

**TRANSPORT FOR LONDON'S SUMMARY OF ORAL SUBMISSIONS
MADE AT THE:
ISSUE SPECIFIC HEARING ON THE DRAFT DCO ON 5 JULY 2016
AND
COMPULSORY ACQUISITION HEARING ON 6 JULY 2016**

1 Issue specific hearing on the draft DCO

1.1 Agenda item 2: Drafting of the Order

1.1.1 Requirement 16

- (a) Requirement 16 in Schedule 2 of the draft Order requires the undertaker to, “review the code of construction practice to establish whether it should be updated ... and where it is to be updated, the undertaker must seek the approval in writing of the relevant planning authority to any update of the code of construction practice”.
- (b) Transport for London (TfL) is concerned that there is no adequate mechanism in place to ensure that it is consulted on any update of the Code of Construction Practice (CoCP). Although article 38 of the draft Order requires the relevant planning authority to consult, “*all other relevant and appropriate statutory consultees*” before deciding whether or not to approve, agree or consent, this does not give TfL sufficient comfort. Such a provision relies on the relevant planning authority adhering to their obligation and it is not clear that they would necessarily do so and, in particular, it is not clear that they will view TfL as a consultee as this will rely on their interpretation of the terms “*relevant and appropriate*”.
- (c) TfL therefore feels that it is prudent and proper that it is named specifically as a consultee in Requirement 16. It performs functions as the highway authority in the area affected by the proposed project and it is imperative that it is consulted on any change to the CoCP as any changes may have an effect on its highway functions.

1.1.2 Article 38 and Schedule 3

- (a) TfL supports the London Borough of Enfield's (LBE) request that:
 - (i) the period of 56 days under article 38 for deemed approval only start once the promoter's application is validated, rather than submitted to the discharging authority;
 - (ii) the period for consultation under Schedule 3 be extended to allow the LBE 14 days to consult with consultees; and

- (iii) a period of 21 days, rather than the current seven, be allowed for LBE to request further information of the undertaker following submission of relevant documentation.

1.2 Agenda item 5: Drafting of the CoCP

- 1.2.1 TfL welcomes the fact that it is named specifically as a consultee in the CoCP, in particular at paragraph 11.5.2 as a consultee to the drafting of the Construction Travel Plan and at paragraph 11.1.2 as a consultee to the drafting of the Construction Logistics Plan.
- 1.2.2 However, TfL is concerned that it is still not named as a consultee to the drafting of the Operational Travel Plan and it urges the promoter to update the CoCP to reflect this concern.
- 1.2.3 Given the commitments by the promoter in the CoCP to consult TfL on the drafting of the various plans referred to in the CoCP, TfL re-iterates its request that it ought to be named expressly in Requirement 16 as a consultee to any update of the CoCP.
- 1.2.4 Without this, and regardless of article 38(6) of the Order, a situation could perceivably arise whereby TfL's interests are not protected because the CoCP is updated to remove the provisions that currently provide a commitment to consult TfL on the various plans, as stated above in 2.1 and 2.2.
- 1.2.5 TfL wishes to avoid any possibility of this occurring.

1.3 Agenda item 6: The draft DCOb (Section 106 Agreement) dated October 2015

- 1.3.1 TfL is not a party to the Section 106 Agreement. However, it notes that at paragraph 5.1 of Schedule 3 and at paragraph 4.3.1 of Schedule 4 of the Agreement, there is a commitment for LBE to consult TfL on the Servicing Management Plan.
- 1.3.2 Although TfL welcomes this provision, as it is not a party to this Agreement it cannot ensure that the provision remains in the final form of the Agreement and nor can it enforce any obligations under it.
- 1.3.3 Similarly to the rationale stated in paragraphs 2.3 and 2.4 above, TfL therefore requests that this commitment be moved to the draft Order to ensure that this commitment is fully complied with by the promoter and enforceable by TfL.

2 Compulsory Acquisition Hearing

2.1 Agenda item 2: Clarification of description of particular plots in the Statement of Reasons, the CA powers roadmap and schedules of the draft DCO

- 2.1.1 TfL understands that the DCO will be amended to remove the reference to plan C_0018 from the definition of 'Order land' as the additional land is no longer needed (and including it would trigger regulations 5 to 19 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010).

- 2.1.2 TfL also understands (and supports) that either the definition in article 2 or the land plans will be altered so that the phrase used in article 2 relating to 'order land' matches that appearing on the land plans.
- 2.1.3 TfL is concerned that article 19 gives a general right of compulsory acquisition over all the Order land, despite article 19(4) subjecting this to articles 23 and 27. Articles 23 and 27 do not exclude that general power from applying to the plots in schedules 10 and 12 respectively, even if that is the stated intention in the explanatory memorandum. Contrast this with, for example, the A556 Knutsford to Bowdon Improvement Scheme DCO¹, where the equivalent articles are 18, 20 and 27. Article 20(2) restricts the general power of compulsory acquisition over the land in the acquisition/creation of rights schedule, and article 27(8) does the same for land in the temporary occupation schedule. TfL requests that equivalent wording be included in this Order.
- 2.1.4 Indeed, the application version of the DCO sought to restrict compulsory acquisition to six parcels set out in the then schedule 10, although article 19 did not in fact refer to schedule 10. Arguably the current draft therefore also triggers the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 process.
- 2.2 Agenda item 8: TfL land subject to compulsory acquisition
- 2.2.1 As well as the six affected plots listed on the agenda where TfL owns the freehold (namely 24, 26, 27, 28, 29 and 31), TfL also has rights listed in the Book of Reference over another 12 plots, namely 7, 8, 11, 13, 17, 18, 19, 22, 23, 25, 30 and 34.
- 2.2.2 Due to the promoter's lack of substantive engagement with TfL (despite the promoter's alleged list of interactions), not a great deal of progress had been made on reaching agreement with the promoter. Nevertheless, TfL is willing to reach agreement on land issues by the end of the examination and is keen to work constructively with the promoter to achieve this. There are some plots of land where it has greater concerns and others where its concerns are of lower importance. It is also necessary to establish the extent to which the promoter's proposed use of the land would impact on TfL's interests..
- 2.2.3 A meeting has been set up for 21 July 2016 and progress will be reported to the Examining Authority in due course.

Bircham Dyson Bell on behalf of Transport for London

15 July 2016

¹ SI 2014/2269 http://www.legislation.gov.uk/uksi/2014/2269/pdfs/uksi_20142269_en.pdf