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Our Ref: LDN023/E5900/005/003  
Your Ref: DR/67788.00009

15 August 2011

Dear Mr Richardson

**LOCAL GOVERNMENT, PLANNING AND LAND ACT 1980, SECTION 142**

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

1. The report of the Inspector, David Prentis BA BPI MRTPI who held a public local inquiry into the above Order on 20, 23, and 26–28 July and on 28–30 September 2010 has been considered. A copy of the Inspector's report is enclosed. References in this letter to paragraphs in the Inspector's report are indicated by the abbreviation IR, followed by the relevant paragraph number.
2. The Order, if confirmed, would authorise the compulsory purchase of all that land measuring around 5.64ha bounded to the west by the A12 (Blackwell Tunnel Northern Approach), to the south by the railway lines and to the east by the River Lea at Bromley by Bow for the purpose of a proposed scheme of development for the building of a superstore, flexible units for retail uses, a library, a school, a park, residential units and a hotel.
3. Seven relevant objections to the Order were received. Two of the objections were lodged by statutory undertakers, EDF Energy Networks Plc and Transport for London were withdrawn before the inquiry, by their letters of 19 July 2010 (IR8.0-8.2). Two more objections were withdrawn during the inquiry by AC Holdings Ltd and Volker Highways by their letter of 22 July after reaching an agreement with Tesco Stores for the acquisition of their interests. This left three remaining objections by Keith Ellis and David Grier, Trad Scaffolding and Colas Ltd. The main grounds of objection were on the basis of loss of business, lack of alternative sites, no attempt to acquire the Order lands by agreement, commitment to comprehensive delivery of the scheme, and no compelling case on the planning merits.

## **The Inspector's report and recommendation**

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

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

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

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

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

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

## **Post Inquiry Representations**

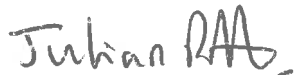
10. Post inquiry representations were received from Addleshaw Goddard on behalf of their clients Keith Ellis and David Grier dated 18 November and 23 December 2010. Denton Wilde Sapte responded on behalf of the Corporation by letter dated 21 December 2010. The contention advanced by the objectors was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

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

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

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

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

A handwritten signature in black ink that reads "Julian Pitt". The signature is written in a cursive style with a horizontal line under the name.

Julian Pitt  
National Unit for Land Acquisition and Disposal



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

The Planning Inspectorate  
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☎ GTN 1371 8000

**by David Prentis BA BPI MRTPI**

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

**Date 11 January 2011**

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**LOCAL GOVERNMENT, PLANNING AND LAND ACT 1980  
ACQUISITION OF LAND ACT 1981  
APPLICATION BY THE LONDON THAMES GATEWAY DEVELOPMENT  
CORPORATION FOR CONFIRMATION OF  
  
THE LONDON THAMES GATEWAY DEVELOPMENT CORPORATION  
(BROMLEY BY BOW) (SOUTH) COMPULSORY PURCHASE ORDER 2010**

Inquiry opened on 20 July 2010

File Ref: LDN 023/E5900/005/003

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## Abbreviations used in the report

### *The main parties*

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

### *Other abbreviations*

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

**File Ref: LDN 023/E5900/005/003**

**The London Thames Gateway Development Corporation (Bromley by Bow) (South) Compulsory Purchase Order 2010**

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

**Summary of Recommendation: The Order be not confirmed**

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**1. Procedural matters and statutory formalities**

- 1.1 The Inquiry sat for 8 days on 20, 23, and 26 - 28 July 2010 and on 28 - 30 September 2010. I made an accompanied visit to parts of the Order lands on 21 July 2010 and unaccompanied visits to the Order lands and surrounding area on 19 July and 29 September 2010. I made unaccompanied visits to the potential relocation sites referred to in the evidence on 27 September 2010.
- 1.2 The London Thames Gateway Development Corporation (the Corporation) confirmed its compliance with the statutory formalities.
- 1.3 The Trustees of Trad Scaffolding and Trad Scaffolding Ltd (Trad) have made an application for judicial review of the Corporation's decision to grant planning permission<sup>1</sup> to Tesco Stores Ltd (Tesco) for the redevelopment of parts of the Order lands. There were further submissions on behalf of Trad to the effect that there are legal impediments to the implementation of the scheme which I shall refer to in section 4 of the report. Legal submissions were made on behalf of Colas Limited (Colas) and Keith Ellis and David Grier (Ellis/Grier) to the effect that the Order as a whole is unlawful. I shall refer to these submissions in section 6 of the report. The Corporation's responses are reported at sections 5 and 7 respectively.
- 1.4 During the Inquiry it emerged that there was information regarding financial viability which had been taken into account by the Corporation but which was not before the Inquiry. I requested that this information be made available and this was done following the adjournment on 28 July 2010<sup>2</sup>. Various financial appraisals were attached to a supplementary statement of evidence<sup>3</sup>. At the resumed Inquiry it emerged that the supplementary statement had been substantially drafted by a person other than the witness himself. Counsel for

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<sup>1</sup> Planning permission Ref PA/09/02574/LBTH, issued 21 July 2010, is at Document DC10. The Judicial Review Claim Form is at document TRD13.

<sup>2</sup> Inspector's note - The information was provided with some redactions. In the main these related to the anticipated acquisition costs of individual plots. The objectors raised no objection to the extent of redaction and I agree that this was a reasonable approach.

<sup>3</sup> See DC1D.

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

- 1.5 The witness made clear in the supplementary statement that he was not professionally qualified to give expert evidence on matters of financial viability<sup>5</sup>. Insofar as the supplementary statement contains opinion or comment on the viability of the proposed scheme of redevelopment, I have not taken it into account. Nevertheless, I have taken account of the financial appraisals themselves. Other witnesses<sup>6</sup> were asked questions about the conclusions to be drawn from the financial appraisals and I have taken account of the evidence which was given in response.
- 1.6 Shortly before the Inquiry the Corporation reached agreement with Transport for London (TfL), previously an objector to the Order. As a result of this Agreement the Corporation put forward a schedule of modifications relating to plots in the vicinity of the A12<sup>7</sup>.
- 1.7 This report includes a description of the Order lands and their surroundings, the material points made at the Inquiry and in writing, together with my conclusions and recommendations. All references in this report with the prefix CD are references to the set of Core Documents which are listed in the attached schedule.

## **2. The Order lands and surroundings**

- 2.1 The Order lands, which extend to around 5.64ha, are described in the evidence<sup>8</sup>. They are bounded to the west by the A12 (Blackwall Tunnel Northern Approach), to the south by railway lines and to the east by the River Lea. The central and north eastern parts of the Order lands are occupied by Tesco. In addition to a Tesco store there are customer car parks, service yards and a petrol filling station. The Order does not seek to acquire the Tesco interests but these plots have been included so that any third party interests may be acquired.
- 2.2 The Ellis/Grier land, which is currently vacant, extends to around 0.48ha and comprises a multi-storey office building, some smaller structures and an open yard located adjacent to the A12 in the southern part of the Order lands. Trad occupies around 1.23ha, including a two storey office building and a car park fronting Imperial Street and an open yard with some ancillary buildings in the south eastern part of the Order lands which is used for the storage and maintenance of scaffolding components. A single storey building fronting Imperial Street is occupied by a separate company. Between Trad and the Ellis/Grier land there is an industrial shed and yard occupied by a highways contractor. The Colas land is on the north side of Otis Street. It extends to around 0.27ha, comprising offices, workshops and a yard, and is occupied by a

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<sup>4</sup> Inspector's note – in answer to my question, Mr Barnes confirmed that no objection was raised to reliance being placed on the attached financial appraisals.

<sup>5</sup> See paragraph 1.3 of DC1D

<sup>6</sup> Inspector's note – David Napier and Colin Smith were asked about the financial appraisals.

<sup>7</sup> The Compromise Agreement and proposed modifications are at Document DC17B.

<sup>8</sup> Section 3 of Document DC1, paragraph 8 of Document EG1, section 5 of Document TRD3 and paragraph 7 of Document CL1.



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

- 2.3 The Order lands include various roads and footways and a pedestrian subway beneath the A12, together with related stairways. In addition, the Order seeks new rights over paved areas adjacent to the A12 in the vicinity of the subway.
- 2.4 Vehicular access to the Order lands is from the A12 via Hancock Road. There is no direct access from the northbound carriageway. Vehicles arriving from the south must cross the A12 at the Bow interchange and then travel back southwards to Hancock Road. Vehicles travelling north from the Order lands must first head south before crossing the A12 at Twelve Trees Crescent. Bromley-by-Bow London underground station is located on the opposite side of the A12, reached via the subway. It provides access to the District and Hammersmith and City lines. There is also a Docklands Light Railway (DLR) station within walking distance of the site.
- 2.5 To the north of the Order lands is an area of industrial and storage uses known as Bromley-by-Bow North. To the west of the A12 there are extensive residential estates dating from the 1950s and 1960s. To the south of the railway lines, west of the A12, is the former St Andrew's Hospital site where a redevelopment scheme for some 900 dwellings is under construction. To the east of the River Lea is the Three Mills complex which includes television studios, offices and some residential units. The complex contains a number of listed buildings, including the Grade 1 listed Tide or Mill House and the Grade II\* listed Clock Mill, and is within a conservation area. To the north east of the Order lands, on the opposite side of the River Lea, is a potential regeneration area at Sugar House Lane<sup>9</sup>.
- 2.6 The Corporation has granted planning permission to Tesco for a scheme of redevelopment covering much of the Order lands ("the scheme"). The permission is hybrid, in that it is part detailed and part outline. Detailed permission has been granted for a superstore (11,377sqm), flexible units for retail uses, financial/professional services, restaurants/cafes, drinking establishments, takeaways and offices (945sqm), a library (1,315sqm), car parking and associated infrastructure including the widening of the underpass. Outline permission has been granted for 454 residential units (5 – 19 storeys), flexible units for retail and other uses (1,086sqm), flexible units for business, leisure and other uses (1,547sqm), a primary school, a hotel (104 bedrooms, 19 storeys), public open space, a petrol filling station and infrastructure including access roads, parking and a riverside walk. Permission was granted following the completion of a S106 Agreement between Tesco, the Corporation and TfL<sup>10</sup>.

### **3. The case for the London Thames Gateway Development Corporation**

#### *Introduction*

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

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<sup>9</sup> The location of these sites is shown on the plan at appendix 1 of DC1A.

<sup>10</sup> The planning application documents are at CD50, the permission is at DC10, the S106 Agreement is at DC7A and there is a supplemental Agreement at DC18A.

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

- 3.2 The Corporation is the Government's delivery body responsible for securing the regeneration of the Lower Lea Valley (LLV) and London Riverside. This is a specific part of the Thames Gateway identified as a national priority for regeneration. The Corporation has set about formulating and implementing its regeneration strategy in compliance with this strong remit. In relation to Bromley-by-Bow, the regeneration strategy identifies the need for comprehensive redevelopment to meet the planning and regeneration objectives for the area.
- 3.3 The existing buildings and uses within the Order lands do not fulfil the potential for regeneration created by their proximity to Stratford, the Olympic Park, Canary Wharf and central London. Much of the land is dominated by hard surfacing for car parking and open storage. The redevelopment of the Order lands would act as a catalyst for the redevelopment of surrounding regeneration sites within the Olympic Fringe area including Bromley-by-Bow North and Sugar House Lane.

#### *Planning policy*

- 3.4 The development plan includes the London Plan 2008 (Consolidated with Alterations since 2004) (the LP), saved policies of the Tower Hamlets Unitary Development Plan 1998 (the UDP) and the Tower Hamlets Core Strategy, adopted in September 2010 (the CS)<sup>11</sup>. Map 2A.1 of the LP identifies the LLV, including Stratford, as an Opportunity Area. Table 5C.1 sets a minimum target of 32,000 new dwellings in this area over the period 2001 – 2026. The LP notes that the LLV Planning Framework proposes a significant new residential community in the valley with the potential capacity to deliver 30,000 to 40,000 new homes. Other relevant policies of the LP cover matters such as affordable housing, social infrastructure, design, accessibility and the open space value of waterways, including the River Lea<sup>12</sup>.
- 3.5 The UDP designates the Order lands as an Industrial Employment Area. Saved Policy EM11 supports industrial and warehousing uses and saved Policy EM13 states that residential use will be permitted only where the loss of industrial land is justified. However, following a planning appeal in 2007 relating to the redevelopment of the Trad site, the Secretary of State concluded that the UDP was out of date with respect to the appeal site and should not be given any weight<sup>13</sup>.
- 3.6 Policy SP01 of the CS states that there should be a new district centre at Bromley-by-Bow to support wider regeneration. The policy encourages the

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<sup>11</sup> Extracts from the LP are at CD11, from the UDP at CD13 and from the CS at CD14.

<sup>12</sup> Further details of relevant national planning guidance, development plan policies, emerging policies and supplementary planning documents are contained in section 4 of DC1.

<sup>13</sup> Appeal Ref APP/A9580/A/07/2036253. See paragraph 12 of the Secretary of State's decision, at CD22.

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

- 3.7 The Mayor of London has published the Draft Replacement London Plan (DRLP) which is to be subject to an examination during 2010. It confirms the LLV Opportunity Area as the most important single strategic initiative for London and an urban renewal challenge of global significance. In addition, it identifies Bromley-by-Bow as a future district centre. The DRLP defines a district centre as providing convenience goods and services for local communities in locations which are accessible by public transport, walking and cycling, typically containing 10,000 – 50,000sqm of retail floorspace<sup>14</sup>.
- 3.8 The LLV Opportunity Area Planning Framework (OAPF) was adopted by the Mayor of London in January 2007. It does not form part of the development plan but has the status of a Supplementary Planning Document<sup>15</sup>. In addition to setting out a series of development principles the OAPF provides a vision and strategy for the Bromley-by-Bow area<sup>16</sup>. Amongst other matters this includes: the delivery of 1500 – 2300 residential units, including about 360 units from mixed use development through the relocation of the existing Tesco store closer to Bromley-by-Bow station; approximately 6,700sqm of new retail floorspace, of which approximately 5,000sqm could be provided through the relocation of the Tesco store; a social infrastructure cluster (preferably near Bromley-by-Bow station) including a primary school, a secondary school, a health centre and associated community space; enhanced accessibility to the River Lea through the development of a linear open space along the west bank and improved facilities for pedestrians and cyclists across the A12.
- 3.9 The Corporation does not have statutory plan-making functions. It has however produced the Bromley-by-Bow Land Use and Design Brief 2009 (LUDB)<sup>17</sup> in partnership with the London Borough of Tower Hamlets (LBTH), Greater London Authority (GLA) and Design for London. The LUDB builds on the OAPF and earlier work by LBTH. It has been adopted by LBTH as interim planning guidance. It covers the Order lands together with Bromley-by-Bow North and sets out a number of objectives which include: a comprehensive development that makes efficient use of land to create a well connected mixed use quarter at Bromley-by-Bow; a new town centre, anchored by a supermarket, that includes new shopping facilities, a primary school, space for community use and open space; and accessibility improvements that link existing communities with new homes, jobs and community facilities and the LLV's open spaces, waterways and heritage assets. The LUDB stresses the need for a comprehensive approach to redevelopment and contains an indicative land use diagram and guidelines for the retail, residential, commercial and community uses proposed.

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<sup>14</sup> Extracts from the DRLP are at CD12.

<sup>15</sup> Inspector's note – at paragraph 8 of the appeal decision referred to above (CD22) the Secretary of State commented that the LLV OAPF (CD19) should be afforded very considerable weight.

<sup>16</sup> Inspector's note – this is a wider area than the Order lands, including Bromley-by-Bow North and areas to the west of the A12.

<sup>17</sup> The full document is at CD15. The land use proposals are contained in section 4.

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

*Proposed use of the Order lands*

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

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

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

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<sup>18</sup> See the Committee Report on the Tesco application (CD49). The urban design approach is described in DC2.

<sup>19</sup> The access proposals are described in DC3.

<sup>20</sup> See CD54.

<sup>21</sup> See DC13.

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

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

### *Implementation*

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

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

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

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<sup>22</sup> There is a plan of land ownership at DC11.

<sup>23</sup> See Appendix 2 of DC1A.

<sup>24</sup> Inspector's note – In answer to my question, Mr Cole stated that the moratorium precludes highway works that might affect traffic around the Olympic Park prior to and during the Olympic Games.

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

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

- 3.17 Tesco has entered into a CPO Indemnity Agreement with the Corporation in which it agrees to underwrite the costs of site assembly and the costs of making the CPO. Under this agreement if there is not substantial commencement of the district centre within 3 years of taking the land then Tesco must offer the land back to the Corporation<sup>28</sup>.
- 3.18 If the CPO were confirmed it would be Tesco's intention to acquire the land and implement the permission as soon as possible. It is plain that Tesco wants to build the new superstore and sees it as in its interests to do so. It has already invested in obtaining planning permission for the scheme and has undertaken to fund the costs of the CPO and land assembly, the construction of phase 1, the provision of infrastructure and the remediation of land for phase 2. The letters submitted by Tesco to the Secretary of State confirm its commitment not just to the store but to the scheme in general<sup>29</sup>.
- 3.19 It is likely that the residential elements would be delivered by a house builder with an affordable housing partner. There has been substantial interest from house builders and registered social landlords, as shown by the letters received. These include letters from house builders already active in the locality, including the developer of the nearby St Andrew's Hospital site. Letters of interest have also been received from potential occupiers of the retail units and from a hotel operator<sup>30</sup>.
- 3.20 In relation to the park, the Corporation has resolved to make available £250,000 for the initial laying out of the open space and £50,000 for its future

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<sup>25</sup> Referred to as "plot 4" in the S106 Agreement, this comprises the phase 2 land other than the school and park.

<sup>26</sup> The buy back provisions are contained in clause 12.1 and appendix 5 of the S106 Agreement. The land value would be the higher of £13.7million or open market value.

<sup>27</sup> See the S106 Agreement (DC7A) and supplementary deed (DC18A). There are explanatory notes setting out the main provisions of the Agreements at appendix 1 to DC1C and at DC21.

<sup>28</sup> See clause 14 of CD47.

<sup>29</sup> See letter 18 in Appendix 1 to DC5 and DC9.

<sup>30</sup> Inspector's note – The letters are at Appendix 1 to DC5. In answer to my questions Mr Napier stated that potential residential developers had been shown scheme drawings during the design process and that the current design reflected comments that had been received.

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

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

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

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

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<sup>31</sup> See paragraph 5.30 of DC1.

<sup>32</sup> See Appendix 2 to DC1C.

<sup>33</sup> Inspector's note – the timescale of 3 to 5 years was given by Mr Allen in answer to a question from Mr Barnes.

<sup>34</sup> As shown on the plan at DC11.

<sup>35</sup> Inspector's note – in answer to my question, Mr Allen stated that it was not known at this stage whether a further CPO would be required. The Corporation would work with the majority land owners concerned and would be prepared to use compulsory powers if needed.

<sup>36</sup> See Appendices 1 and 2 of DC1D.

<sup>37</sup> See Appendix 5 of DC1D.

<sup>38</sup> Inspector's note – the phase 2 appraisal was intended to provide a valuation of the land, based on an assumed developer's profit of 25%. The anticipated capital receipt for disposing of the land is included in the phase 1 appraisal.

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

- 3.24 In early 2010 the Corporation instructed a Joint Advisory Consortium (JAC) of consultants to review independently the GL Hearn appraisals. The JAC appraisal of phase 1 indicated that it would be viable with a profit of £12.4 million or nearly 16%<sup>40</sup>. Furthermore, in addition to the anticipated developer's profit, Tesco would benefit from an unquantifiable trading benefit from having a new and bigger store. The JAC appraisal of phase 2 also shows a positive residual land value.
- 3.25 The relevant policy test, set out in paragraph 22 of Circular 06/2004 and in paragraph 12 of Appendix D, is that there should be a reasonable prospect of the scheme being delivered. Whilst there can be no certainty that the development will happen, there is no policy requirement to demonstrate certainty. There is a very good prospect that the Corporation's proposals will bring about the regeneration of the Order lands. No proposals are being promoted by anyone else for any alternative form of development.

*The need for compulsory acquisition*

- 3.26 Compulsory acquisition is required so that the Corporation can achieve its statutory objective of bringing about the regeneration of the LLV. During 2005 and 2006 the Corporation met with the developers which were, at that time, promoting the redevelopment of the Trad land. The Corporation's view that a more comprehensive approach was needed was explained repeatedly. In January 2007 Aitch Group and Genesis Housing Group appealed against non-determination of their application to develop the Trad land with 530 residential units above ground floor commercial space.
- 3.27 In May 2007 the Corporation's Board resolved to commence work on a regeneration strategy for the land which is now covered by the LUDB and to negotiate and seek site assembly<sup>41</sup>. The Aitch/Genesis appeal was dismissed in November 2007. The Secretary of State considered that the scheme would prejudice the effective regeneration of the area, thereby prejudicing the effective implementation of the broad strategy of the LP to secure the regeneration of this important part of the LLV through a mixed use development. Moreover, the Secretary of State commented that the Corporation has the powers and means of implementation to secure the comprehensive redevelopment sought in the Bromley-by-Bow area<sup>42</sup>.
- 3.28 Following dismissal of the appeal the Corporation called a meeting with landowners and developers in the area and explained that it wanted the landowners to come together in partnership to deliver comprehensive regeneration. Informal discussions continued and in April 2008 a briefing/

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<sup>39</sup> Inspector's note – this land is the overspill car park most of which is not within the Tesco application area. This appraisal was intended to provide a valuation of the land. The anticipated capital receipt for disposing of the land is included in the phase 1 appraisal.

<sup>40</sup> Inspector's note - The difference between the JAC assessment and that of GL Hearn arose primarily because JAC adopted lower estimates of construction costs – see section 5 and the conclusions to the JAC report which is at Appendix 6 to DC1D.

<sup>41</sup> See item 1 within CD46.

<sup>42</sup> See paragraph 14 of the Secretary of State's decision at CD22.



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

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

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

#### *The requirements of Circular 06/2004*

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

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

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<sup>43</sup> The invitation letter, attendance list and presentation are at Appendix 4 of DC1A.

<sup>44</sup> See item 3 within CD46.

<sup>45</sup> The Board report and minutes are at item 4 within CD46.

<sup>46</sup> See paragraph 8.30 of DC1.

<sup>47</sup> Details of the negotiations are set out in the appendix to DC4.

<sup>48</sup> See paragraph 10.4 of the Inspector's report at CD22.

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

- 3.33 That part of the Order lands outside the Tesco scheme must be under the Corporation's control by March 2013, the latest date by which the Corporation will acquire vacant possession of the Leycol Printers site<sup>49</sup>. This is so that the land can be brought forward for comprehensive development together with land to the north, as described above. There is therefore a compelling case for the acquisition of this land.
- 3.34 There are unlikely to be impediments to the implementation of the Tesco scheme. Tesco has indicated its desire to open the new store by June 2012. Evidence has been provided regarding funding in relation to the park, school and IDEA Store. Evidence has been provided on viability and developer interest for phase 2. There is also likely to be significant developer interest in bringing forward development at Bromley-by-Bow North. Given the support in principle of TfL, implementation of the AMJ is unlikely to be an impediment.
- 3.35 There may be a need for other consents, such as Stopping Up Orders, temporary highway closures or diversions. There is no impediment to the grant of such consents, which would be sought from LBTH at the appropriate time.
- 3.36 The Corporation has had regard to the Human Rights implications of making the Order and considers that there would be very significant public benefit arising from the regeneration of the Order lands which would outweigh the effects on occupiers and land owners.

### *Conclusion*

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

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<sup>49</sup> See paragraph 8.69 of DC1.

## **The Objections**

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

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

#### **Reference Nos and addresses:**

Plot 43 – Pelican Wharf, 2 Imperial Street

Plot 45 – Imperial House, Pelican Wharf, to the south of Imperial Street

Plots 46, 47 and 48 – Pelican Wharf, to the south of Imperial Street

Plot 49 – Pelican Wharf, to the south east of Imperial Street

#### **Name of objectors and legal interests:**

Hayden Francis Smith and Doretta Milner Smith as trustees of Trad Scaffolding Company (H F Smith) Furbs – Owners

Trad Scaffolding Co Ltd – Lessee (all plots); Occupier (all plots except plot 45)

#### *Legal submissions*

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

#### *Loss of a successful business*

- 4.3 Trad was founded in 1969. It is part of the Trad Group which provides scaffolding hire services from several locations across the UK. However, the whole of the contracting business is based at Bromley-by-Bow. The contracting operation has an annual turnover of around £20million and employs around 300 people, many of whom are highly skilled workers. It has the capacity to undertake large scale, complex and specialist work. For example, it is currently providing scaffolding for the Shard of Glass project at London Bridge and regularly works for London Underground and on medium/high rise local authority housing contracts. It is one of only 5 companies in and around Greater London with the capacity to take on projects of this nature<sup>52</sup>.
- 4.4 Most of the contracting work is carried out in central and east London. The location at Bromley-by-Bow is important to the company's ability to offer a competitive service. Many jobs require the attendance of staff on a daily basis. Some jobs require attendance during the night so it is important to have a base

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<sup>50</sup> See TRD13.

<sup>51</sup> See 38 – 40, 56 and 58 of TRD15.

<sup>52</sup> See TRD1.

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

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

*Lack of alternative sites*

- 4.6 Trad occupies a site of about 1.23ha (3.05acre) comprising an open yard, a two storey office building of just under 800sqm and a single storey office building of around 78sqm. The single storey building is let to Automec on a short term basis<sup>54</sup>. In considering relocation, the requirement is for a site of similar size. Trad must have regard to the drive time for HGV deliveries because of the need to avoid additional shifts for drivers which would add to operating costs. The accessibility of any potential site to its staff, many of whom travel to work by public transport, is also important: The most suitable location is east London, extending out along the A13 to Beckton, Barking and Dagenham. There are significant set-up costs for a new depot and for this reason a freehold site is preferred. If relocation were to a leasehold property then the company would seek a period of at least 10 years without having to contemplate further upheaval<sup>55</sup>.
- 4.7 Trad instructed surveyors to investigate alternative sites following the submission of the Tesco planning application in November 2009. The site search involved circulars distributed to commercial property agents, use of websites, an advertisement in the Estates Gazette, regular contacts with local authorities and approaches to occupiers of suitable properties. Following the making of the Order a direct approach was made to the Corporation on 12 March 2010 but no sites were identified at that stage<sup>56</sup>.
- 4.8 The Corporation has a statutory duty under S146(2) of the 1980 Act to assist those potentially affected by a CPO with finding a site for relocation. Circular 06/2004 advises that where existing users are affected by a CPO an Urban Development Corporation (UDC) will be expected to indicate how it proposes to

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<sup>53</sup> Inspector's note – In answer to a question from Mr Corner, Mr Allen stated that the economic and regeneration benefits of the scheme would outweigh any loss of jobs at Trad, if that were to occur.

<sup>54</sup> See section 5 of TRD3.

<sup>55</sup> Inspector's note – in answer to a question from Mr Steel, Mr Murray stated that a move to leasehold premises would be a compromise on Trad's part.

<sup>56</sup> Inspector's note - see section 6 of TRD3 for details of Trad's site search. In answer to a question from Mr Steel, Mr Murray confirmed that the requirement is for a site of 3 acres. Whilst some of the advertisements sought sites of 1 to 3 acres, this was because, in order to attract the widest response, it was better not to be too specific in the search criteria.

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

- 4.9 The attitude of the Corporation has been lamentable. On the first day of the Inquiry it introduced 5 new sites which, it asserted, were suitable and available for Trad. On the following day its case changed and it said 2 of the sites were not available<sup>58</sup>. It seems unlikely that the position on these sites had changed within 24 hours and it appears that the Corporation was putting forward evidence without undertaking elementary checks as to whether the sites were in fact available. Moreover, in cross-examination of the Corporation's planning witness it became clear that there had been no investigation of the planning situation in relation to any of the suggested sites<sup>59</sup>.
- 4.10 Trad's comments on the suitability of the sites put forward by the Corporation can be summarised as follows<sup>60</sup>:

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

<sup>57</sup> See the email of 14 April 2010 at Appendix 9(c) of TRD3C.

<sup>58</sup> Inspector's note – The rebuttal proof of evidence of Mr Astbury (Document DC4A) was submitted on day 1 of the Inquiry. The updated rebuttal proof (DC4B) shows two sites, numbered 11 and 12 on the schedule at Appendix 1, as having been withdrawn.

<sup>59</sup> Inspector's note - in answer to questions from Mr Steel, Mr Allen accepted that he did not know the planning history of the various suggested sites. However, in his opinion they appeared to be suitable for use by Trad.

<sup>60</sup> Inspector's note - the reference numbers, site areas and distances from the City are taken from the schedule at Appendix 1 of Mr Astbury's updated rebuttal proof of evidence, (DC4B), which contains further details regarding ownership and transport links. The Trad comments are set out in Appendix 1 to Mr Murray's response to the rebuttal (TRD3C). Site locations and individual site plans are at DC14.

<sup>61</sup> Inspector's note – in answer to a question from Mr Steel, Mr Astbury accepted that Trad has a requirement for 3 acres and that this site would not be suitable unless combined with part of the adjoining AXA site (site 5).

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

<sup>62</sup> Inspector's note – in answer to a question from Mr Steel, Mr Astbury advised that the London Development Agency (the site owner) has another potential occupier which requires 2 acres. He accepted that the remainder of the site would be too small.

<sup>63</sup> Inspector's note – in answer to a question from Mr Steel, Mr Astbury accepted that the lease period would involve Trad in a double move.

<sup>64</sup> Inspector's note – in answer to a question from Mr Steel, Mr Astbury advised that the site extends to 25 acres and is scheduled for phased residential development. The London Development Agency (the site owner) would accept a "lift and shift" clause whereby Trad could be required to relocate within the site.

<sup>65</sup> Inspector's note – in answer to a question from Mr Steel, Mr Hayden Smith stated that he had personal experience of travel delays due to congestion on the A13. Locations to the east of the Goresbrook Interchange, such as the Denver Industrial Estate, would be unacceptable because the additional travel time would disrupt the shift patterns of Trad's drivers.

<sup>66</sup> Inspector's note – Mr Murray did not comment on this site. Mr Steel submitted documents relating to the location of the site within the Public Safety Zone of London City Airport (TRD6, TRD8 and TRD9). In answer to a question from Mr Steel, Mr Astbury commented that the presence of runway landing lights within Site 9 need not prevent its use by Trad as the landing lights could be protected by fencing. In answer to a question from Mr Steel, Mr Hayden Smith commented that the site was impractical. Headlights and flashing safety lights on Trad's vehicles would conflict with aircraft landing lights. The site would be subject to an unacceptable level of aircraft noise.

15	Barking Riverside	Split larger site as required	8.3	Lease for 10 years, break after 5 for DLR construction if required <sup>67</sup>	No terms available
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- 4.11 HWW is now regarded by the Corporation as the best potential relocation site. On 24 August 2010 Tesco submitted an outline planning application for the use of the site for open storage with ancillary office space together with improvement works to Hindmans Way. On 28 September 2010 the Corporation's planning committee authorised officers to grant planning permission, subject to consideration of any further consultation responses received before 11 October 2010<sup>68</sup>. However, there are a number of complexities and uncertainties associated with making the site available.
- 4.12 The day before the Inquiry resumed the Corporation established that land required for the highway works is in third party ownership. On the final day of the Inquiry it emerged that two other third parties have interests. Matters to be resolved include legal agreements with TGD Ltd (TDG), whose land is required for the highway improvements, obtaining planning permission and discharging pre-commencement conditions, drainage, flood risk issues, Health and Safety Executive limitations in relation to adjoining uses, site clearance<sup>69</sup>, decontamination<sup>70</sup>, relocating a large (and locally listed) hopper and obviating the lack of public transport. The Corporation states that resolving these matters would be straightforward. However, little weight should be attached to such unproven assertions. Previous evidence submitted by the Corporation regarding alternative sites has not proved to be reliable on closer examination.
- 4.13 The burden of proof is on the acquiring authority to show that the sites on which it relies are suitable and available. It has failed to do so. The evidence before the Inquiry shows that there are at present no sites which are suitable and available for relocation. The double move option would be unacceptable because it would disrupt the stability and effectiveness of the business. It would not be reasonable to conclude that it is likely that HWW will be suitable and available by July 2011, as proposed by the Corporation. The uncertainty is too great. The cause of the uncertainty is the Corporation's late move to assist Trad with relocation. Had the advice of Circular 06/2004 been followed, the Corporation would have started this process before seeking compulsory purchase powers.

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<sup>67</sup> Inspector's note – in answer to a question from Mr Steel, Mr Astbury stated that the break clause would be after 5 years.

<sup>68</sup> See DC1E for a description of the proposals. The Committee report is at Appendix 2, there is an addendum report at DC19, a revised highway layout at DC20 and a draft planning committee minute at DC22.

<sup>69</sup> Inspector's note – during my site visit I saw that there are culverts or similar structures on the land. At the resumed Inquiry I asked whether there was any further information about these structures. No further information was available although they are shown on DC20.

<sup>70</sup> See the Environmental Risk Assessment at TRD14.

*Compulsory purchase not a last resort*

- 4.14 Trad is fully in favour of the regeneration of Bromley-by-Bow, including the redevelopment of its own site. However, paragraph 24 of Circular 06/2004 states that before embarking on compulsory purchase, and throughout the preparation and procedural stages, acquiring authorities should seek to acquire land by negotiation wherever practicable. The compulsory purchase of land is intended as a last resort in the event that attempts to acquire the land by agreement fail. The Courts have been astute to impose a strict construction on statutes expropriating private property<sup>71</sup>.
- 4.15 In 2006 Trad entered an agreement under which Aitch Group submitted a planning application for the development of the Trad land. Had permission been granted, Trad would have been able to relocate in its own timescale to sites that were available at that time. In November 2006 Trad accepted an unconditional offer of £30million from the Corporation. Solicitors were instructed but the Corporation subsequently withdrew in January 2007 because Board approval was not given. Discussions were then held between Aitch Group and Tesco and in July 2007 terms were agreed for Tesco to purchase the property for £27million plus a top up if the Aitch/Genesis appeal was successful. Again solicitors were instructed and contracts prepared but Tesco subsequently withdrew. From spring 2008 there were further negotiations and terms were substantially agreed. However, it subsequently seemed that Tesco's interest in the scheme waned due to the economic climate<sup>72</sup>.
- 4.16 In each case nothing was done by Trad to cause a change in circumstances, no reasons were given for the withdrawal of the offers and neither the Corporation nor Tesco came back with lower offers or revised terms<sup>73</sup>. In each case the negotiations had reached an advanced stage before being broken off by the Corporation/Tesco. In October 2009 a further offer was made by Tesco. This was less than one quarter of the offers made previously and was considered to be derisory<sup>74</sup>. No reasons were given as to why the offer was so different. At this stage the scheme had not been finalised and was subject to objection from important consultees. Moreover, the S106 terms were not known and the proposals made no mention of relocation. Consequently, Trad did not consider that any meaningful and considered response could be made. In any event, there was no follow up of the offer, either by the Corporation or by Tesco. The fast tracking of the Order has not allowed sufficient time for a transaction of this complexity to be concluded.
- 4.17 Trad remains willing to hold negotiations regarding its site. If the Secretary of State declines to confirm the Order this will have the effect of causing the parties to come together to arrive at a negotiated outcome. The history shows that acquisition by agreement has always been practicable. During the period

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

<sup>72</sup> The history of these discussions is set out in section 7 of Document TRD3.

<sup>73</sup> Inspector's note – these points were confirmed by Mr Murray in answer to questions from Mr Steel.

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



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

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

*Lack of commitment to comprehensive delivery*

- 4.19 It is clear from minutes of Corporation meetings<sup>75</sup> that the scheme has been designed to avoid the OJEU process. That process operates in the public interest in that it promotes competition between developers with the potential to bring about a better scheme. The delivery of comprehensive development can then be guaranteed by a development agreement. The Secretary of State should not approve a CPO which seeks to avoid a procurement process which is required by European law.
- 4.20 The consequence of the avoidance of an OJEU process is that the Corporation has not been able to insist on a development agreement. The need for a comprehensive approach underpins the whole policy context for Bromley-by-Bow and was one of the reasons why the Aitch/Genesis scheme was rejected. However, in the absence of a development agreement there is no mechanism to ensure that comprehensive development is delivered. Officers of the GLA were satisfied that the scheme, if completed as a whole, would represent a reasonable balance of uses. The draft heads of terms of the S106 Agreement considered by the GLA included a commitment to the timely delivery of all phases of the development<sup>76</sup>. There is no such commitment in the final Agreement and the Secretary of State cannot be confident that the balance of uses now proposed will actually be delivered.
- 4.21 Confirmation of the Order would amount to a subsidy to a private developer through the use of public powers. Tesco would avoid having its own land acquired at "no scheme" CPO values. It would then get the benefit of the marriage value of its own land together with the land acquired compulsorily. It could sell on the phase 2 land to another developer or sell the land back to the Corporation under the terms of the CPO indemnity agreement. In either case

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<sup>75</sup> See CD46.

<sup>76</sup> See paragraph 9 and last bullet point of paragraph 27 of CD54.

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

- 4.22 Viability, whilst a necessary condition for development, does not guarantee delivery. There may be many reasons why a developer decides not to proceed. In the absence of a development agreement a developer cannot be compelled to deliver anything. In this case neither the S106 Agreement nor the CPO Indemnity Agreement requires Tesco to carry out development of any part of the scheme. The implementation of the scheme would be entirely in the hands of Tesco, not the public authority. It is accepted that there is a reasonable prospect of phase 1 coming forward but not the later phases. There is no funding commitment to the fitting out of the IDEA Store or the construction of the school and its playing field. Whilst 11 shops would be constructed to shell and core, the letting of the shop units would be risky<sup>77</sup> and the 3 units along Imperial Street would be particularly hard to let as there would initially be little footfall here. There would be difficulties in letting the B1 elements of the scheme<sup>78</sup>. The Hotel Needs Assessment indicates that there is a lack of quantitative need for the hotel and there is limited evidence of operator demand<sup>79</sup>.
- 4.23 The residential phases would be burdened by substantial S106 payments and by £12million of abnormal costs associated with roofing over the petrol filling station to enable residential development above. There is greater profitability in phase 1. Any revised proposals for phase 2 would be assessed on their own merits, without the benefit of any of the phase 1 profit and without the opportunity to address any of the shortcomings of phase 1. For example, a revised scheme might omit features such as the hotel, the high rise housing or the housing above the petrol filling station.
- 4.24 Delivery of phase 1 alone would see large parts of the site left vacant and surrounded by hoardings. Little weight should be attached to expressions of interest from potential house builders because these do not give any commitments. If the Order were confirmed, there would be potential for the phase 2 land to remain vacant for some time. The "buy back" clause of the S106 Agreement would be of little practical benefit because, if phase 2 proves not to be viable, a mere change of ownership would not make it viable. Moreover, there is no evidence that the Corporation would have the funds to buy back the land at its open market value.
- 4.25 There is no requirement, in planning terms, for a superstore of this scale. The superstore should not therefore be regarded as part of the regeneration benefits of the scheme. The housing is a policy requirement but there is no housing in phase 1. Few of the claimed regeneration benefits would be realised unless the whole scheme were to be carried out.

*Lack of compelling case on the planning merits*

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

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<sup>77</sup> See paragraph 4.41 of appendix 6 to DC1D.

<sup>78</sup> Inspector's note – Mr Napier accepted that the B1 element would be difficult to let in answer to a question from Mr Steel. See also paragraph 9.16 of DC5.

<sup>79</sup> See paragraphs 29 – 31 of CL/EG4.

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

- 4.27 The design of the scheme has been criticised by the Commission for Architecture and the Built Environment (CABE). Commenting on the planning application CABE expressed concern that the size and positioning of the superstore would compromise the chances of this development integrating with the surrounding community and regenerating the area<sup>84</sup>.
- 4.28 The OAPF states that development in the Bromley-by-Bow sub-area could deliver around 6,700sqm of new retail space of which 5,000sqm could be provided through the relocation of the existing Tesco store<sup>85</sup>. The scheme would provide a very large superstore with a floor area of 11,377sqm, double the size of the existing store. Planning Policy Statement 4: *Planning for Sustainable Economic Growth* (PPS4) states that district centres will usually include a range of non-retail services as well as local public facilities such as a library. There is real uncertainty over the provision of the IDEA Store and no commitment to providing non-retail services at any stage. A district centre is no more than a possibility, even in the event that the whole scheme comes forward.

#### *Lack of urgency*

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

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<sup>80</sup> See sections 4.1 and 4.2 of CD15.

<sup>81</sup> A plan showing aspects of the scheme which depart from the LUDB is included at appendix 11 of TRD2A.

<sup>82</sup> See paragraph 9.92 of CD49.

<sup>83</sup> See paragraph 4.133 of CD19 and section 4.2 of CD15.

<sup>84</sup> See appendix 7 of TRD2A.

<sup>85</sup> See paragraph 4.136 of CD19.

<sup>86</sup> Inspector's note – in answer to my question, Mr Allen stated that there is no relationship between the delivery of the scheme and the 2012 Olympic Games. He commented that the regeneration of Bromley-by-Bow does form part of the wider regeneration of the Olympic Fringe as part of the Olympic legacy. In answer to questions from Mr Steel, he accepted that there is no contractual reason for urgency.

### *Conclusions*

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

## **5. Response by the Corporation to the case for Trad**

### *The submissions regarding OJEU*

- 5.1 In September 2009 the Corporation decided to promote the regeneration of Bromley-by-Bow South by entering two agreements with Tesco - a conditional sale and purchase contract and a CPO Indemnity Agreement. The Corporation is a short life body charged with making speedy progress on the regeneration of east London. It is aware of the delays that would be associated with following an OJEU process and is confident that the above agreements, together with a S106 Agreement and appropriate planning conditions, would be highly likely to deliver comprehensive regeneration<sup>87</sup>. An OJEU process is only required if there is procurement of public works. In this case there will not be procurement of public works so it cannot be said that the approach taken by the Corporation is unlawful. It is right to say that if there had been a development agreement then an OJEU process would have been required. However, a development agreement could not guarantee comprehensive redevelopment. It could only require redevelopment to take place if it were viable.
- 5.2 It is highly unlikely that anyone, other than Tesco, would carry out the redevelopment of the Order lands<sup>88</sup>. It would have been open to the objectors to approach other potential developers to see if they were interested. However, at no stage of the Inquiry has any suggestion been made that any other developer would be willing and able to secure the regeneration of the Order lands.

### *The relocation of Trad*

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

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<sup>87</sup> See paragraphs 8.23 to 8.25 of DC1.

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

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

- 5.4 Even if the conclusion were reached that the employment now on the Order lands may be lost, the right course of action would be to confirm the Order. The scheme would provide 412 jobs<sup>89</sup> (full time equivalent) plus further unquantified jobs in the school and IDEA Store. This employment gain would substantially outweigh any loss of jobs on the Trad site. Moreover, there are many other advantages of the scheme which would secure regeneration at Bromley-by-Bow South and act as a catalyst for further regeneration.
- 5.5 That said, the Corporation considers that there are suitable alternative sites for Trad. With regard to Trad's requirements, it has been accepted that there is no specific calculation justifying the suggested need for a minimum lease term of 10 years and that, if setting up costs were incurred which were not reflected in the site value, then this would be covered by a disturbance payment<sup>90</sup>. The evidence regarding Trad's requirements has not all been consistent, for example the issues of whether or not the yard and office need to be on the same site<sup>91</sup> and whether any leasehold should be protected under Part II of the Landlord and Tenant Act 1954.
- 5.6 Dealing first with the sites other than HWW, Beam Park (Site 6) is a 25 acre site which is clearly large enough. A lease of 8 years is available, with break clauses thereafter. This is a substantial period. Any lease would be subject to a "lift and shift" clause but that would only require Trad to move within the site, not to leave. Trad suggests that public transport is insufficient but bus services are available nearby<sup>92</sup>. Denver Industrial Estate (Site 8) is a 7 acre site with an 8 year lease available. It is suggested that the site is too far from central London. However, an email of 11 June 2010 shows that Trad's surveyor was content to investigate this site further<sup>93</sup>. In any event, it is only 11.7 miles from central London, which is not far beyond locations which are accepted as being suitable. Other sites are available for shorter periods and could allow Trad to make a double move. Whilst the company would prefer to avoid this, it would be compensated for any loss.
- 5.7 It is argued that the planning status of the various potential relocation sites is unknown. However, there is no evidence of any planning impediment to the use of the sites in question. Moreover, the Corporation would be the

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

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

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

<sup>92</sup> See the table in appendix 1 of DC4B for details of public transport availability for all the suggested relocation sites.

<sup>93</sup> See paragraph 4.11 of DC4B.

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

- 5.8 The site at HWW was referred to in the Corporation's evidence at the start of the Inquiry and has subsequently been the subject of further detailed work. It is in the ownership of the Corporation. It extends to 4.35 acres and is therefore large enough. It is not argued that HWW is beyond a reasonable travel distance to central London. The concerns raised by the objector relate to delivery rather than the principle of suitability.
- 5.9 As described above, an application for outline planning permission, designed to meet the requirements of Trad, has been submitted to and considered by the Corporation. Authority has been delegated to officers to grant outline planning permission subject to no objections raising new material considerations being received by 11 October 2010. There is no reason why planning permission should not be granted. The proposal includes the widening of 130m of Hindmans Way so as to improve access to the site. There has been no suggestion that this would be impractical.
- 5.10 The widening would require third party land in the ownership of TDG. However, TDG is obliged by an agreement under S16 of the Greater London Council (General Powers) Act 1974 to convey the land to the London Borough of Barking. The Borough wishes the land to be conveyed to the Corporation and TDG is willing to do so<sup>94</sup>. Consequently, TDG's ownership is not an impediment to delivery of this site. The road alignment shown on the illustrative plan submitted with the application would also require land in the ownership of Cemex. A minor adjustment to the layout, as shown on the plan before the Inquiry<sup>95</sup>, would avoid any need for this land. There are certain other third party interests and the Corporation will inform the Secretary of State of progress in relation to their acquisition<sup>96</sup>.
- 5.11 The objector raises concerns regarding contamination and flood risk. It is clear from the addendum committee report<sup>97</sup> that the Environment Agency has considered these issues and raises no objection subject to appropriate planning conditions. It is argued that the site is less favourable to Trad than the existing site at Bromley-by-Bow but it is not suggested that it is unsuitable. To the extent that it may be a less valuable site, that is a matter which would be covered by compensation.
- 5.12 The Corporation has set out a programme for the approval of reserved matters, the discharge of conditions, the carrying out of highway works and the preparation of the site for occupation. It is a conservative programme which has not been challenged by the objector<sup>98</sup>. The Corporation undertakes not to

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<sup>94</sup> See paragraphs 2.13 to 2.20 of DC1E.

<sup>95</sup> See DC20.

<sup>96</sup> Inspector's note – after Mr Allen had given his supplementary evidence on HWW, Mr Corner advised the Inquiry that information had come to light regarding two further third party interests. There was an expectation that contracts would be exchanged for the acquisition of one of these interests. Another party may have rights of some sort. These matters would not be resolved before the close of the Inquiry.

<sup>97</sup> See paragraph 2.1 of DC19.

<sup>98</sup> See paragraphs 2.8 to 2.12 and 2.21 to 2.25 of DC1E.

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

### *Negotiations*

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

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

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

### *Criticisms of the scheme*

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

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

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<sup>99</sup> The undertaking is given at paragraph 130 of the closing submissions on behalf of the Corporation (DC23).

<sup>100</sup> Inspector's note – in answer to questions from Mr Steel, Mr Allen stated that an undertaking with no defined end date would not be acceptable. He stated that the Corporation considers the date of 31 July 2011 to be reasonable. It would maintain the Corporation's project timetable.

<sup>101</sup> See paragraph 2.2 of DC1C.

<sup>102</sup> Inspector's note – in answer to my question, Mr Napier stated that a costly transfer deck would be needed above the store in order to support the smaller construction grid required for a residential scheme. In his opinion the residential values achievable in this location

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

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

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

#### *Prospects for delivery of the scheme*

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

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

### **Reference Nos and addresses:**

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

### **Name of objector and legal interest:**

Colas Limited – owner

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

<sup>103</sup> Inspector's note – these points were made by Mr Collins during his evidence in chief.

<sup>104</sup> See page 16 of DC2.

<sup>105</sup> See section 3 of DC2.



**Reference Nos and addresses:**

Plot 38 – Storage yard, hardstanding and land to the west of Imperial Street

Plot 39 – Offices, advertising hoarding and premises known as Clock House,  
1 Imperial Street

Plot 40 – Office, storage yard, hardstanding and land to the south of Imperial  
Street and to the east of the A12 Blackwall Tunnel Approach Road

Plot 41 – Storage yard, hardstanding and land to the south of Imperial Street

**Name of objectors and legal interest:**

Keith Roy Ellis and David Joseph Grier – owners and occupiers

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

*Legal submissions*

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

- (i) The case of *R (Sainsbury's Supermarkets Ltd) v Wolverhampton City Council* [2010] 2 WLR 1173 establishes the principle that when a decision is made to acquire a particular piece of land compulsorily the decision maker may only lawfully have regard to a benefit which will accrue to other land if that other land has a real connection with the land included in the Order. The decision to acquire the Ellis/Grier land took account of the benefit of works related to the proposed primary school and also benefits of a general nature related to development of land north of Three Mills Lane. The decision to acquire the Colas land took account of various benefits associated with development south of Three Mills Lane, including the proposed primary school. In neither case is there a real connection so these considerations should not have been taken into account.
- (ii) The decision to grant planning permission and the actual grant of permission are void because the Corporation took account of irrelevant considerations. Paragraph 7.1 of Schedule 1 to the S106 Agreement contains an obligation by Tesco to carry out works towards the provision of a new school. That benefit has no substantial connection with the main development permitted, the superstore, and should not have been taken into account. Paragraph 1.2 of Schedule 1 contains an obligation to enter a further S106 in relation to the land which is to be acquired. Tesco had no interest in that land at the date of the Agreement and so could not enter into this obligation. That provision (and the Agreement as a whole) is void and was therefore an irrelevant consideration.
- (iii) In making and promoting the Order the Corporation has acted unlawfully in that it has, in substance, delegated many of its functions

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

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

- (iv) Clause 8.3 of the CPO Indemnity Agreement makes provision for the transfer of land from Tesco to the Corporation and then from the Corporation back to Tesco, for the purpose of overriding easements and other third party rights. This would defeat the ordinary proprietary rights of the parties concerned and would reduce the compensation payable to them. The clause is unlawful and contrary to Article 1 of the First Protocol to the ECHR. It invalidates the whole process of compulsory acquisition.
- (v) The Order has been submitted for confirmation in a form which will put the Corporation in a position where it can only act unlawfully. There are numerous plots where the Order seeks to acquire some, but not all, of the interests involved. This is contrary to the principle established in *London and Continental Railways Ltd v Kent County Council* LT – ACQ/212/2005; CA – [2009] EWCA Civ 363

*Matters not in dispute*

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

*Whether the proposed form of regeneration is the right one*

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

*Whether the proposed development will be delivered*

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

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<sup>107</sup> See paragraphs 37 to 57 of the appendix to EG1 and paragraphs 13 to 20 of EG2.

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

- 6.5 It was incumbent on the Corporation, at the time when it resolved to make the Order, to satisfy itself that the scheme would be economically viable. It sought advice from GVA Grimley. The "Tesco Option 2" appraisal shows a profit, expressed as a percentage of total costs, of around 9.5%<sup>109</sup>. That would not be a sufficient return in relation to the risks of undertaking the scheme. It is agreed by witnesses for the objectors and the Corporation that a profit of 15% would be at the bottom of the acceptable range. At that time the GVA Grimley appraisal was the only information before the Corporation. It follows that there cannot have been evidence that the scheme would be viable.
- 6.6 In May 2010 the Corporation received appraisals undertaken by GL Hearn, acting for Tesco<sup>110</sup>. The appraisal for phase 1 alone shows a loss of over £4million or around 5%. The reason phase 1 alone would not be viable is that all of the land acquisition costs are borne by phase 1. The GL Hearn appraisal for the overall scheme shows a profit of £29million, or 15.73%, although the acquisition costs are the same as those of phase 1. The only inducement for Tesco to implement the development is because it would be able to dispose of the land beyond phase 1 to another developer at open market value. There is no obligation on Tesco to develop and no development partner has been identified. There is therefore no evidence that the whole scheme is likely to be implemented.
- 6.7 If development does not take place within 3 years then, under the CPO Indemnity Agreement, the Corporation could buy the Order lands back from Tesco. However, that would be at open market value which would include the marriage value resulting from site assembly. It would be quite different from what Tesco would pay and would be an unjust burden on the public purse. Only the interests acquired would be bought back. This would not include the Tesco interests and would not therefore promote comprehensive regeneration. The arrangement is therefore ineffective and of limited value. Moreover, the provisions would not come into effect for 3 years. It is not known whether the Corporation will exist by then. If not, then these obligations would fall on a future public body. It would be wrong to pass on liabilities in this way.
- 6.8 There is no evidence as to when the school would be built and who would fund it. Local authorities are struggling to keep existing schools in repair. Whilst the land and some preliminary works would be provided, the balance of the funding would be from an unknown source. There is no reasonable prospect of implementation in respect of the school. With regard to the hotel, there is an expression of interest from Travelodge. There is no other interest and no commitment.

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<sup>108</sup> Inspector's note – this was agreed by Mr Allen, in answer to a question from Mr Barnes.

<sup>109</sup> See appendix 2 to DC1D.

<sup>110</sup> See appendix 5 to DC1D.

*Whether the whole of the Order lands is required*

- 6.9 Paragraph 23 of Circular 06/2004 states that where planning permission has not been granted there should be no obvious reason why it might be withheld. There is no planning permission, and no application for planning permission, relating to the Colas land. It cannot be known whether or not there would be a planning impediment to the redevelopment of the land until such time as some specific project is brought forward for evaluation. Confirmation of the Order in respect of the Colas land would be clearly inconsistent with the Circular. The Corporation has not given any reason why that policy should be set aside. It has simply not addressed the matter.
- 6.10 It is not known who the Colas land might be transferred to, nor what form development might take or how it might be funded. The Corporation appears to accept this insofar as the Statement of Case indicates that Colas might be able to remain in occupation for some time following confirmation of the Order<sup>111</sup>. On the other hand, the site is currently in active use providing employment. It would be wrong for the site to be blighted for such an uncertain and speculative proposal.

*Negotiations*

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

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

*The legal submissions*

- 7.1 The written submissions on behalf of Colas and Ellis/Grier to the effect that the Order cannot, as a matter of law, be confirmed are wrong with regard to each of the five grounds. Full details of the Corporation's response are set out in written submissions<sup>114</sup>. The following is a brief summary.
- (i) The submission is based on a misunderstanding of the *Wolverhampton* case. The factual circumstances of that case were very different. The Order has not been made because of any off-site benefits on unrelated land. It would facilitate development of the Order lands themselves in fulfilment of the objective of comprehensive development. The Colas land is not included to facilitate Tesco, it is included because the Corporation wishes to promote comprehensive development in accordance with policy. It is lawful to take into account the benefits which would result from the land being regenerated as a whole. The component parts

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<sup>111</sup> See paragraph 8.16 of CD51.

<sup>112</sup> Inspector's note - See paragraph 10 of CL1 and appendix 2 to DC4. An offer in relation to the nightclub was made at the same time.

<sup>113</sup> See paragraphs 11 to 14 of EG1 and appendix 1 to DC4.

<sup>114</sup> The submissions are at DC24.

cannot be disaggregated in the way that is being suggested.

- (ii) The premise of the submission is misconceived because the absence of a planning permission does not prevent the confirmation of a CPO, either as a matter of law or having regard to policy. The alleged lack of connection with the school is no more than a re-iteration of the first ground. With regard to paragraph 1.2 of Schedule 1 to the S106 Agreement, that obligation is enforceable as a matter of contractual obligation independently of S106. Moreover, it must be seen in the context of other obligations. The planning permission is not unlawful.
- (iii) The objectors accept that there is nothing wrong with a public authority acquiring land for development by a private developer or with that company indemnifying the public body in respect of compensation. The submission misses the essential point that the Corporation had already lawfully exercised its discretion to make the Order. The Order and the CPO Indemnity Agreement were subsequently made contemporaneously. The decision making was lawful. In any event, even if the Corporation's decision were found to be flawed, the Secretary of State's discretion remains unfettered.
- (iv) If the land in question were to be acquired by the Corporation and then transferred to a developer then third party rights would be extinguished by virtue of Schedule 28 to the 1980 Act. If it were unlawful to use Schedule 28 to cleanse title in this way it would deter acquisition by private treaty as an alternative to the use of CPO powers. Most importantly, the overriding of such private rights is subject to compensation. Parliament has made specific provision for the extent to which compensation would be payable so there is no breach of ECHR rights.
- (v) Section 5(1) of the Compulsory Purchase Act 1965 does not seek to prescribe the scope of a CPO; it controls the exercise of powers after a CPO has been made. There is nothing to prevent a CPO providing for the purchase of only some interests in a particular plot. The facts here are materially different from those of the case cited. Tesco's interests have not been included because it will promote the scheme. Its interests will not be bound so there is no question of it being deprived of compensation which should properly be paid.

### *Criticisms of the scheme*

- 7.2 Insofar as the objector refers to the level of housing provision, the Corporation's response to the case for Trad applies.
- 7.3 In criticising the size of the superstore the objector relies on floorspace figures contained in the OAPF. However, there is no indication that those figures were intended to set a maximum floorspace. Furthermore, the OAPF pre-dates the proposal that Bromley-by-Bow should be designated as a district centre. Matters have moved on with both the draft replacement LP and the recently

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

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

*Whether the proposed development will be delivered*

- 7.5 The Corporation's general case relating to the prospects for the delivery of the scheme applies. The following additional points are made in response to matters raised by the objector.
- 7.6 On the basis that the GVA Grimley appraisal shows a return of a little less than 10%, it is suggested that the Corporation had no evidence of viability when it decided to make the Order. However, it was for the Corporation to decide whether or not that figure would be enough and it cannot be suggested that the Corporation's decision was not rational. The assertion that the Order is flawed on these grounds is not made either in the objector's proofs of evidence or in the legal submissions. Furthermore, the evidence does not support the proposition that a profit of 15% is needed to ensure that development will proceed. The JAC report states that, where a developer is a superstore operator, it may forgo some or all of the conventional developer's profit in securing a site against competition<sup>123</sup>.

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<sup>115</sup> See table A2.2 on page 247 of CD12 and the vision for Bromley-by-Bow on page 106 of CD14.

<sup>116</sup> See annex B of CD10.

<sup>117</sup> See annex 2 of CD12.

<sup>118</sup> Inspector's note – accepted by Mr Bashforth, in answer to a question from Mr Corner.

<sup>119</sup> See paragraph 9.36 of CD49.

<sup>120</sup> See paragraphs 4.21 and 6.6 of appendix F to CD50.

<sup>121</sup> See paragraph 9.15 of DC5.

<sup>122</sup> See paragraphs 8 and 9 of CD54.

<sup>123</sup> See paragraph 4.40 of appendix 6 to DC1D.

- 7.7 It is pointed out that the lack of profitability in phase 1 is due to all of the land acquisition costs being borne by that phase. That is inevitable because Tesco would need all the land in order to meet its S106 obligations relating to land for the school and park and the remediation of the residential land. It has been accepted that all of the land would be needed to implement phase 1<sup>124</sup>.
- 7.8 The objector argues that Tesco would receive a substantial capital windfall without any significant regeneration benefits being secured. That would not be the case. The JAC appraisal shows a higher level of profit than the GL Hearn appraisals. As mentioned already, (*see paragraph 3.24 above*), on the JAC figures, Tesco would make a profit on cost of just under 16%. That level of profit is regarded by the JAC as reasonable. Furthermore, the appraisals make no allowance for Tesco's own land interests. In effect these would be put into the scheme "free"<sup>125</sup>. Any other potential developer would need to acquire these interests and pay relocation and disturbance costs, or indeed costs of extinguishment, to Tesco. Consequently, it is very unlikely that anyone other than Tesco would carry out the scheme<sup>126</sup>.
- 7.9 With regard to regeneration, the whole scheme should be regarded as bringing a very substantial regeneration benefit. In addition to obligations relating to the IDEA Store, school and park, phase 1 would deliver the remediation of the residential land, the AMJ and the A12 subway improvements. Phase 2 would deliver significant levels of affordable housing. If the scheme were to be more profitable than expected, further payments would be made towards the Corporation's standard charge and the affordable housing contribution. In summary, Tesco would not make excessive profits but would achieve a level of return which has been independently assessed as being reasonable. The objector has significantly understated the regeneration benefits which would flow from the scheme.

## 8. The withdrawn objections

### *EDF Energy Networks*

#### **Reference Nos and addresses:**

Plot 20 – Electricity substation in the supermarket to the south of Three Mills Lane and east of Hancock Road

Plot 32 – Petrol station forecourt, electricity substation and land to the south east of Hancock Road and north of Imperial Street

#### **Name of objector and legal interests:**

EDF Energy Networks (EPN) Limited – Lessee and occupier

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

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<sup>124</sup> Inspector's note – this was accepted by Mr Colin Smith in answer to a question from Mr Corner.

<sup>125</sup> See paragraph 3.10 of DC5B.

<sup>126</sup> Inspector's note – in his evidence in chief Mr Napier said that, for any other potential developer, these costs would be fatal to the viability of the scheme.

*Transport for London*

**Reference Nos and addresses:**

Plot 35 – Public footpaths

Plot 36 - Public footpaths

Plot 37 - Public footpaths and staircase

Plot 50 – New rights over public highway

Plot 52 – Subway and footpath including airspace to the underside of the A12 but excluding the existing highway viaduct, supporting structure and all airspace above

Plot 54 - Public footpaths

Plot 55 – New rights over public footpaths

Plot 56 - Subway and footpath including airspace to the underside of the A12 but excluding the existing highway viaduct, supporting structure and all airspace above

Plot 56A – New rights over public highway and footpaths

All plots are described as being at the A12 Blackwall Tunnel Approach Road.

**Name of objector and legal interests:**

Transport for London – owner and occupier

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

*ACL and VolkerHighways*

**Reference Nos and addresses:**

Plot 42 – Storage yard, hardstanding and land known as Pelican Wharf, 2 Imperial Street

Plot 43 – Hardstanding, land and access way known as Pelican Wharf, 2 Imperial Street

Plot 44 – Access House, 2 Imperial Street

**Name of objector and legal interests:**

ACL Holdings Limited – owner of plots 42 and 44

VolkerHighways Crowley Limited – lessee and occupier of plots 42 and 44; tenant and occupier of plot 43 (in respect of access)

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



## **9. New Rights**

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

## 10. Conclusions

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

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

### *Background*

- 10.2 The Order lands extend to around 5.64ha, bounded to the west by the A12 (Blackwall Tunnel Northern Approach), to the south by railway lines and to the east by the River Lea. A substantial part of the Order lands is occupied by a Tesco store, petrol filling station, car parks and service yards. The Ellis/Grier land, which is currently vacant, extends to around 0.48ha and comprises a multi-storey office building together with an open yard and smaller structures. The Trad site, which is around 1.23ha, includes a two storey office building, a car park and an open yard with ancillary buildings used for the storage and maintenance of scaffolding components. A single storey building is let to another company. The Colas land extends to around 0.27ha and comprises offices, workshops and a yard. It is occupied by a refrigerated vehicle hire company. Other uses within the Order lands include a highways contractor, located between the Trad and Ellis/Grier sites, and a nightclub and car repair workshop adjoining the Colas land. The Order lands include various roads and footways and a pedestrian underpass beneath the A12. [2.1 – 2.3]
- 10.3 Vehicular access to the Order lands is from the A12, via Hancock Road, but there is no direct access to or from the northbound lane. Bromley-by-Bow London Underground station is located on the opposite side of the A12, reached via the subway, and there is also a DLR station within walking distance. To the north of the Order lands there are industrial and storage uses in an area known as Bromley-by-Bow North. To the west of the A12 there are residential estates and the former St Andrew's Hospital site where some 900 dwellings are under construction. To the east of the River Lea is the Three Mills complex, designated as a conservation area, which contains Grade I and Grade II\* listed buildings. [2.4, 2.5]
- 10.4 In 2007 there was a planning appeal relating to proposals by Aitch/Genesis for the redevelopment of the Trad land with 530 residential units above ground floor commercial space. The appeal was dismissed. Amongst other reasons, the Secretary of State considered that the scheme would prejudice the effective regeneration of the area. He commented that the Corporation had the powers and means of implementation to secure the comprehensive regeneration sought in the Bromley-by-Bow area. This decision is an important material consideration to which I attach significant weight. [3.5, 3.26, 3.27, 3.31]

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

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

#### *Planning policy*

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

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

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

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

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

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

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

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

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

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

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

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

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

- 10.16 There is no evidence of any material harm arising from the scale of the proposed retail provision. The planning application was supported by retail assessments which were taken into account by the Corporation, LBTH and the Mayor of London. An independent review commissioned by the Corporation concluded that the scheme would not result in adverse impacts on existing or proposed centres. It is suggested that the scale of the superstore would be over-dominant in relation to the other units in the scheme. However, evidence has been provided regarding the take-up of similar units in schemes anchored by Tesco superstores and I see no reason why the outcome would be different here. [6.3, 7.4]
- 10.17 With regard to design, I consider that the proposal to create a visual axis linking Imperial Square, the proposed park and the heritage buildings at Three Mills would provide a sound basis for developing a successful scheme. To my mind the design of those parts of the scheme covered by the detailed planning permission would be satisfactory. The design of the balance of the scheme would not be determined until the reserved matters stage. Nevertheless, the proposed road pattern would establish a clear framework for the later phases of development by defining a series of urban blocks. I see no reason why a successful detailed scheme should not be developed within this framework. I note that CABE expressed concern that the size and positioning of the superstore would compromise the chances of the scheme integrating with the surrounding community. However, for the reasons given above, I consider that the scheme would improve connectivity and create new vistas which would help to integrate the development with its surroundings. [3.11, 4.27, 5.18]
- 10.18 The scheme would include a new public open space at Three Mills Park together with a riverside walkway and open space adjacent to the primary school. I consider that this would accord with the LLV OAPF and LP objectives for the River Lea. It would at least preserve and may, subject to detailed design, enhance the settings of the nearby listed buildings and the Three Mills Conservation Area. [3.4, 3.11]
- 10.19 The opportunity to provide housing is an important objective of the OAPF which is reflected in the terms of the LUDB and in the CS vision for Bromley-by-Bow. The objectors point out that the proposed density of 98dph would be well below the figure of 275dph which, according to the OAPF, is the density that most new housing in the locality should be designed to. The decision to locate the primary school south of Three Mills Lane, rather than the position to the north indicated in the LUDB, is one factor affecting the scheme density. I have commented above that the LUDB should not be applied too rigidly. I see no objection to the proposed location which would enable the school to be delivered at an earlier stage and would also provide a closer relationship with community facilities and parking within the district centre. [3.8, 3.9, 4.26, 5.17]

- 10.20 I consider that the most significant factor limiting the housing content of the scheme is the decision not to include housing above the superstore. In this respect the scheme would not accord with the LUDB which states that housing above the superstore would be required. The Corporation provided evidence that such housing would not be viable. Although there was little detailed evidence on that point, there was no persuasive evidence to the contrary. In any event, I note that the OAPF suggests that a mixed use development involving the relocation of the Tesco store could deliver around 360 units, a figure which is exceeded by the scheme. I also take account of the broad target of 1,500 – 2,300 dwellings in the wider Bromley-by-Bow area. Bearing in mind the scheme under construction at the St Andrew's Hospital site and the longer term potential of Bromley-by-Bow North, I consider that there is a reasonable prospect that the total number of dwellings provided in the locality would ultimately be within the OAPF range, with or without housing above the proposed superstore. [3.4, 3.8, 4.26, 5.16]
- 10.21 My overall assessment is that the scheme would accord with the relevant policies of the development plan. Insofar as the OAPF remains up to date, the scheme would accord with it. It would also meet many of the objectives of the LUDB. Whilst it would not accord with the LUDB in all respects, most significantly in relation to the location of the school and the provision of housing above the superstore, that document should not be applied too rigidly. In my view these factors do not amount to significant planning objections to the scheme.
- 10.22 I turn to the land north of Three Mills Lane. The screening and scoping request submitted on behalf of two housing associations promotes a form of comprehensive regeneration. However, the proposals are at an early stage. In my opinion it cannot yet be said whether or not the proposals are likely to accord with the wide range of planning policies applicable to the redevelopment of this area. [3.14, 6.9]

*The prospects for implementation of the Corporation's proposals*

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

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

- 10.25 The objectors argue that, in the absence of a development agreement, there can be little confidence that phase 2 would be delivered. The GL Hearn (May 2010) appraisal of phase 2 took as its starting point an assumed developer's profit of 25%. On that basis, it shows that the phase 2 development would generate a positive residual land value. The JAC report agreed that a figure of 25% would be a reasonable return in relation to the complexity of the project. The JAC appraisal took the same profit figure as its starting point and shows a higher residual land value. I agree that 25% would be a reasonable return for a scheme of this nature and consider that both appraisals indicate that phase 2 of the scheme would be viable. In my view these appraisals are important material considerations which should be taken into account together with the other evidence. [3.23, 3.24, 4.22]
- 10.26 The terms of the S106 Agreement require the residential land to be cleared and remediation to be carried out within 12 months of the opening of the superstore. The Agreement also sets a timetable for the delivery of the AMJ and the A12 subway improvements. I consider that, in general terms, the combination of land assembly, improved access and site preparation would create conditions in which it is likely that redevelopment proposals would be brought forward. There is therefore a reasonable prospect that some form of regeneration would take place. [3.16]
- 10.27 There is however no identified developer, and no identified source of funding, beyond the preparatory works I have described. Any developer acquiring the phase 2 land would be free to reappraise the balance of uses within the scheme and the scheme design, subject to the need to obtain an alternative planning permission. The evidence indicates that there is a lack of quantitative need, and limited operator demand, for the hotel and that some of the commercial space may be difficult to let. Overall, there is no commitment to the commercial elements of phase 2 from potential operators and the level of interest shown is limited. It therefore seems that an incoming developer may well revisit these elements of the scheme. Whilst there is a reasonable prospect that phase 2 would come forward in some form, it cannot be assumed that the mix of uses and the scheme design would necessarily be as currently proposed. Consequently, I consider that the employment figures projected for phase 2 should be treated with caution. [3.19, 4.22, 4.23, 5.4, 6.8]

- 10.28 Delivery of the park, school and IDEA Store would require funding from public authorities. The terms of the S106 Agreement would secure remediation of the land for the park and school and transfer of the land to the Corporation. Construction of the IDEA Store to shell and core, making it available to LBTH at a peppercorn rent, would also be secured. The Corporation has allocated funding for laying out the park and for its future maintenance. There is therefore a good prospect that the park would be delivered. LBTH would be responsible for funding the construction of the school and for fitting out the IDEA Store. There can be no certainty that these elements of the scheme would be delivered until such time as funding has been allocated. However, the letter received from LBTH explains the need for these facilities and the importance attached to them by the Council. Providing the land for the school, and the building for the IDEA Store, would represent a contribution towards the funding for these projects which would no doubt improve the prospects for delivery. I therefore consider that there is a reasonable prospect that the school and IDEA Store would be delivered. [3.16, 3.20, 4.22, 6.8]
- 10.29 I conclude that there is a reasonable prospect that confirmation of the Order would result in the regeneration of the phase 2 land in some form. However, the mix of uses and scheme design may well change and the projected employment figures should therefore be treated with caution.
- 10.30 I have commented above that the proposals for land north of Three Mills Lane are at an early stage and it cannot yet be said whether or not they are likely to comply with the wide range of planning policies which would apply. The scheme is being promoted by two housing associations, each of which owns a block of land within the central part of Bromley-by-Bow North. There was no evidence before the Inquiry regarding the availability of funding for the assembly of the remainder of the land or the implementation of the scheme. [3.21, 6.10]
- 10.31 The Corporation has begun the process of land assembly with the acquisition of the Leycol Printers site. However, in addition to the Colas/nightclub land there are 4 other blocks of land which would need to be assembled in order to bring about the comprehensive development sought by the LUDB. These are 3 blocks in the northern part of the LUDB area (plots 1, 2 and 3 on DC11), which are currently in commercial use, and the greater part of the Tesco overspill car park<sup>128</sup>. These blocks together account for a substantial proportion of the area of Bromley-by-Bow North. It appears that the existing business occupiers would need to be relocated. The Corporation stated that the availability of the Tesco car park can reasonably be assumed. However, there was no evidence of any commitment on Tesco's part to make this land available. In any event, there was no evidence regarding the likelihood of plots 1, 2 and 3 becoming available. The Corporation accepted that it is not known, at this stage, whether a further CPO would be required. [3.14, 3.21]
- 10.32 The Corporation's planning witness stated that the development is expected to take place within 3 to 5 years. However, in view of the uncertainties relating to planning, funding and land assembly I attach only limited weight to that suggested timescale. On the evidence before the Inquiry, I do not consider that it has been demonstrated that there is a realistic prospect of the Corporation's

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<sup>128</sup> Part of the car park is within the Tesco planning application site and would be required for the realignment of Three Mills Lane.



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

*Attempts to assemble the land by negotiation*

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

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

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

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

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

- 10.37 The Corporation has not been directly involved in attempts to purchase the Ellis/Grier land. From mid 2006 Tesco entered into discussions via its agents and conditional terms were agreed at various times. However, Tesco withdrew from those discussions. A further offer was made by Tesco in October 2009 which was revised in February 2010. Some discussion has subsequently taken place but agreement has not been reached. In these circumstances I consider that, on balance, regeneration is more likely to be achieved if the land is acquired by the Corporation. Nevertheless, the evidence indicates that Ellis/Grier are willing to continue to negotiate. [3.30, 6.11]
- 10.38 I turn to the Colas land and the adjoining nightclub/car repair workshop. In respect of the Colas land, no offer to purchase was made prior to June 2010. An offer for the nightclub was made at the same time. These offers were made well after the making of the Order and only shortly before the Inquiry opened. This timing does not indicate that the use of compulsory powers is a last resort and in my view the approach taken does not accord with the advice of Circular 06/2004. [6.11]

*Further comments on the case for Trad*

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

Legal submissions

- 10.39 I am not a lawyer and thus I am not qualified to offer opinions on the merits of the legal submissions. I shall comment on the facts and policy context in relation to the submissions to the extent that this may assist the Secretary of State.
- 10.40 The planning permission granted to Tesco is subject to an application for judicial review. This may affect the weight that the Secretary of State considers ought to be attached to the planning permission. However, Circular 06/2004 does not require planning permission to have been granted prior to the use of compulsory powers. In this case the acquiring authority has firm proposals for the Trad land. Moreover, for the reasons given above, I consider that those proposals accord with the development plan, the OAPF and with many of the objectives of the LUDB. If the permission were to be quashed then the planning application would need to be reassessed in the light of that judgement. However, on the available evidence, there is no obvious reason why planning permission might ultimately be withheld. [4.1]
- 10.41 I am unable to comment on whether the Corporation's agreement with Tesco amounts to the procurement of public works which would require an OJEU process to be followed. However, it is not disputed that if a development agreement had been involved, an OJEU process would have been needed. Whilst I have commented on the absence of a development agreement in connection with the prospects for implementation of the scheme, I am not aware of any policy requirement for a development agreement to be in place. [4.19, 4.20, 5.1]

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

#### Employment considerations

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

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

#### The prospects for the relocation of Trad

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

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

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

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

- 10.47 Albert Island Basin (site 9) is also below the site size criteria and is constrained by its proximity to the runway of London City Airport. I consider that occupation by Trad would conflict with one of the objectives of Department for Transport Circular 01/2010, which is to limit the numbers of people working within Public Safety Zones. Furthermore the site contains an array of landing lights and is subject to high levels of aircraft noise. In my view it is not suitable. Beam Park (site 6) is a large site scheduled for residential development. The Corporation suggests that Trad could move to Beam Park subject to a "lift and shift" clause requiring it to relocate within the site when required. Having regard to the scale of the operation, and the need for related office accommodation, I do not consider that to be a practical or reasonable proposition. Moreover, Trad requires 24 hour access and a location in close proximity to residential development is unlikely to be suitable. [4.10, 4.13, 5.6]
- 10.48 Barking Riverside (site 15) is a large site including a former power station and there was no evidence that any of it is in a condition which is available for occupation now. The site appears to be the subject of regeneration proposals which may or may not be compatible with occupation by Trad. In any event, a break clause after 5 years would create an unacceptable degree of uncertainty. Denver Industrial Estate (site 8) is available on a lease of 8 to 10 years. Whilst there was no information regarding the planning status of the land before the Inquiry, from what I saw on site there is no obvious reason why it could not accommodate a scaffolding yard. However, this location would result in excessive travel times and is therefore unsuitable. Hindmans Way West (HWW) (site 14) is currently derelict and it would be necessary to widen a length of Hindmans Way in order to provide a suitable access to it. It is not therefore available for occupation at present. [4.9 – 4.12, 5.6, 5.7]
- 10.49 The Corporation argued that Trad's evidence contained some inconsistencies regarding its relocation requirements. However, this was in part because, when advertising the requirements, Trad's surveyor sought not to be too specific in order to attract a wide response. I see no reason to doubt the evidence given at the Inquiry by Trad's Chairman on the company's relocation requirements. I conclude that it has not been shown that there are any relocation sites which are suitable and currently available for occupation for a reasonable period. [4.7, 5.5]
- 10.50 The site at HWW was the subject of further work during the course of the Inquiry. It is large enough and has reasonable access to central London. An outline planning application has been considered by the Corporation. The final decision has been delegated to officers. The widening of Hindmans Way would require land owned by TDG. The necessary agreements are in place and TDG has expressed support for the access improvements so this is unlikely to be an impediment. The Corporation has set out a timetable for securing approval of reserved matters, discharge of planning conditions and carrying out the works. It has undertaken not to take possession of the Trad land until either 31 July 2011 or a date 5 months after confirmation of the Order, whichever is the later. It argues that this would be sufficient time for HWW to be made available or for Trad to find an alternative site. [5.8 – 5.12]

- 10.51 On the final day of the Inquiry it emerged that there are other third party interests in HWW. It may be that this matter is resolved by the time the Secretary of State considers the Order. On the evidence before the Inquiry there is uncertainty as to whether HWW is likely to become available and, if it is, in what timescale. Aside from matters of ownership, a range of practical issues would first need to be resolved. Difficulties may arise in obtaining approval for the reserved matters, the details of the works to Hindmans Way, proposals for remediation and measures to protect a locally listed structure. The site is derelict and the submitted plan indicates the presence of various concrete structures and culverts. The Environmental Risk Assessment recommends an extensive programme of site investigations which would need to be completed, and the results assessed, before the remediation proposals could be submitted for approval. [4.11 - 4.13, 5.10 - 5.12]
- 10.52 I consider that there are significant risks connected with the delivery of HWW. First, there may be delays in obtaining the necessary approvals. Second, carrying out the works may take longer than anticipated. The Corporation suggested that 3 months would be sufficient but there was limited evidence in support of that assertion. Moreover, the scope of the works may be affected by site investigations which have yet to be carried out. [4.12, 4.13]
- 10.53 The timing of the availability of HWW would be of great importance to the continuation of Trad's business because of the need for continuity of service to clients engaged in major construction projects. If the Order were confirmed, it would have a fixed period in which to vacate the site at Bromley-by-Bow. Whilst it is possible that another site may become available, the extensive search carried out by Trad shows that finding a suitable site may be a lengthy process. If the ownership issues were resolved, I consider that there would then be a reasonable prospect that HWW would ultimately become available. However, having regard to the risks I have identified, it cannot be concluded that it is likely that HWW would be available by 31 July 2011. It follows that confirmation of the Order would pose a significant risk to the continuation of Trad's business and the employment which it provides. [4.3, 4.6, 4.7, 4.17]
- 10.54 This situation arises because the acquiring authority has been slow to address the issue of relocation. It appears that little account was taken of Trad's relocation requirements at or around the time the Order was made. Some of the suggested relocation sites were put forward shortly before the Inquiry opened and detailed work on HWW started during the Inquiry itself. I consider that the Corporation's approach has not been consistent with the guidance in Circular 06/2004 regarding the assistance which UDCs should provide to businesses affected by compulsory acquisition. [4.8, 4.9, 4.13]

*Further comments on the case for Colas and Ellis/Grier*

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

Legal submissions

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

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

The "buy back" clause of the CPO Indemnity Agreement

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

*Modifications proposed by the acquiring authority*

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

*New rights*

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

*Overall conclusions and consideration of human rights*

- 10.60 A CPO should only be made where there is a compelling case in the public interest which justifies interfering with the human rights of those with an interest in the affected land. In particular, consideration should be given to Article 1 of the First Protocol to the ECHR (*peaceful enjoyment of possessions*). Circular 06/2004 states that it is necessary to take a balanced view between the intentions of the acquiring authority and the concerns of those whose interests are to be acquired compulsorily. I set out below the factors which I consider to be of most significance to this balancing exercise, starting with the points that weigh in favour of confirmation of the Order. I then comment on the particular circumstances relating to that part of the Order lands to the north of Three Mills Lane.
- 10.61 The Order seeks to assemble land to facilitate comprehensive redevelopment in pursuance of the Corporation's regeneration objectives. There is no dispute that the land is in need of regeneration. Moreover, a previous decision of the Secretary of State has confirmed the importance of a comprehensive approach. This decision is a material consideration of significant weight. The Corporation has prepared comprehensive regeneration proposals, contained in the LUDB, for land at Bromley-by-Bow including the Order lands.
- 10.62 Proposals have been brought forward by Tesco for a comprehensive scheme of redevelopment of the land to the south of Three Mills Lane. The scheme would provide much improved access, creating links between existing residential areas, the Order lands and the LLV and facilitating further development at Bromley-by-Bow North. The proposed superstore and retail units would form the core of a new district centre in accordance with the CS and LUDB. The IDEA Store, primary school and park would form a cluster of social infrastructure, as envisaged in the LLV OAPF. The scheme would provide open space and a walkway by the River Lea, in accordance with the objectives of the LLV OAPF and the LP. Phase 2 would provide residential accommodation, including affordable housing, making a significant contribution towards the housing targets of the LLV OAPF. These regeneration benefits would accord with the development plan and with the LLV OAPF, insofar as that document remains up to date. They would also meet many of the objectives of the LUDB.
- 10.63 If the Order were confirmed there is a good prospect that phase 1 would be carried out. However, there is no development agreement requiring the scheme to be implemented as a whole and there is no identified developer for phase 2. Whilst I consider that there is a reasonable prospect that regeneration would take place in some form, it cannot be assumed that the mix of uses and the design of phase 2 would necessarily be as currently proposed.
- 10.64 Tesco has attempted to acquire land to the south of Three Mills Lane by negotiation but agreement has not been reached in respect of the Trad land or the Ellis/Grier land. On balance, regeneration is more likely to be achieved if the land is acquired by the Corporation. There is no evidence of any alternative regeneration proposals.
- 10.65 I turn to those factors which, in my opinion, weigh against confirmation. Trad is a successful business employing around 300 people. It is a well established and stable employer with a high proportion of skilled workers. The means by which regeneration is to be secured include encouraging existing industry and

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

- 10.66 The projected employment figures for phase 2 should be treated with caution and it cannot be concluded with any confidence that the proposals would result in a significant net gain in employment.
- 10.67 In my opinion it has not been demonstrated that any of the suggested relocation sites are suitable and currently available for occupation. The site at HWW is potentially suitable but the issue of third party interests is unresolved. In any event, it cannot be concluded that it is likely that HWW would be available by the time Trad was required to vacate its current premises. Confirmation of the Order would pose a significant risk to the continuation of Trad's business and the employment it provides. Having regard to the scale of the Trad operation, and the economic and social value of the employment it provides, I attach significant weight to this factor. This situation arises because the acquiring authority has been slow to address the issue of relocation. Its approach has not reflected the guidance of Circular 06/2004.
- 10.68 If the Order is not confirmed the regeneration benefits I have identified would be delayed and may not be realised at all. There can be no certainty that Trad and Ellis/Grier would reach voluntary agreements with Tesco and it is also possible that difficulties may arise acquiring other interests in the Order lands. Nevertheless, agreements have been reached with VolkerHighways and ACL and the evidence indicates that both Trad and Ellis/Grier are willing to negotiate further. It may well be possible for the land to be assembled by agreement so that regeneration could ultimately be achieved. Whilst the regeneration of this part of London is an important strategic planning objective, the Corporation did not identify any specific reasons for urgency. [4.29, 5.12]
- 10.69 My overall assessment is that the factors which weigh against confirmation outweigh the points in favour. The Corporation has not demonstrated that there is a compelling case in the public interest for the Order to be confirmed. In these circumstances it is not necessary for me to comment further on the human rights considerations.

#### Land north of Three Mills Lane

- 10.70 The Colas land, (plots 2, 3, 4 and 8), and the car repair workshop and nightclub (plots 6 and 7) form a block of land which is outside the Tesco application boundary and which is not required for the implementation of the AMJ. The Corporation's reason for acquisition of this land is that it is required to facilitate the regeneration of Bromley-by-Bow North. It is therefore appropriate to consider the particular circumstances applying to these plots, starting with the factors which weigh in favour of compulsory acquisition.
- 10.71 The Corporation's regeneration proposals, contained in the LUDB, include this land. There is no dispute that the land is in need of regeneration. There are emerging development proposals which seek to provide comprehensive regeneration including a substantial amount of housing. There are no alternative proposals. Acquisition by the Corporation would make the achievement of regeneration more likely because it would unite the land with the adjoining Leycol Printers site.



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

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

## **11. Recommendation**

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

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

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

Amend the schedule and the Order map to accord with the draft revisions contained in Document DC17B by removing plots 35, 36 (part), 37 (part), 50, 54, 55 and 56A.

*David Prentis*

Inspector

APPEARANCES

FOR THE ACQUIRING AUTHORITY:

Timothy Corner QC	Instructed by Denton Wilde Sapte LLP <sup>130</sup> and Berwin Leighton Paisner LLP
He called	
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FRICS	
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BSc MRTPI	

FOR THE TRUSTEES OF TRAD SCAFFOLDING AND TRAD SCAFFOLDING LTD:

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FOR COLAS LTD AND KEITH ELLIS AND DAVID GRIER:

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<sup>130</sup> Denton Wilde Sapte LLP has since changed to SNR Denton LLP.

## DOCUMENTS

### Core Documents

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

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

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

**Formalities Folder**

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

**Other documents submitted on behalf of the Acquiring Authority**

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

**Documents submitted by other parties**

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

EDF1      *EDF Energy Networks (LPN) plc*  
Letter withdrawing objection dated 19 July 2010

VL1      *VolkerHighways Ltd*  
Letter withdrawing objection dated 22 July 2010

TfL1      *Transport for London*  
Letter withdrawing objection dated 19 July 2010

ACL1      *ACL Holdings Limited*  
Letter withdrawing objection dated 22 July 2010