

Tim Hancock Associates

Chartered Surveyors

A38 Derby Junctions - TR010022

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

Statement by Tim Hancock, B.Sc., FRICS, MEI

**Relating to the effect of the Scheme on the property known as
Markeaton Service Station, A38 Derby, DE24 4AA**

On behalf of Euro Garages Limited

December 2019

1.0 Introduction and Background

- 1.1 My full name is Timothy David Hancock. I am a Fellow of the Royal Institution of Chartered Surveyors, Principal of Tim Hancock Associates Limited, with some 40 years property experience including extensive experience in relation to petrol filling stations since 1989. I advise major oil company and public sector clients in relation to property matters relating to petrol filling stations including major compensation cases.
- 1.2 I am instructed by Euro Garages Limited ("EG") to provide property advice in relation to the effect of the proposals to improve the A38 trunk road ("the Scheme") and, more particularly, the effect of these proposals on the Service Station owned by my client and known as EG Mackworth ("the Service Station").
- 1.3 I have been provided with a copy of the report prepared by Bill Booker of SCP Transportation Planners and Consulting Engineers, dated October 2019.
- 1.4 I have also been provided with a copy of the latest iteration dated November 2019 of the Statement of Common Ground that seeks to define common and outstanding issues between EG and Highways England, the responsible authority.
- 1.5 In this document it is stated on behalf of Highways England that the existing rights of way serving the Service Station are adequate to accommodate the new Scheme and that no changes are envisaged to the existing arrangements. It is acknowledged that these issues are being considered further by Highways England's consultants.
- 1.6 EG's requirement is for Highway England to demonstrate that it is indeed the case that the existing rights of way will remain fully effective following the completion of the Scheme by producing full and detailed drawings of its proposals and overlaying the existing rights of way detail onto this drawing. The objective would be to show that the existing rights of way align fully and effectively with the internal vehicular movements that will occur following the completion of the Scheme.
- 1.7 If the Service Station is left without effective rights of way after the Scheme, it would not be able to legally function, with serious adverse implication for its trading potential and market value.

2.0 Purpose of Statement

- 2.1 The purpose of this Statement is principally to consider the implications if Highways England is not able to demonstrate that the existing rights of way will be effective following the completion of the Scheme and consider in outline the implications of the Scheme as currently proposed in relation to the operation and trading performance of the Service Station.
- 2.2 It will have been noted from the Statement of Common Ground that EG does not object to the principle of the Scheme. Its objective however is to work with Highways England and its consultants to achieve solutions that will minimise the adverse effects of the Scheme on the Service Station, to the extent that this is possible including as a minimum ensuring effective legal operation.
- 2.3 It is appreciated that issues relating to compensation are matters for the Lands Tribunal and do not lie directly within the terms of reference of the Hearing. It is the case, however, that issues relating to the safe and effective operation of the Service Station including the ability to legally trade on the basis of secure rights over third party land do merit serious consideration. The failure to address these issues could lead to a substantially greater compensation claim than might otherwise be the case.
- 2.4 In this Statement I will review the tenure of the Service Station and consider the existing rights of way through which it is operated over third party land.
- 2.5 I will consider in general terms the effects of the Scheme on the trade and access arrangements of the Service Station and the implications of the Scheme in the event that the existing rights of way are not demonstrated to operate satisfactorily following the completion of the Scheme.

3.0 Tenure and Existing Rights

- 3.1 The freehold interest in the Service Station is held by EG under Land Registry Reference DY103730, a copy of which together with the Land Registry Plan is attached to this Statement. It will be noted that the freehold interest is shown edged red and that this land on which the Service Station development currently stands has no independent access to the public highway which adjoin it. The adjoining roads are referred to on the Land Registry Title Plan as Kingsway, which carries the A38, and Ashbourne Road, which carries the A52.

- 3.2 Reference to the title plan will show that in the case of both frontages the Service Station has the benefit of rights of way over the adjoining land vested in McDonalds Restaurants Limited under title DY220642, a copy of which is also attached to this report.
- 3.3 Details of the rights of way benefiting the Service Station are set out in paragraph 2 of the Land Certificate. These rights emanate from a Conveyance dated 8th December 1982 between Derby City Council and Esso Petroleum Limited. Details of the rights granted are "... full right and liberty for the Purchasers, its servants, agents and licensees (in common with the vendor, its lessees and all others having the like right) at all times by day or night to pass or repass along, over and upon the roadways shown coloured blue on the attached plan with or without vehicles of any description and for all purposes connected with the use and enjoyment of the property hereby conveyed". The Land Certificate confirms that the roadways coloured blue referred to are tinted brown on the filed plan.
- 3.4 It will be readily appreciated that the rights enjoyed presently for the benefit of the Service Station connecting to the public highway over the adjoining freehold land are comprehensive in nature. They allow for the full and effective operation of the Service Station without limitation and they subsist in perpetuity.
- 3.5 It will be further appreciated that the documentary rights of way that EG has over the adjoining restaurant are limited in physical extent to the land shaded brown on the title plan. There is no provision within the documentation for the position of the rights of way to be varied to accommodate changes in access arrangements. In the absence of compulsory powers in the background to secure such alternative rights, the adjoining owner would be able to arbitrarily withhold consent for the grant of such varied rights.
- 3.6 Consequently, to the extent that the Scheme requires any change in the position of the internal rights of way that are required by EG and its customers, who are licensees, over the McDonalds Restaurant site, the Service Station will only be able to legally and effectively operate if the existing rights are properly modified to accommodate these changes.
- 3.7 In preparing these comments, I have had regard to the information within the Land Certificate, which directly quotes the conveyance from which the rights were granted. I have not at the time of preparation of this Statement had sight of the conveyance itself. I have requested details of this document from EG and this will be made available if this is possible. My comments may require amendment dependent upon any further details that are identified within the conveyance relating to the right of way.

4.0 The Scheme Proposals

- 4.1 The Scheme proposals are considered fully in Mr Booker's report dated October 2019 and it is not necessary in this Statement to repeat the detail of the proposals. It is sufficient to state that the Scheme is likely to seriously and adversely affect the trading performance of the Service Station in three principal ways in relation to A38 traffic, this being the principal source of fuel trade.
- 4.2 Firstly, traffic on the A38 will now pass through the junction and no longer pass directly past the Service Station, unless it is using the junction itself. Essentially, so far as transient traffic using this route is concerned, the Service Station will no longer be able to serve this trade unless motorists are alerted to its presence through advance warning signs.
- 4.3 Secondly, traffic leaving the A38 via the newly constructed slip road will no longer be able to enter directly into the Service Station using the existing ingress facility, which will be closed, but will be forced to travel through traffic light-controlled junctions to enter the Service Station via the A52 junction. These arrangements will take more time to complete, require a significant detour and will be materially less attractive to motorists.
- 4.4 Thirdly, the manoeuvre to enter the Service Station from the A52 which will become the only access into the Service Station will require a very tight turn. Mr Booker will comment on this proposed arrangement in technical terms. In commercial terms it is my opinion that the proposed access arrangements will provide a significant deterrent for motorists to use the Service Station. The best petrol filling station access arrangements involve the motorist in the minimum of deviation from a straight path when running on to the dispensers under the canopy. The new arrangements will involve the motorist in turning back sharply on himself with the risk of misjudge the manoeuvre that will be required. Mr Booker will also consider these access arrangements in technical terms from the particular perspective of HGV traffic. This includes delivery vehicles including the fuel tanker. In commercial terms it is my opinion that the new arrangements will be unattractive to HGV drivers. Critically, it remains to be demonstrated that the proposed access arrangements will meet stringent oil company fuel distribution standards. Failure to do so is likely to lead to a breach of fuel supply agreement terms and a consequential substantial injurious affection claim. If the Service Station cannot be refuelled safely, the business will be wholly or partly (in relation to HGV trade) extinguished leading to a compensation claim on that basis. Injurious affection is also likely to arise through

interference with ease of access to other traffic flows approaching the roundabout as well as the principal A38 southbound flow.

- 4.5 I would comment that it is likely that the loss of trade would be significantly mitigated by the provision of advance warning signs, particularly on the A38, to alert motorists to the existence of the Service Station. If such signs are provided, the Service Station together with the neighbouring McDonalds restaurant would be better able to serve the welfare needs of the motorist. An incidental benefit to the Scheme would be the reduced compensation costs arising through a reduction in injurious affection to the Service Station. It is appreciated that the signing of petrol filling stations and service stations is a matter for Highways England but noted that this matter remains under active consideration by Highways England. In my experience, the provision of such advance warning signs serves to alert the motorist of the existence of services which are required to provide opportunities for rest, refreshment and fuel as well as improving road safety.

5.0 Internal Traffic Movement Changes

- 5.1 I have noted the concern that the existing documentary rights of way might not align precisely with the internal traffic routes taken by traffic following the completion of the Scheme. If Highway England is able to demonstrate that the existing rights of way will still be satisfactory in all respects the implications of these particular concerns will be fully addressed, leaving what will still undoubtedly be considerable injurious affection to be addressed as a matter of compensation.
- 5.2 To assist in an appreciation of the changes, Mr Booker has produced an overlay plan ("the Overlay Plan") attached to this Statement upon which the position of the existing right of way and boundaries of the properties have been added to a plan showing the current Scheme proposals. Unfortunately, with the information available to EG currently, it has not been possible to prepare an overlay plan in sufficient detail to allow secure and accurate conclusions to be drawn in relation to this matter. Nevertheless, the Overlay Plan provided can serve to illustrate the potential issues that will arise if the post-Scheme internal traffic arrangements do not align with the existing rights of way.
- 5.3 The approximate extent of the rights of way as shown brown on the Title Plan to the Service Station are shown in purple colouring on the Overlay Plan. As noted, because of the different degrees of accuracy between the original Title Plan and the modern survey drawing, there are evidently some distortions. To the extent that it might be necessary to use land outside the limits of the existing rights of way, EG's customers have no right to use this land.

- 5.4 In the case of the rights of way serving the A52 frontage, it appears that these extend beyond the front boundary to the Service Station. Mr Booker has obtained details of the highway boundary from the Highway Authority and will seek to explain its position. It seems evident that some historic changes on this frontage have already taken place and some of the land comprised in the rights of way may in fact be subject to highway rights. It is not clear to me how the Highway Authority has acquired this frontage land. I have not identified any information to suggest that there has been a transfer of land or a dedication of highway. Nevertheless, from the point of view of EG, the existing arrangements are clearly workable as it is possible to get from the Service Station to the public highway, it being acknowledged in the interpretation of the rights of way plan that it was not prepared to modern levels of accuracy.
- 5.5 I would restate the request that Highway England demonstrate its position effectively on this point by producing an accurate survey to demonstrate that the existing rights of way remain effective to allow the safe and legal operation of the Service Station.

6.0 Implications - Deficiency in Rights

- 6.1 If the existing rights of way are deficient for revised internal traffic movements and the Scheme fails to provide adequate rights in substitution of the existing rights to allow customers entering and leaving the Service Station to do so entirely on land comprised within a right of way, then the secure legal operation of the Service Station will be obstructed. Consequently, customers will be prevented from legally using the Service Station as a direct consequence of the Scheme.
- 6.2 Whilst it might be the case in practice that motorists will still be able to use third party land on an unauthorised basis to gain access to and from the Service Station, it cannot be assumed that this practice will be allowed to continue. It is also the case that any purchaser of the Service Station, reasonably advised, would be concerned over this deficiency in rights and the marketability and value of the Service Station could be prejudiced.
- 6.3 If this situation is established, the position could be readily rectified by ensuring that rights of way in substitution of the existing arrangements can be compulsorily acquired by Highways England from the adjoining owner in the event that the parties do not reach agreement directly.
- 6.4 In the absence of such mitigating provisions within the statutory orders, compensation will be based on the facts arising as a consequence of the Scheme. The most salient fact would be that the Scheme will have destroyed the existing satisfactory access arrangements.

- 6.5 Under these circumstances and given that no land is currently proposed to be acquired, it is likely that the basis of compensation will arise from either the stopping up of accesses or the interference with rights. Under either basis of compensation, the injurious affection to the EG's land will fall to be assessed. There would be no assumption in these circumstances that the parties would come to terms to allow the creation of new and alternative rights of way. Consequently, it could well be the case that a claim based on the total extinguishment of EG's interest may need to be submitted.

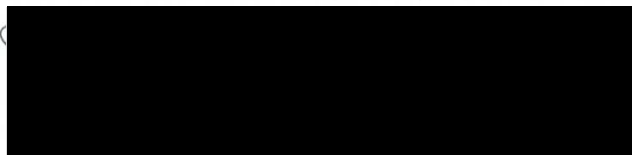
7.0 Adverse Rights

- 7.1 From the information provided by Highways England, no provision has been made for the grant of any rights over the Service Station that are intended to benefit third parties including McDonalds Family Restaurants, the owner of the adjoining freehold land. If Highways England intends to acquire any rights compulsorily for the benefit of third parties over the Service Station, this should be proposed formally adopting the correct legal procedures to allow EG to properly consider the implications and make appropriate representations in relation to such proposals.

8.0 Conclusions

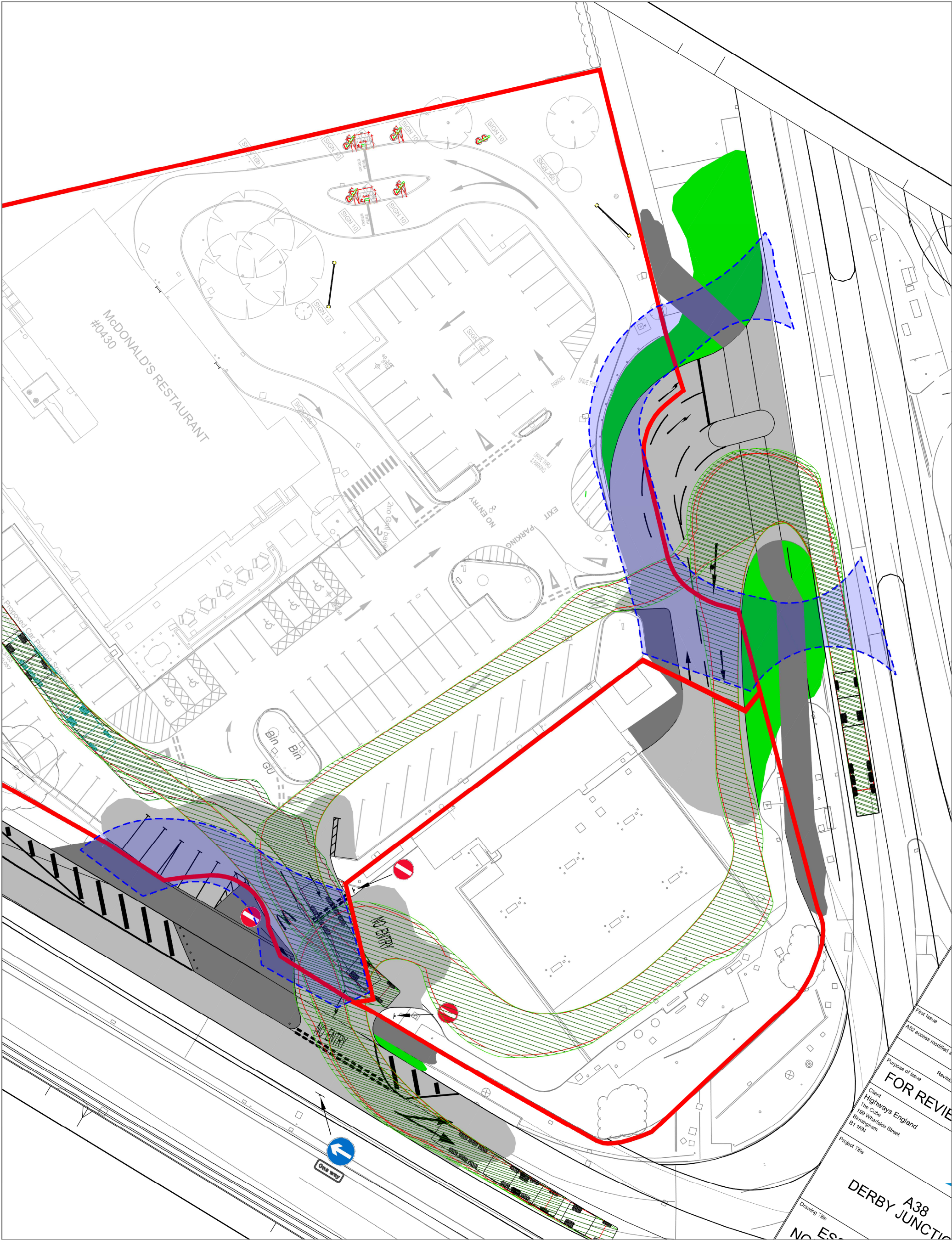
- 8.1 It remains to be established by Highways England that the existing rights of way to the Service Station can provide safe and legal access following completion of the Scheme. If this cannot be demonstrated a substantial claim is likely to be made based on the total extinguishment of EG's interest unless the orders are amended to allow for the acquisition of appropriate access rights expressed in similar terms to the existing rights.
- 8.2 Unless it can be demonstrated that the revised single ingress arrangements are adequate to safely serve the delivery vehicles and in particular fuel tankers, EG may not be able to secure a fuel supply agreement with an oil company. These circumstances would be likely to lead to a claim for the total or partial extinguishment of the business at the Service Station.
- 8.3 Any adverse rights that are to be secured over EG's land in favour of third parties should be considered through due legal process and pending this, EG's position is fully reserved.
- 8.4 EG's objective is to secure continued and effective representation at this location and it is hoped that this matter will receive serious consideration with the objective of both allowing the Service Station to continue to serve what will be a reduced trading potential in any event.

This concludes my Statement.



Timothy David Hancock

10th December 2019



S|C|P

Transportation Planning : Infrastructure Design

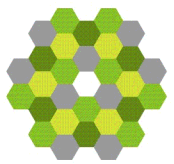
Colwyn Chambers, 19 York Street, Manchester, M2 3BA, Tel 0161 832 4400,
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NOT TO SCALE @ A3

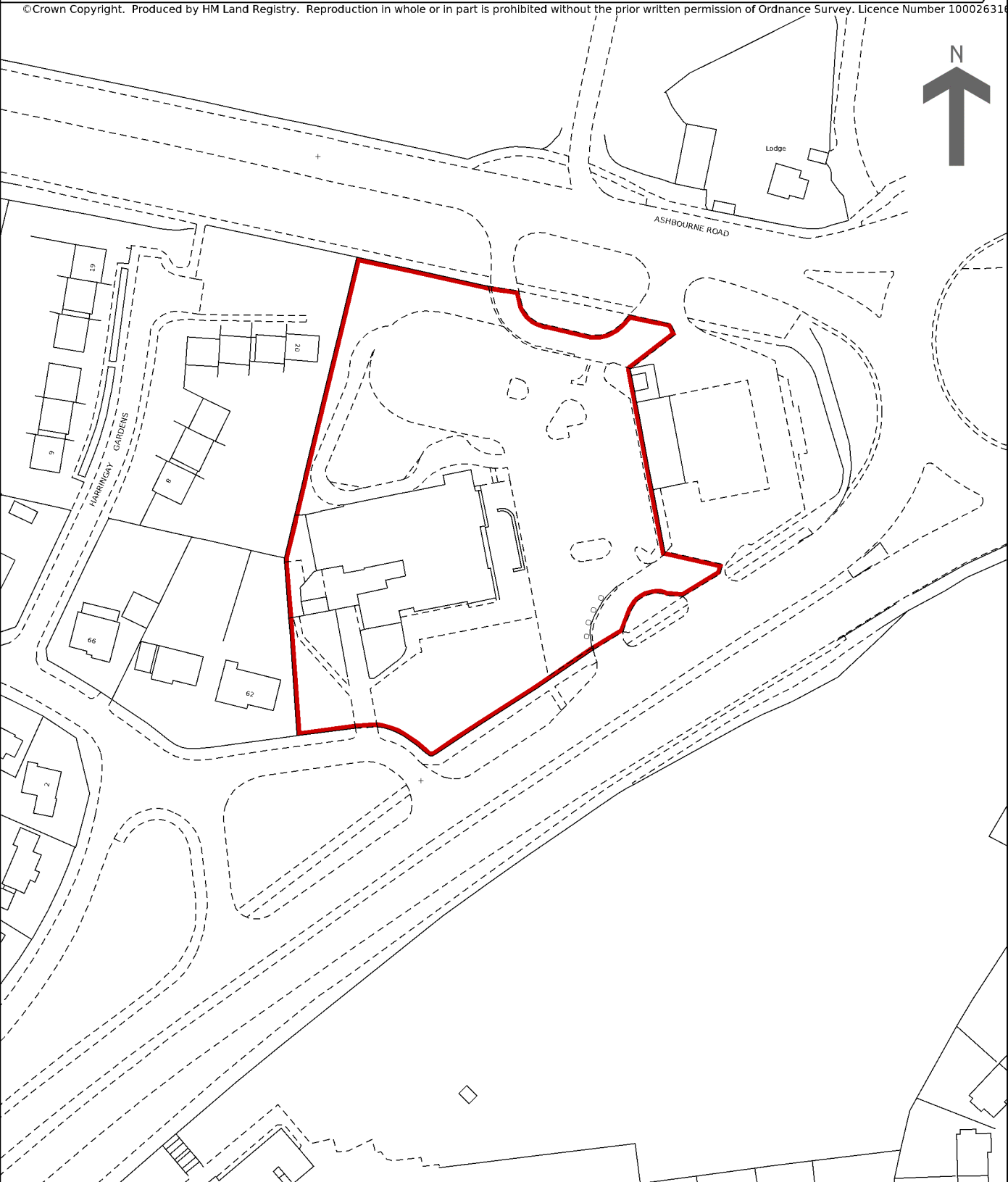
HM Land Registry

Current title plan

Title number **DY220642**
Ordnance Survey map reference **SK3336NW**
Scale **1:1250**
Administrative area **City of Derby**



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This is a print of the view of the title plan obtained from HM Land Registry showing the state of the title plan on 21 August 2019 at 10:20:56. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

This title is dealt with by HM Land Registry, Nottingham Office.

THIS IS A PRINT OF THE VIEW OF THE REGISTER OBTAINED FROM HM LAND REGISTRY SHOWING THE ENTRIES SUBSISTING IN THE REGISTER ON 21 AUG 2019 AT 10:17:37. BUT PLEASE NOTE THAT THIS REGISTER VIEW IS NOT ADMISSIBLE IN A COURT IN THE SAME WAY AS AN OFFICIAL COPY WITHIN THE MEANING OF S.67 LAND REGISTRATION ACT 2002. UNLIKE AN OFFICIAL COPY, IT MAY NOT ENTITLE A PERSON TO BE INDEMNIFIED BY THE REGISTRAR IF HE OR SHE SUFFERS LOSS BY REASON OF A MISTAKE CONTAINED WITHIN IT. THE ENTRIES SHOWN DO NOT TAKE ACCOUNT OF ANY APPLICATIONS PENDING IN HM LAND REGISTRY. FOR SEARCH PURPOSES THE ABOVE DATE SHOULD BE USED AS THE SEARCH FROM DATE.

THIS TITLE IS DEALT WITH BY HM LAND REGISTRY, NOTTINGHAM OFFICE.

TITLE NUMBER: DY220642

There is no application or official search pending against this title.

A: Property Register

This register describes the land and estate comprised in the title.

CITY OF DERBY

- 1 (05.07.1991) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being McDonalds Restaurants Ltd, Kingsway, Derby (DE22 4AA).
- 2 (13.07.1999) The filed plan has been amended as to the Northern and Southern boundaries.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (09.06.2004) PROPRIETOR: McDONALD'S REAL ESTATE LIMITED LIABILITY PARTNERSHIP (LLP Regn. No. OC.303157) of 11-59 High Road, East Finchley, London N2 8AW.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 The land is subject to the following rights granted by a Conveyance of adjoining land at the junction of Ashbourne Road and Kingsway dated 8 December 1982 made between (1) Derby City Council and (2) Esso Petroleum Company Limited:-

Together with full right and liberty for the Purchaser, its servants, agents and licensees (in common with the Vendor its lessees and all others having the like right) at all times by day or night to pass and repass along over and upon the roadways shown coloured blue on the attached plan with or without vehicles of any description for all purposes connected with the use and enjoyment of the property hereby conveyed.

NOTE: Copy plan filed.

- 2 (09.06.2004) The land is subject to the lease set out in the schedule of leases hereto.

Schedule of notices of leases

- | | | | | |
|---|------------|------------------------|------------|----------|
| 1 | 17.04.2008 | The Derbyshire Yeoman, | 14.04.2008 | DY427008 |
|---|------------|------------------------|------------|----------|

Title number DY220642

Schedule of notices of leases continued

Ashbourne Road, Derby

40 years from
14.02.2008

End of register

The electronic official copy of the register follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.



Official copy of register of title

Title number DY103730

Edition date 29.05.2014

- This official copy shows the entries on the register of title on 15 APR 2015 at 10:40:46.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 15 Apr 2015.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by Land Registry, Nottingham Office.

A: Property Register

This register describes the land and estate comprised in the title.

CITY OF DERBY

- 1 (04.01.1983) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being Mackworth Service Station Ltd, Kingsway, Derby (DE22 4AA).
- 2 The land has the benefit of the following rights granted by a Conveyance of the land in this title dated 8 December 1982 made between (1) Derby City Council and (2) Esso Petroleum Company Limited:-

"Together with full right and liberty for the Purchaser, its servants, agents and licensees (in common with the Vendor its lessees and all others having the like right) at all times by day or night to pass and repass along over and upon the roadways shown coloured blue on the attached plan with or without vehicles of any description for all purposes connected with the use and enjoyment of the property hereby conveyed."

NOTE: The roadways coloured blue referred to are tinted brown on the filed plan.

- 3 The Conveyance dated 8 December 1982 referred to above contains the following provision:-

"It is hereby agreed and declared that the Purchaser and its successors in title shall not by virtue of this deed acquire any right of light or air which would prejudice the free use and enjoyment of any adjoining land of the Vendor for building or for other purposes and that any enjoyment of light or air had by the Purchaser or its successors in title from or over the adjoining land of the Vendor shall be deemed to be had by the consent (hereby given) of the Vendor."

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (29.05.2014) PROPRIETOR: EURO GARAGES LIMITED (Co. Regn. No. 4246195)

B: Proprietorship Register continued

of Euro House, Beehive Trading Park, Haslingden Road, Blackburn BB1 2EE.

- 2 (29.05.2014) The price stated to have been paid on 24 April 2014 was £1,478,323 plus £295,664 VAT.
- 3 (29.05.2014) RESTRICTION: No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Esso Petroleum Company, Limited (Co. Regn. No. 26538) of ExxonMobil House, Ermyn Way, Leatherhead, Surrey KT22 8UX or their conveyancer that the provisions of Clauses 11.7.12, 11.7.13 and 11.7.14 of a Transfer dated 24 April 2014 made between (1) Esso Petroleum Company, Limited and (2) Euro Garages Limited have been complied with.
- 4 (29.05.2014) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the Charge dated 29 April 2014 in favour of Lloyds Bank Plc referred to in the Charges Register.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (29.05.2014) A Transfer of the land in this title dated 24 April 2014 made between (1) Esso Petroleum Company, Limited and (2) Euro Garages Limited contains restrictive covenants.

NOTE: Copy filed
- 2 (29.05.2014) REGISTERED CHARGE contained in a Debenture dated 29 April 2014 affecting also other titles.

NOTE: Charge reference WK259759.
- 3 (29.05.2014) Proprietor: LLOYDS BANK PLC (Co. Regn. No. 2065) of 25 Gresham Street, London EC2V 7HN.
- 4 (29.05.2014) The proprietor of the Charge dated 29 April 2014 referred to above is under an obligation to make further advances. These advances will have priority to the extent afforded by section 49(3) Land Registration Act 2002.

End of register