

Silvertown – final deadline, 10th April 2017

Friends of the Earth

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Please find below a few final comments from Friends of the Earth.

SUMMARY

1. We refer to and support CBT's recent submission which drew attention to the recent report for CPRE evaluating road schemes
2. We refer mainly to TfL's written summary of their oral submissions of 28th March 2017 at the ISH on Outstanding Issues including Environmental Matters, and in particular to section 5 on Air Quality, with paragraph 10 below on a further document.
3. On 5.2, it is to be expected that worse traffic, congestion and air pollution result further from the scheme, and supposedly small increases should not be discounted or screened out and could be significant/material and illegal
4. On 5.2, lesser increases than a threshold of 0.4 µg/m₃ would still be material/significant and illegal if worsening air pollution already breaching limits, and not monitoring everywhere but relying on the performance of the scheme itself could miss important impacts.
5. On 5.3, TfL's response to problems the scheme could well cause would be to improve the flow and reduce congestion – but this would just move traffic on to add to problems further on.
6. on 5.4, in response to FOE TfL state ("An exceedance of the EU limit value at a single receptor which is the result of the Scheme does not mean that the Scheme is illegal") but it is not clear if they are referring to either or both that a new exceedance, or the worsening of an existing one – the adding of either by any material/significant degree anywhere in a Zone are not legal – on which I supply supporting argument, but TfL none for theirs.
7. TfL refer to the NN NPS tests but these are not sufficient or robust, and the wider picture including of EU law needs to be taken into account.
8. the effects of the schemes/approach roads being excluded from a N/S Circular boundary ULEZ would be important. However the most profound impacts would be if the ULEZ were made London-wide as is being called for by many, and the Mayor has said that "nothing is off the table" when it comes to cleaning up London's poor air quality. TfL's whole case for the scheme is based on particular tolls for these crossings, but if the whole of London, and the other crossings, had charges applied then the deterrent effect to manage induced traffic would be lost for these crossings. And if tolls on these crossings had to rise even further to maintain a differential deterrent that would have other impacts.
9. on the Hoola building, TfL while admitting serious and prolonged (2 years) exceedances of objectives, refer to an irrelevance of the scheme not leading to an overall significant impact on air quality, and do not even consider installing ventilation proportionate or reasonable.
10. On TfL's options appraisal, their package was certainly not a large or comprehensive non-road package.

11. the scheme must be refused

MAIN TEXT

1. We refer to and support CBT's recent submission which drew attention to the recent report for CPRE evaluating road schemes – as featured here <http://www.bettertransport.org.uk/roads-nowhere/induced-traffic>

2. We refer mainly to TfL's written summary of their oral submissions of 28th March 2017 at the ISH on Outstanding Issues including Environmental Matters ([Transport for London](#) 8.109 Post-hearing Submission Document (Outstanding Issues)), and in particular to section 5 on Air Quality, with paragraph 10 below on a further document.

3. Re 5.2

"□ The Assessed Case indicates that the Scheme would have very small changes in traffic flows on these roads.

• In all cases the changes would be 1% or less – with the exception of the A12 and Tower Bridge (2%). The roads are some distance from the site of the Scheme (4.8 km to 9.6km, by road) and the effects on traffic and air quality will be minimal."

It is to be expected that worse traffic and congestion and air pollution as a result of the scheme will occur some distance from the scheme (if traffic gets across the river quicker but then just gets caught up in, and adds to, the next bottle neck).

And supposedly relatively small % increases are no reason to discount or screen out traffic increases – and effects on air quality supposedly "minimal" could well be significant/material and illegal.

4. "Paragraph 3.7.4 of the M&MS outlines the rationale of where air quality monitoring are to be located (as listed below). The locations of the air quality monitors within Appendix B of the M&MS therefore reflect this guidance.

a) "where the Scheme is forecast to bring about a change in air quality in excess of 0.4 µg/m₃ where annual mean concentrations are above the national air quality objective value;"

"The applicant does not consider it necessary to monitor air quality on all roads particularly where the scheme impacts on traffic flows are small. Should the scheme not be operating as anticipated this would be shown as a result of the traffic flows on the Silvertown and Blackwall tunnels, much more clearly than the wider road network."

EU law does not set any such threshold of 0.4 µg/m₃ and a lesser increase in mean concentration above the EU levels must still be relevant and illegal if materially or significantly (eg by 0.1 µg/m₃) worsening air pollution already breaching limits.

Failing to monitor air quality in all places potentially affected by worsened air pollution where it already breaches limits could mean that illegal worsening of air over limits is not identified – just knowing that the scheme itself is not operating as anticipated does not capture such effects at all.

5. Re 5.3

"Localised measures around junctions which improve the flow reduce congestion could potentially be to mitigate impacts locally, these are well understood traffic measures which have the potential to improve air quality."

TfL's apparently first answer to problems the scheme is likely to create where congestion is re-located to, is to then to "improve the flow" and so "reduce congestion" – this apparently means further widening / enlarging of junctions (and quite likely, it may turn out, also sections of other roads), to deal with the scheme problems, which in turn would just push problems on to the next place. This is no solution and not mitigation.

6. Re 5.4 – section in response to Friends of the Earth

“An exceedance of the EU limit value at a single receptor which is the result of the Scheme does not mean that the Scheme is illegal as claimed by Ms Bates. If that interpretation was correct, it would prevent any regeneration Scheme from coming forward in East London. The Applicant would also refer to its response to item 4.12 of the January Environmental ISH on this topic.”

TfL are not clear whether in what they say (“An exceedance of the EU limit value at a single receptor which is the result of the Scheme does not mean that the Scheme is illegal”) they refer to either or both of the following – neither of which are legal: by any material or significant degree causing a new breach of the Limit Value anywhere in an Air Quality Zone (rather than just the first or only time there is such a breach ie irrespective of whether there are other breaches already) or worsening levels already in breach anywhere in an Air Quality Zone (rather than only delaying compliance)

TfL offer no evidence or argument to support their claim, and by contrast I rely on the following:

- a. EU law itself (Article 13 re a breach)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:152:0001:0044:EN:PDF>

- b. Clarification to Clean Air in London:

“...Limit Values must indeed be complied with throughout the territory of any given air quality zone”

http://cleanair.london/legal/clean-air-in-london-obtains-qc-opinion-on-air-quality-law-including-at-heathrow/attachment/cal-304-letter-of-clarification-from-the-commission-190214_redacted-5/

- c. Support of the McCracken QC opinion – from paragraph 58, particularly paragraph 59

http://cleanair.london/legal/clean-air-in-london-obtains-qc-opinion-on-air-quality-law-including-at-heathrow/attachment/cal-322-robert-mccracken-qc-opinion-for-cal-air-quality-directive-and-planning_signed-061015/

- d. Support from Parliament’s Environmental Audit Committee

<http://www.publications.parliament.uk/pa/cm201516/cmselect/cmenvaud/389/389.pdf>

The report stated “The Government should be clear that significant deterioration in air quality on the roads leading to Heathrow will not be permitted simply because another area of London is more polluted.” (from the summary), and on the same point that “This would make no sense in terms of protecting public health and wellbeing. The Government should make clear that this is not the position it intends to take when assessing the scheme for compliance with the Directive.” (from paragraph 43).

- e. Support from the Inspector at the London Plan alterations on relaxing parking restrictions:

<https://www.london.gov.uk/file/576100/download?token=lecCfrDS> section on Air Quality from page 11 (12 electronic), from paragraph 48.

- f. High Court ruling on Client Earth 2, reference to reducing exposure, as in the conclusion, paragraph 95 i)

7. TfL set out their views on compliance: [Transport for London](#) 8.116 Schedule of Compliance with the National Policy Statement, regarding 5.13:

“The Scheme lies within the Greater London agglomeration, which is currently non-compliant with the Air Quality Directive. In terms of the first bullet point, therefore, the Scheme will not cause the Greater London agglomeration to become non-compliant.”

Whether the scheme causes the Greater London agglomeration to become non-compliant is not an adequate overall test – anywhere within the Zone becoming non-compliance would be illegal

“In terms of the second bullet point, a compliance risk assessment has been undertaken in accordance with the guidance in IAN 175/13 to identify whether the Scheme will affect the ability of the Greater London agglomeration zone to achieve compliance within the most recent timescales reported by Defra to the European Commission. The results of the compliance risk assessment are that the Scheme does not delay the Greater London Urban Agglomeration from achieving compliance within the most recent timescales reported to the European Commission by Defra.”

Whether the scheme would delay the Greater London Urban Area achieving compliance is not an adequate overall test – any material/significant worsening of levels already exceeding the Limit Value anywhere within the Zone would be illegal.

“Defra are in the process of updating their air quality action plans (as a result of the clientearth judgement) due to be published in draft in April 2017, which will set out how the Government intends to achieve compliance with the EU Limit Values in the quickest time possible. The scheme results in an overall improvement in air quality at receptors with the highest pollutant concentration and will therefore support the achievement of compliance with the annual mean nitrogen dioxide EU Limit Value. In addition the Monitoring and Mitigation Strategy is in place post operation which will provide the mechanism to ensure that the scheme impacts are not materially worse than reported in the ES.”

Whether the scheme achieves an improvement anywhere, or even an overall improvement, is not relevant – only whether areas being worsening pass or fail the above 2 tests as I set out above.

The National Networks NPS tests are not sufficient or robust, and the wider picture including of EU law needs to be taken into account.

8.

In relation to TfL’s response to EGRA:

“Extended ULEZ

The Applicant will be working with London boroughs to develop the boundary for the extended ULEZ in detail over the summer, including in relation to the Blackwall Tunnel, as such no decision on this suggestion has yet been made. Furthermore, a consultation including detailed plans will be held in Autumn 2017 and a decision early 2018 on the final Scheme. The Applicant also wishes to re-emphasise the fact that the extended ULEZ is a separate, currently undefined future Scheme.

Regardless of the outcome of the final extended ULEZ proposals, it is to be expected that London, and particularly the east and south east sub-region, will change significantly over the coming years. This is one of the reasons that TfL has developed a flexible approach to setting and varying the user charges, as set out in Charging Policies and Procedures

(CPAP) (REP4-039). As set out in section 3.2 of CPAP, TfL will refresh its assessment of the Scheme around 2 years before Scheme opening in order to set the initial charges in line with the Policies set out in that section. In refreshing this assessment, TfL would take account of changes to the Reference Case including any ULEZ impacts.

And also in relation to the Panel's Rule 17 letter on the ULEZ

[https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR010021/TR010021-001672-Rule%2017%20-%20Notification%20of%20Request%20for%20Further%20Information%20\(the%20Applicant\).pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR010021/TR010021-001672-Rule%2017%20-%20Notification%20of%20Request%20for%20Further%20Information%20(the%20Applicant).pdf)

Clearly the arrangements for inclusion or exclusion of roads from a ULEZ, particularly extended out to the North and South Circular roads as is being suggested, would have profound effects on the scheme operation and impacts on air quality. Exclusion of the crossings/approach roads would mean dirtier vehicles diverting from crossings not excluded from the ULEZ.

However the most profound impacts would be if the ULEZ were made London-wide as is being called for by many, and the Mayor has said that "nothing is off the table" when it comes to cleaning up London's poor air quality (<http://www.mayorwatch.co.uk/city-hall-greens-welcome-mayors-pledge-to-consult-on-expanded-ultra-low-emission-zone/> and http://questions.london.gov.uk/QuestionSearch/searchclient/questions/question_293654).

TfL's whole case for the scheme is based on particular tolls for these crossings, but if the whole of London, and the other crossings, had charges applied then the deterrent effect to manage induced traffic would be lost for these crossings. And if tolls on these crossings had to rise even further to maintain a differential deterrent that would have other impacts.

9. Re the Hoola building

"The Applicant acknowledges that with the adjusted receptor heights (which the applicant considers is still conservative given the road layout around Hoola), the first floor receptors are predicted to exceed the AQS objectives in 2021. However, given the evidence provided by the Applicant that the length of the exceedance period is predicted to be short (approximately two years if the Scheme opened in 2021) and the scheme does not lead to an overall significant impact on air quality, the installation of ventilation at the Hoola development is not considered a proportionate or reasonable mitigation measure.

The table below sets out the modelled annual mean concentrations based on the 5m first floor height.

Modelled annual mean NO₂ at first floor height (5m) on the West Tower of the Hoola

Development with the Silvertown Tunnel (Assessed Case).

Year / Assessed Case Annual Median NO₂ (µg/m³) at 5m

2021 / 41.5

2023 / 39.6"

TfL while admitting serious and prolonged (2 years) exceedances of objectives, refer to an irrelevance of the scheme not leading to an overall significant impact on air quality, and do not even consider installing ventilation proportionate or reasonable.

10. TfL document on Option Appraisal

([Transport for London](#) 8.119 Response on Option Appraisal (Five Case) from ISH 28 March 2017)

"Strategic alternatives stage

1.1.9 At the strategic stage of optioneering, public transport-only options were rejected on the grounds that even a very large package of such options would only modestly address the congestion issues at the Blackwall Tunnel and could not provide additional resilience.

1.1.10 Accordingly, the key alternative option for which economic appraisal is described in this section is the implementation only of a charge at the Blackwall Tunnel, compared to the option of a new crossing at Silvertown accompanied with user charging at the Blackwall Tunnel and the new crossing.”

As we have stated, TfL's strategic optioneering on public transport-only options were not “a very large package” and omitted key components which would make the difference in achieving aims and resolving identified problems – such as holding back or “throttling back” traffic further back on the approaches, further complementary non-road crossings, and London-wide road-user charging.

11. the scheme must be refused