

Mr Peter Robottom  
Lead Member, Examining Authority  
Silvertown Tunnel DCO  
Planning Inspectorate  
Room 3Q Kite Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol  
BS1 6PN

Solicitors and  
Parliamentary Agents

Minerva House  
5 Montague Close  
London  
SE1 9BB  
DX: 156810 London Bridge 6

Switchboard 020 7593 5000  
Direct Line 020 7593 5182  
[www.wslaw.co.uk](http://www.wslaw.co.uk)

18 January 2017

Our Ref: KC/34664/1

Dear Mr Robottom

### **Silvertown Tunnel - Representations by Freysporne Limited**

We write with reference to the ongoing examination of the draft Development Consent Order (**dDCO**) proposed by Transport for London (**TfL**) with regards to the Silvertown Tunnel.

We act for Freysporne Limited, a property developer bringing forward a major site on the outskirts of the land affected by the dDCO, but with an interest in a plot of land (Plot 06-078), which falls within the extent of the land included in the dDCO. It has just come to Freysporne's attention, through the good offices of a third party, that the plot in question is due to be temporarily possessed by TfL under powers included the dDCO.

To date, Freysporne has received no correspondence from TfL with regards to the dDCO, and has not been consulted on their proposals. This is of substantial concern to Freysporne, as the temporary possession of the plot (even on a temporary basis) through the dDCO will prevent the construction and delivery of the scheme in accordance with its contractual obligations to its construction contractors, purchasers and lessees of the 161 dwellings, and the occupiers of the commercial space to be created. That will render the site unviable in financial terms, given that it is the only viable, available and logical access route for residents, occupiers, servicing traffic and emergency services traffic.

Notwithstanding the lack of notification and consultation by TfL to date, Freysporne has reviewed the proposals on the Examining Authority's online portal and instructed us to prepare the enclosed written representations, which explain the adverse impacts TfL's proposals would have on the development

It is noted that these representations fall outside of the Examining Authority's deadline for submissions. However, given the complete failure of TfL to observe due process or notify, we require that these representations are taken into account and our client is given a proper opportunity to prepare and present its case for opposing the powers and possession sought in relation to its land.

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We should be most grateful if you would confirm receipt of the enclosed; please do not hesitate to contact us on the details below should you have any queries whatsoever regarding these representations.

Yours sincerely



**Karen Cooksley**  
**Head of Planning**  
**Partner**

DT 020 7593 5182  
DF 020 7593 5099  
kcooksley@wslaw.co.uk

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## **SILVERTOWN TUNNEL – DEVELOPMENT CONSENT ORDER**

### **WRITTEN REPRESENTATIONS OF FREYSPORNE LIMITED**

Freysporne Limited ('Freysporne') has an interest in a development site ('the Site') within the vicinity of the boundary of the scheme proposed by the Applicant ('the Scheme' and 'TfL' respectively) under the draft Development Consent Order ('the DCO').

#### **1. Introduction to the Site**

- 1.1. The Site is a large-scale, mixed-use, residential-led development of land surrounding a Thames Water pumping station, and is known as 'Pump Tower' ('the Development'). The Development is currently under construction, and is currently due for completion by March 2018.
- 1.2. Once completed, the Development will comprise a 24 storey tower providing 161 dwellings, in excess of 1700m<sup>2</sup> of flexible A1/A3/B1 commercial space (which is anticipated to create more than 150 new jobs), along with associated cycle and motor vehicle parking. The Development is one of the first regeneration projects to emerge in the Silvertown area, and Freysporne has already sold all 161 of the dwellings on an off-plan basis.
- 1.3. The Site is allocated as part of a strategic housing site in the Newham Local Plan (see Policy SP4), as part of site S30, which is estimated to fall within the two per-cent of deprived areas in England and Wales. Accordingly, the Site and Development play a vital role in securing the continued redevelopment of the Silvertown area, and Newham as a whole.
- 1.4. It should also be noted that the Site provides for the regeneration of a significantly under-utilised brownfield site and has secured significant infrastructure for the local area through S106 contributions.
- 1.5. With regards to its layout, the Site incorporates two separate parcels, one of 0.232 hectares, and another of 0.175 hectares; the two are linked by an access road running through the Site ('the Access Road'), which leads to the Thames Water pumping station.

#### **2. Freysporne's Interest**

- 2.1. Freysporne holds the Site on the basis of a lease granted by London International Exhibition Centre PLC ('Excel'), the GLA are the ultimate freeholders of the Site. The Access Road is owned by Thames Water Utilities Limited ('Thames Water').
- 2.2. None of the Site itself falls within the boundaries of the DCO, although it is bounded by that part of Tidal Basin Road that is marked Plot 07-009 in the Land Plans (Document Reference 2.3). However, the Access Road that falls within the boundaries of the Scheme proposed by the DCO, shown as Plot 06-078 (Document Reference 2.3).
- 2.3. Freysporne has an interest in the Access Road pursuant to a Development Deed and Grant of Rights entered into between itself and Thames Water and dated 14 September 2012 ('the Access Deed'), which is registered against title number TGL375372. The

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Access Deed, amongst other things, provides Freysporne (and therefore its contractors and the residents and commercial occupiers of the Development) with a right of access over the Access Road, the mouth of which is the entirety of Plot 06-078.

### **3. The Access Road**

- 3.1. The Access Road is the only vehicular access to the Development and the Site. It is a 'dead end', which currently terminates in the accessway to the Thames Water pumping station.
- 3.2. Given its dead-end nature, and the location of the pumping station, it would be impossible to make alternative provision for access to the Development without making significant changes to the planning permission for the Development, which is already (as at the date of these representations) built out to the 12<sup>th</sup> floor.
- 3.3. The Access Road provides the sole vehicular access to the Development, and therefore is vital to allowing construction traffic and residents to access the site. Without it, residents would be unable to access the Development by car or bike, and the commercial uses would be rendered unviable and unsustainable given the lack of adequate service access. There would also be a significant parts of the site that would be inaccessible by emergency vehicles should the mouth of the Access Road be blocked.
- 3.4. The accessway to the pumping station is due to be temporarily relocated (which is secured in the Access Deed) by Freysporne to ensure that Thames Water continues to have uninterrupted access to the pumping station during the course of construction.
- 3.5. There is, however, to be no provision for access to the Development by its residents under the proposals set out in the Access Deed. Thames Water will also require that, in addition to the temporary accessway, the Access Road is kept open and accessible at all times to ensure adequate access to the pumping station.
- 3.6. Given the nature of the infrastructure located within the pumping station, and the hazards of allowing public access to the same, provision cannot feasibly be made to allow the residents of the Development to make use of the relocated access to the pumping station as an alternative access to the Site and the Development.
- 3.7. It is noted that in their representations, Thames Water Utilities Limited have required that they are granted access in accordance with their freehold interests in Plot 06-078. Those requirements, taken in conjunction with the requirements of Freysporne limited with regards to access by residents and occupiers of the Development, demonstrates that temporary possession of Plot 06-078 by TfL is simply untenable.
- 3.8. Similarly, the siting and dimensions of the relocated Thames Water access to the pumping station are such that the construction traffic currently accessing the Site would be physically incapable of accessing the Site and continuing the Development through that relocated access. There would also be no feasible access to the Site for service, emergency services and utilities vehicles through the relocated Thames Water accessway.

#### 4. TfL's Proposals

- 4.1. Plot 06-078 ('the Plot') is currently listed (per Schedule 7 of the draft DCO dated 16 December 2016 – Document Reference 3.1) as being required for Works Numbers 16, 17 and 19.

Works Number	Works
16	<p>the improvement of the existing Tidal Basin Roundabout for a length of approximately 415 metres, to include—</p> <ul style="list-style-type: none"> <li>(a) the construction of an improved, signalised three-lane roundabout gyratory section;</li> <li>(b) the construction of an improved private means of access to the DLR assets;</li> <li>(c) the construction of an improved private means of access to existing statutory undertakers' apparatus;</li> <li>(d) the construction of an improved and signal controlled non-motorised user route around and across the improved Tidal Basin Roundabout; and</li> <li>(e) the construction of a drainage attenuation tank and associated infrastructure within the improved Tidal Basin Roundabout.</li> </ul>
17	<p>the works associated with the construction of a Silvertown tunnel services compound in the vicinity of the North Portal (Silvertown), to include—</p> <ul style="list-style-type: none"> <li>(a) the construction of tunnel services buildings;</li> <li>(b) the construction of a new private means of access to the tunnel services compound from the realigned Dock Road (Work No. 18);</li> <li>(c) the construction of internal access roads and operational parking facilities;</li> <li>(d) the construction of a drainage attenuation tank and associated infrastructure to the west of the proposed Silvertown Tunnel Northern Approach (Work No, 15);</li> <li>(e) the provision of security fencing and bollards; and</li> <li>(f) the provision of landscaping.</li> </ul>

19	the improvement to the existing Tidal Basin Road for a length of approximately 280 metres, to include resurfacing works to the existing Tidal Basin Road from the junction with the improved Tidal Basin Roundabout (Work No. 16) to the existing junction with the A1011/A1020 Silvertown Way southbound carriageway.
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- 4.2. The latest draft of the Statement of Reasons (Document Reference 4.1) instead provides that the Plot is only required for Works Numbers 16 and 19. Accordingly, Freysporne requests that TfL clarifies the particular Work Numbers that are applicable to the Plot as a matter of urgency. It is self-evident that no meaningful discussion can be held with TfL as to potential private agreements for access to the Plot before the detailed use-case for the Plot is set out. As to the scope of TfL's engagement with Freysporne to date, please see section 6 of these Representations titled 'Consultation'.
- 4.3. It is noted that the particular need for Plot 06-078 is set out by TfL in the Statement of Reasons (Document Reference 4.1) as:
- 'Temporary possession of land for improvement of Tidal Basin Roundabout and Tidal Basin Road.'*
- 4.4. Given the lack of consultation by TfL to date, the precise details of the works to be undertaken on the Plot are not yet known to Freysporne. This, of course, makes it difficult for Freysporne to set out any detailed representations as to the necessity of the Plot to the proposed works.
- 4.5. Notwithstanding the lack of details presented to Freysporne to date, given the severity of the negative impact to the Site, the Development, and the regeneration that is ongoing in the Silvertown area as a whole, it is noted that there must be considerable need, with no alternative, to justify said impact.

#### Temporary Possession

- 4.6. Whilst it is noted that possession of the Plot is to be on a solely temporary basis, and therefore does not expressly fall under the requirements of Section 122 and Section 123 of the Planning Act 2008, given the interference with rights that is proposed, and the numerous and considerable impacts that interference will have on the Development, it is reasonable to require TfL to comply with those obligations even in respect of temporary possession.
- 4.7. The requirements of Section 122 are:
- (1) *An order granting development consent may include provision authorising the compulsory acquisition of land only if the decision-maker is satisfied that the conditions in subsections (2) and (3) are met.*
- (2) *The condition is that the land—*
- (a) *is required for the development to which the development consent relates,*

- (b) *is required to facilitate or is incidental to that development, or*
- (c) *is replacement land which is to be given in exchange for the order land under section 131 or 132.*

(3) *The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily.*

4.8. The requirements of Section 123 are:

(1) *An order granting development consent may include provision authorising the compulsory acquisition of land only if the decision-maker is satisfied that one of the conditions in subsections (2) to (4) is met.*

(2) *The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.*

(3) *The condition is that all persons with an interest in the land consent to the inclusion of the provision.*

(4) *The condition is that the prescribed procedure has been followed in relation to the land.*

4.9. Indeed, a purposive construction of the Planning Act, acknowledging the potential impacts of temporary possession included in Article 29 of the DCO, would self-evidently require that any public body seeking temporary possession must properly justify the interference with private rights and the legitimisation of what would otherwise amount to a trespass. Failure to do so would be inherently *Wednesbury* unreasonable.

## **5. Impacts on the Development**

5.1. Given the lack of consultation to date, Freysporne has been unable to accurately model the precise implications of the proposed blockage of the Access Road should TfL take temporary possession.

5.2. There are, however, two broad scenarios, depending on the timing of TfL taking possession.

5.3. Should possession be taken prior to completion of construction (March 2018), then access to the Site for completion of the Development will no longer be possible. All of the residential on the Development have been pre-let, and accordingly the significant delay that blocking sufficient access to the Site would create would have significant financial implications.

5.4. Should possession be taken after completion of the Development, residents and occupiers (including of the commercial spaces) will be left without access to the parking spaces (which can only be accessed via the Access Road) for either motor vehicles or bicycles.

5.5. The blocking of the Access Road after completion would also mean that there would be no access to the refuse stores in the Development, none of the commercial units would

have adequate servicing access (which would restrict the viability of any such use, and therefore the employment opportunities it presents), and, most concerning, there would be no access to various parts of the Site for emergency services vehicles.

- 5.6. Given that the Development is at an advanced stage of construction, and that all units have been pre-let, there is no opportunity to amend the design of the Development to accommodate the blockage of the Access Road.
- 5.7. Accordingly, blocking the Access Road would pose substantial construction and operational issues for the Development and would undermine the benefits that it will have for the Silvertown area with regards to much-needed homes, employment opportunities, and broader regeneration. It cannot, therefore, be permitted pursuant to the DCO.
- 5.8. Noting that all of the dwellings have already been sold, the implications extend well beyond Freysporne's current interest; they would extend to limiting the accessibility, usability and safety of 161 much-needed new homes. Given the lack of notification and consultation by TfL to date, these implications, with respect to both construction delay and Freysporne's contractual obligations to purchasers and occupiers, are considerable and would ultimately have been avoidable had TfL properly discharged its duty to notify and consult local land interests.

## **6. Consultation**

- 6.1. It is disappointing and deeply concerning that TfL has failed to engage with or consult Freysporne on the proposals, particularly given that it is (and have been for some time) aware of Freysporne's interest in the Plot.
- 6.2. This is clearly evidenced by the reference to Freysporne in Document 8.21, in which it is acknowledged by TfL that there has been 'no contact to date' and that 'contact will be made in due course'. Given that the Examination process is due to close in April of this year, this failure to adequately consult gives rise to a number of procedural concerns.
- 6.3. Freysporne has no objection to the principle of the Scheme, and welcomes the positive results it will likely have on the broader regeneration of the Silvertown area. However, Freysporne was not consulted on, or even notified about, the proposed temporary possession of its interest in the Access Road; it is now too late to provide said possession, without very significant construction, occupation and therefore financial implications.
- 6.4. The failure to notify or consult Freysporne is self-evidently a breach of both statutory duties and best practice as confirmed in the Secretary of State's guidance on the Planning Act 2008. However, it is clearly the practical implications that are of most concern to Freysporne.
- 6.5. The intention behind the detailed pre-application consultation provisions set out the Planning Act 2008 is to give:

*...the ability to anyone interested in or affected by a major infrastructure proposal to both object in-principle to a proposed scheme and at the same time suggest amendments to design out unwelcome features of a proposal.*

- 6.6. Had TfL properly discharged its duties with regards to consultation, Freysporne would have been a willing participant in the design process to ensure that the Scheme could come forward without unduly prejudicing the Development. They were not, however, afforded that opportunity.
- 6.7. Similarly, had consultation with Freysporne taken place concurrently with TfL's proclaimed programme of consultation (as set out in Document Reference 5.2), the substantial financial implications would have been tempered by the considerable additional time Freysporne would have been granted to mitigate the same.

#### Secretary of State's Guidance

- 6.8. The underlying failure to consult Freysporne is clearly out of keeping with the guidance provided by the Secretary of State, which states that:

*Applicants will also need to identify and consult people who own, occupy or have another interest in the land in question, or who could be affected by a project in such a way that they may be able to make a claim for compensation. This will give such parties early notice of projects, and an opportunity to express their views regarding them.*

There also appears to have been a contravention of the guidance that:

*Applicants should be proactive and helpful in ensuring that the person [with an interest in the land] understands how they can, if they so wish, engage with the process if the application is accepted for examination.*

#### Planning Act 2008

- 6.9. It is also noted that, in failing to consult with Freysporne at the pre-application stage, TfL has failed to discharge its duty of consultation under Section 42 of the Planning Act 2008, which requires that certain categories of people, including those with an interest in the land (e.g. Freysporne), are consulted prior to the application being submitted
- 6.10. Freysporne has never received any form of consultation documents, and by TfL's own admission, has not yet been contacted by them with regards to the Scheme proposals. It is noted that TfL suggests that a consultation letter was issued on 2 October 2015 (see Appendix D to Document Reference 5.2); to our knowledge, this was never received by Freysporne and we should be grateful if TfL would confirm the address to which this letter was sent.

#### Natural Justice

- 6.11. We also note that, beyond the scope of the guidance and the statutory provisions, the complete failure on TfL's part to adequately engage with Freysporne in relation to its interest in the Plot amounts to a breach of the rules of natural justice, and as a result

Freysporne has been precluded from putting forward its representations on the proposals on the same terms that other consultees have been equipped to.

- 6.12. There is an entirely reasonable expectation that TfL would seek to engage fully with affected parties well before the examination commenced, all the more so when those parties are to have their rights directly interfered with for a period measured in years, rather than days or weeks.
- 6.13. This is all the more so given the current uncertainty as to the detailed phasing of the works and therefore the precise requirements for each temporarily possessed plot; it can only be assumed that the Plot is to be in TfL's possession for the full period permitted by the draft DCO. Given that this amounts to a minimum of five years, it would be utterly unreasonable for TfL to state that issuing a single letter in 2015 with (by their own admission) no subsequent attempts to contact Freysporne, is by any estimated sufficient to satisfy the requirements of Section 42, the guidance, or in accordance with the rules of natural justice and proper administration.
- 6.14. The proposed interference and the dire implications for the Development would be utterly disproportionate with any benefit that TfL might derive from the blocking of the Access Road through the temporary possession powers afforded to it by the draft DCO.
- 6.15. Accordingly Freysporne respectfully requests that the Plot is duly removed from the draft DCO's temporary possession and compulsory acquisition powers, and that the Examining Authority thoroughly interrogates the consultation undertaken by TfL, should it arise that other parties are similarly affected.

**18 January 2017**

**Winckworth**  
Sherwood