



Silvertown Tunnel Development Consent Order

Deadline 7:

Final Position Statement

London Borough of Newham

10th April 2017

Introduction

The purpose of this statement is to reaffirm the final position of the London Borough of Newham (“the Council”) in light of new and updated documents submitted throughout the examination to date. The focus of this statement is to provide the final position on the key matters considered by the Council as outstanding, presented in the Council’s Deadline 6 submission and covered in the ISH sessions during the course of this Examination process.

Whilst agreement has been achieved between the Council and TfL over the past 6 months on a number of issues, there remain matters where agreement has not been reached, and a determination will be needed by the Examining Authority and Secretary of State in due course. The following statement therefore provides a cohesive list of those matters considered to be outstanding and of most importance to the Council, together with reasons and requested outcome. In order to assist the Examining Authority in its consideration as to whether resolution of these issues by the suggested means is appropriate. Accordingly the matters of concern outlined within this statement are those considered to be both “important” and “relevant” pursuant to the determination of the Secretary of State under the Planning Act 2008 (“2008 Act”) as follows:

1. General
 - Legality of Blackwall User Charge via Development Consent Order
 - Package of River Crossings (Gallions)
2. Traffic Modelling
 - Assessed Case
 - Values of Time Validation
 - Scope of Pre-Scheme Modelling (M&MS)
3. Environmental
 - Air Quality Mitigation at Hoola
 - Air Quality Assessment
 - Not Environmentally Worse Than
 - Geology Soils and Contaminated Land
 - Code of Construction Practice
4. Public Transport
 - Cross-River Bus Service Commitment
 - Means of Distribution of £2m Bus Contribution
 - Emirates Air Line
5. Monitoring and Mitigation Strategy (M&MS)

Scope of Pre-Scheme Modelling Update

Woolwich Ferry Mitigations

6. Charging Policies and Procedures

Tiered Discount Scheme (50%-90% discount on User Charge)

7. Development Consent Order Wording

Article 58 (Transfer of Benefit of Order)

8. Legal Agreement

9. Request

1. General

Legality of Blackwall User Charge via Development Consent Order

The Council remains of the view that legal clarification will be required over the application of Section 120 of the 2008 Act, and the appropriateness of the terms 'supplementary' and 'ancillary' to the introduction of a user charge to the existing Blackwall Tunnel. The Council is of the view that any introduction of a user charge at the existing Blackwall tunnel is required to be advanced separately from this DCO, by means of the process outlined in the GLA Act 2000.

The Council has set out previously that Government Policy does not support the introduction of user charges to existing uncharged highway infrastructure, and it is considered that the formal process as defined in the GLA Act should be followed, where the socio-economic implications of this change would be explored with greater transparency, and with greater public input.

Should the user charge at the Blackwall Tunnel require to be promoted through a separate process outside this application for a Development Consent Order, there remains the need to harmonise the charging policies and procedures with the proposed Silvertown Tunnel, prior to the commencement of development.

Outcome Sought

A ruling on the application of Section 120 of the 2008 Act is sought to clarify the means by which a user charge can be introduced at the existing Blackwall Tunnel. If it is found that the proposals cannot be considered 'supplementary' or 'ancillary' pursuant to Section 120 of the 2008 Act, the Council considers that the current application for Development Consent Order should be refused. To assist, the Council has provided at Deadline 7, an Updated Legal Position Statement prepared by Thomas Hill QC and Christiaan Zwart of 39 Essex Chambers.

Package of River Crossings (Gallions)

The Council remains of the view that the Applicant has not adequately demonstrated commitment to any further river crossings in the area, in part due to the lack of financial commitments in the TfL Business Plan. A study into a possible crossing at Gallions does not represent any kind of commitment, and despite the Applicant's previous assurances to a

package of crossings, it is clear that this Scheme is being promoted in isolation and is considered as the 'solution' in East London.

The Council holds the view, which is supported by previous research, that greater connectivity and regeneration benefits are generated from a new highway crossing at Gallions Reach. The Council is therefore disappointed at the lack of any comprehensive options appraisal presented by the Applicant of the wider range of the crossing options assessed against the needs of East London. Instead, the limited options appraisals which have been undertaken are assessed against 'the Scheme objectives', so its unsurprising that the Scheme would represent most favourable solution.

Previous consultations outcomes from engagement exercises run by the Applicant showed the Gallions crossing to be as well supported by the public as the Silvertown Tunnel Scheme, and separate research has also shown Gallions to deliver greater regeneration and connectivity benefits to the sub-region. It is therefore disappointing that no appraisal framework containing the full range of river crossing options has been presented.

Outcome Sought

It is for the Examining Authority to determine if this Scheme is genuinely the best option to deliver both the Scheme's and wider TfL Mayor's Transport Strategy outcomes and whether there has been sufficient rigour by the Applicant in appraising the costs and benefits of alternative options prior to deciding upon their preferred Scheme. The Applicant's eventual admission through the course of the Examination that there is, in fact, no commitment at all to the delivery of any further crossings despite what was originally stated in the Application is also significant in the consideration of these matters.

2. Traffic Modelling

Assessed Case

The Assessed Case modelling outputs are not agreed by the Host Boroughs.

Concerns remain over values of time validation, and consequently over the accuracy of the model in predicting the effects of the toll on a range of user groups (elasticity relationships) has meant that no agreement could be reached. Despite the requests of the Examining Authority to provide greater detail on these issues, the information provided by the Applicant at various deadlines has failed to convince the Host Boroughs that the Values of Time are representative and lead to robust projections of behavioural change across the range of user groups affected by the Scheme.

Instead, the Council and the neighbouring Host Boroughs have focussed their attention on the Monitoring and Mitigation Strategy (“M&MS”) to ensure that any impacts which arise and are worse than those predicted in the Assessed Case will be identified promptly through an effective and comprehensive monitoring strategy and addressed timeously with a targeted mitigation programme.

While this approach may be sufficient to give the Local Authorities concerned some confidence over the eventual impacts of the Scheme being effectively mitigated, it is however for the Examining Authority to decide if the demonstrated weaknesses in the Applicant’s modelling in the application documents, as exposed over the course of the Examination, can be offset by this means.

Outcome Sought

The Examining Authority must consider if the Applicant’s submission documents provide a sufficiently robust estimate of the likely impacts of the Scheme on which to base any recommendation, and whether any weaknesses in this regard can be satisfactorily offset by any Monitoring and Mitigation Strategy.

Values of Time Validation

As stated above, the Council remains concerned regarding the Values of Time (“VoTs”) that have been applied, and the Applicant’s inability to justify the appropriateness of these from local validations and studies throughout the course of the Examination process.

The only satisfactory means by which these concerns can be addressed is to specify this local validation of Value of Time in the pre-Scheme modelling to ascertain the 'Refreshed Case'. As this run of the modelling suite is intended to not only identify pre-Scheme mitigations, but also to set the initial level of user charge across a range of user groups. It is considered essential that the best estimates of VoTs are incorporated into this phase of the modelling.

Therefore the outcome sought relating to this particular issue, concerns the scope of the pre-scheme modelling specified in the Monitoring and Mitigation Strategy, which is discussed below.

Scope of Pre-Scheme Modelling (M&MS)

As introduced above, the local validation of the VoTs input to the model is critical to the elasticity relationships developed by the model, and consequently to the predicted behavioural response to the user charge.

The Council welcomes the Applicant's commitment to some refinements to the modelling suite to reflect changes in the network characteristics, growth levels, traffic flows and in particular, detailed local modelling (which was found to be deficient in the Applicant's submission through the course of the Examination) but notes that the scope of re-validation of the model at the pre-Scheme stage outlined in the M&MS document falls substantially short of any commitment to stated preference surveys to fully evaluate the appropriate VoT that apply across the sub-region.

For reasons submitted to the Examining Authority throughout the Examination, the Council considers that this commitment to VoT validation should be forthcoming, as it has been a significant issue of contention throughout the discussions with the Applicant over the Scheme. Without such a stage being specified in the pre-Scheme modelling, the Host Boroughs are likely to have little more confidence in the modelling outputs generated by the Applicant at that time than they do at the moment. It is therefore considered by the Council that this important process must be specified and secured in the wording of the M&MS.

Outcome Sought

The Council wishes to see the Examining Authority require a strengthening of the wording in the M&MS to include the specific task of undertaking revised stated preference surveys to determine appropriate Values of Time in the scope of the Pre-Scheme modelling.

3. Environmental

Air Quality Mitigation at Hoola

TfL's Updated Air Quality and Health Assessment (REP2-041), within Table 2-4, shows expected concentrations of nitrogen dioxide at various floor heights on the West Tower of the Hoola Development. These figures update those found within Table 6-18 of Chapter 6 of the Environmental Statement (Air Quality), on the basis of the increase in number of over height vehicles, revised DEFRA guidance, and the commitment to Euro VI (or equivalent) Busses through the Silvertown Tunnel. In its most recent submission on the matter (Technical Note Air Quality at the Hoola Development REP3-031), additional detail is provided in relation to the relative heights and position of residential flats in the Hoola West Tower, the building which is subjected to the greatest expected impact.

It is clear from review of these documents that there are dwellings within the Hoola which are predicted to have a large (>4 Magnitude of change in NO₂ (µg/m³)) worsening of air quality in the assessed case year 2021. The worsening in Air Quality also moves the Hoola building from below air quality objectives to above, which in itself would trigger the requirement for the Council to revise its Air Quality Management Area.

While it is noted that the Updated Air Quality and Health Assessment indicates improvements in Air Quality from the Environmental Statement predictions for the first floor and above (the residential units), this is caused by modelling the first floor at 5m in height rather than at the standard 3m. It is worth noting that the Updated Air Quality and Health Assessment does actually produce some higher concentrations of nitrogen dioxide than stated in the Environmental Statement, with changes at the ground floor rising from 45.0µg/m³ to 45.4 µg/m³ Annual Mean NO₂.

The Applicant's argument for not providing further mitigation for the Hoola is based on a prediction that 2023 is a more likely date for the opening of the Silvertown Tunnel, by which time the air quality at the Hoola would not be expected to exceed the objective value of 40 µg/m³. Mindful that the Scheme is based on an assessed case year of 2021, and that the dDCO as currently drafted does not include Grampian Requirements regarding Air Quality, this view is not accepted by the Council. Further, (as discussed prior) the Council do not agree the Assessed Case and the accuracy of these predictions either for traffic flows or the resultant air quality concentrations. Hence, the Applicant has failed to produce any quantitative assessment as to the accuracy of their models. Additionally there is no

guarantee that London air quality will be as predicted in 2023 and successive reporting of air quality improvements have consistently underestimated air quality pollutant levels in the past.

The Interim Advice Note (IAN) 174/13 *Updated advice for evaluating significant local air quality effects for users of DMRB Volume 11, Section 3, Part 1 'Air Quality (HA207/07)*, provides a broad framework for the assessment of significance of local air quality effects. It is clear though that this document is guidance, and not a policy which provides for a conclusive qualification of significance. It would appear to the Council that Scheme-wide benefits for air quality are masking the recognition of the significance of a large local worsening of air quality, thereby justifying a failure to mitigate.

Given the Mayor of London's clear strategic priority to improve London's Air Quality, it appears extraordinary to the Council that TfL continues to refute that the Scheme should require site specific mitigation of a considerable local impact, such as that predicted at the Hoola Building.

Recognising that TfL has undertaken a desk-top review of the Hoola's ventilation system, the Council notes that this system was fitted primarily for the purpose noise mitigation, in light of an assessment which did not include the impact of Silvertown Tunnel. Further, the Council notes that there is nothing intrinsic about mechanical ventilation that would improve air quality. In order for the mechanical ventilation system to provide an improvement it would need to include an NO₂ filtration system or air intake from a less polluted area.

Outcome Sought

The Council maintains that the potential to retrofit NO₂ filtration measures, and air intake improvements should be undertaken prior to commencement of the development. A scheme to implement any such measures and seek necessary agreements with land-owners should also be implemented prior to the commencement of the development. The Council has included such measures within the Council's draft planning obligation agreement.

Air Quality Assessment

The air quality Assessment has been undertaken in accordance with the interim advice note (IAN) 174/13. This note provides advice that significant effects can only occur where predicted air quality levels exceed National Air Quality Objectives (NAQO). Therefore this assessment fails to give adequate weight to changes in air quality levels as long as the

NAQO are met. In light of increased public concern over NO₂ levels in London the Council would welcome a more appropriately conservative approach using lower threshold levels and lower thresholds of change as used in the “Guidance on land-use planning and development control: Planning for air quality” January 2017 (v1.2).

Outcome Sought

That the further assessments of air quality and mitigation are assessed against the criteria set out in the Guidance on land-use planning and development control: Planning for air quality” January 2017 (v1.2).

Not Environmentally Worse Than

The Council considers the development should be subject to a Not Environmentally Worse Than test. This should relate to the project as a whole and would therefore be best secured through the DCO. This would thereby require the development to equal or better the forecasts within the ES ensuring the delivery of the assessed case or better.

In terms of assessment of any changes in the development the wording proposed by the Examining Authority of not materially new and not materially different would provide the necessary control.

Outcome Sought

That the wording proposed by the Examining Authority is adopted.

Geology, Soils and Contaminated Land

The Council welcomes the Applicant’s view (as set out in Part 5 of Document 8.108 Explanatory Note of Updated Certified Documents (TR010021)) that the provision for an agreed ground investigation, remediation statement prior to construction commencing and a verification report to the scheme becoming operational, can be incorporated into the DCO. Newham do not agree with the wording that the Applicant has provided within the dDCO submitted at Deadline 6 (V5).

Outcome Sought

The Council would welcome the introduction of the Examining Authority’s recommended wording as the DCO requirement. This was suggested as Requirements 15 and 16 in the Examining Authorities revised draft DCO, as published on 20th March 2017.

Code of Construction Practice

Many of the issues raised by the Council as part of their Deadline 6 submission have been resolved as part of ongoing dialogue on this document. However, concerns remain with the commitment to transport 55% (by weight) of all material associated with the scheme by river. Key to these concerns, is that materials re-used on site are included within the definition of “transported by river”. As a substantial proportion of spoil could be re-used on site, for example to provide future flood defences by creating a development platform, this would erode the amount of material that would need to be truly transported by river, instead of by road. The Council has requested from the applicant an estimated breakdown of materials which could be committed to be truly transported by river, but none has been provided.

Outcome Sought

In seeking to resolve the Council’s concerns with respect to river transport, it is requested that if the order is confirmed, Requirement 5(3)(d) of the dDCO is amended to state;

Construction Materials Management Plan, incorporating commitments to river transport, to be approved by the relevant planning authority;

4. Public Transport

Cross-River Bus Service Commitment

The Council has made its position clear on the subject of bus service provision and the Examining Authority now understands this position fully. Newham, in particular, is heavily dependent upon public transport services to secure any benefits from the Scheme whatsoever, as any highway benefits from the Scheme to Newham users are very marginal – and indeed are negative in some time periods as the network on the Northern side of the river in the Borough becomes more congested. Any retraction from the level of bus service provision as specified in the Assessed Case will potentially diminish the level of public transport benefits secured from the Scheme for Newham residents, and will not be considered acceptable to the Council. Different levels of public transport provision and in a different service pattern is essentially an entirely different Scheme from the Assessed Case, with an entirely different set of impacts across a different spatial distribution.

It is acknowledged, however, that it is possible for the Applicant to deliver the same quantum of public transport benefits, as identified from modelled outputs with a different service pattern and frequency.

The Council must therefore insist on a level of service either as specified in the Assessed Case (ie 37.5 buses/hour in each direction during the peak hours), or a level of service that guarantees an equal or greater amount of public transport benefit than identified by the Assessed Case – in any service pattern that the Applicant sees fit. This latter option would avoid the need for the Applicant to specify a service pattern this far in advance, while at the same time securing the level of public transport benefit for the Host Boroughs identified in the Assessed Case. This approach is considered entirely appropriate, and consistent with the use of revised modelled outputs proposed in many other aspects of the pre-Scheme modelling.

Outcome Sought

For the reasons stated above, the Council must insist on the amendment of Requirement 13 to one of the two wording options presented by the Council and the Royal Borough of Greenwich at Deadline 6. For clarity these are outlined again below:

13.-(1) *TfL must implement a cross-river bus service provision using the tunnels which **delivers the same or greater levels of public transport benefits (as quantified in the pre-Scheme Refreshed Case modelling)** as those identified in the Assessed Case without any reduction in any other user benefits generated by the Scheme from the date on which the Silvertown Tunnel opens for public use and thereafter must keep under review and secure the provision of bus services through the tunnels in accordance with the Bus Strategy.*

In addition, changes to Commitment 5 in the Bus Strategy are also proposed in relation to this amended Requirement as follows

Commitment 5:

As part of the refreshed assessment described in section 2.1 and 2.2 of the Monitoring and Mitigation Strategy TfL must assess the likely public transport user benefits over a 5 year period of the indicative service pattern of buses modelled in the Assessed Case.

TfL must then prepare a service pattern for bus services using the Blackwall and Silvertown Tunnels for the first five years of operation which delivers not less than the likely monetised public transport user benefits delivered by the Assessed Case service pattern as evaluated in the refreshed assessment. This refreshed case modelling of public transport user benefits must be subject to independent audit and verification.

TfL must implement the strategy and must secure the provision of not less than the minimum level of bus services specified in the 'cross river bus services' requirement in Schedule 2 to the DCO for the duration of the monitoring period.

The refreshed assessment carried out under Commitment 1 must use the indicative bus network that was used by TfL when preparing the Assessed Case and must assume the same service levels. The monetised economic user benefits will be estimated using the same appraisal methodology as set out in the Economic Assessment Report.

If neither the Applicant nor the ExA can support such an amendment, then the Host Borough position remains as previously stated, and the Requirement must be worded as follows:

13.-(1) *TfL must implement and secure the provision of **not less than 37.5 buses per hour during the peak periods in each direction through the tunnels** from the*

date on which the Silvertown Tunnel opens for public use and thereafter must keep under review and secure the provision of bus services through the tunnels in accordance with the Bus Strategy.

The importance to the Council of securing these benefits of the Scheme cannot be overstated, and the Council's support for the Scheme is dependent upon the delivery of the identified level of public transport benefits to the London Borough of Newham. It is imperative that the DCO delivers this commitment to these levels of public transport services, or the benefits, as specified in the Assessed Case.

It is requested that the Examining Authority ensure the delivery of the quantum of public transport benefits to the Host Boroughs and to Newham in particular by means of either of the two wordings of Requirement 13 as suggested above. The Council's preference remains for either service frequency or level of public transport benefit to be specified explicitly in the Requirement, rather than in the Bus Strategy certified document.

Means of Distribution of £2m Bus Contribution

The Council generally welcomes this offer of support for bus journeys for a fixed period following Scheme opening. However, there remains very little detail in the Bus Strategy on how this fund is to be shared and distributed across the Host Boroughs, who will qualify, and what form the supported bus travel will take.

Outcome Sought

The Council would therefore welcome some detail on this from the Applicant in due course, but in the meantime, it would be helpful if the Examining Authority would consider the strengthening of this aspect of the Bus Strategy with a wording that requires the Applicant to *agree* with the Host Boroughs as to how this £2m contribution will be applied.

Emirates Air Line

The Council remains of the view that the Emirates Air Line ("EAL") is an ideal and convenient sustainable alternative to the Scheme for cyclists and pedestrians. While the Applicant claims there is no need to cater for pedestrian and cycle movements, this is entirely contrary to the Applicant's general policies, in terms of the Mayor's Transport Strategy, and consequently, the Council contests the Applicant's view. A transport scheme in

London in the 21st century which proposes no provision whatsoever for cyclists and pedestrians is wholly unacceptable.

The proposal of a cycle shuttle (with little additional detail provided) presents potential inconveniences for the user, which may affect its popularity as an alternative, which may in turn give the Applicant justification to cease its operation following review. The EAL poses no such challenges for the user, and replicates the line of the new tunnel between Greenwich Peninsula and Tidal Basin almost exactly, as well as having convenient public transport interchanges at each end at North Greenwich and Royal Victoria respectively.

The Council does not, therefore, consider the request to the Applicant unreasonable to fully 'Oysterise' the EAL fare strategy so it becomes integrated with DLR and tube networks – at least during morning and evening peaks, so that it becomes just another part of the TfL London transport network, and to ensure there is no interchange 'penalty' for its use.

Outcome Sought

The Council would wish Requirement 13 to be amended to make specific reference to the EAL becoming an integrated part of the TfL Oyster network, with equivalent pricing and no interchange penalty for its use, so as to provide a viable alternative for non-motorised cross river trips which will in turn encourage greater levels of sustainable cross river travel, in line with general TfL policies.

5. Monitoring & Mitigation Strategy (M&MS)

Scope of Pre-Scheme Modelling Update

This is discussed fully, under Section 2 Traffic Modelling above, but for clarity the M&MS should make explicit reference to the undertaking of stated preference surveys to further locally validate the VoTs input to the model, prior to the pre-Scheme modelling.

Woolwich Ferry Mitigations

The Council is content that a suitable trigger to determine impacts on the Woolwich Ferry have now been agreed in the M&MS. However, there remains concern from the Council that the one major mechanism by which traffic displacement to the Woolwich Ferry could be controlled is not available in the M&MS – i.e. the introduction of a user charge at Woolwich.

Outcome Sought

It is for the Examining Authority to make a determination as to the appropriateness of a strategy which sets triggers for mitigation of impacts to the Woolwich Ferry, but which does not provide the authority to levy user charges, and instead would rely on traffic management measures which may have limited outcomes.

6. Charging Policies and Procedures

Tiered Discount Scheme (50%-90% discount on User Charge)

The Council welcomes the offer by the Applicant of a discount scheme to address the potential adverse socio-economic effects of the Scheme. However, this offer came late in the Examination process (just prior to Deadline 6) it is regrettable that the Applicant could not have made this concession sooner, so that more detail could be discussed and presented to the Examining Authority for Deadline 7.

However, notwithstanding these remarks, the Council wishes to work further with the Applicant over the detail of the proposed discount scheme. But, it is also understood that the Examining Authority in addition to the Host Boroughs will need some clarity over what form such a discount scheme would take, what sort of levels of discount could be available, depending on economic need, and what numbers of Borough residents would qualify for the proposed discount system, before making any decision on the degree of socio-economic mitigation achieved by the proposed discount strategy.

The Council seeks the following two further assurances in this regard:

- To secure an appropriate tiered discount scheme, which identifies 3 or 4 levels of qualification amongst low income groups, and which offers a range of discounts from 90% to 50%, based on household income. This would ensure a targeted discount scheme based on 3 or 4 levels of need, subject to the straightforward administration of the scheme (i.e. tiers can be easily identified from existing data on the receipt of certain benefits)
- To secure these discounts for a meaningful proportion (at least 25%) of Borough residents overall, reflecting the socio-economic disadvantage of the Borough and to ensure that the discount scheme is not 'token', with very few low income residents with access to a vehicle actually qualifying.

It is, acknowledged by the Council that these suggestions for the discount scheme must be caveated by there being no major implications on the travel demand management or revenue generation objectives of the Scheme. However, it is also noted that the Applicant has admitted during the Examination that the likely effect on these outcomes of a 90% discount for those in the lowest income group would be insignificant.

Outcome Sought

It is requested that the Examining Authority ensures an agreed targeted discount scheme is specified in the CPAP which provides for a range of discounts across a number of low income levels, ranging from 50% up to 90%, subject to no adverse impacts on Scheme Objectives and income levels being able to be readily identifiable from existing records. It is also requested of the Examining Authority that the Applicant must ensure an appropriate number of Newham residents would be eligible for such discounts, to reflect the socio-economic characteristics of the Borough (albeit those with access to a car and therefore likely to benefit directly from the discount will be a much smaller number, as only 44% of Newham households have access to a vehicle).

7. Development Consent Order Wording

Article 58 (Transfer of Benefit of Order)

The Council maintains a high level of concern with regard to the extent of the provisions of this Article. TfL, in the Charging Policies and Procedures Document (7.11) sets out its statutory duties as these apply to policies to promote and encourage safe, integrated, efficient and economic transport facilities and services to, from and within London. TfL also has statutory responsibilities to ensure road networks are managed effectively to minimise congestion and disruption to vehicles and pedestrians. These functions provide a level of security to the Council as to how the decisions of the TfL board can be made in respect to the user charge. Accordingly it is a substantial concern to the Council, that this Article enables TfL to transfer its role in setting the charge to a private entity. The Council is not convinced that there is adequate transparency and security within the user charging assessment framework to protect the public interest if the responsibilities for road user charging were to be transferred to another party.

Outcome Sought

It falls to the Examining Authority and Secretary of State to determine whether or not the User Charging Assessment Framework (UCAF) and Charging Policies and Procedures provide adequate security in the instance of a transfer of benefit to a private entity. This should also be considered in context of the Council's over-arching legal concerns. It is considered by the Council that Article 58 could be amended to either A) preclude the transfer of benefit of the order in relation to road user charging, or B) in the event of a transfer of benefit to road user charging, trigger an independent audit and review of the UCAF and Charging Policies and Procedures to ensure that they remain fit for purpose.

8. Legal Agreement

The Council welcomes the offer by the Applicant to enter into a legal agreement to secure development consent obligations and to continue discussions. However, this offer came late in the proceedings and the current draft is in the form of a unilateral undertaking that includes provisions relevant to the other Boroughs and excludes template provisions relevant to the Council. The undertaking does not acknowledge development consent obligations are planning obligations pursuant to section 106 of the Town and Country Planning Act 1990 (the "TCP Act"), in particular sub-section 1061A, the importance of equity to the Council (refer to the Council Cabinet report dated 3rd of November 2016, submitted at Deadline 2), socio-economic characteristics of the Borough, numbers of unemployed and underemployed, and that the application offers no intrinsic benefits to residents and business in a Host Borough.

Additionally the Applicant's unilateral undertaking does not address that pursuant to the TCP Act Section 106 agreements are private agreements made between a local authority, organisation and landowner because, under s106 of the TCP Act it is the land, which is primarily bound by a Section 106 Agreement and not an organisation. Accordingly to enabling realistic enforceability for the Council and consequential certainty to residents and business owners that the obligations promised will be fulfilled the land must be bound. The Council is concerned to ensure that organisations who have committed to make contributions are held to their word unless there is a sufficiently compelling and lawful justification. The GLA is the majority landowner of the affected land within the London Borough of Newham and therefore must be included within the Council's draft deed.

It is regrettable that an agreed deed could not be presented to the Examining Authority for Deadline 6 or Deadline 7. The Council has herein submitted a draft s106 agreement and an explanation table that describes the obligation requested and justification against the relevant statutory tests.

Outcome Sought

It is requested that the Examining Authority provide the Council, residents and businesses sufficient certainty in the fulfilment of the obligations. In the event that the Scheme is approved the Council request the Applicant be required to enter into the draft s106 agreement submitted with this Deadline 7 submission or a similar draft deed deleting or amending one or more requested provisions.

9. Request

The Examining Authority is requested to give due consideration to the matters raised within this statement, in forming a recommendation to present to the Secretary of State.

The Secretary of State is requested to give due consideration to the matters raised in this statement, as they are considered to be vital matters, that are both “important” and “relevant” pursuant to the determination of the Secretary of State under the Planning Act 2008 (“2008 Act”).