

The Borough of Darlington
(Darlington Station Gateway)
Compulsory Purchase Order 2021
PINS ref: APP/PCU/CPOP/N1350/3271399
Inquiry Commencing: 18 January 2022

OPENING SUBMISSIONS BY THE ACQUIRING AUTHORITY

Introduction

1. The CPO has been made in order to deliver significant improvements to Darlington Station and its environs. Currently this major transport hub at the heart of the town centre is dreary, uninviting and for many it is not even readily accessible. The Scheme enabled by this CPO will transform the Site by creating a new station building, significantly improved transport interchange facilities and vibrant new public realm. This fit for purpose gateway to the Tees Valley City Region will not only provide much improved facilities for station users, it will also support the region's planned future growth and enable rail capacity and performance to be enhanced as is so desperately required.
2. The CPO is necessary in order to assemble the land required to facilitate the redevelopment and regeneration of the Site. The Council's evidence explains that there is a compelling case for the confirmation of the CPO which will deliver significant benefits. The almost complete absence of any evidence in opposition to the CPO immediately signals the overwhelming strength of the case for confirmation.
3. These opening submissions deal with the following topics:
 - (1) the strategic economic and transport context;
 - (2) the Scheme;
 - (3) the legal basis for the CPO; and
 - (4) compliance with the CPO Guidance.

The strategic economic and transport context

4. The economic and transport context underlines why the Scheme is of vital strategic importance not only to Darlington, but also the North East region as a whole.
5. Jonathan Spruce's evidence explains the economic context in detail.¹ The key points are that:
 - (1) the Tees Valley contains a number of centres within a small geographical area and the

¹ Spruce paras. 2.2-2.16.

lack of a single dominant commercial centre means that good interconnectivity is essential for the Tees Valley to function effectively;

- (2) the Tees Valley Strategic Economic Plan (“SEP”) contains the target for 25,000 new jobs and 23,000 new homes by 2026. To ensure the proposed economic growth and additional jobs are delivered, the SEP recognises that better transport connections are required across the City Region to provide businesses and residents with a high quality public transport network that is frequent, integrated, reliable and offers a real alternative to the private car in order to be cleaner and more sustainable;
 - (3) to re-establish the growth of the Darlington economy following the COVID-19 pandemic there is a need to widen the Borough’s economic base and deliver housing growth. Progress is being made in that regard and the proposals for the Skertingham Community Village and Burtree Garden Village will see around 6,500 new homes provided over the next 20-25 years, alongside recent employment growth at Symmetry Park and the expansion of the Newton Aycliffe Business Park. Additionally the new HM Treasury North Campus in Darlington will see 400 (i.e. a quarter) of Treasury staff relocate over five years, along with 350 staff from other Government departments;
 - (4) there are still high levels of disadvantage across the Tees Valley and there is the opportunity to increase the number of people in employment by ensuring easy and affordable access to jobs, education and training by providing a high quality, integrated transport network for people and freight;
 - (5) Darlington is in a unique position as a gateway to the wider City Region and should exploit the economic benefit of its strategic location in relation to national and international networks for the benefit of the wider Tees Valley area.
6. The transport context is explained by Jonathan Spruce² and Tom Bryant. The key points are that:
- (1) good interconnectivity is vital for the Tees Valley to function effectively. 90% of the current working population have jobs within the Tees Valley area and 65,000 people cross an administrative boundary within the City Region to get to work;
 - (2) Darlington is one of the Tees Valley’s principal rail gateways and is strategically located on the East Coast Main Line (“ECML”). It therefore acts as a regional transport hub which serves not only the Tees Valley, but also a much wider catchment including South Durham and North Yorkshire. Existing ECML services benefit the Tees Valley economy by £400m p/a;
 - (3) the TransPennine Express service provides east-west connectivity, linking the Tees Valley with the Leeds and Manchester city regions - including the North’s major

² Spruce paras. 2.17-2.28.

international airport (Manchester Airport);

(4) there has been consistent growth in the number of passengers using Darlington Station in the five years prior to the COVID-19 pandemic, peaking at 2,394,446 in 2018-2019;

(5) strategic transport policy is highly supportive of the Scheme,³ in particular:

(a) the Tees Valley Strategic Transport Plan 2020-2030 (“STP”) aspires to transform the Tees Valley rail system to deliver a ‘metro style’ passenger rail system with a minimum 30 minute service at every station and capacity for freight growth linked to the UK’s largest Freeport (Teesworks). The STP recognises that improvements to Darlington Station are fundamental to delivering those objectives;

(b) the Tees Valley Devolution Deal recognises Darlington Station as one of four key strategic transport schemes that are essential to facilitate growth in the Tees Valley;

(c) the SEP recognises that the Darlington Growth Hub is a key priority to improve connectivity within the Tees Valley. The Growth Hub encompasses new platforms at Darlington Station and delivery of a fit for purpose modern rail gateway;

(d) the TVCA Investment Plan identifies significant local funding to develop and support key transport projects and it commits £25m to the Darlington Station master plan improvements;

(e) the Transport for the North Strategic Transport Plan recognises that Darlington is a key transport hub and that investment is required to increase capacity and promote economic growth; and

(f) the Department for Transport Integrated Rail Plan for the North and Midlands (18 November 2021) (“IRP”) presents the Government’s vision for rail investment across the Midlands and the North of England over the next 30 years. The IRP includes the improvements at Darlington Station as part of a package of measures that the Government wishes to be developed for the ECML.

7. Against that background, there are some important issues and constraints with the local rail network, and Darlington Station in particular, as Jonathan Spruce⁴ and Tom Bryant explain:

(1) the ECML north of York, and in particular north of Northallerton where it becomes a two track only railway, is now at or very close to capacity causing train operators to

³ Bryant section 3.1.

⁴ Spruce paras. 3.1-3.8.

struggle to deliver franchise commitments;

- (2) the existing layout at Darlington Station exacerbates problems with capacity and resilience because all local rail services between Darlington/Bishop Auckland and Saltburn are required to cross the ECML at Darlington South junction. Network Rail's ("NR") independent capacity analysis (June 2019) shows that neither Darlington South Junction, nor the two through platforms at Darlington Station, have the capability to accommodate the future train services envisaged for the ECML. The capacity analysis proposed that the track at Darlington South Junction be doubled and another platform be installed to the east of Darlington Station to ensure that local services do not interact with the ECML;
 - (3) Darlington Station itself is not a suitable gateway to the Tees Valley. The Station is in dire need of improvement and its deficiencies will be obvious on the site visit. It lacks retail facilities and it suffers from accessibility and connectivity shortcomings that mean it does not provide safe, high quality links between the Station and the surrounding area. In particular, the footbridge connecting the station to the east and the subway connecting to the west are inhospitable and inconvenient to navigate. The need for improved passenger experience and facilities at this key gateway location is especially important given the economic ambitions of the Borough and the wider Tees Valley City Region. Darlington Station will also play a prominent role in welcoming visitors to the area as part of the 200th anniversary celebrations of the first passenger railway journey between Stockton and Darlington in 2025;
8. The widely recognised strategic imperative to improve Darlington Station led to the production of a Masterplan for Darlington Station in 2016.⁵ As Jonathan Spruce explains,⁶ this began a robust process to identify alternative options informed by consultation and technical workshops with stakeholders. That process established that:
- (1) new platforms needed to be provided to the east of the existing station in order to be technically feasible and to solve the capacity issues at Darlington South Junction;
 - (2) the most suitable location for the new platforms is the existing surface car parking area and therefore it is necessary to provide a suitable location and form for replacement parking;
 - (3) the Multi Storey Car Park Demand Study⁷ followed the standard forecasting methodology in the Passenger Demand Forecasting Handbook to ascertain car parking demand (including to accommodate forecast future growth);
 - (4) the most suitable location for replacement parking in terms of planning, design and

⁵ SD7.

⁶ Spruce paras. 3.9-3.21.

⁷ SD19.

accessibility is to the east of the existing Station;

- (5) the provision of new platforms to the east will also require a new station entrance, associated station facilities and suitable onward connections, including a pick up/drop off area and space for replacement bus services, as well as improved connections for scheduled bus services passing the station;
 - (6) there is a clear need to improve connections by active travel and public transport to the west of the station in order to link with the town centre and complement the improved public realm and new pedestrian crossing facilities that the Council has already delivered along Victoria Road.
9. The preferred solution to address the issues and constraints and deliver these objectives consists of three elements:⁸
- (1) Darlington Station Gateway (i.e. the CPO Scheme - a new station building, improved access and interchange facilities including a new Multi Storey Car Park);
 - (2) Operational Rail Improvements (new platforms and track layout on the approach to the station to address current constraints and accommodate planned growth in demand for passenger and freight services);
 - (3) Station Enhancements (a refurbished station building and new footbridge).

The Scheme

10. The Order seeks to acquire land for the purpose of regeneration to facilitate the Scheme comprising:
- (1) a new station building with multi-modal connections to the east of the existing station building;
 - (2) a new transport interchange and Multi Storey Car Park adjacent to the new station building serving rail users and potentially adjacent developments; and
 - (3) improved transport interchange facilities on the western side of the station.
11. As set out above, there is a strong and clear strategic need for the Scheme which will:
- (1) provide a fit for purpose gateway station for Darlington and thereby ensure that the Tees Valley's external public transport connectivity is enhanced thereby supporting planned future growth;
 - (2) provide much improved facilities for passengers, including better accessibility, improved interchange facilities and better integration with the public transport network; and

⁸ Spruce para 4.1.

- (3) provide a railway station that links better with the town centre and the adjacent Central Park Enterprise Zone thereby supporting growth and enhancing opportunities for the local community.
12. The Scheme is also essential to facilitate the delivery of the Operational Rail Improvements and Station Enhancements, neither of which can take place without the Scheme.
13. The impact of transforming this key gateway into the Tees Valley cannot be underestimated. The Site's shortcomings need to be addressed not just for their own sake, but because the quality and attractiveness of Darlington Station and its environs is so important both to the community that rely upon it and to the success of attracting investment which depends upon the way in which Darlington is perceived.
14. The Council has acquired many of the necessary property interests through private treaty. The extent of those acquisitions as at the date of the evidence is set out in Richard Adamson's proof of evidence. Further agreements have been reached since then, as Richard Adamson will explain in his oral evidence.

Legal basis for the CPO

15. The CPO has been made pursuant to the power contained in s. 226(1)(a) TCPA 1990 which provides that the Council may acquire land compulsorily for "development and other planning purposes" if that acquisition will facilitate the carrying out of development, redevelopment or improvement in relation to that land.
16. In exercising its power under s. 226(1)(a) the Council must have regard to s. 226(1A) which provides that the power must not be exercised unless the Council think that the development, redevelopment or improvement is likely to contribute to the promotion of the economic, social or environmental well-being of their area.
17. The purpose of the CPO is set out in detail in the Statement of Reasons. The Council made the CPO for the purpose of implementing the Scheme as the important first phase in upgrading Darlington Station. As set out below, the Council considers that the Scheme is likely to deliver significant benefits to the Borough in terms of its economic, social and environmental well-being.
18. While there is no longer a requirement in s.226 TCPA 1990 to consider the Development Plan or other material planning considerations, the adopted planning framework falls to be considered under the CPO Guidance (see below). But this does not enable the planning merits of a scheme that already has planning permission to be re-considered. Even in the context of the original version of s.226 TCPA 1990 where there was formerly a requirement to consider the Development Plan or other material planning considerations, Collins J held in *Alliance Spring Co Ltd & Others v First Secretary of State* [2005] 3 P.L.R. 76, that:

"16. [The Secretary of State] recognised that the Inspector could properly have regard to the planning aspects: indeed, s. 226(2)(c) of the 1990 Act makes it clear that he should. But

he noted that those matters were taken into account in the grant of planning permission. In those circumstances, it is not in my view appropriate for an Inspector to take a different view on planning considerations which have already been considered unless there is fresh material or a change of circumstances. Clearly if there is evidence to show that particular matters were not taken into account or were not fully considered, a fresh view can properly be taken. (emphasis added)

19. In this case planning permission has been granted for the Scheme and it has not been challenged. As Dominic Waugh explains in his proof of evidence, the decision to grant planning permission was taken in accordance with the planning framework after full public consultation. Accordingly, it is not necessary for the planning considerations to be reassessed at this Inquiry.

Policy requirements

20. The statutory requirements are applied in conjunction with the policy in the CPO Guidance which sets out the approach to be taken in deciding whether to make, or confirm, any CPO. I will deal with the following matters:

(1) Planning:

- (a) whether the need for planning permission or other consent represents an impediment to implementation of the Scheme (para.15); and
- (b) whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area, or where no such up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework (para. 106);

(2) Funding and deliverability:

- (a) acquiring authorities should be able to show that all the necessary resources are likely to be available within a reasonable time-scale (para. 13);
- (b) 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 (para 14);
- (c) specific advice in relation to CPOs under s.226(1)(a) TCPA 1990 provides that a general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed (para 106); and
- (d) 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, including the programming of any infrastructure accommodation works or remedial work which may be required (para 15).

- (3) **Wellbeing:** the extent to which the proposed purposes will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area (paragraph 106 of the Guidance);
- (4) **Alternatives:** whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired (para 106 of the Guidance);
- (5) **Negotiations**
 - (a) 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 (para 2);
 - (b) public sector organisations should make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues and mitigation and accommodation works where relevant (para 3);
 - (c) acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted (para 17); and
 - (d) steps should be considered to help those affected by a compulsory purchase order, such as to funding landowners' reasonable costs of negotiation (para 19).
- (6) **Human Rights:** whether the purposes for which the Order is made justify any interferences with the human rights of those with an interest in the Order Land (para 2 of the Guidance); and
- (7) **Equalities:** whether confirmation of the Order would be in accordance with the Council's duties under the Equalities Act 2010.

(1) Planning

21. There is no challenge to the Scheme's compliance with the planning framework. The only planning-related objections were on the basis that planning permission for the Scheme had not been granted at the time the objections were made. But the position has now moved on and those objections have been superseded. As Dominic Waugh explains, planning permission and listed building consent have been granted for the Scheme. The relevant consents are as follows:

- (1) Gateway West Planning Permission (ref 21/00691/DC) granted on 22 October 2021 for

the following development:⁹

- (a) demolition of Hogan’s Public House, 97 Pensbury Street, 137-139 Victoria Road, 1 Waverley Terrace and 1-4 Park Lane and engineering operations in the form of highway and associated infrastructure works to the west of the station to connect Pensbury Street to Park Lane, the creation of bus stops and lay-bys;
 - (b) a new highway access and turning facility to the rear of Pensbury Street;
 - (c) a new vehicular access route to the existing car park off Park Lane, including the partial demolition of the existing boundary wall to facilitate this access and creation of a new turning facility to Waverley Terrace; and
 - (d) associated public realm landscaping works.
- (2) Gateway West Listed Building Consent (ref 21/00750/DCLB) granted on 22 October 2021 for the partial demolition of car park boundary wall and the reuse of existing bricks to create 2 no. entrance pillars;¹⁰
- (3) Gateway East Planning Permission (ref 21/00688/DC) granted on 29 September 2021 for the erection of a 672 space Multi Storey Car Park, transport hub, station entrance, concourse, and public realm improvements.
22. None of those consents was subject to legal challenge and they remain extant and capable of implementation. As set out in Dominic Waugh’s appendices, the consents are subject to typical conditions which are all capable of being discharged within the required timeframes.¹¹
23. On 14 January 2022, the Council granted planning permission for the construction of a temporary car park on Council-owned land at the Former Farmers Cattle Market, Clifton Road (ref 21/01244/DC). This will provide temporary car parking during the construction phase until 31 December 2024. Dominic Waugh explains that the principle of that temporary development accords with the development plan.¹²
24. Dominic Waugh’s evidence explains, with reference to the extant planning permissions, why the purposes for which the CPO Lands are being acquired fits with the planning framework which consists of:
- (1) the NPPF;
 - (2) the Saved policies of the Borough of Darlington Local Plan (1997);

⁹ SD25.

¹⁰ SD33.

¹¹ See Waugh Appendix DW3 (Gateway West Planning Permission), Appendix DW5 (Gateway West Listed Building Consent) and Appendix DW8 (Gateway East Planning Permission).

¹² Waugh paras 4.27-4.28.

- (3) the Darlington Core Strategy Development Plan (2011); and
 - (4) the emerging Local Plan for Darlington (and its evidence base including the Town Centre Fringe Masterplan (2013) and the Bank Top Station Masterplan (A Vision for Darlington 2025 – A Modern Rail Hub for a Modern Economy)).
25. In terms of the principle of development, the Scheme will transform the area by creating new entrances to Darlington Station that befit its status as a major transport hub and it will provide a modern and safe environment for station users. Such improvements are supported by Chapters 8 and 12 of the NPPF; Saved Policies E14, E37 and T44 of the Darlington Local Plan; and Policies CS1, CS2, CS14 and CS19 of the Core Strategy.
 26. In terms of landscape, design, public realm and trees, the Scheme will create a welcoming entrance to Darlington that prioritises the space immediately in front of the station for pedestrians and cyclists in a safe and secure environment. This will encourage social interaction and encourage walking, cycling and public transport use. The new landscaping and public realm of Gateway West will link the Railway Station to the Town Centre and complement the public realm improvements that the Council has already delivered on Victoria Road. The Gateway West element of the Scheme will result in the loss of 1 Category C3 tree subject to a Tree Preservation Order. That tree has no material conservation or other cultural value and its loss will be compensated for by a net gain in tree planting. The Gateway East element of the Scheme will require the removal of 11 trees, but will compensate for this by extensive replacement planting and provision of a new green between the realigned Garbutt Square and the Multi Storey Car Park. Overall, the net improvement through the provision of well-designed hard and soft landscaping means that the Scheme accords with Chapters 8 and 12 of the NPPF, Saved Policies E12, E13, E14, E37 and T9 of the Darlington Local Plan, and Policies CS1, CS2, CS14 and CS19 of the Core Strategy.
 27. In terms of promoting sustainable transport, David Colley's evidence demonstrates that the Scheme will result in extensive highway and transportation benefits. It will create a safe and inclusive environment at the entrance to a major transport hub by promoting pedestrian and cyclists in accordance with Chapters 8 and 9 of the NPPF, Saved Policy T9 of the Local Plan and Policy CS19 of the Core Strategy.
 28. In terms of heritage, the Scheme is in accordance with Chapter 16 of the NPPF and Policy CS14 of the Core Strategy. The demolition of non-designated heritage assets to the west (Hogans Public House and 137-139 Pensbury Street) is justified by the substantial public benefits of the Scheme (including the creation of an improved entrance to the Grade II* Listed Railway Station). To the east, the Scheme would sustain and enhance the two affected designated heritage assets - Bank Top Station and the Grade II Listed St John's Church. The demolition of modern buildings which do not contribute to the Station's significance and in some cases are intrusive would enhance the Station's setting. The Scheme would also open up new views of St John's Church and enhance its setting by reinforcing the visual connection between the Station and the Church.

29. Unsurprisingly, the emerging Local Plan which is shortly to be adopted is also wholly supportive of the Scheme. Policy TC6 (which was not the subject of any objection during Examination) promotes regeneration of the Town Centre Fringe (including the Site) and environmental improvements and improved connectivity for pedestrians, cyclists and public transport to allow access to jobs, leisure and business opportunities. It is also notable that the evidence base for the Local Plan further supports the Scheme because the Town Centre Fringe Masterplan identifies the Scheme as a “key project” and the Top Bank Station Masterplan identifies the Scheme as part of a “major opportunity to comprehensively redevelop the area around the new station building to deliver a major new commercial focused development as an extension of Central Park”.
30. Accordingly the purpose for which the CPO Lands are being acquired fits in with the adopted planning framework for the area and there are no planning impediments to implementation of the Scheme. Indeed this is precisely the type of development that the development plan demands. This alone is a compelling reason for the CPO to proceed. An investment like this on a key town centre site deserves the warmest of welcomes.

(2) Funding, deliverability and viability

31. Ian Stewart’s evidence provides substantive information as to the sources of funding available for both acquiring the land and implementing the scheme for which the land is required.¹³ The funding is to be drawn from two sources:
- (1) TVCA has committed £25m through its Transforming Cities Fund, with a further £8m should this be required as a contingency; and
 - (2) DfT will provide the remainder through the Rail Network Enhancement Pipeline (“RNEP”).
32. Both TVCA and DfT have provided letters confirming the funding position.¹⁴ Whilst TVCA’s funding is committed, DfT’s is (as is standard practice) contingent upon approval of the Full Business Case in the Decision to Deliver which in turn depends upon all the development land being available.¹⁵ The Decision to Deliver cannot therefore be confirmed prior to confirmation of the CPO. That is not unusual. Paragraph 14 of the CPO Guidance recognises that there will be situations in which funding details “cannot be finalised until there is certainty that the necessary land will be required”. In such situations the CPO Guidance requires that “the acquiring authority should provide an indication of how any potential shortfalls are intended to be met”.
33. The Council has done more than provide an indication. DfT has confirmed that the funding for the Scheme will be met from the RNEP budget and that £8.7m has already been awarded

¹³ Stewart para 3.6.

¹⁴ Stewart Appendices IS2 & 3.

¹⁵ Stewart para 4.2.4ff.

to fund design work. The approval of the RNEP funding is progressing as anticipated and there is no reason to believe that a Decision to Deliver will not be forthcoming once the land is available following confirmation of the CPO.

34. Ian Stewart's evidence therefore goes beyond the general indication of funding intentions, and any commitment from third parties, that "will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed" according to para 106 of the CPO Guidance. Accordingly, his evidence satisfactorily demonstrates that all the necessary resources are likely to be available within a reasonable time-scale.
35. In terms of deliverability, it should be recognised at the outset that the Scheme is being delivered by three bodies that are extremely well-versed in the delivery of large infrastructure projects (i.e. the Council, TVCA and NR). Moreover, as Ian Stewart explains, there is a clear delivery structure in place which includes robust governance arrangements and teams of costs consultants to provide regular reviews of project outturn costs. The project programme anticipates completion of the Scheme in mid-2024.¹⁶
36. That the Council is ready, willing and able to proceed is quite clear from its evidence. Commitment to the Scheme is clearly demonstrated by the investment of some £3.5 million of funding in the promotion of the CPO Scheme and the acquisition of property interests to date, in addition to the ongoing investment of DfT's initial £8.7m tranche of funding.
37. Consequently, there are no physical or legal impediments to the delivery of the Scheme. The planning permissions and listed building consent are extant and capable of implementation. None of the objectors alleges that there are any other impediments capable of genuinely impeding the delivery of the Scheme.
38. Ian Stewart's evidence explains that the Scheme has been demonstrated to be financially viable and that its long-term financial viability is secured (because the land owned by NR and let to LNER will be managed in accordance with their statutory responsibilities to manage rail infrastructure, and the adopted highway will be managed by the Council as highway authority).¹⁷

(3) Contribution to the economic, social and environmental well-being of the area

39. The evidence of Jonathan Spruce, Dominic Waugh, David Colley and Graeme Dodd explains how the Scheme will promote the economic, social and environmental well-being of the area. There appears to be no serious dispute that the Scheme would promote these matters.
40. In terms of the direct contribution of the Scheme to well-being, the Scheme will transform the public realm and quality of the built environment around Darlington Station –which is the key arrival point for residents, businesses and visitors to Darlington. The following points

¹⁶ Stewart para. 3.1-3.4 and Appendix IS1.

¹⁷ Stewart paras. 4.3.1-4.3.3.

are of particular note:

- (1) improved accessibility: the Scheme will make the station easier to access and navigate, especially for those with mobility difficulties. There will be parking for disabled users and access to the station building via a new DDA compliant access compared to the current non-compliant footbridge;
- (2) improved local connections: the Scheme will significantly improve permeability to the town centre and the Central Park Enterprise Zone via the new public realm. This is particularly important to the east where there is a higher proportion of deprived wards;
- (3) improved safety: the public realm improvements will increase the inclusivity and perceived safety of the station. Segregating car parking and pedestrian areas will also improve passenger movement safety throughout the station;
- (4) improved passenger facilities: the Scheme will enhance the facilities for passengers and encourage the use of public transport. Importantly, the Scheme will facilitate interchange between bus and rail via facilities on Neasham Road. A new bus layby for northbound services is proposed together with the retention of the existing southbound bus stop. The relocated pedestrian crossing allows bus passengers to cross Neasham Road to the south bound stop;
- (5) improvements for pedestrians and cyclists: the Scheme will relocate an existing shared use footway/cycleway on the east side of Neasham Road leading from St John's Crescent to the crossing point. This will integrate into pedestrian and cycle routes from Central Park and those travelling east/west along Yarm Road. There will also be improvements to pedestrian and cycle facilities along Neasham Road adjacent to the station, and alterations to the existing retaining wall on the west side of Neasham Road will facilitate improved pedestrian and cycle connectivity with Parkgate via the widened footway;
- (6) improved townscape and landscape: the Scheme's high quality design and landscaping of the new public realm will significantly enhance the appearance of the station and act as a catalyst for improving the surrounding area;
- (7) improved heritage setting: the Scheme will respect and enhance with heritage setting of the Grade II* Listed Bank Top Station and the Grade II Listed St John's Church. The physical environment around the station will be very substantially improved, enhancing the setting of these important listed buildings and removing the unattractive development currently present;
- (8) improved perception of this important gateway: the Scheme will enhance the station environment, help instil civic pride and promote Darlington and the wider area by giving a considerably more favourable first impression to visitors. There is a particular opportunity now to celebrate Darlington and its opportunities because of the 2025

railway bicentenary celebrations.

41. The Scheme will also act as a catalyst for other improvements to the economic, social and environmental well-being of the Borough, principally because the Scheme is necessary to enable the Operational Rail Improvements and Station Enhancements to be delivered. The considerable indirect and catalytic benefits include:
- (1) improved rail capacity: delivery of faster, more frequent and more reliable train journeys supporting Darlington's role as a gateway to the wider Tees Valley City Region;
 - (2) improved regional connections: improvement of connectivity for those living and working in the wider Tees Valley City Region enabling easier travel to other key economic centres;
42. However if the Scheme were not to proceed there would be serious detriment to Darlington, the wider Borough and the Tees Valley as a whole. It would put at risk further investment and regeneration. It would also amount to a significant missed opportunity to substantially regenerate this key gateway town centre site in accordance with the many strategic planning, transport and economic documents that identify the Scheme as a priority.

(4) Alternatives

43. The rationale for the boundary for the CPO stems from the need to meet the identified engineering and design requirements of the Scheme.¹⁸ All of the CPO Land is permanently required in order to provide or facilitate:
- (1) the new station building with multi-modal connections to the east of the existing station building;
 - (2) the new transport interchange and Multi Storey Car Park adjacent to the new station building; and
 - (3) the improved transport interchange facilities on the western side of the station.
44. There are no reasonable alternatives. Self-evidently there is no alternative location for the delivery of the Scheme. Furthermore, there is no evidence that the important objectives of the Scheme could be realised without all of the land included within the CPO.
45. The Council's evidence demonstrates that:
- (1) the preferred option to address the identified constraints was arrived at following a careful and robust master planning process that involved consultation and technical workshops with stakeholders;
 - (2) the physical and planning constraints mean that there is a relatively small potential

¹⁸ See Richard Adamson's Appendix RTA1 for a summary.

area for the new Multi Storey Car Park building. Those constraints include the need to maintain a 33m separation from adjacent residential properties and the 22m offset from existing tracks required for railway operational purposes. It is also important to ensure unobstructed sightlines between the Grade II* Listed Bank Top Station and the Grade II Listed St John's Church. As Graeme Dodd explains, the design, massing and location of the Scheme has been dictated by the Site constraints and the building cannot be in any other position or in a different orientation, or on a smaller footprint without an unacceptable reduction of the facilities to be provided;¹⁹

(3) the evidence of Graeme Dodd and David Colley demonstrates that it is not possible to exclude any of the Objectors' land from the CPO consistently with achieving the objectives of the Scheme. Specifically:

(a) Plot 27 is essential as the proposed Multi Storey Car Park and concourse will be situated on a large part of Plot 27;

(b) Plots 12 and 14 are in prominent locations within the Scheme and they could not be retained without creating an unsafe access to the new station for both motorised and non-motorised users and a highly suboptimal townscape;

(c) In relation to Plot 43, when developing the Gateway West proposals the Council explored four options that excluded Plot 43 but they were all too compromised and none of them met the primary objectives of the Scheme. None of those options even merited progression to more technical design work and they were rightly discounted.

46. It is also pertinent to note that during the consultations on the Gateway West and Gateway East planning applications no comments were received which suggested an alternative development scheme which would not require the acquisition of the plots comprising the CPO Land.²⁰

(5) Negotiations

47. In accordance with the CPO Guidance, negotiations have proceeded in tandem with the formal process of pursuing the CPO. Given the large number of interests in the CPO Lands this is the only realistic way in which to proceed. In many instances negotiations have been fruitful and in others negotiations have and will continue. The detail of the negotiations is addressed in the evidence of Richard Adamson.

48. As Richard Adamson explains the following approach has been adopted in relation to the acquisition of interests in the CPO Lands:²¹

¹⁹ Dodd section 5.

²⁰ Waugh para 4.8 and 4.23.

²¹ Adamson section 4.3.

- (1) prior to making the CPO the Council acquired some properties by agreement;
 - (2) care was taken to establish the facts of the complex web of ownerships and interests by engaging Terraquest Ltd, a specialist land referencing firm;
 - (3) initial contact was made with occupiers to provide details of the Scheme and encourage property owners to obtain independent professional advice whose reasonable fees and costs the Council would pay;
 - (4) the Council offered financial assistance for those whose first language is not English to be able to engage specialist representation in their first language;
 - (5) the Council has made reasonable financial offers to acquire all interests in the CPO Lands in accordance with the CPO Guidance;
 - (6) the Council has offered to explore the use of Alternative Dispute Resolution; and
 - (7) the Council actively kept those affected informed about the Scheme and the CPO in addition to the consultation that took place in relation to the planning applications.
49. Richard Adamson's evidence demonstrates that the Council has fully complied with the CPO Guidance because it has:
- (1) taken reasonable steps to acquire all of the land and rights included in the Order by agreement;
 - (2) made reasonable initial offers, and been prepared to engage constructively with claimants;
 - (3) undertaken meaningful attempts at negotiation; and
 - (4) taken steps to help those affected by the CPO, including funding landowners' reasonable costs of negotiation.
50. The results of this constructive engagement speak for themselves: the Council has made 11 acquisitions by agreement (not including pre-owned land, but including 1 where contracts are exchanged for completion next week). The Council has also agreed terms for acquisition of another 4 interests, including 3 where the freeholder wants to delay until after 5th April for tax purposes. This leaves 9 interests still to be acquired.
51. There is no reasonable prospect of the Council acquiring the remainder of the CPO Lands within a reasonable period of time and so the use of CPO powers is necessary. The objections based on criticism of the negotiations process do not undermine the case for confirmation of the CPO, but rather reflect disagreements as to the market value of the affected interests applying the Compensation Code. That is not a matter relevant to confirmation of the CPO and affected owners have a statutory right to have the quantum of their compensation determined by the independent Upper Tribunal (Lands Chamber) should agreement with the Council not be reached.

(6-7) Human rights and equalities

52. Consideration of human rights issues, principally with respect to Article 8 and Article 1 of the First Protocol ECHR adds little, if anything, to the approach set out in the CPO Guidance and by the UK courts.²² In all cases, the making of a compulsory purchase order 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 HRA 1998 and the ECHR. See Annex 1 for detailed submissions.
53. The Council's submission is that the very significant public benefits that the Scheme provides by securing the regeneration of the Site justifies the interference with individual rights. Those public benefits, including the wellbeing contribution of the Scheme, are considered in the evidence of Jonathan Spruce. As noted above, these substantial benefits do not appear to be the subject of any real dispute.
54. Furthermore, the requirements of Article 6 ECHR are satisfied. Any person with an interest in the Order Lands has the opportunity to make a representation or objection and to appear at this public inquiry, before the Secretary of State decides whether to confirm the Order.
55. Specifically in relation to Article 8 and the proportionality of the impact on the residential occupiers affected by the CPO:
 - (1) no more land is included within the CPO than required to deliver the Scheme and achieves the public benefits that are its objectives;
 - (2) the Council has paid for access to independent surveyors and ensured that information is available in everyone's first language;
 - (3) the Council has housing powers and duties which it is willing to use, albeit those affected have to date declined Council housing;
 - (4) the Council has been flexible in its offers to purchase and has in appropriate cases offered more than strict market value to assist relocation;
 - (5) the Council has offered Alternative Dispute Resolution and engaged with landowners to understand and seek to address their concerns.
56. In relation to the Equality Act 2010, the Council has taken the provisions of the Act into account at all stages of the process, including when formulating its planning policies, when granting the planning permissions, and when making the CPO. The Council also commissioned an Equality Impact Assessment in order fully to understand the impact of the

²² 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.

Scheme and to guide its interactions with affected landowners.

Compelling Case in the Public Interest

57. The final and overriding question that arises is whether there is a compelling case in the public interest for the compulsory acquisition. That can be tested in this way: would this part of Darlington look, feel and function better with the Scheme in place than it does now? Surely the answer is obvious – yes it would and that would bring considerable benefits to the Council’s whole area and indeed the wider region. Has the Council satisfactorily minimised, mitigated and avoided any adverse impacts of the CPO? Again the answer is clear – yes it has, e.g. by thoroughly investigating alternatives and minimising the land required to that necessary to realise the Scheme’s objectives, by providing those affected with access to free independent professional advice and by providing full and fair compensation in accordance with the Compensation Code. If you agree then the CPO should be confirmed.

The s. 16 Objection

58. Last year the Council signed the undertaking that Northern Powergrid (“NPG”) itself had drafted which will ensure protection of NPG’s apparatus and removal at the Council’s cost. There is no remaining point of substance outstanding. Consequently, this objection has been wholly dealt with albeit not formally withdrawn as yet.

Conclusions

59. These submissions have sought to set out the fundamental reasons why the Order should be confirmed along with the context for the determination of objections.
60. 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 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;
 - (4) the legal requirements of s. 226 TCPA 1990 are satisfied;
 - (5) there are no new material considerations which would justify a different approach to be taken to that of the Council in granting planning permission;
 - (6) the policy requirements in the CPO Guidance for the confirmation of the Order are satisfied;
 - (7) the confirmation of the Order would be entirely consistent with the NPPF and development plan;

- (8) the Council has fully complied with its equalities duties; and
- (9) confirmation of the Order would be consistent with, and not breach, the human rights of the landowners affected.

61. The Council respectfully requests that the CPO be confirmed as sought.

RICHARD MOULES

Landmark Chambers, 18 January 2022

ANNEX TO OPENING SUBMISSIONS

Annex 1: Detailed Legal Submissions

1. Copies of the authorities can be supplied if required.

Human Rights

2. 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 Secretary of State in the CPO Guidance and by the UK courts. In all cases, the making of a compulsory purchase order to acquire private interests in land must be shown to be justified in the public interest.
3. The balance between the public interest and private rights is not only a requirement of the Secretary of State (in the CPO Guidance) and English law (see below) but reflects the position under the Human Rights Act 1998 (“HRA 1998”) and the European Convention on Human Rights (“ECHR”).
4. 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.
5. 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 [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. 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. In the context of expropriation, the Court said in **James v. UK** at [46]:

“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.”

9. 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 [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 ...”

10. Strasbourg considers the availability of compensation to be a relevant consideration although not an absolute requirement. See **James v. UK** at [54]²³ (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.

²³ 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.

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 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..."

11. Indeed, Strasbourg will only find breach of A1P1 where there is an *extreme disparity* between the compensation awarded and value: see **Vistins v. Latvia** (2014) 58 EHRR 4 at [110]-[119].
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 compulsorily 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. 17 of the CPO Circular 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. Further, in ***R. (Clays Lane Housing Cooperative Ltd) v. Housing Corp*** [2005] 1 W.L.R. 2229 Maurice Kay LJ 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* & 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 preferred 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. As the former CPO Circular para. 19 advised:

"Parliament has always taken the view that land should only be taken where there is clear evidence that the public benefit will outweigh the private loss. The coming into force of the Human Rights Act has simply served to reinforce that basic requirement."