Bond Dickinson

PLANNING ACT 2008

INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

APPLICATION FOR THE YORK POTASH HARBOUR FACILITIES DEVELOPMENT CONSENT ORDER (Reference TR30002)

WRITTEN REPRESENTATION OF SABIC UK PETROCHEMICALS LIMITED (Unique Reference Number 10031257)

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1. INTRODUCTION

1.1 This is the Written Representation of SABIC UK Petrochemicals Limited to the proposed York Potash Harbour Facilities Development Consent Order.

1.2 The form of this document is identical to the submissions of Huntsman and DEA.

2. DEFINITIONS

2.1 In this written representation the words and phrases in column (1) below are given the meaning contained in column (2) below.

(1) Words and Phrases	(2) Meaning
2008 Act	The Planning Act 2008
A1085 Roundabout	The roundabout at the junction of the A1085 and the northern access to the Wilton Site
Aniline Plant	Huntsman's facility at Wilton for the manufacture of Aniline
Applicant	YPL and SMP, together being the promoters of the Application
Application	The application for the Order
Book of Reference	The Book of Reference submitted with the Application
Cracker	SABIC's Olefins 6 Facility at Wilton for the manufacture of ethylene
DEA	DEA UK SNS Limited
DEA Sub-riverbed Apparatus	DEA's sub-riverbed cables and pipeline immediately adjacent to and to the west of the proposed quay comprising Work No.2 in the Draft Order
Dogger Bank DCO	The Dogger Bank Teesside A and B Wind Farm Order 2015
Draft Order	The draft York Potash Harbour Facilities Development Consent Order in the form submitted with the Application
Environmental Statement	The environmental statement submitted with the Application (Document 6.4)

Highway Works	The highway works shown on the Highway Works Plan
Huntsman	Huntsman Polyurethanes (UK) Limited
Land Plans	The land plans referred to in the Order (being Documents 2.1 to 2.1N)
LDPE Plant	SABIC's plant at Wilton for the manufacture of low density polyethylene
MC2	Major Crossing Point 2 as shown on the Conveyor Route Plans Northern Route – Sheet 2 drawing PD1586-SK492 (Document 3.3J)
NPA	North York Moors National Park Authority
Nitrobenzene	Mononitrobenzene
Nitrobenzene Plant	Huntsman's facility at Wilton for the manufacture of Nitrobenzene
Number 2 Tunnel	The tunnel under the River Tees adjacent to and to the west of the proposed quay comprising Work No.2 in the Draft Order
Objectors	Together SABIC, Huntsman and DEA
Order	Such Order as may be made by the Secretary of State pursuant to the Application
Pipeline Corridor	The Pipeline Corridor operated by Sembcorp and used by the Objectors which links the Wilton Complex with the Number 2 Tunnel and the DEA Sub-riverbed Apparatus
RCBC	Redcar and Cleveland Council
Requirements	The requirements set out in Schedule 2 of the Draft Order
SABIC	SABIC UK Petrochemicals Limited
Sembcorp	Sembcorp Utilities UK Limited
SMP	Sirius Minerals Plc
Undertaker	The Applicant in exercising the powers set out in the Order
Wilton Complex	The multi-occupancy chemical manufacturing site known as Wilton International
Wilton Site Roads	The roads made available for common use within the Wilton Complex and the Pipeline Corridor
Works	The works comprised in the Authorised Development
Works Plans	The works plans referred to in the Order (being Documents 2.2 to 2.2F)
YPL	York Potash Limited

2.2 The following words and phrases shall have the meanings given to them in the Draft Order:

Authorised Development

Highway Works Plan

Order Land

3. SUMMARY

3.1 Subject to the proper protection of their undertakings, the Objectors do not object in principle to the making of the Order. The Objectors are currently engaged in positive negotiations with the Applicant in relation to revised protective provisions for their benefit and an agreement that will satisfy their concerns. However at the time of submission of this document those negotiations are on-going. As a result, the Objectors' interests are not adequately protected and their objections are therefore sustained.

3.2 Specifically, the Objectors object to the following:

3.2.1 The making of the Order, as the adverse impacts of the Authorised Development would outweigh its benefits contrary to Section 104(7) of the 2008 Act.

3.2.2 The granting of rights of compulsory acquisition, as the Applicant has not shown that all of the land is "required" or satisfied the public interest test under Sections 122(2) and (3) of the 2008 Act.

3.2.3 The potential effect of dredging and the building of the quay on the integrity of the Number 2 Tunnel and the DEA Sub-riverbed Apparatus .

3.2.4 The potential effect of the construction and operation of the Authorised Development on navigation in the River Tees.

3.2.5 The inclusion of the southern conveyor route in the Draft Order.

3.2.6 The breadth of ancillary works permitted by Article 6 of the Draft Order.

3.2.7 The breadth, flexibility and complexity of the proposed limits of deviation.

3.2.8 The application of Articles 10 to 13 (streets) to the Wilton Complex and the Pipeline Corridor.

3.2.9 The temporary stopping up and temporary possession of the A1085 Roundabout in terms of access to DEA's apparatus and the potential cumulative effects of the Draft Order and Dogger Bank DCO in terms of restriction of access to the Wilton Complex.

3.2.10 The powers of compulsory acquisition in Articles 24 to 30 of the Draft Order which provide powers that could be used to extinguish the Objectors' rights to maintain their apparatus, remove that apparatus and restrict access to the apparatus.

3.2.11 The inadequacy of the proposed guarantee in respect of the costs of compulsory acquisition in Article 23 of the Draft Order, particularly the length of the guarantee and the method for determining the sum covered.

3.2.12 The terms of the Requirements.

3.2.13 The inadequacy of the proposed protective provisions in relation to the Works and their silence with respect to use of the Wilton Site Roads.

3.2.14 The proposed undergrounding of the conveyor under the A1085.

3.2.15 Until the above issues are resolved to the Objectors' satisfaction, the making of the Order.

4. OPERATIONS

4.1 Introduction

4.1.1 The Objectors are providing the following information in order to assist the Examining Authority's understanding of the importance of their operations both in terms of employment and the costs of disruption to their operations in order that it can use this information to assess whether the adverse impacts of the development outweigh its benefits contrary to Section 104(7) of the 2008 Act and also to assist the Examining Authority in applying the public interest test under Section 122 of the 2008 Act.

4.1.2 The Objectors are unable to provide full information in relation to their operations or the potential scale of their losses for a variety of reasons, including:

(a) The examination process does not allow for the disclosure of information on a confidential basis.

(b) The information would stray into realms which would ordinarily only be traversed during negotiations about compensation for compulsory acquisition and which could be prejudicial to such a future claim in the event that the Secretary of State ultimately decides to grant the Order.

(c) The losses likely to be sustained in the future may differ considerably from those based on a historical analysis, for example due to issues such as fluctuating commodity prices.

4.1.3 In light of these problems it has often been necessary to have regard to a number of generic (industry) studies and to provide these representations strictly without prejudice to any claim which the Objectors may have in respect of compensation for compulsory acquisition (including, but not limited to, the heads of any claim, the quantum and basis of calculation of compensation, and any evidence to be submitted in support of such a claim both in quantitative and qualitative terms).

4.2 The Wilton Complex and Pipeline Corridor

4.2.1 The Wilton Complex is a chemical manufacturing site, originally authorised by three "instruments of consent" in 1946. It was formerly wholly-owned and operated by ICI, but on the fragmentation of ICI in the 1990s it became a multi-occupancy site with shared facilities which are owned and operated by Sembcorp.

4.2.2 The Wilton Complex is criss-crossed by a number of corridors which are used to transfer raw materials, manufactured produce, utilities and waste around the site. Some of the apparatus running through these corridors is owned by the occupiers of the Wilton Complex (such as SABIC and Huntsman), some by Sembcorp as a supplier to its tenants, and some by utilities such as Northumbrian Water.

4.2.3 These corridors connect with the Pipeline Corridor, which leaves the northern limits of the Wilton Complex near to the A1085 Roundabout and passes under the A1085 under the Lord McGowan Bridge. This Pipeline Corridor was designed to provide a link between the Wilton Complex and Tunnel Number 2 (and a further tunnel known as Tunnel Number 1) under the River Tees and beyond that to other facilities on the northern banks of the Tees; however it now also carries pipeline and associated cables to the route followed by the Sub-riverbed Apparatus.

4.3 SABIC

4.3.1 SABIC's Facilities

(a) SABIC operates two main facilities in the Wilton Complex:

(i) The Cracker. The Cracker processes ("cracks") naphtha into ethylene by heating the fluid to a point where it breaks apart the molecular bonds holding it together to form a number of products, primarily ethylene. A project is currently underway to modify the Cracker into an ethane gas cracker using shale gas-based feedstock.

(ii) The LDPE Plant. This produces 400 ktpa of low density polyethylene, a thermoplastic made from ethylene. Approximately 50% of the ethylene made by the Cracker is supplied to the LDPE Plant.

(b) The Cracker and LDPE Plant are linked via the Pipeline Corridor to SABIC's facilities to the north of the Tees, in particular its ship loading and unloading facilities at its North Tees Works.

(c) SABIC transfers naphtha (soon to be ethane see paragraph 4.3.2 below) from its jetties at the North Tees Works along the Pipeline Corridor to the Wilton Complex, and then transfers ethylene in the opposite direction for distribution to purchasers. The Pipeline Corridor is therefore an essential artery without which SABIC's operations could not function.

(d) In addition, SABIC operates an aromatics complex at North Tees and an ethylene liquefaction facility. Beside these there are substantial logistical facilities at Wilton and North Tees, including major storage capacity, a cross-country pipelines network and substantial distribution and shipping services.

4.3.2 Change in Feedstock

(a) The Cracker must be periodically overhauled and the next overhaul is due to take place in 2020. This will be a major overhaul and plans for this event are at an early stage. This will be a major engineering operation involving over 1,000 additional personnel and 30 cranes.

(b) There are also current works which are due to be completed in 2016 involving the creation of new ethane import infrastructure comprising an import terminal and storage tank at SABIC's North Tees site and a new interplant pipeline between North Tees and the Cracker along the Pipeline Corridor. This constitutes the first phase of a change in Cracker feedstock from naphtha to ethane.

(c) The 2020 works will also facilitate the second phase of the change in feedstock for the Cracker from naphtha to ethane. This will involve significant changes to the Cracker plant which are required in order to process higher rates of the new feedstock. These on-plant changes will include the installation of a new distillation column and ancillaries at the south edge of the plant as well as changes to existing furnaces, compressors, heat exchangers and control systems.

4.3.3 Private Losses

(a) SABIC acts as a toller at the Wilton Complex, with the tolling principal being SABIC Petrochemicals BV ("SPBV"), a company registered in the Netherlands. The statutory accounts of SABIC therefore reflect the financial performance of SABIC as a toller, with the underlying commercial financial performance being reflected in the accounts of SABIC's legal entities in the Netherlands.

(b) Notwithstanding the above, SABIC continues to monitor its financial performance on a commercial basis in parallel to preparing its statutory accounts on the basis of its activities as a toller.

(c) The key production unit on the complex is the Cracker. Approximately 50% of the ethylene produced by the Cracker is consumed downstream by SABIC's low density polyethylene plant (within the Wilton Complex). The remaining 50% is exported as liquefied ethylene. By-products of the Cracker are further processed on other units to produce benzene, cyclohexane and butadiene.

(d) Two key measures are used to monitor financial performance. These are:

(i) Margin. This reflects the delta between sales revenue and the variable costs incurred in making the products and delivering them to customers (i.e. raw materials, utilities and distribution costs); and

(ii) Earnings before interest, taxes, depreciation, and amortization ("EBITDA"). The delta between Margin and EBITDA comprises the fixed costs of the operations including support function costs.

(e) In the event of the Cracker being taken offline, it would have to be drained and resent and it would take approximately 10 to 12 days to bring it back into operation. Excluding the sale of inventories already on hand, Margins would immediately become zero from own produced products. Any consequential losses incurred due to not being able to fulfil third party commitments would either create a margin loss or, at best, a break-even situation depending on the market strength of supply and demand at the time of the outage and how easy it would be to source purchased material to satisfy customer contractual commitments.

(f) Cracker margins are the key measure on an integrated chemical complex such as the Wilton Complex. Reported Cracker margins or indeed benchmark Cracker margins take into account the benefits accruing from selling by products. IHS Chemical (formerly CMAI (Chemical Market Associates Inc)) provide both historic and forecast margin and pricing data for Olefins Crackers. SABIC uses such data in its forward projections. Care needs to be taken to select the correct raw material pricing from this data source for the Cracker ie liquid (typically naphtha) or gas (typically ethane). As is stated above, there is a phased project to change the feedstock of the Cracker from the former raw material to the latter.

(g) Based on IHS Chemical data, SABIC's modelled integrated Cracker margins for the period 2020 et seq, based on a 700 kt ethylene output and based on gas rather than liquid cracking, are understood to be of the order of £1,000,000 per day. Modelling for the period 2014 to 2015 suggests a figure of £500,000 per day.

(h) In addition to this loss, in the event of a controlled shutdown of the Cracker there would be additional shutdown costs of typically £5,000,000

(i) Fixed costs ascribed to the UK site operations are in the order of £100,000,000 per annum. Included within this would be a headcount of circa 450 for 2017, beyond which circa 300 would be on the Cracker and the balance on other plants, logistics area and in support functions. These figures reflect the current level of employment of 300 in respect of the Cracker.

(j) Following any cessation of production on the Cracker and the immediate loss of margin, this £100,000,000 of fixed costs would effectively become the EBITDA loss of the site on an annualised basis.

(k) Factors such as consequential losses (for example damages to third parties caused by the non-delivery of product, damages or costs as a consequence of

environmental remediation or damages or costs relating to personal injury, or damage to property directly caused by the Works) are not included in the above figures. The Examining Authority will appreciate that the nature of consequential losses is that their extent would not become fully apparent until the powers under the Order were exercised. It is not, therefore, possible to give an account of consequential losses at this stage, however they could clearly be considerable.

(l) In addition to the above, in terms of qualitative loss, it should be noted that the powers sought by the Applicant would, if granted in the terms it is requesting, cause significant business uncertainty for SABIC.

4.3.4 Employment

(a) As is stated above, SABIC employs approximately 450 people at the Wilton Complex of whom 300 are employed at the Cracker. Following the change in Cracker feedstock from naphtha to ethane these numbers would remain broadly the same.

4.4 Huntsman

4.4.1 Huntsman's Facilities

(a) Huntsman owns and operates an integrated facility on the Wilton Complex for the manufacture of Nitrobenzene and aniline:

(i) The Nitrobenzene Plant produces Nitrobenzene through the nitration of benzene with nitric acid, in the presence of sulphuric acid. When constructed in 1996 it was the largest plant of its' type in the world, and it has been further improved, with the most recent capacity expansion being completed in April 2015. All of the Nitrobenzene produced on the this plant is currently exported to the neighbouring Aniline Plant.

(ii) The Aniline Plant produces aniline through the hydrogenation of Nitrobenzene. The majority of the aniline produced (90-95%) is exported to Huntsman's Rotterdam site and used in the manufacture of isocyanates ("MDI"), with the balance supplied to external customers.

(b) The Nitrobenzene Plant and the Aniline Plant are linked to other facilities via the Pipeline Corridor:

(i) Benzene is imported by pipeline to the Nitrobenzene Plant from storages to the north of the Tees. Huntsman owns this pipeline.

(ii) Dilute Effluent is exported by pipeline from the Nitrobenzene Plant to Northumbrian Water Limited's ("NWL") Bran Sands treatment works. NWL own this pipeline.

(iii) Hydrogen is supplied by pipeline from the BOC Hydrogen Plant at North Tees to the Aniline Plant. BOC owns this pipeline.

(iv) All aniline produced on the Aniline Plant is exported via pipeline to the Vopak Storage Terminal on the north bank of the Tees. Huntsman owns this pipeline.

4.4.2 Integration with Suppliers

(a) In addition to the connections with suppliers, storage companies and waste treatment mentioned above, the Nitrobenzene Plant and Aniline Plant are integrated into Teesside chemical operations, most notably with:

(i) GrowHow (for the supply of nitric acid);

(ii) BOC (for the supply of Hydrogen); and

(iii) Sembcorp Utilities (for the supply of utilities).

Any impact on Huntsman operations would in addition be felt by these suppliers.

(b) Huntsman's operations are "world scale" and provide critical mass to a number of suppliers. The closure of the Huntsman assets would directly lead to the closure of the BOC Hydrogen plant and the likely closure of one of the nitric acid plants operated by GrowHow.

4.4.3 Private Losses

(a) Aniline is a key intermediate in the production of Polyurethane chemicals and whilst there is a small merchant market for aniline, aniline production is always associated with a consuming polyurethanes production plant.

(b) These market characteristics make it very difficult to source large quantities of Aniline at short notice. For this reason, planned maintenance of the Aniline Plant is always aligned to that of its consuming polyurethanes plant.

(c) A significant outage at Huntsman's Aniline Plant would therefore very quickly lead to a significant impact on its polyurethane production as it is highly unlikely that sufficient aniline could be purchased at short notice. Any such purchases would come at a premium to the cost of own produced aniline but a much larger impact from reduced polyurethane production and associated sales can be anticipated.

(d) The magnitude of the potential impact can be derived from the size of the business interruption insurance policy that the company holds ($200M).

4.4.4 Employment

(a) Huntsman directly employs approximately 75 people at its' Wilton facility. In addition to this, there are a large number of people indirectly employed to in the maintenance, servicing and logistics that support this facility.

(b) It is widely accepted that the ratio of supply chain jobs to direct jobs is at least 2:1. Suggesting that at least 150 jobs in the supply chain are supported by the Huntsman operation.

4.5 DEA

4.5.1 DEA's Pipeline System

(a) DEA is a licensee and the operator of the Breagh gas field, which lies approximately 65 kilometres off the north-east coast of England. Petroleum fluids (wet gas) are exported from the Breagh field through a 100-kilometre long 20" submarine pipeline to a beach valve station at Coatham Sands, Teesside, and then through a further 11 kilometres of onshore buried pipeline to the Teesside Gas Processing Plant (TGPP). An additional 3" pipeline runs back to circulate mono-ethylene glycol (MEG) from the TGPP to the offshore Breagh platform installation where the MEG is injected in the 20" pipeline for hydrate inhibition and corrosion management. A fibre optic cable also runs along the pipelines in order to allow for remote control of the offshore platform from the TGPP. Together, these three components constitute the Breagh pipeline system.

(b) Part of the onshore section of the Breagh pipeline system runs through the Pipeline Corridor.

4.5.2 Production and Sale of Gas

(a) All pipeline fluids are processed in the TGPP in three phases in order to produce natural gas (dry gas) that is sold into the National Transmission System, hydrocarbon condensate that is exported to a local storage terminal for onward sale, and MEG for reinjection into the 20" pipeline.

(b) The current average rate of production of gas from the Breagh field is 110 million standard cubic feet per day. Based on a gas price of 50p/therm this equates to approximately £550,000 of gross revenue per day. This revenue would be lost to DEA in the event of a shutdown of the Breagh pipeline system.

(c) It is anticipated that the rate of production will increase over the coming years. For example, it is currently forecast that production will reach 125 million standard cubic feet per day by September 2016. This would generate daily gross revenue of over £600,000 (at a price of 50p/therm).

(d) Further, DEA's gas sales are often transacted on a forward sale basis, i.e. a fixed price is agreed in the present for deliveries to the buyer during a particular period in the future. If the Breagh pipeline system is shutdown then DEA will be unable to deliver any forward sale quantities contracted for the period of the shutdown. The buyer will then be entitled to buy back the under-delivered quantity in the market at a potentially higher price. DEA would be liable for the difference between the contract price and the higher price paid by the buyer.

(e) Factors such as consequential losses (for example damages to third parties caused by the non-delivery of product, damages or costs as a consequence of environmental remediation or damages or costs relating to personal injury, or damage to property directly caused by the Works) are not included in the above figures. The Examining Authority will appreciate that the nature of consequential losses is that their extent would not become fully apparent until the powers under the Order were exercised. It is not, therefore, possible to give an account of consequential losses at this stage, however they could clearly be considerable.

(f) In addition to the above, in terms of qualitative loss, it should be noted that the powers sought by the Applicant would, if granted in the terms it is requesting, cause significant business uncertainty for DEA.

5. JUSTIFICATION FOR COMPULSORY ACQUISITION

5.1 Section 122 of the 2008 Act

5.1.1 Although no powers for freehold acquisition are included in the Draft Order, the Applicant is seeking powers for the temporary possession of the Order Land, the acquisition of rights through it and the extinguishment and overriding of any rights which are inconsistent with the acquisition of those rights.

5.1.2 The Objectors' interests in the Pipeline Corridor are in the nature of rights to maintain their apparatus through the land. The absence of freehold acquisition powers therefore provides them with no protection, whilst the power to extinguish or override their rights is of great concern.

5.1.3 Section 122 of the 2008 Act sets out the principal test for the Secretary of State in determining whether or not to include powers of compulsory acquisition in a development consent order.

5.1.4 Section 122 states as follows:

122 Purpose for which compulsory acquisition may be authorised

(1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met.

(2) The condition is that the land—

(a) is required for the development to which the development consent relates,

(b) is required to facilitate or is incidental to that development, or

(c)…

(3) The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily.

5.2 No more land than is reasonably required

5.2.1 Under Section 122(2) of the Planning Act 2008 an order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the land:

> *"(a) is required for the development to which the development consent relates; or*
>
> *(b) is required to facilitate or is incidental to that development…"*

5.2.2 Paragraph 11 of the DCLG "Guidance related to procedures for the compulsory acquisition of land" dated September 2013 ("the DCLG Guidance") states:

> *"For this to be met, the applicant should be able to demonstrate to the satisfaction of the Secretary of State that the land in question is needed for the development for which consent is sought. The Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development."* (our emphasis)

Paragraph 11 continues in relation to Section 122(2)(b):

> *"An example might be the acquisition of land for the purposes of landscaping the project. In such a case the Secretary of State will need to be satisfied that the development could only be landscaped to a satisfactory standard if the land in question were to be compulsorily acquired, and that the land to be taken is no more than is reasonably necessary for that purpose, and that is proportionate."*

5.2.3 The word "required" in Section 122 of the 2008 Act also mirrors the wording of Section 226(1)(a) of the 1990 Act (as that Section was originally enacted). The meaning of that word was considered by the Court of Appeal in *Sharkey v Secretary of State for the Environment* (1992) 63 P. & C.R. 332 where McGowan LJ stated at 340:

> *"…the local authority do not have to go so far as to show that the compulsory purchase is indispensable to the carrying out of the activity or the achieving of the purpose; or, to use another similar expression, that it is essential. On the other hand, I do not find the word 'desirable' satisfactory, because it could be mistaken for 'convenient' , which clearly, in my judgment, is not sufficient. I believe the word 'required' here means 'necessary in the circumstances of the case'."*

This judgment is copied at Annex 1. Although *Sharkey* related to a different piece of legislation, in light of the DCLG Guidance set out above it would seem reasonable to conclude that the word "required" in Section 122(1)(a) and (b) should be interpreted in the same manner.

5.2.4 This supports the general proposition that applies in respect of any application for powers of compulsory purchase of acquisition: the acquiring authority must justify the need for every last inch of land.

5.3 Public benefit outweighs the private loss

5.3.1 Under Section 122(3) of the 2008 Act an order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that:

> *"…there is a compelling case in the public interest for the land to be acquired compulsorily."*

5.3.2 Paragraph 13 of the DCLG Guidance states:

> *"For this condition to be met, the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss."* (our emphasis)

5.3.3 Paragraphs 14 to 16 of the DCLG Guidance continue by explaining that "…the Secretary of State will weigh up the public benefits that a scheme will bring against any private loss to those affected by compulsory acquisition." When addressing the question of whether to grant powers of compulsory acquisition the decision maker is also bound to have regard to Article 1 of the First Protocol of EHCR (protection of property).

5.3.4 The starting point for analysis of the Objectors' private loss is the "worst case scenario" of the Undertaker exercising the Order powers to their fullest extent. The potential effects of the exercise of the powers in the form set out in the Draft Order are therefore analysed below.

5.3.5 The Objectors' analysis as to the potential financial and economic consequences of the exercise of such rights is set out below.

5.4 Context in which the Public Interest Test must be applied

5.4.1 The Objectors' operations are carried out at both a nationally and regionally significant scale. A description of their operations is contained in Section 4 above. The Order, if granted, has the potential to severely disrupt or even end these operations.

5.4.2 Although the Objectors are not as a matter of law statutory undertakers, the physical nature of their operations through the Pipeline Corridor and the scale and national importance and significance of their operations means that they are analogous to statutory undertakers in terms of the public utility of their operations. It is an anomaly of the law that they are not treated as such for the purposes of the stricter tests contained in the 2008 Act at Sections 127 (in relation to temporary possession) and 138 (in respect of the acquisition of rights).

5.4.3 These special protections are necessary because such undertakings provide a service for the public benefit.

5.4.4 The public interest test in Section 122(3) of the 2008 Act therefore falls to be determined not just by weighing the public benefits of the Authorised Development against the private loss of the Objectors, but also against the public dis-benefits caused by the disruption of the Objectors' operations, which are inseparable from the Objectors' private interests. The potential detriment to the Objectors' operations (and by extension to the public interest) is examined in more detail in Section 4 above.

5.4.5 As can be from the analysis below, the Draft Order contains powers which could destroy the Objectors' operations. Article 30 (temporary use of land for carrying out the undertaking) for example, provides powers for the undertaker to take temporary exclusive possession of the Pipeline Corridor (Article 30(1)(a)(ii) for a period in excess of six years and a power for them to "remove any building… from that land", which would include the Objectors' apparatus. Even a short period of temporary exclusive possession and/or removal could have profound consequences for the Objectors' operations and their nationally significant assets.

5.4.6 The consequences of granting the powers of compulsory acquisition as set out in the Draft Order would therefore potentially be very severe both in terms of public and private loss. It follows that the test set out in Section 122(3) has not been satisfied in respect of the Pipeline Corridor and that the powers of compulsory acquisition which the Applicant is seeking in relation to this land should not be granted.

5.4.7 Moreover, many of the operations of many of the owners and operators at the Wilton Complex are symbiotic and suspension in production of the Cracker (for example) would have knock-on effects in relation to their operations causing further significant financial losses. A prolonged shutdown of the Cracker could put SABIC's Wilton operations (and those of other owners and operators at the Wilton Complex) at significant risk.

5.4.8 In weighing the public benefit against private loss, these consequences to a nationally significant chemical manufacturing site and to a nationally significant gas transmission high pressure pipeline are of very considerable weight indeed on the side of private loss and in the Objectors' submission outweigh the public benefit of the scheme.

5.4.9 This highlights the need for the proposed protective provisions to be tightened to offset the potential for private and public loss and reduce its weight when set against the potential public benefit of the Authorised Development. Where the Objectors' proposed protective provisions are weakened or made uncertain, the weight of private loss in the equation will increase accordingly.

5.4.10 The protective provisions in the Draft Order are analysed in detail below and are considered to be inadequate to protect the Objectors.

5.4.11 In order to establish whether or not this test has been fulfilled by the Applicant it will therefore be necessary to first settle the terms of the proposed Protective Provisions in order that the level (and weight) of private loss can be properly ascertained and weighed in the balance against the scheme's public benefit.

5.5 Public Benefit

5.5.1 The Objectors note the Applicant's estimate of the construction cost of the scheme set out in Section 6 of its Funding Statement and the short term socio-economic public benefits which may arise as a result of this investment.

5.5.2 However the Objectors also note the relatively modest scale of employment generation which would arise as a result of the Authorised Development. This is stated in paragraph 19.7.1 of Section 19 of the Environmental Statement to be as follows:

> *"The operational workforce at the proposed harbour facility would be 26 employees per day (Phase 1) and 34 employees per day (on completion of Phase 2)."*

5.5.3 It is acknowledged that the Applicant's overall operations (including the mine and materials handling facility) would be likely to generate additional jobs, however the scale of job creation is not readily apparent from the Application.

5.5.4 When considering the impact of a proposal on employment the Secretary of State should attach greater weight to existing employment that the potential employment which might arise as the result of a development. This is clear from the Report at Annex 2 in respect of the London Thames Gateway Development Corporation (Bromley by Bow) (South) Compulsory Purchase Order 2010 (Appeal Reference LDN 023/E5900/005/003). At paragraph 10.44 the Inspector concluded:

> "In general terms I do not consider that existing jobs in a well-established company can be regarded as having the same social and economic value as potential jobs which may result from a proposed development. Greater weight should be attached to existing jobs."

5.5.5 By extension, the Objectors' case is that the extent of the potential public benefits of the Authorised Development inevitably contain an element of speculation and conjecture. Meanwhile, the on-going operations of the Objectors and other Wilton operators are real and substantial and to a degree predictable on the basis of the existing position, past performance and market predictions.

6. ANALYSIS OF THE DRAFT ORDER

6.1 Dredging and Quay

6.1.1 The Objectors are concerned about the effect of Work No. 1 (dredging) and Work No. 2 (quay) on the structural integrity of the Number 2 Tunnel and the DEA Sub-riverbed Apparatus . This issue is of particular significance to DEA, since Work No.1 will occur over the DEA Sub-riverbed Apparatus .

6.1.2 The Number 2 Tunnel and the DEA Sub-riverbed Apparatus are essential to the Objectors' operations and any damage sustained to them as a result of the Authorised Development would have profound consequences for the Objectors' operations.

6.1.3 The Application does not provide sufficient information or modelling in relation to the likely effects of a change in loading above or adjacent to the Number 2 Tunnel and the DEA Sub-riverbed Apparatus to allow the Objectors to be confident that their assets will not be affected. The Objectors do not have the technical details of the Authorised Development and, in any case, it is not their role to show that there will be effects. The information and modelling referred to is a very technical exercise which only the Applicant can properly undertake and it is therefore for the Applicant to show that the Number 2 Tunnel and the DEA Sub-riverbed Apparatus will not be affected. Assuming that the Applicant could show that they will not be affected, given the risks to these assets the Objectors would need to ensure that baseline data was obtained in respect of the current pipeline and then that monitoring took place throughout the dredging process. Expert advice would be clearly be required.

6.1.4 It is the Examining Authority's duty to ensure that it is satisfied on this point before it recommends the approval of the Application.

6.2 Navigation

6.2.1 The Objectors are also concerned about the potential effect of the dredging and the operation of the Authorised Development on river traffic. Both SABIC and Huntsman are reliant on bringing raw materials in and exporting their products via the Tees.

6.2.2 In terms of the extent of dredging, Work No. 1 is clearly very wide, covering almost the whole extent of the existing river channel, and this could clearly have implications for river traffic.

6.2.3 All of SABIC's shipping consists of gas tankers and liquid ships (roughly 50:50 at present). Huntsman's shipping is all liquid ships.

6.2.4 The Harbourmaster governs navigation on the River Tees and imposes restrictions on the passage of vessels carrying hazardous cargo. The severity of these restrictions varies depending on the size of vessel concerned. These restrictions include restrictions on vessels which are carrying hazardous cargo passing other ships. SABIC is already facing problems in securing sufficient slots to navigate and is suffering demurrage charges as a result: SABIC and Huntsman are therefore concerned that the problem is not exacerbated by the construction and operation of the Authorised Works.

6.2.5 SABIC also anticipates a change to its shipping patterns in the coming years. The number of gas tankers will increase in 2016 with a drop in liquid ships (also associated with Aromatics closure). As a result of the operation of the Cracker changing to ethane as a feedstock from 2020, at that time there will be a further increase in gas tankers and fall in the level of liquid shipping.

6.2.6 An assessment of the effect on Commercial Navigation has been carried out in Section 16 of the Environmental Statement "Commercial Navigation" which predicts negligible impacts, but does not appear to make any reference to the above issues.

6.3 Flow Control Pipe

6.3.1 Work No. 3 is the installation of a replacement flow control pipe and the lagoon enhancement works to improve habitat for water birds.

6.3.2 The Objectors are concerned about the potential for water inundation affecting the Pipeline Corridor.

6.4 Conveyor Routing

6.4.1 Work No. 4 is the construction of "parallel conveyors". The location of these conveyors is shown on the Works Plans.

6.4.2 The Pipeline Corridor contains a large amount of apparatus belonging both to the Objectors and a number of other Wilton operators. If the Order is made it is important to limit so far as possible the extent of interaction between the Authorised Development and this apparatus. The Objectors therefore have a very strong preference that the southern conveyor route should be excised from the Order.

6.4.3 There are also compulsory acquisition issues to the inclusion of two routes in the Order. Firstly, the Order does not appear to include a mechanism to limit acquisition by the Undertaker to one route or the other. The land requirement of the Draft Order is therefore excessive and unjustifiable. Secondly, the Undertaker must show under Section 122(2) that the land is "required", which it cannot do in relation to its proposed two-option authorisation. This is linked with the non-statutory blighting of the routes.

6.4.4 The description of Work No. 4 should be amended to state the number of parallel conveyors in question.

6.5 Access

6.5.1 Work No.5 comprises a number of facilities ancillary to the conveyors. As can be seen on Works Plans Sheets 1 to 3, Work No.5 comprises a considerably wider area than Work No. 4 and encompasses the Pipeline Corridor for much of its route. Work No. 5 includes:

(a) Most importantly "conveyor footings and supports" and "transfer towers" associated with Work No.4;

(b) Vehicular and pedestrian access;

(c) Construction space;

(d) Access for construction and maintenance;

(e) Services and surface and foul water disposal;

(f) Fencing; and

(g) Security control.

6.5.2 The Objectors are concerned about the extent of Work No. 5 for two reasons:

(a) Together with the Land Plans, it suggests that the Applicant intends to control, and have exclusive possession of, the whole of the land stippled red (on which Work No.5 may be constructed); and

(b) There has been no attempt to carve out the parts of the land in which the Objectors' apparatus is situated or the access routes which allow the installation, repair, maintenance and replacement of such apparatus.

6.6 Work No. 10

6.6.1 Work No. 10 comprises a site compound with materials storage offices etc. DEA is concerned that these works are directly over the route of DEA's pipeline.

6.7 Further Works

6.7.1 In addition to the works specified in Schedule 1 of the Draft Order, Article 6 makes very broad provision for "ancillary works" including roads, railway lines, buildings etc.

6.7.2 It is acknowledged that this article is not without precedence:

(a) It is based on wording found in a number of Harbour Empowerment Orders made under the Harbours Act 1964 (see for example Article 7 of the Hinkley Point Harbour Empowerment Order 2007). However there is a fundamental difference between the Hinkley Point order and the Draft Order in that the Hinkley Point Order provided for a company called NNB Genco to become harbour authority within a defined area. The Draft Order does not make such provision in respect of the Undertaker.

(b) It is also a provision which has been included in DCOs, for example Article 11 of the Able Marine Energy Park DCO. As with the Hinkley Point order, in the Able DCO the power was limited to the area within the limits of the harbour and Able Humber Ports Limited was made harbour authority for that land.

(c) In any event, the Objectors consider that this power is far too broad for the land over which the conveyor runs and objects on the basis that:

(i) The Undertaker is not seeking to be made harbour authority and the power should therefore be omitted in its entirety;

(ii) Due to the nature of the Authorised Development (a conveyor leading to a quay) it is entirely inappropriate for such wide powers to be granted; and

(iii) The conveyor is ancillary to the harbour facilities, ie it is "associated development" and should not be considered part of any harbour created. It follows that if Article 6 is included in the Order it should be limited to the area of the new quay (Work No. 2).

6.8 Limits of Deviation

6.8.1 The limits of deviation allowed by the Draft Order are excessively wide and provide a high degree of uncertainty for those affected by the Order. This is particularly undesirable in light of the technical challenges faced in the Pipeline Corridor.

6.8.2 The Objectors' understanding is as follows:

(a) The starting point is Article 3, which provides a power for the Authorised Development to be carried out, and the description of each of the works makes reference to the works being "within the area described on the works plans". This is reinforced by Article 4(a) which provides a power to deviate laterally within the limits of deviation.

(b) The Works Plans themselves then contain a specific concession that "Any boundary between the areas of two Works Numbers may deviate laterally by 20 metres either side of the boundary". This is repeated in Article 4(c). The meaning of this provision is unclear, however it has been confirmed orally by the Applicant that this is supposed to be broad enough, for example, to allow the Undertaker to extend Work No. 4 (the conveyor itself) up to 20 metres into the land comprising Work No. 5 (the footings). This makes the Works Plans very misleading, and makes predicting the precise location of the Works far more difficult than might at first appear. If the Applicant intends that Work No. 4 can be carried out anywhere within the land comprising Work No.5, the Works Plans should reflect this situation.

(c) Article 4 then provides in the first instance that these Works are to conform with the "parameters table" which is Document 6.9. This table sets out the maximum dimensions of many of the Works. For example, if the open quay structure is built, it must be 486 metres long and 28 metres wide, and a maximum of two ship loaders may be built with a maximum height of 60 metres OD with the boom raised. The Objectors raise no objection in relation to the Parameters Table per se.

6.8.3 With regard to the conveyor itself (Work No. 4):

(a) The lateral limits of deviation are shown on the Works Plans (Documents 2.2A to 2.2F).

(b) The vertical limits of deviation are shown on Document 3.11A in respect of the "Southern Route". This shows the bottom of the bridge structure plotted against LIDAR generated topography levels.

(c) The type of conveyor used at each location is shown on the "Conveyor Route Plans" (Documents 3.3A to 3.3F).

6.8.4 With regard to the conveyor footings comprised in Work No. 5, their precise location is not fixed by the parameters table. The location of the transfer stations, however, is fixed by the Conveyor Route Plans (Documents 3.3A to 3.3O).

6.8.5 Article 4 makes one further provision in respect of deviation. Under Article 4(b) Work No. 4 can deviate vertically to the extent shown on the vertical deviation plans. These are Documents 3.11A and 3.11B, which show the upper and lower limits of deviation.

6.8.6 Moreover, requirement 4 provides that the Works must be carried out in accordance with the Works Plans, Parameters Table and Vertical Deviation plans, "unless otherwise approved by the local planning authority".

6.8.7 The complexity of these provisions and the range of flexibility afforded is excessive. Although some flexibility may be required from the Works Plans, the extent of such

flexibility should be clearly stated (and easily ascertainable) and justified in each instance.

6.9 Streets

6.9.1 Article 10 relates to street works and provides powers to break open and place apparatus in streets within the Order Limits, putting the Undertaker on the same footing in respect of street works as a statutory undertaker (eg Northumbrian Water), meaning that the New Roads and Street Works Act 1991 applies to such works. They must also obtain the Highway Authority's consent to such works.

6.9.2 Article 11 provides a power for the undertaker to temporarily stop up or divert "any street" with the Highway Authority's consent and provides for compensation to be payable. This seems too wide, and should be limited to a list of identified streets listed in a Schedule to the Order. This is of great importance given the issue set out at paragraph 6.10.4 below.

6.9.3 Article 11 is of particular importance to DEA in terms of the A1085 Roundabout. DEA uses the A1085 Roundabout to gain access to its apparatus which runs immediately to the north of the roundabout, and is therefore very concerned indeed about the exercise of a stopping up power which would prevent it from accessing its pipeline for maintenance or in the event of an emergency situation.

6.9.4 Article 13 provides a power for the Undertaker and Highway Authority to enter into agreements in relation to the improvement and repair of streets, their stopping up and diversion and the carrying out of street works. The agreement can provide for the Highway Authority to exercise the Undertaker's powers under the Order in relation to the street and to payment. This power is of concern because there is nothing in the stopping up provision to link the power to streets where stopping up is authorised by the Order (as in Article 18 of the Able Marine Energy Park DCO) and the power could therefore be misinterpreted as a power to stop up by agreement.

6.9.5 Articles 10, 11 and 13 are also of concern because they could apply to the Wilton Site Roads. This is because "streets" are defined in the 1991 Act as follows:

> *"…the whole or any part of any of the following, irrespective of whether it is a thoroughfare—*
>
> *(a) any highway, road, lane, footway, alley or passage,*
>
> *(b) any square or court, and*
>
> *(c) any land laid out as a way whether it is for the time being formed as a way or not."*

The Wilton Site Roads appear to fall within this definition, although in practice this is a nonsense given the access controls, the purpose for which the Wilton Site Roads are currently used and the nature of activities on them. The Objectors are seeking protective provisions to ensure that Articles 10, 11 and 13 will not be used in relation to the Wilton Site Roads and that an alternative mechanism will apply.

6.9.6 Finally, some thought needs to be given to the cumulative effect of the powers sought under the Draft Order and those granted in the Dogger Bank DCO which affects access from the south east (Southway) and south (Queen's Avenue East). The power to temporarily stop up streets in the two orders could potentially lead to the simultaneous closure of three of the access routes to the Wilton Complex. This could have safety and operational ramifications. Provision must be made to prevent this from occurring. Huntsman, for example, requires the Wilton West Gate and at least one other gate to remain open.

6.9.7 The Objectors consider that protective provisions should deal with the Undertaker's access to and use of the Wilton Site Roads and will be providing some drafting to the Applicant in this regard.

6.10 Compulsory Acquisition

6.10.1 Article 24 provides a power for the Undertaker to "create and acquire the new rights" and to "impose the restrictions" set out in the Book of Reference. With regard to the power for the Undertaker to "impose the restrictions described in the Book of Reference" there is an element of doubt as to whether or not restrictions may lawfully be acquired compulsorily, and the inclusion of such powers is largely untested in the Courts.

6.10.2 Article 24(2) provides that "all private rights over land subject to the compulsory acquisition of rights… are extinguished in so far as their continuance would be inconsistent with the carrying out and use of the authorised development". This is problematic for the Objectors as they have essential apparatus in the Order Land and it is not certain that at least some of this apparatus could be considered to be "inconsistent with the carrying out of the authorised development". There is therefore a significant risk that at least some of the Objectors' rights could be extinguished by this article. The Objectors require assurances either through protective provisions or by agreement that their rights to keep their apparatus in situ and to install, repair, maintain and replace apparatus will not be affected by the Order.

6.10.3 Article 25 allows the Undertaker to override easements and other rights. At face value this provision is to allow the Authorised Works to be carried out even if they are in breach of a restriction on the land which would otherwise prevent them from happening. However, under Article 25(3) this is expressly applied to an "easement" and "any natural right of support". It would therefore appear that the Order could be used to remove rights of support for the Objectors' apparatus, or to trump the Objectors' rights in respect of their existing apparatus. This position is not acceptable to the Objectors who require assurances either through protective provisions or by agreement that their easements and other rights will not be overridden.

6.10.4 Article 29 provides a power for the Undertaker to enter onto and appropriate the subsoil and airspace of any street. Although this article is commonly applied in DCOs, its precise meaning is unclear, however it would appear to be a right for the Undertaker to acquire the subsoil under the airspace above any street and that it therefore supplements the powers to take and override easements and other rights (in Article 25). This is of concern to the Objectors where their apparatus passes under or over the Wilton Site Roads affected by the Order. This position is not acceptable to the Objectors who require assurances either through protective provisions or by agreement that their rights will not be overridden under this article.

6.10.5 Finally, Article 30 provides powers for the Undertaker to take possession of certain land temporarily. This right expressly applies to two plots only, both of which are at the Wilton Complex end of the conveyor and shown in yellow on the Land Plans.

6.10.6 The first plot is Plot 54A which comprises the whole of the A1085 Roundabout:

(a) It is not clear why the whole roundabout is subject to rights of temporary possession given that the highway works comprised in Work No. 12 are limited to the western side of the roundabout.

(b) Combined with Article 11 (temporary stopping up) this would allow the Undertaker to close the A1085 Roundabout and go into possession of the land for a period in excess of six years. Although this issue may be mitigated at least to a degree by the need to obtain consent for the closure from the local Highway Authority, the Objectors have no control over the extent of the closure. Given that under Requirement 5 of the Draft Order the Highway Works must be completed before

the main development is carried out, it is clear that the powers of temporary possession are too extensive in terms of the length of potential possession of this land and, if authorised, should be curtailed.

(c) If Plot 54A is retained it should be made smaller and should only apply to the western part of the roundabout where the Highway Works are to be carried out.

(d) As stated above, DEA uses the A1085 Roundabout to gain access to its apparatus which runs immediately to the north of the roundabout, and is therefore very concerned indeed about the exercise of a stopping up power which would prevent it from accessing this apparatus. This position is not acceptable to DEA which requires assurances either through protective provisions or by agreement that it will be able to continue to access its apparatus notwithstanding this article.

6.10.7 The second plot over which temporary possession is expressly authorised is Plot 59A. This is an area of land within the Wilton Complex, immediately to the north and west of the main northern access road. This is the site of Work No. 11. SABIC has apparatus which passes directly though this land and is concerned about the temporary use of this land by the Undertaker, especially in light of the power under Article 30(1)(b) referred to in paragraph 6.10.9 below. Huntsman also requires access along this strip of land in order to reach its assets, although no Huntsman asset runs through it.

6.10.8 Of even more concern is that the Article 30 right to take temporary possession also applies to any of the Order Land in respect of which no powers of compulsory acquisition have been exercised (i.e. the service of a notice of intended entry or the making of a general vesting declaration). This means that the Undertaker is free to take temporary possession of any part of the Order Land (including the Pipeline Corridor) for a period which can exceed six years.

6.10.9 Moreover, under Article 30(1)(b) the Undertaker may remove "any buildings" from the land. "Building" is defined in Article 2(1) of the Draft Order as "any structure or erection or any part of a building, structure or erection", and would appear to be wide enough to encompass the Objectors' apparatus. This position is not acceptable to the Objectors who require assurances either through protective provisions or by agreement that their apparatus will not be removed under this article and that they will continue to have access to and be able to install, repair, maintain and replace their apparatus.

6.10.10 Article 23 provides that before exercising its powers of compulsory acquisition the Undertaker must put in place a guarantee (or another form of security approved by the Secretary of State) in respect of its potential liabilities to pay compensation, enforceable by any person to whom compensation is payable.

6.10.11 Article 23 states that the guarantee must be in place for "a maximum of 20 years" from the date when the relevant power is exercised:

(a) The Objectors consider that the 20 years should run from the latest date that powers of compulsory acquisition may be exercised under Article 27.

(b) The Objectors are concerned about the expression of the length of the guarantee as a maximum period as this would give the Undertaker the flexibility to put in place a guarantee of any length, provided that it exceeded 0 years. The Order should provide for the guarantee to be in place for a minimum term of years.

6.10.12 The Objectors are also concerned that Article 23 does not provide for the approval of the form and amount of the guarantee by the Secretary of State. The Objectors note the comment in the Funding Statement that the estimated cost of and acquisition under the Order is "in the region of £15 million". The Funding Statement does not appear to include any estimate for compensation in respect of other potential heads of claim such as severance, injurious affection, disturbance or business extinguishment which, given the details given in Section 4 may be considerable. The Objectors are therefore

concerned that the level and terms of the guarantee that is put in place should be subject to third party scrutiny and vetting to ensure its adequacy and Article 23 should be amended accordingly.

6.10.13 In light of the above, and in the absence of suitable and adequate protective provisions or side agreement for the protection of the Objectors, it is not considered that the Applicant has demonstrated:

(a) That the Order Land is all "required" pursuant to Section 122(2) of the 2008 Act; or

(b) That the public interest test in Section 122(3) of the 2008 Act has been satisfied,

and accordingly powers of compulsory acquisition should not be granted.

6.11 Requirements

6.11.1 Under requirements 2 and 3 details of layout, quay structure and related infrastructure, external appearance and scale of all building and structures (which will include the conveyors), drainage and levels will all fall to be approved by the local planning authority. Essentially this means that the details of the scheme will be settled at a later date by the approval of details by the Council. The Objectors consider that they should be notified when such submissions are made in order to afford them an opportunity to make comments to the local planning authority about elements of the scheme which might affect their interests. They therefore require assurances either through protective provisions or by agreement that this will occur.

6.11.2 Requirement 4 provides that the works must be carried out in accordance with the Works Plans, Parameters Table and Vertical Deviation plans, "unless otherwise approved by the local planning authority". This flexibility is of concern, notwithstanding the provision that the altered development must fall within the Order Limits and have no significant environmental effects beyond what has been assessed in the Environmental Statement. The Parameters Table and Vertical Deviation Plans in particular should set the absolute limits of the development so that there can be certainty on that point, and there should be no additional layer of flexibility for the local planning authority.

6.11.3 Requirement 5 provides that the Highway Works (Work No.12) to the A1085 Roundabout must be completed before any Phase of the Development is begun. As stated above, this raises the question as to why temporary possession can be taken of the A1085 Roundabout for such a long period.

6.11.4 Requirement 6 provides for the submission, approval and implementation of a Construction Environmental Management Plan ("CEMP"). This deals with issues such as a stakeholder communications plan, control of dust and emissions. The approved plan must comply with the principles of the framework plan (Environmental Statement, Section 6, Appendix 6.4). The Objectors are currently considering the Framework Plan and reserve the right to make further submissions in relation to its contents as the Examination progresses. Huntsman is concerned that the Framework Plan appears to be more reactive than proactive and that a good communications plan needs to be established.

6.11.5 The Objectors do consider that the provisions in Requirement 6(2), allowing the local planning authority to approve an amended CEMP, should be amended to ensure that the amendments also comply with the framework document.

6.11.6 Requirement 7 provides for the submission, approval and implementation of a Construction Traffic Management Plan. The principles of what is to be put in place are set out in Appendix 12.3 of the Environmental Statement and, again, the Objectors are currently considering the adequacy of these principles and any problems which are not

addressed or could be caused. As a general point, the Objectors would be very concerned any fetter on their ability to gain access to their apparatus for emergencies or required maintenance.

6.11.7 Huntsman considers that the proposed routing of construction traffic for both the harbour and materials handling facility via the A1085 is preferable and that it would be very concerned about the routing of vehicles through the Wilton Complex as this would increase traffic flow around its facilities.

6.11.8 The Objectors so consider that Requirement 7 should be amended so that the plan which is submitted should be drafted "in accordance with" the principles set out in Appendix 12.3 of the Environmental Statement and not "in connection with" those principles, as is currently stated in the Draft Order.

6.12 Marine Licence

6.12.1 Conditions are also set out at Schedule 5 in relation to the licence under the Marine and Coastal Access Act 2009 which is deemed to be granted by the Order

6.12.2 Paragraphs 10 to 39 contain conditions and as a passing note paragraph 9 needs to be amended as it currently refers to "paragraphs 10 to 50".

6.13 Protective Provisions

6.13.1 Protective provisions for the Protection of the Pipeline Corridor have been included in Schedule 9 of the Order which would benefit the Objectors.

6.13.2 The Objectors do not consider that these provisions are adequate to sufficiently protect their undertakings and as part of their negotiations with the Applicant are currently in the process of drafting a revised set of protective provisions. In general terms these provisions will provide:

(a) That the Undertaker will be obliged to obtain their express approval (or the express approval of a consultant to be appointed by them and paid for by the operator) of the methodology and approach in respect of any interference with or protective measures to be undertaken at or in close proximity to their assets prior to any works being carried out.

(b) The Undertaker will provide continued unfettered access at all times to their infrastructure for the purposes of installation, inspection, repair, replacement and general maintenance; and

(c) That the Undertaker will provide a robust and unqualified indemnity (together with adequate provisions for insurance and bonds) in relation to any damage loss or expenses to which they are put as a result of the carrying out and implementation of the works under the Order including any shutdown of their apparatus.

6.13.3 The remainder of this section sets out a number of problems and shortcomings with the protective provisions as currently contained in the Draft Order.

6.13.4 The protections are stated to apply to "all pipes within the pipeline corridor". The "pipeline corridor" is the corridor along which the conveyor is erected. The extent of the protection is unclear and should be defined by reference to those parts of the Order Land affected by Works No. 4 and 5 as shown on the Works Plans: that this is the land which may be affected by the Authorised Development.

6.13.5 "Pipes" are defined as the "pipe or pipes" within the pipeline corridor and all ancillary apparatus. There is specific reference to "apparatus properly appurtenant to the pipes as are specified by Section 65(2) of the Pipelines Act 1962 (this should be the "Pipe-

lines Act 1962"). Clarification is needed that apparatus is protected whether or not it is covered by the Pipe-lines Act 1962.

6.13.6 The Objectors are concerned that the words "pipes" and "pipelines" are used interchangeably in the protective provisions and further clarification is required.

6.13.7 Paragraph 3 provides for the submission, before commencing a part of the Authorised Development which "would have" an effect on the operation and maintenance of the pipes, to the owner of the pipes plans and sections of the proposed work. The owner of the pipes has 28 days to request further information which must be provided. The Objectors have three concerns:

(a) This should be amended to refer either to works in the "pipeline corridor" (as revised above) or to works within a certain distance thereof.

(b) The works by their nature are very technical and the Objectors do not have in-house expertise in relation to the issues which are likely to arise. As a result a longer period of time may be required in order to ascertain what further information is required.

(c) There is no timescale for the provision of the additional information, nor is there a moratorium on works being carried out until after the information is provided and the works authorised.

6.13.8 Paragraph 4 provides that no works which would affect in full or in part the operation, maintenance, repair, replacement and/or abandonment of the "pipelines" and access to them may be commenced until the plans and sections in relation to the works have been authorised by the owner of the relevant pipe. Clearly the word "pipeline" should be replaced with the word "pipe".

6.13.9 Paragraph 5 provides that requirements can be imposed on the authorisation by the pipe owner for the continuing safety and operation or viability of the pipes, and for the owner to have access at all times. Access should be specified to be at all times and both pedestrian and vehicular. The word "requirement" should be replaced by the word "condition".

6.13.10 Paragraph 6 provides deeming provisions if SABIC or Huntsman do not respond to the notice within 14 days of the expiry of the 28 day period (on which see paragraph 6.13.7(b) above). It is unclear whether this "response" has to be an authorisation or refusal, or whether the requesting of further information would suffice to prevent deeming from occurring.

6.13.11 Paragraph 7 provides for 28 days' notice to be given of works "in the vicinity of the pipes" so that Objectors can make their engineer available to advise on safety precautions during the works. The proximity which would trigger this requirement is too uncertain and should be tied in to a set distance from the pipes.

6.13.12 Paragraph 8 provides that excavations within 1 metre of the known location of pipes must be hand dug. The Objectors consider that this should be increased to 1.5 metres.

6.13.13 Paragraph 9 relates to temporary crossings for construction traffic. It would be a concern for DEA if heavy lifts take place in the vicinity of its pipeline. DEA would, for example, need to be able to consult with a third party expert prior to permitting such a crossing.

6.13.14 Paragraph 10 provides for the fencing- off of a 1.5 metre exclusion zone from the pipes. The reference to signage "should be erect" should read "must be erected".

6.13.15 Paragraph 11 provides a restriction on the use of explosives "in the vicinity of the pipes" unless the Undertaker has consulted with the pipe owner. The "vicinity" needs to be clearly defined, however as a more fundamental point the Objectors can envisage no circumstance in which explosives could or should be used anywhere near their apparatus. Consultation would seem a very weak protection: the Objectors consider that the use of explosives should be prohibited.

6.13.16 Paragraph 12 provides a similar restriction in respect of piling within 1.5 metres of the pipes. The Undertaker must consult on the method used but may not use percussive piling. The Objectors are currently considering whether this distance is adequate.

6.13.17 In Paragraph 13 protection is provided in respect of excavations in the direct vicinity of above ground structures such as pipe supports. These must "have their zone of influence calculated". The Protective Provisions do not go on to say what is to be done with that calculation or to impose any further restrictions. This would also require a design approval which would need to be approved by the relevant Objector at the Undertaker's cost.

6.13.18 Paragraph 14 relates to the compacting of infilled materials around excavated pipes and states that permanent support may need to be provided. It does not provide for any sums to be paid for increased maintenance costs, or restrict the methods that may be used for compaction.

6.13.19 Paragraph 15 provides a minimum 1 metre clearance between the works and the "pipeline" (this needs to be changed to "pipe") to facilitate repairs. There is provision that "the owner will advise of the actual distance required", but there is no obligation to comply with this "advice".

6.13.20 Paragraph 16 relates to damage to the wrapping of pipes and provides for the owner to be notified to enable repairs to be carried out; the repairs must be subject to testing and the results "shown" (which should state "provided") to the owner. This provision does not say who would carry out and/or pay for the repairs or what would occur if testing showed poor results. As part of the protective provisions, the Objectors' view is that Baseline cathodic protection testing and installation of continuous monitoring throughout construction should be paid for by the Undertaker.

6.13.21 Paragraph 17 relates to minor repairs stating that the pipe owner will carry these out at no cost to the Undertaker provided that access can be obtained. The Objectors do not consider that this is equitable.

6.13.22 Paragraph 18 relates to damage to the pipes causing weakness or leakage and provides that the Undertaker will be responsible for the cost of repair. No provision is made in respect of associated costs such as environmental mitigation.

6.13.23 With regard to third party services the protective provisions do not appear to provide comfort. For Huntsman this includes System 15 (BOC) and System 120 (Northumbrian Water). The protective provisions do not currently provide any assurances for the Objectors in relation to these assets.

6.13.24 The protective provisions do not deal with access to the Wilton Complex or the Pipeline Corridor by the Objectors. It is vital that rights of access for the installation, repair, maintenance and replacement of apparatus are retained.

6.13.25 The protective provisions do not deal with what would occur in the event of a conflict between the Objectors' existing apparatus and the proposed conveyor and its footings and do not appear to govern such works or make provision for the procurement and granting of replacement rights. That is assuming that the Undertaker intends to interfere with the Objectors' apparatus and rights; certainly the Order does not preclude it from doing so, and does provide for the overriding of the Objectors' rights.

6.13.26 The protective provisions do not make provision in respect of the losses of Objectors if damage to apparatus leads to a forced shut down, or in respect of damage to apparatus caused by, for example, the fracturing of another pipe. There is no provision relating to minimum insurance/bonding levels and no indemnity for damages.

6.13.27 With regard to costs there is no provision for the Objectors to recover their costs in giving authorisation, instructing an expert, considering information, providing an engineer or repairs made necessary as a result of the Works.

6.13.28 In short the proposed protections are considered to be wholly inadequate.

7. UNDERGROUNDING THE CONVEYOR UNDER THE A1085

7.1 As stated at the Preliminary Meeting, DEA has serious concerns and reservations about the undergrounding of the conveyor beneath the A1085.

7.2 DEA's pipeline system is itself underground and running parallel and to the north of the A1085 at this point. DEA is concerned about the potential effects of the engineering required to underground the conveyor on this location, as well as the need to secure access and protection of its pipeline during and after construction. In particular, DEA believes that the potential interaction with its pipeline system to the south-west of the A1085 Roundabout, the likely traffic congestion caused by the construction work and the interference with MC2 as shown on the Conveyor Route) for access to its pipeline for maintenance or in emergency situations represent significant risks to it (see Page 52 of the Options Report).

7.3 DEA is currently considering the extent to which Protective Provisions can allay its concerns in this regard.

Bond Dickinson LLP

21 August 2015

ANNEX 1

Sharkey v Secretary of State for the Environment (1992) 63 P. & C.R. 332

Status: Positive or Neutral Judicial Treatment

*332 Sharkey and Another v Secretary of State for the Environment and South Buckinghamshire District Council

Court of Appeal

14 October 1991

(1992) 63 P. & C.R. 332

(Parker , Mccowan and Scott L.JJ.):

October 14, 1991

Compulsory purchase order—Land required for a planning purpose—Meaning of "required"—Whether local authority should exhaust other planning enforcement powers before using compulsory purchase powers— Town and Country Planning Act, 1971, s.112(1)(b)

Gipsies brought mobile homes onto eight plots in the metropolitan green belt, where there was a presumption against development, without obtaining planning permission. They intended to settle permanently there. The local authority proceeded against the gipsies, initially by way of enforcement notices and then by obtaining injunctions, but finally, finding that these procedures were cumbersome, expensive and ineffective, made a compulsory purchase order seeking to purchase all eight plots on the ground that the land was "required" to achieve proper planning of the area within the Town and Country Planning Act 1971, s.112(1)(b) .

After holding a public inquiry into the compulsory purchase order, the inspector, while accepting that the development was inappropriate and unacceptable in the green belt, recommended that the order should not be confirmed, on the grounds that the council had not satisfactorily shown that this was the only reasonable means of achieving proper planning of the area and that the order was premature. This was not accepted by the Secretary of State, who confirmed the order in respect of four plots on the ground that, on the evidence, successful restoration of the land without the compulsory purchase order would be unlikely in these cases, but deferred his decision in respect of the other four plots where time for compliance with the enforcement notices had not yet expired.

Certain gipsies appealed against the decision of Roch J., [1] who had dismissed their application to quash the compulsory purchase order. They contended that the land was not "required" by the local authority within section 112(1)(b) , since there were various ways in which the clearance of the land could be achieved without compulsory purchase.

Held, dismissing the appeal, that in order to show that land was "required" for a purpose which it was necessary to achieve in the interests of proper planning within the Town and Country Planning Act 1971, s.112(1)(b) , a local authority did not have to show that compulsory purchase of the land was indispensable to the achieving of that purpose, but that it was necessary in the circumstances of the case. It was not enough, however, that such compulsory purchase might be desirable. The Secretary of State was entitled to find that the council was unlikely to achieve successful restoration of the land without compulsory purchase in respect of four plots and to defer a decision in respect of the four further plots where there was a possibility that this might be achieved.

Cases cited:

(1) *Company Developments (Property) Ltd. v. Secretary of State for the Environment and Salisbury District Council [1978] J.P.L. 107* .

(2) *R. v. Secretary of State for the Environment, ex p. Leicester City Council (1988) 55 P. & C.R. 364* . ***333***

(3) *Runnymede Borough Council v. Ball [1986] 1 W.L.R. 353; [1986] 1 All E.R. 629; 53 P. & C.R. 117, C.A.*

Legislation construed:

Town and Country Planning Act 1971 (c. 78), s.112(1)(b) (see now Planning Act 1990, s.226(1)). The provision is set out at page 335, *post* .

Appeal by L. Sharkey and C. Fitzgerald from a decision of Roch J. on May 11, 1990 (*see 62 P. & C.R. 126*) in which he dismissed their application to quash a compulsory purchase order made by the South Buckinghamshire District Council on October 8, 1985, relating to certain plots of land at Swallow Street, Iver, Buckinghamshire, in the metropolitan green belt, upon which they had installed mobile homes without planning permission. The appellants contended that the district council only required clearance of the land, which could be achieved by prosecution, by the council entering upon the land and clearing it, by injunction or by providing a suitable alternative site. Compulsory purchase was not "required."

Representation

Harry Sales for the appellants (applicants).

W. Robert Griffiths for the first respondent.

R. J. Rundell for the second respondent.

Parker L.J.

I will ask McCowan L.J. to give the first judgment.

McCowan L.J.

This is an appeal from a decision of Roch J. given on the May 11, 1990, dismissing an application by the appellants that the South Bucks District Council (Ivor No. 1) Compulsory Purchase Order 1985 be quashed. The first respondent is the Secretary of State for the Environment and the second respondent is the South Bucks District Council.

The order in question, as made by the South Bucks District Council on October 8, 1985, related to plots 1 to 6, 7A and 7B Swallow Street, Iver. The order as confirmed by the Secretary of State related only to plots 1, 5, 6 and 7A. Postponement of consideration of the order in so far as it related to plots 2, 3, 4 and 7B was directed by the Secretary of State.

Between September 15 and 17, 1987, an inspector held a public inquiry into the compulsory purchase order and also into various enforcement notices with which neither the hearing before Roch J. nor the appeal have been concerned. The reason for that, as we understand it, is that before the case started in front of Roch J. it was agreed between the parties that the appellants would not pursue their appeals against the enforcement on the basis that the council for their part would not take action in respect of them before some date in 1991. Those enforcement notices are therefore effective.

That inspector described the site covered by the order thus:

> The order land is on the west side of Swallow Street and in a generally open area between the north-western and south-western extremities of the built-up areas of Iver and Iver Heath respectively. It is approximately 0.28 (0.69 acres) in area and divided

into 7 plots, numbered 1 to 7 consecutively from south to north (Plan A). At the time of the inquiry Plot 7 had been sub-divided into 2, the southern part referred to as Plot 7A and the northern as Plot 7B (Plan Q).

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The inspector went on to make findings of fact about, among other things, the state of occupation of the various plots. He said:

> 5. Plot 1, Cherry Orchard, contains a mobile home and hardstanding and garden areas, and is residentially occupied by Mr. Sharkey and family.
>
> 6. Plot 2, Springfield Rose, contains a mobile home and hardstanding area, and is residentially occupied by Mr. And Mrs. Carey.
>
> 7. Plot 3, Little Apple, contains a mobile home, touring caravan and hardstanding area, and is residentially occupied by Mr. M. Smith and family.
>
> 8. Plot 4, Mill Place, contains a mobile home, touring caravan and hardstanding area, and is residentially occupied by Mr. J. Smith and family.
>
> 9. Plot 5, Silver Birch, contains a mobile home and hardstanding area, and is residentially occupied by Mr. Fitzgerald and family.
>
> 10. Plot 6, Swallows Nest, contains a mobile home and patio, garden and hardstanding areas, and is residentially occupied by Mr. Stubbings and family.
>
> 11. Plot 7A, Summerset Place, contains a touring caravan and hard-standing area, and is residentially occupied by Mr. Brown and family.
>
> 12. Plot 7B, Meadowside, contains a touring caravan and hardstanding and garden areas, and is residentially occupied by Mr. Price and family.

Plots 1 and 5, it is to be noticed, are occupied by the two appellants. The learned judge summarised the situation in this way [2] :

> Those plots were occupied by travellers or gypsies. Often the occupant was the person who had purchased the plot. Entrances were made on to Swallow Street in most cases, although in some cases it was said that existing entrances were used. Hardstanding was put down for caravans and for vehicles, walls were built and gardens cultivated. In addition some septic tanks were constructed.
>
> It seems that the travellers who bought and occupied those plots were travellers who wished to settle, to send their children to school, and to avoid having to move their children from one school to another. In short that the occupants were responsible and orderly people.
>
> However, Swallow Street is within the Metropolitan Green Belt and there was and is a presumption against such development which is only to be displaced in certain exceptional cases. The second respondent, as the local planning authority, were against this unpermitted development and took steps to terminate this unauthorized use of this land.
>
> Enforcement notices were prepared and served under section 87 of the Town and Country Planning Act 1971 . In respect of some of the plots there was more than one enforcement notice.
>
> The history in relation to plot 1 was this: that in 1984 four enforcement notices were served. In August 1985 the second respondent used its powers under section 91 of the Town and Country Planning Act 1971 to enter plot 1 and execute the work set out in the four enforce ***335** ment notices. Consequently, by October 8, 1985 plot 1 was unoccupied and the hardstanding, fences and vehicular access which had existed on plot 1 had been removed.

> In May 1986 a High Court injunction was obtained to prevent plot 1 being used by a traveller. In August of 1986 a second such injunction was obtained by the second respondent. In February 1987 further action under section 91 of the Act was taken. In April 1987 a writ was served on the then occupant of plot 1. Nevertheless by September 1987, at the time that a public inquiry was held by a planning inspector, Mr. Brock, plot 1 was being used by a traveller who had a caravan on the plot sited on hardstanding.
>
> The inspector's report indicates that four enforcement notices were served in respect of plot 2, the first on May 15, 1985 and the remaining three on September 3, 1985. Three enforcement notices were served in respect of plot 6, two on September 5, 1985 and the third on September 20, 1985. Five enforcement notices were served in respect of plot 4, four on September 5, 1985 and the fifth on March 7, 1986. One enforcement notice was served in respect of plot 7 on August 8, 1987.
>
> On October 8, 1985 the second respondent promulgated a compulsory purchase order under section 112(1)(b) of the Town and Country Planning Act 1971 seeking authorization to purchase compulsorily the land described in the schedule which was all eight plots, that is to say, plots 1 to 6 7A and 7B which were described in the schedule simply as plot 7; “For the purpose which it is necessary to achieve in the interests of the proper planning in the area in which the land is.”

It is convenient at this point to read section 112 of the Town and Country Planning Act 1971 . In so far as it is material it provides as follows:

(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily

> (a) any land which is in their area and which is suitable for and is required in order to secure the carrying out of one or more of the following activities, namely, development, redevelopment and improvement;
>
> (b) any land which is in their area and which is required for a purpose which it is necessary to achieve in the interest of the proper planning of and area in which the land is situated.

As the judge said, the council relied in this case on subsection 1(b) . The council's case under that subsection before the inspector was summarised by him as follows:

> 167 The need for a compulsory purchase order is due to deliberate flouting of planning control by the occupiers of the land or their predecessors. Normal legal procedures have been shown to be cumbersome, expensive and ineffective. Enforcement procedure has been satisfactory up to a point, but thereafter has been ineffective; prosecutions depend on identification, which is difficult when occupiers come and go, the level of fines imposed is low and injunctions obtained apply only to the persons named. On the Cherry Orchard site [I interpolate that is a reference to plot 1] section 91 action has been found ineffective; twice the land has been cleared, and twice reinstated. A stop ****336*** notice on Plot 7 has been ineffective. No grounds exist for expecting that the land would revert to an appropriate Green Belt use even if section 91 powers were again to be used. All except one of the present occupiers have said that they would not reinstate their land to the condition in which it formerly was. Public money would be wasted by the use of section 91 powers, and the aim of protecting the Green Belt would be rendered futile.
>
> 168. The only effective means of protection is by compulsory purchase. As a housing action area is purchased for the benefit of the community as a whole, so would the purchase of this Green Belt land be of benefit to the community. In the light of that consideration the order should be confirmed. Even if it is thought that it should not be confirmed in respect of Plots 2 to 6 on the grounds that all other avenues have not yet been fully explored, it should be confirmed in respect of Plots 1, 7A and 7B.

The inspector's conclusion on this issue was:

> 189. … I find the development which has taken place on the land to be inappropriate and unacceptable. In my opinion the location is such that the land should not be left in a derelict or neglected state, but should be put to a suitable rural use. That aim seems to me to be one which it is necessary to achieve in the interests of the proper planning of the area.
>
> 190. However, I do not consider that, with the possible exception of Plot 1, the Council have satisfactorily shown that the only practicable means of achieving the aim is by compulsory purchase. With regard to Plots 3 to 6, there is no evidence of prosecutions or attempted prosecutions for non-compliance with those enforcement notices which are not the subject of appeal and should by now have been complied with. Regarding Plots 7A and 7B, action in respect of a breach of the stop notice is apparently still being pursued, and I note that the period for compliance with the enforcement notice issued on September 11, 1987 is not due to and until November 16, 1987. I find insufficient evidence to substantiate a claim that the general level of fines imposed for non-compliance with enforcement notices is so low as to vitiate the value of prosecution.
>
> 191. As to the notices currently under appeal, it might be that the appellants would now decide to accept what I believe to be the inevitability of the situation, and would choose to comply with the requirements within the time allowed. The evidence is that, in the event of non-compliance with the notices if upheld, and of the order not being confirmed, the Council would seek to use its powers under section 91 of the 1971 Act. This course of action would no doubt be open to the Council to pursue if it wished, and it does not seem to me necessarily to follow that, because Plot 1 has been reoccupied after such action in the past, further action would fail to have the desired effect in the future.
>
> 192. Even if past experience provided a good reason for the compulsory purchase of Plot 1, the purpose which it is necessary to achieve would be unlikely to be realised by the acquisition of an individual plot in isolation. The Council's restoration and landscaping scheme could not be implemented by the use only of Plot 1. With regard to that ***337*** scheme, it seems to me that an appropriate rural use would equally lie in the return of the land to grazing land, whether as a parcel on its own or in conjunction with adjoining land. It could be that the present owners of the land, notwithstanding the evidence given at the inquiry, would be finally convinced that they should dispose of their land, and would offer it for sale to an owner of adjoining or adjacent land for use by him for an appropriate purpose.

I interrupt the reading at this point to make the comment that nothing has happened since to justify the inspector's optimism. He continued:

> 193. I conclude that, whereas it may eventually be found that, in order to achieve the necessary purpose on planning grounds, no practicable alternative exists to compulsory purchase of the land, the making of the order at this stage is, at the least, premature.

He went on to recommend that the compulsory purchase order be not confirmed.

In turn the Secretary of State had this to say on the issue in his decision letter of the February 24, 1989:

> The Secretary of State agrees that the interests of the proper planning of an area within the Metropolitan Green Belt are served by the removal of development which is detrimental to the visual amenities of that area.
>
> 5. In considering the Inspector's conclusions in the light of the council's statement of reasons, the Secretary of State agrees that the development which has taken place on the order land is inappropriate and unacceptable in this generally open area which is within the Metropolitan Green Belt and the Colne Valley Park. He shares the Inspector's opinion that the implementation of the council's proposed landscaping scheme (which

> was prepared only after the order had been submitted for confirmation) whilst consistent with Green Belt policy, is not the only purpose to which the land could appropriately be put. He agrees that the land should not be left in a derelict or neglected state.
>
> 6. On the basis of the evidence presented at the inquiry, the Secretary of State does not accept in its entirety the Inspector's conclusion that the council have not satisfactorily shown that the only practicable means of achieving the aim of putting the order land to a suitable rural use is by compulsory acquisition. The Secretary of State has had particular regard to the evidence presented by the council as to the result of enforcement action in respect of various sites in the district, including sites which are also the subject of this order. He has concluded, on the balance of probabilities, that successful restoration of the land as a consequence of the upholding of the enforcement notices is unlikely as respects plots 1, 5, 6 and 7A since the evidence of the owners of those plots is to the effect that they would not, or in one case could not afford to restore the land, even if the notices were upheld. Accordingly he has decided to confirm the order in relation to those plots.
>
> 7. The evidence given by the owners of plots 3 and 4 suggests that the land would be restored if the enforcement notices were upheld. In relation to plots 2 and 7B the owners either expressed no view or were undecided about restoration. The Secretary of State considers that it ***338*** would be appropriate in relation to these plots to defer his decision on the order until the period for compliance with the relevant enforcement notices has elapsed. He will then form a view as to the necessity for confirmation of the order in respect of those plots.

I need not read paragraph 8, which deals with certain modifications. In paragraph 9 he went on to say:

> 9. Accordingly, in exercise of the power conferred on him by section 132(2) of the Town and Country Planning Act 1971 , he hereby confirms the South Bucks District Council (Iver No. 1) Compulsory Purchase Order 1985 insofar as it relates to plots 1, 5, 6 and 7A subject to the modifications shown thereon in red ink. He hereby directs that consideration of the order insofar as it relates to plots 2, 3, 4 and 7B be postponed until September 28, 1989.

In challenging this decision in the courts the appellants put forward two grounds in their notice. First, it is said that:

> the first respondent treated the likelihood of the applicants carrying out works of restoration in accordance with enforcement notices as the determining factor and in so doing ignored the powers of the Second Respondent to carry out works of restoration under section 91 of the Town and Country Planning Act 1971 .

Secondly, that:

> the first respondent considered it unnecessary to confirm the compulsory purchase order in respect of plots owned by other than the applicants and thereby and by his express conclusions concluded that the avowed purpose of the order in the form of the second respondent's proposed landscaping scheme did not justify confirmation of the compulsory purchase order.

The provisions of section 91(1) of the Town and Country Planning Act 1971 there referred to read as follows:

> If, within the period specified in an enforcement notice for compliance therewith, or within such extended period as the local planning authority may allow, any steps which by virtue of section 87(7)(a) of the Act are required by the notice to be taken (other than the discontinuance of a use of land) have not been taken, the local planning authority may enter the land and take those steps, and may recover from the person who is then

the owner of the land any expenses reasonably incurred by them in doing so.

It is to be observed, however, that, in practical terms, to do this it would be necessary first to get occupiers off the site.

The appellants submitted before Roch J. that compulsory purchase of the land was not required for the purpose in question, because that purpose could be achieved by other means, notably under section 91 . Roch J. was referred to two authorities on the word “required” in this context, as have we. Both cases involve consideration of section 112(1)(a) but, as the judge said, and it has not been disputed, the word “required” must have the same meaning in (*b*) as in (*a*).

In *Company Developments (Property) Ltd. v. Secretary of State for the Environment and Salisbury District Council* Sir Douglas Frank held that ***339** the word “required” in this context does not mean “essential,” but only that the acquiring authority and the Secretary of State consider it desirable to acquire the land to secure the carrying out of the activity in question.

In *R. v. Secretary of State for the Environment, ex p. Leicester City Council* McCullough J. considered that the word “required” meant more than mere desirability. Roch J., in this case, dealt with that argument as follows. [3]

> Because of the nature of the power given to local authorities by section 112 , namely, to deprive the owner of his land against that owner's will, I prefer and adopt the stricter meaning of the word “required” suggested by the judgment of McCullough J. In my judgment the word means that the compulsory acquisition of the land is called for; it is a thing needed for the accomplishment of one of the activities or purposes set out in the section. However, I accept the dictum of Sir Douglas Frank QC to this extent that neither the local authority nor the Secretary of State have to go so far as to show the compulsory acquisition of the land is indispensable to the carrying out of the activity or the achieving of the necessary planning purpose. The local authority need not have tried to use all their other powers before resorting to compulsory purchase, provided there is evidence on which they and the Secretary of State can conclude that, without the use of compulsory purchase powers, the necessary planning purpose is unlikely to be achieved.
>
> In this case the Secretary of State in paragraph 5 of the letter of his decision correctly, in my view, identified the purpose which it was necessary to achieve in the interest of proper planning of the area in which the land was situated, namely, to remove the development which had taken place and which was inappropriate and unacceptable and to ensure that the land should not be left in a derelict or neglected state. The Secretary of State then went on to consider whether acquisition of the land by compulsory powers was required in the sense of being needed for the accomplishment of the purpose because he has concluded, on the balance of probabilities, that successful restoration of the land was unlikely in respect of plots 1, 5, 6 and 7A, unless the order was confirmed in relation to those plots. In my judgment there was evidence on which the Secretary of State was entitled to reach that conclusion. If the Secretary of State had asked himself the question, is the compulsory acquisition of this land desirable for the accomplishment of the purpose, I would have held that he had applied the wrong test.
>
> Had the Secretary of State gone on to refuse to confirm the compulsory purchase order with regard to the other four plots, then in my opinion there may have been some prospect of his decision being overturned on the grounds of irrationality. However, that is not the decision reached by the Secretary of State and I assume, in his favour, that he will confirm the compulsory purchase order in respect of those plots if, despite the removal of caravans and so forth from those plots, those plots are not restored to some use suitable for the area but are ***340** left in a state where they become or are likely to become derelict and neglected.
>
> I may confess in this case that had the decision been mine, I would have reached the same conclusion as that reached by the inspector, namely, that the making of the compulsory purchase order at that stage was premature. However, it is a well established principle of administrative law that such judgments are for the local authority and the Secretary of State and not for this court.

> Consequently the conclusion that I have reached is that I must dismiss these applications for judicial review.

I agree with Roch J. that the local authority do not have to go so far as to show that the compulsory purchase is indispensable to the carrying out of the activity or the achieving of the purpose; or, to use another similar expression, that it is essential. On the other hand, I do not find the word “desirable” satisfactory, because it could be mistaken for “convenient,” which clearly, in my judgment, is not sufficient. I believe the word “required” here means “necessary in the circumstances of the case.”

Before this court the appellants put their case in this way. It is said by Mr. Sales that the seven grounds of appeal in the notice of appeal all relate to different aspects of the same point, which is that the land, the subject of a compulsory purchase, is not required by the second respondent. Compulsory purchase by, for example, local authorities can be authorised when they require land for the carrying out of their function, such as by-ways, housing, parks, etc. In all cases it is the land itself which is required for the purpose for which there is statutory authority to acquire compulsorily. In the case of section 112(1)(b) of the 1971 Act, this, he points out, is an express requirement. But, he says, in this case there is no requirement whatever of the second respondents for the land itself. Their requirement is only the clearance of the land and that could be achieved without compulsory purchase of the land itself by any of the following methods or a combination of them: (1) prosecutions under section 179 of the 1990 Act for non-compliance with enforcement notices; (2) execution of work by the local planning authority plus entry on to the land for that purpose, pursuant to section 178 of the 1990 Act, coupled with a right to recover from the owner expenses reasonably incurred in so doing; (3) injunction proceedings pursuant to section 222 of the Local Government Act 1972 ; (4) the provision of an acceptable alternative site for the appellants.

I am bound to say, however, that the planning history of the site, notably that of plot 1, gives one little faith in the efficacy of these remedies in dealing with these occupiers. It is indeed important, in my judgment, not to lose sight of two sections of the evidence which was before the Secretary of State. The first of these was the history of the unsuccessful attempt by the council using other methods to get these plots cleared, which history was recounted by Roch J. in a passage which I have quoted from his judgment.

The second section concerned the intentions of the occupants themselves. These the inspector summarised on the evidence they gave as follows. He recounted that Mr. Sharkey, one of the appellants, who occupies plot 1, said in evidence that “they could not afford to restore it to green field land.” Mr. Carey's evidence in respect of plot 2 was that he would not be prepared to move to any council owned site. Mr. M. Smith said in respect of plot 3 that he would be prepared, with the council's help, to ***341** reinstate it. Mr. J. Smith from plot 4 said that he would reinstate it to green meadow. Mr. Fitzgerald, the other of the appellants, said of plot 5 that he could not reimburse the council for any costs of reinstatement. Mr. Stubbings from plot 6 said that he would not restore it to its former condition. Mrs. Brown from plot 7A said that they would not themselves clear it. Mr. Price from plot 7B on the other hand, said that he did not know if he would reinstate it.

In the light of all that evidence the Secretary of State was, in my judgment, entitled to arrive at the conclusion that the council were not likely to achieve successful restoration of the land including plots 1, 5, 6 and 7A without compulsory purchase but that in respect of the remaining plots it was still possible that they might.

I agree with Roch J. that, had the Secretary of State refused to confirm a compulsory purchase order with regard to those remaining four plots, some force might have been given to an argument that he had acted irrationally, but, as it is, the plain implication of his decision is that if these plots are not restored to a use suitable for their area he will confirm the compulsory purchase order in respect of them.

As I indicated, a subsidiary argument was advanced by the appellants that by deferring a decision in respect of those plots the Secretary of State has put it out of the council's power to carry out their landscaping scheme. I am satisfied however that this scheme was only put forward at the inquiry as a possible scheme should the order be confirmed in respect of all eight plots. The scheme is not essential to the planning purpose, which is to restore the land to rural use.

That purpose can be achieved in respect of a single plot by removal of a caravan, hardstanding, etc., and reversion to grass or shrubs and trees.

For all these reasons I agree with Roch J.'s decision and would dismiss the appeal.

Scott L.J.

I agree with the judgment that McCowan L.J. has given and would add only one point.

Both before us and before Roch J. Mr. Sales submitted that the power of compulsory purchase given by section 112 of the 1971 Act was a power which should be used only as "a last resort," as he put it. That may be so as between the various statutory powers available to the local authority under the Town and Country Planning Acts. If, however, the choice is between an exercise of the power of compulsory purchase and the alternative route by means of which a local authority may seek to enforce the planning law, namely High Court proceedings for a civil injunction, then I do not agree.

There are statements in a number of cases at levels all the way up to the House of Lords to the effect that the use of civil proceedings for injunctions in order to enforce the public law should be confined to exceptional cases (see, *e.g.* Runnymede Council v. Ball and the cases there cited). A civil injunction involves the substitution of an unlimited power of imprisonment, available in contempt of court proceedings against persons who disobey the injunction, for the limited penalties for disobedience of the law prescribed by Parliament. I do not doubt that in many cases local authorities are entirely justified in taking High Court proceedings for injunctions so as to obtain the additional sanction of committal for contempt in order to enforce obedience to the statutory offences in question. But to say that a compulsory purchase power is only to be used as a matter of last ***342** resort after a civil injunction has been shown to be ineffective is a proposition I find entirely unacceptable. Which of the two, compulsory purchase or High Court proceedings, is to be preferred may depend upon the facts of a particular case. Which ought to be the last resort may be a matter of debate in a number of cases. But in the circumstances with which the council was faced in the instant case, I do not regard an application for a High Court injunction, with the possibility of contempt proceedings following, as something which had to be tried before the compulsory purchase procedure could be invoked. I agree that this appeal should be dismissed.

Parker L.J. I agree. Both the inspector and the Secretary of State came to the clear conclusion that this land was necessary to be acquired in the interests of proper planning and that, unless that purpose could be achieved by other means, a compulsory purchase order was justified. The inspector had a somewhat rosier view of the situation than the Secretary of State and apparently took the view that the purpose might be achieved without a compulsory purchase order. The Secretary of State considered that it could not be achieved in respect of certain of the plots, but that it might conceivably be achieved in respect of others and therefore deferred his decision with respect to those others.

In my view the Secretary of State not only came to the right conclusion but no other conclusion was really open to him. I would also dismiss this appeal.

Representation

Solicitors— Lance Kent & Co . Chesham, Buckinghamshire; the Treasury Solicitor ; the Solicitor to the South Buckinghamshire District Council.

Appeal dismissed with costs. Application for leave to appeal to the House of Lords refused.

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1. *See (1991) 62 P. & C.R. 126* .

2. *(1991) 62 P. & C.R. 126* at p. 128.

3. *(1991) 62 P. & C.R. 126* at pp. 133–134.

ANNEX 2

Report into the London Thames Gateway Development Corporation (Bromley by Bow) (South) Compulsory Purchase Order 2010 (Appeal Reference LDN 023/E5900/005/003).

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Tel: 0303 44 44- 44401

Our Ref: LDN023/E5900/005/003
Your Ref:

15 August 2011

Dear Sirs

THE LONDON THAMES GATEWAY DEVELOPMENT CORPORATION (BROMLEY BY BOW) (SOUTH) COMPULSORY PURCHASE ORDER 2010

You may inspect any documents, photographs or plans appended to the Inspector's report, by applying to the Secretary of State. Applications should be made in writing to this office. You should quote the reference number shown on this letter and state the date and time (in normal office hours) when you would like to inspect the documents. For administrative purposes, it would be helpful if three days notice could be given, although this is not essential.

A remaining objector whose objection has been successful may qualify for an award of inquiry costs if he or she or a representative attended the inquiry. Objectors who succeeded in having some of their land excluded from the order may qualify for an award for the issues on which they succeeded. If you consider that you have a claim for an award of inquiry costs on grounds of success, you should write now to the Secretary of State at the above address. You should give your full name and quote the reference number shown on this letter. Unnecessary delay in submitting a claim may result in the Secretary of State declining to consider it or refusing a full award.

[
Yours sincerely

[redacted]

Martin McConville

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Our Ref: LDN023/E59/00005/003
Your Ref: DR/67788.00009

15 August 2011

Dear Mr Richardson

LOCAL GOVERNMENT, PLANNING AND LAND ACT 1980, SECTION 142

THE LONDON THAMES GATEWAY DEVELOPMENT CORPORATION (BROMLEY BY BOW) (SOUTH) COMPULSORY PURCHASE ORDER 2010

1. The report of the inspector, David Prentis BA BPI MRTPI who held a public local inquiry into the above Order on 20, 23, and 26–28 July and on 28-30 September 2010 has been considered. A copy of the Inspector's report is enclosed. References in this letter to paragraphs in the Inspector's report are indicated by the abbreviation IR, followed by the relevant paragraph number.

2. The Order, if confirmed, would authorise the compulsory purchase of all that land measuring around 5.64ha bounded to the west by the A12 (Blackwell Tunnel Northern Approach), to the south by the railway lines and to the east by the River Lea at Bromley by Bow for the purpose of a proposed scheme of development for the building of a superstore, flexible units for retail uses, a library, a school, a park, residential units and a hotel.

3. Seven relevant objections to the Order were received. Two of the objections were lodged by statutory undertakers, EDF Energy Networks Plc and Transport for London were withdrawn before the inquiry, by their letters of 19 July 2010 (IR8.0-8.2). Two more objections were withdrawn during the inquiry by AC Holdings Ltd and Volker Highways by their letter of 22 July after reaching an agreement with Tesco Stores for the acquisition of their interests. This left three remaining objections by Keith Ellis and David Grier, Trad Scaffolding and Colas Ltd. The main grounds of objection were on the basis of loss of business, lack of alternative sites, no attempt to acquire the Order lands by agreement, commitment to comprehensive delivery of the scheme, and no compelling case on the planning merits.

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The Inspector's report and recommendation

4. The Inspector's report sumarises the submissions made at the inquiry. A copy of his conclusions is annexed to this letter.

5. The Inspector has recommended that The London Thames Gateway Development Corporation (Bromley by Bow) (South) Compulsory Purchase Order 2010 should not be confirmed.

6. The Secretary of State has also given careful consideration to the Inspector's report and the objector's submissions. Although he agrees with the Inspector that the Bromley by Bow site is in need of regeneration (IR10.60-10.64) he considers that the factors against confirmation of the Order outweigh its benefits. He accepts the Inspector's view that the Corporation has not demonstrated that suitable relocation sites are currently available for the objector's Trad Scaffolding Co Ltd business (IR10.67). He further agrees that whilst the regeneration of the site is of strategic planning importance to London the Corporation has not identified any specific reasons necessitating the urgency of the acquisition of the Order land as there is still a possibility within time that the land needed for the regeneration of the area could be assembled by agreement (IR4.29 & 10.68). He also concurs with the Inspector's conclusions about the uncertainties relating to planning, funding and land assembly raising doubts about the Corporation's ability to deliver their proposals for the land north of Three Mills Lane within a reasonable timescale (IR 10.72).

7. For all the reasons given by the Inspector, therefore, the Secretary of State accepts that a compelling case in the public interest has not been made to justify the confirmation of the Order (IR10.69 & 10.73).

8. The Secretary of State has carefully considered whether the purposes for which the Order was made sufficiently justify interfering with the human rights of those with an interest in the land affected and he is not satisfied that such interference is justified. In particular he has considered the provisions of Article 1 of the First Protocol to the European Convention on Human Rights. In this respect the Secretary of State is not satisfied that in confirming the Order a fair balance would be struck between the public interest and the rights of those with an interest in the land affected. He has reached this conclusion for the reasons given above in relation to the lack of a compelling case in the public interest.

9. For all these reasons, the Secretary of State has decided to accept the Inspector's recommendation and not to confirm The London Thames Gateway Development Corporation (Bromley by Bow) (South) Compulsory Purchase Order 2010.

Post Inquiry Representations

10. Post inquiry representations were received from Addleshaw Goddard on behalf of their clients Keith Ellis and David Grier dated 18 November and 23 December 2010. Denton Wilde Sapte responded on behalf of the Corporation by letter dated 21 December 2010. The contention advanced by the objectors was that the scheme underlying the Order was contrary to the provisions of the Treaty on the Functioning of the European Union as it involved the grant or possible grant of State aid. These

representations raised new issues not considered by the Inspector in his report. However, given that he has decided not to confirm the Order for the reasons given by the Inspector, the Secretary of State does not consider that it is necessary for him to address the new issues raised in the post inquiry representations. He has therefore decided not to refer back to the parties in relation to these issues before reaching his decision

11. I enclose the Order and the map to which it refers.

12. A copy of this letter and the Inspector's report is being sent to remaining objectors who appeared or were represented at the local inquiry and any other interested party.

Signed by authority of the Secretary of State for the Department of Communities and Local Government

[redacted]

Julian Pitt
National Unit for Land Acquisition and Disposal

CPO Report to the Secretary of State for Communities and Local Government

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
GTN 1371 6000

Date 11 January 2011

LOCAL GOVERNMENT, PLANNING AND LAND ACT 1980

ACQUISITION OF LAND ACT 1981

APPLICATION BY THE LONDON THAMES GATEWAY DEVELOPMENT CORPORATION FOR CONFIRMATION OF

THE LONDON THAMES GATEWAY DEVELOPMENT CORPORATION (BROMLEY BY BOW) (SOUTH) COMPULSORY PURCHASE ORDER 2010

Inquiry opened on 20 July 2010

File Ref: LDN G23/E5900/005/003

Contents

Abbreviations used in the report

The main parties

Corporation	The London Thames Gateway Development Corporation
Colas	Colas Limited
Ellis/Grier	Keith Roy Ellis and David Joseph Grier
Trad	The Trustees of Trad Scaffolding and Trad Scaffolding Ltd
Tesco	Tesco Stores Ltd

Other abbreviations

AMJ	All Movements Junction
CABE	Commission for Architecture and the Built Environment
CS	Tower Hamlets Core Strategy 2010
dph	Dwellings per hectare
DLR	Docklands Light Railway
DRLP	Draft Replacement London Plan
ECHR	European Convention on Human Rights
GLA	Greater London Authority
HWW	Hindmans Way West
JAC	Joint Advisory Consortium
LBTH	London Borough of Tower Hamlets
LLV	Lower Lea Valley
LP	London Plan 2008 (Consolidated with Alterations since 2004)
LUDB	Bromley-by-Bow Land Use and Design Brief 2009
OAPF	Opportunity Area Planning Framework
OJEU	Official Journal of the European Union
PPS4	Planning Policy Statement 4: *Planning for Sustainable Economic Growth*
TDG	TDG Ltd
TfL	Transport for London
UDC	Urban Development Corporation
UDP	Tower Hamlets Unitary Development Plan 1998
1980 Act	The Local Government, Planning and Land Act 1980

File Ref: LDN 023/E5900/005/003
The London Thames Gateway Development Corporation (Bromley by Bow) (South) Compulsory Purchase Order 2010

- The Compulsory Purchase Order was made under section 142 of the Local Government, Planning and Land Act 1980 and the Acquisition of Land Act 1981 by The London Thames Gateway Development Corporation on 2 March 2010.
- The purposes of the Order are to secure the regeneration of the area by bringing land and buildings into effective use, encouraging the development of new commerce, creating an attractive environment and ensuring that housing and social facilities are available to encourage people to live and work in the area by the provision of mixed use development.
- When the Inquiry opened there were 5 statutory objections and no non-statutory objections outstanding. Two objections were withdrawn during the Inquiry and no late objections were lodged.

Summary of Recommendation: The Order be not confirmed

1. Procedural matters and statutory formalities

1.1 The Inquiry sat for 8 days on 20, 23, and 26 - 28 July 2010 and on 28 - 30 September 2010. I made an accompanied visit to parts of the Order lands on 21 July 2010 and unaccompanied visits to the Order lands and surrounding area on 19 July and 29 September 2010. I made unaccompanied visits to the potential relocation sites referred to in the evidence on 27 September 2010.

1.2 The London Thames Gateway Development Corporation (the Corporation) confirmed its compliance with the statutory formalities.

1.3 The Trustees of Trad Scaffolding and Trad Scaffolding Ltd (Trad) have made an application for judicial review of the Corporation's decision to grant planning permission[1] to Tesco Stores Ltd (Tesco) for the redevelopment of parts of the Order lands. There were further submissions on behalf of Trad to the effect that there are legal impediments to the implementation of the scheme which I shall refer to in section 4 of the report. Legal submissions were made on behalf of Colas Limited (Colas) and Keith Ellis and David Grier (Ellis/Grier) to the effect that the Order as a whole is unlawful. I shall refer to these submissions in section 6 of the report. The Corporation's responses are reported at sections 5 and 7 respectively.

1.4 During the Inquiry it emerged that there was information regarding financial viability which had been taken into account by the Corporation but which was not before the Inquiry. I requested that this information be made available and this was done following the adjournment on 28 July 2010[2]. Various financial appraisals were attached to a supplementary statement of evidence[3]. At the resumed Inquiry it emerged that the supplementary statement had been substantially drafted by a person other than the witness himself. Counsel for

[1] Planning permission Ref PA/09/02574/LBTH, issued 21 July 2010, is at Document DC10. The Judicial Review Claim Form is at document TRD13.
[2] Inspector's note - The information was provided with some redactions. In the main these related to the anticipated acquisition costs of individual plots. The objectors raised no objection to the extent of redaction and I agree that this was a reasonable approach.
[3] See DC1D.

Colas and Ellis/Grier submitted that this was improper and that the proceedings would be flawed if any reliance were placed on this evidence[4].

1.5 The witness made clear in the supplementary statement that he was not professionally qualified to give expert evidence on matters of financial viability[5]. Insofar as the supplementary statement contains opinion or comment on the viability of the proposed scheme of redevelopment, I have not taken it into account. Nevertheless, I have taken account of the financial appraisals themselves. Other witnesses[6] were asked questions about the conclusions to be drawn from the financial appraisals and I have taken account of the evidence which was given in response.

1.6 Shortly before the Inquiry the Corporation reached agreement with Transport for London (TfL), previously an objector to the Order. As a result of this Agreement the Corporation put forward a schedule of modifications relating to plots in the vicinity of the A12[7].

1.7 This report includes a description of the Order lands and their surroundings, the material points made at the Inquiry and in writing, together with my conclusions and recommendations. All references in this report with the prefix CD are references to the set of Core Documents which are listed in the attached schedule.

2. The Order lands and surroundings

2.1 The Order lands, which extend to around 5.64ha, are described in the evidence[8]. They are bounded to the west by the A12 (Blackwall Tunnel Northern Approach), to the south by railway lines and to the east by the River Lea. The central and north eastern parts of the Order lands are occupied by Tesco. In addition to a Tesco store there are customer car parks, service yards and a petrol filling station. The Order does not seek to acquire the Tesco interests but these plots have been included so that any third party interests may be acquired.

2.2 The Ellis/Grier land, which is currently vacant, extends to around 0.48ha and comprises a multi-storey office building, some smaller structures and an open yard located adjacent to the A12 in the southern part of the Order lands. Trad occupies around 1.23ha, including a two storey office building and a car park fronting Imperial Street and an open yard with some ancillary buildings in the south eastern part of the Order lands which is used for the storage and maintenance of scaffolding components. A single storey building fronting Imperial Street is occupied by a separate company. Between Trad and the Ellis/Grier land there is an industrial shed and yard occupied by a highways contractor. The Colas land is on the north side of Otis Street. It extends to around 0.27ha, comprising offices, workshops and a yard, and is occupied by a

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[4] Inspector's note – In answer to my question, Mr Barnes confirmed that no objection was raised to reliance being placed on the attached financial appraisals.
[5] See paragraph 1.3 of DC1D
[6] Inspector's note – David Napier and Colin Smith were asked about the financial appraisals.
[7] The Compromise Agreement and proposed modifications are at Document DC17B.
[8] Section 3 of Document DC1, paragraph 8 of Document EG1, section 5 of Document TRD3 and paragraph 7 of Document CL1.

refrigerated vehicle hire company. Adjoining the Colas land is a two storey building, occupied by a nightclub, and a single storey car repair workshop.

2.3 The Order lands include various roads and footways and a pedestrian subway beneath the A12, together with related stairways. In addition, the Order seeks new rights over paved areas adjacent to the A12 in the vicinity of the subway.

2.4 Vehicular access to the Order lands is from the A12 via Hancock Road. There is no direct access from the northbound carriageway. Vehicles arriving from the south must cross the A12 at the Bow Interchange and then travel back southwards to Hancock Road. Vehicles travelling north from the Order lands must first head south before crossing the A12 at Twelve Trees Crescent. Bromley-by-Bow London underground station is located on the opposite side of the A12, reached via the subway. It provides access to the District and Hammersmith and City lines. There is also a Docklands Light Railway (DLR) station within walking distance of the site.

2.5 To the north of the Order lands is an area of industrial and storage uses known as Bromley-by-Bow North. To the west of the A12 there are extensive residential estates dating from the 1950s and 1960s. To the south of the railway lines, west of the A12, is the former St Andrew's Hospital site where a redevelopment scheme for some 900 dwellings is under construction. To the east of the River Lea is the Three Mills complex which includes television studios, offices and some residential units. The complex contains a number of listed buildings, including the Grade 1 listed Tide or Mill House and the Grade II* listed Clock Mill, and is within a conservation area. To the north east of the Order lands, on the opposite side of the River Lea, is a potential regeneration area at Sugar House Lane[9].

2.6 The Corporation has granted planning permission to Tesco for a scheme of redevelopment covering much of the Order lands ("the scheme"). The permission is hybrid, in that it is part detailed and part outline. Detailed permission has been granted for a superstore (11,377sqm), flexible units for retail uses, financial/professional services, restaurants/cafes, drinking establishments, takeaways and offices (945sqm), a library (1,315sqm), car parking and associated infrastructure including the widening of the underpass. Outline permission has been granted for 454 residential units (5 – 19 storeys), flexible units for retail and other uses (1,086sqm), flexible units for business, leisure and other uses (1,547sqm), a primary school, a hotel (104 bedrooms, 19 storeys), public open space, a petrol filling station and infrastructure including access roads, parking and a riverside walk. Permission was granted following the completion of a S106 Agreement between Tesco, the Corporation and TfL[10].

3. The case for the London Thames Gateway Development Corporation

Introduction

3.1 The Order was made under S142 of the Local Government, Planning and Land Act 1980 (the 1980 Act). It would authorise the Corporation to purchase

[9] The location of these sites is shown on the plan at appendix 1 of DC1A.
[10] The planning application documents are at CD50, the permission is at DC10, the S106 Agreement is at DC7A and there is a supplemental Agreement at DC18A.

compulsorily land and new rights for the purpose of securing the regeneration of the Order lands. In particular, it would bring the land into effective use, encourage the development of new commerce, create an attractive environment and ensure that housing and social facilities are available to encourage people to live and work in the area. This would achieve the Corporation's objectives under S136 of the 1980 Act.

3.2 The Corporation is the Government's delivery body responsible for securing the regeneration of the Lower Lea Valley (LLV) and London Riverside. This is a specific part of the Thames Gateway identified as a national priority for regeneration. The Corporation has set about formulating and implementing its regeneration strategy in compliance with this strong remit. In relation to Bromley-by-Bow, the regeneration strategy identifies the need for comprehensive redevelopment to meet the planning and regeneration objectives for the area.

3.3 The existing buildings and uses within the Order lands do not fulfil the potential for regeneration created by their proximity to Stratford, the Olympic Park, Canary Wharf and central London. Much of the land is dominated by hard surfacing for car parking and open storage. The redevelopment of the Order lands would act as a catalyst for the redevelopment of surrounding regeneration sites within the Olympic Fringe area including Bromley-by-Bow North and Sugar House Lane.

Planning policy

3.4 The development plan includes the London Plan 2008 (Consolidated with Alterations since 2004) (the LP), saved policies of the Tower Hamlets Unitary Development Plan 1998 (the UDP) and the Tower Hamlets Core Strategy, adopted in September 2010 (the CS)[11]. Map 2A.1 of the LP identifies the LLV, including Stratford, as an Opportunity Area. Table 5C.1 sets a minimum target of 32,000 new dwellings in this area over the period 2001 – 2026. The LP notes that the LLV Planning Framework proposes a significant new residential community in the valley with the potential capacity to deliver 30,000 to 40,000 new homes. Other relevant policies of the LP cover matters such as affordable housing, social infrastructure, design, accessibility and the open space value of waterways, including the River Lea[12].

3.5 The UDP designates the Order lands as an Industrial Employment Area. Saved Policy EM11 supports industrial and warehousing uses and saved Policy EM13 states that residential use will be permitted only where the loss of industrial land is justified. However, following a planning appeal in 2007 relating to the redevelopment of the Trad site, the Secretary of State concluded that the UDP was out of date with respect to the appeal site and should not be given any weight[13].

3.6 Policy SP01 of the CS states that there should be a new district centre at Bromley-by-Bow to support wider regeneration. The policy encourages the

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[11] Extracts from the LP are at CD11, from the UDP at CD13 and from the CS at CD14.
[12] Further details of relevant national planning guidance, development plan policies, emerging policies and supplementary planning documents are contained in section 4 of DC1.
[13] Appeal Ref APP/A9580/A/07/2036253. See paragraph 12 of the Secretary of State's decision, at CD22.

provision of additional floorspace for convenience and comparison shopping. The CS sets out a vision for Bromley-by-Bow as a prosperous neighbourhood set against the River Lea and a transformed A12. The vision emphasises comprehensive regeneration and the integration of existing and new communities, particularly by east-west movement.

3.7 The Mayor of London has published the Draft Replacement London Plan (DRLP) which is to be subject to an examination during 2010. It confirms the LLV Opportunity Area as the most important single strategic initiative for London and an urban renewal challenge of global significance. In addition, it identifies Bromley-by-Bow as a future district centre. The DRLP defines a district centre as providing convenience goods and services for local communities in locations which are accessible by public transport, walking and cycling, typically containing 10,000 – 50,000sqm of retail floorspace[14].

3.8 The LLV Opportunity Area Planning Framework (OAPF) was adopted by the Mayor of London in January 2007. It does not form part of the development plan but has the status of a Supplementary Planning Document[15]. In addition to setting out a series of development principles the OAPF provides a vision and strategy for the Bromley-by-Bow area[16]. Amongst other matters this includes: the delivery of 1500 – 2300 residential units, including about 360 units from mixed use development through the relocation of the existing Tesco store closer to Bromley-by-Bow station; approximately 6,700sqm of new retail floorspace, of which approximately 5,000sqm could be provided through the relocation of the Tesco store; a social infrastructure cluster (preferably near Bromley-by-Bow station) including a primary school, a secondary school, a health centre and associated community space; enhanced accessibility to the River Lea through the development of a linear open space along the west bank and improved facilities for pedestrians and cyclists across the A12.

3.9 The Corporation does not have statutory plan-making functions. It has however produced the Bromley-by-Bow Land Use and Design Brief 2009 (LUDB)[17] in partnership with the London Borough of Tower Hamlets (LBTH), Greater London Authority (GLA) and Design for London. The LUDB builds on the OAPF and earlier work by LBTH. It has been adopted by LBTH as interim planning guidance. It covers the Order lands together with Bromley-by-Bow North and sets out a number of objectives which include: a comprehensive development that makes efficient use of land to create a well connected mixed use quarter at Bromley-by-Bow; a new town centre, anchored by a supermarket, that includes new shopping facilities, a primary school, space for community use and open space; and accessibility improvements that link existing communities with new homes, jobs and community facilities and the LLV's open spaces, waterways and heritage assets. The LUDB stresses the need for a comprehensive approach to redevelopment and contains an indicative land use diagram and guidelines for the retail, residential, commercial and community uses proposed.

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[14] Extracts from the DRLP are at CD12.
[15] Inspector's note – at paragraph 8 of the appeal decision referred to above (CD22) the Secretary of State commented that the LLV OAPF (CD19) should be afforded very considerable weight.
[16] Inspector's note – this is a wider area than the Order lands, including Bromley-by-Bow North and areas to the west of the A12.
[17] The full document is at CD15. The land use proposals are contained in section 4.

3.10 There is a hierarchy of planning policy that identifies the Order lands as a priority for sustainable regeneration. The principle of a mixed use development, including a new town centre and significant accessibility and townscape improvements, is consistent with adopted and emerging planning policy.

Proposed use of the Order lands

3.11 The greater part of the Order lands is covered by the Tesco planning permission. The scheme would provide a new district centre including a new store and associated petrol filling station, smaller shops and commercial units, an IDEA Store (or library), a school, a park, housing and a hotel. The principal urban design axis would be a viewing corridor linking an improved subway under the A12 to the listed buildings at Three Mills. This axis would define the new alignment of Imperial Street. A pedestrian open space (Imperial Square) would be formed at the same level as the subway. This would provide direct access to the Tesco customer entrance and café. The superstore would act as an anchor for a district centre of 17 shops, restaurants and cafés. The IDEA Store would be centrally located within the district centre and would add vibrancy to Imperial Square. The fall in levels across the site would allow cars and service vehicles to enter at under-croft level at the far end of the store. The new and realigned streets would form a series of urban blocks with varying building heights. The hotel would form a landmark building adjacent to the A12 in a position where residential accommodation at lower levels would not be appropriate due to environmental conditions. The proposed scheme is described in greater detail in the evidence[18].

3.12 The access proposals include a new all movements junction (AMJ) allowing direct access into the site to and from the A12. The AMJ would incorporate pedestrian crossings thereby improving pedestrian access across the A12. The existing subway by the station is not accessible by disabled persons. It is narrow and poorly lit. The scheme would create a wider, more accessible and more attractive route for pedestrians and cyclists leading directly into Imperial Square. Within the site, Three Mills Lane would be realigned and a new north/south route (Lea Avenue) would be created to give access to the store, the district centre parking and the primary school. Imperial Street would be restricted to buses, pedestrians and cycles with limited service access to the retail units. The new layout would allow for improved bus penetration into the site and, in the longer term, enable a direct bus route to Stratford town centre to be established via Bromley-by-Bow North[19].

3.13 The Mayor of London allowed the Corporation to determine the application itself[20] and the Secretary of State did not wish to intervene[21]. Planning permission has now been granted. It is not necessary for the works to the AMJ to be covered by the planning permission because these would all be within the public highway. The scheme complies with the planning policies set out above because it would provide a district centre, housing (including affordable

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[18] See the Committee Report on the Tesco application (CD49). The urban design approach is described in DC2.
[19] The access proposals are described in DC3.
[20] See CD54.
[21] See DC13.

housing), a primary school, public open space, improved crossing arrangements across the A12 and improved public transport accessibility.

3.14 Part of the Order lands is not covered by the planning permission. This land is to be brought forward as part of the comprehensive development of Bromley-by-Bow North, in accordance with the LUDB. Southern Housing Group and East Thames Group are housing associations which already own land in the area. They propose to bring forward a scheme including the balance of the Order lands and the Leycol Printers site[22] which is already owned by the Corporation. A screening and scoping request has been submitted which shows a mixed use development of approximately 667 residential units and 12,000sqm of employment floorspace[23]. The proposals are at an early stage but are expected to comply with the planning policies referred to above because they will promote comprehensive regeneration; integrate and link the Order lands with the Sugar House Lane area; facilitate improved public transport, pedestrian and cycle access across the River Lea Navigation; provide improved access to the River Lea Navigation and provide new housing and modern commercial space.

Implementation

3.15 It is intended that the scheme covered by the Tesco planning permission would be implemented in two phases. Phase 1 would include the new Tesco store; the first part of the district centre including Imperial Square, 11 retail units and the IDEA Store; the preparation of land for the school and park and the new road layout within the site. Phase 2 would comprise the school and park together with the residential, hotel, leisure and commercial elements of the scheme.

3.16 The S106 Agreement would ensure the provision of items crucial to the delivery of a successful scheme, including:

- Remediation of the land for the primary school and park and transfer of the land to the Corporation within 12 months of the opening of the superstore.
- Construction of the IDEA Store to shell and core and making it available to LBTH on a new 125 year lease for a peppercorn rent prior to the opening of the superstore.
- Securing scheme approval from TfL for the AMJ and demonstrating that funds are in place for its delivery before any development commences.
- Delivery of the AMJ within 18 months of the end of the Olympic moratorium[24].
- Making the improved subway ready for use prior to the opening of the units in the district centre, including the superstore.
- Completion of the 11 flexible retail units within the district centre and marketing them for 12 months prior to the opening of the superstore.
- Clearance, remediation and decontamination of the residential land[25] within 12 months of the opening of the superstore, thereby enabling the delivery of phase 2.

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[22] There is a plan of land ownership at DC11.
[23] See Appendix 2 of DC1A.
[24] Inspector's note – In answer to my question, Mr Cole stated that the moratorium precludes highway works that might affect traffic around the Olympic Park prior to and during the Olympic Games.

- Provision for the Corporation to buy back the residential land if development is not commenced, or the land transferred to a developer, within 5 years of the opening of the superstore[26].
- Affordable housing.

Further planning contributions would be subject to viability testing following completion of phase 1. The contributions include the payment of a discounted standard charge of up to £10,000 per unit and a further Affordable Housing Contribution in lieu of the difference between the level of affordable housing the scheme can initially support and the desired level of 35% affordable housing. Once the residential elements of the scheme had been delivered there would be a further opportunity to capture any planning contributions not already made if residential values were to exceed certain levels[27]. If the residential land were not brought forward for development within a certain time period the Corporation would have the option to buy back the land so that the scheme could be implemented by others.

3.17 Tesco has entered into a CPO Indemnity Agreement with the Corporation in which it agrees to underwrite the costs of site assembly and the costs of making the CPO. Under this agreement if there is not substantial commencement of the district centre within 3 years of taking the land then Tesco must offer the land back to the Corporation[28].

3.18 If the CPO were confirmed it would be Tesco's intention to acquire the land and implement the permission as soon as possible. It is plain that Tesco wants to build the new superstore and sees it as in its interests to do so. It has already invested in obtaining planning permission for the scheme and has undertaken to fund the costs of the CPO and land assembly, the construction of phase 1, the provision of infrastructure and the remediation of land for phase 2. The letters submitted by Tesco to the Secretary of State confirm its commitment not just to the store but to the scheme in general[29].

3.19 It is likely that the residential elements would be delivered by a house builder with an affordable housing partner. There has been substantial interest from house builders and registered social landlords, as shown by the letters received. These include letters from house builders already active in the locality, including the developer of the nearby St Andrew's Hospital site. Letters of interest have also been received from potential occupiers of the retail units and from a hotel operator[30].

3.20 In relation to the park, the Corporation has resolved to make available £250,000 for the initial laying out of the open space and £50,000 for its future

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[25] Referred to as "plot 4" in the S106 Agreement, this comprises the phase 2 land other than the school and park.
[26] The buy back provisions are contained in clause 12.1 and appendix 5 of the S106 Agreement. The land value would be the higher of £13.7million or open market value.
[27] See the S106 Agreement (DC7A) and supplementary deed (DC18A). There are explanatory notes setting out the main provisions of the Agreements at appendix 1 to DC1C and at DC21.
[28] See clause 14 of CD47.
[29] See letter 18 in Appendix 1 to DC5 and DC9.
[30] Inspector's note – The letters are at Appendix 1 to DC5. In answer to my questions Mr Napier stated that potential residential developers had been shown scheme drawings during the design process and that the current design reflected comments that had been received.

maintenance[31]. There is thus ample evidence that the park would be provided. The Chief Executive of LBTH has confirmed that the Council considers the IDEA Store to be an essential component of the district centre and that there is a need for a primary school in this location due to anticipated population growth and a projected shortfall in school places. The Council is confident that funds would be available for both elements of the scheme[32]. Given the need for both projects, the Council's clear commitment and the provision of a suitable building for the IDEA Store and a cleared site for the school the Secretary of State can be confident that these elements of the scheme would be realised.

3.21 The northern part of the Order lands, outside the boundary of the Tesco planning application, is expected to be included in a comprehensive planning application to be submitted by the housing associations which already control much of Bromley-by-Bow North. Subject to the availability of the Tesco overspill car park, which it is reasonable to assume, once the Colas land is in public ownership the majority of the Bromley-by-Bow North land would be available for the proposed development which is expected to take place in the next 3 to 5 years[33]. If the Tesco overspill car park and land at plots 1, 2 and 3[34] were not made available they could be subject to a CPO[35]. However, there is no reason to suppose that those plots will not be made available so there is no need for a CPO at present. The fact that Colas is resisting this Order shows that the Order is fully justified in its case.

3.22 The Corporation has had careful regard to the financial viability of the scheme, both at the time of making the Order and at the point of resolving to grant planning permission. At the time of resolving to make the Order in December 2009 it had regard to reports by Amion Consulting and GVA Grimley[36]. The GVA Grimley appraisal of Option 2, (the option most relevant to the present scheme), indicated a level of developer's profit just short of 10%. On the basis of these reports and officers' advice the Corporation concluded that the scheme would be likely to proceed.

3.23 At the time of the resolution to grant planning permission for the scheme in May 2010 the most up-to-date information submitted by the applicants was a set of appraisals carried out by GL Hearn[37]. The appraisal of the overall scheme shows that it would be viable, with a developer's profit of £29 million. Considered in isolation, phase 1 would make a loss. However, the appraisals of phase 2[38] and of Tesco's land north of Three Mills Lane[39] show a positive

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[31] See paragraph 5.30 of DC1.
[32] See Appendix 2 to DC1C.
[33] Inspector's note – the timescale of 3 to 5 years was given by Mr Allen in answer to a question from Mr Barnes.
[34] As shown on the plan at DC11.
[35] Inspector's note – In answer to my question, Mr Allen stated that it was not known at this stage whether a further CPO would be required. The Corporation would work with the majority land owners concerned and would be prepared to use compulsory powers if needed.
[36] See Appendices 1 and 2 of DC1D.
[37] See Appendix 5 of DC1D.
[38] Inspector's note – the phase 2 appraisal was intended to provide a valuation of the land, based on an assumed developer's profit of 25%. The anticipated capital receipt for disposing of the land is included in the phase 1 appraisal.

residual land value. The appraisals show that Tesco has an incentive to deliver, or procure delivery of, the whole scheme.

3.24 In early 2010 the Corporation instructed a Joint Advisory Consortium (JAC) of consultants to review independently the GL Hearn appraisals. The JAC appraisal of phase 1 indicated that it would be viable with a profit of £12.4 million or nearly 16%[40]. Furthermore, in addition to the anticipated developer's profit, Tesco would benefit from an unquantifiable trading benefit from having a new and bigger store. The JAC appraisal of phase 2 also shows a positive residual land value.

3.25 The relevant policy test, set out in paragraph 22 of Circular 06/2004 and in paragraph 12 of Appendix D, is that there should be a reasonable prospect of the scheme being delivered. Whilst there can be no certainty that the development will happen, there is no policy requirement to demonstrate certainty. There is a very good prospect that the Corporation's proposals will bring about the regeneration of the Order lands. No proposals are being promoted by anyone else for any alternative form of development.

The need for compulsory acquisition

3.26 Compulsory acquisition is required so that the Corporation can achieve its statutory objective of bringing about the regeneration of the LLV. During 2005 and 2006 the Corporation met with the developers which were, at that time, promoting the redevelopment of the Trad land. The Corporation's view that a more comprehensive approach was needed was explained repeatedly. In January 2007 Aitch Group and Genesis Housing Group appealed against non-determination of their application to develop the Trad land with 530 residential units above ground floor commercial space.

3.27 In May 2007 the Corporation's Board resolved to commence work on a regeneration strategy for the land which is now covered by the LUDB and to negotiate and seek site assembly[41]. The Aitch/Genesis appeal was dismissed in November 2007. The Secretary of State considered that the scheme would prejudice the effective regeneration of the area, thereby prejudicing the effective implementation of the broad strategy of the LP to secure the regeneration of this important part of the LLV through a mixed use development. Moreover, the Secretary of State commented that the Corporation has the powers and means of implementation to secure the comprehensive redevelopment sought in the Bromley-by-Bow area[42].

3.28 Following dismissal of the appeal the Corporation called a meeting with landowners and developers in the area and explained that it wanted the landowners to come together in partnership to deliver comprehensive regeneration. Informal discussions continued and in April 2008 a briefing/

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[39] Inspector's note – this land is the overspill car park most of which is not within the Tesco application area. This appraisal was intended to provide a valuation of the land. The anticipated capital receipt for disposing of the land is included in the phase 1 appraisal.
[40] Inspector's note - The difference between the JAC assessment and that of GL Hearn arose primarily because JAC adopted lower estimates of construction costs – see section 5 and the conclusions to the JAC report which is at Appendix 6 to DC1D.
[41] See item 1 within CD46.
[42] See paragraph 14 of the Secretary of State's decision at CD22.

workshop was held at which there was a presentation on the draft LUDB[43]. Although it is understood that there were further discussions between landowners, no joint proposals were put forward. Tesco then commenced pre-application discussions regarding a comprehensive scheme and submitted a request for a Scoping Opinion. However, in December 2008 Tesco disengaged from the discussions and advised that there was no prospect of the separate landowners promoting a joint comprehensive scheme.

3.29 By this stage the Corporation had approved the draft LUDB and carried out public consultations on it. In July 2009 Tesco advised the Corporation that it had failed to agree terms with neighbouring landowners and wished to commence pre-application discussions on the scheme. In September 2009 the Corporation's Board considered a strategy for implementation of regeneration within the LUDB area. It resolved that development could proceed as two parcels broadly north and south of Three Mills Lane. In respect of the southern area, the Board agreed an approach whereby there would be a conditional sale and purchase agreement from the Corporation to Tesco and a CPO Indemnity Agreement from Tesco to the Corporation[44]. On 7 December 2009 the Board resolved to make the Order and gave authority to enter into the CPO Indemnity Agreement[45]. The Board subsequently approved funding for the acquisition of those plots not covered by the CPO Indemnity Agreement[46].

3.30 Tesco, advised by GL Hearn, undertook negotiations to acquire the land in 2007, and again in 2008, but was unable to agree terms acceptable to its Board. In October 2009 Tesco made offers for the Trad land and the Ellis/Grier land[47]. These offers preceded the resolution to make the Order. Despite reasonable efforts having been made, neither the Corporation nor Tesco has been able to secure the land by agreement. There is not a reasonable prospect of securing the land by agreement within a reasonable timescale.

The requirements of Circular 06/2004

3.31 There can be no doubt that the land is in need of regeneration. The Inspector who reported on the Aitch/Genesis appeal commented that the need for regeneration is very evident from a visit to the area, which is characterised by a poor physical environment, including the housing stock, a lack of cohesion due to the strong barrier to east-west movement caused by the A12 arterial route, a lack of any defined centre, a deficiency of open space and poor use of the riverside setting. He concluded that the need for regeneration is an important policy direction of very significant weight[48].

3.32 The Corporation has made significant efforts to encourage the landowners to work together. However, a combination of economic circumstances and land value expectations seems to have rendered this impossible in respect of Bromley-by-Bow South. The proposals promoted by Aitch/Genesis were unacceptable and subsequently no alternative proposals, other than the Tesco

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[43] The invitation letter, attendance list and presentation are at Appendix 4 of DC1A.
[44] See item 3 within CD46.
[45] The Board report and minutes are at item 4 within CD46.
[46] See paragraph 8.30 of DC1.
[47] Details of the negotiations are set out in the appendix to DC4.
[48] See paragraph 10.4 of the Inspector's report at CD22.

scheme, have been brought forward. There is a clear regeneration vision, embodied in the LUDB. The Corporation's regeneration proposals are of excellent quality and are likely to be delivered within a reasonable timescale. The Tesco scheme would bring forward regeneration in compliance with the planning policy framework and the Corporation's regeneration strategy. Regeneration is thus far more likely if the Corporation acquires the land in order to enable the Tesco scheme to proceed.

3.33 That part of the Order lands outside the Tesco scheme must be under the Corporation's control by March 2013, the latest date by which the Corporation will acquire vacant possession of the Leycol Printers site[49]. This is so that the land can be brought forward for comprehensive development together with land to the north, as described above. There is therefore a compelling case for the acquisition of this land.

3.34 There are unlikely to be impediments to the implementation of the Tesco scheme. Tesco has indicated its desire to open the new store by June 2012. Evidence has been provided regarding funding in relation to the park, school and IDEA Store. Evidence has been provided on viability and developer interest for phase 2. There is also likely to be significant developer interest in bringing forward development at Bromley-by-Bow North. Given the support in principle of TfL, implementation of the AMJ is unlikely to be an impediment.

3.35 There may be a need for other consents, such as Stopping Up Orders, temporary highway closures or diversions. There is no impediment to the grant of such consents, which would be sought from LBTH at the appropriate time.

3.36 The Corporation has had regard to the Human Rights implications of making the Order and considers that there would be very significant public benefit arising from the regeneration of the Order lands which would outweigh the effects on occupiers and land owners.

Conclusion

3.37 Confirmation of the Order would be in compliance with national policy to promote the regeneration of the Thames Gateway and the Bromley-by-Bow area in particular. It would bring forward sustainable regeneration, in an area specifically prioritised by its inclusion in the Corporation's remit, in compliance with planning policies produced by the Mayor of London and the Council. It is highly significant that the objectors do not dispute the need for the regeneration of the Order lands. Nor do they quarrel with the planning policies which seek that regeneration by major redevelopment. They do not dispute that their land is needed for regenerative development to take place and they have not put forward any alternative scheme of redevelopment or any alternative developer to Tesco for the land south of Three Mills Lane.

3.38 There is a compelling case in the public interest for the Order to be confirmed.

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[49] See paragraph 8.69 of DC1.

The Objections

Sections 4 to 7 of the report contain the main points made by the objectors at the Inquiry and in writing, together with the responses of the Corporation.

4. The case for Trad (Documents TRD1 – TRD15)

Reference Nos and addresses:
Plot 43 – Pelican Wharf, 2 Imperial Street
Plot 45 – Imperial House, Pelican Wharf, to the south of Imperial Street
Plots 46, 47 and 48 – Pelican Wharf, to the south of Imperial Street
Plot 49 – Pelican Wharf, to the south east of Imperial Street

Name of objectors and legal interests:
Hayden Francis Smith and Doretta Milner Smith as trustees of Trad Scaffolding Company (H F Smith) Furbs – Owners
Trad Scaffolding Co Ltd – Lessee (all plots); Occupier (all plots except plot 45)

Legal submissions

4.1 Application has been made for judicial review of the Corporation's decision to grant planning permission for the Tesco scheme. The reasoning, set out in the Claim Form[50], explains why comprehensive development and regeneration benefits are not secured. If upheld, this would fatally undermine the basis for the Order and is a matter relevant to the Secretary of State's decision. In addition, it is submitted that the avoidance of an Official Journal of the European Union (OJEU) process for public procurement and the exclusion of the Tesco land are legal impediments to implementation of the scheme. These points are expanded on below[51].

4.2 The legal submissions made on behalf of Colas and Ellis/Grier (reported below) that the making of the Order was unlawful are also adopted.

Loss of a successful business

4.3 Trad was founded in 1969. It is part of the Trad Group which provides scaffolding hire services from several locations across the UK. However, the whole of the contracting business is based at Bromley-by-Bow. The contracting operation has an annual turnover of around £20million and employs around 300 people, many of whom are highly skilled workers. It has the capacity to undertake large scale, complex and specialist work. For example, it is currently providing scaffolding for the Shard of Glass project at London Bridge and regularly works for London Underground and on medium/high rise local authority housing contracts. It is one of only 5 companies in and around Greater London with the capacity to take on projects of this nature[52].

4.4 Most of the contracting work is carried out in central and east London. The location at Bromley-by-Bow is important to the company's ability to offer a competitive service. Many jobs require the attendance of staff on a daily basis. Some jobs require attendance during the night so it is important to have a base

[50] See TRD13.
[51] See 38 – 40, 56 and 58 of TRD15.
[52] See TRD3.

which does not have any restrictions on hours of working. The existing site has excellent public transport links, being only a few minutes from Bromley-by-Bow station. This is important to the efficiency of the operation. Trad is a stable employer and over 60 of its staff have been with the company for more than six years.

4.5 The Corporation suggests that, even if Trad were not to relocate, the potential loss of jobs would be outweighed by the benefits of the scheme[53]. That is the wrong test to apply because, for a CPO, there must be a compelling case in the public interest. Moreover, if only phase 1 of the scheme were to come forward, the net gain in jobs would be minimal and potentially negative. Trad's business is of strategic importance to Bromley-by-Bow and to London as a whole. If there is a real risk of significant harm to, or loss of, Trad's contracts and business operation then the Order should not be confirmed.

Lack of alternative sites

4.6 Trad occupies a site of about 1.23ha (3.05acre) comprising an open yard, a two storey office building of just under 800sqm and a single storey office building of around 78sqm. The single storey building is let to Automec on a short term basis[54]. In considering relocation, the requirement is for a site of similar size. Trad must have regard to the drive time for HGV deliveries because of the need to avoid additional shifts for drivers which would add to operating costs. The accessibility of any potential site to its staff, many of whom travel to work by public transport, is also important. The most suitable location is east London, extending out along the A13 to Beckton, Barking and Dagenham. There are significant set-up costs for a new depot and for this reason a freehold site is preferred. If relocation were to a leasehold property then the company would seek a period of at least 10 years without having to contemplate further upheaval[55].

4.7 Trad instructed surveyors to investigate alternative sites following the submission of the Tesco planning application in November 2009. The site search involved circulars distributed to commercial property agents, use of websites, an advertisement in the Estates Gazette, regular contacts with local authorities and approaches to occupiers of suitable properties. Following the making of the Order a direct approach was made to the Corporation on 12 March 2010 but no sites were identified at that stage[56].

4.8 The Corporation has a statutory duty under S146(2) of the 1980 Act to assist those potentially affected by a CPO with finding a site for relocation. Circular 06/2004 advises that where existing users are affected by a CPO an Urban Development Corporation (UDC) will be expected to indicate how it proposes to

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[53] Inspector's note – In answer to a question from Mr Corner, Mr Allen stated that the economic and regeneration benefits of the scheme would outweigh any loss of jobs at Trad, if that were to occur.
[54] See section 5 of TRD3.
[55] Inspector's note – in answer to a question from Mr Steel, Mr Murray stated that a move to leasehold premises would be a compromise on Trad's part.
[56] Inspector's note - see section 6 of TRD3 for details of Trad's site search. In answer to a question from Mr Steel, Mr Murray confirmed that the requirement is for a site of 3 acres. Whilst some of the advertisements sought sites of 1 to 3 acres, this was because, in order to attract the widest response, it was better not to be too specific in the search criteria.

assist them to relocate. The Corporation has failed in that duty. In answer to the enquiry from Trad's surveyor, the Corporation advised on 14 April 2010 that it did not hold any sites which could be suitable as relocation propositions for Trad[57]. However, the site which the Corporation has relied on since 22 July 2010 as the best option for relocation is Hindmans Way (West) (HWW) which is owned by the Corporation. It is to the Corporation's discredit that it seeks to rely on this site now when it was not prepared to bring it forward at an earlier stage.

4.9 The attitude of the Corporation has been lamentable. On the first day of the Inquiry it introduced 5 new sites which, it asserted, were suitable and available for Trad. On the following day its case changed and it said 2 of the sites were not available[58]. It seems unlikely that the position on these sites had changed within 24 hours and it appears that the Corporation was putting forward evidence without undertaking elementary checks as to whether the sites were in fact available. Moreover, in cross-examination of the Corporation's planning witness it became clear that there had been no investigation of the planning situation in relation to any of the suggested sites[59].

4.10 Trad's comments on the suitability of the sites put forward by the Corporation can be summarised as follows[60]:

Ref	*Site*	*Site Area (acres)*	*Miles from City*	*Terms*	*Trad's comments*
3	Kuehne & Nagel	1.6 with office building[61]	9.9	Lease to Oct 2013 – potentially longer	Site too small, lease too short, too far from public transport.
4	Hindmans Way (East)	3.95 (not all available)[62]	9.9	Freehold or leasehold	Site unsurfaced, remediation in progress, no terms available.

[57] See the email of 14 April 2010 at Appendix 9(c) of TRD3C.
[58] Inspector's note – The rebuttal proof of evidence of Mr Astbury (Document DC4A) was submitted on day 1 of the Inquiry. The updated rebuttal proof (DC4B) shows two sites, numbered 11 and 12 on the schedule at Appendix 1, as having been withdrawn.
[59] Inspector's note - In answer to questions from Mr Steel, Mr Allen accepted that he did not know the planning history of the various suggested sites. However, in his opinion they appeared to be suitable for use by Trad.
[60] Inspector's note - the reference numbers, site areas and distances from the City are taken from the schedule at Appendix 1 of Mr Astbury's updated rebuttal proof of evidence, (DC4B), which contains further details regarding ownership and transport links. The Trad comments are set out in Appendix 1 to Mr Murray's response to the rebuttal (TRD3C). Site locations and individual site plans are at DC14.
[61] Inspector's note – in answer to a question from Mr Steel, Mr Astbury accepted that Trad has a requirement for 3 acres and that this site would not be suitable unless combined with part of the adjoining AXA site (site 5).

5	AXA, Chequers Lane	Split larger site as required	10.0	Lease for 2 to 5 years, break options for development[63]	Lease too short.
6	Beam Park	Split larger site as required[64]	10.6	Lease for 8 years with break option thereafter	Lease too short, no security of tenure, too far from public transport, outer limit of travel distance.
8	Denver Industrial Estate	Up to 7.0	11.7	Lease for up to 10 years	Believes lease of only 8 years is available which is too short. Travel distance too great[65].
9	Albert Island Basin	2.7	7.1	Lease for 10 years, break after 8	See note[66]
10	Armada Way, Beckton	2.5	6.9	Lease for 10 years, break after 2 (for new river crossing)	Site too small, break period too short, un-surfaced site.
13	Carlsberg Tetley	1.0	4.4	Leasehold	Too small, no terms available.
14	Hindmans Way (West)	4.35	9.9	Freehold	See paragraphs 4.11 to 4.13 below.

[62] Inspector's note – In answer to a question from Mr Steel, Mr Astbury advised that the London Development Agency (the site owner) has another potential occupier which requires 2 acres. He accepted that the remainder of the site would be too small.
[63] Inspector's note – In answer to a question from Mr Steel, Mr Astbury accepted that the lease period would involve Trad in a double move.
[64] Inspector's note – In answer to a question from Mr Steel, Mr Astbury advised that the site extends to 25 acres and is scheduled for phased residential development. The London Development Agency (the site owner) would accept a "lift and shift" clause whereby Trad could be required to relocate within the site.
[65] Inspector's note – In answer to a question from Mr Steel, Mr Hayden Smith stated that he had personal experience of travel delays due to congestion on the A13. Locations to the east of the Goresbrook Interchange, such as the Denver Industrial Estate, would be unacceptable because the additional travel time would disrupt the shift patterns of Trad's drivers.
[66] Inspector's note – Mr Murray did not comment on this site. Mr Steel submitted documents relating to the location of the site within the Public Safety Zone of London City Airport (TRD6, TRD8 and TRD9). In answer to a question from Mr Steel, Mr Astbury commented that the presence of runway landing lights within Site 9 need not prevent its use by Trad as the landing lights could be protected by fencing. In answer to a question from Mr Steel, Mr Hayden Smith commented that the site was impractical. Headlights and flashing safety lights on Trad's vehicles would conflict with aircraft landing lights. The site would be subject to an unacceptable level of aircraft noise.

15	Barking Riverside	Split larger site as required	8.3	Lease for 10 years, break after 5 for DLR construction if required[67]	No terms available

4.11 HWW is now regarded by the Corporation as the best potential relocation site. On 24 August 2010 Tesco submitted an outline planning application for the use of the site for open storage with ancillary office space together with improvement works to Hindmans Way. On 28 September 2010 the Corporation's planning committee authorised officers to grant planning permission, subject to consideration of any further consultation responses received before 11 October 2010[68]. However, there are a number of complexities and uncertainties associated with making the site available.

4.12 The day before the Inquiry resumed the Corporation established that land required for the highway works is in third party ownership. On the final day of the Inquiry it emerged that two other third parties have interests. Matters to be resolved include legal agreements with TGD Ltd (TDG), whose land is required for the highway improvements, obtaining planning permission and discharging pre-commencement conditions, drainage, flood risk issues, Health and Safety Executive limitations in relation to adjoining uses, site clearance[69], decontamination[70], relocating a large (and locally listed) hopper and obviating the lack of public transport. The Corporation states that resolving these matters would be straightforward. However, little weight should be attached to such unproven assertions. Previous evidence submitted by the Corporation regarding alternative sites has not proved to be reliable on closer examination.

4.13 The burden of proof is on the acquiring authority to show that the sites on which it relies are suitable and available. It has failed to do so. The evidence before the Inquiry shows that there are at present no sites which are suitable and available for relocation. The double move option would be unacceptable because it would disrupt the stability and effectiveness of the business. It would not be reasonable to conclude that it is likely that HWW will be suitable and available by July 2011, as proposed by the Corporation. The uncertainty is too great. The cause of the uncertainty is the Corporation's late move to assist Trad with relocation. Had the advice of Circular 06/2004 been followed, the Corporation would have started this process before seeking compulsory purchase powers.

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[67] Inspector's note – in answer to a question from Mr Steel, Mr Astbury stated that the break clause would be after 5 years.
[68] See DC1E for a description of the proposals. The Committee report is at Appendix 2, there is an addendum report at DC19, a revised highway layout at DC20 and a draft planning committee minute at DC22.
[69] Inspector's note – during my site visit I saw that there are culverts or similar structures on the land. At the resumed Inquiry I asked whether there was any further information about these structures. No further information was available although they are shown on DC20.
[70] See the Environmental Risk Assessment at TRD14.

Compulsory purchase not a last resort

4.14 Trad is fully in favour of the regeneration of Bromley-by-Bow, including the redevelopment of its own site. However, paragraph 24 of Circular 06/2004 states that before embarking on compulsory purchase, and throughout the preparation and procedural stages, acquiring authorities should seek to acquire land by negotiation wherever practicable. The compulsory purchase of land is intended as a last resort in the event that attempts to acquire the land by agreement fail. The Courts have been astute to impose a strict construction on statutes expropriating private property[71].

4.15 In 2006 Trad entered an agreement under which Aitch Group submitted a planning application for the development of the Trad land. Had permission been granted, Trad would have been able to relocate in its own timescale to sites that were available at that time. In November 2006 Trad accepted an unconditional offer of £30million from the Corporation. Solicitors were instructed but the Corporation subsequently withdrew in January 2007 because Board approval was not given. Discussions were then held between Aitch Group and Tesco and in July 2007 terms were agreed for Tesco to purchase the property for £27million plus a top up if the Aitch/Genesis appeal was successful. Again solicitors were instructed and contracts prepared but Tesco subsequently withdrew. From spring 2008 there were further negotiations and terms were substantially agreed. However, it subsequently seemed that Tesco's interest in the scheme waned due to the economic climate[72].

4.16 In each case nothing was done by Trad to cause a change in circumstances, no reasons were given for the withdrawal of the offers and neither the Corporation nor Tesco came back with lower offers or revised terms[73]. In each case the negotiations had reached an advanced stage before being broken off by the Corporation/Tesco. In October 2009 a further offer was made by Tesco. This was less than one quarter of the offers made previously and was considered to be derisory[74]. No reasons were given as to why the offer was so different. At this stage the scheme had not been finalised and was subject to objection from important consultees. Moreover, the S106 terms were not known and the proposals made no mention of relocation. Consequently, Trad did not consider that any meaningful and considered response could be made. In any event, there was no follow up of the offer, either by the Corporation or by Tesco. The fast tracking of the Order has not allowed sufficient time for a transaction of this complexity to be concluded.

4.17 Trad remains willing to hold negotiations regarding its site. If the Secretary of State declines to confirm the Order this will have the effect of causing the parties to come together to arrive at a negotiated outcome. The history shows that acquisition by agreement has always been practicable. During the period

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[71] R (on the application of Sainsbury's Supermarkets Ltd) (Appellant) v Wolverhampton City Council [2010] UKSC 20

[72] The history of these discussions is set out in section 7 of Document TRD3.

[73] Inspector's note – these points were confirmed by Mr Murray in answer to questions from Mr Steel.

[74] Inspector's note – Mr Murray's comment that the offer was derisory was made in response to a question from Mr Steel. Mr Steel explained that the figure itself is not a matter for the Secretary of State, his intention was to show how the negotiations had been conducted.

from March to July 2010 it was Trad that was making most of the effort to find a suitable relocation site. It is not disputed that this was a full and genuine search. The failure to reach agreement lies wholly with the Corporation and Tesco. Had proper negotiations taken place, the timing of vacant possession would have been the subject of discussion. If subjected to compulsory acquisition Trad would lose control over the timing of relocation and would have only a short period in which to vacate the site. The timing of any relocation is of great importance to the survival of the business because of the need to provide continuity of service to clients engaged in major construction projects and so that the company can bid for new contracts in the knowledge that it will have a yard to operate from.

4.18 Moreover, making the Order before undertaking private negotiations puts Trad at an unfair disadvantage in that any valuation of the land following CPO would take no account of the scheme for which the CPO is being made. The process undertaken by the Corporation has not complied with the Circular, with the protections of the common law or with Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR). The Order has not been made as a last resort and should not be confirmed.

Lack of commitment to comprehensive delivery

4.19 It is clear from minutes of Corporation meetings[75] that the scheme has been designed to avoid the OJEU process. That process operates in the public interest in that it promotes competition between developers with the potential to bring about a better scheme. The delivery of comprehensive development can then be guaranteed by a development agreement. The Secretary of State should not approve a CPO which seeks to avoid a procurement process which is required by European law.

4.20 The consequence of the avoidance of an OJEU process is that the Corporation has not been able to insist on a development agreement. The need for a comprehensive approach underpins the whole policy context for Bromley-by-Bow and was one of the reasons why the Altch/Genesis scheme was rejected. However, in the absence of a development agreement there is no mechanism to ensure that comprehensive development is delivered. Officers of the GLA were satisfied that the scheme, if completed as a whole, would represent a reasonable balance of uses. The draft heads of terms of the S106 Agreement considered by the GLA included a commitment to the timely delivery of all phases of the development[76]. There is no such commitment in the final Agreement and the Secretary of State cannot be confident that the balance of uses now proposed will actually be delivered.

4.21 Confirmation of the Order would amount to a subsidy to a private developer through the use of public powers. Tesco would avoid having its own land acquired at "no scheme" CPO values. It would then get the benefit of the marriage value of its own land together with the land acquired compulsorily. It could sell on the phase 2 land to another developer or sell the land back to the Corporation under the terms of the CPO indemnity agreement. In either case

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[75] See CD46.

[76] See paragraph 9 and last bullet point of paragraph 27 of CD54.

this would be at an uplifted open market value. Tesco would thereby gain an unfair advantage to the detriment of existing land owners.

4.22 Viability, whilst a necessary condition for development, does not guarantee delivery. There may be many reasons why a developer decides not to proceed. In the absence of a development agreement a developer cannot be compelled to deliver anything. In this case neither the S106 Agreement nor the CPO Indemnity Agreement requires Tesco to carry out development of any part of the scheme. The implementation of the scheme would be entirely in the hands of Tesco, not the public authority. It is accepted that there is a reasonable prospect of phase 1 coming forward but not the later phases. There is no funding commitment to the fitting out of the IDEA Store or the construction of the school and its playing field. Whilst 11 shops would be constructed to shell and core, the letting of the shop units would be risky[77] and the 3 units along Imperial Street would be particularly hard to let as there would initially be little footfall here. There would be difficulties in letting the B1 elements of the scheme[78]. The Hotel Needs Assessment indicates that there is a lack of quantitative need for the hotel and there is limited evidence of operator demand[79].

4.23 The residential phases would be burdened by substantial S106 payments and by £12million of abnormal costs associated with roofing over the petrol filling station to enable residential development above. There is greater profitability in phase 1. Any revised proposals for phase 2 would be assessed on their own merits, without the benefit of any of the phase 1 profit and without the opportunity to address any of the shortcomings of phase 1. For example, a revised scheme might omit features such as the hotel, the high rise housing or the housing above the petrol filling station.

4.24 Delivery of phase 1 alone would see large parts of the site left vacant and surrounded by hoardings. Little weight should be attached to expressions of interest from potential house builders because these do not give any commitments. If the Order were confirmed, there would be potential for the phase 2 land to remain vacant for some time. The "buy back" clause of the S106 Agreement would be of little practical benefit because, if phase 2 proves not to be viable, a mere change of ownership would not make it viable. Moreover, there is no evidence that the Corporation would have the funds to buy back the land at its open market value.

4.25 There is no requirement, in planning terms, for a superstore of this scale. The superstore should not therefore be regarded as part of the regeneration benefits of the scheme. The housing is a policy requirement but there is no housing in phase 1. Few of the claimed regeneration benefits would be realised unless the whole scheme were to be carried out.

Lack of compelling case on the planning merits

4.26 The scheme proposals would provide insufficient housing, would be of poor design and would at best achieve the bare minimum that could be described as

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[77] See paragraph 4.41 of appendix 6 to DC1D.
[78] Inspector's note – Mr Napier accepted that the B1 element would be difficult to let in answer to a question from Mr Steel. See also paragraph 9.16 of DC5.
[79] See paragraphs 29 – 31 of CL/EG4.

a district centre. The LUDB states that housing will be required above the superstore and that there should be lower density family housing in the south east part of the site[80]. There would be no housing above the store and none in the south east part of the site which would be occupied by the school and part of the superstore[81]. The committee report notes that the proposed density of 98 dwellings per hectare (dph) would be at or below the lower range of the density guidelines due to the size of the superstore and the lack of housing above it[82]. In fact the density would be substantially below the level of 275dph which, according to the OAPF and LUDP, is the density most housing in this area should be designed to[83]. This supports the view that the scheme would fail to make effective use of the Order lands and would not make adequate provision for housing.

4.27 The design of the scheme has been criticised by the Commission for Architecture and the Built Environment (CABE). Commenting on the planning application CABE expressed concern that the size and positioning of the superstore would compromise the chances of this development integrating with the surrounding community and regenerating the area[84].

4.28 The OAPF states that development in the Bromley-by-Bow sub-area could deliver around 6,700sqm of new retail space of which 5,000sqm could be provided through the relocation of the existing Tesco store[85]. The scheme would provide a very large superstore with a floor area of 11,377sqm, double the size of the existing store. Planning Policy Statement 4: *Planning for Sustainable Economic Growth* (PPS4) states that district centres will usually include a range of non-retail services as well as local public facilities such as a library. There is real uncertainty over the provision of the IDEA Store and no commitment to providing non-retail services at any stage. A district centre is no more than a possibility, even in the event that the whole scheme comes forward.

Lack of urgency

4.29 There is no urgency in relation to the Olympics. Indeed, there is no urgency whatsoever other than the general objective of securing regeneration within this part of London[86]. There is no evidence of pressing need for any of the individual elements of the scheme. There has been a rush to get the Order confirmed without discharging the statutory and policy obligations of the acquiring authority. A more careful approach would have allowed for alternative schemes to be considered, a better mix of uses and better prospects for the achievement of comprehensive development.

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[80] See sections 4.1 and 4.2 of CD15.
[81] A plan showing aspects of the scheme which depart from the LUDB is included at appendix 11 of TRD2A.
[82] See paragraph 9.92 of CD49.
[83] See paragraph 4.133 of CD19 and section 4.2 of CD15.
[84] See appendix 7 of TRD2A.
[85] See paragraph 4.136 of CD19.
[86] Inspector's note – in answer to my question, Mr Allen stated that there is no relationship between the delivery of the scheme and the 2012 Olympic Games. He commented that the regeneration of Bromley-by-Bow does form part of the wider regeneration of the Olympic Fringe as part of the Olympic legacy. In answer to questions from Mr Steel, he accepted that there is no contractual reason for urgency.

Conclusions

4.30 The Corporation accepts that regeneration includes the preservation of existing jobs. However, confirmation of the Order would result in a loss of jobs and risks taking land out of active use, leaving it undeveloped. There is no commitment to the funding of the school or the IDEA Store and no commitment to the residential elements of the scheme. The scheme does not secure the claimed regeneration benefits. There are many impediments to implementation, both of a financial and a legal nature. The acquiring authority has not sought to acquire land by negotiation and the use of compulsory powers is not a last resort. The claimed benefits would not outweigh the inevitable harm which would be caused to Trad, its skilled workforce and the local area if the Order were confirmed. There is no compelling case in the public interest and the Order should not be confirmed.

5. Response by the Corporation to the case for Trad

The submissions regarding OJEU

5.1 In September 2009 the Corporation decided to promote the regeneration of Bromley-by-Bow South by entering two agreements with Tesco - a conditional sale and purchase contract and a CPO Indemnity Agreement. The Corporation is a short life body charged with making speedy progress on the regeneration of east London. It is aware of the delays that would be associated with following an OJEU process and is confident that the above agreements, together with a S106 Agreement and appropriate planning conditions, would be highly likely to deliver comprehensive regeneration[87]. An OJEU process is only required if there is procurement of public works. In this case there will not be procurement of public works so it cannot be said that the approach taken by the Corporation is unlawful. It is right to say that if there had been a development agreement then an OJEU process would have been required. However, a development agreement could not guarantee comprehensive redevelopment. It could only require redevelopment to take place if it were viable.

5.2 It is highly unlikely that anyone, other than Tesco, would carry out the redevelopment of the Order lands[88]. It would have been open to the objectors to approach other potential developers to see if they were interested. However, at no stage of the Inquiry has any suggestion been made that any other developer would be willing and able to secure the regeneration of the Order lands.

The relocation of Trad

5.3 Trad has recognised the importance of regeneration for several years and has actively promoted the redevelopment of its own site. The history of negotiations has been described in the evidence. This is not a company which is determined to stay at this location. On the contrary, it has long recognised

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[87] See paragraphs 8.23 to 8.25 of DC1.

[88] Inspector's note – in answer to my question, Mr Napier stated that, notwithstanding the buy back clause in the CPO Indemnity Agreement, it was very unlikely that anyone other than Tesco would carry out the scheme because any other developer would first need to acquire the Tesco interests in the Order lands.

the inevitability that it will have to move. This does not suggest that Trad is overly concerned about being able to relocate when the need arises.

5.4 Even if the conclusion were reached that the employment now on the Order lands may be lost, the right course of action would be to confirm the Order. The scheme would provide 412 jobs[89] (full time equivalent) plus further un-quantified jobs in the school and IDEA Store. This employment gain would substantially outweigh any loss of jobs on the Trad site. Moreover, there are many other advantages of the scheme which would secure regeneration at Bromley-by-Bow South and act as a catalyst for further regeneration.

5.5 That said, the Corporation considers that there are suitable alternative sites for Trad. With regard to Trad's requirements, it has been accepted that there is no specific calculation justifying the suggested need for a minimum lease term of 10 years and that, if setting up costs were incurred which were not reflected in the site value, then this would be covered by a disturbance payment[90]. The evidence regarding Trad's requirements has not all been consistent, for example the issues of whether or not the yard and office need to be on the same site[91] and whether any leasehold should be protected under Part II of the Landlord and Tenant Act 1954.

5.6 Dealing first with the sites other than HWW, Beam Park (Site 6) is a 25 acre site which is clearly large enough. A lease of 8 years is available, with break clauses thereafter. This is a substantial period. Any lease would be subject to a "lift and shift" clause but that would only require Trad to move within the site, not to leave. Trad suggests that public transport is insufficient but bus services are available nearby[92]. Denver Industrial Estate (Site 8) is a 7 acre site with an 8 year lease available. It is suggested that the site is too far from central London. However, an email of 11 June 2010 shows that Trad's surveyor was content to investigate this site further[93]. In any event, it is only 11.7 miles from central London, which is not far beyond locations which are accepted as being suitable. Other sites are available for shorter periods and could allow Trad to make a double move. Whilst the company would prefer to avoid this, it would be compensated for any loss.

5.7 It is argued that the planning status of the various potential relocation sites is unknown. However, there is no evidence of any planning impediment to the use of the sites in question. Moreover, the Corporation would be the

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[89] See paragraph 9.22 of the committee report (CD49) which states that the superstore would provide 229 more jobs than the existing store and that the hotel, flexible retail and commercial units would provide 183 jobs.

[90] Inspector's note - in answer to a question from Mr Corner, Mr Murray accepted that there is no magic in the figure of 10 years; rather it is a question of what is a reasonable period. Mr Murray commented that Trad is being flexible and that other leasehold premises in the Trad group are on leases of at least 15 years.

[91] Inspector's note - in answer to my question, Mr Hayden Smith stated that it was very important for the office to be on the same site as the yard because supervisors need to ensure that the correct materials are dispatched to site and so that instructions can be given to the scaffolding teams. Mr Corner contrasted this response with Mr Murray's evidence at paragraph 6.3 of TRD3.

[92] See the table in appendix 1 of DC48 for details of public transport availability for all the suggested relocation sites.

[93] See paragraph 4.11 of DC48.

determining authority for all sites other than Albert Island Basin (Site 9). Securing the relocation of Trad would weigh heavily in favour of the grant of any planning permission that may be required.

5.8 The site at HWW was referred to in the Corporation's evidence at the start of the Inquiry and has subsequently been the subject of further detailed work. It is in the ownership of the Corporation. It extends to 4.35 acres and is therefore large enough. It is not argued that HWW is beyond a reasonable travel distance to central London. The concerns raised by the objector relate to delivery rather than the principle of suitability.

5.9 As described above, an application for outline planning permission, designed to meet the requirements of Trad, has been submitted to and considered by the Corporation. Authority has been delegated to officers to grant outline planning permission subject to no objections raising new material considerations being received by 11 October 2010. There is no reason why planning permission should not be granted. The proposal includes the widening of 130m of Hindmans Way so as to improve access to the site. There has been no suggestion that this would be impractical.

5.10 The widening would require third party land in the ownership of TDG. However, TDG is obliged by an agreement under S16 of the Greater London Council (General Powers) Act 1974 to convey the land to the London Borough of Barking. The Borough wishes the land to be conveyed to the Corporation and TDG is willing to do so[94]. Consequently, TDG's ownership is not an impediment to delivery of this site. The road alignment shown on the illustrative plan submitted with the application would also require land in the ownership of Cemex. A minor adjustment to the layout, as shown on the plan before the Inquiry[95], would avoid any need for this land. There are certain other third party interests and the Corporation will inform the Secretary of State of progress in relation to their acquisition[96].

5.11 The objector raises concerns regarding contamination and flood risk. It is clear from the addendum committee report[97] that the Environment Agency has considered these issues and raises no objection subject to appropriate planning conditions. It is argued that the site is less favourable to Trad than the existing site at Bromley-by-Bow but it is not suggested that it is unsuitable. To the extent that it may be a less valuable site, that is a matter which would be covered by compensation.

5.12 The Corporation has set out a programme for the approval of reserved matters, the discharge of conditions, the carrying out of highway works and the preparation of the site for occupation. It is a conservative programme which has not been challenged by the objector[98]. The Corporation undertakes not to

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[94] See paragraphs 2.13 to 2.20 of DC1E.
[95] See DC20.
[96] Inspector's note – after Mr Allen had given his supplementary evidence on HWW, Mr Corner advised the Inquiry that information had come to light regarding two further third party interests. There was an expectation that contracts would be exchanged for the acquisition of one of these interests. Another party may have rights of some sort. These matters would not be resolved before the close of the Inquiry.
[97] See paragraph 2.1 of DC19.
[98] See paragraphs 2.8 to 2.12 and 2.21 to 2.25 of DC1E.

take possession of the Trad land before the later of (a) a date 5 months after the confirmation of the Order; or (b) 31 July 2011[99]. It has been suggested that the Corporation should give an open ended commitment not to take the land before HWW is available. That is not acceptable. The regeneration of Bromley-by-Bow is promoted by planning policy and should be brought forward as quickly as possible[100]. The Corporation has behaved reasonably in allowing a substantial period before taking possession. There would be sufficient time for HWW to become available or for Trad to make other arrangements.

Negotiations

5.13 The Corporation's general case regarding the history of negotiations and the need for compulsory acquisition applies.

5.14 It is clear that discussions with Trad have taken place over several years. However, those discussions have centred on Trad's desire to secure a proportion of the development value secured by the comprehensive regeneration of Bromley-by-Bow South. They have not focussed on the amount which Trad can expect to receive on compulsory purchase. It is not the intention of Circular 06/2004 that a land owner should secure a purchase price which exceeds compulsory purchase compensation. It is argued that Trad would receive only compensation under the compensation code and it is suggested that this would be unfair in relation to Tesco's position. However, the objective of compulsory purchase is to facilitate development in the public interest. Compensation has been set at a level which Parliament deems suitable.

5.15 Negotiations with Trad have taken place, and are taking place, but agreement has not been reached. It is plain that compulsory purchase is needed in order to complete land assembly.

Criticisms of the scheme

Further points in relation to the proposed superstore and district centre were made on behalf of Colas and Ellis/Grier. The Corporation's response on that issue is reported in section 7.

5.16 In relation to housing, much of the objector's evidence was based on the LUDB. However, the LUDB is not intended to be applied inflexibly[101]. The Corporation and LBTH are the authorities responsible for the LUDB and they have both concluded that the scheme complies sufficiently with it and that the proposed level of housing is acceptable. The objector's main criticism is that there would be no housing above the superstore. The Corporation has produced evidence to show that such housing would not be viable[102]. Whilst it is true to say that no

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[99] The undertaking is given at paragraph 130 of the closing submissions on behalf of the Corporation (DC23).
[100] Inspector's note – In answer to questions from Mr Steel, Mr Allen stated that an undertaking with no defined end date would not be acceptable. He stated that the Corporation considers the date of 31 July 2011 to be reasonable. It would maintain the Corporation's project timetable.
[101] See paragraph 2.2 of DC1C.
[102] Inspector's note – In answer to my question, Mr Napier stated that a costly transfer deck would be needed above the store in order to support the smaller construction grid required for a residential scheme. In his opinion the residential values achievable in this location

detailed figures have been provided, there is no other scheme in prospect which would deliver housing above the store. It is also suggested that there should be housing in the south west corner of the site. That would be inappropriate because housing above the IDEA Store would overshadow Imperial Square. Moreover, any units within an east/west block at this point would face directly north or, alternatively, over the railway lines to the south[103].

5.17 Finally, it is suggested that there should be housing in the south east part of the site, between the store and the river. That is where the school is proposed. Evidence has been provided regarding the rationale for this location, as opposed to the position north of Three Mills Lane indicated in the LUDB. The proposed location would enable the school to be provided sooner; complement the community facilities in the district centre; provide a better relationship between the school and the proposed park and allow the district centre parking to be used by visitors to the school[104]. In any event, the proposed location would not result in a loss of housing overall because the site north of Three Mills Lane would be available for housing as part of Bromley-by-Bow North. Housing above the school would be inappropriate because a play space is proposed at roof level and because the overall height of the building should respect the setting of the nearby listed buildings.

5.18 Turning to design, the objector relies on the views of CABE but has not brought forward any independent design evidence. The urban design approach has been described in the evidence[105]. The Corporation considers that this would be a scheme of design excellence. It has attracted the support of the Mayor, who is advised by Design for London.

Prospects for delivery of the scheme

5.19 The Corporation's general case relating to the prospects for the implementation of its proposals applies.

6. The case for Colas and Ellis/Grier (Documents CL1, EG1, EG2, CL/EG1 -7)

Reference Nos and addresses:
Plot 2 – Car park, yard and disused electricity sub-station at 30 Hancock Road
Plot 3 – Offices at 30 Hancock Road
Plot 4 – Offices at 30 Hancock Road
Plot 8 – Warehouse and premises at 30 Hancock Road

Name of objector and legal interest:
Colas Limited – owner

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would not justify the additional construction costs involved. See also paragraphs 10.12 to 10.16 of DC5

[103] Inspector's note – these points were made by Mr Collins during his evidence in chief.

[104] See page 16 of DC2.

[105] See section 3 of DC2.

Reference Nos and addresses:
Plot 38 – Storage yard, hardstanding and land to the west of Imperial Street
Plot 39 – Offices, advertising hoarding and premises known as Clock House, 1 Imperial Street
Plot 40 – Office, storage yard, hardstanding and land to the south of Imperial Street and to the east of the A12 Blackwall Tunnel Approach Road
Plot 41 – Storage yard, hardstanding and land to the south of Imperial Street

Name of objectors and legal interest:
Keith Roy Ellis and David Joseph Grier – owners and occupiers

The cases for Colas and Ellis/Grier were presented jointly. Other than where specifically indicated in the text, the following points are made on behalf of both objectors.

Legal submissions

6.1 It is submitted that the decision to make the Order was unlawful. Full details of the five grounds of challenge are set out in written submissions[106]. The following is a brief summary of the arguments.

(i) The case of *R (Sainsbury's Supermarkets Ltd) v Wolverhampton City Council* [2010] 2 WLR 1173 establishes the principle that when a decision is made to acquire a particular piece of land compulsorily the decision maker may only lawfully have regard to a benefit which will accrue to other land if that other land has a real connection with the land included in the Order. The decision to acquire the Ellis/Grier land took account of the benefit of works related to the proposed primary school and also benefits of a general nature related to development of land north of Three Mills Lane. The decision to acquire the Colas land took account of various benefits associated with development south of Three Mills Lane, including the proposed primary school. In neither case is there a real connection so these considerations should not have been taken into account.

(ii) The decision to grant planning permission and the actual grant of permission are void because the Corporation took account of irrelevant considerations. Paragraph 7.1 of Schedule 1 to the S106 Agreement contains an obligation by Tesco to carry out works towards the provision of a new school. That benefit has no substantial connection with the main development permitted, the superstore, and should not have been taken into account. Paragraph 1.2 of Schedule 1 contains an obligation to enter a further S106 in relation to the land which is to be acquired. Tesco had no interest in that land at the date of the Agreement and so could not enter into this obligation. That provision (and the Agreement as a whole) is void and was therefore an irrelevant consideration.

(iii) In making and promoting the Order the Corporation has acted unlawfully in that it has, in substance, delegated many of its functions

[106] The submissions are at CL/EG5 and there are folders containing relevant authorities at CL/EG5A (cases) and CL/EG5B (statutes).

without any authority to do so. It has surrendered its statutory powers to make decisions and exercise discretions in favour of Tesco either doing so itself or having a right of veto over such decisions.

(iv) Clause 8.3 of the CPO Indemnity Agreement makes provision for the transfer of land from Tesco to the Corporation and then from the Corporation back to Tesco, for the purpose of overriding easements and other third party rights. This would defeat the ordinary proprietary rights of the parties concerned and would reduce the compensation payable to them. The clause is unlawful and contrary to Article 1 of the First Protocol to the ECHR. It invalidates the whole process of compulsory acquisition.

(v) The Order has been submitted for confirmation in a form which will put the Corporation in a position where it can only act unlawfully. There are numerous plots where the Order seeks to acquire some, but not all, of the interests involved. This is contrary to the principle established in *London and Continental Railways Ltd v Kent County Council* LT - ACQ/212/2005; CA - [2009] EWCA Civ 363

Matters not in dispute

6.2 It is not in dispute that the Order land would benefit from regeneration, that part of that regeneration would include a substantial new superstore and that ancillary development such as improved pedestrian access, a new road pattern, landscaping and public open space would be required.

Whether the proposed form of regeneration is the right one

6.3 The scale of the proposed superstore would be too great and it would not form part of a district centre as that term is normally understood. It would more than double the sales area of the existing store and would be one of the largest superstores in this part of London. The proposed retail floorspace would significantly exceed that which is envisaged in the OAPF. It would dominate the new district centre and represent about 92% of the retail floorspace of the first phase of development. It would also have one of the highest proportions of comparison goods floorspace with 40% to 45% being dedicated to non-food goods. The scale and nature of the store means that it would be capable of operating as a one-stop shop where shoppers have no need to visit other facilities in the district centre. The dominance of the superstore would be likely to undermine policy aspirations for a vibrant mixed use centre consistent with the CS, LUDB and OAPF. Furthermore, the scale of the superstore places a limitation on the amount of housing that would be delivered. The proposed density would be below that required by the OAPF and there would be no housing above the store or in the south east part of the site[107].

Whether the proposed development will be delivered

6.4 Paragraph 12 of Annex D to Circular 06/2004 states that there should be a realistic prospect that the land will be brought into beneficial use within a reasonable timeframe. There must therefore be a clear understanding of a programme of likely regeneration and its important components. It is accepted

[107] See paragraphs 37 to 57 of the appendix to EG1 and paragraphs 13 to 20 of EG2.

that this expectation applies to the whole of the Order lands[108]. The question is therefore whether the whole of the proposed development is likely to happen. Tesco is the only practicable developer for the first phase. The Secretary of State can only be assured that there is a reasonable prospect of development where there is either a legal obligation or an obvious economic or practical incentive. In this case Tesco is under no obligation to implement the scheme, hence the significance of the financial appraisals.

6.5 It was incumbent on the Corporation, at the time when it resolved to make the Order, to satisfy itself that the scheme would be economically viable. It sought advice from GVA Grimley. The "Tesco Option 2" appraisal shows a profit, expressed as a percentage of total costs, of around 9.5%[109]. That would not be a sufficient return in relation to the risks of undertaking the scheme. It is agreed by witnesses for the objectors and the Corporation that a profit of 15% would be at the bottom of the acceptable range. At that time the GVA Grimley appraisal was the only information before the Corporation. It follows that there cannot have been evidence that the scheme would be viable.

6.6 In May 2010 the Corporation received appraisals undertaken by GL Hearn, acting for Tesco[110]. The appraisal for phase 1 alone shows a loss of over £4million or around 5%. The reason phase 1 alone would not be viable is that all of the land acquisition costs are borne by phase 1. The GL Hearn appraisal for the overall scheme shows a profit of £29million, or 15.73%, although the acquisition costs are the same as those of phase 1. The only inducement for Tesco to implement the development is because it would be able to dispose of the land beyond phase 1 to another developer at open market value. There is no obligation on Tesco to develop and no development partner has been identified. There is therefore no evidence that the whole scheme is likely to be implemented.

6.7 If development does not take place within 3 years then, under the CPO Indemnity Agreement, the Corporation could buy the Order lands back from Tesco. However, that would be at open market value which would include the marriage value resulting from site assembly. It would be quite different from what Tesco would pay and would be an unjust burden on the public purse. Only the interests acquired would be bought back. This would not include the Tesco interests and would not therefore promote comprehensive regeneration. The arrangement is therefore ineffective and of limited value. Moreover, the provisions would not come into effect for 3 years. It is not known whether the Corporation will exist by then. If not, then these obligations would fall on a future public body. It would be wrong to pass on liabilities in this way.

6.8 There is no evidence as to when the school would be built and who would fund it. Local authorities are struggling to keep existing schools in repair. Whilst the land and some preliminary works would be provided, the balance of the funding would be from an unknown source. There is no reasonable prospect of implementation in respect of the school. With regard to the hotel, there is an expression of interest from Travelodge. There is no other interest and no commitment.

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[108] Inspector's note – this was agreed by Mr Allen, in answer to a question from Mr Barnes.
[109] See appendix 2 to DC1D.
[110] See appendix 5 to DC1D.

Whether the whole of the Order lands is required

6.9 Paragraph 23 of Circular 06/2004 states that where planning permission has not been granted there should be no obvious reason why it might be withheld. There is no planning permission, and no application for planning permission, relating to the Colas land. It cannot be known whether or not there would be a planning impediment to the redevelopment of the land until such time as some specific project is brought forward for evaluation. Confirmation of the Order in respect of the Colas land would be clearly inconsistent with the Circular. The Corporation has not given any reason why that policy should be set aside. It has simply not addressed the matter.

6.10 It is not known who the Colas land might be transferred to, nor what form development might take or how it might be funded. The Corporation appears to accept this insofar as the Statement of Case indicates that Colas might be able to remain in occupation for some time following confirmation of the Order[111]. On the other hand, the site is currently in active use providing employment. It would be wrong for the site to be blighted for such an uncertain and speculative proposal.

Negotiations

6.11 There have been insufficient efforts to acquire the land by negotiation. In respect of the Colas site, no offer to purchase the land was made prior to June 2010[112]. The Corporation has made no efforts to negotiate on the Ellis/Grier land, instead it has left matters to Tesco. From mid 2006 Tesco entered into negotiations via its agents, GL Hearn. Conditional terms were agreed on several occasions but each time Tesco withdrew[113].

7. Response of the Corporation to the case for Colas and Ellis/Grier

The legal submissions

7.1 The written submissions on behalf of Colas and Ellis/Grier to the effect that the Order cannot, as a matter of law, be confirmed are wrong with regard to each of the five grounds. Full details of the Corporation's response are set out in written submissions[114]. The following is a brief summary.

(i) The submission is based on a misunderstanding of the *Wolverhampton* case. The factual circumstances of that case were very different. The Order has not been made because of any off-site benefits on unrelated land. It would facilitate development of the Order lands themselves in fulfilment of the objective of comprehensive development. The Colas land is not included to facilitate Tesco, it is included because the Corporation wishes to promote comprehensive development in accordance with policy. It is lawful to take into account the benefits which would result from the land being regenerated as a whole. The component parts

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[111] See paragraph 8.16 of CD51.
[112] Inspector's note - See paragraph 10 of CL1 and appendix 2 to DC4. An offer in relation to the nightclub was made at the same time.
[113] See paragraphs 11 to 14 of EG1 and appendix 1 to DC4.
[114] The submissions are at DC24.

cannot be disaggregated in the way that is being suggested.

(ii) The premise of the submission is misconceived because the absence of a planning permission does not prevent the confirmation of a CPO, either as a matter of law or having regard to policy. The alleged lack of connection with the school is no more than a re-iteration of the first ground. With regard to paragraph 1.2 of Schedule 1 to the S106 Agreement, that obligation is enforceable as a matter of contractual obligation independently of S106. Moreover, it must be seen in the context of other obligations. The planning permission is not unlawful.

(iii) The objectors accept that there is nothing wrong with a public authority acquiring land for development by a private developer or with that company indemnifying the public body in respect of compensation. The submission misses the essential point that the Corporation had already lawfully exercised its discretion to make the Order. The Order and the CPO Indemnity Agreement were subsequently made contemporaneously. The decision making was lawful. In any event, even if the Corporation's decision were found to be flawed, the Secretary of State's discretion remains unfettered.

(iv) If the land in question were to be acquired by the Corporation and then transferred to a developer then third party rights would be extinguished by virtue of Schedule 28 to the 1980 Act. If it were unlawful to use Schedule 28 to cleanse title in this way it would deter acquisition by private treaty as an alternative to the use of CPO powers. Most importantly, the overriding of such private rights is subject to compensation. Parliament has made specific provision for the extent to which compensation would be payable so there is no breach of ECHR rights.

(v) Section 5(1) of the Compulsory Purchase Act 1965 does not seek to prescribe the scope of a CPO; it controls the exercise of powers after a CPO has been made. There is nothing to prevent a CPO providing for the purchase of only some interests in a particular plot. The facts here are materially different from those of the case cited. Tesco's interests have not been included because it will promote the scheme. Its interests will not be bound so there is no question of it being deprived of compensation which should properly be paid.

Criticisms of the scheme

7.2 Insofar as the objector refers to the level of housing provision, the Corporation's response to the case for Trad applies.

7.3 In criticising the size of the superstore the objector relies on floorspace figures contained in the OAPF. However, there is no indication that those figures were intended to set a maximum floorspace. Furthermore, the OAPF pre-dates the proposal that Bromley-by-Bow should be designated as a district centre. Matters have moved on with both the draft replacement LP and the recently

adopted CS now proposing that there should be a new district centre at Bromley-by-Bow[115]. PPS4 recognises the anchor function of superstores within district centres[116] and the DRLP states that district centres will generally contain 10,000 to 50,000sqm of retail floorspace[117]. The proposed superstore is within that range and is clearly appropriate to a district centre. Attention is drawn to the proportion of the superstore which would be devoted to comparison goods. However, it is accepted that the proportion here would be no different to the Asda store at Beckton[118] so the proposal is not unusual in this area.

7.4 There is no evidence that the size of the proposed superstore would result in any harm. Having commissioned an independent review of the submitted retail assessments, the Corporation was entitled to find that no unacceptable impacts would be caused[119]. There is no evidence that the superstore would have the effect of putting off other potential occupiers of units in the district centre. On the contrary, the marketing strategy submitted with the planning application gives examples of firms occupying units adjacent to similar Tesco stores and comments that the overriding incentive to retailers would be the high level of footfall generated by the Tesco anchor[120]. The evidence shows that interest has already been shown by potential occupiers, including restaurant operators[121]. It is significant that other public authorities see no objection to the size of the superstore. The Mayor of London has withdrawn earlier concerns[122], the Secretary of State declined to call in the application and LBTH has no objection to it.

Whether the proposed development will be delivered

7.5 The Corporation's general case relating to the prospects for the delivery of the scheme applies. The following additional points are made in response to matters raised by the objector.

7.6 On the basis that the GVA Grimley appraisal shows a return of a little less than 10%, it is suggested that the Corporation had no evidence of viability when it decided to make the Order. However, it was for the Corporation to decide whether or not that figure would be enough and it cannot be suggested that the Corporation's decision was not rational. The assertion that the Order is flawed on these grounds is not made either in the objector's proofs of evidence or in the legal submissions. Furthermore, the evidence does not support the proposition that a profit of 15% is needed to ensure that development will proceed. The JAC report states that, where a developer is a superstore operator, it may forgo some or all of the conventional developer's profit in securing a site against competition[123].

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[115] See table A2.2 on page 247 of CD12 and the vision for Bromley-by-Bow on page 106 of CD14.
[116] See annex B of CD10.
[117] See annex 2 of CD12.
[118] Inspector's note – accepted by Mr Bashforth, in answer to a question from Mr Corner.
[119] See paragraph 9.36 of CD49.
[120] See paragraphs 4.21 and 6.6 of appendix F to CD50.
[121] See paragraph 9.15 of DC5.
[122] See paragraphs 8 and 9 of CD54.
[123] See paragraph 4.40 of appendix 6 to DC1D.

7.7 It is pointed out that the lack of profitability in phase 1 is due to all of the land acquisition costs being borne by that phase. That is inevitable because Tesco would need all the land in order to meet its S106 obligations relating to land for the school and park and the remediation of the residential land. It has been accepted that all of the land would be needed to implement phase 1[124].

7.8 The objector argues that Tesco would receive a substantial capital windfall without any significant regeneration benefits being secured. That would not be the case. The JAC appraisal shows a higher level of profit than the GL Hearn appraisals. As mentioned already, (*see paragraph 3.24 above*), on the JAC figures, Tesco would make a profit on cost of just under 16%. That level of profit is regarded by the JAC as reasonable. Furthermore, the appraisals make no allowance for Tesco's own land interests. In effect these would be put into the scheme "free"[125]. Any other potential developer would need to acquire these interests and pay relocation and disturbance costs, or indeed costs of extinguishment, to Tesco. Consequently, it is very unlikely that anyone other than Tesco would carry out the scheme[126].

7.9 With regard to regeneration, the whole scheme should be regarded as bringing a very substantial regeneration benefit. In addition to obligations relating to the IDEA Store, school and park, phase 1 would deliver the remediation of the residential land, the AMJ and the A12 subway improvements. Phase 2 would deliver significant levels of affordable housing. If the scheme were to be more profitable than expected, further payments would be made towards the Corporation's standard charge and the affordable housing contribution. In summary, Tesco would not make excessive profits but would achieve a level of return which has been independently assessed as being reasonable. The objector has significantly understated the regeneration benefits which would flow from the scheme.

8. The withdrawn objections

EDF Energy Networks

Reference Nos and addresses:
Plot 20 – Electricity substation in the supermarket to the south of Three Mills Lane and east of Hancock Road
Plot 32 – Petrol station forecourt, electricity substation and land to the south east of Hancock Road and north of Imperial Street

Name of objector and legal interests:
EDF Energy Networks (EPN) Limited – Lessee and occupier

8.1 The objection was withdrawn by letter dated 19 July 2010 (EDF1).

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[124] Inspector's note – this was accepted by Mr Colin Smith in answer to a question from Mr Corner.
[125] See paragraph 3.10 of DC58.
[126] Inspector's note – In his evidence in chief Mr Napier said that, for any other potential developer, these costs would be fatal to the viability of the scheme.

Transport for London

Reference Nos and addresses:
Plot 35 – Public footpaths
Plot 36 - Public footpaths
Plot 37 - Public footpaths and staircase
Plot 50 – New rights over public highway
Plot 52 – Subway and footpath including airspace to the underside of the A12 but excluding the existing highway viaduct, supporting structure and all airspace above
Plot 54 - Public footpaths
Plot 55 – New rights over public footpaths
Plot 56 - Subway and footpath including airspace to the underside of the A12 but excluding the existing highway viaduct, supporting structure and all airspace above
Plot 56A – New rights over public highway and footpaths
All plots are described as being at the A12 Blackwall Tunnel Approach Road.

Name of objector and legal interests:
Transport for London – owner and occupier

8.2 The objection was withdrawn by letter dated 19 July 2010 (TfL1) following an agreement between TfL and the Corporation under which the Corporation agreed to seek the deletion of the following plots from the Order: 35, 36 (part), 37 (part), 50, 54, 55 and 56A. The agreement also governs how those plots remaining in the Order are to be dealt with. There is a copy of the agreement at DC17B. At appendix 2 there is a revised Order Map showing the proposed modifications in green. At appendix 3 there is a revised Order schedule. The amendments to plots 36 and 37 are shown at a larger scale on Plan 3 and Plan 4 respectively.

ACL and VolkerHighways

Reference Nos and addresses:
Plot 42 – Storage yard, hardstanding and land known as Pelican Wharf, 2 Imperial Street
Plot 43 – Hardstanding, land and access way known as Pelican Wharf, 2 Imperial Street
Plot 44 – Access House, 2 Imperial Street

Name of objector and legal interests:
ACL Holdings Limited – owner of plots 42 and 44
VolkerHighways Crowley Limited – lessee and occupier of plots 42 and 44; tenant and occupier of plot 43 (in respect of access)

8.3 The objections were withdrawn by separate letters dated 22 July 2010 (ACL1 and VOL1) following agreements under which Tesco would acquire these interests.

9. New Rights

9.1 The Order sought new rights over plots 50, 51 and 56A. Following the agreement with TfL referred to above, new rights are now sought only in respect of plot 51. This is a paved access way to the south of Talwin Street, leading to the western end of the A12 underpass. The rights sought, which are set out fully in the Order, may be summarised as rights of access for the purposes of the construction and maintenance of the development and the right to store plant and materials in connection with such construction or maintenance. There were no objections in relation to this plot.

10. Conclusions

Numbers in square brackets [n] refer to earlier paragraphs in this report.

10.1 The acquiring authority is the London Thames Gateway Development Corporation, an Urban Development Corporation (UDC) designated under the Local Government, Planning and Land Act 1980. Section 142 of that Act sets out the compulsory purchase powers of a UDC. I have taken account of the purposes of UDCs, as defined in the 1980 Act. I have also had regard to advice in Circular 06/2004 *Compulsory Purchase and the Crichel Down Rules*. Paragraphs 16 - 23 contain advice on the justification for compulsory acquisition and state that an order should only be made where there is a compelling case in the public interest. Paragraphs 24 and 25 contain advice about preparatory work. Appendix D provides specific advice on orders made by UDCs.

Background

10.2 The Order lands extend to around 5.64ha, bounded to the west by the A12 (Blackwall Tunnel Northern Approach), to the south by railway lines and to the east by the River Lea. A substantial part of the Order lands is occupied by a Tesco store, petrol filling station, car parks and service yards. The Ellis/Grier land, which is currently vacant, extends to around 0.48ha and comprises a multi-storey office building together with an open yard and smaller structures. The Trad site, which is around 1.23ha, includes a two storey office building, a car park and an open yard with ancillary buildings used for the storage and maintenance of scaffolding components. A single storey building is let to another company. The Colas land extends to around 0.27ha and comprises offices, workshops and a yard. It is occupied by a refrigerated vehicle hire company. Other uses within the Order lands include a highways contractor, located between the Trad and Ellis/Grier sites, and a nightclub and car repair workshop adjoining the Colas land. The Order lands include various roads and footways and a pedestrian underpass beneath the A12. [2.1 - 2.3]

10.3 Vehicular access to the Order lands is from the A12, via Hancock Road, but there is no direct access to or from the northbound lane. Bromley-by-Bow London Underground station is located on the opposite side of the A12, reached via the subway, and there is also a DLR station within walking distance. To the north of the Order lands there are industrial and storage uses in an area known as Bromley-by-Bow North. To the west of the A12 there are residential estates and the former St Andrew's Hospital site where some 900 dwellings are under construction. To the east of the River Lea is the Three Mills complex, designated as a conservation area, which contains Grade I and Grade II* listed buildings. [2.4, 2.5]

10.4 In 2007 there was a planning appeal relating to proposals by Aitch/Genesis for the redevelopment of the Trad land with 530 residential units above ground floor commercial space. The appeal was dismissed. Amongst other reasons, the Secretary of State considered that the scheme would prejudice the effective regeneration of the area. He commented that the Corporation had the powers and means of implementation to secure the comprehensive regeneration sought in the Bromley-by-Bow area. This decision is an important material consideration to which I attach significant weight. [3.5, 3.26, 3.27, 3.31]

10.5 Tesco has been granted planning permission for a scheme covering much of the Order lands. The permission is part detailed and part outline. Detailed permission has been granted for a superstore, units for retail, service and food/drink uses, a library and associated infrastructure including car parking and the widening of the underpass. Outline permission has been granted for 454 residential units, retail, business and leisure uses, a primary school, a hotel, public open space, a petrol filling station and associated infrastructure including roads, parking and a riverside walk. Permission was granted following the completion of a S106 Agreement between Tesco, the Corporation and TfL. [2.6]

10.6 Part of Bromley-by-Bow North is controlled by Southern Housing Group and part by East Thames Group. These two housing associations intend to bring forward a comprehensive scheme for the whole of Bromley-by-Bow North, including the Leycol Printers site which has been acquired by the Corporation, the Colas land and a Tesco car park. A screening and scoping opinion request has been submitted which describes a mixed use scheme of 667 residential units and 12,000sqm of employment floorspace. [3.14, 3.21]

Planning policy

10.7 The development plan includes the LP (2008), saved policies of the Tower Hamlets UDP (1998) and the Tower Hamlets CS, adopted in September 2010. The LP identifies the LLV, including Stratford, as an Opportunity Area and sets a minimum target of 32,000 new dwellings in this area over the period 2001 – 2026. Other relevant policies of the LP cover matters such as affordable housing, social infrastructure, design, accessibility and the open space value of waterways, including the River Lea. Policy SP01 of the CS states that there should be a new district centre at Bromley-by-Bow to support wider regeneration. The CS sets out a vision for Bromley-by-Bow which emphasises comprehensive regeneration and the integration of existing and new communities, particularly by east-west movement. [3.4, 3.6]

10.8 The UDP designates the Order lands as an Industrial Employment Area and seeks to protect and support industrial and warehousing uses. However, in considering the Aitch/Genesis appeal referred to above, the Secretary of State concluded that the UDP was out of date with respect to the appeal site and should not be given any weight. I consider that the recent adoption of the CS reinforces that conclusion and that the UDP designation should not be given weight when assessing the merits of the Order. [3.5]

10.9 The DRLP confirms the strategic importance of the LLV Opportunity Area and identifies Bromley-by-Bow as a future district centre. The DRLP is emerging policy which is subject to examination. I consider that some weight can be attached to the DRLP, including the definition of a "district centre" contained therein. [3.7]

10.10 The LLV OAPF was adopted by the Mayor of London in January 2007. In the context of the Aitch/Genesis appeal, the Secretary of State found that the OAPF was an important Supplementary Planning Document which should be afforded very considerable weight. I consider that the OAPF should continue to be afforded considerable weight with the proviso that, if there is any conflict with the CS, then the CS must take precedence because it is now part of the development plan. The OAPF contains a vision and strategy for the Bromley-by-

Bow area which includes 1500 – 2300 residential units, approximately 6,700sqm of new retail floorspace, a social infrastructure cluster, enhanced accessibility to the River Lea and improved facilities for pedestrians and cyclists crossing the A12. [3.8]

10.11 The Corporation has produced the Bromley-by-Bow LUDB (2009). This does not form part of the development plan and is not a Supplementary Planning Document. Nevertheless, it was produced in partnership with LBTH and the GLA. It has been adopted by LBTH as interim planning guidance and builds on the OAPF and earlier work by LBTH. Moreover, it is consistent with the recently adopted CS, although it pre-dates that document. In my view it is an important material consideration. However, it is intended to provide design guidance and should not be applied too rigidly. The LUDB stresses the need for a comprehensive approach to redevelopment and contains an indicative land use pattern. The objectives of the LUDB include provision of a new town centre[127] anchored by a supermarket, new shopping facilities, a primary school, space for community use and open space. Other objectives include a mix of private and affordable housing and accessibility improvements. [3.9]

The extent to which the Corporation's proposals accord with planning policy

10.12 In this section I shall deal first with the Tesco scheme and then with the proposals for land north of Three Mills Lane.

10.13 The Tesco scheme proposes a comprehensive approach to the redevelopment of the land south of Three Mills Lane, which accords with the general thrust of the policy context I have described above. The CS and the LUDB stress the importance of improving accessibility. I consider that the proposals would provide much improved pedestrian and cycle access across the A12, via the improved subway, affording level access to the new Imperial Street. Crossing facilities provided as part of the AMJ would connect with the realigned Three Mills Lane. These routes would provide direct and attractive links between the existing residential areas to the west of the A12, the Order lands, Bromley-by-Bow North, the River Lea and the open space network of the LLV. Moreover, the AMJ would provide better vehicular access, enable improved bus penetration and facilitate further development at Bromley-by-Bow North. [3.11, 3.12]

10.14 The proposed superstore, together with units for shops and other uses around Imperial Square and along Imperial Street, would provide the core of a new district centre, in accordance with the CS and LUDB. I consider that the IDEA Store would form an important component of such a centre. The IDEA Store, primary school and park would form a cluster of social infrastructure, as envisaged in the LLV OAPF. The scheme includes 454 residential units, including affordable housing, which would make a significant contribution towards the housing targets contained in the OAPF. [2.6, 3.11, 3.16]

10.15 The criticisms of the scheme made by objectors relate to the size of the superstore, the design of the scheme and the level of housing provision. I note that the proposed retail floorspace would be significantly greater than the level

[127] Use of the term "town centre" in the LUDB is not inconsistent with the term "district centre" in CS Policy SP01. This is because Policy SP01 contains a hierarchy of town centres, district centres being one level within that hierarchy.

anticipated in the OAPF. However, I attach only limited weight to the OAPF retail floorspace figures because they have been overtaken by the proposal for a new district centre at Bromley-by-Bow which is contained in the DRLP and in the recently adopted CS. The scheme falls within the range of 10,000 – 50,000sqm of retail floorspace referred to in the DRLP definition of a district centre. [4.28, 6.3, 7.3, 7.4]

10.16 There is no evidence of any material harm arising from the scale of the proposed retail provision. The planning application was supported by retail assessments which were taken into account by the Corporation, LBTH and the Mayor of London. An independent review commissioned by the Corporation concluded that the scheme would not result in adverse impacts on existing or proposed centres. It is suggested that the scale of the superstore would be over-dominant in relation to the other units in the scheme. However, evidence has been provided regarding the take-up of similar units in schemes anchored by Tesco superstores and I see no reason why the outcome would be different here. [6.3, 7.4]

10.17 With regard to design, I consider that the proposal to create a visual axis linking Imperial Square, the proposed park and the heritage buildings at Three Mills would provide a sound basis for developing a successful scheme. To my mind the design of those parts of the scheme covered by the detailed planning permission would be satisfactory. The design of the balance of the scheme would not be determined until the reserved matters stage. Nevertheless, the proposed road pattern would establish a clear framework for the later phases of development by defining a series of urban blocks. I see no reason why a successful detailed scheme should not be developed within this framework. I note that CABE expressed concern that the size and positioning of the superstore would compromise the chances of the scheme integrating with the surrounding community. However, for the reasons given above, I consider that the scheme would improve connectivity and create new vistas which would help to integrate the development with its surroundings. [3.11, 4.27, 5.18]

10.18 The scheme would include a new public open space at Three Mills Park together with a riverside walkway and open space adjacent to the primary school. I consider that this would accord with the LLV OAPF and LP objectives for the River Lea. It would at least preserve and may, subject to detailed design, enhance the settings of the nearby listed buildings and the Three Mills Conservation Area. [3.4, 3.11]

10.19 The opportunity to provide housing is an important objective of the OAPF which is reflected in the terms of the LUDB and in the CS vision for Bromley-by-Bow. The objectors point out that the proposed density of 98dph would be well below the figure of 275dph which, according to the OAPF, is the density that most new housing in the locality should be designed to. The decision to locate the primary school south of Three Mills Lane, rather than the position to the north indicated in the LUDB, is one factor affecting the scheme density. I have commented above that the LUDB should not be applied too rigidly. I see no objection to the proposed location which would enable the school to be delivered at an earlier stage and would also provide a closer relationship with community facilities and parking within the district centre. [3.8, 3.9, 4.26, 5.17]

10.20 I consider that the most significant factor limiting the housing content of the scheme is the decision not to include housing above the superstore. In this respect the scheme would not accord with the LUDB which states that housing above the superstore would be required. The Corporation provided evidence that such housing would not be viable. Although there was little detailed evidence on that point, there was no persuasive evidence to the contrary. In any event, I note that the OAPF suggests that a mixed use development involving the relocation of the Tesco store could deliver around 360 units, a figure which is exceeded by the scheme. I also take account of the broad target of 1,500 – 2,300 dwellings in the wider Bromley-by-Bow area. Bearing in mind the scheme under construction at the St Andrew's Hospital site and the longer term potential of Bromley-by-Bow North, I consider that there is a reasonable prospect that the total number of dwellings provided in the locality would ultimately be within the OAPF range, with or without housing above the proposed superstore. [3.4, 3.8, 4.26, 5.16]

10.21 My overall assessment is that the scheme would accord with the relevant policies of the development plan. Insofar as the OAPF remains up to date, the scheme would accord with it. It would also meet many of the objectives of the LUDB. Whilst it would not accord with the LUDB in all respects, most significantly in relation to the location of the school and the provision of housing above the superstore, that document should not be applied too rigidly. In my view these factors do not amount to significant planning objections to the scheme.

10.22 I turn to the land north of Three Mills Lane. The screening and scoping request submitted on behalf of two housing associations promotes a form of comprehensive regeneration. However, the proposals are at an early stage. In my opinion it cannot yet be said whether or not the proposals are likely to accord with the wide range of planning policies applicable to the redevelopment of this area. [3.14, 6.9]

The prospects for implementation of the Corporation's proposals

10.23 The Corporation's evidence is that it is most likely that phase 1 would be implemented by Tesco and that phase 2 would be implemented by a house builder with an affordable housing partner. That evidence is reinforced by the letters from Tesco which confirm the company's commitment to the scheme as a whole but do not suggest that it would itself implement phase 2. I shall therefore consider the prospects for implementation for each phase of the scheme and then the prospects for the land north of Three Mills Lane. The evidence includes various financial appraisals. In my view the GL Hearn appraisals of May 2010 and the JAC appraisals are of most relevance to consideration of the Order. The GL Hearn appraisals are the most up-to-date of the appraisals carried out on behalf of Tesco and the JAC appraisals represent an independent review commissioned by the Corporation. I attach greatest weight to the separate appraisals of phase 1 and phase 2 as these reflect the way it is most likely that the development would be implemented. [3.18, 3.19, 3.22 - 3.24]

10.24 In the letters referred to above, Tesco draws attention to its financial commitment to promoting the scheme thus far and underwriting the costs of the Order. Tesco has a clear commercial incentive to implement phase 1 because the existing store would be replaced by a large modern superstore. At

the Inquiry the objectors pointed out that there is no obligation on Tesco to deliver any part of the scheme. However, it is significant that there was no suggestion from any party that it was unlikely that Tesco would implement phase 1. The GL Hearn (May 2010) appraisal shows a loss of around £4million for the phase 1 development. On the other hand, the JAC appraisal shows a profit of £12.4million or nearly 16% profit on cost. The JAC report comments that, where a developer is a supermarket operator, it may forgo a conventional developer's profit because of the trading advantages it will obtain from a new store. That advice seems to me to be pertinent to the current situation. With regard to the availability of funds, Tesco draws attention to its track record of delivering retail development throughout the UK and elsewhere. Taking account of all the above factors, I consider that if the Order were confirmed there is a good prospect that phase 1 would be implemented. [3.23, 3.24, 4.22, 6.4, 6.6, 7.6]

10.25 The objectors argue that, in the absence of a development agreement, there can be little confidence that phase 2 would be delivered. The GL Hearn (May 2010) appraisal of phase 2 took as its starting point an assumed developer's profit of 25%. On that basis, it shows that the phase 2 development would generate a positive residual land value. The JAC report agreed that a figure of 25% would be a reasonable return in relation to the complexity of the project. The JAC appraisal took the same profit figure as its starting point and shows a higher residual land value. I agree that 25% would be a reasonable return for a scheme of this nature and consider that both appraisals indicate that phase 2 of the scheme would be viable. In my view these appraisals are important material considerations which should be taken into account together with the other evidence. [3.23, 3.24, 4.22]

10.26 The terms of the S106 Agreement require the residential land to be cleared and remediation to be carried out within 12 months of the opening of the superstore. The Agreement also sets a timetable for the delivery of the A13 and the A12 subway improvements. I consider that, in general terms, the combination of land assembly, improved access and site preparation would create conditions in which it is likely that redevelopment proposals would be brought forward. There is therefore a reasonable prospect that some form of regeneration would take place. [3.16]

10.27 There is however no identified developer, and no identified source of funding, beyond the preparatory works I have described. Any developer acquiring the phase 2 land would be free to reappraise the balance of uses within the scheme and the scheme design, subject to the need to obtain an alternative planning permission. The evidence indicates that there is a lack of quantitative need, and limited operator demand, for the hotel and that some of the commercial space may be difficult to let. Overall, there is no commitment to the commercial elements of phase 2 from potential operators and the level of interest shown is limited. It therefore seems that an incoming developer may well revisit these elements of the scheme. Whilst there is a reasonable prospect that phase 2 would come forward in some form, it cannot be assumed that the mix of uses and the scheme design would necessarily be as currently proposed. Consequently, I consider that the employment figures projected for phase 2 should be treated with caution. [3.19, 4.22, 4.23, 5.4, 6.8]

10.28 Delivery of the park, school and IDEA Store would require funding from public authorities. The terms of the S106 Agreement would secure remediation of the land for the park and school and transfer of the land to the Corporation. Construction of the IDEA Store to shell and core, making it available to LBTH at a peppercorn rent, would also be secured. The Corporation has allocated funding for laying out the park and for its future maintenance. There is therefore a good prospect that the park would be delivered. LBTH would be responsible for funding the construction of the school and for fitting out the IDEA Store. There can be no certainty that these elements of the scheme would be delivered until such time as funding has been allocated. However, the letter received from LBTH explains the need for these facilities and the importance attached to them by the Council. Providing the land for the school, and the building for the IDEA Store, would represent a contribution towards the funding for these projects which would no doubt improve the prospects for delivery. I therefore consider that there is a reasonable prospect that the school and IDEA Store would be delivered. [3.16, 3.20, 4.22, 6.8]

10.29 I conclude that there is a reasonable prospect that confirmation of the Order would result in the regeneration of the phase 2 land in some form. However, the mix of uses and scheme design may well change and the projected employment figures should therefore be treated with caution.

10.30 I have commented above that the proposals for land north of Three Mills Lane are at an early stage and it cannot yet be said whether or not they are likely to comply with the wide range of planning policies which would apply. The scheme is being promoted by two housing associations, each of which owns a block of land within the central part of Bromley-by-Bow North. There was no evidence before the Inquiry regarding the availability of funding for the assembly of the remainder of the land or the implementation of the scheme. [3.21, 6.10]

10.31 The Corporation has begun the process of land assembly with the acquisition of the Leycol Printers site. However, in addition to the Colas/nightclub land there are 4 other blocks of land which would need to be assembled in order to bring about the comprehensive development sought by the LUDB. These are 3 blocks in the northern part of the LUDB area (plots 1, 2 and 3 on DC11), which are currently in commercial use, and the greater part of the Tesco overspill car park[128]. These blocks together account for a substantial proportion of the area of Bromley-by-Bow North. It appears that the existing business occupiers would need to be relocated. The Corporation stated that the availability of the Tesco car park can reasonably be assumed. However, there was no evidence of any commitment on Tesco's part to make this land available. In any event, there was no evidence regarding the likelihood of plots 1, 2 and 3 becoming available. The Corporation accepted that it is not known, at this stage, whether a further CPO would be required. [3.14, 3.21]

10.32 The Corporation's planning witness stated that the development is expected to take place within 3 to 5 years. However, in view of the uncertainties relating to planning, funding and land assembly I attach only limited weight to that suggested timescale. On the evidence before the Inquiry, I do not consider that it has been demonstrated that there is a realistic prospect of the Corporation's

[128] Part of the car park is within the Tesco planning application site and would be required for the realignment of Three Mills Lane.

proposals for the land north of Three Mills Lane being delivered within a reasonable timescale. [3.21]

Attempts to assemble the land by negotiation

10.33 Circular 06/2004 states that before embarking on compulsory purchase and throughout the preparation and procedural stages acquiring authorities should seek to acquire land by negotiation wherever practicable. Compulsory purchase is intended as a last resort in the event that such negotiations are unsuccessful. The Circular also advises that, given the amount of time which needs to be allowed to complete the CPO process, it may be sensible to initiate formal procedures in parallel with negotiations. Appendix D to the Circular states that, while a UDC should seek to acquire land by agreement wherever possible, it is recognised that this may not always be practicable and that it may sometimes be necessary to use CPO powers at the same time as attempting to purchase by agreement.

10.34 The Corporation made an offer for the Trad land which was subsequently accepted in November 2006. However, the offer was withdrawn in January 2007 and since that time the Corporation has not itself attempted to acquire the land. Terms were then agreed, or substantially agreed, between Tesco and Trad in 2007 and again in 2008. On each occasion the terms were agreed by those conducting the negotiations but ultimately were not agreed by the Tesco board. A further offer was made on behalf of Tesco in October 2009. Trad's position at the Inquiry was that it is, and always has been, a willing seller. However, Trad argued that it was not possible to make a meaningful response to the October 2009 offer because the scheme was not resolved and because it was seeking information from the Corporation. Trad considers that there has been insufficient time for negotiations of this complexity to be concluded. The Corporation argued that negotiations have taken place but agreement has not been reached. In the Corporation's view the Order is therefore needed to complete land assembly. [3.30, 4.15, 4.16, 4.17, 5.15]

10.35 In considering these arguments, I would first comment that the sums offered at various stages are not relevant to my recommendation because the assessment of compensation is not a matter for the Secretary of State. I have no doubt that Trad is indeed a willing seller, evidenced by the extensive efforts it has made to find a suitable relocation site. It is not disputed that these were full and genuine efforts. On the other hand, there is no reason to doubt that Tesco has made a genuine attempt to assemble land by negotiation, as shown by the agreements it has reached with VolkerHighways and ACL. [4.16, 4.17, 8.3]

10.36 I accept that there appears to have been little by way of follow-up by Tesco to its October 2009 offer. Moreover, I appreciate that at the time the offer was made Trad was seeking information about the arrangements made between the Corporation and Tesco and also wished to have greater certainty about the proposed scheme. Nevertheless, the offer has remained on the table for several months. For whatever reason, agreement has not been reached. It therefore seems to me that, on balance, regeneration is more likely to be achieved if the land is acquired by the Corporation. However, I do not discount the possibility that regeneration could be achieved without compulsory acquisition. Trad accepts the need for regeneration and remains a willing seller, subject to the

question of relocation which I shall consider in the following section of this report.

10.37 The Corporation has not been directly involved in attempts to purchase the Ellis/Grier land. From mid 2006 Tesco entered into discussions via its agents and conditional terms were agreed at various times. However, Tesco withdrew from those discussions. A further offer was made by Tesco in October 2009 which was revised in February 2010. Some discussion has subsequently taken place but agreement has not been reached. In these circumstances I consider that, on balance, regeneration is more likely to be achieved if the land is acquired by the Corporation. Nevertheless, the evidence indicates that Ellis/Grier are willing to continue to negotiate. [3.30, 6.11]

10.38 I turn to the Colas land and the adjoining nightclub/car repair workshop. In respect of the Colas land, no offer to purchase was made prior to June 2010. An offer for the nightclub was made at the same time. These offers were made well after the making of the Order and only shortly before the Inquiry opened. This timing does not indicate that the use of compulsory powers is a last resort and in my view the approach taken does not accord with the advice of Circular 06/2004. [6.11]

Further comments on the case for Trad

I have commented above on Trad's arguments regarding negotiations, the prospects for implementation of the scheme, housing provision, design and the superstore. In this section I shall comment on the legal submissions, employment considerations and the prospects for the relocation of Trad.

Legal submissions

10.39 I am not a lawyer and thus I am not qualified to offer opinions on the merits of the legal submissions. I shall comment on the facts and policy context in relation to the submissions to the extent that this may assist the Secretary of State.

10.40 The planning permission granted to Tesco is subject to an application for judicial review. This may affect the weight that the Secretary of State considers ought to be attached to the planning permission. However, Circular 06/2004 does not require planning permission to have been granted prior to the use of compulsory powers. In this case the acquiring authority has firm proposals for the Trad land. Moreover, for the reasons given above, I consider that those proposals accord with the development plan, the OAPF and with many of the objectives of the LUDB. If the permission were to be quashed then the planning application would need to be reassessed in the light of that judgement. However, on the available evidence, there is no obvious reason why planning permission might ultimately be withheld. [4.1]

10.41 I am unable to comment on whether the Corporation's agreement with Tesco amounts to the procurement of public works which would require an OJEU process to be followed. However, it is not disputed that if a development agreement had been involved, an OJEU process would have been needed. Whilst I have commented on the absence of a development agreement in connection with the prospects for implementation of the scheme, I am not aware of any policy requirement for a development agreement to be in place. [4.19, 4.20, 5.1]

10.42 It is argued that the exclusion of the Tesco interests from the Order would amount to an unfair subsidy to a private developer. However, if the Order were to be confirmed the compensation payable to the objector would be settled in accordance with established procedures. In any event, the GL Hearn phase 1 appraisal shows that Tesco would make a loss whilst the JAC phase 1 appraisal shows a profit of around 16%. These figures do not indicate to me that Tesco would receive an excessive or unusual level of developer's profit. [4.21, 5.14, 7.8, 7.9]

Employment considerations

10.43 It is not disputed that Trad is a successful business employing around 300 people. It is a well established and stable employer with a high proportion of skilled workers and is one of only a few such firms with the capacity to undertake the largest and most complex construction projects. The objective of a UDC is to secure the regeneration of its area. The means for so doing are set out in S136(2) of the 1980 Act and include encouraging the development of existing and new industry and commerce. It is therefore clear that the Corporation's objectives include encouraging existing firms such as Trad. [4.3]

10.44 The Corporation argued that, if the existing employment were to be lost, this would be outweighed by the net employment gain resulting from the scheme. I do not share that view. In general terms, I do not consider that existing jobs in a well-established company can be regarded as having the same social and economic value as potential jobs which may result from a proposed development. Greater weight should be attached to the existing jobs. Furthermore, of the 412 projected additional jobs, 183 would come from phase 2. I have commented above that this estimate should be treated with caution. Even allowing for potential additional jobs at the school and IDEA Store it cannot, in my view, be concluded with any confidence that there would be a significant net gain in employment. [5.4]

The prospects for the relocation of Trad

10.45 Appendix D of Circular 06/2004 draws attention to S146(2) of the 1980 Act which encourages UDCs, so far as practicable, to assist businesses whose property has been acquired to relocate to land owned by the UDC. It states that a UDC will be expected to indicate how it proposes to assist such users. [4.8]

10.46 At the Inquiry the Corporation put forward a list of potential relocation sites[129]. Of these, Kuehne and Nagel (site 3), Hindmans Way (East) (site 4), Carlsberg Tetley (site 13) and Armada Way (site 10) are unsuitable in that they are clearly too small for Trad's requirements. In addition, Kuehne and Nagel is only available on a short lease and Armada Way is un-surfaced, thus not currently available for occupation, and furthermore would have a break clause after only 2 years. The AXA site (site 5) is only available for 2 to 5 years. The Corporation accepted that relocation to this site would result in Trad requiring a double move. In my view a double move would impose a high degree of

[129] See the table at 4.10. Sites numbered 1 and 2 on the schedule are existing Trad premises. Sites 7, 11 and 12 are no longer relied on by the Corporation.

uncertainty on Trad and could not be regarded as a reasonable relocation solution. [4.10, 4.13]

10.47 Albert Island Basin (site 9) is also below the site size criteria and is constrained by its proximity to the runway of London City Airport. I consider that occupation by Trad would conflict with one of the objectives of Department for Transport Circular 01/2010, which is to limit the numbers of people working within Public Safety Zones. Furthermore the site contains an array of landing lights and is subject to high levels of aircraft noise. In my view it is not suitable. Beam Park (site 6) is a large site scheduled for residential development. The Corporation suggests that Trad could move to Beam Park subject to a "lift and shift" clause requiring it to relocate within the site when required. Having regard to the scale of the operation, and the need for related office accommodation, I do not consider that to be a practical or reasonable proposition. Moreover, Trad requires 24 hour access and a location in close proximity to residential development is unlikely to be suitable. [4.10, 4.13, 5.6]

10.48 Barking Riverside (site 15) is a large site including a former power station and there was no evidence that any of it is in a condition which is available for occupation now. The site appears to be the subject of regeneration proposals which may or may not be compatible with occupation by Trad. In any event, a break clause after 5 years would create an unacceptable degree of uncertainty. Denver Industrial Estate (site 8) is available on a lease of 8 to 10 years. Whilst there was no information regarding the planning status of the land before the Inquiry, from what I saw on site there is no obvious reason why it could not accommodate a scaffolding yard. However, this location would result in excessive travel times and is therefore unsuitable. Hindmans Way West (HWW) (site 14) is currently derelict and it would be necessary to widen a length of Hindmans Way in order to provide a suitable access to it. It is not therefore available for occupation at present. [4.9 - 4.12, 5.6, 5.7]

10.49 The Corporation argued that Trad's evidence contained some inconsistencies regarding its relocation requirements. However, this was in part because, when advertising the requirements, Trad's surveyor sought not to be too specific in order to attract a wide response. I see no reason to doubt the evidence given at the Inquiry by Trad's Chairman on the company's relocation requirements. I conclude that it has not been shown that there are any relocation sites which are suitable and currently available for occupation for a reasonable period. [4.7, 5.5]

10.50 The site at HWW was the subject of further work during the course of the Inquiry. It is large enough and has reasonable access to central London. An outline planning application has been considered by the Corporation. The final decision has been delegated to officers. The widening of Hindmans Way would require land owned by TDG. The necessary agreements are in place and TDG has expressed support for the access improvements so this is unlikely to be an impediment. The Corporation has set out a timetable for securing approval of reserved matters, discharge of planning conditions and carrying out the works. It has undertaken not to take possession of the Trad land until either 31 July 2011 or a date 5 months after confirmation of the Order, whichever is the later. It argues that this would be sufficient time for HWW to be made available or for Trad to find an alternative site. [5.8 - 5.12]

10.51 On the final day of the Inquiry it emerged that there are other third party interests in HWW. It may be that this matter is resolved by the time the Secretary of State considers the Order. On the evidence before the Inquiry there is uncertainty as to whether HWW is likely to become available and, if it is, in what timescale. Aside from matters of ownership, a range of practical issues would first need to be resolved. Difficulties may arise in obtaining approval for the reserved matters, the details of the works to Hindmans Way, proposals for remediation and measures to protect a locally listed structure. The site is derelict and the submitted plan indicates the presence of various concrete structures and culverts. The Environmental Risk Assessment recommends an extensive programme of site investigations which would need to be completed, and the results assessed, before the remediation proposals could be submitted for approval. [4.11 - 4.13, 5.10 - 5.12]

10.52 I consider that there are significant risks connected with the delivery of HWW. First, there may be delays in obtaining the necessary approvals. Second, carrying out the works may take longer than anticipated. The Corporation suggested that 3 months would be sufficient but there was limited evidence in support of that assertion. Moreover, the scope of the works may be affected by site investigations which have yet to be carried out. [4.12, 4.13]

10.53 The timing of the availability of HWW would be of great importance to the continuation of Trad's business because of the need for continuity of service to clients engaged in major construction projects. If the Order were confirmed, it would have a fixed period in which to vacate the site at Bromley-by-Bow. Whilst it is possible that another site may become available, the extensive search carried out by Trad shows that finding a suitable site may be a lengthy process. If the ownership issues were resolved, I consider that there would then be a reasonable prospect that HWW would ultimately become available. However, having regard to the risks I have identified, it cannot be concluded that it is likely that HWW would be available by 31 July 2011. It follows that confirmation of the Order would pose a significant risk to the continuation of Trad's business and the employment which it provides. [4.3, 4.6, 4.7, 4.17]

10.54 This situation arises because the acquiring authority has been slow to address the issue of relocation. It appears that little account was taken of Trad's relocation requirements at or around the time the Order was made. Some of the suggested relocation sites were put forward shortly before the Inquiry opened and detailed work on HWW started during the Inquiry itself. I consider that the Corporation's approach has not been consistent with the guidance in Circular 06/2004 regarding the assistance which UDCs should provide to businesses affected by compulsory acquisition. [4.8, 4.9, 4.13]

Further comments on the case for Colas and Ellis/Grier

I have commented above on the case for Colas and Ellis/Grier relating to the size of the superstore and housing provision, the prospects for implementation of the Corporation's proposals and negotiations. In this section I shall comment on the legal submissions and criticisms of the "buy back" clause of the CPO Indemnity Agreement.

Legal submissions

10.55 As stated above, I am not qualified to offer a legal opinion and will only comment on the facts and policy insofar as this may be helpful. Regarding the first ground of challenge, I consider that the facts here are quite different to those of *Wolverhampton*. In that case benefits relating to unrelated proposals on a separate site were taken into account. In the present case, the acquiring authority has proposals for a comprehensive scheme of redevelopment, described in the Tesco planning application, which would include the Ellis/Grier land. It seems to me that the acquiring authority took account of the benefits of that scheme as a whole in deciding to acquire this land. It is submitted that, in deciding to acquire the Colas land, account was taken of benefits relating to land south of Three Mills Lane. However, the evidence does not support that interpretation. The Corporation's Statement of Reasons, Statement of Case and evidence at the Inquiry all indicate that the rationale for the inclusion of the Colas land was to facilitate the regeneration of Bromley-by-Bow North. [6.1, 7.1]

10.56 The second ground of challenge is that the grant of planning permission was unlawful. Insofar as that ground relates to consideration of the school, I refer to the preceding paragraph. I refer also to my comments relating to Trad's application for judicial review of the decision to grant planning permission. The remaining grounds relate to documents which are before the Secretary of State and I have no further comments on them. [6.1, 7.1]

The "buy back" clause of the CPO Indemnity Agreement

10.57 It is suggested that this clause would be ineffective in securing comprehensive regeneration and also unfair, in that land acquired compulsorily would be bought back at open market value. I agree that the "buy back" clause would be of little practical benefit. It would not apply to the Tesco interests because these would not have been acquired in the first place. It would not therefore deliver the land assembly required for comprehensive regeneration. I shall attach little weight to the clause in my overall assessment of the merits of the Order. However, I do not consider that the clause is inherently unfair to the objectors because, if the Order were confirmed, compensation would be assessed in accordance with established procedures. [3.17, 6.7]

Modifications proposed by the acquiring authority

10.58 The modifications proposed by the acquiring authority would remove from the Order various footpaths and a stairway adjoining the A12 in the vicinity of the subway. They result from an agreement between the Corporation and TfL regarding the implementation of works to the highway and subway. I see no objection to the proposed modifications. [8.2]

New rights

10.59 Following the modifications referred to above new rights are sought in relation to one plot only, an access way to the south of Talwin Street leading to the underpass. The improvements to the underpass are an integral part of the proposals. I consider that it is reasonable to seek these rights to facilitate the implementation of the scheme. [9.1]

Overall conclusions and consideration of human rights

10.60 A CPO should only be made where there is a compelling case in the public interest which justifies interfering with the human rights of those with an interest in the affected land. In particular, consideration should be given to Article 1 of the First Protocol to the ECHR (*peaceful enjoyment of possessions*). Circular 06/2004 states that it is necessary to take a balanced view between the intentions of the acquiring authority and the concerns of those whose interests are to be acquired compulsorily. I set out below the factors which I consider to be of most significance to this balancing exercise, starting with the points that weigh in favour of confirmation of the Order. I then comment on the particular circumstances relating to that part of the Order lands to the north of Three Mills Lane.

10.61 The Order seeks to assemble land to facilitate comprehensive redevelopment in pursuance of the Corporation's regeneration objectives. There is no dispute that the land is in need of regeneration. Moreover, a previous decision of the Secretary of State has confirmed the importance of a comprehensive approach. This decision is a material consideration of significant weight. The Corporation has prepared comprehensive regeneration proposals, contained in the LUDB, for land at Bromley-by-Bow including the Order lands.

10.62 Proposals have been brought forward by Tesco for a comprehensive scheme of redevelopment of the land to the south of Three Mills Lane. The scheme would provide much improved access, creating links between existing residential areas, the Order lands and the LLV and facilitating further development at Bromley-by-Bow North. The proposed superstore and retail units would form the core of a new district centre in accordance with the CS and LUDB. The IDEA Store, primary school and park would form a cluster of social infrastructure, as envisaged in the LLV OAPF. The scheme would provide open space and a walkway by the River Lea, in accordance with the objectives of the LLV OAPF and the LP. Phase 2 would provide residential accommodation, including affordable housing, making a significant contribution towards the housing targets of the LLV OAPF. These regeneration benefits would accord with the development plan and with the LLV OAPF, insofar as that document remains up to date. They would also meet many of the objectives of the LUDB.

10.63 If the Order were confirmed there is a good prospect that phase 1 would be carried out. However, there is no development agreement requiring the scheme to be implemented as a whole and there is no identified developer for phase 2. Whilst I consider that there is a reasonable prospect that regeneration would take place in some form, it cannot be assumed that the mix of uses and the design of phase 2 would necessarily be as currently proposed.

10.64 Tesco has attempted to acquire land to the south of Three Mills Lane by negotiation but agreement has not been reached in respect of the Trad land or the Ellis/Grier land. On balance, regeneration is more likely to be achieved if the land is acquired by the Corporation. There is no evidence of any alternative regeneration proposals.

10.65 I turn to those factors which, in my opinion, weigh against confirmation. Trad is a successful business employing around 300 people. It is a well established and stable employer with a high proportion of skilled workers. The means by which regeneration is to be secured include encouraging existing industry and

commerce. Circular 06/2004 and S146(2) of the 1980 Act draw attention to the importance of assisting existing businesses affected by compulsory acquisition.

10.66 The projected employment figures for phase 2 should be treated with caution and it cannot be concluded with any confidence that the proposals would result in a significant net gain in employment.

10.67 In my opinion it has not been demonstrated that any of the suggested relocation sites are suitable and currently available for occupation. The site at HWW is potentially suitable but the issue of third party interests is unresolved. In any event, it cannot be concluded that it is likely that HWW would be available by the time Trad was required to vacate its current premises. Confirmation of the Order would pose a significant risk to the continuation of Trad's business and the employment it provides. Having regard to the scale of the Trad operation, and the economic and social value of the employment it provides, I attach significant weight to this factor. This situation arises because the acquiring authority has been slow to address the issue of relocation. Its approach has not reflected the guidance of Circular 06/2004.

10.68 If the Order is not confirmed the regeneration benefits I have identified would be delayed and may not be realised at all. There can be no certainty that Trad and Ellis/Grier would reach voluntary agreements with Tesco and it is also possible that difficulties may arise acquiring other interests in the Order lands. Nevertheless, agreements have been reached with VolkerHighways and ACL and the evidence indicates that both Trad and Ellis/Grier are willing to negotiate further. It may well be possible for the land to be assembled by agreement so that regeneration could ultimately be achieved. Whilst the regeneration of this part of London is an important strategic planning objective, the Corporation did not identify any specific reasons for urgency. [4.29, 5.12]

10.69 My overall assessment is that the factors which weigh against confirmation outweigh the points in favour. The Corporation has not demonstrated that there is a compelling case in the public interest for the Order to be confirmed. In these circumstances it is not necessary for me to comment further on the human rights considerations.

Land north of Three Mills Lane

10.70 The Colas land, (plots 2, 3, 4 and 8), and the car repair workshop and nightclub (plots 6 and 7) form a block of land which is outside the Tesco application boundary and which is not required for the implementation of the AMJ. The Corporation's reason for acquisition of this land is that it is required to facilitate the regeneration of Bromley-by-Bow North. It is therefore appropriate to consider the particular circumstances applying to these plots, starting with the factors which weigh in favour of compulsory acquisition.

10.71 The Corporation's regeneration proposals, contained in the LUDB, include this land. There is no dispute that the land is in need of regeneration. There are emerging development proposals which seek to provide comprehensive regeneration including a substantial amount of housing. There are no alternative proposals. Acquisition by the Corporation would make the achievement of regeneration more likely because it would unite the land with the adjoining Leycol Printers site.

10.72 On the other hand, the land is in active use and is contributing to the local economy. The redevelopment proposals are at an early stage and it cannot yet be said whether they are likely to comply with the wide range of planning policies which would be applicable. There was no evidence before the Inquiry regarding the availability of funding for the assembly of land or the implementation of the scheme. Acquisition by the Corporation would represent only a small step towards achieving the comprehensive regeneration promoted by the LUDB because a substantial proportion of Bromley-by-Bow North would still need to be assembled. The Corporation accepted that it is not known, at this stage, whether a further CPO would be required. In view of the uncertainties relating to planning, funding and land assembly I do not consider that it has been demonstrated that there is a realistic prospect of the Corporation's proposals being delivered within a reasonable timescale. Furthermore, there have been only limited attempts to acquire the land by agreement.

10.73 I conclude that it has not been demonstrated that there is a compelling case in the public interest for the compulsory acquisition of the Colas/nightclub land. The land is not required for the implementation of the Tesco scheme. If, notwithstanding my recommendation, the Secretary of State is minded to confirm the Order, I consider that it should be modified to exclude these plots.

11. Recommendation

11.1 For the reasons given above, I recommend to the Secretary of State for Communities and Local Government that the London Thames Gateway Development Corporation (Bromley by Bow) (South) Compulsory Purchase Order 2010 be not confirmed.

11.2 If, notwithstanding the above recommendation, the Secretary of State is minded to confirm the Order, I recommend that it be modified as follows:

Amend the schedule and the Order map by removing plots 2, 3, 4, 6, 7 and 8.

Amend the schedule and the Order map to accord with the draft revisions contained in Document DC178 by removing plots 35, 36 (part), 37 (part), 50, 54, 55 and 56A.

David Prentis

Inspector

APPEARANCES

FOR THE ACQUIRING AUTHORITY:

Timothy Corner QC	Instructed by Denton Wilde Sapte LLP[130] and Berwin Leighton Paisner LLP
He called	
Jonathan Collins BA(Hons) BA(Arch) ARB RIBA	ColladoCollins Partners LLP
Adrian Cole BA MSc CILT	Director, Colin Buchanan
Paul Astbury BSc(Hons) MRICS	Head of Compulsory Purchase, GL Hearn Ltd
David Napier FRICS	Development Director, GL Hearn Ltd
John Allen BSc MRTPI	Director of Planning, London Thames Gateway Development Corporation

FOR THE TRUSTEES OF TRAD SCAFFOLDING AND TRAD SCAFFOLDING LTD:

John Steel QC and Alex Goodman, of Counsel	Instructed by Trowers and Hamlins LLP
He called	
Hayden Smith	Chairman, Trad Scaffolding Ltd
Iestyn John BA(Hons) MA MRTPI	Associate Director, DTZ
Steven Murray BSc FRICS	Director, Bowyer Bryce Chartered Surveyors

FOR COLAS LTD AND KEITH ELLIS AND DAVID GRIER:

Michael Barnes QC	Instructed by Addleshaw Goddard LLP
He called	
Colin Smith FRICS	Head of Compulsory Purchase and Compensation, CB Richard Ellis
Sean Bashforth BA(Hons) MA MRTPI	Planning Director, RPS

[130] Denton Wilde Sapte LLP has since changed to SNR Denton LLP.

DOCUMENTS

Core Documents

CD1	Statement of Reasons
CD2	The London Thames Gateway Development Corporation (Bromley by Bow) (South) Compulsory Purchase Order 2010
CD2A	Notice of the making of the Order served on Qualifying Persons
CD2B	Notice of the making of the Order published on 4 March 2010 and 11 March 2010 and posted on the Order lands
CD3	Extracts from Local Government, Planning and Land Act 1980
CD4	Extracts from Acquisition of Land Act 1981
CD5	Extracts from Town and Country Planning Act 1990
CD6	Extracts from Planning and Compulsory Purchase Act 2004
CD7	The London Thames Gateway Development Corporation (Area and Constitution) Order 2004
CD8	The London Thames Gateway Development Corporation (Planning Functions) Order 2005
CD9	ODPM Circular 06/2004 *Compulsory Purchase and the Crichel Down Rules*
CD10	PPS4: *Planning for Sustainable Economic Growth* and companion guidance
CD11	Extracts from the London Plan (Spatial Development Strategy for Greater London) 2008
CD12	Extracts from the London Plan (Spatial Development Strategy for Greater London) Consultation Draft Replacement Plan 2009
CD13	Extracts from the London Borough of Tower Hamlets Unitary Development Plan 1998
CD14	Extracts from the London Borough of Tower Hamlets Core Strategy Submission Version 2009
CD15	Bromley-by-Bow Land Use and Design Brief 2009
CD16	Extracts from the London Borough of Tower Hamlets Interim Planning Guidance – Leaside Area Action Plan
CD17	London Borough of Tower Hamlets Bromley-by-Bow Masterplan (draft) 2006
CD18	The London Thames Gateway Development Corporation's Vision of the Lower Lea Valley 2006
CD19	The Lower Lea Valley Opportunity Area Planning Framework 2007
CD20	The London Thames Gateway Development Corporation Delivery and Investment Strategy 2007
CD21	The London Thames Gateway Development Corporation Relocation and Acquisition Policy 2009
CD22	Inspector's Report and Secretary of State's Decision regarding appeal by Aitch Group Holdings Ltd and Genesis Housing Group (Ref APP/A9580/A/07/2036253)
CD23	Letters of objection from Trowers and Hamlins on behalf of Hayden and Doretta Smith and Trad Scaffolding Company Ltd dated 11 March 2010 and 26 March 2010
CD24	Letter of objection from EDF Energy Networks dated 19 March 2010

CD25	Letters of objection from Keith Murray Associates on behalf of VolkerHighways Ltd dated 20 and 24 March 2010
CD26	Letter of objection from Transport for London dated 23 March 2010
CD27	Letter of objection from CBRE on behalf of Colas Ltd dated 25 March 2010
CD28	Letter of objection from Golding James on behalf of ACL Holdings dated 25 March 2010
CD29	Letter of objection from CBRE on behalf of Keith Ellis and David Grier dated 26 March 2010
CD30	Letter from Secretary of State giving notice of intention to hold a public inquiry dated 30 March 2010
CD31*	RPG9A – *Creating Opportunity: The Thames Gateway planning Framework* 1995
CD32	*Creating Sustainable Communities: Delivering the Thames Gateway* ODPM 2005
CD33	*Sustainable Communities – Building for the Future* 2003
CD34	Thames Gateway Interim Plan and Development Prospectus 2006
CD35	Thames Gateway Delivery Plan 2007
CD36	Thames Gateway Annual Reports 2007/2008 and 2008/2009
CD37	Announcement in relation to the Quinquennial Review by Shahid Malik January 2010
CD38	Summary of responses to consultation on Quinquennial Review 2010
CD39*	PPS1: *Delivering Sustainable Communities*
CD40*	PPS3: *Housing*
CD41*	PPG13: *Transport*
CD42*	PPS5: *Planning for the Historic Environment*
CD43*	PPG17: *Planning for Open Space, Sport and Recreation*
CD44	Engines for Growth – The Corporation 2005
CD45	Regenerating East London – The Corporation 2009
CD46	Corporation Board reports and minutes 2007 – 2009
CD47	CPO Indemnity Agreement dated 2 March 2010
CD48	Sustainable Communities: An Urban Development Corporation for the London Thames Gateway – Decision Document 2004
CD49	Report and addendum report to the Corporation's Planning Committee 26 May 2010
CD50	Tesco Planning Application Documents December 2009/April 2010 (2 volumes)
CD51	Statement of Case
CD52	Sugar House Lane and Three Mills Land Use and Design Brief (draft) 2010
CD53	Mayor of London – Stage 1 approval
CD54	Mayor of London – Stage 2 approval
CD55	Extracts from Mayor of London Transport Strategy 2010
CD56	LBTH Final Local Implementation Plan for Approval 2005/06 to 2010/11
CD57	Lea River Park Design Framework – The Corporation 2008
CD58	Mayor of London – Proposals for Devolution 2010

**These documents were listed by the Acquiring Authority but were not included with the submitted documents*

Formalities Folder

Folder containing Public Notice of Inquiry and Certificates and other details relating to the service of the Notice and the service of the Acquiring Authority's Statement of Case and evidence

Other documents submitted on behalf of the Acquiring Authority

DC1	Statement of Evidence of John Allen
DC1A	Appendices to Statement of Evidence of John Allen
DC1B	Summary Statement of Evidence of John Allen
DC1C	Rebuttal Statement of Evidence of John Allen
DC1D	Supplemental Statement of John Allen (2 volumes)
DC1E	Second Supplemental Statement of John Allen
DC2	Statement of Evidence of Jonathan Collins
DC2A	Summary Statement of Evidence of Jonathan Collins
DC3	Statement of Evidence of Adrian Cole plus Appendices
DC3A	Summary Statement of Evidence of Adrian Cole
DC4	Statement of Evidence of Paul Astbury plus Appendices
DC4A	Rebuttal Statement of Evidence of Paul Astbury
DC4B	Updated Rebuttal Statement of Evidence of Paul Astbury
DC5	Statement of Evidence of David Napier plus Appendices
DC5A	Summary Statement of Evidence of David Napier
DC5B	Supplemental Statement of Evidence of David Napier
DC6	List of Appearances
DC7	Draft S106 Agreement (Undated)
DC7A	S106 Agreement dated 21 July 2010
DC8	Opening Submissions
DC9	Letter from Tesco of 16 July 2010
DC10	Planning permission PA/09/02574/LBTH issued 21 July 2010
DC11	Plan showing land ownerships
DC12	Letters from DTZ dated 13 January 2010 and 26 April 2010
DC13	Letter from Government Office for London dated 6 July 2010
DC14	Bundle of plans showing potential relocation sites
DC15	Letter from DentonWildeSapte dated 6 August 2010
DC15A	Hotel needs assessment
DC15B	Project programme
DC16	Letter from DentonWildeSapte dated 9 August 2010
DC16A	Viability appraisal – Overall scheme
DC16B	Viability appraisal – Phase 1
DC16C	Viability appraisal – Phase 2
DC16D	Viability appraisal - Northern land
DC17	Letter from DentonWildeSapte dated 23 August 2010 -PINS
DC17A	Letter from DentonWildeSapte dated 23 August 2010 -NULAD
DC17B	Agreement with TfL and proposed modifications to the Order
DC18	Draft supplemental S106 Agreement
DC18A	Supplemental S106 Agreement dated 29 September 2010
DC19	Addendum planning committee report - 28 September 2010
DC20	Plan of improvements to Hindmans Way
DC21	Note on development reappraisal terms of the S106
DC22	Draft planning committee minute - 28 September 2010
DC23	Closing submissions
DC24	Response to legal submissions for Colas and Ellis/Grier together with bundle of authorities

Documents submitted by other parties

	Trustees of Trad Scaffolding/Trad Scaffolding Ltd
TRD1	Statement of Evidence of Hayden Smith plus Appendices
TRD2	Statement of Evidence of Iestyn John
TRD2A	Appendices to Statement of Evidence of Iestyn John
TRD2B	Summary Statement of Evidence of Iestyn John
TRD3	Statement of Evidence of Steven Murray
TRD3A	Appendices to Statement of Evidence of Steven Murray
TRD3B	Summary Statement of Evidence of Steven Murray
TRD3C	Response to Rebuttal Proof of Paul Astbury by Steven Murray
TRD4	Email from Paul Astbury dated 22 July 2010
TRD5	Minutes of the Corporation's Resources Committee 17 August 2009
TRD6	Department for Transport Circular 01/2010 *Control of Development in Airport Public Safety Zones*
TRD7	Letter from Steven Murray dated 28 September 2010
TRD8	London City Airport – Public Safety Zone diagram
TRD9	London City Airport – noise contours
TRD10	Map of Dagenham area showing potential relocation sites
TRD11	Correspondence between Steven Murray/Paul Astbury
TRD12	Correspondence between Bowyer Bryce/the Corporation
TRD13	Judicial Review Claim Form
TRD14	Environmental Risk Assessment – Hindmans Way
TRD15	Closing submissions
	Colas Ltd
CL1	Statement of Evidence of Colin Smith
	Keith Ellis and David Grier
EG1	Statement of Evidence of Colin Smith
EG2	Supplementary Evidence of Sean Bashforth
	Colas Ltd and Keith Ellis/David Grier
CL/EG1	ODPM Circular 05/2005 *Planning Obligations*
CL/EG2	Legal Submissions dated 27 July 2010
CL/EG3	Lands Tribunal decision regarding *London and Continental Railways Ltd v Kent County Council*
CL/EG4	Supplemental Statement of Colin Smith
CL/EG5	Legal submissions
CL/EG5A	Folder of authorities (cases)
CL/EG5B	Folder of authorities (statutes)
CL/EG6	Letter from DentonWildeSapte dated 24 September 2010
CL/EG7	GVA Grimley valuation report November 2009

	EDF Energy Networks (LPN) plc
EDF1	Letter withdrawing objection dated 19 July 2010
	VolkerHighways Ltd
VL1	Letter withdrawing objection dated 22 July 2010
	Transport for London
TfL1	Letter withdrawing objection dated 19 July 2010
	ACL Holdings Limited
ACL1	Letter withdrawing objection dated 22 July 2010

PLANNING ACT 2008

INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

APPLICATION FOR THE YORK POTASH HARBOUR FACILITIES DEVELOPMENT CONSENT ORDER (Reference TR30002)

SUMMARY WRITTEN REPRESENTATION OF SABIC UK PETROCHEMICALS LIMITED (Unique Reference Number 10031257)

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1. INTRODUCTION

1.1 This is the Summary Written Representation of SABIC UK Petrochemicals Limited to the proposed York Potash Harbour Facilities Development Consent Order.

1.2 The form of this document is identical to the submissions of Huntsman and DEA.

2. DEFINITIONS

2.1 In this written representation the words and phrases in column (1) below are given the meaning contained in column (2) below.

(1) Words and Phrases	(2) Meaning
2008 Act	The Planning Act 2008
A1085 Roundabout	The roundabout at the junction of the A1085 and the northern access to the Wilton Site
Application	The application for the Order
DEA	DEA UK SNS Limited
DEA Sub-riverbed Apparatus	DEA's sub-riverbed cables and pipeline immediately adjacent to and to the west of the proposed quay comprising Work No.2 in the Draft Order
Dogger Bank DCO	The Dogger Bank Teesside A and B Wind Farm Order 2015
Draft Order	The draft York Potash Harbour Facilities Development Consent Order in the form submitted with the Application
Huntsman	Huntsman Polyurethanes (UK) Limited
Number 2 Tunnel	The tunnel under the River Tees adjacent to and to the west of the proposed quay comprising Work No.2 in the Draft Order
Objectors	Together SABIC, Huntsman and DEA
Order	Such Order as may be made by the Secretary of State pursuant to

	the Application
Pipeline Corridor	The Pipeline Corridor operated by Sembcorp and used by the Objectors which links the Wilton Complex with the Number 2 Tunnel and the DEA Sub-riverbed Apparatus
Requirements	The requirements set out in Schedule 2 of the Draft Order
SABIC	SABIC UK Petrochemicals Limited
Sembcorp	Sembcorp Utilities UK Limited
Wilton Complex	The multi-occupancy chemical manufacturing site known as Wilton International
Wilton Site Roads	The roads made available for common use within the Wilton Complex and the Pipeline Corridor
Works	The works comprised in the Authorised Development

2.2 The following words and phrases shall have the meanings given to them in the Draft Order:

Authorised Development

3. SUMMARY

3.1 Subject to the proper protection of their undertakings, the Objectors do not object in principle to the making of the Order. The Objectors are currently engaged in positive negotiations with the Applicant in relation to revised protective provisions for their benefit and an agreement that will satisfy their concerns. However at the time of submission of this document those negotiations are on-going. As a result, the Objectors' interests are not adequately protected and their objections are therefore sustained.

3.2 Specifically, the Objectors object to the following:

3.2.1 The making of the Order, as the adverse impacts of the Authorised Development would outweigh its benefits contrary to Section 104(7) of the 2008 Act.

3.2.2 The granting of rights of compulsory acquisition, as the Applicant has not shown that all of the land is "required" or satisfied the public interest test under Sections 122(2) and (3) of the 2008 Act.

3.2.3 The potential effect of dredging and the building of the quay on the integrity of the Number 2 Tunnel and the DEA Sub-riverbed Apparatus .

3.2.4 The potential effect of the construction and operation of the Authorised Development on navigation in the River Tees.

3.2.5 The inclusion of the southern conveyor route in the Draft Order.

3.2.6 The breadth of ancillary works permitted by Article 6 of the Draft Order.

3.2.7 The breadth, flexibility and complexity of the proposed limits of deviation.

3.2.8 The application of Articles 10 to 13 (streets) to the Wilton Complex and the Pipeline Corridor.

3.2.9 The temporary stopping up and temporary possession of the A1085 Roundabout in terms of access to DEA's apparatus and the potential cumulative effects of the Draft Order and Dogger Bank DCO in terms of restriction of access to the Wilton Complex.

3.2.10 The powers of compulsory acquisition in Articles 24 to 30 of the Draft Order which provide powers that could be used to extinguish the Objectors' rights to maintain their apparatus, remove that apparatus and restrict access to the apparatus.

3.2.11 The inadequacy of the proposed guarantee in respect of the costs of compulsory acquisition in Article 23 of the Draft Order, particularly the length of the guarantee and the method for determining the sum covered.

3.2.12 The terms of the Requirements.

3.2.13 The inadequacy of the proposed protective provisions in relation to the Works and their silence with respect to use of the Wilton Site Roads.

3.2.14 The proposed undergrounding of the conveyor under the A1085.

3.2.15 Until the above issues are resolved to the Objectors' satisfaction, the making of the Order.

Bond Dickinson LLP

21 August 2015