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Emré Williams
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27 January 2017

By Email

Our ref STMM/ROGN/SCO030.00065/100668.01107

Dear Emré

Your Ref: TR010021

Application by Transport for London (TfL) for an order granting development consent for the proposed Silvertown Tunnel (the Application)

Deadline 3

Southern Gas Networks plc and Birch Sites Limited

We are instructed by Southern Gas Networks plc (**SGN**) and Birch Sites Limited, which is part of National Grid Property Holdings Ltd (**NGP**). These are Interested Parties in the examination of the Application whose land is proposed to be compulsorily acquired via the Application.

We are writing to provide comments on Deadline 3 in relation to two aspects of the Application: the extent of the powers of compulsory acquisition under the book of reference (**BoR**) and the current inability to require TfL to acquire the whole of land in the situation where it only proposes to compulsorily acquire part of land under the development consent order (**DCO**).

The extent of powers of compulsory acquisition under the BOR

We have previously written on behalf of our clients to object to the inclusion of land, which relates to a use of land outside of the Application scheme, within the DCO and the BoR.

The Application, quite rightly, does not include works for the re-construction of Studio 338. However, the proposed powers of compulsory acquisition include land to be acquired in support of the continuing existence of Studio 338 and these powers include the compulsory acquisition of our clients' land in order to facilitate the creation of new accesses and emergency fire egress routes in order to enable Studio 338 to continue to trade.

In particular, TfL's application documents state that the following plots will be acquired, or will be subject to rights required, for the following purposes:

1. **SGN land - Plot 01-047a**: This plot will be compulsorily acquired, by way of temporary possession, as a working space to facilitate the construction of new access/egress to/from premises;
2. **SGN land - Plot 01-058a**: This plot will be compulsorily acquired, by way of permanent acquisition, for the construction of the new access/egress to/from premises;
3. **NGP land - Plot 01-058c**: This plot will be compulsorily acquired, by way of permanent acquisition, for the construction of the new access/egress to/from premises; and
4. **NGP land – Plot 01-060a**: This plot will be compulsorily acquired, by way of temporary possession, as a working space to facilitate the construction of new access/egress to/from premises.

The acquisition of the above plots of land is not required for the construction, maintenance or operation of the Application scheme and, as such, there is no compelling case in the public interest that can justify the compulsory acquisition of the above plots of land.

By virtue of section 122(1) of the Planning Act 2008 (the **2008 Act**) the DCO may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the conditions in subsections 122(2) and 122(3) of the 2008 Act are met:

The condition under section 122(2) of the 2008 Act is that the "and is:

1. required for the development to which the development consent relates;
2. required to facilitate or is incidental to that development; or
3. replacement land which is to be given in exchange for the order land under section 131 or 132 of the 2008 Act.

Taking the elements of this condition in turn, the acquisition of the above plots is not:

1. required for the development to which the DCO relates, as the development of Studio 338 is not included within the DCO;
2. required to facilitate, and is not incidental to, the development under the DCO, as the acquisition of these plots is solely for the creation of a new access to and egress from the premises. As TfL's statement of reasons makes clear, the acquisition of these plots is "*to enable the night club to continue to trade*" and is not to facilitate the scheme; and
3. replacement land.

Accordingly, the condition under section 122 of the 2008 Act is not met and the Application scheme could still be delivered without the inclusion of powers of compulsory acquisition over these plots of land.

In any event, the further condition under section 122(3) of the 2008 Act which must be met in order for powers of compulsory acquisition is that there is a compelling case in the public interest for the land to be acquired compulsorily.

As TfL set out in the statement of reasons, in order for the Secretary of State to be satisfied that the condition under section 122(3) of the 2008 Act is met the Secretary of State would need to be persuaded

that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition of land and interests for the scheme will outweigh the private loss that would be suffered by those with interests in land to be acquired. As is made clear in paragraph 16 of the document Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land: "*there may be circumstances where the Secretary of State could reasonably justify granting development consent for a project, but decide against including in an order the provisions authorising the compulsory acquisition of the land. For example, this could arise where the Secretary of State is not persuaded that all of the land which the applicant wishes to acquire compulsorily has been shown to be necessary for the purposes of the scheme*". This is the case in respect of these plots of land.

There is no evidence within the Application to support a conclusion that the compulsory acquisition of the above plots is in the public interest, nor that the ability of Studio 338 to continue to trade as a nightclub is within the public interest.

Accordingly, the condition under section 122(3) of the 2008 Act is not met and, as noted above, the Application scheme could still be delivered without the inclusion of powers of compulsory acquisition over these plots of land.

Please note that Studio 338 has submitted a separate application for planning permission to the Royal Borough of Greenwich (**RBG**). SGN has objected to this application, and a copy of SGN's letter of objection is enclosed again for your assistance.

We are aware that Lidoka Estates, a neighbouring landowner, has also objected to the compulsory acquisition of Plot -1-058.

Ability to require TfL to acquire the whole of land in the situation where it only proposes to compulsorily acquire part of land

There are two areas of land where NGP may wish to require TfL to require a greater extent of land than is currently proposed under the DCO and the BOR. These are: 1) – Plots 01-076, 02-015, 02-017, 02-017a, 01-077 and 02-088, where TfL intend to acquire rights or take temporary possession; and 2) a land locked triangle of land adjacent to Plot 01-060. Similarly, there is a further land locked triangle parcel of land where SGN may wish to require TfL to acquire a greater extent of land than is currently proposed under the DCO and BOR.

As you will be aware, there are statutory provisions which apply in certain circumstances under compulsory acquisition whereby a landowner can require an acquiring authority to acquire the whole of its land where only part of the land is initially to be compulsorily acquired. This is applied by section 8 of the Compulsory Purchase Act 1965 (the **CPA 1965**), and similar provisions apply in relation to general vesting declarations (**GVD**), but it does not apply in all circumstances: it only extends to houses, buildings or manufactories and not to land itself. As no house, building or land is to be acquired, these provisions do not assist NGP.

The DCO includes Article 27, which applies instead of section 8 of the CPA 1965, but Article 27 does not amend the extent of section 8 of the CPA 1965 so as to include land (so the power to require TfL to acquire a greater extent of land only extends to houses, buildings or manufactories and not to land, as per the statute) and it does not amend the corresponding provisions in relation to GVDs. Therefore, if the DCO is granted in its current form TfL could not be obliged to acquire a greater extent of NGP's land using the statutory procedures.

NGP and SGN request that Article 27(1)(a) is extended to include all such land, and not simply houses, buildings or manufactories. NGP and SGN also request that amendments to the corresponding provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 are applied by the DCO in order to give effect to such amendments in the situation where a GVD, and not a notice to treat, is used to acquire land.

In relation to certain plots of land, for example:

1. the landlocked triangles of land, including that adjacent to Plot 01-060, the current effect of the Application would be, effectively, to sterilise this land and leave it landlocked and without giving NGP any recourse to TfL;
2. the land which is not to be permanently acquired from NGP, NGP would be left unable to access its land as the Application scheme does not include an alternative access. As a consequence of this, the retained land may be left landlocked without recourse to TfL; and
3. NGP's retained land, this land is known to be in a state that it is likely to require some remediation given its previous use as a gasholder site. At present, TfL would acquire only part of this land under a permanent basis and so part of NGP's land would be left in an unremediated state and subject to the environmental disturbance of the Application scheme.

By amending Article 27 and the corresponding provisions regarding GVDs as requested, NGP would have the ability, should it wish, to require TfL to acquire those parts of its land as part of the acquisition of its other land and the problems identified above could be remedied.

As noted above, discussions between SGN, NGP and TfL are ongoing with the focus on reaching an acceptable agreement to address SGN and NGP's concerns. Following the productive meeting with TfL on Thursday 12 January 2017 a further meeting is scheduled for Monday 30 January 2017.

SGN and NGP are focussed on reaching an agreement with TfL but would both wish to have the opportunity to attend the compulsory acquisition hearing currently scheduled for 29 March 2017 and make representations as part of the examination into the Application and to attend any further hearings, if it becomes necessary.

Yours faithfully,

Stephen McNaught

CMS Cameron McKenna LLP

our ref: **BF/Q30195**
your ref:
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date: 10 January 2017

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Dear Mr Mohtram,

STUDIO 338 BAR, 338 TUNNEL AVENUE, GREENWICH, LONDON, SE10
PLANNING APPLICATION 16/3945/F OBJECTION

We are instructed by our client Scotia Gas Networks (SGN) who own a considerable piece of land adjacent to the application site known as Studio 338.

The planning application submitted under reference 16/3945/F for the reinstatement of a fire damaged property known as Studio 338 was validated on the 28th November 2016. Our client as adjacent land owner has not received notification of the application albeit has been made aware of the application and on this basis wishes to object to the proposal on the following grounds:-

- The Studio 338 Bar is a nightclub and entertainment facility which can host up to 3,000 people. This type of use is reflective of an industrial area where residential amenities are not taken into consideration and perhaps is a use that was acceptable where it was first envisaged some years ago. However, Greenwich Council as part of their vision within the Local Plan are promoting residential led mixed used development. In particular site GP3 (the gas holder site) is subject to a development brief that seeks comprehensive redevelopment against a series of key objectives. This includes high quality building spaces and accessibility delivered through residential development to compliment the 16,000 new homes proposed by Knight Dragon on adjacent land. It is considered that the reinstatement of the nightclub would prejudice the objectives of site brief GP3 and undermine the future aspirations as set out within the Royal Greenwich Local Plan.

- National Plan Policy Framework defines main town center uses as including entertainment and recreation facilities, such as bars, pubs, nightclubs etc. Section 2 of the NPPF (para.23 – 27) requires an analysis where town center uses are proposed and in particular para.24 confirms that Local Planning Authorities should apply a sequential test for planning applications including main town center uses that are not in an existing center and not in accordance with an up to date Local Plan. They should require applications for main town center uses to be located in town centers then in edge of center locations and only if suitable sites are not available, should out of center locations be considered. This application

is not within a town center location and is not supported by a sequential assessment. As a result para.27 is relevant noting that where an application fails to satisfy the sequential test it should be refused.

- The NPPF also refers to the requirements for an impact analysis for leisure developments which are outside of town centers and not in accordance with an up to date Local Plan. The Local Authority will determine the extent to which an impact assessment is necessary however we would suggest that at the very least an analysis of the impacts associated with the operation by virtue of local amenity, noise and customer dispersion should be assessed. This does not appear to be submitted with the application and therefore the impacts of the 3,000 customers entering and leaving the site have not been adequately assessed by applicant and therefore the local planning authority do not have the necessary material to hand to make a decision.

- Fire Evacuation Facilities - The planning application drawings do not detail a fire evacuation strategy or development required to implement this and as a result we believe it would be advisable to ensure that this component forms part of the planning application. We believe that a fire evacuation strategy is material for the determination of the planning application in light of the history of the site and the implications of this strategy on adjacent land owners will be an important consideration for adjacent land owners.

- Hazardous Substances Consent – as you will be aware the site is located within the inner zone of the gas holder HSC and also within the inner zone of the Brenntag HSC. The Health and Safety Executive needs to be notified and we would welcome a copy of their advice.

- There are questions regarding the deliverability of the proposal given that part of the land is owned by our client SGN who have not readily given their permission for the redevelopment to take place.

- Part of the site is also leased from NGP but is only leased on a temporary basis. Part of the site will also be required for the Silvertown tunnel. These are material considerations which weigh against the grant of planning permission.

I trust that you will register this letter of objection and should you have any queries please do not hesitate to contact me. Please keep us advised on the progress of the application.

Yours sincerely,

[redacted]

Ben Ford
Director

Enc.

cc: Neil Willey - Royal Borough of Greenwich