

Secretary of State for Transport  
National Transport Casework Team  
Department for Transport  
Tyneside House  
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Newcastle Upon Tyne  
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**Date:** 4 April 2022  
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**By Email ([nationalcasework@dft.gov.uk](mailto:nationalcasework@dft.gov.uk)) and Special Delivery**

Dear Sir/ Madam

**The Borough Council of Calderdale (Elland Station and West Vale Access Package)  
(West Yorkshire Plus Transport Fund, Transforming Cities Fund) Compulsory  
Purchase Order 2022 ("the Order")  
Land at WM Morrison Supermarkets, 4 Jubilee Way, Elland, Halifax HX5 9DT ("the  
Property")  
Our Clients: Optimisation Investments Limited and WM Morrison Supermarkets  
Limited**

We act for Optimisation Investments Limited and WM Morrison Supermarkets Limited in respect of the above Order, made by Calderdale Council ("the Council") on 16 February 2022.

Our clients are generally supportive of the delivery of a new Elland railway station and connectivity improvements within the surrounding area.

However, the Order scheme would significantly and adversely impact upon the ongoing and future use of our clients' Property. The Council has made no meaningful attempts to explore alternative proposals which could deliver similar accessibility benefits whilst mitigating these impacts and has made no meaningful attempt to negotiate the acquisition of land which is needed for accessibility improvements.

Accordingly, our clients hereby object to the Order. They consider that there is no proper basis for the Order to be confirmed by the Secretary of State for the reasons set out in this letter.

**The Property**

The property comprises a retail superstore with customer car parking, vehicular and pedestrian accesses, servicing and adjoining petrol filling station and car wash. In addition to the operational land, the Property includes development land with prominent road frontage which links to Elland town centre.

**The Order**

The Order, if confirmed, would provide the Council with powers to compulsorily acquire the land within Plots 3/1, 3/1a, 3/1b, 3/1c, 3/1d, 3/1e and 3/1f as described in the Schedule to the Order and shown coloured pink on the Order Map.

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These Plots include part of the principal vehicular access to the store and petrol filling station and include pedestrian access links. They also include areas of the development land of critical importance to its successful future development.

### Grounds of objection

1. Inadequate engagement by the Council with our clients in relation to the Order scheme.

A level of dialogue has continued between the Council and our clients over the past two years. However, the Council failed to provide adequate details of the proposals during this period to enable our clients to understand in full the potential impacts.

Our clients were presented with the Order Maps at a meeting held on 18 February 2022. The plans identified a greater land take than previously intimated to our clients. As this meeting followed the making of the order on 16 February 2022, it formed a 'fait accompli' rather than an opportunity for our clients to engage constructively.

2. Failure to give proper regard to our clients' ongoing use of the Property and their future development proposals.

As a result of the lack of proper engagement, the Council failed to gain a proper understanding of the critical aspects of the ongoing use of the operational land within the Property and how it might be impacted. Similarly, the Council failed to gain an understanding of our clients' own development proposals for the development land within the Property and what impact the Order scheme may have upon these proposals.

Without gaining such an understanding, the Council failed to explore whether its accessibility proposals could be adapted to mitigate their impact upon our clients' Property, both from an operational and future development perspective.

Government Guidance<sup>1</sup> reinforces the importance of this engagement, stating that:

*"Talking to landowners will also assist the acquiring authority to understand more about the land 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."* [Paragraph 17]

This matter, with which the Council failed to grapple, is a matter which the Secretary of State requires to address in considering whether to confirm the Order. The Government Guidance states:

*"The minister confirming the order has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those with an interest in the land that it is proposing to acquire compulsorily and the wider public interest."* [Paragraph 13]

Our clients do not consider there to be a sound justification for the extent of the land within our clients' Property to be included within the Order. The extent of the Order land is a key matter to be considered by the Secretary of State when

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<sup>1</sup> "Guidance on compulsory purchase process and the Criche Down Rules", Department for Levelling Up, Housing & Communities, July 2019.

considering whether to confirm the Order. Government Circular 2/97<sup>2</sup> states in this regard:

*"The Secretary of State for Transport will require to be satisfied in every case that the land included in a CPO can reasonably be regarded as required for the purposes of the acquisition as stated in the order."* [Paragraph 18]

3. Lack of reasonable attempts to negotiate voluntary acquisition

Government Guidance provides that:

*"The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement."* [Paragraph 2]

As indicated above, the full extent of the Order land was only made clear to our clients following the making of the Order. From this it is self-evident that the Council could not have and did not satisfy the requirement under the Government Guidance to make a meaningful attempt to negotiate the acquisition of the land needed for the Order scheme.

For the reasons set out above, we do not consider that a compelling case in the public interest has been made by the Council for the inclusion of the Property within the Order land.

Accordingly, we consider there to be no sound reason for the Secretary of State to confirm the Order and invite the Secretary of State to refuse to confirm the Order as drafted.

We would be grateful if you would kindly acknowledge receipt and direct all future correspondence on this matter to Eversheds Sutherland at the above postal address and by email to Roddy Macdonald ([roddymacdonald@eversheds-sutherland.com](mailto:roddymacdonald@eversheds-sutherland.com)).

Yours faithfully

*Eversheds Sutherland (International) LLP*

**Eversheds Sutherland (International) LLP**

cc Charles Felgate, Geldards LLP ([charles.felgate@geldards.com](mailto:charles.felgate@geldards.com))

Calderdale Council ([ellandaccesspackage@calderdale.gov.uk](mailto:ellandaccesspackage@calderdale.gov.uk))

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<sup>2</sup> "Circular No. 2/97 "Notes on the Preparation, Drafting and Submission of Compulsory Purchase Orders for Highway Schemes and Car Parks for which the Secretary of State for Transport is the Confirming Authority", Department of Transport, June 1997