

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

Inquiry dates: 11-14, 19-21 and 27 February 2020

Closing Submissions on behalf of the Acquiring Authority

Introduction

1. These Closing Submissions:
 - (1) adopt the same abbreviations as used in the Opening Submissions (“OS”)¹. Note that the Heseltine Report is found at CD/D/6;
 - (2) supplement the OS and are to be considered together with them and the evidence.
2. Some general points will be made first, followed by specific submissions in relation to the Thai Banks (“TBs”), Tarmac and PD Teesport (“PDT”). Sembcorp’s objection was heard at the inquiry on day 5 but withdrawn on Tuesday 25 February 2020.
3. With regard to the two objections received from parties² not notified to STDC until shortly before the inquiry commenced, there is no evidence that they have been prejudiced and they have not responded to any attempt by STDC to contact them or sought to make late representations.

General

Reasonable steps to acquire

4. STDC has made significant efforts to acquire land by agreement as advised by the CPO Guidance³ so as to avoid the need to rely on powers of compulsory acquisition. STDC were quick off the mark to give effect to the Heseltine Report, which was published in June 2016. Within 9 months, and even before STDC was formally established by the STDC Order in August 2017, the shadow STDC had met with SSI/TBs in Bangkok on 29 March 2017⁴ and were actively engaged in negotiations. Having regard to the long-running engagement described by DA and MK, and also recorded in SMH’s own evidence⁵, it cannot credibly be suggested that STDC has failed to pursue negotiated settlements in respect of the land within its area and to prepare to deliver

¹ STDC-INQ-03

² Air Products Plc/Air Products Renewable Energy Ltd and Millennium EFW Ltd.

³ CD/C/3, paras. 2 and 17

⁴ See SMH’s Appendix 10. This chronology (which is not complete since it mainly details correspondence and not meetings).

⁵ Ibid.

the Master Plan. AG's Proof details the steps taken in the delivery of the Master Plan proposals to date, with much of the remainder being contingent on CPO confirmation⁶.

5. STDC's approach to negotiations followed the well-established advice in the CPO Guidance to pursue the CPO process and negotiations in parallel, to encourage meaningful engagement. In particular:
 - (1) STDC did not simply make the Order and then negotiate. Negotiations commenced significantly in advance of the making of the Order (and even in advance of the establishment of STDC), and in a number of cases resulted in an agreed acquisition. See, for example, the major acquisition of the Tata Steel land (1,500 acres) in February 2019;
 - (2) Negotiated withdrawals of objections have occurred both before and during the inquiry, including SSI on 20 February 2020 (see below);
 - (3) The good sense of the CPO Guidance in relation to the CPO process running in tandem with negotiations has been underlined by the position with SSI and the TBs. There has been lengthy engagement going back to March 2017, with an offer of £23m (£17m without shares) being made in May 2018⁷, but with no resolution with SSI until day 6 of the inquiry;
 - (4) Notwithstanding Tarmac's complaints, it is clear that there have been serious negotiations especially since the resolution to make the CPO in July 2018 and continuing up to (and beyond) the inquiry⁸. A meeting was held in 2017 with JM, and Tarmac were written to in September 2018 and invited to instruct a surveyor and enter into discussions. Information provision in response to Tarmac's request then took place. Tarmac's criticisms need to be viewed in the context of its having a single site within a very large area involving a significant number of different interests and its stated intention to manage withdrawal. As the CPO Guidance anticipates at paras. 2 and 17, the CPO process was the catalyst for extensive and serious negotiations.

Planning policy compliance

6. Para. 132(v) of the CPO Guidance requires consideration of:

“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”
7. The comprehensive regeneration scheme articulated in the Master Plan is founded in:
 - (1) Policies LS4 and ED6 of the RCLP (see the OS at para. 44 and the examining inspector's

⁶ STDC4/2 p.36.

⁷ See e.g. Board Minutes 26.9.18 PR Appx 6 p 190 §6.4.

⁸ See p.16-19 of MK's Appendices STDC8/3

recommended modification⁹ to Policy LS4 at para. 46);

- (2) All policies of the South Tees SPD, and policies STDC1, 2 and 5 in particular, which underline the importance of achieving “the comprehensive redevelopment of the South Tees Area in order to realise an exemplar world class industrial business park” (policy STDC1, “Regeneration Priorities¹⁰”), and resisting “piecemeal development ... where this would conflict with the comprehensive redevelopment of an area that is uniquely suited to large scale uses and/or clusters of compatible uses and will positively support such a joined-up approach to redevelopment” (policy STDC1).
8. JM and AG in particular have explained in detail in their written and oral evidence the importance of comprehensive development, how the Master Plan will deliver this, and how the overall regeneration scheme would be undermined by a piecemeal approach and the removal of individual interests from the CPO. The benefits of the Scheme, which are consistent with the planning policy context, are set out at OS para. 58 but in summary constitute significant economic, social and environmental benefits for the STDC Area and beyond, not least an estimated 20,000 jobs (with a shift to higher-skilled employment) and an estimated £1bn per annum to the Tees Valley economy.
9. As will be explained below, leaving the TBs and Tarmac in place and excluding them from the Order Lands would run directly contrary to the policy ambitions of the RCLP, SPD and Master Plan to assemble the land comprehensively (see STDC 2) and realise a co-ordinated approach to infrastructure, remediation, utilities, and high-quality industrial development on what is an extremely complex site overall which will need new infrastructure if it is to succeed as a high quality industrial site.

Funding and viability

10. STDC has presented detailed evidence by GM, GG, JK and DAM on the funding for and viability of delivering the Master Plan. The position is summarised in the OS at paras. 74-86 in relation to the four different elements of STDC’s financial case:
 - (1) The financial model presented by GM based on costs advised by experts;
 - (2) The demand among end-users considered by GG;
 - (3) The demand among investors considered by JK;
 - (4) The overall viability appraisal by DAM.

Those witnesses also explained a number of points in detail in their oral evidence and responded to the detailed objections advanced in particular by the TBs.

11. STDC’s responses to the criticisms of the funding and viability position alleged by PR for the TBs

⁹ CD/D/3

¹⁰ Ibid, p.15-16.

are dealt with below.

The Thai Banks

(a) Generally

12. SSI withdrew its objection on the morning of 20 February 2020 (day 6 of the Inquiry), but the TBs – said by Richard Glover QC to be for administrative reasons – could not formally withdraw at the same time. It is expected that resolution should be achievable before a decision on the CPO objections is made. However, as explained by R Glover QC on day 6, the TBs withdrew their inquiry team (legal representatives and witnesses) and have limited their objection to their written representations, did not XX the witnesses of STDC and have not called their own witnesses to give oral evidence or to be tested by XX. They did so it having been made clear by STDC that, in the absence of with TBs’ withdrawal, it would have to continue and present oral evidence to counter the points made in the rebuttal evidence produced by SMH and PR for the TBs.
13. STDC therefore called additional evidence in chief to deal with the TBs’ outstanding objections including evidence that responded in detail to SMH and PR’s rebuttal evidence. The many questions their evidence raised (such as PR’s experience and understanding of the investment, market and economic evidence) could not be put to them since they did not give oral evidence and were not tendered for XX. The points raised in SMH and PR’s evidence was, however, comprehensively rebutted by that additional oral evidence called from all of STDC’s witnesses on 20 and 21 February. It was clear that PR had not properly understood the STDC evidence relating to finance, viability and investment, even that of GM’s costs since for example he had not seen that service charges were included in GM’s spreadsheet Appx 3A and 3B both as income and expenditure. Further examples are set out below.
14. Both SSI and the TBs confirmed on 20 February 2020 that they were not pursuing their earlier representations concerning the validity of the Order, to which STDC has already responded in writing: see para. 29 of the OS. For the avoidance of doubt (and without prejudice to STDC’s case that the Order was validly made), the STDC Board also made confirmatory resolutions at their meeting on 29 January 2020 as follows¹¹:

 “... the Board:
 i. confirm that the July 2018 resolution authorised the making of one or more CPOs without the need for a further resolution before the making of the CPOs; and
 ii. reaffirm its commitment and decision to make the CPO.”
15. By withdrawing their witnesses, this leaves the issues in the written evidence of the TBs unexplained, their evidence untested by questioning, the evidence of STDC unchallenged by cross-examination and the additional rebuttal evidence of STDC (in documents submitted to the inquiry and in XIC) completely unaddressed.

¹¹ STDC-INQ-04 (Report to Board) and STDC-INQ-05 (Minutes of Board meeting)

16. Even if the TBs' objection is not withdrawn by the date of the decision it should be given significantly reduced weight in the light of SSI's withdrawal and the inability to test the evidence by questions, despite the many disputed issues the evidence raises. Where there is conflict, STDC submits that STDC's evidence should be preferred - especially since STDC has been careful to address in rebuttals and additional oral evidence the points raised in the TBs' proofs.

(b) The effect of excluding the SSI land

17. To keep the TBs' interests in place (essentially the SSI land since they hold charges over it) would have a major adverse effect on the ability of STDC to deliver comprehensive redevelopment and to meet the objectives set out above of the RCLP, South Tees SPD and the Master Plan (in particular policies LS4 and ED6 of the RCLP and policies STDC1, 2 and 5 of the South Tees SPD – see above). JM's evidence has explained the serious implications for the balance of the STDC Area of excluding the TBs' land from the Order Lands, and AG's evidence has demonstrated how this would run contrary to the planning policy seeking to resist piecemeal development. Indeed, the need to place the Order Lands into single ownership, that of STDC the establishment of which had already been proposed, was recommended in the Heseltine Report at para. 4.6.10¹² (see OS para. 13).
18. Indeed, given the level of commitment of public funding from the Government to the STDC Area, both previously and for the future, the public interest would not be well-served by imperilling the Master Plan scheme underpinning the CPO.
19. The problems that JM and AG identify also have considerable consequences from the perspective of the market, both at the level of end-user and investor. GG explained how the former would react to the TBs' land being developed in isolation: the quality of the end-users would diminish, STDC would be much more limited in terms of the scale of sites they could offer to large size end-users, and the end-users attracted by the promise of a co-ordinated and comprehensive industrial business park would lose interest. In terms of the investor market, JK said in XIC that he would not want to take the offer to investors without the inclusion of the TBs' land¹³.

(c) Allegations of STDC's failure to negotiate

20. The general position on STDC's negotiations has already been set out above. The TBs' allegation of a failure by STDC to negotiate now has to be viewed in the context of SSI having withdrawn its objection. Notwithstanding this, the allegation is "without foundation"¹⁴ in light of the chronology of events explained by DA and MK in XIC by reference to the chronology produced

¹² CD/D/6 p. 31.

¹³ See the conclusion to his Proof STDC6/2 at para. 8.2.

¹⁴ DA XIC, day 6

by SMH¹⁵ and the reports to and minutes of the STDC Board meetings¹⁶. A reading even of only SMH's chronology at his Appendix 10 and of the STDC Board Reports and Minutes produced in PR's Appendix 6 provides a wholly different picture to that described in their evidence.

21. The evidence shows that:

- (1) Negotiations began with a meeting in Bangkok as early as March 2017, 9 months after the publication of the Heseltine Report, and prior to the formal establishment of STDC in August 2017. DA explained that STDC was "quick out of the blocks" in starting discussions because it was recognised from the outset that the SSI/TBs' interests formed a significant part of the STDC Area and a solution needed to be found;
- (2) The TBs then visited STDC in May 2017 and were given a private presentation by JM of matters which were subsequently presented in the Master Plan launched in October 2017. They therefore were given a clear picture of how STDC proposed to approach the STDC Area well in advance of the publication of the Master Plan or adoption of the SPD;
- (3) Following extensive discussions, STDC made an offer to the TBs in May 2018, accompanied by the GVA valuation report, and there were two days of meetings on 23-24 May 2018 at the British Embassy in Bangkok to discuss the offer. By this point, significant progress had been made and discussions were looking positive. As MK explained in XIC, the offer was in excess of his firm's RICS-compliant Red Book valuation, in order to try and encourage agreement to be reached and he considered there was sufficient information in order for that valuation to be properly given;
- (4) There then followed a protracted period during which STDC awaited the TBs' review of STDC's valuation, for which the TBs had eventually instructed Duff & Phelps¹⁷. MK explained in XIC that he had spent a lot of time chasing Duff & Phelps to produce a valuation, but was met with "inaction". No request was made to STDC for further information until October 2018 (following chasing by STDC and BEIS) and the request then made on 16 October 2018 appeared to be a response to those requests to respond.
- (5) STDC pressed for a further meeting, which eventually took place on 7 January 2019, followed by a three-day visit by SSI and the TBs to STDC in the same month. About the same time, STDC arranged for the information within their control to be made available electronically to the TBs (see below), and explained that other requested information which was not within STDC's control would need to be obtained from the OR and STSC. That explanation appeared to fall on (perhaps intentionally) deaf ears and had to be repeated on a number of occasions. DA explained in XIC that it appeared to be the active

¹⁵ Appendix 10 to SMH's Proof

¹⁶ See PR's Appendix 6, pp. 54, 131, 149, 167, 169, 199, 231, 276, 283, 292-293, 300 and 320. See also DA's Appendix 3 setting out the Lands Chamber contract communications.

¹⁷ SMH Appendix 10, 4th page.

participation of SSI (as opposed to the TBs) from January 2019 onwards that caused the negotiations to slow down – the clear inference being that this was done to improve their own negotiating position on compensation¹⁸;

- (6) The meeting that was finally scheduled in March 2019¹⁹ for the TBs to present their valuation opinion ended in disappointment due to the TBs' continued failure to produce their own valuation;
 - (7) With there still being no valuation response produced by the TBs, a further offer was made by STDC (excluding the RBT shares) in August 2019. DA explained that STDC had attempted to break the log-jam over valuations/compensation by offering on 9 occasions from 3.5.19 to 15.1.20 a "Lands Chamber contract" which would allow the CPO to proceed but which would leave compensation to be determined, possibly with an agreed minimum level of compensation recoverable²⁰. At no stage did either SSI or the TBs respond to this offer, not even to reject it;
 - (8) The parties agreed to valuer-to-valuer discussions, as part of an agreement by STDC to pay the TBs' professionals' fees, which were eventually scheduled for 15 November 2019. It is difficult to regard what happened as a proper or professional response to what had been agreed. JM and MK attended, but PR explained that he was not there as a valuer and that in future negotiations were to be directed through solicitors. Instead, further information requests were made for documents which had already been provided by STDC back in early 2019 (or indicated to be outside of STDC's control). See below;
 - (9) Despite all the information provided, the lengthy period of discussions, and all of the chasing by STDC, at no point in the negotiations have the TBs produced their own valuation or sought to negotiate over value. Their representatives have hidden behind flimsy and repeated excuses that there was insufficient information. It is difficult to see how the TBs can have rejected STDC's offer of £17m (which MK said was in excess of the GVA/Avison Young base valuation under the compensation code) without having a good idea of what they considered the value to be. Even if the only concern was to seek to drive up the offer to offset significant lending to SSI by the TBs, there was no engagement over values.
22. Having regard to this course of dealing, supported by SMH and PR's own evidence in their appendices, it cannot be said that STDC has failed to negotiate with the TBs. MK was clear in XIC that "without question" PR had been supplied with sufficient information to enable a valuation exercise to be undertaken, and that he suspected the only reason the TBs would not engage on valuation was that they were unable to properly dispute the valuation by STDC. MK

¹⁸ See Board Minutes of 15.1.19 PR Appx 6 p 276 §6.1 – "It is clear that SSI (Thailand) is now back in the game and seeking to drive up value which is in conflict with the MOU with the Banks..."

¹⁹ Note the Report for the Board Meeting on 27.3.19 (PR Appx 6 p. 291 at 292) which expected a discussion of valuations on 29 March though it did "not expect any agreement on value" (§5.3).

²⁰ See DA's Appx 3.

questioned whether PR, in saying he lacked sufficient information and imaintaining his view that STDC had not conducted meaningful negotiations, fully appreciated his professional obligations as an independent expert to the inquiry. There are certainly a number of serious questions concerned with these matters that would have been put to him in XX had he given oral evidence.

23. In conclusion, as DA made clear, and STDC's actions with other landowners demonstrates, it was STDC's clear aim to engage and reach agreement wherever reasonably possible. It is the TBs (and SSI) which failed to engage in reasonable negotiations and their approach appears to have been clearly one of prevarication – perhaps as a result (as MK suggested) that their advisers were aware of the limited value of their properties. By no stretch of the imagination can STDC be fairly criticised for a failure to negotiate and seek to acquire by agreement as advised by the CPO Guidance.

(d) Allegation of STDC's failure to provide information

24. These criticisms are as ill-founded as the allegations regarding failure to negotiate and appear to be motivated by the same tactical approach. The TBs contend there has been a failure by STDC to provide information so that they could come up with their own valuation.
25. This has been dealt with in detail in the written and oral evidence of JM and MK. JM's Rebuttal at paras. 2.5-2.11 sets out the position on information provision and, in response to further complaints in PR's Rebuttal, JM went through in XIC a further bundle of documents²¹ he produced to the inquiry (and explained on day 6) to rebut TB's contentions:
 - (1) Appendix A exhibits a list of all the files stored in the OneDrive domain that was shared with the TBs from February 2019;
 - (2) Appendix B sets out the access permissions, including to PR and SMH;
 - (3) Appendix C exhibits email correspondence regarding information provision and access to the domain;
 - (4) Appendix D contains legal correspondence on information provision – the email dated 4 December 2019 from Gowling to Mishcon de Reya encloses a useful table setting out in one place STDC's response on the various information requests. The table was compiled by PR and sent through Mishcons and the response sent by Gowlings added a response column from JM. As JM explained, the responses fell into one of four categories: (a) the information had already been provided; (b) the information was not controlled by STDC and was instead controlled by the OR or STSC; (c) the information does not exist; (d) the information (in a few limited cases) was provided as part of the response;
 - (5) Appendix E contain correspondence between JM and PR on information provision and negotiations.

²¹ STDC-INO-08

26. Overall, JM said in XIC that the contention of the TBs regarding information provision was “without foundation”. Moreover, as MK said in his evidence on day 7, he considered there was sufficient information to provide a Red Book valuation (as GVA did) in May 2018 and that the information provided to the TBs had not omitted anything of significance to that relied on by GVA. Indeed, more was provided as JM and the documentation makes clear.
27. The allegations should be rejected since they were plainly a negotiating tactic to avoid the TBs’ valuers having to advance a valuation in negotiations which, as set out in the previous section, they failed to do at any time. It is to be inferred, as MK suggested, that this occurred because of the low value to be ascribed to their interests and it may also be inferred they may not have wished to accept this or to advance values which could easily be criticised by STDC’s experts.

(e) Funding/viability criticisms

28. STDC’s evidence on this issue has not been seriously challenged at the inquiry. PR’s Rebuttal on matters of marketing, investment finance, financial modelling and economic assessment must be viewed in the context of his apparent lack of suitable expertise to challenge the professional evidence of GM, GG, JK and DAM, apparent from his many errors and misunderstandings. He did not attend, as noted, to explain himself.
29. The specific points in PR’s Rebuttal were all addressed in XIC as follows:
 - (1) GM went through his evidence on the model in detail, explaining each individual element within it on the income and expenditure side. He has also produced a comprehensive tabular response²² to the points taken by PR against his evidence in PR’s Response Evidence. He explained his rebuttal of PR in his XIC, and demonstrated that PR’s criticisms are invalid, mostly because they misunderstand the model. PR had failed, for example, to understand the true position with service charges, the scrap value of the steel plant or the fact that agreement has already been reached by both central and local government as to STDC sharing in rates revenue but that the mechanism had not been put in place yet;
 - (2) GG likewise rebutted the concerns raised by PR about his evidence of end-user demand. In summary -
 - (a) GG explained that he would not expect to have seen any of the many enquiries translate into completed transactions bearing in mind the continuing CPO process, and that further approaches to STDC have continued to be made during the course of the inquiry. Moreover, a number of serious inquiries (about 7 or 8) are well-advanced as JM explained in XIC, although the details remain confidential;
 - (b) PR’s attempt to distinguish the STDC Area from other manufacturing parks on the basis of business rates relief had no merit because the benefit to end-users of that

²² STDC-INV-09

relief is over-stated by PR²³ and he does not appear to have understood the limitations on the relief (both in time and scale) or that they may not be as attractive as other incentives which do not reduce rates, but which fall to be aggregated against a total cap imposed by state aid rules;

- (c) PR's suggestion that the UK's past performance on inward manufacturing investment would not continue in the future was unsubstantiated by any evidence, and is not borne out by the numerous international enquiries received by STDC.
- (3) JK's evidence on the interest that investors would have in the Scheme was effectively unchallenged by PR, as JK explained in XIC. PR's only criticisms were shown to be misplaced -
- (a) PR failed to understand that a Public Works Loan Board application would not be expected to have been made at this stage, and JK said there was no reason why it would not be successful. In any case, the model was not dependent on a PWLB grant. Even if the application failed, JK's extensive knowledge and experience of the investor market led him to be confident that alternative private funders would be queuing up to fund the Scheme;
 - (b) PR did not recognise that the potential Free Port designation had not been assumed in the financial model and that, if it were, it would carry significant benefits (including higher rental values) that would off-set any consequential rates relief.
- (4) DAM explained in XIC that PR's criticisms and his analysis to produce a significantly reduced IRR was based on mistaken understanding of the model and DAM's assumptions and was "economically illiterate". Like GM, he confirmed that the increase in rental values was not due to inflation but instead reflected the ability to charge higher rent as occupancy levels grew and the quality of the surrounding site evolved (a "real" price increase). This was part of a general misunderstanding of the difference between "nominal" and "real" values which DAM explained – pointing out that GM's Appendix 3B was produced on a "real" basis without inflation which was required for modelling purposes. DAM also agreed with GG that PR had significantly overstated the importance of business rates relief to end users. With regard to para. 3.77 of PR's Response Evidence, DAM said that he had not seen any viability evidence presented by the TBs to support PR's claims, and that their proposed private sector development would not benefit from the same economic factors supporting STDC's scheme. DAM described PR's own IRR analysis as "absolute nonsense" and "wholly unreliable".
- (5) There seemed to be little understanding by PR that DAM's economic analysis built in several very conservative assumptions including a very high optimism bias and PR's

²³ See p.3 of GM's response table at STDC-INQ-09

evidence appeared to be little more than a haphazard attempt to inflate costs and drive down revenue. PR's evidence ignored the key benefits of the Scheme in creating jobs in a disadvantaged area, and instead focused on questioning the revenues the Scheme would generate. He did not even appreciate that the latest DBEIS/Treasury award of £71 million had been based, as DA and GM explained, on a very detailed business case provided to DBEIS last Autumn and subject to discussions and probing thereafter. It was naïve of him to treat standard conditions imposed by DBEIS on funding as an indication that it had made the offer without detailed justification.

30. There is therefore no basis for treating the assessment of the viability of the scheme underlying the CPO as suspect or of treating this as a reason why the CPO is unlikely to be implemented.

(f) The Thai Banks' suggested alternatives

31. The OS set out at paras. 61-68 STDC's response to the three proposed "alternatives" by the TBs. The Inspector has also heard detailed rebuttal evidence from STDC's witnesses and it is submitted that these are not genuine alternatives and lack credibility.
32. The RBT expansion proposal is rebutted by a number of STDC's witnesses:
 - (1) JM's Rebuttal²⁴ at paras. 3.10-3.17, which he further addressed in XIC, explains that there is no evidence of any need for RBT to expand onto SSI's land, and that "[i]f anything, it could be argued that the operational port land at RBT could be reduced further, to deliver far greater efficiencies and free up land for alternative uses". This is supported by the report from Royal Haskoning²⁵;
 - (2) AG's Rebuttal at paras. 2.4-2.11 points out that the RBT scheme does not take into account the recently expanded SPA boundary, which is now directly adjacent to the RBT expansion land, as it includes the Tees estuary adjacent to RBT. In addition, DP's "Indicative Masterplan" for the RBT expansion proposal²⁶ envisages "the north east section of the site to be used for port related industry, and storage and distribution"²⁷. However, this land falls within the Teesmouth and Cleveland SSSI, the proximity of which DP fails to mention. By contrast, the Master Plan has fully taken into account the SPA and SSSI²⁸;
 - (3) GG's Rebuttal notes that there is an inconsistency between the TBs' witnesses as to what land is proposed for the RBT expansion: DP states that RBT will expand into Plots 1, 2 and 3, whereas PR states that it will expand only into Plot 1²⁹. As GG explains³⁰, none of the TBs' witnesses has sought to demonstrate how the expanded RBT proposal being

²⁴ STDC2/4

²⁵ JM's Rebuttal Appendix C

²⁶ See Appendix 3 to DP's Proof.

²⁷ See para. 6.6 of DP's Proof.

²⁸ See AG's Rebuttal at 2.11.

²⁹ See GG Rebuttal at §2.4.

³⁰ See GG Rebuttal at §§2.6-8 and at 3.17-3.22.

developed independently would fit in with the need for a comprehensive regeneration of the STDC Area as a whole, with the attendant needs for decontamination, health and safety issues, and infrastructure provision. From a market perspective, no developer or investor would wish to progress the RBT expansion in isolation, and it would only attract low grade end users. The exclusion of this land from STDC control would also reduce the scale and range of uses able to be attracted to the wider STDC Area, thereby impacting on the regeneration of the area as a whole.

33. The proposal to re-start steelmaking using the existing facilities lacks credibility:
- (1) DA's Rebuttal, which he expanded upon in XIC, explains how the re-starting of steel-making on the SSI land has not been properly analysed or supported by evidence and due diligence by the TBs. Steel-making has not taken place on the SSI land for almost 5 years and the facilities are aged and environmentally non-compliant. SMH and DP assume that no operational development would be required to re-start steelmaking, but the TBs have significantly underestimated the cost and works that would be involved in such an endeavour, as demonstrated by the independent specialist evidence obtained by STDC and appended to DA's Rebuttal³¹. The estimated cost is close to £1bn. This is not the same proposition as setting up new electric arc furnace steelmaking elsewhere on site, which would be environmentally up-to-date and compliant, and which would be in accordance with the Master Plan;
 - (2) AG explains in his Rebuttal that there is some confusion among the TBs' witnesses as to how much of the SSI land will be required, and a failure by them 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 format³². Any alternative seeking permission for operational development would have to comply with current planning policies, and operational development to restart the steelmaking as suggested by SMH would be in conflict with the local plan, SPD and Master Plan.
 - (3) GG's Rebuttal³³ sets out why, from a market demand perspective, the steelmaking restart proposal would be unattractive due to the adverse impact it would have on the scope for comprehensive regeneration of the STDC Area.
34. As set out in OS para. 63(3), the wind farm development proposal has, even more so than the other alternatives, not been properly supported or evidenced by the TBs.
35. Quite apart from the inadequacies of the TBs' alternative proposals, STDC's witnesses have addressed, within the scope of their particular evidence, the implications of failing to bring the Order Lands within the comprehensive control of STDC, with the need to deliver new site-wide

³¹ See DA's Rebuttal at §§2.10-2.13 and Appxs. 3 and 4.

³² AG Rebuttal at §§2.12-2.30.

³³ GG Rebuttal 3.24-3.27.

infrastructure, and in particular the serious adverse effect that would be caused by the separate development on the SSI land.

36. In comparison with the TBs' proposals, the acquisition of the Order Lands by STDC would 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. It more than meets the requirement to show this "on balance", as specified by para. 132(iii) of the CPO Guidance. As GG³⁴ 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.

Tarmac Trading Ltd (including East Coast Slag Products)

37. Tarmac's objection amounts to an alternative proposal for it to simply remain on its land which should be excluded from the CPO. Although it is accepted by STDC that Tarmac is an existing and operating business, RH accepted in XX that:
- (1) Tarmac had no long term plans to remain on the land after the expiry of its lease in 2029 and in any event not to do so on the majority of its 72 acres;
 - (2) in its negotiations with STDC to date Tarmac had been looking to achieve a phased withdrawal from its current site;
 - (3) Tarmac could operate its asphalt and concrete business from only 10 acres³⁵.
38. Tarmac currently occupies approximately 100 acres of land (70 is leased, 30 is "overspill" on land that is in substance a tolerated trespass but in any event is precarious³⁶) in circumstances where RH accepted in XX that Tarmac only requires 10 acres on any alternative site. Most of the land occupied is used to stockpile the remaining 500,000 tonnes of slag arising from the now ended steel operations, of which only about 250,000 has been processed for use in making concrete and cement (supplied to Hanson). The current use of the 100 acres is therefore a highly inefficient use of land, especially given the vision for the STDC Area under the SPD and Master Plan. It is particularly inefficient from the perspective of job density. DAM's evidence explains that the scheme for the STDC Area envisages an average job density of 8.6 jobs per acre³⁷. Excluding contractors, Tarmac only has 8 employees across the entirety of their 100 acres.
39. Despite Tarmac's effort to present itself as the "John Lewis" of their industry sector, and as "advanced manufacturing", its operations are not consistent with the vision in the Master Plan for a world class industrial business park across the STDC Area and it is highly doubtful that the processing of slag and manufacture of cement, concrete and asphalt falls within the "advanced

³⁴ STDC5/2

³⁵ Which is what its "Plan B" for relocation has involved according to RH.

³⁶ As confirmed by RH in XX.

³⁷ DAM Proof STDC7/2 para. 6.50.

manufacturing and advanced and new technologies” referred to in SPD Policy STDC1³⁸. It is notable that Tarmac made no representations as part of the consultation on the RCLP, the SPD or the Master Plan and did not object to the vision for new industry on their site. Tarmac has not attempted to work with STDC to find a way for its operations to be consistent with STDC’s overall plans for the area so that it does not frustrate the comprehensive assembly and redevelopment required by SPD policies STDC1 and STDC2 which the retention of their large site clearly would do. JM explained in XIC the importance of STDC securing the Tarmac land in its location within the Southern Industrial Zone and its proximity to the river, where major new port facilities are proposed within the Master Plan.

40. Moreover, in this context, Tarmac did not seek to challenge the evidence of JM, DA, GM, GG, JK, AG or DAM as to what was required to deliver the RCLP, SPD and Master Plan vision for the STDC Area and advanced no evidence to contradict it. Its evidence to the inquiry was very limited and did not touch on the significant policy issues as they apply to the STDC Area and Order Lands, but curiously focused on limited points made about safeguarding that plainly do not apply to the Tarmac land. Tarmac’s XX of DAM amounted to asking a single question which was not a question for DAM but rather for GM, who was not subjected to any request for XX.
41. Tarmac’s attempt in the evidence of DW (who admitted he had no planning qualifications) to suggest that, in planning terms, their site should be considered a Mineral Safeguarding Area (“MSA”) was firmly rejected by AG. In short, DW accepted in XX that:
 - (1) The designation of an MSA is a matter for plan-making and there was no safeguarding of the Tarmac site in the minerals and waste local plan documents or the RCLP;
 - (2) Tarmac made no representations to secure the designation of their land as an MSA in the RCLP or MWLP;
 - (3) In any event, the definition of an MSA in the NPPF³⁹ requires an MSA to have known deposits of minerals, which the Tarmac land does not. It follows that the Tarmac land is not, nor could it ever be, designated as an MSA consistently with the NPPF;
 - (4) MCW11 of the Minerals and Waste Core Strategy (2011)⁴⁰ was safeguarding the port and rail facilities, and not the Tarmac land which is only land served by those facilities.
42. Tarmac’s objection relies on historic planning consents for their operations (the most recent of which dates back to the 1980s according to DW in XX). DW accepted in XX that the planning context had changed “significantly” over the last few years with the RCLP, the SPD and the Master Plan and the formation of the STDC and designation of the STDC Area. As noted above, Tarmac did not to participate in any recent plan-making process.
43. Tarmac’s complaint that negotiations were inadequate since they only began in earnest

³⁸ CD/D/3 p.15

³⁹ See NPPF Annex 2 Glossary [CD/C/1] p.69.

⁴⁰ CD/D/4, p.39

following the making of the CPO does not advance its case and provides no basis for refusing to confirm the CPO of its interest:

- (1) There had been a meeting with STDC (in its shadow form) as early as 2017, which RH agreed had taken place;
 - (2) Tarmac had made clear its wish to manage a withdrawal from its land, or at least most of it and RH made clear that "Plan B" was to find a 10 acre site. He agreed Tarmac had another site nearby at Cochrane's Wharf which had operations concerned with aggregates, recycling and concrete;
 - (3) It is national policy that negotiations and the making of a CPO should run in parallel as set out in the OS and paras. 2 and 17 of the CPO Guidance. Following that guidance, the CPO process was planned and the formal procedures initiated by 25 July 2018 and the Order made on 10 April 2019. Even on Tarmac's case, which MK did not agree, the negotiations began in earnest in early October 2019 and continued.
44. In any event, the reluctance of Tarmac to move relates to its 500,000 tonnes of stockpiled material of which half was expected to be used within about 12 months and the remainder over an extended period to 2029, which is not compatible with the Master Plan and SPD. At worst therefore it would have a claim for compensation which would include such loss of profits as it might establish resulting from the loss of the material that remained on site at vesting. It would therefore be adequately compensated under the Code instead of such stockpiling remaining as an obstruction to the delivery of the CPO scheme. Whatever the position, the value of the material appeared to be limited such that RH said in XX that Tarmac would not seek to remove it for use elsewhere prior to vesting.
45. Mr Denyer-Green in submissions introduced a CPO decision dated 18 June 2019, of a refusal to confirm a CPO in Harlow, which had not been referred to by Tarmac in its evidence or even put to AG in XX. Indeed, it turned out that DW had not even read it, which suggests a last-minute attempt to bolster the objection, given that DW's evidence was already submitted late. That impression is reinforced when the decision itself is considered since it is so far removed from the current circumstances that it is of no relevance. It was a case where the objector was the Order Lands owner and it was found by the Inspector that the objector could deliver the development required by the Acquiring Authority in any event and that public acquisition would not improve its marketability or delivery. Here the scale of land and proposals is a different order of magnitude and Tarmac neither owns the Order Lands nor has any desire or ability to deliver what can only be achieved here by the use of compulsory powers.
46. Tarmac's alternative scenario whereby it remains *in situ* is therefore unacceptable, is contrary to the policy objectives of the RCLP and SPD and will have an adverse effect on delivery of the Master Plan scheme. Whilst it may be possible for agreement to be reached over relocation to a 10 acre site either on the STDC Area or elsewhere, there is no agreement at present.
47. There is a compelling case for compulsory acquisition of the Tarmac land, thereby entitling

Tarmac to appropriate compensation for relocation and Tarmac's objection should not be upheld.

PD Teesport

48. PDT's late representations (which the Inspector has determined do not constitute a formal objection to the Order) have been responded to in writing by Gowlings on behalf of STDC by letter dated 18 February 2020⁴¹, except for their most recent letter dated 25 February 2020. This letter adds little of substance which has not already been addressed in that response of 18 February. The letter from Gowlings setting out the response to the earlier letters also provides proof of service of the Order on PDT⁴² to which it did not object.
49. The latest representations do not present an accurate picture of what occurred and fails to acknowledge the lengthy engagement by STDC with PDT and their clear knowledge of the CPO and the lack of intention by STDC to acquire it. Those representations in any event fail to make good the basis of the allegations of injurious affection which even if correct and valid would relate only to compensation.
50. In any event, the correspondence set out in the later letter (which only presents part of the picture) makes it abundantly clear that PDT were told of the resolution in principle to make the CPO by Jonathan Bretherton of STDC on 18 May 2018 but that it was not STDC's intention to take land:

"The Corporation Board has resolved, in principle, to make an order to acquire land necessary for the redevelopment plans that we have been discussing with you for some time.

I expect to be ready to make a recommendation to the Board in July regarding the land to be subject to the order and that we will proceed with a CPO at that stage.

At present, we are verifying all land interests in the widest area that could be of interest. In doing so, we have adopted the precautionary approach of going beyond the boundaries that we expect to include to cover off the possibility of errors in the mapping.

As I mentioned, I have had personal experience of such major errors on large sites such as this and we have already identified several. I can confirm that, so far as I am aware, there is no land owned by PDP that we would propose to include in the order—we are merely confirming what we believe the position to be. For the avoidance of doubt, I suggest that we meet once we have concluded the current land referencing exercise to go through the findings. I'd be happy to do that and suggest that we do so in the second half of June by which stage we will have an accurate picture of where we are.

Whilst writing, I would like to add that we have redesigned the South Bank roundabout proposal to avoid your land. I am told, however, that we would wish to erect temporary Herras fencing on a very minor length of your land to secure the construction site whilst the roundabout is built. I'd be obliged if you could confirm that this is in order."

51. The issue over the roundabout raised in the latest letter is a red herring and was resolved in any event.

⁴¹ STDC-INQ-07

⁴² See s. 6 of the Acquisition of Land Act 1981 for service by recorded delivery.

52. The issue over Plot 173 is to a significant extent a result of the failure of PDT to respond to the requisitions regarding ownership sent out in May and September 2018: see the details set out in Gowling's response letter.
53. There was ample engagement with PDT. Indeed, the report to the Board⁴³ and Board Minutes of 25.7.18⁴⁴ make it clear that there had been weekly meetings with PDT at a senior level (referred to there as PDP). DA in his proof at paras. 3.17, 4.15 explained the PDT's land had been excluded because of the collaborative working. See also JM's main proof⁴⁵ at para. 5.32.
54. It is clear that in any event PDT must have been aware of the Order and the inquiry given their presence in the STDC Area and the considerable publicity and information available locally. It can be inferred that the late correspondence is an attempt to set up a negotiating position with STDC and the Inspector is asked to treat their representations in that light and given that it does not challenge the basis of the making of the CPO or its importance to the wider public interest.
55. With one exception, the Order does not include PDT land and the concern PDT has expressed relates to access rights which it currently enjoys and Plot 173 which was in unknown ownership when investigated and the CPO made. Any rights of access currently existing over land which vests in STDC remain in place. To the extent that STDC may subsequent to the Order seek to vary the access, including emergency access, a new deed of easement has been offered but is currently not agreed. STDC has also offered not to acquire Plot 173. The exercise of other statutory powers in future is not the subject of the Order. It remains the case that STDC does not intend to prevent PDT having access to its land.

General conclusion

56. For reasons set out in detail in the OS⁴⁶, in evidence, and above, STDC submits that (a) there will be no impediments to delivery of the Scheme, and (b) the Order will not breach the human rights of anyone affected by it. All the objections that have not been resolved are ones which are either unfounded or are capable of being properly compensation pursuant to the Code.
57. By reference to the five factors set out at para. 132 of the CPO Guidance (OS para. 32):
 - (1) STDC has demonstrated that the Order Lands as part of the STDC Area are in need of regeneration;
 - (2) The alternative proposals advanced by the TBs are unsupported by evidence of viability, contrary to policy and would compromise the comprehensive regeneration of the Order Land. The frustration of the Master Plan would also follow from Tarmac remaining *in situ*;

⁴³ PR Appendix 6 pp. 150-151 see §§10.12- 10.15, making it clear that meetings had taken place at a senior level and that there was no intention or desire to use CPO powers but land title issues were still to be resolved.

⁴⁴ PR Appendix 6 p. 167 §6.4 – "BH confirmed that what are now weekly meetings with PD Ports are moving us to a conclusion".

⁴⁵ STDC/2/2.

⁴⁶ Paras. 87-91 of the OS.

- (3) Regeneration is more likely to be achieved if the land is acquired by STDC than if it is left in private ownership. This was recognised by the Heseltine Report;
 - (4) The recent history and state of the land provides a compelling justification for regeneration following the assembly of land through the Order. Such assembly is supported by the RCLP and SPD especially policy STDC 2;
 - (5) The Order Lands are in an area for which STDC has a comprehensive regeneration scheme (set out in the Master Plan, underpinned by the RCLP and the South Tees SPD) and the quality and timescale of STDC's regeneration proposals are unmatched by any alternative proposals.
58. In conclusion, taken with the other matters set out in the OS, pursuant to paras. 2 and 12 of the CPO Guidance, there is a compelling case in the public interest for confirming the Order.

DAVID ELVIN Q.C.

MATTHEW FRASER

Landmark Chambers,
London EC4A 2HG
27 February 2020