

SILVERTOWN TUNNEL DEVELOPMENT CONSENT ORDER

Quintain (No.8) Limited

Further Written Representations

Quintain (No.8) Limited (**Quintain**) has already made initial representations to the Examining Authority in respect of the proposed Development Consent Order for the Silvertown Tunnel (the **DCO**), dated 31 August 2016.

These further written representations are intended to build on the objections and concerns that were raised in those initial representations, and offer the Examining Authority further details of Quintain's position.

Please note that, as of the date of these further initial representations being prepared for submission, there was a Statement of Common Ground (**SoCG**) being prepared amongst Transport for London (**TfL**), and Quintain and GLA Land and Property Limited (**GLAP**) in their capacity as joint land-owners of the Carlsberg-Tetley site (the **Site**).

Quintain's Interest

As noted in the initial representations, Quintain has ownership interests in the Site, in conjunction with GLAP. The extent of this ownership is explored in more detail in the SoCG.

Quintain and GLAP have, prior to the bringing forward of the DCO, developed plans for the redevelopment of the Site as a mixed-use residential-led development. The current masterplan for the Site, based on the Mcaslan + Partners masterplan from 2014 (which is appended to the SoCG) (the **Masterplan**), anticipates that the Site will deliver 2,500 homes along with various commercial spaces.

Accordingly, the Site is of significant strategic value to the regeneration of the Silvertown area, Newham and east London more broadly, all of which will face significant impacts from the proposed tunnel works, and its continued operation going forward. This strategic value was recognised in the Royal Docks and Beckton Riverside Opportunity Area Planning Framework (the **OAPF**), which is currently in draft form but expected to be published by early 2017.

Quintain's Objections - Summary

Quintain does not object to the principle of the works to be enabled by the DCO, nor does it object to the principle of the tunnel itself. Instead, Quintain's objections are centred on the current terms of the draft DCO.

Quintain's objections fall in three broad categories, namely:

- i) The DCO's compulsory purchase provisions;
- ii) The DCO's provisions regarding the construction and design of the tunnel and associated works; and
- iii) The Environmental Statement submitted to support the draft DCO fails to comply with the requirements of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the **EIA Regulations**)

Each of those are considered in turn below.

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Quintain's Objections

Compulsory Purchase Provisions

Quintain's objections with regards to the compulsory purchase provisions primarily relate to the extent of temporary land take of the Site, to be enabled by the Compulsory Purchase Order (CPO) currently envisaged in the draft DCO and its supporting documents.

S122(c) of the Planning Act 2008 requires that there must be '*compelling case in the public interest for the land to be acquired compulsorily*' before a DCO can be permitted to include provisions allowing the compulsory acquisition of land or rights over it. It is Quintain's position that the DCO and supporting documents in their current form have failed to demonstrate this on the basis that they fail to adequately establish that:

- a) the acquisition of/interference with the Site is required for the Scheme's construction;
- b) all reasonable alternatives have been explored;
- c) the interference with Quintain's rights is for a legitimate purpose, necessary and proportionate; and
- d) there is a clear idea of how the Site is to be used.

Given that Quintain's site is currently proposed to deliver around 2,500 urgently needed homes, delivery of which would be delayed by roughly five years as a result of the CPO process currently proposed, there must be a compelling reason for the broad-brush approach to the CPO powers sought in the draft DCO. Otherwise, there is no reasonable conclusion other than the powers sought are not proportionate to the ends.

We would have expected considerable attention to have been expended on considering alternatives to the current proposals, or means of mitigating the same, if those proposals are to be justified as necessary and proportionate in their current form, particularly given the aforementioned impact on a strategically important housing-delivery site.

Unfortunately, however, it seems that little in the way of consideration to alternatives or such mitigation has been given; the section of the Statement of Reasons (document reference 4.1) which supposedly considers the alternative options deals primarily with the differing options for the project as a whole, rather than a detailed analysis of why the particular areas sought are required, and what alternatives were considered. Appendix B to the same purports to set out a summary of the points shaping the current proposals, but fails to do more than provide a status update on negotiations relating to the CPO process with the affected landowners.

It is clear that if alternative options or mitigation proposals have not been adequately considered, it is impossible to say that the acquisition of and interference with the Site is in fact necessary, or proportionate. Appendix 1 to these further representations demonstrates Quintain's suggested phasing of its proposed development; as can be seen from that plan, one key alternative would be a phased CPO which allows development of key sites to occur concurrently, minimising cost, speeding delivery and evidencing a pragmatic approach to bringing forward both key infrastructure and strategic housing developments. Further consideration of a phased land take appears in the Construction and Design section of these representations.

Accordingly, Quintain does not believe that the current extent of the temporary land take proposed under the terms of the CPO properly complies with the provisions of s122(c). Quintain does not object to the nature of the powers contained in Articles 19, 22, 29 or 30 of the draft

DCO, but does object to the manner in which it is proposed that those powers will be implemented.

Construction and Design

It is self-evident that the compulsory acquisition of the Site (even on a temporary basis) will hamper the development envisaged by the Masterplan. This will not only hold back delivery of the housing proposed thereon for a period measured in years, rather than weeks or months, but as things stand it will also introduce a number of constraints which will permanently prevent the site reaching its full delivery potential.

Firstly, the land take of the project is excessive, resulting in both a strategic housing site which is permanently hamstrung, and an unnecessarily high compensation bill weighing heavily on the public purse.

In particular, Quintain considers the following to be unnecessary:

- a) the physical limits of the temporarily acquired land which will prevent the development of the Site for many years;
- b) the extent of the areas claimed to be temporarily required for construction of the TBM Chamber, again preventing the development of the Site for many years; and
- c) the extent of areas claimed to be for associated infrastructure.

The TBM Chamber and associated head house are indicatively shown on General Arrangement Plan Sheet 3 of 3; at present the land required for the head house is shown as a 13.5m by 6.5m area. A combination of the area required and uncertainty as to its final location presents a considerable impediment to planning future development of the Site.

In general, the proposed areas taken for the construction and associated infrastructure on the Site are excessive, and do not recognise the potential for phasing land take to ensure that it is as efficient and effective as possible.

Phased land take would allow for development of the project and Quintain/GLAP's development to be concurrent, rather than strictly sequential, and would speed delivery whilst minimising the impact of both developments on both the Site and the wider area.

Quintain's engineering consultants have raised in particular the following points in relation to this land-take:

- i) Much of the Site identified by TfL as being required for the works is labelled for "temporary storage". Other land on the Site is labelled as having a purpose, even if it is for storage. The necessity for this "temporary storage" is therefore unclear, particularly in the context of other areas being clearly labelled. This is not only raises issues in respect of the construction practicalities but also as to the propriety of the CPO powers sought in respect of temporary land take, given that the proportionality of those is then brought into question where no clear purpose is provided.
- ii) The worksite layout plans represent only three stages from the construction programme. The construction phasing plans represent 5 stages. Consequently, the details shown on the layout plans 'compress' the works from the construction phasing, resulting in a possible over-exaggeration of temporary land requirements necessary. Thus, land is apportioned to activities that are not concurrent (e.g. spoil classification would not be occurring at the same time as tunnel boring).

- iii) Land requirements for proposed activities are generous. TfL has successfully operated major tunnelling operations from smaller sites; for example, four TBM drives were operated from the Limmo site. It is noted that whilst the tunnel bores were smaller at that site, the tunnelling method was the same, and the additional number of bores more than mitigates the difference in size. Quintain has no issue with the final bore dimensions or placement of them, but does question the necessity of such a large temporary land take in the absence of any clear technical justification made by TfL to date in the examination process.
- iv) Land has been identified and allocated for construction processes that are unlikely to be required e.g. a slurry treatment plant is not required for the proposed type of TBM (earth pressure balance). For instance, it is Quintain's understanding, on the advice of its technical consultants, that the proposed Earth Pressure Balance tunnelling method does not require a Slurry Treatment Plant, and yet land is allocated for just that.

As noted above, this issue is exacerbated by the fact that the worksite layout plans fail to fully account for the construction phasing plans, in so far as the latter contains five phases, whilst the former only three. Consequently, there is a significant inflation of the estimate of land required when compared to the reality as at the time of construction, and there is considerable potential for the duration and extent of land take to be reduced, further reducing the impact of both developments.

The land take for construction appears to default to occupying the whole of the land identified in the DCO and then subdividing this into the various uses. There is considerable scope for rationalising the construction land take such that not all of the land is taken and / or so that that areas of the Site could be released early to allow Quintain to progress development construction. It is also noted that the land take includes a large area for stockpiling. This is most unlikely to be used to this extent as the contractor will want to avoid any double handling as far as practicable and only stockpile spoil in extremis. Any areas of stockpiling should be rationalised, particularly in light of proposals in respect of spoil reuse that are considered later in these representations.

TfL has also failed to consider the impact of the operation of the tunnel on the future development of the Site. This includes the need for building above the tunnels and the impact of the tunnels' operation (particularly with regards to noise, impacts on air quality, and access) on the future use of the Site. Indeed, as is apparent when these further representations are taken in the round there appears to have been a general failure by TfL to account for the Site on a receptor basis.

In terms of access the following comments are made:

- i) It is disappointing that little in the way of details as to how TfL intends to plan for and accommodate any changes required to the design of the Tidal Basin Roundabout to facilitate access to and traffic generated by the redevelopment of the Site in line with the Masterplan. This is particularly disappointing in light of TfL's statement that junctions around the appeal scheme will be assessed closer to scheme opening and mitigations implemented where necessary. On the Greenwich side of the river it is evident that more effort has been put in to tie highways for the TfL scheme with known and future highways need, which appears to discount much of the proposed development of the northern side, as have been envisaged in the OAPF and previously discussed London Borough of Newham policies.
- ii) The realignment of Dock Road proposed by the Scheme does not appear to consider future development of the Site or the wider Masterplan area, it simply reconnects North Woolwich Road with the Tidal Basin Roundabout. This could promote HGV traffic from

the existing industrial land uses to pass through a future residential development area, which would also have significant implications.

- iii) Quintain's technical advisers have explained that in their view, the alignment of Dock Road in the TfL scheme would not successfully serve the Masterplan or alternative development schemes, and as such would seem a costly waste of infrastructure provision.

In terms of noise impact the following technical comments are made:

- i) A cover of some description over the Northern Portal is needed. The longer this cover or canopy is, the greater the number of noise-sensitive receptors on the Site to which it would provide benefit. This should be incorporated in place of the far less effective barriers currently proposed.
- ii) The noise reduction associated with a cover would not reduce the noise impact on the worst-affected proposed dwellings (e.g. those to the north of where the cover terminates) and the noise impact would be unchanged.
- iii) However, for all dwellings to the east, west and south of the cover, the potential for a reduced level of noise impact is significant and could make more areas of the site developable as well as increase the range of uses that a particular area of the site may be suitable for (e.g. an area of the site previously unusable for amenity space may become suitable for gardens/podiums etc.).
- iv) A number of example precedents exist including:
 - o Berger Tunnel, Stuttgart (48° 47' 53.48" N 9° 12' 30.95" E)
 - o Bangolet Tunnel, Paris (48° 52' 18.32" N 2° 25' 58.60" E)
 - o Arundel Square, London (51.544773° N -0.110966° W)

It would seem foolhardy to design the Project so that the density of housing on the Site is unduly limited; clearly it is vital that developments in London are able to deliver as many homes as possible within the limits set within the London Plan and Borough planning policies. The current proposals do not account for the weights and depths of foundations required for large-scale residential development, which has the potential to forever limit the viability of the Site providing the number of homes currently envisaged and expected of it.

Should Quintain obtain rights to develop over the tunnel, the tunnel structures need to be designed to accommodate Quintain's proposals. That is, the tunnel needs to be designed to withstand, both in terms of ultimate and serviceability limit state, imposed loads and foundation solutions. Similarly, the tunnels need to be designed not to adversely affect the proposed development. These requirements need to be defined in any DCO.

Without definition, land above the tunnel would probably be limited to single storey lightly loaded structures, parkland and landscaping, significantly reducing development potential which directly conflicts with the Site's strategic potential and designation. Limehouse Link was constructed using cut and cover methods and designed to accommodate oversite development. Whilst it is acknowledged that the primarily bored tunnel proposed by the DCO is somewhat different in its implementation, and is more complex to make such provision for, this merely serves to highlight the importance of ensuring adequate provision is secured at an early stage.

It is also noted that TfL have failed to consider the Masterplan, of which they have been aware for some time, or the associated designation in the OAPF, in considering the design of the portal buildings.

Quintain also objects on the grounds that adequate consideration does not appear to have been given to the potential re-use of tunnelling spoil on the Site as part of its development. This is evidenced by the failure to include the Site in the Receptor Site Assessment (for Excavated Materials) (document reference 6.10 Appendix D).

The Site will require a significant amount of material as part of its anticipated successful redevelopment, and therefore an opportunity is presented to maximise the beneficial re-use of waste and limit the number of both road vehicle and barge movements required to handle said material. It is anticipated by Quintain's consultants that the Site could take roughly a quarter (i.e. 250,000m³) of the excavation material extracted by the tunnelling works (subject, of course, to the suitability of that waste for re-use as determined in accordance with the provisions of the Site Waste Management Plan, document reference 6.10 Appendix E).

Clearly this is an environmental boon for both the project and Quintain's development, but it also could pose significant economic benefits. Quintain's cost consultant has estimated that more than £10,000,000.00 could be saved by the beneficial re-use of tunnelling spoil on the Site.

Accordingly it is disappointing that there appears to have been little in the way of detailed analysis or engagement prior to the DCO process commencing as to the potential for such re-use both on the Site and more broadly.

Environmental Statement

It is noted that TfL's Environmental Statement (the **ES**) is not in compliance with the EIA Regulations.

In particular we note that the mitigation measures set out in the ES fall short of the requirements of Paragraph 21, Part 1 of Schedule 4 to the EIA Regulations, in that many of them are not expressly set out on the grounds that much of the design work for the project is still to be done. Given that Paragraph 21 requires a description of the mitigation measures to be undertaken, clearly the ES is not compliant in its current form.

Further, given that many of the assessments of the environmental impacts of the project rely on the proposed mitigation in order to assess the overall effect and therefore the ranking of their level of significance, it is hard to determine precisely what mitigation has been taken into account to analyse this.

It is surprising that the Site is not itself identified as an air quality receptor, given that this area is shown as 'released for residential development' under the OAPF. The Site, regardless of this allocation, should have been considered as it is within close proximity to the tunnel portal. Assessment should include future receptor locations and propose suitable mitigation where necessary. This does not appear to have been done.

We note and have considered the Rule 17 letter from the Planning Inspectorate on this matter. In a judgement date 2 November 2016 the High Court concluded that for proper construction of Article 23 of Directive 2008/50/EC the Secretary of State must aim to achieve compliance with EU limit values by the soonest possible date. The government's air quality plan was judged to fail to comply with Article 23 for a number of reasons, including, by adopting too optimistic a model for future emissions. These optimistic future emissions assumptions are the same as those adopted in the air quality assessment (Environmental Statement chapter) for the Silvertown Tunnel scheme (see sections 6.6.58 & 6.6.59 of Environmental Statement).

For the Site consideration should therefore be given as to whether, in light of the high court judgment, making such optimistic assumptions may underestimate the impact of the development on air quality. It is therefore essential that:

- a) The ES fully considers air quality impacts on the Site;
- b) The ES reconsiders what the impact of the tunnel scheme would be using a more conservative assumption with regards to future emissions reductions; and
- c) The ES designs and implements air quality mitigation measures above and beyond those currently reported and considered.

The ES also fails to provide an outline of the main alternatives studied by TfL and the reasons for which those were discounted in favour the proposed scheme. This is more generally indicative of a need to consider carefully more efficient alternatives which are better for the environment and the public purse.

We also note that the ES requires extensive cross-referral across the other application documents in order to incorporate the full gamut of information required by Part 2 of Schedule 4.

Regulation 17 of the 2009 Regulations requires that an Examining Authority suspend consideration where an inadequate ES is provided; given that the current ES cannot be read as a standalone document, does not refer to any alternative schemes, and fails to properly provide details of the mitigation proposed, it is hard to see how the current ES could possibly be deemed adequate for the purposes of the DCO examination.

Conclusion

For the reasons set out above, Quintain believes the draft DCO, in its current form, fails to adequately comply with the legal requirements set out in the Planning Act 2008 in respect of its desired CPO powers, but also in relation to the EIA Regulations.

On that basis Quintain respectfully submits that the DCO contains flaws that will prejudice both its legal standing, and its ability to practically deliver the project that it was designed to provide. Accordingly, Quintain intends to continue to object to the draft DCO until such time as the objections set out above are adequately dealt with.

It should be noted that Quintain is in constructive discussions with TfL with a view to agreeing how to best deal with these points. These are evidenced further in the SoCG, and described in our letter to the Examining Authority of 10 November 2016. It is hoped that these constructive discussions continue with TfL, and that suitable solutions to the objections set out above can be found.

15 November 2016

Winckworth
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APPENDIX 1

Phasing Plan

NEW PROPOSAL I PHASING PLAN

