

# The South Tees Development Corporation (Land at the former Redcar Steel Works, Redcar) Compulsory Purchase Order 2019

Inquiry Commencing: 11 February 2020

## Opening Submissions on behalf of the Acquiring Authority

### Abbreviations

1. The following abbreviations are used in these Opening Submissions:

<b>AG, DA, DAM, GG, GM, JK, JM, MK</b>	STDC's witnesses: Anthony Greally, David Allison, Dan Aylward-Mills, Guy Gilfillan, Gary MacDonald, John Knowles, John McNicholas, Michael King.
<b>DBEIS</b>	Department of Business, Energy and Industrial Strategy
<b>CCUS</b>	Carbon Capture, Utilisation and Storage
<b>CPO</b>	Compulsory Purchase Order
<b>CPO Guidance</b>	MHCLG's Guidance on Compulsory purchase process and The Crichel Down Rules (July 2019) [CD/C/3]
<b>DP, PR, SMH</b>	SSI's witnesses: Duncan Parr, Peter Roberts, Simon Melhuish-Hancock
<b>DPD</b>	Development Plan Document
<b>ECHR</b>	European Convention on Human Rights
<b>EIA</b>	Environmental Impact Assessment
<b>The Heseltine Report</b>	The report by Lord Heseltine "Tees Valley Opportunity Unlimited" <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/527649/Tees_Valley_Opportunity_Unlimited.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/527649/Tees_Valley_Opportunity_Unlimited.pdf</a> commissioned by DBEIS as an independent report and published in June 2016.
<b>Highfield</b>	Highfield Environmental Limited
<b>HRA</b>	Habitats Regulations Assessment
<b>Master Plan</b>	The South Tees Regeneration Master Plan (November 2019) [CD/F/2]
<b>Mayor</b>	The Mayor of Tees Valley, also Chairman of STDC
<b>MDC</b>	Mayoral Development Corporation
<b>MHCLG</b>	Ministry of Housing, Communities and Local Government
<b>NPPF</b>	National Planning Policy Framework (February 2019)
<b>OR</b>	The Official Receiver, acting in respect of SSI's insolvency.
<b>Order</b>	The South Tees Development Corporation (Land at the former Redcar Steel Works, Redcar) Compulsory Purchase Order 2019 [CD/A/1]
<b>Order Lands</b>	The land the subject of the Order, which lies within the STDC Area and comprises approximately 1,752 acres of land of the former Redcar Steel Works, Redcar, which is bounded by private access road known as Breakwater South Gare to the north, the Trunk Road (A1085) to the east, Tees Dock Road and South Bank to the south and the River Tees and Teesport to the West. See the plans at [CD/A/2.11-2.11].
<b>RCBC</b>	Redcar and Cleveland Borough Council
<b>RCLP</b>	The Redcar and Cleveland Local Plan, adopted in May 2018
<b>RBT</b>	Redcar Bulk Terminal
<b>RH</b>	Tarmac's witness: Ross Halley
<b>Scheme</b>	The scheme underpinning the CPO to deliver the Master Plan
<b>SOC</b>	STDC's Statement of Case [CD/A/5]
<b>SOR</b>	STDC's Statement of Reasons [CD/A/3]
<b>SPD</b>	Supplementary Planning Document
<b>SSI</b>	Sahaviriya Steel Industries/Thai banks – Siam Commercial Bank, TISCO and

	Krung Thai collectively referred to as “SSI” unless the context requires them to be referred to separately
<b>STDC</b>	South Tees Development Corporation, which is an MDC established under s. 198 of the Localism Act 2011 (as modified by art. 4 of the Tees Valley Combined Authority (Functions) Order 2017) and the STDC Order
<b>STDC Area</b>	The administrative area of STDC, covering approximately 4,500 acres of land to the south of the River Tees in the Borough of Redcar and Cleveland. See the plan at [CD/F/2], p.15.
<b>STDC Order</b>	South Tees Development Corporation (Establishment) Order 2017 [CD/B/3]
<b>STSC</b>	South Tees Site Company
<b>Tarmac</b>	Tarmac Trading Limited and East Coast Slag Products
<b>The 2004 Act</b>	Planning and Compulsory Purchase Act 2004
<b>The 2011 Act</b>	Localism Act 2011
<b>TVCA</b>	Tees Valley Combined Authority. Tees Valley comprises the boroughs of Darlington, Hartlepool, Middlesbrough, Redcar & Cleveland, and Stockton-on-Tees. See the TVCA Order.
<b>TVCA Order</b>	Tees Valley Combined Authority (Functions) Order 2017
<b>UDC</b>	Urban Development Corporation

## Introduction

2. The CPO has been made to secure the regeneration of the STDC Area, an area of land comprising close to 4,500 acres at the mouth of the River Tees, within the Tees Valley’s primary industrial zone. The STDC Area has historically been the home to heavy industry, primarily iron and steel making, the port and logistics handling, and chemicals.
3. In October 2015, the iron and steel making came to an end with the liquidation of SSI, forcing the closures of the Redcar iron and coke-making complex and the Lackenby steel-making plant. The South Bank Coke Ovens closed just ahead of the liquidation in September 2015. This marked the end of nearly 170 years of iron and steelmaking in the locality and the loss of some 2,000 jobs directly, 1,000 contractors, and a further 1,000 jobs indirectly<sup>1</sup>.
4. As will be explained below, the creation of STDC in August 2017, the first MDC outside of London, is the result of a recognised need for regeneration of the STDC Area. The production of the Master Plan is the result of nearly 2.5 years of consultation, and will guide the transformation of the STDC Area, resulting in 20,000 new jobs and a world-class industrial business park.
5. These Opening Submissions will deal with the following:
  - (1) Introduction to the Development Corporation, the STDC Area, the Order Lands and the Scheme;
  - (2) The legal basis for the CPO;
  - (3) Policy requirements in the CPO Guidance;
  - (4) Consistency with planning policy and contribution to the well-being of the area;

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<sup>1</sup> The South Tees Area SPD at para. 1.17 [CD/D/3].

- (5) Consideration of alternatives and negotiations;
- (6) Funding for and viability of the Scheme;
- (7) Whether there are impediments to delivery;
- (8) Human rights, the Public Sector Equality Duty and whether there is a compelling case in the public interest;
- (9) Conclusions.

### **The Development Corporation**

- 6. The TVCA Order conferred on TVCA, in relation to its area, functions corresponding to the functions that the Mayor of London has in relation to Greater London, including the designation of an area to establish a Development Corporation. The TVCA Order modified these functions in art. 4 and provided that these are to be exercised by the Mayor.
- 7. Under s. 197(1) of the 2011 Act, as modified by the TVCA Order, the Mayor is given the power to designate any area of land in TVCA's area as a mayoral development area, provided that "the Mayor considers that this is expedient for furthering economic development and regeneration in the Combined Authority area".
- 8. S. 198 of the 2011 Act requires the Secretary of State, if notified by the Mayor that a mayoral development area has been designated, to make an Order establishing a MDC for this area.
- 9. STDC was created in August 2017 by the STDC Order.
- 10. STDC's objective is to secure the regeneration of the STDC Area, focusing on the promotion of the long term sustainable economic prosperity and commercial development of Tees Valley, by converting assets in the STDC Area into opportunities for business investment and economic growth.
- 11. The Explanatory Memorandum to the STDC Order provides at para. 7.1:
 

"The objective of the proposal was to drive forward growth and investment, create jobs, and support local communities in the area in light of the closure of the SSI steelworks site in Redcar and Cleveland. On 7 June 2016, Lord Heseltine published his independent report "Tees Valley: Opportunity Unlimited"<sup>2</sup>, which reiterated the need to establish a mayoral development corporation as quickly as possible to drive regeneration, jobs and growth in the local area"
- 12. Para. 7.6 provides:
 

"The principle objective of the Corporation will be to take strategic leadership of the site to co-ordinate and drive regeneration in the area. The Corporation will take forward the work that has been led by the Shadow South Tees Development Corporation Board and the South Tees Site Company, which were established to take the lead in shaping the future vision for the South Tees area and to help manage the SSI in liquidation."
- 13. Indeed, the Heseltine Report had recommended in June 2016:

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<sup>2</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/527649/Tees\\_Valley\\_Opportunity\\_Unlimited.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/527649/Tees_Valley_Opportunity_Unlimited.pdf) ("the Heseltine Report").

**“4.6.10 Recommendation. That the South Tees Development Corporation is established as quickly as possible and that Government and local partners put the relevant resource in place in order to realise this goal. Also that Government begins engagement with the Combined Authority on how and when ownership and management of the SSI site can be moved to the South Tees Development Corporation, including with relevant Her Majesty’s Treasury funding agreements, and the agreement of the Combined Authority.”**

## **The STDC Area**

14. The STDC Area<sup>3</sup> comprises close to 4,500 acres, entirely within the Borough of Redcar and Cleveland, at the mouth of the River Tees, within the Tees Valley’s primary industrial zone. The STDC Area comprises operational and non-operational industrial land, largely made up of:
  - (1) redundant iron and steel works facilities and land (the former SSI operations and land formerly within Tata Steel ownership);
  - (2) an operational steel works (British Steel Ltd in liquidation); and
  - (3) operational ports (PD Ports Teesport and RBT).
15. The area was described in the Heseltine Report<sup>4</sup> as follows:

“Four miles of the south bank of the Tees is a scene of desolation, a memory of industrial activity now gone. Yes, there are some conspicuous examples of recent investment particularly with PD Ports and Northumbrian Water facilities but the contrast with the north bank is stark.”
16. Along its northern and north-eastern fringes, the STDC Area encompasses sizeable land areas that are subject, in part, to various environmental designations. These areas are: South Gare and Coatham Sands and Coatham Marsh Nature Reserve. The Teesmouth and Cleveland Coast SPA, Ramsar Site and SSSI (which adjoins the STDC Area in places) has recently been modified and enlarged<sup>5</sup>.
17. In addition to the operational steel works and operational ports, the STDC Area includes a number of other operational or soon-to-be operational businesses<sup>6</sup>.
18. By virtue of the long industrial history of the STDC Area, stretching back over 150 years, and the many changes in ownership over that time, the STDC Area is now characterised by fragmented and complex land ownership and related site operations, with heavy reliance on shared, declining infrastructure assets between different businesses. The area is also heavily contaminated.
19. Upon the 2015 closure of SSI, the SSI assets and landholdings (amounting to almost 1,000 acres) were immediately placed in the hands of the OR. On 1 December 2016, in view of the inability of the landowners to look after their own land, STSC assumed responsibility for the safe management of the SSI land, having been established by DBEIS. STSC is a wholly owned subsidiary of DBEIS. The OR retains overall control over the former SSI land and related assets

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<sup>3</sup> The STDC Area is explained in detail in JM’s Proof STDC2/2 para. 2.1 onwards.

<sup>4</sup> Introduction.

<sup>5</sup> On 16.1.20 – see AG Rebuttal para. 2.7 and his plans, which show the enlarged SPA and SSSIs.

<sup>6</sup> JM Proof STDC2/2 para. 2.8-2.9.

pending their disposal, while STSC, working on behalf of the OR under the terms of a Management Agreement, is responsible for their safe, secure and cost-effective management on an ongoing basis. The “make it safe”/“keep it safe” strategy is a critical function given the COMAH (Control of Major Accident Hazards) Upper Tier status allocated to the SSI sites. DBEIS have allocated £117.8m in “keep safe funding”. This money is irrecoverable from SSI due to its liquidation. The burden on the public purse as a result of SSI’s liquidation is an important justification for pressing ahead with urgent regeneration, and is also relevant context when assessing SSI’s objections to the CPO. That assumed responsibility and expense also supports public acquisition of the Order Lands.

20. It is STDC’s case that in order to regenerate the area successfully, given the significant amounts of public money already spent on it, land ownership must be rationalised so that new development and the infrastructure necessary to support it can be introduced in a coordinated manner that is attractive to the modern market and will bring back significant employment to the area, as well as wider social, economic and environmental benefits. Retention of existing land ownerships and property boundaries will prevent this important public objective from being realised to its greatest potential.

### **The Order Lands**

21. A description of the Order Lands, comprising approximately 1,752 acres of land, is in the SOC<sup>7</sup>. It is bounded by the River Tees, the A1085 Trunk Road and the North Sea, and is close to the town of Redcar.

### **The Scheme**

22. The Scheme is set out in the Master Plan and will be fully explained in the evidence of JM and AG. The Scheme is supported by the South Tees Area SPD [CD/D/3] which is in turn supported by Policy LS 4 of the RCLP [CD/D/2]. The two documents were both adopted in May 2018.
23. The vision in the Master Plan is to transform the STDC Area into a world-class example of a modern, large-scale industrial business park by providing a flexible development framework where land plots can be established in a variety of sizes to meet different occupier needs in the most efficient manner possible. Of equal importance is the delivery of an area-wide infrastructure system to both service occupier requirements and to provide optimum connectivity across the STDC Area<sup>8</sup>. As the SPD states in Section 2:

#### **“The Supplementary Planning Document's Vision for the South Tees Area**

The Vision for the South Tees regeneration programme is to see the area transformed into a hotbed of new industry and enterprise for the Tees Valley that makes a substantial contribution to the sustained economic growth and prosperity of the region and the communities it serves.

The Vision sees the creation of up to 20,000 new jobs. The focus is on higher skilled sectors and occupations, centred on manufacturing innovation and advanced technologies and those industries best able to deliver sustained economic prosperity for the Tees Valley and its people,

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<sup>7</sup> [CD/A/3], section3. See the Location Plan attached to the Order at [CD/A/2.1].

<sup>8</sup> SOC, para. 4.4

while realising a jobs spectrum that offers opportunities for all. The Vision is underpinned by the aspiration for new development to make best use of existing infrastructure and available land and to deliver a high value, low carbon, diverse and inclusive circular economy for the Tees Valley.

The Vision sees an aspirational, modern industrial park, combining industrial, environmental, heritage and community assets in a well designed development that is safe for all users and supported by a safe and efficient transport network, which delivers enhanced connectivity to the wider Tees Valley and beyond.

It extends to realising a telling, positive change in the external perceptions of the South Tees Area and wider Tees Valley to potential inward investors, to achieving the remediation of land contamination and to safeguarding biodiversity and promoting and encouraging environmental improvement. In overall terms, the realised Vision for the South Tees Area will deliver an exemplar, world class industrial business park that is renowned as a destination for manufacturing excellence.”

24. STDC envisages that the objectives of the Master Plan will be realised over a 20+ year period. There has already been progress with delivery of the Master Plan to date<sup>9</sup>, and the confirmation of the Order will enable the full transformative potential of the Master Plan to be realised.

### **Legal basis for the CPO**

25. STDC may do anything it considers appropriate for the purposes of its object or for purposes incidental to those purposes: s. 201 of the 2011 Act [CD/B/1].
26. S. 206 of the 2011 Act states that STDC may carry out or facilitate:
- (1) regeneration or development of land;
  - (2) the more effective use of land;
  - (3) provision of buildings or other land;
  - (4) the acquisition, holding, improvement, management, reclaiming, repair or disposal of buildings, other land, plant, machinery;
  - (5) the carrying out of building and other operations (including converting or demolishing buildings);
  - (6) the creation of an attractive environment.
27. Pursuant to resolutions of STDC’s Board on 25 July 2018<sup>10</sup>, the Order<sup>11</sup> was made on 10 April 2019 under s. 207 of the 2011 Act, which provides that STDC may acquire land in its area or elsewhere by agreement or, on being authorised to do so by the Secretary of State, compulsorily. Part 1 of Schedule 2 to the Housing and Regeneration Act 2008 applies to the acquisition of land by STDC as it does to Homes England under that Act.
28. S. 207(4) of the 2011 Act provides that this acquisition power includes the power to acquire

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<sup>9</sup> See AG’s Proof, para. 6.23.

<sup>10</sup> [CD/E/2]

<sup>11</sup> [CD/A/1]

new rights over land.

29. In correspondence in December 2019, solicitors for SSI argued that the Order was invalidly made by STDC for two reasons. As explained fully in the letter in response from STDC’s solicitors, Gowlings, on 6 January 2020<sup>12</sup>, the Order was validly made. More detailed submissions will be provided if necessary, but the substance is set out in Gowlings’ letter:

- (1) The Board of STDC authorised the making of the Order at their meeting in July 2018 and SSI’s suggestion otherwise is premised on a misreading of the minutes of that meeting. SSI’s contention that the July 2018 meeting resolution only approves an amendment to the recommendation rather than adopting the recommendation itself confuses (a) the explanation that this was proposed by the CEO as an amendment to an earlier recommendation with (b) the fact that the Board approved the revised recommendation.
- (2) The Order was made under seal, dated and duly authenticated by the Mayor as Chair of STDC, in accordance with: s. 10(2) of the Acquisition of Land Act 1981<sup>13</sup>; reg. 3(a)(i) of the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 (see Form 1, Note (p)); and para. 11(1)(a) of Schedule 21 to the 2011 Act. SSI’s contention that the Order needed to be authenticated by STDC’s Chief Executive ignored the statutory power to authenticate given to the Mayor by para. 11(1)(a) of Schedule 21 to the 2011 Act.

The contentions raised by SSI therefore are not sound and do not support the contention that the Order was not validly made.

### **CPO Guidance – policy requirements**

30. The CPO Guidance<sup>14</sup> does not contain specific guidance in relation to the use of CPO powers by MDCs. However, as AG explains<sup>15</sup>, the guidance on UDCs should be followed as far as relevant and applicable to MDCs.
31. In respect of UDCs, para. 125 acknowledges that “[t]he acquisition of land and buildings by compulsory purchase is one of the main ways in which an urban development corporation can take effective steps to secure its statutory objectives”.
32. Para. 132 of the CPO Guidance provides:

**“132. What does the Secretary of State need to consider when reaching a decision on whether to confirm a section 142 order to acquisition land?”**

In reaching a decision on whether to confirm a section 142 order, the Secretary of State will take into account the statutory objectives of the urban development corporation set out in paragraph 119 above and consider:

- i. whether the urban development corporation has demonstrated that the land is in need of regeneration

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<sup>12</sup> See Appendix 1A to PR’s Proof, p.211

<sup>13</sup> [CD/B/2]

<sup>14</sup> [CD/C/3]

<sup>15</sup> STDC/4/2, para. 3.3

- ii. what alternative proposals (if any) have been put forward by the owners of the land or other persons for regeneration
  - iii. whether regeneration is on balance more likely to be achieved if the land is acquired by the urban development corporation
  - iv. the recent history and state of the land
  - v. whether the land is in an area for which the urban development corporation has a comprehensive regeneration scheme; and the quality and timescale of both the urban development corporation's regeneration proposals and any alternative proposals"
33. The CPO Guidance also contains general guidance for the exercise of compulsory purchase powers. Central to this general guidance is paras. 2 and 12. Para. 2 advises that negotiations should take place but (consistently with earlier versions of the guidance) advise pursuing them in parallel with CPO, and both it and 12 set out a long-established core principle:

**"2. When should compulsory purchase powers be used?**

Acquiring authorities should use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest.

The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.

Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:

- plan a compulsory purchase timetable as a contingency measure; and
- initiate formal procedures

This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

When making and confirming an order, acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected."

**"12. How does an acquiring authority justify a compulsory purchase order?**

It is the acquiring authority that must decide how best to justify its proposal to compulsorily acquire land under a particular act. The acquiring authority will need to be ready to defend the proposal at any inquiry or through written representations and, if necessary, in the courts.

There are certain fundamental principles that a confirming minister should consider when deciding whether or not to confirm a compulsory purchase order ....

A compulsory purchase order should only be made where there is a compelling case in the public interest.

An acquiring authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights ...."



34. On negotiations alongside CPO, see also para. 128 of the CPO Guidance.

35. The CPO Guidance para. 13 provides:

“If an acquiring authority does not:

- have a clear idea of how it intends to use the land which it is proposing to acquire; and
- cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale

it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making.”

36. Importantly, this should be read together with para. 129 applying to UDCs (and similarly MDCs like STDC), which sets out the specific role of UDCs in regeneration and has a particular resonance when considering this case:

**“129. Do urban development corporations have to predetermine what development will take place on land before it is acquired?”**

To achieve its objectives, it may sometimes be necessary for an urban development corporation to assemble land for which it has no specific development proposals. Urban development corporations are expected to achieve their objectives largely by stimulating and attracting greater private sector investment and do not usually carry out extensive building development themselves, as it may be counterproductive to decide what private sector development should take place. Land may be suitable for a variety of development and the market can change rapidly as regeneration proceeds. Urban development corporation ownership of land can stimulate confidence that regeneration will take place, and help to secure investment. Urban development corporations can often bring about regeneration by assembling land and providing infrastructure over a wide area to secure or encourage its development by others.”

37. Similarly, paras. 133-144 provides guidance on the level of detail that a UDC is expected to provide at the confirmation stage:

**“133. What level of detail do urban development corporations need to provide when seeking an order?”**

The Secretary of State recognises that given their specific duty to regenerate their areas, it will not always be possible or desirable for urban development corporations to have specific proposals for the land concerned beyond their general framework for the regeneration of the area, and detailed land use planning and other factors will not necessarily have been resolved before making an order. In cases where there is a defined end use, or provision of strategic infrastructure to facilitate regeneration, an urban development corporation will normally have reasonably firm proposals, and will have resolved as far as practicable any major planning impediments, before submitting the order for confirmation. Depending on the circumstances however, the Secretary of State accepts that it will not always be feasible for such developments to have received full planning permission, nor for all other statutory procedures necessarily to have been completed at the time of submission of the order.

**134. Where detailed proposals are not provided what information is an urban development corporation expected to provide?**

Where an urban development corporation does not provide detailed proposals for redevelopment, it will still be expected to demonstrate the case for acquisition in the context of its development strategy. The urban development corporation needs to be able to show that using compulsory purchase powers is in the public interest and that there is a real prospect of the land being brought into beneficial use within a reasonable timeframe. The

Secretary of State will expect the statement of reasons accompanying the submission of the order to include a summary of the framework for the regeneration of the urban development area, and that the urban development corporation will be in a position to present evidence at the public inquiry to support its case for compulsory acquisition.”

38. With regard to assessing alternative proposals, para. 135 provides as follows in respect of UDCs:

**“135. What does the Secretary of State have to consider where there are other proposals for the use of land contained within an order?”**

Where the owners of land or other parties have their own proposals for the use or development of land contained within an order, it will be necessary for the Secretary of State to consider whether these are capable of being or likely to be, implemented, taking into account the planning position, how long the land has been unused, and how the alternative proposals may conflict with those of the urban development corporation.”

39. In relation to funding and viability, the CPO Guidance provides:

**“14. What information about the resource implications of the proposed scheme does an acquiring authority need to provide?”**

In preparing its justification, the acquiring authority should address:

a) sources of funding - the acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme for which the land is required. If the scheme is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty that the necessary land will be required, the acquiring authority should provide an indication of how any potential shortfalls are intended to be met. This should include:

- the degree to which other bodies (including the private sector) have agreed to make financial contributions or underwrite the scheme; and
- the basis on which the contributions or underwriting is to be made

b) timing of that funding - funding should generally be available now or early in the process. Failing that, the confirming minister would expect funding to be available to complete the compulsory acquisition within the statutory period (see section 4 of the Compulsory Purchase Act 1965) following the operative date, and only in exceptional circumstances would it be reasonable to acquire land with little prospect of the scheme being implemented for a number of years.”

40. As to dealing with impediments to the scheme, the CPO Guidance provides at para. 15:

**“15. How does the acquiring authority address whether there are any other impediments to the scheme going ahead?”**

The acquiring authority will also need to be able to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation. These include:

- the programming of any infrastructure accommodation works or remedial work which may be required; and
- any need for planning permission or other consent or licence

Where planning permission will be required for the scheme, and permission has yet to be granted, the acquiring authority should demonstrate to the confirming minister that there are no obvious reasons why it might be withheld. ...”

41. Consistently with the CPO Guidance, the Inspector’s pre-inquiry note dated 17 January 2020 indicated that he wished the evidence to this inquiry to address:

- (1) Whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area;
- (2) The extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area;
- (3) Whether the purpose for which the Applicant is proposing to acquire the land could be achieved by any other means, including consideration of the appropriateness of any alternatives suggested;
- (4) The financial viability of the scheme and whether there is a reasonable prospect that the scheme will proceed; and
- (5) The purposes of the CPO must also justify the interference with the human rights of those with an interest in the land affected.

## **Consistency with planning policy**

### ***The development plan***

42. STDC can demonstrate that the purpose for which the Order Lands is being acquired fits in with the adopted development plan for the area (Inspector's point (1)) and has the support of s. 38(6) of the 2004 Act and para. 11 of the NPPF.
43. The development plan for the Redcar and Cleveland area, within which the STDC Area is located, comprises:
  - (1) The RCLP<sup>16</sup>;
  - (2) The Tees Valley Joint Minerals and Waste Core Strategy DPD<sup>17</sup>; and
  - (3) The Tees Valley Joint Minerals and Waste Policies and Sites DPD<sup>18</sup>.
44. The key strategic policies in the RCLP are as follows:
  - (1) Policy LS4 South Tees Spatial Strategy<sup>19</sup> sets out RCBC's aims for a wider South Tees area, which includes the STDC Area. The policy supports, inter alia, the delivery of significant economic growth through STDC and the regeneration of the STDC Area. It also provides specific support for the existing steel industries, alongside the expansion of the port and logistics sector, the environmental, recycling and offshore energy sectors and the expansion of the road network to unlock development potential at South Tees. It also aims to secure the decontamination and redevelopment of potentially contaminated land, and to protect European sites and enhance the environmental quality of the River

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<sup>16</sup> [CD/D/2]

<sup>17</sup> [CD/D/4]

<sup>18</sup> [CD/D/5]

<sup>19</sup> [CD/D/2], p.67.

Tees and coastline.

- (2) Policy ED6 Promoting Economic Growth<sup>20</sup> allocates land for specialist employment uses, such as heavy processing industries and port logistics in the South Tees Area and supports development proposals falling within Use Classes B1, B2, B8 and suitable employment related sui-generis uses. The allocation covers most of the STDC area (with the exception of the Coastal Community Zone).
45. Both policies make specific reference to the need for developments to have regard to, and to meet the requirements of the South Tees Area SPD, as well as to STDC's preparation of the Master Plan (see below).
46. The RCLP inspector had required the modification of LS 4 to reflect the objectives of STDC and stated [CD/D/11]:
- “15. The need to promote economic development and address higher than average levels of unemployment apply across the Tees Valley. As a result, the issues are dealt with at a sub-regional level by Tees Valley Unlimited ('TVU'), and more latterly, the Tees Valley Combined Authority. Redevelopment of sites such as the SSI Redcar Steelworks is overseen by the Combined Authority and the South Tees Development Corporation ('STDC'), which is a Mayoral Development Corporation created by the Tees Valley Mayor. The Council is actively engaged with the STDC to ensure that the Plan provides a positive framework for the regionally-significant site.
- ...
62. I appreciate that there are local policy-led initiatives aimed at increasing employment. The Tees Valley Strategic Economic Plan ('SEP') aims to generate 25,000 net new jobs across the Tees Valley, with around 215 new jobs per year in Redcar and Cleveland. In addition, following the examination hearing sessions the draft South Tees Master Plan Supplementary Planning Document ('SPD') was published for consultation. It is based on the South Tees Regeneration Master Plan 'Building our Industrial Strategy' which seeks to create 20,000 new jobs. The Government has also committed to providing financial support to facilitate the regeneration of South Tees.
63. But neither are short-term initiatives. Due to the scale of site assembly, demolition, remediation and infrastructure required, the emerging South Tees Master Plan SPD states that the project will be realised over the next 15-19+ years. A similar, longer-term view was shared by the STDC at the examination hearing sessions. When taking into account the considerable amount of work required to successfully regenerate the area, the level of job growth identified will not be realised in the short-term future.
- ....
222. The wider spatial strategy for South Tees is set out in Policy LS4 and confirms how the Council and its partners aim to regenerate the area. One of the main barriers to investment is the current road infrastructure. Safeguarding the route for an extension to Dockside Road is therefore justified. However, to reflect the latest position several MMs are required to ensure that the Plan is up-to-date (MM16, MM17 and MM127).”
47. The two Minerals and Waste DPDs were adopted in September 2011 and therefore limited weight should be given to them. Any conflict between the earlier DPDs and the RCLP must be resolved in favour of the more recent RCLP: see s. 38(5) of the 2004 Act.

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<sup>20</sup> [CD/D/2], p.94.

### ***The NPPF***

48. The following NPPF policies are relevant to this CPO:
- (1) The promotion of planning policies and decisions to help create the conditions in which businesses can invest, expand and adapt (paragraph 80);
  - (2) Para. 81 sets out a clear strategy for planning policies to help build a strong and competitive economy including a requirement to:
    - “a) set out a clear economic vision and strategy which positively and proactively encourages sustainable economic growth, having regard to Local Industrial Strategies and other local policies for economic development and regeneration.”
  - (3) Para. 118 gives “substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land”;
  - (4) Para. 119 promotes “opportunities to identify and facilitate land assembly, supported where necessary by compulsory purchase powers, where this can help to bring more land forward for meeting development needs and/or secure better development outcomes.”

### ***The South Tees Area SPD***

49. The South Tees Area SPD<sup>21</sup> was adopted in May 2018. It supports the above policies of the RCLP<sup>22</sup>. The “South Tees Area” is the STDC Area. It is informed by the Master Plan and supports the economic and physical regeneration of the STDC Area. It sets out the vision and core objectives for the area and provides greater detail on how planning policies will be interpreted.
50. The SPD contains a series of Strategic Development Principles to guide planning applications associated with the redevelopment of the STDC Area. They are discussed in detail in AG’s Proof at para. 4.38 onwards, and comprise:
- (1) STDC1: Regeneration Priorities;
  - (2) STDC2: Land Assembly and Delivery;
  - (3) STDC3: Phasing Strategy;
  - (4) STDC4: Economic Development Strategy;
  - (5) STDC5: Transport Infrastructure;
  - (6) STDC6: Energy Innovation;
  - (7) STDC7: Natural Environmental Protection and Enhancement;
  - (8) STDC8: Preserving Heritage Assets;
  - (9) STDC9: Site Remediation;
  - (10) STDC10: Utilities.
51. There are then a series of Site Specific Development Principles (STDC11 – STDC15) in respect of

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<sup>21</sup> CD/D/3

<sup>22</sup> Policy LS4(b) & (f) refer to the SPD [CD/D/2] p.67

each “development zone” within the STDC Area<sup>23</sup>.

### ***The Master Plan***

52. The Master Plan<sup>24</sup> is the critical document setting out STDC’s vision for the STDC Area. The preparation of the Master Plan is referred to in the RCLP itself<sup>25</sup>. The content and purpose of the Master Plan will be covered in detail in the evidence of JM. It has been endorsed by STDC’s Board as the basis for its decision-making to deliver industrial-led regeneration of the STDC Area. It is closely aligned with the policy framework in the RCLP and the SPD<sup>26</sup>.
53. In compliance with para. 132(v) of the CPO Guidance, STDC therefore has a “comprehensive regeneration scheme” set out in the Master Plan. The quality of the vision set out in the Master Plan is high, seeking to transform the STDC Area into “a world class employment-generating zone and economic growth enabler for the Tees Valley”<sup>27</sup>. The vision is to create up to 20,000 new jobs, with a focus on “higher-skilled sectors and occupations, centred on manufacturing innovation and advanced technologies”<sup>28</sup>. In addition, “the Vision is underpinned by the aspiration for new development to deliver a high value, low carbon, diverse and inclusive circular economy”<sup>29</sup>.

### **Contribution to well-being of the area**

#### The recent history and current state of the land, and the need for regeneration

54. As required by para. 132(i) and (iv) of the CPO Guidance, STDC has demonstrated that the land is in need of regeneration: see the evidence of JM on the condition and characteristics of the Order Lands, and section 2 of the Master Plan entitled “South Tees Existing Conditions”. The land includes large areas of non-operational industrial land and declining infrastructure assets. The recent history has seen a decline in the state of the land since the liquidation of SSI. As a result of certain former uses, major remediation is required<sup>30</sup>. According to recent assessments of the economic viability of re-starting iron and steel-making using the existing facilities<sup>31</sup>, the assets are typically over 40 years old and have not seen major investment since 2000. Major works would be needed to enable their re-use the enormous expense of which (just a little under £1 billion) would render it unviable to do so<sup>32</sup>, though that does not mean that more modern steel-making would not be supported elsewhere in the STDC Area.

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<sup>23</sup> See the plan of the development zones in the Master Plan, p.79 [CD/F/2]

<sup>24</sup> [CD/F/2]

<sup>25</sup> See para. 3.27 [CD/D/2] p.67. The launch of the Master Plan process (October 2017) predated the adoption of the RCLP (May 2018).

<sup>26</sup> See AG’s Proof, para. 5.8-5.9.

<sup>27</sup> Master Plan [CD/F/2], p.10

<sup>28</sup> Ibid, p.16

<sup>29</sup> Ibid, p.16

<sup>30</sup> CD/F/2, Master Plan, p.54, para. 2.11.3.

<sup>31</sup> See DA’s Rebuttal STDC1/4

<sup>32</sup> See DA Rebuttal STDC1/4 Appendix 3 (and Appendix 4).

55. As JM explains -

“the SSI land is ... dominated by large scale industrial plant and facilities in a declining, poor structural condition, presenting, not just to the former SSI land but adjoining land also, many health and safety hazards and constraints requiring continued site management in order to mitigate risk”<sup>33</sup>.

As described above, by virtue of the hazardous substances inventory, the land is designated as a top tier hazardous site under the Control of Major Accident Hazards Regulations ("COMAH") and remains a significant management liability.

56. The situation left behind by SSI has necessitated extensive financial intervention by the Government in the form of the SSI Task Force (supporting those who lost their jobs) and STSC, who undertake the “Keep Safe” functions of site management, safety and security<sup>34</sup>. The “Keep Safe” operation is being undertaken at the expense of the public purse, with no financial assistance (and no scope for cost recovery) from SSI.

57. As STDC’s witnesses will explain, the current state of the land precludes small-scale, isolated development on discrete land parcels, which would not prove attractive to the market and would have major viability problems. As JM states in his Proof of Evidence<sup>35</sup>:

“The co-existence of potential new uses on already acquired land, with the neighbouring relic industrial structures and redundant land that characterise the former SSI estate, would not make for a compelling proposition to investors; a situation that would be compounded by the constraints imposed by the existing CoMAH Upper Tier status allocated to the former SSI estate and the extensive array of former SSI overland redundant pipework infrastructure that traverses development land within STDC ownership. Further, endeavouring to locate new uses adjacent to structurally deteriorating, aged assets, presents major risks and introduces additional complexities in how such uses are realised and configured. Falling debris from the existing plant and facilities is a routine occurrence on the former SSI estate, especially in adverse weather conditions, such as metal sheeting becoming detached from buildings during periods of high winds. This would result in neighbouring new developments being located further away from existing redundant uses and developable land being undesirably sacrificed to achieve safe working distances and stand-off areas, impacting overall viability of the development proposition.”

## **The benefits of the Scheme**

58. The Inspector’s second point requires STDC to demonstrate “[t]he extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area”. The benefits are dealt with in STDC’s evidence and can be summarised as follows<sup>36</sup>:

### **(1) Economic**

(a) Based on initial estimates, and through the delivery of the Master Plan objectives and

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<sup>33</sup> STDC2/2, para. 2.17

<sup>34</sup> STDC2/2, para. 2.23

<sup>35</sup> JM Proof STDC2/2, para. 2.52

<sup>36</sup> JM Proof STDC2/2 para. 3.20. See also AG Proof, section9.

related development densities, the creation of up to 20,000 new jobs.

- (b) A shift in employment focus towards higher skilled sectors and occupations, centred on manufacturing innovation and advanced technologies, and those industries best able to deliver sustained economic prosperity for the Tees Valley and its people, while realising a jobs spectrum that offers opportunities for all.
- (c) Through the shift in jobs typology, a raising in the average wage in the Tees Valley to a level much closer to the UK national average (presently at around 80% of the UK national average).
- (d) The generation of an additional minimum GVA figure into the Tees Valley economy of £1.0 billion per annum.
- (e) The creation of a high value, low carbon, diverse and inclusive circular economy for the Tees Valley, that is optimally positioned to deliver sustained economic growth long into the future.
- (f) Expansion in deep-water port facilities on the River Tees through the development of a further 2.0 kilometres (1.2 miles) of new berthing capacity, not just to serve the STDC Area, but the wider Tees Valley and further afield.
- (g) The creation of 25 miles of new, modern highways infrastructure, and up to 30 miles of freight railway infrastructure improvements.
- (h) Major opportunities for lower cost, on-site power generation and provision into an STDC Area-wide private wire network, serving new large power consumers, where resilience of supply and economically viable power purchasing is key.
- (i) Improved accessibility to Teesport, the sixth largest port in the UK (based on most recent statistics).
- (j) Reinforced links with Wilton International and other major industrial operations in the South Tees area, augmenting and supporting their own economic growth plans.
- (k) A strengthened profile of the Tees Valley in the global marketplace as a major UK destination for industry, innovation and manufacturing excellence.

## **(2) Social and Community**

- (a) Major opportunities for a significant change in the learning and skills agenda in the Tees Valley, working with educational institutions and local training providers to plan and deliver an appropriately skilled workforce, ensuring the employees of the future have the skills necessary to access employment in areas of new and emerging technologies within the advanced manufacturing, energy, and renewables sectors, linked to the establishment of clear targets for job creation, improving skills attainment, and the recruitment of local labour, with a key objective being the retention of local talent.
- (b) Improved transport infrastructure across all modes, providing better connectivity to local towns, and enabling local people to more easily access new employment



opportunities on South Tees.

- (c) Improved connectivity with Redcar town centre, increasing footfall, boosting the town's economy, and enabling overall town centre regeneration.
- (d) Growth in local businesses across many sectors, through the increased economic activity in the locale, benefitting supply chain service providers and the wider service sector.
- (e) An enhanced destination profile and brand for the STDC Area, Redcar and the wider Tees Valley, both nationally and internationally, at the same time enabling an improved leisure and tourism offer.
- (f) The provision of opportunities for improved leisure and amenity through the creation of a high-quality large-scale destination that incorporates an appropriate complement of public realm and community uses, including the improvement and bringing back into more beneficial use, existing public rights of way and coastal assets, augmented by the retention of industrial heritage features, creating a genuine sense of place on South Tees, where industry, community uses and environmentally-designated spaces co-exist and are successfully integrated.

**(3) Environmental**

- (a) Environmental improvement to around 2,300 acres (920 hectares) of derelict, former industrial brownfield land.
- (b) Decontamination and demolition of an extensive array of redundant, hazardous industrial assets with the materials arising therefrom being recycled.
- (c) Establishment of industrial end uses that fit within a low carbon and circular economy, embracing opportunities for CCUS.
- (d) Clean energy generation on a major scale and 'Clean Growth' in the economy, reducing industrial pollution, ensuring long-term environmental sustainability.
- (e) Ecological habitat mitigation and improvement, creating new bio-diversity habitats and habitat corridors, and the implementation of sustainable, long-term habitat management strategies.
- (f) The creation of high quality public open spaces and strategic landscaping, as part of an integrated, Area-wide strategy.

**Alternatives**

59. Para. 132(ii) of the CPO Guidance requires consideration of "what alternative proposals (if any) have been put forward by the owners of the land or other persons for regeneration" (item (3) in the Inspector's list of issues). Para. 135 of the CPO Guidance provides:

"Where the owners of land or other parties have their own proposals for the use or development of land contained within an order, it will be necessary for the Secretary of State to consider whether these are capable of being or likely to be, implemented, taking into account the planning position, how long the land has been unused, and how the alternative

proposals may conflict with those of the urban development corporation.”

60. The mere existence of an alternative proposal, even one that is less intrusive of individual rights, is insufficient to undermine the justification for a CPO. As Maurice Kay LJ stated in **R. (Clays Lane Housing Cooperative Ltd) v. Housing Corp** [2005] 1 WLR 2229 at [25]:

“If ‘strict necessity’ were to compel the ‘least intrusive’ alternative, decisions which were distinctly second best or worse when tested against the performance of a regulator’s statutory functions would become mandatory. A decision which was fraught with adverse consequences would have to prevail because it was, perhaps quite marginally, the least intrusive.”

61. Only one objector to the Order, SSI, advances what are said to be alternative proposals. Despite the significant period of time available to SSI, the proposals are made for the first time in their Proofs<sup>37</sup>. There are three suggested alternatives<sup>38</sup> but none is supported with sufficient detail or certainty:
- (1) The expansion of the operations of RBT, whose land lies outside of the Order Land, onto Plot 1 the Order Lands (which is adjacent to RBT’s land<sup>39</sup>);
  - (2) Re-start steelmaking on the SSI land using the existing facilities;
  - (3) Selling the SSI land for an off-shore wind farm development.
62. STDC has produced rebuttal evidence to demonstrate that SSI has failed to show how any of these alternatives is “capable of being or likely to be, implemented” and can be accommodated consistently with STDC’s proposals.
63. Taking each proposal in turn:
- (1) The RBT expansion proposal<sup>40</sup> is premised on an alleged operational need for RBT to expand onto the Order Land, but there is no such need. RBT’s current land is more than adequate to accommodate their operations<sup>41</sup>. In any event, nothing more than a very basic concept is identified by SSI. There appears to be an inconsistency between the evidence of DP and PR as to how much of the SSI land is required for SSI’s scheme, which is further indicative of the proposal being poorly drawn up.
  - (2) The re-starting of steel-making on the SSI land likewise has not been properly analysed or supported by evidence by SSI. Steel-making has not taken place on the SSI land for 4.5 years. DP assumes that no operational development would be required to re-start steelmaking, but SSI have significantly underestimated the cost and works that would be involved in such an endeavour, as demonstrated by the specialist viability evidence obtained by STDC and appended to DA’s Rebuttal. In summary, the works likely to be

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<sup>37</sup> See the Proofs of SMH, PR and DP.

<sup>38</sup> PR Proof, section 8

<sup>39</sup> SSI have acquired 100% of the shares in RBT – see SMH Rebuttal at para. 4.4.

<sup>40</sup> Note that New British Steel shares in RBT are to be acquired by SSI: SMH Second Statement para. 4.4. The proposal now appears to be that Jingye wishes use RBT in connection with its proposed acquisition of Scunthorpe plant and an extension to the right of pre-emption is to be obtained to assist in realising this.

<sup>41</sup> JM’s Rebuttal STDC2/4, paras. 3.10-3.17.

required are: replacement of the basic oxygen steelmaking vessels; a full rebuild of the main coke oven batteries; a full replacement of the by-products plant; erection of a new coke making facility to meet latest environmental standards; erection of a new sinter plant to meet current environmental legislation; a full rebuild of the blast furnace; and significant repairs to other assets. As noted the estimated cost is close to £1bn. In addition, as AG explains in his Rebuttal, there is some confusion among the witnesses of SSI as to how much of the SSI land will be required, and a failure by SSI to consider (at all) the implications that the re-starting of steel-making might have for the rest of the STDC Area in terms of undermining a comprehensive strategy on infrastructure, remediation and other matters, and being an incompatible use in that format.

- (3) The wind farm proposal is not the subject of any evidence by DP, which is suggestive that it is not a serious proposal. It has, like the other alternatives, not been properly supported or evidenced by SSI.
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64. Aside from the inadequacies of the proposals, there is a wider point about the impact that SSI going it alone would have on the overall deliverability of the Scheme. STDC's witnesses have addressed in their Proofs, within the scope of their particular evidence, the implications of failing to bring the Order Lands within the comprehensive control of STDC, and in particular the effect that separate development on the SSI land would have. It would have implications for marketability and viability (see the evidence of GG, JK and DAM), and would prevent the development and regeneration of the STDC Area in line with the Master Plan. The SPD and the Master Plan both make it clear that comprehensive rather than piecemeal development is critical to the overall scheme. STDC's ambitions for the STDC Area are holistic, focusing on physical, economic and social regeneration and the delivery of the Master Plan as a whole. The linkages with transport, technology, innovation and the skills agenda are all vital and the alternatives are silent on these aspects.
  65. It is revealing that SSI have only very recently attempted to formulate an alternative proposal, having failed to engage in the masterplanning process for the STDC Area that has been running since 2017. As is explained in the "negotiations" section below, SSI's failure to properly enter into discussions with STDC about their land (for example by not offering a valuation of their land, while being content to challenge STDC's own valuations) is indicative of them only having just woken up to the process.
  66. The Inspector is also required under para. 135 of the CPO Guidance to consider "how long the land has been unused". In this case, the SSI land has lain dormant since September 2015, and not until January 2020 has there been any proposal put forward by SSI.
  67. The Inspector will therefore in due course be invited to reject SSI's case on alternative proposals.
  68. In comparison with those alternatives, the acquisition of the Order Lands by STDC would at least "on balance" (see para. 132(iii) of the CPO Guidance) significantly increase the likelihood of regeneration coming forward, because it would enable a comprehensive scheme under

common ownership to be brought forward, in realisation of the Master Plan. As GG<sup>42</sup> and JK explain, the comprehensive nature of STDC's proposals if the CPO were confirmed is a major attraction from the perspective of the industrial end user and investment markets respectively.

## **Negotiations**

69. STDC has made every effort to acquire land by agreement as advised by the CPO Guidance so as to avoid the need to rely on powers of compulsory acquisition.
70. The evidence on STDC's efforts at negotiation will be given by MK<sup>43</sup>, DA and JM, who will show the steps that have been taken to negotiate with affected parties since before commencing the formal compulsory purchase process.
71. SSI alleges a failure to negotiate meaningfully in respect of acquiring their land interests (and a related allegation of a failure to provide sufficient information to enable SSI to negotiate). This allegation is addressed and rejected in the Rebuttal Proofs of DA, JM and MK<sup>44</sup>. Indeed, the allegation is not credible in any event in the context of the objectives of STDC and it is clear from the approach with other objections that serious efforts have been made, and are continuing to be made, to negotiate with landowners.
72. Indeed, a fair consideration of the evidence leads to the clear conclusion that the lack of willingness to engage seriously has been on SSI's side who have at no time put forward even their own valuation case as a basis for negotiation and have not even permitted their own valuers to engage in meaningful discussions. They have come forward at a very late stage with unformed proposals, having failed to act in previous years. SSI seeks to make something about cultural differences in SMH's evidence<sup>45</sup>. Even if this were of any substance in the context of money lent for operations within the UK, nonetheless this CPO is being brought forward here under our legal system and SSI has engaged sufficient expert advisers, legal and otherwise, to advise SSI and the Banks of what is required and expected under English law and policy.
73. Regarding the objections by Tarmac and Highfield, this is covered in the Proof of Evidence and Rebuttal of MK<sup>46</sup>. In summary, Tarmac's contention that STDC has failed to address through negotiation the need for relocation of their business is invalid. Many of the issues raised by Highfield fall outside the scope of this inquiry, e.g. adjusting boundaries in their favour: see MK's Rebuttal STDC8/4 paras. 4.3 – 4.14. Other objections are address in MK's evidence/

## **Funding and Viability**

74. Item (4) in the Inspector's list of evidence is "[t]he financial viability of the scheme and whether there is a reasonable prospect that the scheme will proceed". This relates to paras. 13, 14 and

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<sup>42</sup> STDC5/2

<sup>43</sup> MK Proof STDC8/2

<sup>44</sup> See also Gowling's letter dated 19 December 2019 responding to the issue of information provision: Appendix 1A to PR's Proof, p.195.

<sup>45</sup> SMH Proof, para. 6.17

<sup>46</sup> STDC8/2 and STDC8/4

134 of the CPO Guidance above.

75. This aspect of STDC's case in support of the Order can be divided into:

- (1) The financial model for the Scheme;
- (2) The market demand among potential end users;
- (3) The demand among private investors;
- (4) The overall viability of the Scheme.

***Financial model for the Scheme***

76. The sources and timing of funding for the Scheme (the two elements required by para. 14 of the CPO Guidance) will be addressed in the evidence of GM. He will explain by reference to STDC's financial model that, as required by para. 13 of the CPO Guidance, "all the necessary resources are likely to be available to achieve [the Scheme] within a reasonable time-scale". For a scheme of this scale, the timescale is self-evidently significantly longer than for many other compulsory acquisition scenarios.

77. In summary, the financial model presented by GM<sup>47</sup> highlights the following:

- (1) The enormous scale of public funding, both from:
  - (a) TVCA through their Investment Plan 2019-2029 (£56.5m);
  - (b) Central Government, whose £71m commitment in regeneration funding needs to be taken together with the "Keep Safe" funding from DBEIS (over £100m), specific funding for the regeneration of a site in the South Industrial Zone known as the Prairie Site (£14m), funding for the SSI Taskforce established to support employees affected by the SSI liquidation (£80m) and the grant for STDC's operational running costs (£9m).

78. Despite the public funding being very high, it accounts for only 5% across the life of the financial model (30 years), because the remainder is to be funded by private sector investment, financing loans and direct income from the STDC Area (primarily in the form of rent).

79. The financial model is predicated on an "investment fund", through which initial capital investment for remediation and regeneration will facilitate development activity and subsequent generation of income, as the phased delivery of the Scheme unfolds.

***Market demand among potential end users***

80. To demonstrate a reasonable prospect that the Scheme will proceed, it needs to be shown that there will be a demand in the market among potential end users for participation in the Scheme. This aspect of STDC's case will be presented in the evidence of GG, who will explain that:

- (1) The Master Plan and the benefits of single overall control by STDC will provide a compelling offer to end users from many parts of the manufacturing sector;

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<sup>47</sup> GM's Proof STDC3/2, section 3

- (2) The STDC Area is unique in terms of the location and characteristics of the site, and the consistency of those characteristics with the requirements of manufacturing end users;
  - (3) The attraction of the STDC Area to the market is evident from the number and range of enquiries STDC has received prior to having even commenced formal marketing;
  - (4) The single comprehensive regeneration strategy envisioned in the Master Plan, and secured through the Order, is a critical factor in explaining the market demand;
  - (5) The alternative of fragmented development, or the loss of land within the Order Lands from the control of STDC, would risk large tracts of the STDC Area remaining undeveloped, with the remainder being occupied by a mixture of lower quality users.
81. SSI's objection needs to be approached in the light of GG's evidence on what the retention of SSI's landholdings would look like to the market. The exclusion of the SSI land from the Order Lands is wholly inconsistent with delivering the significant change, economic, environmental and social, to the STDC Area etc. Given that SSI did not engage at any stage in the master planning process or the RCLP process and given that it must have been obvious that these public processes affected its interests<sup>48</sup>, it is very late in the day for it to be advancing contrary contentions especially given the considerable amounts of public money spent on the STDC Area in the meantime. STDC was, after all, set up in the aftermath of the failure of SSI's business at Redcar.

#### ***Market demand among investors***

82. To demonstrate that the Investment Plan underpinning the financial model is realistic, JK will show how attractive the Scheme will be to the investment market. His evidence will cover the following matters:
- (1) The increasing investment focus on manufacturing and logistics real estate assets, in particular high-value manufacturing;
  - (2) The interest in large scale and long term investment opportunities of the kind envisaged in the Master Plan;
  - (3) The financial benefits in larger development schemes through clustering, asset management and placemaking;
  - (4) The development opportunity presented by STDC in the Master Plan, and how private investment funding will be available to cover what is not funded by public means;
  - (5) The importance of a single comprehensive scheme, secured by the Order, to ensuring that the offer is attractive to the investment market.

#### ***Overall viability of the Scheme***

83. To complete STDC's case on funding and viability, DAM's evidence performs a "Social Cost-

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<sup>48</sup> The RCLP, SPD and Master Plan processes were the subject of public advertisement and consultation even if, as SSI suggests in rebuttal, it was not individually notified. It seems inconceivable that if it considered its interests to have been adversely affected by the formation of STDC, the SPD or Master Plan it would not have submitted representations.

Benefit Analysis” pursuant to the Treasury’s 2018 Green Book, taking the figures for revenue and expenditure from the financial model explained in GM’s evidence. DAM will explain both the national economic benefits of the Scheme, as well as the (more significant) regional economic benefits through job creation. His evidence includes a robust assessment of the key assumptions underpinning the potential benefits, concluding that they are valid. He will show how the net benefits of the Scheme can also withstand a high level of “optimism bias” should costs overrun.

84. Overall, his evidence will demonstrate that the expected rate of return of the Scheme will be sufficiently high to attract private sector investment, consistently with the evidence of JK.
85. Like other witnesses, DAM will consider the alternative scenario of the Order Lands not being brought under comprehensive control, and the effect that this would have on the viability of the Scheme overall.
86. PR’s late and extensive criticisms in his rebuttal evidence are misplaced and misconceived, and suggest a lack of proper understanding of what has been done.

### **Impediments**

87. The CPO Guidance requires the acquiring authority to demonstrate that “there are no obvious reasons why [planning permission] might be withheld”. The CPO Guidance also requires acquiring authorities to consider other impediments, whether physical or legal.
88. As demonstrated by the evidence of AG, there are no planning or other impediments to the proposed scheme. Indeed, the Master Plan and the proposals for the STDC Area are in accordance with the Development Plan. Moreover, it is established that it is not a pre-condition for confirmation of a CPO that the underlying scheme has planning consent: see the CPO Guidance at paras. 15, 133 and 134 (above) and, e.g. ***Gala Leisure Ltd v Secretary of State for the Environment*** (2001) 82 P. & C.R. It is a matter of judgment for the Inspector to consider whether the Scheme envisaged would accord with planning policy. In this case, it is plain from the policies considered above in the Local Plan, the NPPF, the SPD and the Master Plan that the Scheme is in accordance with the planning framework. AG’s evidence addresses<sup>49</sup> the issues of EIA, HRA, the HSE Consultation Zones, access/highways, ground conditions/remediation, and also<sup>50</sup> the separate requirements to obtain other consents/licences.
89. STDC will therefore demonstrate that there are no impediments to delivering the Master Plan. The same cannot be said for SSI’s proposed alternatives, such as the suggested re-start to steel-making on the SSI land.

### **Human rights**

90. Consideration of human rights issues, principally with respect to Article 1 of the First Protocol

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<sup>49</sup> AG Proof, section 7.

<sup>50</sup> AG Proof, section 8.

ECHR is reflected in the CPO Guidance at para. 2, which provides that “the purposes for which the compulsory purchase order is made [must] justify interfering with the human rights of those with an interest in the land affected”. The issue of CPO interference with human rights has been considered in detail by the UK courts<sup>51</sup>. In all cases, the making of a CPO to acquire private interests in land must be shown to be justified in the public interest. The balance between the public interest and private rights is not only a requirement of the CPO Guidance, and English law, but reflects the position under the Human Rights Act 1998 and the ECHR. See the Annex for detailed submissions.

91. STDC’s submission is that the very significant public benefits that the Scheme provides by securing the regeneration of the Site provides a compelling case that justifies the interference with individual rights<sup>52</sup>. No objector is contending a breach of human rights.

### **Public Sector Equality Duty**

92. Section 6 of the CPO Guidance provides that acquiring authorities, in accordance with the Public Sector Equality Duty in s. 149 of the Equality Act 2010, must have due regard to the need to:
- (1) eliminate unlawful discrimination, harassment, victimisation;
  - (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
93. STDC has carried out an Equality Impact Assessment<sup>53</sup> demonstrating compliance with the Public Sector Equality Duty.

### **Compelling case in the public interest**

94. The final and overriding question that arises (see para. 2 of the CPO Guidance) is whether there is a compelling case in the public interest for the compulsory acquisition. For the reasons explained above, a clear and compelling case in the public interest exists for the confirmation of the CPO, sufficient to justify the use of compulsory acquisition.

### **Conclusions**

95. These opening submissions have sought to set out the fundamental reasons why the Order should be confirmed along with the context for the determination of objections.
96. For all the reasons set out above and in the evidence to be presented to the Inquiry:
- (1) There is a compelling case in the public interest for the confirmation of the Order which

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<sup>51</sup> See e.g. *Chesterfield Properties PLC v Secretary of State* (1997) 76 P & CR 117, *Tesco Stores Ltd v Secretary of State & Wycombe District Council* (2000) P & CR 427 at 429 and *Bexley LBC v Secretary of State* [2001] EWHC Admin 323. The approach in these cases was approved by the Court of Appeal in *Hall v First Secretary of State* [2008] J.P.L. 63, *per* Carnwath LJ at para 15.

<sup>52</sup> The issue of human rights is dealt with in detail by AG.

<sup>53</sup> [CD/G/2]



justifies the acquisition and overriding of private rights.

- (2) There are no material impediments to the implementation of the Scheme other than the confirmation of the Order.
- (3) No alternatives to the CPO Scheme as a whole exist. The planning framework requires a comprehensive approach to be taken.
- (4) The legal requirements for making the Order are satisfied.
- (5) The policy requirements in the CPO Guidance for the confirmation of the Order are satisfied.
- (6) The confirmation of the Order would be entirely consistent with, and not breach, the NPPF, the development plan, the SPD and the Master Plan.
- (7) The confirmation of the Order would be consistent with, and not breach, the human rights of the landowners affected.

97. STDC respectfully requests that the CPO be confirmed as sought.

**DAVID ELVIN Q.C.**

**MATTHEW FRASER**

Landmark Chambers,  
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11 February 2020

## ANNEX TO OPENING SUBMISSIONS

### CPO and human rights: detailed legal submissions

1. The relevant powers are contained in s. 206 of the Localism Act 2011 are found at CD/B/1.
2. Copies of the authorities can be supplied if required.
3. Consideration of human rights issues, principally with respect to Article 1 of the First Protocol, adds little, if anything, to the approach required by the CPO Guidance (which reflects consistent guidance over several decades) and by the UK courts. In all cases, the making of a CPO to acquire private interests in land must be shown to be justified in the public interest.
4. The balance between the public interest and private rights is not only a long-standing requirement now found in the CPO Guidance and English law (see below) but reflects the position under the Human Rights Act 1998 (“HRA”) and the European Convention on Human Rights (“ECHR”).
5. The pre-HRA approach is set out in *R v. Secretary of State for Transport ex parte de Rothschild* [1989] 1 All E.R. 933 and *Chesterfield Properties PLC v. Secretary of State* (1997) 76 P. & C.R. 117. As Laws J held in *Chesterfield*:

“To some ears it may sound a little eccentric to describe, for example, Kwik Save's ownership of their shop in Stockton as a human right; but it is enough that ownership of land is recognised as a constitutional right, as Lord Denning said it was. The identification of any right as ‘constitutional’, however, means nothing in the absence of a written constitution unless it is defined by reference to some particular protection which the law affords it. The common law affords such protection by adopting, within *Wednesbury*, a variable standard of review. There is no question of the court exceeding the principle of reasonableness. It means only that reasonableness itself requires in such cases that in ordering the priorities which will drive his decision, the decision-maker must give a high place to the right in question. He cannot treat it merely as something to be taken into account, akin to any other relevant consideration; he must recognise it as a value to be kept, unless in his judgment there is a greater value that justifies its loss. In many arenas of public discretion, the force to be given to all and any factors which the decision-maker must confront is neutral in the eye of the law; he may make of each what he will, and the law will not interfere because the weight he attributes to any of them is for him and not the court. But where a constitutional right is involved, the law presumes it to carry substantial force. Only another interest, a public interest, of greater force may override it. The decision-maker is, of course, the first judge of the question whether in the particular case there exists such an interest which should prevail.”

6. Under the ECHR, Article 1 of the First Protocol provides:

#### **“Article 1 Protection of property**

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

7. An interference with private property rights must be justified in the public interest. In Strasbourg terms what is described as a “fair balance” must be struck between the public

reason for acquisition and private property rights. The “fair balance” is one of the forms of “proportionality” i.e. the requirement that the decision to expropriate must be justified on the facts of the case. In **James v. UK** (1986) 8 EHRR 123 at para. 50:

“Not only must a measure depriving a person of his property pursue, on the facts as well as in principle, a legitimate aim “in the public interest”, but there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised ... This latter requirement was expressed in other terms in the *Sporrong and Lönnroth* judgment by the notion of the “fair balance” that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights (... para. 69).”

8. As can be seen, this closely corresponds with the requirements of English law and policy: see above and the CPO Guidance, especially at paras. 2 and 12 and the “compelling case in the public interest” test.
9. The ECtHR has always accorded a wide “margin of appreciation” to public authorities exercising compulsory powers. The ECtHR has refused to involve itself in detailed consideration of the merits of policy judgments. The Court said in **James v. UK** at para. 46:

“... the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues on which opinions within a democratic society may reasonably differ widely. The court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature’s judgment as to what is ‘in the public interest’ unless that judgment be manifestly without reasonable foundation.”

10. The ECtHR does not require there to be no alternative to a particular scheme in issue in order to justify compulsory purchase. See **James v. UK**, at para. 51 which, although expressed in the context of the Leasehold Reform Act 1967 (which forced landlords to sell the freehold or a long lease to certain tenants), the same reasoning applies to CPOs:

“The availability of alternative solutions does not in itself render the leasehold reform legislation unjustified; it constitutes one factor, along with others, relevant for determining whether the means chosen could be regarded as reasonable and suited to achieving the legitimate aim being pursued, having regard to the need to strike a “fair balance”. Provided the legislature remained within these bounds, it is not for the Court to say whether the legislation represented the best solution for dealing with the problem or whether the legislative discretion should have been exercised in another way ...”

11. Strasbourg considers the availability of compensation to be a relevant consideration although not an absolute requirement. In **James v. UK** at para. 54 of its judgment<sup>54</sup> (emphasis added):

“Like the Commission, the Court observes that under the legal systems of the Contracting States, the taking of property in the public interest without payment of compensation is treated as justifiable only in exceptional circumstances not relevant for present purposes. As far as Article 1 is concerned, the protection of the right of property it affords would be largely illusory and ineffective in the absence of any equivalent principle. Clearly, compensation terms are material to the assessment whether the contested legislation respects a fair balance

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<sup>54</sup> See also **Lithgow v. UK** (1986) 8 EHRR 329 at paras. 120-122 which follows the same approach and in which an attack on the means of assessing compensation was singularly unsuccessful.

between the various interests at stake and, notably, whether it does not impose a disproportionate burden on the applicants ...

The Court further accepts the Commission's conclusion as to the standard of compensation: the taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference which could not be considered justifiable under Article 1. Article 1 does not, however, guarantee a right to full compensation in all circumstances. Legitimate objectives of "public interest", such as pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value. Furthermore, the Court's power of review is limited to ascertaining whether the choice of compensation terms falls outside the State's wide margin of appreciation in this..."

12. It follows that, depending on the circumstances, the ECHR does not even require that market value (which is secured by the compensation rules under UK legislation for CPOs) be given in order for it to be sufficient. This underlines the fact that compensation is looked at by Strasbourg in broad terms. In the UK legal system the compensation code, generally based on market value and the principle of equivalence, provides compensation for losses which will be suffered by those whose interests are acquired: see e.g. the Land Compensation Act 1961.
13. Under the "principle of equivalence" a person whose property is acquired is entitled to recover no less (and no more) than the losses suffered: this includes not only the value of the land acquired but directly related consequential losses (i.e. disturbance). As Lord Nicholls expressed the principle in ***Director of Buildings & Lands v. Shun Fung Ironworks Ltd*** [1995] 2 W.L.R. 404 at 411-412 (emphasis added):

"The purpose of these provisions... is to provide fair compensation for a claimant whose land has been compulsorily taken from him. This is sometimes described as the principle of equivalence. No allowance is to be made because the resumption or acquisition was compulsory; and land is to be valued at the price it might be expected to realise if sold by a willing seller, not an unwilling seller. But subject to these qualifications, a claimant is entitled to be compensated fairly and fully for his loss. Conversely, and built into the concept of fair compensation, is the corollary that a claimant is not entitled to receive more than fair compensation: a person is entitled to compensation for losses fairly attributable to the taking of his land, but not to any greater amount. It is ultimately by this touchstone, with its two facets, that all claims for compensation succeed or fail."
14. This approach was confirmed by the House of Lords in ***Waters v. Welsh Development Agency*** [2004] 1 W.L.R. 1304 at para 1 where Lord Nicholls stated:

"1. Compulsory purchase of property is an essential tool in a modern democratic society... Hand in hand with the power to acquire land without the owner's consent is an obligation to pay full and fair compensation. That is axiomatic: *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] 2 AC 111, 125."
15. The English provisions for compulsory purchase and compensation accordingly plainly satisfy the requirements of the ECHR.
16. It has been expressly recognised by the Courts that English CPO law and procedure complies with the ECHR. In ***Tesco Stores Ltd v. Secretary of State & Wycombe District Council*** (2000) P & CR 427 Sullivan J. held at p. 429:

"I am not persuaded that either the Convention or the principle of proportionality add any

new dimension to the pre-Convention jurisprudence that is applicable to the present case.

In very broad terms, the Convention requires that a fair balance must be struck between the public interest, in the present case in securing much needed redevelopment of the Western Sector of the town, and an individual's right to the peaceful enjoyment of his possessions. Any interference with that right must be necessary and proportionate.

Although the Human Rights Act 1998 does not come into force until October 2, I am satisfied that for present purposes the Secretary of State's policy as set out in Circular 14 of 94 that a Compulsory Purchase Order should not be made unless there is 'a compelling case in the public interest' fairly reflects that necessary element of balance."

17. In **Bexley LBC v. Secretary of State** [2001] EWHC Admin 323, following the coming into force of the HRA, Harrison J. followed **Tesco** and held at para. 46 (emphasis added):

"It was accepted on behalf of the Secretary of State that, by virtue of section 22(4) of the Human Rights Act 1998, he was required to act in accordance with the European Convention on Human Rights when making his decision on 17 August 2000. It was therefore accepted that Article 1 of the First Protocol to the Convention applied in the same way as it applied to the Secretary of State's decision in the *Tesco Stores* case. The right of an individual to peaceful enjoyment of his possessions under that Article is a qualified, rather than an absolute, right and it involves a balancing exercise between the public interest and the individual's right whereby any interference with the individual's right must be necessary and proportionate. Like Sullivan J in the *Tesco Stores* case, I am not persuaded that there is anything materially different between those principles and the principles applied by the Secretary of State under Circular 14/94 whereby a compulsory purchase order is not to be made unless there is "a compelling case in the public interest". Such an approach necessarily involves weighing the individual's rights against the public interest."

18. The Court of Appeal has agreed with this approach. In **R. (Hall) v. First Secretary of State Potter v. Hillingdon LBC** [2008] J.P.L. 63 Carnwath LJ held (citing the predecessor to para. 2 and 12 of the CPO Guidance in the 2003 CPO Circular):

"The courts have accepted that this principle fairly reflects the necessary balance required by the Convention (see *R(Clays Lane Housing) v Housing Corporation* [2005] 1WLR 2229 , 2236). Where the balance depends on judgments of planning policy, the Secretary of State's decision will not be open to challenge save on conventional judicial review grounds."

19. In **R. (Clays Lane Housing Cooperative Ltd) v. Housing Corp** [2005] 1 W.L.R. 2229 Maurice Kay LJ (with whom Waller and Brooke LJ agreed) rejected the view that approach in CPO cases was displaced by the **Samaroo** approach of the "least intrusive option":

"20 The centre piece of the Strasbourg jurisprudence on this point is *James v United Kingdom* 8 EHRR 123. The European Court of Human Rights, at para 51, plainly rejected a test of "strict necessity" and emphasised "the need to strike a 'fair balance'" in relation to article 1 of the First Protocol. The speech of Lord Steyn in *Daly's* case [2001] 2 AC 532, para 27, adopts the language of "no more than ... necessary to accomplish the objective". Although *Daly's* case concerned article 8 it was no doubt because it has been authoritatively applied more generally, and specifically to article 1 of the First Protocol (see *International Transport Roth GmbH v Secretary of State for the Home Department* [2003] QB 728, per Simon Brown LJ, at para 51) that Mr Stanley accepted in the course of his submissions that "necessity" is a requirement of proportionality in the present case. His point is that "necessity" is a more flexible concept than the "strict necessity" that was rejected in *James v United Kingdom*. In particular, he submits, it does not compel and is not to be equated with the least intrusive option. To this extent, he seeks to distinguish *Samaroo's* case [2001] UKHRR 1150, another article 8 case.

21 That *Samaroo's* case is not of universal application has been accepted by this court in *Lough v First Secretary of State* [2004] 1 WLR 2557, which was concerned with the application of article 8 and article 1 of the First Protocol to a grant of planning permission. Pill LJ said, at para 49:

"The concept of proportionality is inherent in the approach to decision making in planning law. The procedure stated by Dyson LJ in *Samaroo's* case [2001] UKHRR 1150 ... is not wholly appropriate to decision making in the present context in that it does not take account of the right, recognised in the Convention, of a landowner to make use of his land, a right which is, however, to be weighed against the rights of others affected by the use of land and of the community in general. The first stage of the procedure stated by Dyson LJ does not require, nor was it intended to require that, before any development of land is permitted, it must be established that the objectives of the development cannot be achieved in some other way or on some other site. The effect of the proposal on adjoining owners and occupants must, however, be considered in the context of article 8, and a balancing of interests is necessary ... Dyson LJ stated, at para 26: "It is important to emphasise that the striking of a fair balance lies at the heart of proportionality."

Keene LJ agreeing, said, at para 55:

"the process outlined in *Samaroo's* case, while appropriate where there is direct interference with article 8 rights by a public body, cannot be applied without adaptation in a situation where the essential conflict is between two or more groups of private interests. In such a situation, a balancing exercise of the kind conducted in the present case by the inspector is sufficient to meet any requirement of proportionality."

I interpret this as signifying that what is "necessary" is driven by the balancing exercise rather than by a "least intrusive" requirement.

22 There is nothing new about interpreting the word "necessary" in a less than absolute way. In *Handyside v United Kingdom* (1976) 1 EHRR 737, para 48, the European Court of Human Rights observed that, in the context of article 10(2), "the adjective 'necessary' ... is not synonymous with 'indispensable'". It compared the position with that arising under article 6(1) where the words are "strictly necessary" and article 2(2) ("absolutely necessary"). It seems to me that it was these more rigorous tests that were rejected by the court in *James v United Kingdom* 8 EHRR 123 in the context of article 1 of the First Protocol.

23 As the word adopted by Lord Steyn in *Daly's case* [2001] 2 AC 532 was "necessary" and not "strictly necessary", I conclude that there is no real inconsistency between *Daly's* case and *James v United Kingdom*. They both allow "necessary", where appropriate, to mean "reasonably", rather than "strictly" or "absolutely" necessary. Everything then depends on the context because, as Lord Steyn reminds us, at para 28: "In law context is everything." In the present context, I do not regard what Lord Hope said in *Shayler's* case [2003] 1 AC 247 as having been intended to go further than Lord Steyn had gone in *Daly's* case.

24 I therefore focus on the context in this case. It is not a case of naked property deprivation. It is common ground that the decision of 24 June 2002 that there should be a transfer by reason of mismanagement of CLHC is unassailable. The context is one wherein a statutory regulator, HC, having unobjectionably decided upon a transfer, then had to choose between two alternatives, Peabody or TFHC. It chose Peabody.

25 In my judgment, the task in which HC was engaged was wholly different from the task of the Secretary of State in *Samaroo's* case [2001] UKHRR 1150. Having lawfully decided that there would have to be a transfer, the decision was then one between two proffered alternatives. Although not in every respect the same as a planning decision, it approximated to what Keene LJ was describing in *Lough v First Secretary of State* [2004] 1 WLR 2557, para 55, namely "a situation where the essential conflict is between two or more groups of private interests". I conclude that the appropriate test of proportionality requires a balancing exercise and a decision which is justified on the basis of a compelling case in the public interest *and* as

being reasonably necessary but not obligatorily the least intrusive of Convention rights. That accords with Strasbourg and domestic authority. It is also consistent with sensible and practical decision making in the public interest in this context. If "strict necessity" were to compel the "least intrusive" alternative, decisions which were distinctly second best or worse when tested against the performance of a regulator's statutory functions would become mandatory. A decision which was fraught with adverse consequences would have to prevail because it was, perhaps quite marginally, the least intrusive. Whilst one can readily see why that should be so in some Convention contexts, it would be a recipe for poor public administration in the context of cases such as *Lough v First Secretary of State* and the present case."

20. Accordingly, there is no breach of the HRA or ECHR in considering and, if the submissions and evidence put forward in support of the CPO are found to be soundly based, confirming the CPO.