

Adran yr Economi a'r Seilwaith
Department for Economy and Infrastructure



Llywodraeth Cymru
Welsh Government

Objection Ref OBJ0329

File Ref WG/REB/OBJ0329 - Marshalls

**Response to Objector's Evidence: Mr Henry Church of CBRE and
Mr Andrew Johnson of Marshalls plc
(CPO Reference Plot 8/5)**

1. Grounds for Objection

1.1. Details

1.1.1. Mr. Henry Church of CBRE and Mr. Andrew Johnson of Marshalls plc have both submitted Statements of Evidence dated February 2017 on behalf of Marshalls Mono Limited in relation to the draft statutory Orders associated with the Welsh Government's proposals for the M4 Corridor around Newport, which has been received via the Programme Officer.

1.1.2. The Welsh Government understands the evidence submitted within the Statements to be based on the following:

Mr Henry Church's Statement

1. The current proposals would affect the vast majority of Marshalls' Newport site as the existing plant is shown as the proposed location for a bridge pier.
2. WG indicated that much of the land may be offered back on completion of the scheme, the likely timescale for this and the subsequent requirements at the Newport site to rebuild the block making plant means that "offer back" is not a viable prospect and the plant will need to be permanently relocated.
3. Marshalls submitted a business case setting out an overview of the business, employment and prospects/potential for growth and identifies the potential consequences arising should the CPO be implemented. The relocation site requirements as well as setting out a timeline for relocation together with indicative costs of relocation.
4. Fundamentally there must be an overriding justification in the public interest, before a CPO can be confirmed (see paragraph 15 of the Circular14/04).
5. Circular14/04, Paragraph 22 states "Before embarking on compulsory purchase, acquiring authorities should seek to acquire land by negotiation wherever practicable." WG the acquiring authority has, to date, made no offer to acquire the land by negotiation.
6. WAG has not made a proposal to remove uncertainty on both it and the affected party by entering into a conditional agreement.

7. Marshalls issued Heads of Terms to WG on 6 January 2017 ahead of a meeting between representatives of WG and Marshalls on 26 January 2017 WG responded to the Heads of Terms and a further revised set of Heads of Terms were sent.
8. The effect of the limited engagement Marshalls has little confidence that WAG appreciates the extent of the Newport site's operation and the impact the scheme would have on the sites operations, manufacturing capabilities and employees jobs.
9. Whilst there is no legal requirement for an acquiring authority to indemnify an affected party in respect of its costs in negotiating with them it is good practice.
10. Difficulties in securing reimbursement of costs has resulted in Marshalls funding costs to date – not only those in objecting but also all of those in reviewing alternative sites and costs incurred in meeting with WG. The only exception to this is that WAG has jointly appointed Marshalls planners and directly reimbursed their costs to date.
11. Circular 14/04 is clear as to the responsibilities on the acquiring authority to engage with those affected, In this instance, the intent to engage has been led by Marshalls. Not only has the dialogue been limited but, surprisingly, no offer to acquire has been made.
12. WG has failed to follow guidance in Circular 14/04.
13. WG has failed to understand the significance of Marshalls' property and business interests affected by not appointing a property specialist to negotiate Heads of Terms.
14. WG has failed to grasp the implications of the CPO extend beyond those that money compensates. the CPO would result in the loss of 65 jobs if a relocation site is not found. Furthermore the failure to successfully relocate the Marshalls' business is likely to have a knock on effect on jobs at companies that supply Marshalls.
15. Consequences of the failure to satisfactorily address Marshall's concerns means that Marshalls now face the closure (without replacement) of this facility with the resulting loss of 65 jobs, potential

further job losses for Marshalls' suppliers and a resultant loss of income to Newport and elsewhere in Wales.

16. Harm is capable of being addressed if a suitable relocation site is secured and sufficient time allowed to facilitate relocation.
17. The composite site at Queensway would suffice or other alternatives.
18. Indicative timetables recently tabled by WAG show that a break in operation of no less than 6 months is almost inevitable, even if a suitable relocation site is identified. This break in operation and production will impact severely on Marshalls' business.
19. Marshalls has secured planning consent for relocation of additional manufacturing capacity to Newport through proposed development which was granted by Newport City Council in 2011. Plans have been halted pending clarification of the uncertainty associated with the M4 scheme proposals.
20. Job losses would depend on whether Marshalls were able to relocate within the immediate vicinity.
21. the notice period provided for within the Order is inadequate to provide appropriate lead times and notice in which to relocate operations to a new replacement facility.
22. Marshalls would be obliged to find solutions for product manufacture and storage at its other UK manufacturing facilities. This is likely to result in a significant financial consequence to the business.

Mr Andrew Johnson's Statement

23. If the Scheme's Orders are confirmed Marshalls' current operations at the Site will have to cease. Accordingly there is a clear need to relocate Marshalls' business should the Scheme go ahead.
24. WAG has failed to recognise the significance of the Site to Marshalls and other neighbouring or associated business interests affected by the Scheme.
25. Marshalls are frustrated by the slow pace of communication and disappointed at the lack of meaningful engagement from WAG.

2. REBUTTAL**2.1. Points Raised**

2.1.1. Some of the above points have already been addressed in previous correspondence or proofs of evidence. Others are dealt with by topic by the relevant witness in the following sections, in addition to their general proofs of evidence, to which readers should also make reference in their entirety for a full understanding of the Welsh Government's case. For ease of reference the places where the above points are addressed in this Rebuttal are listed in the table below:

Objector's point reference	Rebuttal paragraph reference	Objector's point reference	Rebuttal paragraph reference
1	2.1.2	14	2.1.2
2	2.1.2	15	2.1.2
3	2.1.2	16	2.2.7
4	2.1.2	17	2.2.7
5	2.2.1	18	2.1.2
6	2.2.1	19	2.1.2
7	2.1.2	20	2.2.7
8	2.2.3	21	2.1.2
9	2.2.3	22	2.1.2
10	2.2.3	23	2.2.10
11	2.2.1	24	2.2.10
12	2.2.1	25	2.2.13
13	2.1.2		

2.1.2. The Objector's points that have already been covered in previous correspondence and proofs of evidence are as follows:

- Point 1** (*The current proposals would affect the vast majority of Marshalls' Newport site as the existing plant is shown as the proposed location for a bridge pier.*) / Proof of Evidence by Ben Sibert, Engineering Design – Section 3 and Section 5 C15.241 to 5.244 outline the reasons for the current proposals.

- 2 **Point 2** (*WG indicated that much of the land may be offered back on completion of the scheme, the likely timescale for this and the subsequent requirements at the Newport site to rebuild the block making plant means that “offer back” is not a viable prospect and the plant will need to be permanently relocated.*) / Proof of Evidence by Matt Jones, Chief Witness – Section 1 Cl18.10 to 18.11, recognises the impact that the proposals will have on Marshall’s operations.
- 3 **Point 3** (*Marshalls submitted a business case setting out an overview of the business, employment and prospects/potential for growth and identifies the potential consequences arising should the CPO be implemented. The relocation site requirements as well as setting out a timeline for relocation together with indicative costs of relocation.*) / Proof of Evidence by Matt Jones, Chief Witness – Section 1 Cl18.10 to 18.11, recognises the impact that the proposals will have on Marshall’s operations and sets out how the WG seeks to engage with and assist Marshalls, where possible.
- 4 **Point 4** (*Fundamentally there must be an overriding justification in the public interest, before a CPO can be confirmed (see paragraph 15 of the Circular14/04).*

“15. The National Assembly has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those whose land is to be expropriated. The more comprehensive the justification which the acquiring authority can present, the stronger its case is likely to be. But each case has to be considered on its own merits and the advice in this Circular is not intended to imply that the National Assembly will require any particular degree of justification for any specific order. Nor will it make any general presumption that, in order to show that there is a compelling case in the public interest, an acquiring authority must be able to demonstrate that the land is required immediately in order to secure the purpose for which it is to be acquired.”) / Proof of Evidence by Matt Jones, Chief Witness – para 18.15 to 18.22 and para 22.31, Proof of Evidence by Ben Sibert, Engineering Design – Section 3 and Section 5 para 5.241 to 5.244 and Proof of Evidence by Barry Woodman, Construction – para 10.65 to 10.66 outline the reasons for the current proposals.

- 5 **Points 7, 13, 18, 19, 21 and 22** (*Marshalls issued Heads of Terms to WG on 6 January 2017 ahead of a meeting between representatives of WG and Marshalls on 26 January 2017 WG responded to the Heads of Terms and a further revised set of Heads of Terms were sent.*), (*WG has failed to understand the significance of Marshalls' property and business interests affected by not appointing a property specialist to negotiate Heads of Terms.*), (*Indicative timetables recently tabled by WAG show that a break in operation of no less than 6 months is almost inevitable, even if a suitable relocation site is identified. This break in operation and production will impact severely on Marshalls' business.*), (*Marshalls has secured planning consent for relocation of additional manufacturing capacity to Newport through proposed development which was granted by Newport City Council in 2011. Plans have been halted pending clarification of the uncertainty associated with the M4 scheme proposals.*), (*the notice period provided for within the Order is inadequate to provide appropriate lead times and notice in which to relocate operations to a new replacement facility.*), (*Marshalls would be obliged to find solutions for product manufacture and storage at its other UK manufacturing facilities. This is likely to result in a significant financial consequence to the business.*) / Proof of Evidence by Matt Jones, Chief Witness – para 18.22. Welsh Government engaged the services of property, compensation and CPO specialists JLL to negotiate Heads of Terms with businesses affected by the scheme.
- 6 **Points 14 and 15** (*WG has failed to grasp the implications of the CPO extend beyond those that money compensates. the CPO would result in the loss of 65 jobs if a relocation site is not found. Furthermore the failure to successfully relocate the Marshalls' business is likely to have a knock on effect on jobs at companies that supply Marshalls.*), (*Consequences of the failure to satisfactorily address Marshall's concerns means that Marshalls now face the closure (without replacement) of this facility with the resulting loss of 65 jobs, potential further job losses for Marshalls' suppliers and a resultant loss of income to Newport and elsewhere in Wales.*) / Proof of Evidence by Matt Jones, Chief Witness – para 18.22, Proof of Evidence by Stephen Bussell, para 5.76.

2.1.3. The other points are responded to by specialist topic in turn in the sections following.

2.2. Matthew Jones (General)

2.2.1. **Points 5, 6, 11 and 12** (*Circular 14/04, Paragraph 22 states "Before embarking on compulsory purchase, acquiring authorities should seek to acquire land by negotiation wherever practicable." WG the acquiring authority has, to date, made no offer to acquire the land by negotiation.*), (*WAG has not made a proposal to remove uncertainty on both it and the affected party by entering into a conditional agreement.*), (*Circular 14/04 is clear as to the responsibilities on the acquiring authority to engage with those affected. In this instance, the intent to engage has been led by Marshalls. Not only has the dialogue been limited but, surprisingly, no offer to acquire has been made.*), (*WG has failed to follow guidance in Circular 14/04.*) / Proof of Evidence by Matt Jones, Chief Witness – CI18.15 to 18.22.

2.2.2. Welsh Government formally notified Mr Andrew Johnson of Marshalls Mono Ltd of the publication of the CPO for the draft Orders by letter dated 22nd March 2016. The letter outlined the intentions of the Welsh Ministers and the process to be followed. It also identified the land plots which the Ministers had an interest in should the scheme proceed. Section 13 of this letter identified the compensation process which the Welsh Ministers intended to follow. In this section, it is clearly stated that until a decision is made to proceed with the scheme that the Welsh Minister's Valuer could not be instructed to open negotiations in respect of compensation. Furthermore, Section 16 of the letter indicated that Welsh Minister's representatives would be available to meet with the property owner or occupier to discuss the implications of the proposed CPO.

2.2.3. Paragraph numbers 2.2.5, 2.2.9, 2.2.12, 2.2.15 to 2.2.18 below provide further information on the level of engagement and continuous liaison by Welsh Government with Marshalls and their Agent Mr Henry Church since notification of the publication of the CPO for the draft Orders. A schedule of meetings demonstrating engagement is contained in Annex A.

2.2.4. **Points 8, 9 and 10** (*The effect of the limited engagement Marshalls has little confidence that WAG appreciates the extent of the Newport site's operation and the impact the scheme would have on the sites operations,*

manufacturing capabilities and employees jobs.), (Whilst there is no legal requirement for an acquiring authority to indemnify an affected party in respect of its costs in negotiating with them it is good practice.), (Difficulties in securing reimbursement of costs has resulted in Marshalls funding costs to date – not only those in objecting but also all of those in reviewing alternative sites and costs incurred in meeting with WG. The only exception to this is that WAG has jointly appointed Marshalls planners and directly reimbursed their costs to date.) / Proof of Evidence by Matt Jones, Chief Witness – para 18.22

- 2.2.5. A business case for a proposed compensation package funded by Welsh Government was developed by Marshalls and their Agent at the request of the Welsh Government and was issued to the Welsh Government in October 2016. The purpose of this business case was to establish the compensation package that would be required to facilitate a relocation of Marshalls business in Newport. Gerald Eve were subsequently engaged by Marshalls and funded by Welsh Government to undertake a planning appraisal of a proposed site at Queensway Meadows on behalf of Marshalls. This report was issued in January 2017 The scoping requirements have been submitted to Newport City Council for approval and response is awaited.
- 2.2.6. Activities associated with the due diligence will lead to sufficient information to lodge a planning application and include a geotechnical investigation, valued at approximately £40,000 and currently out to competitive tender. Tenders have been returned. , and the designers commission to undertake the due diligence valued at approximately £85,000, both of which are fully underwritten by Welsh Government.
- 2.2.7. Section 4.8 of Mr Church's PoE indicates that Marshall's have had to underwrite all costs to date. Welsh Government's normal position in relation to the recovery of costs, indicated to objectors who have a duty to compile compensation packages to mitigate their potential losses, is that they will underwrite reasonable costs for the purpose of this activity. Welsh Government has been engaged in correspondence with Marshalls as to the reasonableness of some costs claimed. Resolution of those matters is anticipated via ongoing dialogue with Marshalls.

- 2.2.8. **Points 16, 17 and 20** (*Harm is capable of being addressed if a suitable relocation site is secured and sufficient time allowed to facilitate relocation.*), (*The composite site at Queensway Meadows would suffice or other alternatives.*), (*Job losses would depend on whether Marshalls were able to relocate within the immediate vicinity.*) / Proof of Evidence by Matt Jones, Chief Witness – para 18.10 to 18.11 and para 18.21, Proof of Evidence by Stephen Bussell, Economics para 5.74 to 5.77.
- 2.2.9. A significant amount of work has been undertaken to ensure that the Travelling Community occupation of the proposed Queensway Meadows relocation site is addressed and there have been court appearances to obtain possession of the site in order to progress due diligence, in advance of any agreement with Marshalls. The Travelling Community occupation has now been brought to an end.
- 2.2.10. It is believed that Marshall's have concerns about the proposed Queensway Meadows site. However they indicate that a composite site with an adjoining building belonging to Freshwater may be acceptable. Unfortunately, Freshwater had then and still have yet to decide whether they will make their site available. A decision is awaited from them as to whether the property will be disposed of as a whole. Welsh Government have been in discussion with Freshwater and now have a meeting planned with Marshall's for 13 June to discuss a proposed way forward on the Freshwater building.
- 2.2.11. It is understood that Marshalls are also interested in a proposed relocation site in Chepstow (the former Tesco's site) and have viewed that.
- 2.2.12. Section 5.1 of Mr Church's PoE indicates a detailed summary of engagement is attached in Appendix HC2. No detailed summary is evident in the appendices.
- 2.2.13. **Points 23 and 24** (*If the Scheme's Orders are confirmed Marshalls' current operations at the Site will have to cease. Accordingly there is a clear need to relocate Marshalls' business should the Scheme go ahead.*), (*WAG has failed to recognise the significance of the Site to Marshalls and other neighbouring or associated business interests affected by the Scheme.*) Proof of Evidence by Matt Jones, Chief Witness – para 18.15 to 18.22.
- 2.2.14. The Welsh Government recognised the potential for Marshalls operations to cease as a result of the Scheme. As set out above, a business case for a

proposed compensation package funded by Welsh Government was accordingly developed by Marshalls and their Agent and issued to Welsh Government in October 2016. The purpose of this business case was to establish the compensation package that would be required to facilitate a relocation of Marshalls business in Newport without the need for operations to cease. Gerald Eve were subsequently engaged and funded by Welsh Government to undertake a planning appraisal of the proposed site at Meadow's Road on behalf of Marshalls. This report was issued in January 2017 and a scoping study has now been sent to Newport County Council for approval..

- 2.2.15. Activities associated with the due diligence will lead to sufficient information to lodge a planning application and includes a geotechnical investigation, valued at approximately £40,000 and currently out to competitive tender, and the designers commission to undertake the due diligence valued at approximately £85,000 fully underwritten by Welsh Government.
- 2.2.16. As above Marshalls indicated that they would not proceed with the Queensway Meadows site, are looking at the Freshwater site adjoining and are also looking at the Former Tesco site in Chepstow. The Welsh Government have been supportive of Marshall's relocation proposals throughout.
- 2.2.17. **Point 25** (*Marshalls are frustrated by the slow pace of communication and disappointed at the lack of meaningful engagement from WAG.*) / Proof of Evidence by Matt Jones, Chief Witness – para 18.21
- 2.2.18. Confirmation of receipt of the objection was issued on 18th May 2016 with a detailed follow up indicated in due course. Contact was made with Welsh Government by a representative of CBRE Ltd, Mr Henry Church indicating appointment for representation by Marshalls plc. Initial contact was on 26th May 2016, with subsequent follow up emails to engage issued on 8th, 9th and 10th June.
- 2.2.19. Mr Lyndon Thomas of Welsh Government Transport Property department engaged with Marshalls and their Agent in June 2016 and has been in continuous liaison with Marshalls and their Agent Mr Henry Church with a view to assisting Marshalls locate a suitable alternative site for relocation of

the business in Newport as part of a proposed compensation package. A schedule of meetings demonstrating engagement is contained in Annex A.

2.2.20. There is weekly ongoing liaison with the agent for the Freshwater building in relation to the site adjoining that at Queensway Meadows that the Welsh Government proposed Marshalls relocate to, and Marshalls are regularly appraised of these updates. Consideration is also being given to an alternative premises in Chepstow (the former Tesco's site). Welsh Government consider that engagement to date has sought to both build a good working relationship with Marshalls and their Agent and to alleviate concerns about future compensation entitlement.

2.2.21. The requirement for a legal agreement was discussed at a meeting held on 11th January 2017. Subsequently draft Heads of Terms for a legal agreement were compiled and issued by Marshalls Agent to Welsh Government. Welsh Government have engaged the services of property, compensation and CPO specialists JLL to negotiate Heads of Terms with other businesses affected by the scheme.

Annex A – Schedule of meetings

Meeting No	Date and Time	Purpose
01	28/06/2016 11:00 to 17:00	Tour of the Marshall's site to understand the site & layout. Visit to the 3 option sites for a relocation.
02	09/09/2016 9:00 to 11:00	Meeting to discuss details of the project and actions required to take the project forward.
03	11/10/2016 8:30 to 12:30	Meeting with Marshall's project team and engineers to discuss plant layout and to explore availability of adjacent factory. Arup present to take brief and start due diligence.
04	14/11/2016 14:30 to 17:00	Meeting with Marshall's/Arup and Marshall's planners (Gerald Eve) to discuss more detailed matters of layout, site due diligence and planning of Queensway Meadows and also adjacent buildings.
05	11/01/2017 9:00 to 11:00	Working up the construction programme and design on Queensway Meadows
06	07/02/2017 12:30 to 14:30	Meeting with Newport Council including Marshall's planning advisor (Harry Spawton of Gerald Eve) to discuss Environmental, Transport and general planning matters.
07	13/06/17	Planned meeting to discuss with Marshall a proposed way forward on the Freshwater building.