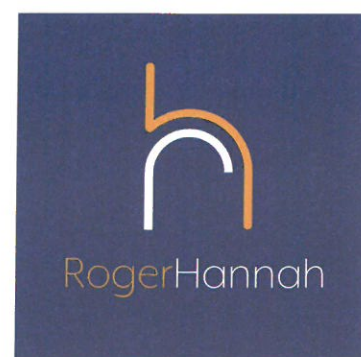


31 OCT 2019



Secretary of State for Transport
National Transport Casework Team
Department of Transport
Tyneside House
Skinnerburn Road
Newcastle upon Tyne
NE4 7AR

Our Ref: SJL.gle.CPO154

Your Ref:

30 October 2019

Dear Sirs

Re: The Council of the City of Stoke on Trent Cobridge Junction Improvement Compulsory Purchase Order 2019

Owner: Trustees of Mr A Stanley (Deceased) & Sherwin Rivers Limited

Property: Land and Premises, the Remer Printing Works, 295 Waterloo Road, Cobridge, Stoke on Trent, ST6 3HR

We act on behalf of the Trustees of Mr Alan Stanley (Deceased) and Sherwin Rivers Limited in respect to the aforementioned Compulsory Purchase Order (the CPO) being promoted by the City of Stoke on Trent (the Council) under Section 239 of the Highways Act 1980 and Section 226 of the Town and Country Planning Act 1990.

For clarification the subject property is held by the Trustees of Mr Alan Stanley (Deceased) being Mr Steven Stanley and his sister, Mrs Julie Griffiths who inherited the property in September 2015, albeit probate was never completed following the death of their father, Alan Stanley. The property is and has always been occupied by Sherwin Rivers Limited, a company incorporated in 1969 and solely owned by Mr Steven Stanley and his wife Mrs Sharon Stanley. At no point has the property been occupied by the Remer Printing Works.

Whilst our clients are generally supportive of the needs and requirement of the new junction improvements, they are extremely concerned about the fact the Council are pursuing the CPO and the impact this will have on their business. Accordingly, we can confirm that our clients wish to **oppose** The Council of the City of Stoke on Trent Cobridge Junction Improvement Compulsory Purchase Order 2019 (The Order). We would be grateful if you would accept this letter as an objection on their behalf.

In preparing our Objection we have been mindful of the Statement of Reasons prepared by the Council as their justification for the making of the proposed Order. In summary, the grounds of objection are as follows:

I. Negotiations

a) Acquisition of Subject Property & Relocation Opportunities

Section II of the Statement of Reasons states that the Council has been in dialogue with all parties with a view to acquiring those interests by private treaty and that these discussions will continue throughout the compulsory purchase process.

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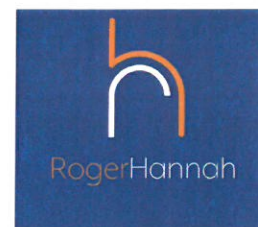
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However, whilst the negotiations referred to have been ongoing since the Council's initial approach in late 2015 to date, there has been little evidence that the Council have the ability and commitment to complete negotiations. Ultimately, we believe the Council is relying upon the CPO to secure the premises.

As background the Council initially approach our client in late 2015, to advise of the proposed scheme and confirm that it was prepared to work with our client to facilitate a relocation without the resolution to use compulsory purchase powers, but the Council was prepared to treat with our client on the assumption that a CPO had been confirmed. However, the Council has not performed on a number of occasions which has resulted in the client incurring significant losses and costs through no fault of his own.

In March 2016, our client had a further meeting with the Council and a dialogue commenced to explore a private treaty acquisition of the subject property and relocation. Following this meeting our client instigated a site search and commissioned Roger Hannah to provide valuation and compensation advice. Following the provision of our advice, we were subsequently instructed to open negotiations with the Council officers responsible for delivering the project.

Our client's property comprises a part single/part two storey building which extends to 371.6 sq m (4,000 sq ft) and has the benefit of a yard to the rear which provides loading and parking facilities. Furthermore, the property has prominence to the A50 Waterloo Road and is close to the A53 and less than 0.5 miles from Hanley which is the principal commercial and retail centre of Stoke on Trent. As a result, the premises are conveniently located to Stoke's main commercial area as well as the wider Stoke market.

In terms of supply, there is a dearth of comparable sized properties, thus properties of a similar size and nature very rarely come to the market. As a result and as evidenced by the nature of the properties our client has considered, the only comparable properties available are modern units which have been developed in areas such as Fenton and Longton which are located on or within proximity of arterial routes which serve the major commercial centres within the Stoke on Trent Conurbation.

Since 2016 our client has sought to identify a number of suitable relocation options, but to date the Council have been reluctant to progress negotiations in a manner which would facilitate a timely and cost-effective relocation. We have set out a detailed timeline for these negotiations in the Appendix attached to this letter. However, as a summary of each property identified below:

Property	Date Identified	Comments
Unit 4 Dewsbury Road Fenton Industrial Estate	June 2016, terms agreed July 2016	<ul style="list-style-type: none"> • Terms agreed to purchase July 2016 • Council agreed value of subject in August 2016 and principle of deal in September 2016 • September 2016 a second contract issued to a third party • Council only appointed solicitor on 16th September • On 27th September our client's solicitor was informed that a sale had been agreed with another party and this sale completed on 7th October 2016
Unit 1 Phoenix Way Longton Industrial Estate	October 2016	<ul style="list-style-type: none"> • A new build property located 5 miles South of the subject property • Initial proposal to purchase and suggested structure of a deal put to the Council in October 2016

	<ul style="list-style-type: none"> • More detailed proposal to structure of transaction made November 2016 • Our client sought to mitigate losses via structure of deal to avoid claim for non-recoverable VAT. • Our client sought to fund the price differential as part of the deal • The Council did not pursue any negotiations or explore this option and the property eventually went under offer January 2017
<p>Unit 5 Tunstall Trade Park, Tunstall April 2017</p>	<ul style="list-style-type: none"> • A new build property located 2 miles from the subject property • Initial proposal to purchase and suggested structure of a deal put to the Council in April 2017 • Our client sought to mitigate losses via structure of deal to avoid claim for non-recoverable VAT • Our client sought to fund the price differential as part of the deal • The Council did not seek to explore option and there was still no decision by September 2017 • The opportunity was withdrawn, and the property went under offer
<p>Unit 3 Tunstall Trade Park, Tunstall June 2018</p>	<ul style="list-style-type: none"> • A new build property located within a later phase of development • Initial proposal to purchase and suggested structure of a deal put to the Council in June 2018 • Our client sought to mitigate losses via structure of deal to avoid claim for non-recoverable VAT • Our client sought to fund the price differential as part of the deal • Negotiations took 3 months to agree revised Market Value agreed (completed September 2018) • Agreement reached September 2018 with Council to reimburse previous abortive costs which will go towards purchase • Terms agreed and solicitors instructed in November 2018 to deal with the sale of the subject and purchase of Unit 3 • Agreement with Council for the appointment of a Project Manager to oversee fit out and relocation • Council issue draft heads of terms for purchase of subject in January 2019, 2 months AFTER the purchase of Unit 3 was agreed • Discussions ongoing in February 2019 in respect to appointment of Project Manager • April 2019 structure of deal and other issues still not agreed with limited commitment from Council to progress negotiations • Developer seeks 5% non-refundable deposit and 8 weeks to complete otherwise would re-market the property • May 2019 Council agree to appoint of client's own Project Manager at a meeting but fail to confirm this in writing as agreed • June 2019 Council advise that it look to acquire Unit 3 rather than our client • September 2019 Council receives internal approval to progress a purchase, 10 months after our client had negotiated the original sale. The developer withdraws £20,000 cashback which had been agreed with our client • October 2019, still seeking to iron out appointment of Project Manager and principles of a relocation

Whilst the Council are currently progressing the acquisition of purchase Unit 3 with a view to selling onto our client, there are and still remain a number of issues which the Council have failed to confirm or agree with our client which creates further uncertainty. Furthermore, the specification of the fit out and appointment of a Project Manager has yet to be agreed whilst we are waiting for clarification from as to the timescale for any possible relocation. This could create potential disruption to the business which puts any relocation as well as the delivery of the scheme at risk.

In respect to Unit 5 Tunstall Trade Park, there was very little dialogue with the Council officers in respect to this option, which, as advised above, ultimately resulted in the Council stating 5 months later that no decision had been made. The Council officer we were liaising with advised on the 22nd September 2017 that he had been instructed not to respond to us as there was nothing to say. In addition, our client was informed by the Engineering and Commissioning Manager responsible for the scheme, on the same day that *“as a project was under review as part of the Council’s wider review of its Capital Programme. Whilst under review no formal decision had been made not to continue the scheme and that such a decision could take several months. No further work will be undertaken on the scheme until the decision has been made”*. Consequently, all discussions regarding any relocation were left in limbo until the Council made another approach in June 2018 to re-institute discussions.

b) Abortive Costs

Following the Council’s decision to withdraw from discussions in September 2017, our client started to pursue a claim from the Council for the costs which had been incurred as a result of the abortive acquisition of Unit 4 Dewsbury Road.

This claim is summarized as follows:

- Legal and surveyors’ fees related to negotiations and the aborted purchase
- Loss of profit in the business - as a result of our client negotiating acquisition of property and dealing with the project and issues raised
- Loss in the value of the SIPP – incurred as a direct result of trying to mitigate the loss by enabling the recovery of VAT. Funds were withdrawn from the SIPP to acquire Unit 4 following Council’s support to acquire the property for relocation
- Losses relating to a party wall issue – incurred following demolition of adjoining building which had been acquired by the Council. Losses include damage to machinery and loss of contract

The foregoing shows that the Council have entered into “token” negotiations and at one point withdrew from all negotiations whilst the project was under review. Our client has entered into discussions in good faith in order to structure matters which would assist relocation and deliver ensure the Council could deliver the project within a reasonable timescale with the funding it had secured. In light of the experience to date and the lack of action we have major concerns over the Council’s ability and desire to enter into constructive dialogue which would result in our client obtained fair and reasonable compensation and to facilitate a relocation without the detrimental impact on the business.

To date our client has incurred costs which have yet to be reimbursed and would be fully claimable under a CPO as well as a considerable amount of time on dealing with the matter to date. Over this period our client has not been able to invest in the business and buy new machinery which was required as money was tied up in the potential relocations. However as a necessity, our client has now had to put capital into the business to purchase these machines thus impacting on the funding gap between the sale price of the subject property and the purchase price of Unit 3, which has been compounded by the Council seeking to step in and purchase the property, thus our client losing the £20,000 cash back which would have gone some way to reducing the difference.

Overall meetings have been held with a variety of officers at the Council including the Assistant Director of Investment, Planning and Regeneration with no progress. Ultimately, we believe that the Council are relying upon the CPO in order to secure the premises and have only really engaged in “token” negotiations with our client. This can be seen with the email from Council’s Engineering and Commissioning Manager of 1st April 2019 stating that “the sooner we can get going with this CPO the better – regret not starting much sooner!”

2. Finance of The Scheme

In Para 4.6 and Section 9 of the Statement of Reasons, the cost of the Scheme is £5.09million which will be met from a combination of NPIF grant of £2.09million from Central Government which makes up just over 41% and £3.0million from the Council’s own capital investment programme.

We understand that funding under the NPIF was to be allocated to successful bidders over two financial years – 2018/19, 2019/20. In the DfT’s own guidance notes there is no facility for the Department’s funding to slip beyond the end of March 2020 and the Department will not be liable for any cost overruns or delivery slippage. The Council have advised over the last 12 months that work on the scheme needs to be completed by March 2020. The fact that the grant is to be utilised by this deadline with no facility to move this beyond March 2020 puts the scheme under considerable financial risk with the Council failing to demonstrate that it has additional funding in place in the event of a delay or overrun of the project which would result in the loss of the NPIF grant. This timescale is clearly at risk particularly as no meaningful work has commenced and that the Council has yet to secure any of the remaining land by negotiation, thus having to resort to the CPO. It should however be noted that the Council have advised that work on the scheme should commence in September 2019 with a 12 month construction period. Clearly with the NPIF grant only available until March 2020, this adds further risk to the project as a whole.

Accordingly, the risk that the Council could lose circa 41% of the required funding within the next 5 months creates a significant element of risk and uncertainty as to whether the Scheme as a whole can be delivered.

3. Benefit Cost Ratio

Para 4.5 of the Statement of Reasons states the Council submitted an economic appraisal to the Department of Transport (DfT) as part of a bid to fund the scheme from the DfT’s National Productivity Investment Fund (NPIF). In preparing the assessment, a traffic assessment model was built, and the results were used to estimate monetary benefits from the Scheme as compared to scheme costs. The Statement of Reasons states that the present value of benefits over a 60-year period was valued at £10.1million and the scheme has a Benefit to Cost ratio of 3.12.

There is no breakdown of the cost benefits for each element of the Scheme.

No narrative has been provided as to how the BCR indicated has been arrived at. It should be noted that simple Benefit Cost Ratios are insensitive to the magnitude of net benefits and therefore favour projects with small costs and benefits over those with higher net benefits. Accordingly, further information should be made available as to whether the BCR has been determined using an incremental BCR or net present value which would eliminate such issues.

A cost benefit analysis requires that all costs and benefits be identified and appropriately quantified. No further information is provided to indicate what assumptions have been made in this appraisal. Accordingly, certain costs and benefits may have been omitted creating uncertainty and inaccurate analysis. Another disadvantage of the cost benefit analysis is the amount of subjectivity involved when identifying, quantifying, and estimating different costs and benefits.

We would request that a copy of the appraisal is provided by the Acquiring Authority.

4. Reduce Congestion

Relieving congestion by increasing highway capacity has been referred to numerous times throughout the Statement of Reasons. We are concerned that the proposed Scheme as it currently stands will fail to tackle these problems in the long term and is simply a short-term measure. This in our opinion should form part of a comprehensive package of measures aimed at reducing vehicle usage. Without reducing vehicle usage, there is a risk that the scheme will merely encourage more road users with any increased capacity quickly being absorbed by increased vehicle movements. This is a particularly important consideration given that a key aim of the scheme is to encourage development in the wider area which will inevitably add to the overall number of vehicle movements.

Many existing and future vehicle movements are likely to comprise private cars used for daily commuting, occupied by one person. We would suggest that a more productive use of resources would be to re-focus attention on improving public transport provision, making this more appealing and the use of a private car less appealing.

Focusing on traffic reduction will be much more beneficial in tackling congestion and road safety as well as "improving journey time reliability".

5. CPO The Last Resort

It is an established principle that compulsory purchase should be regarded as a method of last resort.

Para 11.1 of the Statement of Reasons the Council states that it has considered Para 16 of the Guidance which states that:

"undertaking negotiations in parallel with preparing and making a compulsory purchase order can help build a good working relationship with those whose interests are affected by showing that the authority is willing to be open and to treat their concerns with respect. This includes statutory undertakers and similar bodies as well as private individuals and businesses. Such negotiations can then help to save time at the formal objection stage by minimising the fear that can arise from misunderstandings."

Talking to landowners will also assist the acquiring authority to understand more about the land that it seeks to acquire and any physical or legal impediments to development that may exist. It may also help in identifying what measures can be taken to mitigate the effects of the scheme on landowners and neighbours, thereby reducing the cost of a scheme. Acquiring Authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where landownership is unknown or in question”.

This however has not been the case in respect to our clients’ land. Our client was initially approached in 2015 when the Council first tabled the prospective scheme. Since then and as commented above, there have been discussions and negotiations to progress an acquisition of the subject property and managed relocation of the business. However, these discussions have ultimately failed due to the Council’s own actions resulting in several potential relocation properties being lost and our client incurring costs as a consequence of the Council which have not been reimbursed.

Ultimately, we believe that the Council has always sought to rely upon the CPO in order to secure the premises rather than progressing negotiations, which can be evidenced by the email from the email sent by the Council’s Engineering and Commissioning Manager of 1st April 2019 stating that “*the sooner we can get going with this CPO the better – regret not starting much sooner!*”.

Consequently, the CPO is an infringement of our client’s human rights, again we discuss further in this objection letter.

6. Human Rights

It is our considered opinion that the proposed Order is also an infringement of our client’s human rights under the Human Rights Act 1998. The Secretary of State must consider whether, on balance, the case for compulsory purchase justifies interfering with the human rights of the owners and occupiers of the Order land.

Under Article 1 of the First Protocol, no one shall be deprived of their possessions except in the public interest.

The Council has failed in its duty to fully reimburse our client’s losses incurred from the abortive acquisition of Unit 4 Dewsbury Road, or for damages which arose from the unauthorized works to the Party Wall. Furthermore, the Council has failed to discharge our client’s professional fees incurred in dealing with the project in a timely manner, which has left our client with significant costs which have had to be carried for a number of years through no fault of his own. This is unlawful and a breach of our client’s human rights.

Furthermore, the delays in progressing the acquisition of a relocation property has meant that our client has not been able to invest in the business which prior to the Council announcing the scheme had grown year on year. The failure to invest capital in new machinery has had a significant impact on the business, which has been at a standstill for the last 4 years.



The Council advises at Paragraph 10.8 that extensive consultation has taken place in relation to the proposed scheme, with the opportunities for affected parties to make representations. We have attended three meetings in April 2016, June 2018 and March 2019 with the Council's officers where we have been given design updates. In addition, we would contend that no opportunity has been given to our client to make representations as to the design. The Council's officers charged with delivering the scheme have always believed the whole of our client's property would be required to deliver the scheme. Whilst the Council did table a proposal, which saw the frontage of the subject property taken back to facilitate the carriageways and a 2.5m shared cycle way and footpath. This proposal was not practical. The main workshop in the retained workshop has been configured to fit certain sized printing presses and digital printer which could no longer be housed in the building. Furthermore, whilst the works are ongoing this would have rendered the upper floor redundant as access would have been lost. The loss of the floor area under this proposal would have reduced the total floor area of the building by 40%.

For the reasons set out above, we do not consider that the Scheme as proposed is fully in the public interest and many of the objectives given as justification for the confirmation of the Order can be met without resorting to a CPO. As such, there is inadequate justification for interfering with the human rights of the owners and occupiers affected by this proposed Scheme. The balance has not been struck between the individual rights and the wider public interest.

In conclusion, there is "no compelling case in the public's interest" as required by national policy to acquire the Objector's land.

The above represents our client's objection to the Compulsory Purchase Order. We reserve the right to add to or expand our client's case upon site of further evidence and information being made available by the Acquiring Authority.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'S Lashmar'.

Stephen Lashmar BA (Hons) MRICS
Director
For and on behalf of
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Appendix I – Timeline of Negotiations

I. Unit 4 Dewsbury Road, Fenton Industrial Estate, Fenton

- In March 2016, Council officers met our client. At this meeting the Council officers confirmed that they would be willing to enter into negotiations with the client to secure a private treaty acquisition under the auspice of a deemed Compulsory Purchase Order.
- Following this meeting, Roger Hannah was instructed to undertake a valuation of the subject property advise on compensation under a deemed CPO and ultimately instigate negotiations with the Council.
- Our client instigated a property search and identified Unit 4 Dewsbury Road on Fenton Industrial Estate (Unit 4) as a suitable relocation option. The unit was smaller than the subject, but a scheme was designed to facilitate the development of a mezzanine floor to provide additional floor space.
- Negotiations were progressed over the course of June 2016 and terms were agreed in early July 2016.
- 27th June 2016, we submitted our valuation and supporting evidence to the Council. The Council's surveyor advised of his valuation on 8th July 2016.
- On 1st August 2016 the Vendor of Unit 4 contacted our client to seeking to progress the sale contract. However, the delay in reaching an agreement with the Council on the value of the subject and their lack of commitment to progress the acquisition led the Vendor of Unit 4 to re-market the property.
- 17th August 2016 we sought a commitment from the Council to progress an acquisition. Eventually the value of the subject property was agreed on 18th August 2016, albeit other relocation costs, cost of a mezzanine and other heads of claim under the Compensation Code were not agreed.
- On 5th September 2016 the Vendor of Unit 4 advised of interest from a second party and that he would be looking at a contract race, which was relayed back to the Council.
- Eventually on 8th September 2016 the Council agreed to relocation costs and other heads of claim.
- On 9th September 2016, our client his solicitor in funds in order to progress the sale to a completion.
- The Council did not instruct their legal team to deal with the purchase until the 16th September.
- On 26th September the Council issued a claim form as part of its reporting process which was completed and returned.
- Our client's solicitor was advised on 27th September 2016, by the Vendor's legal team that a sale had been agreed with another party, despite our client seeking to progress matters including preparing documentation for Building Regs.

- Ultimately as a result of the delay on the part of the Council in progressing the acquisition of the subject property the Vendor of Unit 4 completed a sale to a third party on 7th October 2016.
- This left our client with abortive legal fees, and other costs which were incurred because of pursuing the acquisition of Unit 4.

2. Unit 1, Phoenix Way, Longton Industrial Estate

- Following the abortive acquisition of Unit 4, our client continued to search for an alternative property, and shortly afterwards identified Unit 1 on Phoenix Way as a possible option. Unlike Unit 4, Phoenix Way was a new build property developed by a national developer, where the purchase price was considerably greater than the agreed value of the subject. Furthermore, the developer had elected to charge VAT on the property thus as our client (as a property owner) was not VAT registered, this would result in an additional claim for non-recoverable VAT, which under a deemed CPO was recoverable as a head of claim.
- The unit was larger than Unit 4 Dewsbury Road and similar in size to the subject, so a mezzanine floor was not required, however the difference in value and the VAT created a significant funding gap.
- A proposal was made to the Council on 29th October 2016 suggesting that in the absence of any other suitable property, the potential acquisition of Unit 1 Phoenix Way be explored, which would include withdrawing the claim for some of the costs incurred in the abortive acquisition of Unit 4 Dewsbury Road and the requirement to complete works to a party wall which the Council had started to demolish.
- A formal proposal was submitted to the Council on 10th November 2016, setting out the principle terms of a transaction for Unit 1 Phoenix Way and the sale of the subject property to the Council. Receipt of this was acknowledged on the same day. However, despite this request, there was no further response from the Council and ultimately the property was sold.

3. Abortive Costs Flowing from the Acquisition of Unit 4 Dewsbury Road

- As advised above, our client incurred significant costs as a result of the aborted acquisition of Unit 4 Dewsbury Road. These costs not just related to legal fees and surveyors' fees incurred but also loss of profit and loss in the value of my client's SIPP.
- The acquisition of Unit 4 was to be undertaken by the SIPP so as to mitigate a claim for VAT. Under the ownership of the subject property, VAT could not be recovered. Accordingly our client sort to acquire Unit 4 and Unit 1 Phoenix Way through his SIPP so VAT could be recovered.
- In order to facilitate the purchase of Unit 4, Mr Stanley moved funds out of his SIPP, in preparation for completion. This ultimately reduced the investment return that would have been achieved had the money remained invested in the SIPP. Consequently, to the investment return after charges were 13.61%, thus the SIPP would have grown by £29,397. In addition to the loss in the value of the SIPP, there were the SIPP's administration costs.
- Finally, the abortive costs also included Mr Stanley's time incurred in dealing with the matter as well as a loss in profits for Sherwin Rivers Limited which were incurred during the 3 months from June 2016, whilst our client sought to progress the

acquisition of Unit 4. In establishing this loss, our client's accountant compared the sales over the course of this period with sales over the same period 12 months prior.

- These losses were a direct consequence of the aborted acquisition of Unit 4 and the failure of the Council to agree the value of the subject property and appropriate costs, and expediate the instruction of their legal team to progress the acquisition of the subject property.
- A claim for abortive costs was submitted to the Council on 27 February 2017 with all supporting invoices and evidence.
- Despite ongoing discussions with the Council regarding these costs, it was not until 5th January 2018 that the Council confirmed that a recommendation for payment of some of these costs, being legal, surveyors' fees and some other incidental costs was to be submitted to the Council Cabinet, although there were concerns over the claim for the loss in the value of the SIPP and Mr Stanley's personal time. Thus further evidence and justifications were presented to substantiate these claims.
- On 22nd March 2018 the Council advised that they were waiting for cost codes to be issued in order to start making payments.
- On 6th April 2018 the Council subsequently advised that all payments were linked to the Cabinet Report which had been submitted in January 2018 and which had not been signed off. However the Council officers were seeking delegated authority to start making early payments to discharge some of the abortive costs.
- On 14th April 2018, the Council's Estates Officer advised that instructions had been issued to the legal department to make the payments.
- On the 1st June 2018 the Council officer advised that the legal department would not sign off costs as there was no CPO, despite previous Committee Reports stating that all negotiations under the scheme would be under the auspice of a deemed CPO.
- It was not until 24th July 2018, some 7 months after the Cabinet Report recommending payment of abortive costs be made and 17 months after the claim for abortive costs was submitted, that the Council approved the Report. This only recommended the payment of legal and surveyors fees, plus several other incidental costs and not the loss in the value of the SIPP or loss in profits which had been incurred.
- On 21st August 2018 and 24th September 2018, the Council officer advised that the Cabinet Report was due to be signed off despite being approved in July.
- Discussions regarding the payment of those costs not accepted continued and on 2nd November 2018 the Council agreed to pay all outstanding abortive costs as part of a deal to facilitate the acquisition of a relocation property at Tunstall Trade Park (see below).
- However, it should be noted that whilst having agreed to pay the outstanding legal and surveyors fees and other incidental costs these were not paid by the Council until January 2019, by which time our client had discharged our professional fees, due to the Council's reluctance to make the agreed payment. Furthermore, to date the payment of the loss in the value of the SIPP and loss of profit remain outstanding.

4. Damages Arising from Work to A Party Wall

- In August 2016 our client entered into a Party Wall Agreement ahead of demolition of 297 Waterloo Road, which had previously been acquired by the Council as part of the land assembly for the scheme.
- During the course of the works, a number of concerns were raised by our client that the agreed schedule of works was not being adhered, resulting in the works being put on hold until a meeting between all parties and their respective surveyors had taken place.
- On 27th October 2016 the parties met to discuss these issues and it was agreed that no further works be undertaken until our client's surveyor had prepared a report which was issued to the Council on 1st November 2016.
- Despite this, on 31st October 2016, contractors attended site without notification and started to remove pipework which ran through the Party Wall. In undertaking this work, rather than using pipe cutting equipment, the contractor used a hammer and chisel to repeatedly hit the protruding pipe until it broke off. The vibrations caused by the repeated hammering caused brick dust and rust debris and metal fillings from the pipe to fall into printing machinery which was running at the time and microwave which were located directly below their side of the wall. This resulted in our client having to cease production until the affected machinery had been repaired by a specialist company.
- Consequently, our client incurred direct repair costs and the loss of a contract with a customer who took their business elsewhere. Overall the loss to our client in repairs, loss of contract and down time whilst the machines were repaired totalled £15,890.
- By attending site, the Council's contractor breached the agreement not to undertake any further work until the surveyor's report was received and by failing to notify our client about attending site, there was no opportunity for our client to cover machinery and protect it from the dust and debris.
- Initially the issue was pursued through the Party Wall Award, this ultimately fell outside the scope of the Award. Subsequently, an insurance claim has been pursued, with the Council continuing to deny liability. An offer to settle the matter has been made, but this only amounts to a 1/3 of the losses incurred.
- Despite repeated requests from our client's insurance broker, the Council's loss adjuster, despite promising to do so, has failed to correspond since May 2019.
- The requirement for these losses to be reimbursed has been brought to the fore recently as discussions with the Council have progressed with another potential relocation option which will be discussed below. Whilst our client has sought reimbursement of these losses, this has been to facilitate the acquisition of a property with the monies to be used bridge a funding gap.

5. Negotiations on Unit 5 Tunstall Trade Park, Tunstall, Stoke on Trent

- On 6th April 2017, at an update meeting with the Council, our client raised an opportunity to relocate to a new building being constructed at Tunstall Trade Park in Tunstall, approximately 2 miles to the North of the subject property.
- The units are of a similar size to the subject and would provide a turnkey option for Sherwin Rivers to relocate. However as with Unit 2 Phoenix Way, the purchase price was significantly in excess of the value of the subject property.
- On 11th April 2017, a proposal was submitted to the Council for the sale of the subject property and the acquisition of Unit 5 Tunstall Trade Park. The acquisition would be funded by Mr Stanley via his SIPP so as to mitigate the loss for non-recoverable VAT. The difference between the value of the subject property and Unit 5 would also be met by the SIPP together with the outstanding abortive costs which had arisen as a result of the aborted acquisition of Unit 4 Dewsbury Road and damages arising from the Party Wall.
- In addition to the Council purchasing the subject, our client would also claim for the fit out of Unit 5 and the relocation of machinery etc as would be payable under the Compensation Code. However, this option was subject to the re-negotiation of the value of the subject property, to reflect market progression. Details of the additional anticipated costs including removal costs and fit out were provided to the Council on 13th July 2017. These costs were acknowledged by the Council on 18th July 2017.
- Nothing was received from the Council until a phone call with the Council officer who confirmed that he had not been given instructions to respond as there was no update. Ultimately the negotiations for Unit 5 were ceased.
- Also on 22nd September 2017, our client was informed by the Engineering and Commissioning Manager responsible for the scheme, that *“as a project was under review as part of the Council’s wider review of its Capital Programme. Whilst under review no formal decision had been made not to continue the scheme and that such a decision could take several months. No further work will be undertaken on the scheme until the decision has been made”*. Consequently, all discussions regarding any relocation were left in limbo until the Council made another approach in June 2018 to re-instigate discussions.

6. Negotiations on Unit 3 Tunstall Trade Park, Tunstall, Stoke on Trent

- On 14th June 2018 our client met with the Council who provided an update on the scheme. At this meeting our client raised the possibility of resurrecting a deal for another unit on Tunstall Trade Park. It was suggested that the property be acquired through a Special Purchase Vehicle, as opposed to our client’s SIPP, so as to mitigate against non-recoverable VAT. Furthermore, the funding gap would have to be bridged in part by agreeing a revised value for the subject as well as payment of the abortive costs and losses previously incurred. The balance of the differential including Stamp Duty Land Tax would be met by our client.
- On 24th July 2018, we reiterated to the Council any opportunity to acquire Unit 3 Tunstall Trade Park was subject to agreeing all outstanding abortive costs, which would go towards bridging the gap in value.
- On 24th September 2018, the Council eventually agreed a revised value for the subject property.

- Following further dialogue, on 2nd November 2018, the Council confirmed its support for the acquisition of Unit 3 by agreeing to pay the outstanding abortive costs but on the proviso that the Party Wall claim was removed from the overall claim and dealt with outside of these discussions. The scheme had become time critical with the Council advising that the scheme needed to be completed by the end of 2019 ready for opening in the first quarter of 2020.
- Our client entered into negotiations with the developer at Tunstall Trade Park on 6th November 2018 for the purchase of Unit 3 for £380,000 with £20,000 cash back from the developer to facilitate the acquisition.
- On 7th November 2018 we confirmed with the Council that negotiations had been opened on Unit 3 and the need to agree other associated costs including relocation costs as well as the Council's timetable for possession and appointment of a Project Manager to oversee the move.
- Subsequently our client instructed solicitors to progress the acquisition of Unit 3 on 14th November 2018, and liaise to with the Council to progress the sale of the subject property. In order to assist the Council with its development timetable and provide our client with the funds to progress the purchase, it was agreed that the sale of the subject could be done on a sale and leaseback basis so that the relocation could be phased in order to mitigate against any claim for loss of business.
- In terms of the relocation and the costs involved, it was agreed with the Council that a Project Manager should be appointed to manage the overall project. A fee proposal was obtained from a local firm of architects which was put to the Council for approval, with a suggestion that a meeting be set up between our client, the Project Manager and the Council to agree scope of works, and the remit of the instruction. Due to limited progress on the part of the Council a meeting with held on 5th December 2018 to discuss how to proceed and the Council confirmed again the acceptance of a Project Manager.
- Draft heads of terms were issued in January 2019 for the acquisition of the subject property and the payment of the agreed sums together with the provision for the Council to pay all other reasonable relocation and fit out costs.
- On 7th February 2019, the Council issued a draft tenancy agreement which would be used for the leaseback of the subject property, whilst the fit out of the new property was undertaken.
- On the 11th February 2019, we responded to the Council to say that the draft heads of terms were agreed with the exception of the backstop date for vacant possession of the subject property which the Council wanted on 31st May 2019. This timescale was not feasible in terms of completing the purchase of Unit 3 and the subsequently fit out.
- On 22nd February 2019 the Council subsequently advised that before it would agree to the appointment of the Project Manager it needed to understand the proposals for Unit 3 and that a second fee quote for these services should be obtained to demonstrate that our client had mitigated the loss. A second fee quote was obtained and submitted for consideration in March 2019.

- By this time, the developer of Unit 3 was pushing for movement on the acquisition. The need to progress matters on the subject unit with the Council as reiterated to the Council officers, but until final terms were agreed there was nothing else that could be done on the acquisition.
- On 14th March 2019 a meeting with the Council's officers was held to discuss the draft heads of terms, appointment of the Project Manager and the backstop date for possession of the subject property as the Council was still seeking possession on 31st May. At this meeting the Council reiterated that it was not liable for any of the Party Wall damages.
- In an email exchange on 18th March 2019 the Council commented that they were not happy that the Party Wall damages were being linked to the purchase of Unit 3.
- It was pointed out to the Council officers on 19th March, that these losses had always been factored into the purchase, not just of Unit 3 but also previous properties and that the monies were always going to be factored into the funding of a relocation opportunity. Without this, our client was at his maximum in terms of funding and in the absence of a more cost-effective option; there was no alternative but to consider a new build unit.
- On 1st April 2019 we advised the Council advising that unless they stopped procrastinating on the deal and agreed the outstanding points possession and relocation to Unit 3 and how the funding gap was going to be dealt with, there was a probability that the purchase of Unit 3 would fall through. It was also pointed out that our client had been under threat of the scheme since 2015 and despite working with the Council and move matters forward, our client was no further on than had been in November 2018.
- It was on this date that the Council essentially decided to instigate the CPO when we were copied into an internal email from the Council's Engineering and Commissioning Manager who was leading the project stating that *"the sooner we can get going with this CPO the better – regret not starting much sooner!"*
- On 11th April, the developer of Tunstall Trade Park advised that a deal had been agreed recently for an adjacent unit at £12,500 more than had been agreed for Unit 3. Due to the lack of progress he was now seeking a 5% non-refundable deposit on exchange of contracts, and would agree to an 8-week period before completion. This was relayed back to the Council.
- In an email exchange on 26th April 2019 the Council suggested outsourcing the project management to their consultants, whilst the fit-out works would be undertaken by their own in-house contractors. We advised that under a CPO, the Acquiring Authority cannot dictate which consultants and professionals a claimant should or can appoint.
- On the 10th May 2019, our client met with the Assistant Director of Investment, Planning and Regeneration and the Head of the Council's Estate Department. At this meeting the Council agreed to the appointment of our client's preferred Project Manager. The Head of Estates was to confirm this in writing, but as yet this letter has not been received to confirm this.

- On 4th June 2019, the Council advised that it would step in to acquire Unit 3 rather than our client to provide certainty. Furthermore it required our client to consent to the appointment of their own Project Manager. It was reiterated that an Acquiring Authority cannot dictate which consultants a claimant can appoint.
- No further contact from the Council was received until the 9th August when we were advised that the Council was making progress with the acquisition of Unit 3 and that terms were being negotiated.
- However in September 2019 the Council only got Cabinet approval to proceed with the purchase of Unit 3 and ultimately negotiated the purchase at £380,000 without the cashback our client had previously negotiated.
- Following this there still remain outstanding issues which are preventing any further discussions which are summarized below:
 - Non-recoverable VAT – the Council have requested why the property cannot be acquired by the business.
 - The agreed purchase price is £20,000 more than had previously been agreed increasing the funding gap, with no agreement as to how this gap will be funded.
 - Additional costs including professional fees have been incurred along with additional time by our client.
 - The Council have now requested our client obtain a third quote from a Project Manager, despite previously agreeing to an earlier quote which had been provided.
 - No information provided by the Council as to the timescale for possession of the subject property.
- Clearly the Council had already decided to proceed with the CPO rather than negotiate a deal.