

Nathaniel Lichfield & Partners

On behalf of U and I Group PLC

Silvertown Tunnel DCO Hearing

Further Representations 16 February 2017

We write further to our representations on 13th December 2016, when we foresaw further information coming from TfL in respect of

- 1 the safety issues arising from the continuing existence of COMAH zones around the Brenntag chemicals depot and
- 2 the public realm works necessary to provide pedestrian and cycle safety and future-proof bus stop provision on Tunnel Avenue.

On 06 February, we held a conference call by invitation from Lucy Dunglinson of Ardent and Martin Beckett, a senior project engineer from TfL, when both matters were discussed.

1. Public Safety issues

Our understanding from the conference call is that TfL is either

- i. content with a Grampian condition capable of later clarification in the post-commencement period or
- ii. willing to rely on a later understanding with the HSE that the road scheme would provide a safer environment for passing motorists than does the current situation.

Neither of these seems acceptable.

We note that the ExA has itself raised the question of TfL concerning the possible Grampian condition as being acceptable for a post-commencement trigger and for the potential wording of a pre-opening condition.

There apparently also remains the question expressed by Michael Humphries QC of whether a Grampian condition could affect the case for CPO in the event of continuing uncertainty over outstanding technical requirements. Compulsory purchase should only be authorised where there are no impediments to a scheme coming forward.

However, the main practical concern is that the decision allowing certainty of being able to open the tunnel to traffic could only come after substantial expenditure and construction has already been undertaken – surely not something a public body should consider (together with all the harms arising from construction itself).

It is clear that the HSE has also clearly stated its ongoing concerns.

In this context, the response noted of TfL evidence to the ExA on 17th January to the effect that:

In response to a query from the HSE as to how the risk assessment would tally with its unchallenged advice submitted into the examination thus far, Mr Owen stated that the HSE's advice would remain but the proposed risk assessment would if necessary come post-consent, so could take into account any changes in circumstances in the future.

suggests that it could only be for currently-unknown circumstances in the future that a risk assessment could conceivably come to a conclusion that the tunnel could open, notwithstanding the ongoing formal risk level still requiring an Advise Against conclusion from HSE/RBG.

There is, of course, an avenue open to the ExA, to TfL, to HSE and to RBG to ensure that this problem does not arise and certainty can exist:

The current and undetermined HSC application by Brenntag (RBG reference: 12/1247/H) to store the reclassified material of Sodium Hypochlorite is already the subject of advice from HSE to RBG to require the imposition of a condition 'fixing' the location of future storage of Hydrofluoric Acid at the site, with the intended effect of a slight but still welcome reduction in the extent of the COMAH consultation zones. HSE has currently declined also to advise imposition of a second condition which would restrict the storage of that acid to individual containers of up to 24kg and at a maximum concentration of 60%, which would have the effect of a major reduction in COMAH consultation zones to the effect that Advise Against would no longer become relevant for the Silvertown Tunnel proposal.

This prospect was raised in the conference telephone call as an opportunity for TfL to avoid the issue altogether but Mr Beckett indicated that they would be content to continue with the prospective Grampian-style condition as it would otherwise involve compensation.

U+I believes it to be in the public interest for TfL properly to resolve this uncertainty by dealing now with the Brenntag storage matters, seeking agreement to secure the necessary compliance with the second and additional limitation on storage of Hydrofluoric Acid as above and thereby avoid breach of standard HSE advice and which could only later be overcome through unforeseen new circumstances.

This could either be

- a) by agreement, as suggested, and encompassed in a pre-commencement condition as envisaged by the ExA or
- b) by inclusion within the necessary accommodation works agreement to allow construction.

TfL is already in negotiations with Brenntag in respect of re-organisation of carparking, etc., and could easily include further certainty on storage of dangerous acid(s) and compensation could be applied in both respects to avoid inconvenience and uncertainty of a safe solution for road users.

The ExA is already clearly engaged in trying to remove uncertainty which leads to unsatisfactory Grampian-style conditions and could require TfL to conclude such negotiations.

In the event of there being insufficient time to resolve this matter before the close of the Examination, there would be a need for a pre-commencement condition to be imposed to give certainty before any major construction commences.

2. Public realm, cycle, pedestrian safety and bus facilities

The same conference call also considered the emerging and likely TfL response to earlier representations by Morden College and U+I in respect of

- a) poor proposals to deal with pedestrian and cycle safety on Tunnel Avenue following its re-opening to two-way traffic and
- b) the absence of any opportunity for southbound stops for bus services on Tunnel Avenue.

The concern remains that users of the extended/re-located shared-surface overbridge would connect with the narrow Tunnel Avenue western footway, which is narrow for much of its length; cycle users would therefore either need to use the narrow footway for cycling OR to cross doubled traffic flows (with increased HGV movements) on Tunnel Avenue in an uncontrolled way to reach its southbound carriageway.

In parallel, the narrow width of the Tunnel Avenue would not allow for southbound bus passengers to descend from a bus onto a safe footway refuge before crossing Tunnel Avenue roadway to reach necessary destinations – including major schemes with both employment (Alcatel-Lucent and two safeguarded wharves) and residential (Enderby Wharf, Morden Wharf and The Telegraph Works) spaces.

Earlier representations on behalf of U+I had been supported by Ramboll sketch designs which could greatly improve both of these aspects. TfL has now indicated that its response will now be substantially and further delayed until D4 in early March, whilst apparently working in tandem with RBG highways engineers.

TfL has also advised the ExA that these alterations should be regarded as non-material.

The conference call with Martin Beckett of TfL indicated that much of this obligation was likely thus to be included within a revised Design & Access Statement, alongside an obligation to provide a safe solution passed on to the selected main contractor.

However, we note that TfL has already indicated at a recent ISH that it has concern about being bound to requirements of that Statement in considering post-consent detailing with RBG – thus weakening the certainty of delivering any safer solution. Also, we are unable to see what obligation(s) and what strength of requirements (best endeavours/reasonable endeavours/seek to) are to be put in any main construction contract.

This uncertainty remains of concern to U+I but should clearly also be of concern to the ExA in its obligation to ensure an efficient and safe scheme if consent is recommended for the DCO.

BUS USER ACCESS AND SAFETY

When questioned during the conference call about likely solution options, Mr Beckett was clearly referring to a draft plan which showed the prospect of a local ‘chicane’ just north of the proposed new location for the western overbridge ramps, where a setback in the current Brenntag/highway boundary allows extra footway width. He indicated that this could allow a localised re-alignment of Tunnel Avenue to permit a bus stop pavement reserve on its eastern side (backing onto the main Tunnel Approach Road) to allow for passengers to wait for or descend from southbound bus services; the crossing to the full western footway was still likely to be uncontrolled. As noted above, this at-grade pedestrian crossing would be across a Tunnel Avenue with roughly doubled flows with increased HGV content.

We have not had sight of the draft drawing, which is apparently not to be released until D4 on 06 March. We confirmed that we would therefore be submitting further commentary in the short period between D4 and D5.

PEDESTRIAN/CYCLE SAFETY

In respect of the width of the western footway on Tunnel Avenue, Mr Beckett recognised that there should be a desire for safe use by both pedestrians and cyclists along Tunnel Avenue and connecting safely to the proposed overbridge.

He indicated that the current draft proposal drawing indicates a shared surface pedestrian/cycle route running along the western side of Tunnel Avenue carriageway – most likely at 3m width but possibly with a localised narrowing close to the main Brenntag office building. The southward extent of this shared surface was confirmed as being to the southern end of the scheme's main land take, i.e., roughly the midpoint of the narrow Morden Wharf frontage.

This would be acceptable if achievable and we await the drawing at D4. However, it may show that the land-take to achieve a satisfactory and safe proposal is inadequate.

Just as for bus service provision, there will also remain the concern over certainty of implementation arising from compliance with any revised Design & Access Statement and any obligations within a prospective main construction contract.

Your Reference
12/1247/8H

Our Reference
2613933/CYC01/VJF01



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7 February 2017

Dear Madam

**Town and Country Planning Act 1990 (as amended) Town and Country Planning (Development Management Procedure) (England) Order 2010
Brenntag UK Limited, 215 Tunnel Avenue, Greenwich, SE10 0QW
Consent for the storage of hazardous substances**

We are instructed by U and I Group plc and write in relation to the above application. My client has previously written to you in relation to the application given its proposals for the redevelopment of Morden Wharf and the effect the hazardous substances stored on the above site would have on that redevelopment.

As you will be aware, TfL has now made an application for a development consent order for the Silvertown Tunnel. The Silvertown Tunnel is a nationally significant infrastructure project and it is designed to directly address the severe and ongoing lack of resilience in the cross river network in east London by adding a new tunnel adjacent to the Blackwell Tunnel.

The fact that the application for the Silvertown Tunnel Development Consent Order has been made and is, therefore, highly likely to come to fruition is a material consideration in the Council's consideration of the above application, in that the inner ring consultation zone impinges on both Tunnel Avenue and the tunnel approach road. While the current application proposed by Brenntag would reduce the inner ring consultation zone the tunnel approach road would still be affected by the inner ring consultation zone and, therefore, within the "advise against" designation. The consent should be sufficiently conditioned so as to ensure the tunnel approach road is outside the inner ring consultation zone.

Previously our client was advocating that the consent should be conditioned so that the storage of hydrofluoric acid within the site is reduced to containers with a maximum capacity of 24kg and the acid itself to a maximum concentration of 60%. This may have the effect of ensuring that the tunnel approach road lays outside of the inner ring consultation zone the important thing is that the consent is appropriately conditioned having regard to known developments.

While neither the HSE nor the Council have previously been willing to put forward further condition in the absence of other developments, the existence of the Silvertown Tunnel application is a new material

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consideration that must be taken into account when deciding what conditions should be imposed and whether the consent should be granted.

Prior to granting the hazardous substances consent the HSE should, therefore, be re-consulted as the COMAH Competent Authority to re-evaluate its advice on whether the application should be consented and/or the conditions that should be imposed. Proceeding to grant the hazardous substances consent without taking this step would make the grant of the consent challengeable by way of judicial review. We have written to the HSE separately to advise that they should be re-consulted and do need to consider their position.

We note that it has been suggested through the Silvertown Tunnel examination process by the HSE that if the hazardous substance consent is granted subject to the HSE's conditions the inner consultation zone may reduce such that HSE no longer advise against the scheme but no certainty of this is given. There is therefore the suggestion of effectively "parking" this issue through the imposition of a "Grampian" style Requirement which would restrict public use and occupation of the Silvertown Tunnel Approach Road until the hazardous substance consent has been modified so that the HSE does not Advise Against the authorised development.

Whilst it may appear that the new scheme could reduce exposure to hazardous substances risks, such that there could be safety benefit which could overturn the conventional Advise Against advice, the reality is there will certainly be additional traffic at the closest point to Brenntag on Tunnel Avenue (almost doubling flows as evidenced by traffic flows in the DCO Appendices documentation) as being within the Inner Zone of the PADHI consultation basis, as well as increased, if smoother, traffic along the A102 Approach Road also within the Inner Zone.

Imposition of a restrictive condition (e.g., storage of hydrofluoric acid in containers of no more than 24kg capacity and 60% concentration) by RBG as HSA would be appropriate in order to remove these ongoing risks by adjusting the Inner Zone, now achievable by HSE advising the imposition of a further condition in respect of both the current Brenntag HSC application and for any further subsequent one arising from alterations to ownership as a consequence of the acquisition of land by TfL through the DCO process.

This could either be through the imposition of a Grampian condition on any DCO for the TfL scheme but preferably by now imposing a further limiting condition on the advice of HSE. Doing so now would provide for a simpler consent but, notably, also provide certainty of timing and control for TfL in its implementation of the Silvertown Tunnel scheme.

We therefore request to be kept apprised of any correspondence with the HSE on the application and also request that you revert to us ahead of granting consent with an indication of how the matters raised in this letter have been addressed.

Yours faithfully



Gawling WLG (UK) LLP

cc: John Comber, Chief Executive
Andrew Parker
Richard Upton, Deputy Chief Executive, U+I

Your Reference
Our Reference
2613933/CYC01/VJF01



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7 February 2017

Dear Sir

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Brenntag UK Limited, 215 Tunnel Avenue, Greenwich, SE10 0QW
Consent for the storage of hazardous substances**

We are instructed by U and I Group plc and write in relation to the above application which is currently before the Royal Borough of Greenwich. We understand that the HSE were previously consulted on the above application back in 2012 and thereafter in November 2012 gave an indication that it would not advise against the grant of the hazardous substances consent subject to the imposition of a further condition relating to defining storage location(s).

As you will be aware, TfL have now made an application for a development consent order for the Silvertown Tunnel. The Silvertown Tunnel is a nationally significant infrastructure project and it is designed to directly address the severe and ongoing lack of resilience in the cross river network in east London by adding a new tunnel adjacent to the Blackwell Tunnel.

The fact that the application for the Silvertown Tunnel Development Consent Order has been made and is, therefore, highly likely to come to fruition is a material consideration in the Council's consideration of the above application, in that the inner ring consultation zone impinges on both Tunnel Avenue and the tunnel approach road. While the current application proposed by Brenntag would reduce the inner ring consultation zone the tunnel approach road would still be affected by the inner ring consultation zone and, therefore, within the "Advise Against" designation. This would not, however, be the case if the consent was appropriately conditioned. Previously our client was advocating that the consent should be conditioned so that the storage of hydrofluoric acid within the site is reduced to containers with a maximum capacity of 24kg and the acid itself to a maximum concentration of 60%. This may have the effect of ensuring that the tunnel approach road lays outside of the inner ring consultation zone the important thing is that the consent is appropriately conditioned having regard to known developments.

While neither the HSE nor the Council have previously been willing to put forward further conditions in the absence of other developments, the existence of the Silvertown Tunnel application is a new material

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consideration that must be taken into account when deciding what conditions should be imposed and whether the consent should be granted.

We have written to the Council to indicate that prior to granting the hazardous substances consent the HSE should, therefore, be re-consulted as the COMAH competent authority to re-evaluate its advice on whether the application should be consented and/or the conditions that should be imposed. Proceeding to grant the hazardous substances consent without taking this step would make the grant of the consent challengeable by way of judicial review. We ask that you do insist that you are re-consulted and that you reconsider your position on the application and what conditions would be appropriate.

We note that it has been suggested by the HSE through the Silvertown Tunnel examination process that, if the hazardous substance consent is granted subject to the HSE's conditions, the inner consultation zone may reduce such that HSE no longer Advise Against the scheme but we note that no certainty of this is given. It is imperative that certainty is provided through the outstanding hazardous consent applications.

There has also been the suggestion of effectively "parking" this issue through the imposition of a "Grampian" style requirement which would restrict public use and occupation of the Silvertown Tunnel Approach Road until the hazardous substance consent has been modified so that the HSE does not Advise Against the authorised development. We respectfully submit that this is not an appropriate way forward as it creates uncertainty over the Silvertown Tunnel project not least as no certainty is given that the hazardous substance consent granted with the previous conditions noted by the HSE would result in the HSE not Advising Against the Silvertown Tunnel development.

Whilst it may appear that the new scheme could reduce exposure to hazardous substances risks, such that there could be safety benefit which could overturn the conventional Advise Against advice, the reality is that

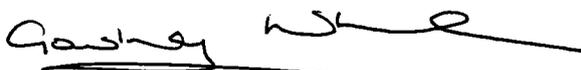
- a) there will certainly be additional traffic at the closest point to Brenntag on Tunnel Avenue (almost doubling flows as evidenced by traffic flows in the DCO Appendices documentation) as being within the Inner Zone of the PADHI consultation basis, as well as
- b) increased, if smoother, traffic flow along the A102 Approach Road also within the Inner Zone.

Imposition of a restrictive condition (e.g., storage of hydrofluoric acid in containers of no more than 24kg capacity and 60% concentration) would therefore be appropriate in order to remove these ongoing risks by adjusting the Inner Zone, now achievable by the HSE advising to RBG the imposition of a further condition in respect of both the current Brenntag HSC application and for any further subsequent application arising from alterations to ownership as a consequence of the acquisition of land by TfL through the DCO process.

This could either be through the imposition of a Grampian condition on any DCO for the TfL scheme as currently now being considered but preferably by now imposing a further limiting condition on the advice of HSE. Doing so now would provide for a simpler consent but, notably, also provide certainty of timing and control for TfL in its implementation of the Silvertown Tunnel scheme.

We should be grateful if you could keep us apprised of any correspondence with the Council on this matter and look forward to hearing from you on the content of this letter.

Yours faithfully



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