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20 May 2019

National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Our ref:
SB/JM/PCP757/SASDE

Your ref:
EN010093

Also by email: RiversideEP@planninginspectorate.gov.uk
RiversideEP@pins.gsi.gov.uk

Dear Sirs

Application by Cory Riverside Energy for an Order Granting Development Consent for the Riverside Energy Park
Our client: SAS Depot Limited

In accordance with item 4 of the Examination Timetable, please find enclosed the Written Representations on behalf of our client SAS Depot Limited.

Please confirm safe receipt.

Yours faithfully

[redacted]

Knights Solicitors

Enc.

IN THE MATTER OF THE PROPOSED RIVERSIDE ENERGY PARK

EN010093

WRITTEN REPRESENTATION OF S A S DEPOT LIMITED

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1. S A S Depot Limited ("SASDE") opposes the application by Cory Environmental Holdings Limited ("Cory") for development consent for the proposed Riverside Energy Park ("REP").

2. SASDE owns the freehold land known as Site C, Norman Road North, Belvedere, Kent DA17 6JY.[1] Cory seeks to acquire permanently, by compulsory acquisition, 6,362m² of the land owned freehold by SASDE.[2]

3. Cory also seeks to create and compulsorily acquire new rights over land, take temporary possession of land and extinguish or override existing rights over land.

4. The land owned by SASDE is its sole commercial property asset. Its only income is provided by rent from the property. In respect of SASDE Cory intends to compulsory purchase the whole of SASDE's site, thus depriving SASDE of it's sole asset and income. The current lease on the property runs from 1 January 2015 to 31 December 2019. The rental price was reviewed annually, and the initial rent was £125,000 per annum. The rental price for the current year is £138,640 per annum: an increase of

[1] Title number SGL511335.

[2] See page 6 of Cory's Book of Reference, Land Plan plot number 02/06 and Article 21 of the draft DCO.

£13,640. Should a new Lease be negotiated, either with Cory or another Tenant, SASDE would be seeking an initial rent in excess of £200,000.

5. The land owned by SASDE is of an asset class which is scarce in south east London/north west Kent and it is very difficult if not impossible to replace on a "like for like" basis.

6. SASDE is a family owned company – its three shareholders are all members of the same family and Directors of the company. All are over 70 and currently two of the shareholders are in poor health. A fourth Director (who is not a shareholder) is aged over 65. SASDE provides its shareholders with over 75% of their individual income and is the sole commercial asset owned by the shareholders. The land which Cory seeks to compulsorily purchase through this DCO has been owned by the family for several decades and is an ideal passive investment property, being a single tenancy let. The deprivation of this sole asset from the Company will be extremely disruptive for the shareholders and Directors as given their age and health they are unlikely to be in the position to easily go through the process of finding, purchasing and managing a replacement investment property.

7. Section 122(1) of the Planning Act 2008 provides that an Order granting development consent "may" include provision authorising the compulsory acquisition of land "only if" the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met. Subsection (2) sets out three alternatives. The condition in subsection (3) is that "there is a compelling case in the public interest for the land to be acquired compulsorily".

8. Section 122 of the Planning Act 2008 is supplemented by the *Guidance related to procedures for the compulsory acquisition of land* ("the 2013 Guidance").[3] Also material is the *Guidance on Compulsory purchase process and The Crichel Down Rules* ("the 2018 Guidance").[4]

9. Cory accepts, correctly, that it is necessary for the decision-maker in respect of the application to be satisfied that there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in the DCO. However, that is not the limit of the necessity test. The decision-maker must also be satisfied that there is a compelling case in the public interest for the compulsory acquisition of the SASDE land.

10. SASDE submits that there is no such compelling case in the public interest for the compulsory acquisition of its land. By the same token, there is no such compelling case in the public interest for any other proposed interference with SASDE's interests.[5] Cory has plainly acted in breach of the 2013 Guidance and the 2018 Guidance.

11. Contrary to paragraphs 8 and 10 of the 2013 Guidance, Cory is unable to demonstrate to the Secretary of State's satisfaction that all reasonable alternatives to compulsory acquisition have been explored and it has not demonstrated that the proposed interference with SASDE's rights as a person with an interest in land meets the paragraph 8 tests. Pursuant to paragraph 10 of the 2013 Guidance, the Secretary of State ought not ultimately be persuaded that the tests there set out are met having regard in particular to the provisions of Article 1 of the First Protocol to the ECHR.

[3] Department for Communities and Local Government (September 2013).
[4] Ministry of Housing, Communities and Local Government (last updated, February 2018).
[5] See paragraph 3 above.

12. Paragraphs 24-30 of the 2013 Guidance provide as follows, insofar as is relevant to these Written Representations:

> 24. Early consultation with people who could be affected by the compulsory acquisition can help build up a good working relationship with those whose interests are affected, by showing that the applicant is willing to be open and to treat their concerns with respect. It may also help to save time during the examination process by addressing and resolving issues before an application is submitted, and reducing any potential mistrust or fear that can arise that can arise in these circumstances.
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> 25. Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.
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> 26. Making clear during pre-application consultation that compulsory acquisition will, if necessary, be sought in an order will help to make the seriousness of the applicant's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.
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> 27. In the interests of speed and fostering good will, applicants are urged to consider offering full access to alternative dispute resolution techniques for those with concerns about the compulsory acquisition of their land. These should involve a suitably qualified independent third party and should be available throughout the whole of the compulsory acquisition process, from the planning and preparation stage to agreeing the compensation payable for the acquired properties. For example, mediation might help to clarify concerns relating to

the principle of compulsorily acquiring the land, while other techniques such as early neutral evaluation might help to relieve worries at an early stage about the potential level of compensation eventually payable if the order were to be confirmed.

28. The use of alternative dispute resolution techniques can save time and money for both parties, while its relative speed and informality may also help to reduce the stress which the process inevitably places on those whose properties are affected.

29. Other actions which applicants should consider initiating during the preparatory stage include:

- providing full information about what the compulsory acquisition process under the Planning Act involves, the rights and duties of those affected and an indicative timetable for the decision making process;
- appointing a specified case manager to whom those with concerns about the proposed acquisition can have easy and direct access.

30. The applicant may offer to alleviate concerns about future compensation entitlement by entering into agreements with those whose interests are directly affected. These can be used as a means of guaranteeing the minimum level of compensation which would be payable if the acquisition were to go ahead (but without prejudicing any future right of the claimant to refer the matter to the Upper Tribunal (Lands Chamber), including the basis on which disturbance costs would be assessed.)

13. Cory's conduct has been manifestly contrary to paragraphs 24-30 of the 2013 Guidance.

14. It should be set out from the outset that Cory's application is made for the benefit of a commercially driven energy development and sought by a commercial operator. Ordinarily, had this not been an NSIP and progressed by way of a DCO, land assembly for commercial developments would be made by private treaty and not via compulsory purchase means. In these private, commercial transaction significant premiums are normally made and financially viable and sustainable for this type of commercial development. Accordingly Cory should have gone beyond the bare minimum requirements to seek compulsory purchase as a last resort in their negotiations as it is clearly possible that Cory could have acquired the land and rights necessary by agreement, at commercial values, that the development would justify. In any event, for the reasons that followed, Cory in fact failed to do even the minimum required to avoid the need for compulsory purchase before making their application.

15. Cory should have provided more detail on the design of the scheme fixed before making the application. Cory did not consult SASDE or other affected parties on the proposed design of the scheme and have ignored questions raised by SASDE regarding the design following its application. Further, the pre-application documents disclosed by Cory prior to the Application regarding the design varied from the documents submitted in Cory's final Application. Specifically, Cory's pre-application documents did not include reference to the Supplementary Environmental Information to the PEIR, despite this being produced in June/July 2018 and therefore well in advance of the Application made on 16 November 2018. That Supplementary Information included alternative cabling routes which may reduce the need for CPO powers, or in some instances remove the need entirely. SASDE believe that further amendments to the design could easily be implemented which reduce the need for CPO powers further. It is not clear why the cabling route proposed by Cory needs to deviate from the highway at certain points,

and questions raised by SASDE regarding this have not been answered – rather SASDE have simply been referred back to the ES without further substantive explanation.

16. It cannot be said that there was "early consultation" of SASDE by Cory, or that Cory has been willing to be open with SASDE and treat its concerns with respect. Cory has thus failed to save time during the examination process; on the contrary, its failings have unnecessarily prolonged the examination process. They have also increased SASDE's mistrust and fear rather than reduced it. Moreover, SASDE's concerns about the inadequacy of the Cory consultation are consistent with the concerns expressed on behalf of the Greater London Authority. Thus: "GLA officers have raised concerns regarding the nature and methodology of the consultation."[6]

17. At a meeting on 11 December 2017, SASDE and Cory reached what SASDE considered to be an agreement in principle for a new lease of the SASDE land. Four days later, Cory resiled from its position at that meeting. Nine days before the meeting, albeit unknown to SASDE, an Inception Meeting had already taken place between Cory and the Planning Inspectorate.[7] More than 15 months have now elapsed since the meeting on 11 December 2017. In all of that time, Cory has made six offers to purchase the SASDE land (five with unreasonably short acceptance periods) and none of the offers have been consistent with the principle identified in the 2018 Guidance that compensation for the acquisition of land by agreement should be paid as if the land had been compulsorily purchased. Cory has not made reasonable attempts to seek to acquire SASDE's land by negotiation, and its conduct is contrary to the "general rule"

[6] GLA letter dated 4 December 2018. Copy appended, together with the Knights solicitors letter (on behalf of SASDE and two other parties) dated 12 December 2018.
[7] Cory did not mention this Inception Meeting during the 11 December 2017 meeting.

set out in paragraph 25 of the 2013 Guidance. Five offers were made before the application was submitted; however, these offers were:

i) not accompanied by any undertakings in respect of fees to provide SASDE with sufficient time to obtain their own valuation advice as to whether the offers put forward were reasonable. Indeed, the final offer was made on 7th November 2018, a mere 9 days before the application for the DCO was submitted on 16th November 2018. This left insufficient time for SASDE to consider whether the offer was reasonable prior to the application;

iii) time limited to one month in respect of the first four offers, and provided SASDE with insufficient time to fully consider whether or not to accept them,

iv) significantly undervalued the land using comparables that were 3-4 years old, and;

iv) devoid of any attempts to discuss and agree compensation that would be payable under the Compensation Code, contrary to both the 2013 and 2018 Guidance

It is clear from the way in which the offers were made prior to submitting the application that there has been no reasonable attempt to acquire SASDE's land by agreement.

18. Contrary to paragraph 26 of the same, Cory did not during pre-application consultation make it clear to SASDE "from the outset" that compulsory acquisition would, if necessary, be sought and hence it did not make clear the seriousness of its intentions "from the outset". The Meeting Note of the 20 August 2018 meeting between Cory and the Planning Inspectorate does not fairly reflect the position adopted by SASDE or Cory's failings in terms of seeking to acquire SASDE's land by negotiation and agreement. The assertion in paragraph 6.6.2 of Cory's Statement of Reasons that it, "has engaged in extensive consultation and negotiations with all persons with an

interest in the relevant land in order to try to avoid the need for compulsory acquisition wherever possible" is an assertion which does not withstand scrutiny with respect to SASDE. The same goes for the assertion in paragraph 8.3.2 that detailed discussions are ongoing, "in order to ensure…concerns are taken into account and accommodated wherever possible." Cory's Statement of Reasons at Appendix B pages 57-58 manifestly misrepresents the status of the negotiations between the parties. The environmental statement has no chapter assessing impact on private assets.

19. Contrary to paragraph 27 of the 2013 Guidance, there is no or no credible evidence that Cory has considered offering SASDE full access to alternative dispute resolution techniques. It has certainly not offered SASDE full or any access to these techniques. Its conduct is inimical to paragraph 28 of the 2013 Guidance, increasing the stress on SASDE rather than reducing it.

20. Likewise, in the context of paragraphs 29 of the 2013 Guidance, there is no or no credible evidence that Cory has considered initiating the kinds of other actions there set out. It has not provided SASDE with full information about the compulsory acquisition process, and it has not appointed a specific case manager of the kind described to whom SASDE could have easy and direct access.

21. As for paragraph 30 of the 2013 Guidance, Cory has never offered to alleviate SASDE's concerns by entering into agreements with SASDE such as to guarantee a minimum level of compensation or to set out the basis for assessment of disturbance costs. It was not until 8 November 2018 that Cory made a reasonable offer in terms of paying SASDE's fees, and those undertakings were not honoured until 16 April 2019It is worth raising, at this point, that SASDE is a very small company and has incurred significant

fees in dealing with the compulsory acquisition process. At no point has Cory offered to attempt to ease this financial burden and stress on SASDE.

22. Other representors have put in issue Cory's case for compulsory acquisition and the adequacy of Cory's consultation/negotiation: see the Relevant Representations of Maz Mohammed,[8] Daniel Bell,[9] Western Riverside Waste Authority,[10] Jon Cruddas MP,[11] Ingrebourne Valley Limited,[12] Teresa Pearce MP,[13] ARRIVA London Limited,[14] Creek Side Developments (Kent) Limited,[15] Landsul Limited,[16] Munster Joinery (UK) Limited,[17] Network Rail Infrastructure Limited,[18] and Thames Water Utilities Limited.[19] These representations are consistent with SASDE's position and effectively endorse it.

Simon Bell
Counsel
Knights Solicitors

20th May 2019

[8] 4 January 2019.
[9] 28 January 2019.
[10] 1 February 2019.
[11] 4 February 2019.
[12] 8 February 2019.
[13] 8 February 2019.
[14] 9 February 2019.
[15] 11 February 2019.
[16] 11 February 2019.
[17] 11 February 2019.
[18] 12 February 2019.
[19] 12 February 2019.