

The Planning Inspectorate
Temple Quay House (2 The Square) Temple
Quay
Bristol
Avon
BS1 6PN

Our ref: SL/2016/115920/05-L01
Your ref: Silvertown Tunnel
Date: 5 April 2017

Dear Sir/Madam

**APPLICATION BY TRANSPORT FOR LONDON FOR AN ORDER GRANTING
DEVELOPMENT CONSENT FOR SILVERTOWN TUNNEL**

DEADLINE 6 SUBMISSION

Please find below our submission for deadline 6 which incorporates the action points set by the Examining Authority. In addition, we have provided a summary of our oral submissions at the recent hearings as an appendix to this letter.

Action point 9

An issue was raised at the hearing on 28 March 2017 as to whether dredging works would be controlled by the Deemed Marine License (DML) or the Protective Provisions. The Environment Agency (EA) consider that dredging works would be controlled by both but the EA would be consulted by the Marine Management Organisation (MMO) on the DML so this would in effect be one consent.

Action point 10

At deadline 5 Protective Provisions between the EA and the applicant (TfL) were not agreed. Although some progress has been made, complete agreement has not been reached. We have therefore set out below our comments on those matters in the Protective Provisions which are still not agreed.

In an attempt to reach agreement we have suggested as an alternative that TfL could construct and maintain a secondary line of flood defences to the statutory level to the landward side of the existing defences. We would be willing to consider the use of temporary flood defence solutions in this secondary line. We have put forward wording to TfL to cover

this option. TfL is currently considering this wording but this has not to date been accepted by TfL so it is not attached to this statement. Instead, we have attached the same version of Protective Provisions which we sent at deadline 5, for ease of reference.

Maintenance of the flood defences

The main dispute is over Clause 7 – Maintenance of the flood defences. In its application for the DCO, TfL sought in Article 3 of the DCO to disapply the Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879. It has recently requested that this disapplication should apply for the maintenance period on Article 30 (14) of the draft DCO. This Act places an obligation on riparian owners to maintain the river wall which is unusual to the London area.

We have indicated that we would only agree to such disapplication if TfL takes on the obligation to maintain the river wall in a 'fit for purpose' condition and to the statutory levels to which the riparian owners would be liable to maintain it if we took enforcement action against them.

We have accordingly sought amendments to the wording put forward by TfL in Clause 7(1) of the Protective Provisions. This is not agreed by TfL. TfL is only prepared to accept an obligation to maintain the river wall to the same standard of repair as it is in before commencement of the relevant works. We do not consider it reasonable to seek to disapply the Act for a significant period (likely to be 9 years) without agreeing to take on the obligation to maintain a fit for purpose flood defence to the statutory level, in view of the risk of flooding that would arise and so have deleted the wording put forward by TfL in Clause 7(2).

With regard to Clauses 7(6) and 7(7) we do not consider these are appropriate for inclusion in Protective Provisions which are for the benefit of the EA. As far as we are aware these clauses have not been discussed with the third parties on whom they would impose liability (presumably the riparian owners). It would appear to be contrary to the rules of natural justice to impose an obligation on third parties without them having at least an opportunity to comment.

Definitions

We do not consider it reasonable to ignore the potential effect on any flood defences outside the 'red line' boundary in the DCO. Hence we have amended the wording in the definition of 'flood defences' in this section to delete the wording which restricts this definition. An amended definition of 'statutory defence level' and a definition of the plan on which this is shown will be necessary if the Examining Authority accepts the EA's amendments to Clause 7.

Specified works

We are content for piling in the marine environment to be dealt with by the MMO under the DML. However we wish TfL to seek our approval for piling works on land in the same way as other relevant works under the protective provisions, as these could potentially affect the structural integrity of flood defences.

Indemnities and costs

We seek wording clarifying the types of loss for which TfL must compensate the EA in the event of the EA suffering losses as a result of the authorised works being carried out. Although this clarification is not wording previously used in any DCO, the EA has recently reviewed its preferred protective provisions and considers this wording should be added to the indemnity. We would ask the Examining Authority to note that the EA may only claim losses reasonably incurred or suffered and would submit in the light of this the additional wording should be acceptable.

Disapplication of Other Legislation for Maintenance Period

We are not currently in a position to give s150 Planning Act 2008 consent in relation to the other legislation within our remit listed in Article 3 for the maintenance period.

Please do not hesitate to contact me if you require any further information.

Yours faithfully

Niall Connolly
Planning Specialist

Direct dial 02084746765

Direct e-mail kslplanning@environment-agency.gov.uk

Appendix: Summary of Oral Submissions by the Environment Agency

6. Geology, soils and contaminated land

Mr Connolly said in response to 6.1 on the Agenda he confirmed that it is the Environment Agency's preference to have a requirement relating to contaminated land issues as it would provide more clarity. He also stated that we are content with the wording provided by the Examining Authority.

10. Marine Ecology

With regard to 10.1 on the Agenda, Ms Bolt confirmed the Environment Agency is content with the applicant's report and its conclusions which was submitted on 24 February 2017. Confirmation of this was provided in writing in the Environment Agency's Deadline 5 submission (see section on 'Ecological impacts of proposed works to the river bed at the NAABSA berth').

11. Dredging and Navigation

With regard to 11.1 on the Agenda, Ms Bolt confirmed the Environment Agency are satisfied that the issues regarding the maximum length of dredge excavation and the placing of crushed stone will be dealt with in the Deemed Marine Licence (DML), which the Environment Agency will be consulted upon. Ms Bolt said our understanding was that dredging would be controlled by the DML. If the applicant considers it is caught by the Protective Provision too we are content with that.

With regard to 11.2 on the agenda Mr Arthur clarified it is zones **2**, **6**, **7** and **8** where current assessments have not demonstrated the river walls will be strong enough. However the Environment Agency is of the view that the protective provisions will provide the Environment Agency with the information that they need going forward. One outstanding issue is what level the walls will be – the level in which they are found or a fit for purpose level.

12. Surface Water and Flood Risk Assessment

With regard to Items 12.1 and 12.5 on the Agenda the Environment Agency commented as follows.

Mr Arthur confirmed the Environment Agency has no further comments on surface water as this issue is no longer within its remit. He explained one issue is the feasibility of raising the defences post construction. We have received a note from the applicant and are comfortable the wall could be raised after the tunnel has been built. It should be noted however that there would be restrictions on piling post tunnel construction and therefore it is unlikely the walls could be built in current form. The form proposed by the applicant would set the walls back and reduce the amount of land available for future use. It is for the riparian owner to agree the raising of the wall.

In terms of responsibility, today, without DCO application it is the riparian owner's responsibility. Were the Metropolitan Flood Act disapplied and the applicant's version of protective provisions accepted, there would be no-one responsible for the purposes of these flood defences during the disapplication of the Flood Acts. The Environment Agency thinks it is reasonable that the applicant take on the responsibility for fit for purpose flood defences during the disapplication period to ensure London is protected to the adequate standards.

A fit for purpose maintenance condition is requested by the Environment Agency. If the request to disapply the Flood Acts is refused the responsibility would remain with the riparian owner.

Environment Agency

Orchard House Endeavour Park, London Road, Addington, West Malling, Kent, ME19 5SH

Customer services line: 03708 506 506

Email: enquiries@environment-agency.gov.uk

www.gov.uk/environment-agency

Mr Arthur confirmed the Environment Agency do have powers to force the riparian owner to undertake works, however we do not necessarily have powers to make them do something for the next four years whilst the applicant on site. There is a need to maintain a fit for purpose flood defence. Some short term solutions may be possible but may mean they lose some land use.

Ms King explained our main concern is not the deterioration as a direct impact of construction work - responsibility for which has been agreed with the applicant and reflected in Protective Provisions - but possible deterioration which might happen by ageing or other means as the works take place over a set period of time. We are facing a situation where there may be no party liable to take the ownership and responsibility which increases the flood risk. We want to reinforce the concept of fit for purpose flood defences whilst the applicant takes ownership of the site to ensure water does not enter the land behind it rather than trying to trick the applicant into raising or improving the flood defences to a higher standard. The Environment Agency merely want fit for purposes stable flood defences.

Mr Arthur confirmed it is the Metropolitan Management Flood Act which puts the responsibility on riparian land owner and it is the removal of that responsibility which concerns us.

Mr Arthur confirmed the Environment Agency does understand the applicant's concerns. We are simply saying we need fit for purpose flood defences during the construction phase. We are keen to work together to find a solution.

Ms Bolt confirmed that the outstanding issues are confirmed in our Position Statement submitted at deadline 5. There is however one new issue which is that the applicant is now seeking to extend the period for disapplication to allow for a maintenance period of five years. This would apply not just for the Metropolitan Flood Act but also other legislation such as the Environment Agency's legislation regarding permits and abstraction licences and so on. We need to consider our position generally and revert back.

Ms King explained that the additional period for disapplication of five years will further increase the possibility of flood risk as the Metropolitan Flood Act will be disapplied for over twice as long as initially anticipated. That gap of responsibility for flood risk raises our concerns.

Statutory Defence Levels at the site in metres above Ordinance Datum

