered in accordance with AC6. The existing pipeline will take a minimum of 3 years to be delivered. This will require an average of 60 new dwellings per year assuming all planned dwellings are delivered. The Council cannot therefore afford to rest on its laurels if the objectives of Policy AC6 and the wider strategy set out in DCLP1 are to be met. The continued sustainable development of Castleward is essential.

34.The implications of historic under-delivery of new homes are the same in Derby as have been seen nationally, with rising ratios of house prices to income and particular ill effects in the first-time buyer market. The ratio of median house prices to median gross annual income in Derby rose from 3.13 in 2002 to 5.42 in 2019, with an even greater increase in the lower quartile (which is most likely to represent first time buyers).

35. Failure of the CUV to deliver the target contribution of Castleward to the DCLP1 housing requirement therefore risks driving a continued worsening of the price income ratios, increased overcrowding and young people less able to move from the family home.
36. The City's need is not confined to market housing. There is also a real need for affordable provision too, as reflected in both the Local Plan requirement for up to 30% affordable provision on sites of 15+ dwellings (Policy CP7, B1/283) and in the 6,755 households listed on the Council's Housing Register as in need of affordable housing because their current accommodation does not meet their needs. The greatest need stems from overcrowding, followed by medical or welfare reasons, or persons living in otherwise unsatisfactory conditions.
37. The Council have only been able to let an average of 608 homes per annum over the past three years, with the total annual lettings in fact declining since 2013/14, and only 433 properties let in 2019/20. Furthermore, there have been net losses in the overall affordable supply as a result of existing tenants exercising the Right to Buy (842 council homes sold since 2015, compared to new build or acquisition of 653 affordable homes over the same period).
38. Consequently, if the Council is to be able to boost its affordable supply, it is vital that it uses its land assembly powers to bring forward the redevelopment of sites where affordable housing can viably be provided (either on its own terms or with the assistance of grant funding) but which the market would not otherwise deliver. This is the case on the Order Land, where the affordable provision secured by Phase 3A stands at a policy-exceeding 33%.
39. In short, the evidence confirms a substantial and increasing housing need in the City of Derby. The lack of housing supply to meet the demand is adding

pressure on affordability for first time buyers or renters. Greater provision of both market and affordable housing in the CUV are required if the City's planned needs are to be met. All of this lends critical weight to the Council's case for the Order.

Qualitative housing gain

40.As the Order Land does not contain any existing residential uses, there is no requirement to improve the existing stock within its boundaries. There is however a need to increase the supply of high-quality stock within the City more generally. Again, this need is not challenged by any party.

41.As explained by Mr Gillie (ACQ/1B), the Housing Stock Condition Report (2019) identifies that properties in the area surrounding the CUV are more likely to be of pre-1918 construction (48.9% of the housing stock in Arboretum ward, which includes Castleward), are more likely to be terraced houses, and more likely to be in the private rented sector.

42.Based on the English Housing Survey's findings that estimate the likelihood of each individual property in the City failing the Decent Homes standard, or suffering from a hazard as defined by the Housing Health and Safety Rating System (HHSRS), some 18,700 private sector homes in Derby (21% of the total) are projected to fail Decent Homes standards; this is higher than the East Midlands Regional average. It is notable that these failure rates are most acute in the wards closest to the CUV regeneration area (Normanton 32%, Arboretum 26%, Alvaston 23%), which is perhaps consistent with the age and tenure of those properties.

43.As explained also by Mr Gillie, the health and other social consequences of poor-quality living accommodation are well-understood, and include worse

physical and mental health, excess mortality in winter, increased prevalence of accidents in the home, and worse educational and emotional outcomes for children.

44. Derby's aspiration as set out in the City Centre Masterplan 2030 is for it to be a 'Living City', providing lifestyle and housing choice through sustainable City Centre development (CD 3.1, B1/261-4). It also has ambitions for it to be a 'City of health and happiness' (Council Plan 2019-2023, CD 3.3, B1/309). Fundamental to the achievement of these objectives is ensuring a good supply of high-quality homes, for the benefit of existing and future residents and their families.

45. The delivery of the Scheme will contribute materially to this aim. The 512 homes to be provided will, by virtue of a planning condition imposed on the Outline Planning Permission, achieve BREEAM Communities standard and Level 3 of the Code for Sustainable Homes, both of which ensure the long-term sustainability and practicality of those homes for their occupants.

46. Achievement of these independent standards is clear evidence that the new homes to be provided are likely to be of better quality in many aspects than the existing housing stock in this area of Derby.

47. Again, substantial weight should be afforded to the high-quality nature of the homes that are to be delivered.

Other benefits

48. Although the statutory test applicable to the use of the Housing Act powers is limited to matters of housing gain, meaning that the Council is not required to deliver any non-housing benefits, there are a number of other social,

environmental and economic benefits that would flow from the making of the Order and which therefore contribute to the compelling case for it.

49.As noted by Mr Green (in XC and B2/557 at [7.4.1]), these include:

- a. Advancing the regeneration of the CUV in accordance with the long-held planning aspirations for the area;
- b. Consequential improvements to the image and perception of the City for residents, visitors and investors;
- c. Optimising the use of land in an important City Centre fringe location;
- d. Enhancing the use and collective ownership of the previously developed public open space at Liversage Square; and
- e. Supporting the substantial £8m investment made in the new school and nursery.

50.A further advantage noted by Mr Gillie (B2/20 at [5.4]) is that the improvement of the housing offer in the City should help it to capture the full economic benefit of having major and high-paying employers such as Rolls-Royce and Bombardier based here, by increasing housing choice and hopefully therefore reducing the level of employees in those organisations commuting in from outside the City.

The downside: the loss of existing employment

51.As in the case of almost any compulsory purchase order, the very substantial benefits that will flow from the Order do not come without cost. In this case, the cost is the potential loss of existing employment in the area. However, the

Council has taken, and continues to take, steps to ensure that this downside is minimised so far as practicable.

52. At the time the Council made the Order, the number of full time equivalent (FTE) jobs at risk numbered 179. Since then, the Order Land's largest employer, Cosy, has relocated, along with Willow Coffee and Derby Timber Supplies. This has resulted in a c.50% reduction in the number of FTE jobs at risk.

53. Of the remaining 16 businesses, six businesses (48 FTE) are those that the Council has categorised (without challenge) as being 'challenging' to relocate. This includes two of the three remaining objectors, Tarmac (OBJ/1) and DAES (OBJ/3)³. The remaining 10 businesses (41 FTE) are considered to have either 'good' or 'very good' prospects of relocation. This includes the final remaining objector, Midcastle (OBJ/2), as well as Derbyshire County Transport and Moguntia, with whom Ms Lister confirmed in XC that the Council's relocation support team are continuing active discussions.

54. The practical assistance offered by that team, which the Council is under no obligation to provide, remains open to all other affected parties and will continue to be so following any confirmation of the Order. It is plainly in the City's interests to retain businesses that contribute to its economic life.

55. It should not however be forgotten that the loss of the existing employment uses within the Order Land is expressly contemplated both by the relevant policies of the adopted Development Plan (specifically policy AC6 of DCLP1) and by the Outline Planning Permission.

³ Although the owner of DAES is over 60 and as such entitled, under the Compensation Code, to extinguish his business without attempting to relocate in any event.

56. As has been explained in the evidence of Mr Pheasant (ACQ/2B), DCLP1 was the culmination of many years of work by the Council, informed by a considerable evidence base, and was tested and examined on behalf of the Secretary of State and found to be sound. It represents the democratically established vision for the City over the remainder of the decade, and that vision is that the CUV is best used predominantly for housing.

57. Furthermore, DCLP1 makes express provision for the City's employment needs pursuant to CP10 and other policies, and over 199ha of employment land is allocated to meet those needs, which includes the need for industrial land of the kind currently found in the Order Land (CD 3.2, B1/288-291). As noted by Mr Green in XC, it is in those areas that it is hoped that some of the remaining businesses can be successfully and appropriately relocated.

58. The absence of objections from the vast majority of occupiers of the Order Land suggests that there is broad acceptance of the case for change.

59. The impact of the Order upon the two remaining objectors who raise that issue in their case against it (Tarmac and Midcastle) are specifically addressed further below. However, although sympathetic to the potential impact on their private interests, the Council remains firmly of the view that the very substantial benefits of the Order for a much greater number of people, and for the City more generally, decisively outweigh any disadvantages flowing from its making.

Deliverability

60. There are two aspects to deliverability: the availability of a party who is physically able to undertake the development proposed (or to co-ordinate the

same), and the availability of funding to pay for that development. In the present case, the Council is able to satisfy the Inspector as to both.

The developer partner and timetable for delivery

61. In Compendium, the Council has a developer partner who has not only the experience and resources to undertake the development proposed, but who has already demonstrated their commitment and expertise through the delivery of the first two (pre-CPO) phases of the CUV regeneration. The pre-existing relationship also means that the necessary contractual arrangements are already in place between the parties so as to enable the smooth delivery of the remaining phases on the Order Land.

62. The next phase of the development, Phase 3A, already has Reserved Matters approval (CD 2.2 B1/242) and the intention is for Compendium to start on site in April, with completion of those 82 units by the end of 2022.

63. In respect of the remainder of the phases, Compendium has a clear timetable for delivery, with all phases being scheduled for completion by mid-2027, well within the maximum 10-year time frame for delivery permitted by section 17 HA 1985, and with much of the land required materially sooner. Significantly, should Compendium not be able to meet the statutory timeframe for any reason, the Council has in place a contractual mechanism that would enable it to recover any land transferred to Compendium and to complete the development itself outside of the terms of the Development Agreement (B2/571 at [10.4.5]).

Funding

64. The Council and Compendium are able to evidence that there is sufficient funding available to enable land assembly to be completed pursuant to the Order, if confirmed, and to deliver the Scheme.

65. The sources of this funding are threefold: HIF funding obtained from Homes England, private funding provided by Compendium, and funding from the Council's own reserves (in particular, un-ringfenced funds from its Housing Revenue Account).

66. As set out in the table contained in the evidence of Messrs Gilman/Green, all three sources will be drawn upon to fund the costs of acquisition pursuant to the Order (Table 9, B2/568). The development costs will then be borne by Compendium as developer in the usual way, funded by shareholder loans (B2/505).

67. It is noteworthy that no remaining objector suggests that sufficient funds are not or will not be available to deliver the Scheme.

68. The Inspector can in the above circumstances be satisfied that the Scheme underlying the Order can be brought forward and executed in a timely manner if it is confirmed.

Alternatives

69. No remaining objector to the inquiry contends that there is an alternative means by which the benefits that the Scheme is intended to secure could be delivered. Even Liversage Street (Derby) Ltd and John Street (Derby) Ltd (previously OBJ/4, objection now withdrawn) did not contend that the Scheme

itself was not required, or should be abandoned - only that they should be allowed to deliver part of it.

70. The Scheme is the product of many years of hard work by the Council and the CUV Partnership. As detailed in the evidence of Mr Pheasant (ACQ/2B & 2C), the policy basis for it, as well as the Scheme itself, has been subject to extensive consultation, which consultation found that the Scheme was an appropriate response to the Council's housing and regeneration objectives.

71. In short, there is no alternative to the comprehensive proposals being advanced, and the availability of one cannot therefore be a matter weighing against confirmation of the Order. Indeed, the absence of any alternative, and the risk of the poor-quality environment that currently defines the Order Land being allowed to remain, weighs strongly in favour of granting the Council the powers that it needs in order to deliver the Scheme.

Equalities

72. Both the Council and the Secretary of State (acting via the Inspector) are subject to the public sector equality duty contained in section 149 of the Equality Act 2010 (CD 5.4). This means that they are each obliged, when exercising their functions, to have due regard to the need to: eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under that Act; advance equality of opportunity between persons who share a relevant protected characteristic and those who do not; and to foster good relations between persons who share a relevant characteristic and those who do not.

73. In order to assist with discharging this duty (which, it must be recalled, is not a duty to achieve any particular substantive outcome), it is best practice

for those subject to it to undertake an Equalities Impact Assessment ('EqIA'). An EqIA identifies how proposed actions will impact upon those with protected characteristics, and enables the relevant actor to consider any mitigating actions it might take to avoid or reduce any such adverse impact.

74. In the present case, an initial EqIA was undertaken in October 2019, the output of which enabled the Council to discharge its duty when authorising the making of the Order. In order to ensure that it remained accurate for the purposes of the Inspector's decision making, and consistent with the Council's own preferred approach of carrying out annual reviews, a review was completed in November 2020. A copy of the most recent EqIA is included in the Core Documents (CD 4.3).

75. The outcome of the initial and updated EqIAs was not materially different, with both finding that the Scheme would not result in disadvantage to persons by reason of any protected characteristics. Although the EqIAs identified that those with the protected characteristic of gender (male business owners and employees) were the group predominantly likely to be adversely affected, this reflected the fact that they were the cohort predominantly engaged in economic activity on the Order Land.

76. Moreover, as a result of the Council's attempts to relocate those businesses and jobs, it was considered that any negative impact on men could be substantially reduced, if not avoided.

77. The EqIAs further identified that the Council's intervention through the Scheme would also have positive effects for the Council's area as a whole, which in turn would address the aims of the PSED, through the provision of new market and affordable homes that can benefit the diverse population

within the Council's area, and provision of an improved environment within which people from a range of backgrounds will have the opportunity to mix and participate together in community life.

78. Consistent with the above, no party has ever objected to the Order on the grounds that it, or the Scheme underlying it, would give rise to inequality of any kind.

79. Confirmation of the Order would in the circumstances be consistent with both the letter and the spirit of the public sector equality duty. The Scheme will have a positive outcome for equalities considerations.

Human Rights

80. As is evident from the Statement of Reasons (CD 1.3), Statement of Case (CD 1.5), and evidence of Messrs Gilman/Green (ACQ/5B), the Council has taken into account the human rights of those who would be affected by the Order. The Inspector must do the same. In doing so, however, it is important that the Inspector confines himself to considering only the impact to which the Order (rather than any steps taken outside the scope of the Order) would give rise.

81. The Council acknowledges that Convention Rights are engaged by the making and proposed confirmation of the Order. Most pertinently in the present case, all those whose property interests would be divested have the right to peaceful enjoyment of their property under Article 1 Protocol 1 of the European Convention on Human Rights (protected in domestic law by the Human Rights Act 1998).

82. Article 1 Protocol 1 is not however an unqualified right. It is well-settled that interference may be justified in accordance with the law, providing that interference is proportionate to the public interest being achieved. The courts have confirmed that proportionality will have been established if, as is submitted above, the Inspector accepts that the benefits that would flow from implementation of the Scheme are compelling: Hall v First Secretary of State [2007] EWCA Civ 612 at [15].

83. Anyone whose interest is acquired pursuant to the Order will be entitled to be compensated in accordance with the Compensation Code, mitigating any interference with Convention rights.

84. Furthermore, the making and confirmation of the Order is consistent with Article 6 rights (fair trial rights) by virtue of the availability of the inquiry procedure, and the subsequent availability of legal challenge to any decision taken.

85. Interference with human rights should not in the above circumstances be a reason for the Inspector not to confirm the Order.

Other matters

86. Mr Porter's objection (INQ/1) asked the Inspector to consider safety issues arising from the use of cranes pursuant to the oversailing rights that would be granted by the Order. Respectfully, the safe use of cranes is governed by other regulations (such as the Lifting Operations and Lifting Equipment Regulations, the operation of which is overseen by the Health & Safety Executive), and the Inspector is entitled to assume this separate regulation is effective. In the absence of any specific evidence suggesting that crane oversailing in this location could not be safely accommodated, any generic risks associated with

the use of cranes are not a matter to which the Inspector could attach any weight.

Outstanding Objections

87. The number of unresolved objections has now reduced, from an initial seven following the making of the Order, to just three as the inquiry closes. Following successful negotiations between the parties, both statutory undertakers (WPD and CenturyLink) have withdrawn their objections, as have Hawkins & Shepherd and Liversage Street (Derby) Ltd and John Street (Derby) Ltd (correspondence provided at B3/43-56). The remaining three objections come from persons whose business premises are proposed to be acquired: Tarmac (OBJ/1) (B3/1), Midcastle (OBJ/2) (B3/7) and DAES (OBJ/3) (B3/9).

88. Of those remaining objectors, only Tarmac provided evidence to the inquiry (TAR/1 -3 at B4/1, 173 and 185). However, they were not represented and did not appear. This is significant because it meant that the evidence that they supplied, which was prepared by solicitors and not accompanied by a statement of truth, could not be tested. The weight which can be afforded to that evidence, in circumstances where the Council's contrary evidence was subject to declarations of truth and proffered for questioning, can necessarily only be limited.

89. A summary of the position as it stands in relation to each remaining objector at the close of the inquiry is set out below.

OBJ/1 Tarmac

90. At the time of its original objection in April 2020, Tarmac objected to the Order on four grounds. Of these, three went to the principle of the Order (absence of a compelling case; proposals contrary to planning policy and guidance on safeguarding existing minerals processing sites; and prematurity), whilst one (failure to grasp Tarmac's business operation) went to the adequacy of negotiations undertaken with it in relation to its interest.

91. In its Statement of Evidence submitted in January 2021 (TAR/1), each of these areas of objection was formally maintained (with very limited additional substantive information or evidence supplied), along with a further ground of objection, being that there was no need for Tarmac's interest to be included within the Order. The new ground reflected the fact that, in the period between the submission of Tarmac's objection and their Statement of Evidence, the Council had acquired the freehold to Tarmac's site and advised that it intended to terminate their lease at the end of its current term (December 2021), in accordance with the provisions of the Landlord and Tenant Act 1954 ('the 1954 Act'). The consequence of this process, if successful, will be that Tarmac's interest will not be acquired pursuant to the Order, and will instead be compensated in accordance with the statutory requirement set out in section 37 of the 1954 Act, which provides for compensation in the sum of 2 x Rateable Value, a measure that is acknowledged to be less than that which would be available to Tarmac under the Compensation Code.

92. As noted in Opening (INQ/2), in its two most recent statements, the focus of Tarmac's objection has shifted, with the thrust of its complaint being its view that the Council has acted in a disingenuous manner towards it; that the

compensation available pursuant to the LTA 1954 Act means it will suffer disproportionately; and that its interest should be excluded from the Order having regard to the availability of that alternative procedure.

93. In particular, it appears now to suggest that it does not have an in-principle objection to the Scheme (INQ/2 at [11]).

94. It has also not challenged the correctness of any of the evidence adduced by the Council in relation to its planning-related ground, in spite of a issuing rebuttal.

95. In view of these factors, the Council does question the extent to which Tarmac should be taken as seriously pursuing its planning and other 'in principle' grounds. Nonetheless, these submissions summarise the Council's position in relation to them on the conservative assumption that they remain live.

Absence of a compelling case

96. The compelling case for the Order has already been addressed in the earlier part of these closing submissions, and it is not repeated here. The relevance of the burden borne by Tarmac if the Council is able to determine its interests using the 1954 Act provisions to the overall balancing exercise to be carried out by the Inspector is covered later in this section.

Proposals contrary to planning policy and guidance

97. The first point to note is that this inquiry is concerned with the confirmation of an Order made pursuant to powers conferred by the HA 1985, in circumstances where there is an extant planning permission authorising the development pursuant to which the Scheme can be delivered. The acceptability of the

Scheme in planning terms is therefore already established and not a matter that should concern the Inspector.

98. The second point is that the argument advanced (by solicitors, rather than by a qualified planning professional) is in any event a bad one.

99. As explained by Mr Pheasant, the planning objection has three constituent parts. They are claims that: (1) contrary to Paragraph 204(e) of the NPPF, the acquisition of property will cause various minerals processing activities and a viable business to cease; (2) that four employees will be made redundant contrary to paragraph 80 of the NPPF; and (3) that the Council has failed to have regard to the Government's Minerals PPG on safeguarding storage, handling and transport sites, failing to prevent development that would conflict with their business.

100. In respect of points (1) and (3), the PPG indicates that it is for Local Plans rather than Minerals Plans to set out policies relating to safeguarding facilities and sites for the storage, handling and transport of minerals, except where such facilities and sites are located at quarries or aggregate wharves or rail terminals. In preparing its Local Plan, DCLP1, the Council needed to balance the requirements of the NPPF and the PPG and prioritise those that it considered most relevant and important to deliver. As now, the need for housing in Derby was significant when DCLP1 was prepared and its delivery prioritised. Protection was afforded to a number of mineral processing facilities/plants outside mineral workings sites, including where they were in employment locations subject to Policy CP10. Tarmac's Castleward site is not one of these, because the strategic policy for Castleward, AC6, requires the

area to be transformed to provide a new, high quality, residential neighbourhood. This is also reflected in the Outline Planning Permission.

101. Tarmac had the opportunity to object to this vision at the time the Plan was under preparation, as indeed it did in relation to another policy affecting a different site in its ownership in the City, but it did not.

102. The Council did not therefore fail to take account of the requirements of national policy and guidance at the relevant (plan-making) stage, but afforded priority to the delivery of housing in this location, as it was entitled to.

103. In respect of point (2), paragraph 80 of the NPPF expressly applies to the development of planning policies and development control decisions, not decisions on the confirmation of compulsory purchase orders. The NPPF was however extant at the time of the adoption of DCLP1, and the grant of the Outline Planning Permission, and taken into account. The loss of employment land, and the related loss of jobs, has already been considered and found to be acceptable, having regard to the merits of the alternative, residential use of the land.

104. In this context it is worthy of note that, of the c.90 jobs that remain at risk unless relocation sites can be found for the occupiers of the Order Land, Tarmac's site represents only 4-6 of those. Whilst losing them would be regrettable, the public benefit in delivering 512 new homes on the Order Land is considered to substantially outweigh that loss.

105. In any event, as confirmed by Ms Lister in XC, the Council continues to seek to assist Tarmac with identifying a suitable site to relocate its business. Whilst the difficulties with finding a site are acknowledged, discussions in relation to one site (the Balfour Beatty land) are understood to remain ongoing, and it is

in any event too early for it to be conclusively said that relocation will not be possible.

Failure to understand Tarmac's relocation requirements

106. The Council has been in contact with and assisting Tarmac with its search for a relocation site since June 2019, a period of some 20 months (B4/144). During that time, Tarmac has met with the Council and its representatives on numerous occasions, with further contacts made by telephone and email (ACQ/3C/8 at B2/480). In XC, Ms Lister suggested that, altogether, there have been around 26 exchanges, and confirmed that on not one of those occasions had Tarmac advised the Council that it had misunderstood its requirements. The only place it has made this claim is in the CMS letters submitted to this Inquiry which, as previously noted, are not accompanied by any statement of truth, and which are unsupported by any corroborating documentation.

107. By contrast, the Council has submitted some of the records of contact with Tarmac in its possession, including (for example) responses to site searches issued by Thomas Lister to Mr Wharmby and Tarmac's agent, Mr Hall (ACQ/3_2, B4/146 and 151), and Thomas Lister's notes of meetings held between the parties (B4/154). Any suggestion in those documents that the Council has misunderstood Tarmac's requirements is conspicuous by its absence, consistent with Ms Lister's account.

108. As per Ms Lister's evidence, Tarmac is acknowledged to be best placed to understand its own relocation requirements. All of the searches carried out by the Council have been consistent with the parameters provided by Tarmac, albeit that these have changed over time. To the extent that there has been

any failure of understanding on the part of the Council, it must have arisen as a result of a failure of communication on the part of Tarmac or its representatives.

109. A final point to note in relation to relocation sites is that, just because none of the sites suggested by the Council have yet emerged to be suitable for Tarmac's relocation, this does not constitute a failure by the Council. It is not responsible for the number and identity of sites available in the market at any given time, and nor can it oblige a landowner to accept Tarmac as a tenant. Its role is limited to finding sites that *may* be suitable, and then (if necessary) facilitating contact between the site owner and Tarmac.

Council's discussions re relocation disingenuous

110. Tarmac's most recent submissions have suggested that it is "*obvious*" that the Council has never had any genuine intention to acquire its interest, and that the relocation discussions have merely been the Council leading Tarmac a merry dance, whilst secretly negotiating to acquire the freehold interest so that it could terminate Tarmac's lease without (in its view) adequate compensation (see e.g. TAR/3, B4/188).

111. This allegation is wholly misconceived. As explained by Ms Lister in XC, the former freeholder of Tarmac's interest, Mrs Rayson, was approached on two occasions, in 2017 and early 2020, and made clear to the Council that she had no intention of treating with them in advance of a confirmed Order (see also the note of the latter meeting, B2/342). It was only when a final approach was made, in October 2020, that Mrs Rayson's position was established to have changed (seemingly after Tarmac's failure to complete a renewal of its lease), and the sale of the freehold progressed promptly thereafter.

112. As such, until October 2020, the Council had no basis for believing that it would ever be able to rely on the 1954 Act provisions to determine Tarmac's interest. All discussions were therefore undertaken in good faith against that background.

113. In circumstances where the Guidance requires that the Council seek to acquire land by agreement, it cannot, as Mr Green observed in XC, have come as a surprise to Tarmac (who are professionally advised) that the Council would be seeking to engage with the freeholder of that site. The consequence of that acquisition would necessarily be to confer upon the Council rights as landlord – the same rights as Mrs Rayson, or indeed any purchaser of the land, would have enjoyed.

114. As noted in Opening (INQ/2), the Council's ability now to avail itself of the 1954 Act process is a direct consequence of its compliance with the Guidance, having acquired the superior interest and its attendant rights and advantages by agreement.

115. The other aspect of Tarmac's complaint about the Council's dealings with it is the absence of any offer of compensation prior to that made in November 2020 in the context of the proposed 1954 Act proceedings.

116. The Council accepts that it did not make a formal offer to Tarmac for its interest at a time when Compensation Code compensation was understood to be the basis upon which Tarmac would be compensated. That was not however the consequence of an absence intention on the part of the Council to treat with Tarmac on a voluntary basis. It was, as confirmed by Ms Lister in XC, because Tarmac had made clear that it would not surrender its interest until a relocation site had been identified. Identifying such a site was therefore a

logically prior step to be completed before discussions about the financial terms (either for surrender of the lease itself, or any disturbance costs) could sensibly be progressed – those costs varying dependent upon the relocation site identified (or not, as the case may be).

117. Again, it is noteworthy that Tarmac has not produced any contemporaneous correspondence pressing the Council for an offer, notwithstanding the regular contact between the parties over the last 20 months. No doubt that is reflective of that fact that Tarmac was content with the approach being taken.

Prematurity

118. Mr Bullock has made clear that Compendium will need Tarmac's land in 2022 in order to progress Reserved Matters approval of Phase 4 of the proposed development under the Outline Planning Permission as planned, and to provide what Compendium regards as an acceptable residential environment as the Phase 3 dwellings are completed and occupied (ACQ/4_2). Given that this is next year, the inclusion of Tarmac's interest in the Order cannot sensibly be regarded as premature.

No need for Tarmac's interest to be included in the Order

119. Tarmac also contend that, because:

- a. The Phase 3A Reserved Matters approval was consented notwithstanding the presence of its site, that use can co-exist with the redevelopment; and/or
- b. Because the Council now have the 1954 Act procedure available to them in order to determine Tarmac's interest,

compulsory acquisition is not required, and their interest should be omitted from the Order.

120. These arguments are also misconceived.

121. Although it is right to say that Phase 3A has received a Reserved Matters approval that acknowledges and seeks to mitigate the continued presence of Tarmac's site, that approval was granted under and in the context of the wider proposals covered by the Outline Planning Permission, which envisage the replacement of the Tarmac site in the longer term. It cannot therefore be said that the approval indicates that the planning department was content for Tarmac's use to continue in perpetuity. Its short-term presence is a corollary of the phased nature of the development.

122. Moreover, the planning position is in any event distinct from the commercial position. As Mr Green observed in XC, it may well be difficult or impossible to sell new homes in Phase 3A, opposite Tarmac's site, if there is no prospect of its removal.

123. Further, whilst the Council intends to determine Tarmac's interest pursuant to the 1954 Act, there is no certainty that it will succeed in doing so. At this stage, it is not known whether Tarmac will contest the proceedings, and it is not obliged to declare this until December 2021. If proceedings are contested, there is a possibility that they will either (a) fail, or (b) not be determined sufficiently promptly to enable the Council to keep to its development programme.

124. If either of those circumstances materialises, the Council may need to revert to relying on powers of compulsory acquisition in order to ensure the benefits associated with the Scheme can be delivered in a timely manner. If

that happens, Tarmac will be entitled to compensation in accordance with the Compensation Code in the usual way.

125. If Tarmac's interest is not retained in the Order, such that the Council could not avail itself of compulsory powers, Mr Green explained in XC that the result would be one or a combination of the following: an inability to deliver Phase 4, and related inability to deliver the vision for Castleward established in the adopted policy; adverse implications for the saleability of earlier phases owing to the continued presence of the Tarmac use; a need for the Council to acquire from Tarmac by agreement, effectively placing them in a ransom position to the disadvantage of the public purse; or a material delay (and additional expense) caused by the need for the Council to seek further compulsory purchase powers.

126. All and any of these outcomes are contrary to the public interest and can be avoided by retaining Tarmac's interest within the Order.

Disproportionate burden faced by Tarmac

127. Finally, Tarmac object to the Order on the basis that they would face a disproportionate burden if their interest is terminated under the 1954 Act and their business extinguished "*without adequate compensation*" (B4/186 at [1.5]).

128. As noted in Opening, the Inspector must take care to avoid conflating the effects of the Order, if confirmed, with the effects of actions proposed to be undertaken by the Council as a consequence of rights available to it in its capacity as a landowner with a superior interest.

129. If Tarmac's interest is terminated pursuant to the 1954 Act, that will not be an effect of the Order and any perceived disadvantages associated with that cannot be allowed to weigh in the balance against its confirmation.

130. If, however, Tarmac's interest is retained in and ultimately acquired pursuant to the Order, then it will be compensated in accordance with the Compensation Code, a financial outcome with which it does not take issue.

131. Further and in any event, the compensation that is payable to persons with interests of the kind enjoyed by Tarmac is prescribed by law. Parliament has therefore determined that it is adequate; it is not open to the Inspector in determining this case to take a different view.

OBJ/2 Midcastle

132. The objection of Midcastle is fundamentally concerned with the business disruption to which displacement from their existing site will give rise, and the risk of consequential redundancies (OBJ/2, B3/8).

133. The Council acknowledges that the Midcastle business is a long-standing resident of the Castleward area, that it says it employs 37 people (albeit that the number identified by the Council at the date of the Statement of Reasons was fewer, at 28 including 3 part time workers – see the 'Bathroom Traders Ltd' entry at B1/76), and that its current location serves its needs well. It is also recognised that a move away from Castleward has the potential to cause disruption to the business, at or following a time when that business has experienced considerable disruption owing to the CV19 pandemic.

134. As is the case with Tarmac, however, the disadvantages associated with the disturbance of Midcastle and its employees are considered to proportionate

having regard to the need for the Order Land to contribute to the significant need for new and high quality housing in the City Centre.

135. In spite of the Council's best efforts, recorded by Ms Lister (ACQ/3B, B2/276 at [4.10] onwards; ACQ/3C/10, B2/484), the Council has had very little opportunity to discuss Midcastle's relocation requirements and to assist in facilitating a relocation opportunity to date. The reasons for this are well understood, but it is important to appreciate that they are not of the Council's making.

136. On the basis of the information obtained by Ardent prior to the making of the Order, which was not challenged by Midcastle in its objection, the prospects of being able to identify such an opportunity for Midcastle are however considered to be good (see again the 'Bathroom Traders Ltd' entry at B1/76). It is therefore encouraging that Midcastle is now in a position to discuss relocation opportunities (as reported by Ms Lister in XC), and that its appointed agent will be in contact with the Council during the week of the inquiry, or shortly thereafter, in order to open that dialogue.

137. The Council therefore considers that there is cause for some optimism that the business may be successfully relocated in due course, with consequent disruption minimised or avoided, and it will continue to offer its support in facilitating this outcome. In any event, any eligible disruption or extinguishment will fall to be compensated in accordance with the Compensation Code.

OBJ/3 DAES

138. There are three aspects to DAES's objection to the Order: (1) an allegation that the Council has made no meaningful attempt to acquire by agreement;

(2) a complaint that it had not received any assurances as to a minimum level of compensation or a 'not before date'; and (3) a complaint that a delay in submitting the Order had created uncertainty over a 15 year period.

139. None of these complaints is well-founded.

140. Dealing with point (3) first, this was addressed in the written evidence of Messrs Gilman/Green (ACQ/5B, B2/585 at [12.5]). They explained that, whilst it was true that proposals for the regeneration of Castleward have been in development for a 15 year period, the Council has acted as promptly as the planning and procurement processes, and funding, have allowed.

141. In respect of point (2), a 'not before date' was provided in summer 2020, but no assurances have been given about minimum levels of compensation, given the absence of both a date for the acquisition of the interests, and any detailed claim information and supporting material. All compensation consequent upon the compulsory acquisition would however be consistent with the requirements of the Compensation Code.

142. Finally, in relation to point (1), Ms Lister set out in detail the contacts that had been made with DAES prior to the making of the Order and in the months following (ACQ/3B, B2/318 at iii; ACQ/3C, B2/482). This included contacts in the period leading up to the Pre-Inquiry Meeting held in November, at which DAES's representative had claimed that the Council had not been engaging.

143. In any event, since the PIM, the parties have been actively engaged in discussing mutually acceptable terms for the acquisition of DAES and Mr Ross's interests. Ms Lister confirmed in XC that heads of terms have now been agreed,

and so it remains only for them to be sent to solicitors to progress the final legal agreement.

144. Consequently, the Inspector can be satisfied that the Council has made adequate attempts to acquire by agreement, and that these attempts are close to bearing fruit.

145. In all of the above circumstances, whilst the Council is understanding of the **objectors' natural desire not to lose** their properties at a time not of their choosing, the grounds of objection raised by them are unmeritorious and should not be upheld.

Conclusion

146. The decision to make this CPO was not taken lightly. It is the culmination of many years of work by the Council and the CUV Partnership. The benefits of the Scheme proceeding are clear and substantial, with its delivery making a not only significant contribution to the fulfilment of the City's considerable and pressing housing need, but also the achievement of the Council's longstanding placemaking ambitions, unlocking the potential of the Castleward area to create a high-quality and sustainable residential neighbourhood.

147. The burden on those who will lose their interests in the Order Land is acknowledged. However, the Council has taken and continues to take all reasonable steps to help them move on successfully and with the minimum impact, whilst also acting in a manner conscious of the Council's own fiduciary responsibilities.

148. In the circumstances the balance is considered to lie in achieving the greatest good for the greatest number. That outcome is one that can only be fully realised with the confirmation of the Order.

REBECCA CLUTTEN

Francis Taylor Building

Temple, London

27 January 2021

Castleward CPO Public Inquiry

Questions for Mr Bullock from Mr Porter

Q 1. Could Mr Bullock confirm that he is the contractor of the existing substantial buildings in Castleward Village.

A. Compendium Living has developed the first two phases of Castleward on Carrington Street and Castleward Boulevard/Park Street

Q 2. Can Mr Bullock confirm the nature of the foundations to be used. I presume it is going to be a mix of short bored piles filled in with concrete and interspaced with a shallow raft foundation

A. Our foundation designs are determined on advice from our specialist structural engineers following detailed ground investigation on each site. The previously developed nature of the land across Castleward means that a range of foundation designs have been employed, but we have used piled foundations on a number of blocks to date.

Q 3. Could the existing buildings be extended upwards in time?

A. Once we have constructed our new homes, future owners will be free to do with them as they choose. However, we would expect that they would have to secure planning permission for changes in height and building regulations approval to any changes with structural implications. As a matter of course, we do not design our buildings with capacity for future upward extension as this would require unnecessarily costly foundations and structural wall designs.

Q 4. What precautionary measures are in place to prevent a domino effect collapse, which I sincerely hope will never happen?

A. All our buildings are designed on the basis of advice for our specialist structural engineering consultants and have to comply with all current building control requirements including loading, wind-bracing etc. in anticipation of any reasonably foreseeable operating conditions or circumstances.

The Derby City Council (Castleward) Compulsory Purchase Order 2020

Response to written question posed to Public Inquiry 27th January 2021 by Ms Sile Tang, resident at 30 Park Street, Derby

Q. *In the presentation of Mr. Michael Gillie, Jonathan Pheasant and John Green, they all mentioned the goal of Castleward regeneration was to provide high-quality affordable homes to meet demands in Derby. Have they collected evidences from existing Castleward residences to evaluate if Compendium had delivered good quality of properties meeting their needs?*

I have been living in current property since 2016. There are poor finishing issues which have been challenging my experience here as well as residences in Castleward whatsapp group. In the first two years covered by the Compendium warranty, issues like:

- *water leakages via the ceiling from upstairs bathroom to ground floor,*
- *thin wall (hear everything at neighbours'),*
- *joint between walls of mine and my neighbour forgotten to be glued,*
- *loose paving stones in garden etc. have been reported but not completely solved.*

After the warranty expires, fire alarm, water tap, toilet and plastering are broken and we paid for it. Would you define this as good quality home?

A. We have investigated the defects history for 30 Park Street, the property in question and can confirm that a number of defects were reported by the property owner in the period from June 2016 to June 2018. The vast majority were minor in nature and all were remedied to the apparent satisfaction of the owner. As Ms Tang noted, the defects warranty period expires after two years after which homeowners are able to make claims against the longer term warranty provided by the National House Building Council for any significant defects. We are not aware that any such claim has been made. As described in my evidence, we have had an office on site since we started construction and, pandemic-permitting, have been accessible to deal with complaints about construction standards. We do subscribe to the NHBC's satisfaction survey service and our constructor, Lovell, has a higher than 90% 'net promoter score' on the basis of feedback. However, we are not complacent about our build standards and continue to seek improvement, and are confident that we have built and will continue to do so to high standard in Castleward in support of our and our partners' aim to provide high quality new homes in a popular new neighbourhood.

Dave Bullock

Managing Director – Compendium Living

29th January 2021