

**BIRMINGHAM CITY COUNCIL
PUBLIC REPORT**

Report to: CABINET
Report of: Assistant Director Planning
Date of Decision: 24 May 2018
SUBJECT: PHOENIX BUSINESS PARK, BRICKFIELD ROAD,
TYSELEY – PROPOSED COMPULSORY PURCHASE
ORDER
Key Decision: Yes **Relevant Forward Plan Ref:** 003698/2017
If not in the Forward Plan: Chief Executive approved
(please "X" box) O&S Chair approved
Relevant Cabinet Member: Councillor Ian Ward, Leader
Relevant O&S Chair: Councillor Zafar Iqbal, Economy, Skills and Transport
Wards affected: South Yardley

1. Purpose of report:

- 1.1 To seek approval for the making of a compulsory purchase order (CPO) on behalf of Euro Property Investments Limited (part of the Euro Packaging group) to enable them to acquire the long leasehold interest in land at Phoenix Business Park on Brickfield Road in order to consolidate and expand their business operations.

2. Decision(s) recommended:

That Cabinet:

- 2.1 Authorises, subject to (i) the completion of the agreement at paragraph 2.2 below and (ii) the grant of planning permission for the proposed development, the making of a Compulsory Purchase Order under Section 226(1)(a) of the Town and Country Planning Act 1990, in respect of the area identified and edged black on the plan at Appendix 1 (the 'Order Land'), including where necessary, acquisition of new rights under Section 13 of the Local Government (Miscellaneous Provisions) Act 1976, to be entitled The Birmingham City Council (Brickfield Road Tyseley) Compulsory Purchase Order (the 'CPO') in order to facilitate an employment development.
- 2.2 Authorises the City Solicitor to complete an Indemnity Agreement under which all costs, expenses and compensation arising from the CPO are met by Euro Property Investments Limited.
- 2.3 Authorises the City Solicitor to take all necessary steps, including the execution of documents as required, to secure the making, confirmation and implementation of the CPO, as well as the publication and service of all necessary notices, including High Court Enforcement Officer Notices.
- 2.4 Authorises the Assistant Director Property to voluntarily negotiate for, and acquire, all interests in land required in advance of, and alongside, making the CPO.
- 2.5 Authorises the Assistant Director Property to negotiate and agree the terms for a new lease with Euro Property Investments Limited in order to facilitate their development proposals.
- 2.6 Instructs the City Solicitor to confirm the CPO, if granted power to do so by the Secretary of State, and
- 2.7 Instructs the City Solicitor to negotiate, execute and complete all necessary documents to give effect to the above recommendations.

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3. Consultation

3.1 Internal

- 3.1.1 The members for the South Yardley Ward; Councillors Nawaz Ali, Zaker Choudhry and Zafar Iqbal; have been consulted on the report and either have no issues with the report or support the proposals put forward by Euro Packaging. The comments made by the Ward Councillors are detailed in Appendix 2.
- 3.1.2 Officers in Birmingham Property Services, City Finance and Legal Services have been involved in the preparation of this report.

3.2 External

- 3.2.1 The owners of the long leasehold of Phoenix Business Park have been informed of the proposals and have confirmed that they have been in discussions with Euro Packaging but have not reached agreement. They object to the City Council's proposed use of its compulsory purchase powers (see para. 5.5).

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

- 4.1.1 The proposed expansion of Euro Packaging contributes towards the City Council's Plan and Budget 2018+ and the aim to be a city of growth in every respect. In particular the proposals will contribute to the key priority of Jobs and Skills as well as the growth aspirations of both the City Council and the West Midlands Combined Authority.
- 4.1.2 The proposals accord with the Birmingham Development Plan 2031(BDP) and 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). The BDP also sets out in the Implementation section the City Council's willingness to use its compulsory purchase powers to assemble sites as one of the mechanisms to ensure delivery of the policies and proposals within the plan. Further details on the planning and policy context are set out in Appendix 4.

4.2 Financial Implications

(Will decisions be carried out within existing finance and Resources?)

- 4.2.1 An Indemnity Agreement between the City Council and the developer (Euro Property Investments Limited on behalf of Euro Packaging Limited) with appropriate additional security as required will be prepared to ensure that all of the costs associated with the CPO, including progressing the order and all the costs of site acquisition, all compensation and delivery of the redevelopment, will be borne by the developer.

4.2.2 In the meantime (prior to Cabinet approval and the completion of the Indemnity Agreement at 4.2.1 above), solicitors acting on behalf of Euro Property Investments Limited have provided an undertaking to pay on an indemnity basis up to a maximum of £10,000 (excluding VAT) all costs and disbursements of the City Council in order to pursue the acquisition of the site, whether or not the City Council proceeds to make a CPO, upon receipt of costs schedules from the City Council.

4.2.3 As the freehold of the site is owned by the City Council, Euro Packaging will need to renegotiate the terms of the existing leasehold with the City Council at the appropriate time as matters progress.

4.3 Legal Implications

4.3.1 The relevant legal powers for the proposed CPO are contained in Section 226 (1) (a) of the Town and Country Planning Act 1990 and in respect of new rights, Section 13 of the Local Government (Miscellaneous Provisions) Act 1976. Section 226 (1) (a) enables acquiring authorities to exercise their compulsory acquisition powers if they consider 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.

4.3.2 Appendix 3 provides further justification for the use of compulsory purchase powers.

4.3.3 In considering whether to make a CPO the rights of property owners under the Human Rights Act 1998, particularly Article 8, Article 14 and Article 1 of the first Protocol have been taken into account (see Appendix 5). It is considered that any future compulsory acquisition would not constitute an unlawful interference with any of these rights.

4.4 Public Sector Equality Duty (see separate guidance note)

4.4.1 From the available information it is considered that the CPO process will not give rise to any illegal discrimination and will support equality of opportunity by optimising the site's economic growth potential. The proposed redevelopment of the site is considered to provide potential benefits that will include opportunities that can be shared by potential job-seekers.

4.4.2 The CPO, by bringing a step closer the commencement of the development, has the potential to impact on the business owners and employees who currently operate on the site. However the proposed approach of supporting businesses to relocate is expected to minimise this impact. It is considered that this approach should enable many of the businesses to successfully relocate. The timely exercise of CPO powers and measures to inform business owners about the CPO process, will contribute to keeping them informed about this stage prior to commencement of the development. As the CPO progresses it's impact will continue to be reviewed.

5. Relevant background/chronology of key events:

5.1 Euro Packaging supply bespoke packaging products to a range of customers including many of the world's leading retailers. Their global HQ is located at 20 Brickfield Road in Tyseley and incorporates manufacturing, distribution, research and development, and offices. At the current time 480 people are employed at the Tyseley HQ making Euro Packaging a significant employer in East Birmingham.

- 5.2 Due to the success of the company and the need to diversify into new business areas Euro Packaging have a pressing need to expand at their Tyseley site. The expansion would incorporate a new business line and would create up to 300 new jobs bringing Euro Packaging's workforce at Tyseley up to 780. Euro Packaging has estimated that the new investment will be between £14 – 15 m. However the options to expand within their current footprint are very limited due to the constraints of the existing site and the company has therefore approached the owners of the adjacent Phoenix Business Park regarding the acquisition of their site to facilitate this expansion. The only other option would be to consider relocation of the business outside of the city which they state is "a measure that we do not want to contemplate (although ultimately we may be forced to do so)".
- 5.3 Phoenix Business Park is also located on Brickfield Road in Tyseley and measures approximately 1.5 ha (shown on Appendix 1). The site has been sub-divided into 16 smaller plots and currently incorporates a number of occupiers and a range of uses including but not limited to the storage of vehicles; the storage of building materials; the storage of scaffolding and waste management. The site was previously granted temporary planning approval in 2007, for a period of three years for the sub-division of the site into 16 plots and a range of storage uses on the site. This approval (2006/00735/PA) subsequently lapsed in 2010 although the uses have continued on site. Over time three planning applications have been submitted since to seek to regularise this position, the most recent of which, planning application 2016/10590/PA for change of use and sub-division of the site into 16 plots to be used as open storage and car parking was refused on the 20 July 2017. At the current time, therefore, there is no current planning approval for the uses on site.
- 5.4 The freehold of the site is owned by the City Council but is let on a long leasehold of 125 years from the 10th December 1998. In 2002 it is understood that the lease was assigned to the current main occupier of the site.
- 5.5 The Council is advised that Euro Packaging has held discussions with the lessee over the course of the last 18 months regarding the acquisition of the long leasehold interest. These discussions included a formal offer for the site in November 2016. Euro Packaging understood at that time that the offer had been received favourably and heads of terms were subsequently forwarded to the lessee's solicitors. Matters have however since stalled. As a result on the March 13th 2017, Euro Property Investments Limited (part of the Euro Packaging group) wrote requesting that the City Council use its compulsory purchase power to acquire the site and facilitate the expansion of the business.
- 5.6 As set out above, the proposals will result in approximately 300 new jobs in an area of high unemployment (levels of unemployment within the East Birmingham Corridor are consistently above both the national and Birmingham average). Euro Packaging's proposals would incorporate a new building on the site as well as its appropriate remediation (the site is a landfill site (the former Bayliss Brickworks)). Euro Packaging have also progressed a planning application for their proposals in support of the City Council's use of its compulsory purchase powers which was registered on the 26 February 2018. The application (2018/01359/PA) is an outline application with some matters reserved (save for access, scale and appearance) for the erection of a building for general industrial / warehouse and distribution purposes (Use Class B2 and B8).
- 5.7 The proposals are consistent with both national and local planning policy and the site is identified as Core Employment Land within the Birmingham Development Plan 2017. The proposals would also bring an under-utilised site (which currently does not have planning permission) into productive use (see Appendix 3).

5.8 In conclusion it is considered that the proposals would bring about the development, redevelopment and improvement of the site and as set out above would bring direct economic, social and environmental benefits for the area and the community. This will promote the economic, social and environmental well-being of the area.

6. Evaluation of alternative option(s):

6.1 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 to accommodate the extent of operations and investment in the business proposed. The company has stated that if they cannot expand at Tyseley than they will look outside Birmingham and therefore the proposed investment and jobs will be lost to the city.

6.2 A further alternative would be for the City Council not to use its compulsory purchase powers and for Euro Packaging to continue negotiations for the acquisition of the site. There is no certainty that these negotiations would be successful, either in a reasonable timescale or at all, and there is therefore a risk that the company may contemplate relocation elsewhere. Euro Packaging will continue to progress negotiations for the voluntary acquisition of the site at the same time as the compulsory purchase process.

7. Reasons for Decision(s):

7.1 The recommended use of the City Council’s compulsory purchase powers will help facilitate the expansion of Euro Packaging Limited’s business and the creation of approximately 300 new jobs in an area of high unemployment.

7.2 The proposals will also bring an under-utilised site into more productive use as well as enhance the local environment.

Signatures	<u>Date</u>
Cllr Ian Ward Leader of the City Council
Ian MacLeod Assistant Director Planning; Economy

List of Background Documents used to compile this Report:

1. Letter from Euro Packaging requesting that the City Council use its compulsory purchase powers to facilitate the expansion of the business; 13th March 2017
2. Letter from Coley & Tilley Solicitors, solicitors acting for Euro Property Investments Limited, providing an undertaking to cover the City Council’s costs in progressing a compulsory purchase order up until completion of an indemnity agreement.
3. Planning application 2018/01359/PA, Phoenix Park, Brickfield Road.
4. Birmingham Development Plan (BDP) 2031, adopted by the City Council on 10th January 2017

List of Appendices accompanying this Report (if any):

1. Plan of land and rights to be acquired at Phoenix Business Park.

2. Comments of proposals received from South Yardley Ward Members.
3. Justifications for Compulsory Purchase Order
4. Planning and Policy Context
5. Compulsory Purchase – The Human Rights Act 1998 and the European Convention of Human Rights.
6. Equality Analysis

PROTOCOL PUBLIC SECTOR EQUALITY DUTY

- 1 The public sector equality duty drives the need for equality assessments (Initial and Full). An initial assessment should, be prepared from the outset based upon available knowledge and information.
- 2 If there is no adverse impact then that fact should be stated within the Report at section 4.4 and the initial assessment document appended to the Report duly signed and dated. A summary of the statutory duty is annexed to this Protocol and should be referred to in the standard section (4.4) of executive reports for decision and then attached in an appendix; the term 'adverse impact' refers to any decision-making by the Council which can be judged as likely to be contrary in whole or in part to the equality duty.
- 3 A full assessment should be prepared where necessary and consultation should then take place.
- 4 Consultation should address any possible adverse impact upon service users, providers and those within the scope of the report; questions need to assist to identify adverse impact which might be contrary to the equality duty and engage all such persons in a dialogue which might identify ways in which any adverse impact might be avoided or, if avoidance is not possible, reduced.
- 5 Responses to the consultation should be analysed in order to identify:
 - (a) whether there is adverse impact upon persons within the protected categories
 - (b) what is the nature of this adverse impact
 - (c) whether the adverse impact can be avoided and at what cost – and if not –
 - (d) what mitigating actions can be taken and at what cost
- 6 The impact assessment carried out at the outset will need to be amended to have due regard to the matters in (4) above.
- 7 Where there is adverse impact the final Report should contain:
 - a summary of the adverse impact and any possible mitigating actions (in section 4.4 or an appendix if necessary)
 - the full equality impact assessment (as an appendix)
 - the equality duty – see page 9 (as an appendix).

Equality Act 2010

The Executive must have due regard to the public sector equality duty when considering Council reports for decision.

The public sector equality duty is as follows:

- 1 The Council must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 2 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 3 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- 4 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - (a) tackle prejudice, and
 - (b) promote understanding.
- 5 The relevant protected characteristics are:
 - (a) Marriage & civil partnership
 - (b) Age
 - (c) Disability
 - (d) Gender reassignment
 - (e) Pregnancy and maternity
 - (f) Race
 - (g) Religion or belief
 - (h) Sex
 - (i) Sexual orientation