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10 April 2017

Our Ref: KC/36943/1

Dear Sirs

Silvertown Tunnel DCO

We write further to the Compulsory Acquisition Hearing held on 29 March 2017, and the response to our client's (Silvertown Homes Limited (**SHL**)) representations at said hearing that was issued by Transport for London (**TfL**) on 6 April 2017 (document reference 8.113 (**TfL's Response**)).

As was noted at that hearing, SHL and TfL are in ongoing discussions regarding SHL's objections to the current DCO proposals with a view to both parties reaching an agreement which would allow SHL to withdraw its objections. It is hoped that such an agreement will be reached shortly.

If such an agreement is, indeed, reached (as it is hoped will be the case), SHL confirms that it intends to write to the Examining Authority and Secretary of State as soon as possible to withdraw its objections to date.

If such any agreement cannot be reached however, SHL maintains its objections, as set out in its representations to date, and as detailed further below.

SHL's Objections

The Examining Authority will no doubt recall that SHL's outstanding objections fall into two broad categories:

- 1) The temporary land take proposed by TfL is excessive, and could be streamlined to avoid unnecessary delays to the redevelopment of the Carlsberg-Tetley Site (**the Site**). In particular, Phase 1A could be released somewhat earlier; and
- 2) The DCO's current proposals fail to properly account for the significant economic, transport, programming and environmental benefits that could be achieved through the beneficial reuse on the Site of spoil arising from the DCO tunnelling works.

These are set out in more detail in SHL's written representations dated 24 March 2017 (document reference REP5-032).

Noting the detailed nature of TfL's Response, and the limited time available to the Examining Authority before the closure of the Examination of the DCO on 11 April 2017, it is not proposed that a detailed response to TfL's Response is put before the Examining Authority. SHL considers its proposals to continue to stand on the basis of the representations made on 24 and 29 March 2017.

SHL does, however, consider that it may be of assistance to the Examining Authority to provide comments against a limited number of the points raised by TfL's Response, and accordingly these are set out below as a final submission at Deadline 7 of the Examination.

Land Take and Phasing

It is considered that the temporary landtake for the DCO scheme is overly generous and fails to account for a number of efficiency measures that might minimise the extent of land disrupted by the DCO scheme.

SHL's alternative proposals, as set out in its previous representations to date, clearly set out such efficiencies and the resulting reduction in interference with private property rights. It is clear that there cannot be a case in the public interest for such interference if all reasonable alternatives to the use of such powers have not been given due consideration.

It therefore remains SHL's position that given the lack of proper consideration given to these alternative proposals to date, and in particular the potential early release of Phase 1A on the Site, TfL cannot properly state there to be a compelling case in the public interest for the exercise of powers of temporary possession and compulsory purchase under the auspices of the DCO.

Re-use of Spoil

It is noted that TfL suggests there to be an element of inconsistency within the estimated amounts of excavated material arising from the open-cut and cut-and-cover tunnelling works on the Silvertown work site. As noted in SHL's previous representations, the most recent figures are taken from Appendix 6A to TfL's Environmental Statement. The figures now presented by TfL are not set out within the application documentation, and therefore are not subject to the same level of scrutiny throughout the application process.

SHL has only ever sought to agree the principle of reuse; it is recognised that the DCO works might create a considerably different amount of spoil to those estimated at this stage. However, SHL considers it reasonable and sensible to reach agreement that any spoil that *is* available and suitable for beneficial reuse on the Site is best used accordingly, rather than being transported away from the Site, thereby incurring the additional associated economic, environmental, transport and double-handling costs.

It is also noted that TfL has provided a suggested breakdown of the savings that the SHL proposals will achieve, and has estimated these to be in the region of £1.2m, reduced to £830,000 when accounting for costs to the SHL project. SHL considers it inaccurate to attribute costs incurred by SHL to the overall savings by the DCO project.

Nearly half of the assessed 'costs of the saving' set out by TfL in Appendix A to TfL's Response is the 'lease of storage site'. As has been noted previously, SHL considers that, with proper phasing and streamlining of the DCO works, as set out in the Buro Happold design note appended to SHL's most recent representations, there is sufficient available land across the Silvertown work site to accommodate the stockpiling of any arisings prior to their beneficial reuse, without undue interference with the carrying out of the DCO works.

Whilst it is acknowledged that the contractor will have to give considerable attention to planning the management of the spoil as it arises, its segregation, transportation, stockpiling, placing and

compaction, it is reasonable to assume such a level of attention to the detail of material management from any competent contractor.

Accordingly, SHL does not consider the TfL costings to be an accurate representation of the savings that could be achieved by SHL's proposals regarding the beneficial reuse of spoil. In any event, however, it is noted that this should not be a debate about the quantum of any saving; it is accepted in TfL's response that SHL's proposals would create a saving to the public purse – the precise quantum of which is disputed – but a saving is nonetheless achievable.

Noting the overall cost of the DCO scheme, it would be anticipated that TfL would seek to obtain all efficiencies available to it, particularly when such savings would reduce the burden on the public purse that will fall to be alleviated otherwise through the user charge.

It is also noted that the principle that spoil retention and re-use on site represents best economic and sustainable practice has been agreed at each of the meetings between the parties. In addition to the actual cost saving to the scheme, there are the cost and programme savings to the proposed development together with the reductions in environmental costs involved in the transport / disposal of spoil and the subsequent import of soil materials necessary for the Masterplan development.

Procurement

TfL's comments on the procurement process followed to date (as set out in Section 5 of TfL's Response) are noted. It is acknowledged by SHL that TfL will understandably seek to be in a position to deliver the DCO scheme as soon as possible should the Secretary of State approve the DCO.

The process set out by TfL (and in particular the ability to issue an addendum to the Invitation to Negotiate, per paragraph 5.1.4) does not preclude the inclusion of the proposed spoil reuse by SHL, nor the earlier release of Phase 1A. Indeed there appears to be an ideal window in which TfL could mandate such a change to the ITN in issuing the October/November 2017 Addendum.

Nonetheless, it appears that TfL continue to pre-judge the outcome of the Examination; TfL has confirmed that the Project Agreement for the carrying out of the works under the DCO scheme will be based on the final submitted draft DCO, and the third party agreements reached with other objectors. Therefore any amendments that might be made by the Examining Authority or the Secretary of State will require amendments to both the ITN and the Project Agreement, which TfL expressly acknowledges could 'create a risk of severe delay to the procurement process'. On this basis TfL must, therefore consider the likelihood of any such amendments to be minor; self-evidently the outcome of the Examination has therefore been pre-judged by TfL.

In any event, the explanation provided by TfL fails to adequately explain TfL's previous comments that it was not possible to include SHL's proposals within the procurement process. It instead appears that the addendum to the ITN would be a particularly opportune point at which to include such requirements, should the Examining Authority or Secretary of State be minded to include them.

Next Steps

Notwithstanding the above, we are instructed that SHL and TfL continue to seek agreement on the outstanding matters between them. It is understood that an in-principle resolution is now in hand, subject to final terms being agreed between the parties; this is set out on the appended position statement agreed between SHL and TfL.

It is therefore hoped that final agreement on these points can be reached in short order, which would therefore allow SHL to withdraw its objection as detailed above.

Both parties are directing considerable efforts to achieving this; it is, however, unlikely that this will occur before the conclusion of the Examination on 11 April 2017.

Noting the above, we will endeavour to provide the Examining Authority with confirmation of the status of any resulting agreement as soon as is possible.

Yours faithfully

A handwritten signature in black ink that reads "Winckworth Sherwood LLP". The script is cursive and somewhat stylized, with the letters being connected and fluid.

Winckworth Sherwood LLP

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SILVERTOWN TUNNEL

POSITION STATEMENT BETWEEN THE APPLICANT AND KEYSTONE/SILVERTOWN HOMES LIMITED

1. INTRODUCTION

- 1.1 This document sets out the Applicant's and Keystone/Silvertown Homes Limited's ("SHL") position in respect of SHL's outstanding representations in relation to the proposed Silvertown Tunnel.
- 1.2 This position statement has been agreed between the parties.

2. SHL'S OUTSTANDING REPRESENTATIONS

- 2.1 The Applicant and SHL have engaged in positive, constructive discussions during the course of the examination into the Applicant's application for a DCO for the proposed Silvertown Tunnel.
- 2.2 In particular the Applicant and SHL have now negotiated an 'in-principle' resolution to the previously outstanding issues of spoil re-use and early land release.
- 2.3 In this light, the parties are confident that formal agreement will be reached shortly following the close of the examination. As soon as reasonably practicable following the reaching of an agreement, SHL will write to the Secretary of State informing him that its representations are withdrawn, such that this can be taken into account during the decision-making process. However, absent of this formal agreement, SHL's outstanding representations remain.

10 April 2017