

SILVERTOWN TUNNEL DCO EXAMINATION:

FURTHER REPRESENTATIONS BY LICHFIELDS ON BEHALF OF U AND I GROUP PLC 3 April 2017

Lichfields on behalf of U and I Group PLC has previously made representations both before and during the Examination concerning the absence of

- a) sufficient safety and capacity for users of non-car modes on Tunnel Avenue and
- b) certainty of public safety from hazardous substances in the locality of Tunnel Avenue.

At Deadline 5, there was still no clarity on either of these points. Prior to attendance at the OFH on 28 March, a further discussion was therefore held with Ardent/TfL to clarify progress in view of the imminent completion of the Examination. We were pleased to note at the OFH that TfL has finally moved to adopt changes to reflect some our concerns.

TUNNEL AVENUE

Pedestrian/cycle safety

Whilst there had been no agreement of confirmation that cyclists would be cared for adequately, we are pleased to note that the revised Design Principles are now to include a requirement on the contractor to provide a minimum 3m wide shared cyclepath/footway, which TfL describes as adequate to meet envisaged usage reflecting existing planning commitments and regeneration expectations for the locality; this facility is described as being necessary from the northern part of Tunnel Avenue as far south as the southern boundary of the TfL scheme. It is noted that the width could be reduced to around 2.5m where there is a pinch point close to the Brenntag office building.

The draft Design & Access Statement now helpfully also indicates the prospect of that cyclepath/footway being up to 6m width in part, with some landscaping.

Whilst this proposed provision is certainly much poorer overall as compared with that north of the river or east of the A102 approach road, it is the least that TfL should be offering.

We ask that TfL is to be required to include these requirements through any DCO approval, meeting TfL general objectives and the requirements of London Plan policy.

Bus stop provision

We acknowledge that bus route and frequency planning will be undertaken at a later stage after commencement of construction.

However, the opening up of Tunnel Avenue to southbound traffic will lead to apparently a doubling of daily flows on the secondary road, including increased usage by HGVs and with potential for southbound bus provision (matching current northbound opportunity). It is therefore important that the proposed construction, whilst adding local network traffic pressures, should mitigate this by ensuring the prospect of safe provision for a southbound bus stop facility on Tunnel Avenue – i.e., it should not be 'designed out'.

Following the representation to the OFH, we were therefore pleased to hear TfL's confirmation that evening to the Panel that it would include in the Design Principles to be passed on to the appointed contractor the requirement for the detailed design of Tunnel Avenue to ensure that the Tunnel Avenue road specification would be such that both

- 1 a minimum 6m wide carriageway is provided throughout its length within the DCO area and

- 2 sufficient space be provided on its western side to allow for later safe re-alignment of the carriageway (by others if required) to permit installation of a bus stop refuge with sufficient pedestrian waiting and drop-off width and capacity on its eastern, southbound, side to serve any new southbound bus services along that newly-available route.

We ask that TfL is to be required to include these requirements through any DCO approval, meeting TfL general objectives and the requirements of London Plan policy.

HAZARDOUS SUBSTANCES REQUIREMENTS

We understand that, throughout the Examination, the HSE has apparently confirmed its position that it holds an 'Advise Against' position in relation to the DCO scheme. This is in respect of both the gasholder and the Brenntag chemicals store.

Whilst the position in relation to the gasholder is capable of resolution, that for the Brenntag depot appears not without some movement from the current impasse between RBG, Brenntag and HSE.

Brenntag

Without repeating evidence, the current position appears to be that the Flood Risk Appraisal (FRA) recently submitted by Brenntag as a requirement of its 2012 application for HSC (arising from a national re-classification of substances) is based on the recognition that one of the more dangerous materials, hydrofluoric acid, is i) stored in sealed 24kg containers ii) at only 60% strength and iii) in a particular location for the relevant storage cage. Any current consideration of the HSC application by RBG as the Hazardous Substances Authority to assure public safety is thus based on this specific submitted Assessment.

We believe from the ISH earlier on 28 March that RBG and HSE are in further discussions following requests from the Panel but were not in a position to clarify any new understandings at that time.

Our clear understanding is that

- a) the Inner Zone in PADHI consultation currently covers large areas of Tunnel Avenue and the A102 approach road
- b) the current position is such that HSE has advised RBG that a condition should be imposed restricting the storage location to that as shown in the FRA, with the effect of reducing the extent of the Inner Zone but still leaving it to include areas of Tunnel Avenue and the A102 approach road.

In both circumstances, the Advise Against position is maintained.

This is capable of being resolved

by RBG as Hazardous Substances Authority properly following through the consequences of the required FRA and

by HSE additionally advising RBG to add a further condition which ensures the lower safety risk from storage of hydrofluoric acid at up to the capacity and strength as indicated in the company's own Assessment.

Without such resolution, the Examination and the Secretary of State are left with the current unresolved position.

However, it is clearly important (or essential) that both the compulsory acquisition of land and the construction/opening of the Tunnel scheme can indeed proceed if the DCO is approved. Any uncertainty over construction or opening would not create sufficient justification for the scheme and hence for the necessary compulsory acquisition.

In the absence of satisfactorily safe resolution of the matter by RBG, the Examination's Panel will need to ensure that the Grampian-style condition suggested by TfL is amended to provide sufficient certainty to allow a positive recommendation and approval.

It was confirmed by the Chairman of the Panel at the OFH that TfL has to date been 'reluctant' to accept a pre-commencement condition, with the implication that the Panel and the Secretary of State need to envisage approval of the DCO and permitting compulsory purchase but without certainty that the new Tunnel can open to traffic. Such reluctance is understandable but not appropriate.

It is quite normal for conditions to be imposed on any statutory approval and that some of these are difficult to comply with – but that they are nevertheless necessary in planning terms to ensure satisfactory subsequent implementation. They should be imposed if they meet the statutory tests of necessity, reasonability, etc. and are required to make scheme acceptable in all respects, following a balancing of planning considerations.

In the current case, the second part of the suggested Grampian-style condition has been suggested by TfL as

(b) TfL has submitted to the Secretary of State an assessment of whether opening the authorised development for public use and occupying the tunnel services building would increase the number of people at risk from existing hazards at the Brenntag Inorganic Chemicals Ltd site with the potential to impact on local populations, including loss of containment of hazardous substances and, on the basis of that risk assessment and following consultation with the Health and Safety Executive and the Hazardous Substances Authority, the Secretary of State has confirmed in writing that the Silvertown Tunnel may open to public use and that the tunnel services buildings at the South Portal comprised in Work No 12 may be occupied.

It is clear now that 1. the opening of a third tunnel 'would increase the number of people at risk from existing hazards', leaving open 2. the only prospect of the Tunnel (then constructed but lying unused) being opened for public use as being for the Secretary of State to later come to a view on some future risk assessment (assisted by RBG and HSE).

Either that risk should be identified now and assessed as satisfactory now – or there will be continuing uncertainty, leaving the potential for only less-than-reasonable certainty to not allow the imposition of a Grampian-style condition at all. Unique to the DCO process is the inclusion of compulsory purchase of third party land; it would be at least inappropriate for the Secretary of State to authorise compulsory purchase of additional land from the outset to build roads, etc. without the certainty that these can be brought into public use.

In these circumstances, we have expressed to the Panel the view that, in the event of RBG and HSE not properly resolving the situation to ensure safety in any event through imposition of appropriate conditions (plural) on the current application for HSC, the Secretary of State should amend the TfL-suggested wording to require the suggested further risk assessment being both undertaken and approved prior to authorisation of land acquisition or commencement of construction.

This revised approach would be reasonable, equitable and necessary to ensure both that the substantial public expenditure on acquisition and construction would be of value and that the prior compulsory acquisition of land is therefore justified.

This will no doubt be inconvenient for TfL, which is nevertheless in the position to pursue through compulsory acquisition of land and/or rights which would allow it to ensure that the necessary revised storage conditions would definitively remove the hazard risk from Tunnel Avenue and the A102 approach roads. Such negotiations could have taken place but appear to have not. The rights to compulsory

acquisition sufficient to remove these risks could be part of the CPO provisions as now sought through the DCO procedure.

We request the Panel to recommend

- a) that the currently-proposed pre-occupation-based condition is not appropriate to create sufficient certainty to justify compulsory purchases or the substantial public expenditure
- b) that TfL be encouraged to work further with RBG and HSE to achieve satisfactory conditioning of the current HSC application to remove risk from Tunnel Avenue and the A102 approach roads – prior to any acquisition or construction
- c) that alternatively TfL be encouraged to negotiate further with Brenntag to offer further restrictions on storage sufficient to remove that risk – or to include the necessary provisions in the approved DCO for compulsory acquisition of the necessary land and/or rights
- d) in the absence of any of the above, that any DCO approval shall be subject to the inclusion of an alternative second part of the relevant Grampian-style condition along the lines of the following basis:

*(b) TfL has submitted to the Secretary of State an assessment of whether opening the authorised development for public use and occupying the tunnel services building would increase the number of people at risk from existing hazards at the Brenntag Inorganic Chemicals Ltd site with the potential to impact on local populations, including loss of containment of hazardous substances and, on the basis of that risk assessment and following consultation with the Health and Safety Executive and the Hazardous Substances Authority, **the Secretary of State has confirmed further in writing that the compulsory purchase rights as granted by this Order may be exercised and that the works to construct Silvertown Tunnel and the tunnel services buildings at the South Portal comprised in Work No 12 may commence.***

MH/03 April 2017