



Natasha Kopala
Great Minster House
33 Horseferry Road
London, SW1 4DR
C/O The Planning Inspectorate
Email: Silvertownntunnel@pins.gsi.gov.uk

Deirdra Armsby
Director of Regeneration & Planning

1st Floor, West Wing
Newham Dockside
1000 Dockside Road
London
E16 2QU

PINS Ref: TR010021
LBN Ref: 16/02991/DCO

Date: 14th August 2017

Re: Application by Transport for London (TfL) (“the Applicant”) for an Order granting Development Consent for the proposed Silvertown Tunnel including user charging on the Blackwell Tunnel (“the Scheme”)

Dear Ms Kopala,

I write further to your correspondence dated 31st July 2017, which requests that the London Borough of Newham (“the Council”) and the Applicant “*provide an update (to the Department) in respect of the discussions relating to the legal agreement / s106 agreement and in particular the following matters:*

- *transitional business support provisions;*
- *a cross river cycle shuttle bus provision; and*
- *a scheme of ventilation at the Hoola building.”*

The Council write in light of the request, yet notwithstanding or to abrogate from our submission at Deadline 7 to the Examining Authority. Accordingly the Council assume that the Department has made a determination upon the legality of the Development Consent Order approach.

In response to your request the Council advise as follows as to on-going discussions:

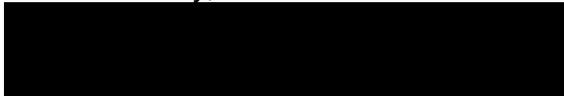
1. On the 12th of July 2017 Council officers met with the Applicant in an attempt to discern likely areas of resolution that relate to the s106 agreement, such discussions include all of the items listed above. In the course of these discussions, the Council officers were advised that the Applicant has been ‘*chased on a couple of occasions*’ by the Planning Inspectorate since the close of the Examination to provide its draft legal agreement. An email chain which followed this meeting between Amanda Reid for the Council and David Rowe for the Applicant is attached at Appendix 1.
2. On the 12th of July 2017, the Planning Inspectorate advised the Council that the final Rule 17 letter was issued on the 7th of April 2017. An email chain wherein this advice is provided is attached at Appendix 2. We note that Rule 17 (further information) of The Infrastructure Planning (Examination Procedure) Rules 2010, provides the Examining

Authority the power to request further information “*at any time before the completion of the examination*”.

3. On 13th of July 2017, the Applicant apologised to the Council and advised that there was a mistake in stating that they had been ‘chased’ by the Planning Inspectorate. An email chain of this correspondence is attached at Appendix 3.
4. Subsequent to the above, it is noted your letter dated 31st of July 2017 has requested updates on discussions relating to the section 106 agreement.
5. The Council respond to the current request by the Department of Transport to all parties in that:
 - a. the Applicant and the Council are continuing discussions in an attempt to resolve matters that relate to the s106 agreement, which includes all obligations in the Deadline 7 draft deed, as submitted, that are pursuant to sections 106 and 106(1A) of the Town and County Planning Act 1990; and
 - b. additionally, the Council confirms that discussions are continuing with the Applicant and other Boroughs to better understand what is required to support the Order in the event of confirmation.
6. This correspondence is considered by the Council to be both “important” and “relevant” pursuant to the determination of the Secretary of State under the Planning Act 2008 (as amended).

The Council thanks the Department of Transport for the opportunity to provide an update, and requests that it be forwarded the statutory provision relied upon to either re-open the Examination process or request further information of any party to those proceedings, as neither Rule 17 or section 98 of the Planning Act 2008 appear relevant to the current circumstances.

Yours sincerely,

A black rectangular redaction box covers the signature area. A small blue mark is visible to the right of the box.

Deirdra Armsby
Director of Regeneration & Planning

Encl.

Appendix 1 – Email correspondence TfL & LBN 12.07.2017

Appendix 2 – Email correspondence PINs & LBN 12.07.2017

Appendix 3 – Email correspondence TfL & LBN 13.07.2017

James Burton

From: Amanda Reid
Sent: 12 July 2017 16:24
To: 'Rowe David (ST)'
Cc: James Burton; Catherine Knight; Murray Woodburn; Chester Neil
Subject: RE: Silvertown Tunnel Meeting - 12 July 2017

All noted with thanks David.

Amanda Reid | Head of Planning and Development
Regeneration and Planning Directorate
London Borough of Newham
Newham Dockside | 1000 Dockside Road | London E16 2QU
DDI: 020 3373 1468 | Int: 31468

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From: Rowe David (ST) [mailto:DavidRowe@TfL.gov.uk]
Sent: 12 July 2017 15:35
To: Amanda Reid
Cc: James Burton; Catherine Knight; Murray Woodburn; Chester Neil
Subject: RE: Silvertown Tunnel Meeting - 12 July 2017

Amanda

Many thanks for the email and for meeting earlier. We will seek to get you a response to you either tonight or tomorrow. A couple of points on your notes:

- The agreements with R.B.Greenwich and with L.B.Tower Hamlets have been progressed in parallel with the agreement for LBN, but they have not necessitated meetings. The reason I was keen to meet with yourselves today was to try and work through the three issues I outlined that appear to be the main points to be resolved to enable us to get to a similar position in being able to produce a legal agreement with LBN.
- In respect of point 1, I also agreed to provide a copy of the red line boundary for the scheme to Catherine.
- In respect of point 2, it was agreed I would provide a copy of the most recent draft legal agreement TfL has produced and that Catherine would produce a table setting out the issues and costs that LBN wish to see included above and beyond those already referenced in TfL's draft agreement. My colleague Neil Chester has previously provided a marked up copy of the draft s106 agreement produced by LBN highlighting those areas where we require further clarification.
- In respect of point 3, given the difference in legal costs of LBN compared with RB Greenwich and LB Tower Hamlets it would be helpful to have the breakdown of activities to which Catherine referred alongside the invoice.
- An additional action agreed after you left was for TfL to advise on the form of words that would be used in the covering letter to PINS/DfT to make clear the agreement only relates to those matters where TfL and LBN are in agreement (i.e. the wider issues that you made representations on during the examination still stand as matters that they should consider).

Best regards. David

David Rowe

Head of Infrastructure Sponsorship

Transport for London ▶ Surface Transport

From: Amanda.Reid@newham.gov.uk [<mailto:Amanda.Reid@newham.gov.uk>]
Sent: 12 July 2017 14:08
To: Rowe David (ST)
Cc: James.Burton@newham.gov.uk; Catherine.Knight@oneSource.co.uk; murray.woodburn@newham.gov.uk
Subject: Silvertown Tunnel Meeting - 12 July 2017

David,

Thank you for suggesting that we meet this morning; it was very good to meet you. I do apologise for having to leave promptly, as I would've liked to have had the opportunity to discuss TfL's issues in more detail. Given that I did have to shoot off, I felt it necessary to follow up with a quick note / actions.

- ALL noted that the Panel yesterday, issued their recommendation report to the SoS;
- AR stated that LBN had submitted its draft S106 to the Panel in accordance with deadline 7;
- DR stated that he had been 'chased' by PINs on a couple of occasions since the hearing closed requesting that TfL provide its draft legal agreement, and that TfL had responded advising that it wasn't ready yet. It has been agreed that TfL can still provide information to DfT, which will be transferred to the SoS to inform the final report. TfL will provide a draft legal agreement by the end of this month. DR advised that he has been meeting with RB Greenwich and LB Tower Hamlets since the hearing closed and that they had arrived at a satisfactory draft agreement, but required input from LBN, hence the request to meet today; ACTION DR agreed to provide CK with copies of the chaser email exchanges between TfL and PINs.
- DR advised of TfL having three issues outstanding:
 - 1) Form of the agreement
Local Gov Act & Localism Act – v – S106
DR advised that TfL has received legal advice that it is not appropriate to use S106, citing the Cable Car as an example.
CK requested sight of the legal advice and advised that she needed a sound legal reason on which to advise LBN.

ACTION: DR to provide copy of the legal advice referenced.
 - 2) Matters covered by the agreement
DR advised that TfL is concerned that the LBN S106 includes matters that were not agreed between TfL and LBN. CK responded that there may well be matters that TfL/LBN cannot agree upon, but that LBN would be happy to engage with TfL to discuss those matters further.

ACTION: DR to advise LBN what the specific areas of concern are.
 - 3) Costs
DR advised that RB Greenwich and LB Tower Hamlets were both less than £3,000. TfL may be able to stretch to £12,000, but there are limits to the costs it would absorb. CK advised that LBN's outstanding costs are in the region of £8,000 and she would ensure that TfL is invoiced for the work to date asap.

ACTION: CK to invoice TfL.

This is where I left the room, so I wasn't privy to any final discussions.

I do hope that the above is helpful and that execution of the agreed actions will ensure that we are all able to engage more fully next time that we meet.

Kind Regards,

Amanda Reid | Head of Planning and Development
Regeneration and Planning Directorate
London Borough of Newham
Newham Dockside | 1000 Dockside Road | London E16 2QU
DDI: 020 3373 1468 | Int: 31468

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James Burton

From: Emre Williams <Emre.Williams@pins.gsi.gov.uk>
Sent: 12 July 2017 12:22
To: James Burton; Catherine Knight; Murray Woodburn; Amanda Reid
Cc: silvertowntunnel
Subject: RE: Attn: Emre Williams RE: Silvertown Tunnel - Updates on Legal Agreements

Hi James,

Please be advised that the Examination of the Silvertown Tunnel application closed on 11 April 2017 as per the amended examination timetable issued by the Panel on 10 February 2017 ([Appendix A](#)).

The final deadline as per the Procedural Decision letter issued on 10 February 2017 was 10 April 2017 (**Deadline 7**). It should be noted that the final [Rule 17 letter](#) issued during the Examination requesting further information by the Panel is dated 07 April 2017 with a deadline of receipt thereof for D7.

This was the last request made by the Panel.

You will be aware that the Panel yesterday, issued their Recommendation Report (RR) to the Secretary of State (SoS) and the SoS now has until 11 October 2017 to issue a Decision on the proposal. Our website has been updated accordingly to reflect this <https://infrastructure.planninginspectorate.gov.uk/projects/london/silvertown-tunnel/?ipcsection=overview>

You note in your correspondence below that the Applicant has advised you that PINS has issued a request to "*provide updates on legal agreements since the closure of the examination*". As the Case Manager on this project I can confirm that we have not issued any such correspondence on behalf of PINS or the Panel, however as the Panel's RR was issued to the SoS yesterday, it may be that the SoS has issued such a request from the Applicant.

You may wish to seek clarity from the Applicant as to whether such a request was made by PINS (if so this was not from Major Applications and Plans) or whether the request was made by the SoS, the latter is more than likely possible.

I trust you find this response satisfactory, however if you require any further information please do not hesitate to contact me or the Silvertown Tunnel case team.

Kind Regards

Emré Williams
Case Manager
Major Applications and Plans

The Planning Inspectorate, Temple Quay House, Temple Quay, Bristol BS1 6PN

Direct Line: 0303 444 5069

Helpline: 0303 444 5000

Email: emre.williams@pins.gsi.gov.uk

Web: infrastructure.planninginspectorate.gov.uk (National Infrastructure Planning)
Web: www.gov.uk/government/organisations/planning-inspectorate (The Planning Inspectorate)

Twitter: @PINSgov

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From: silvertowntunnel
Sent: 12 July 2017 10:57
To: Emre Williams
Subject: FW: Attn: Emre Williams RE: Silvertown Tunnel - Updates on Legal Agreements

From: James.Burton@newham.gov.uk [<mailto:James.Burton@newham.gov.uk>]
Sent: 12 July 2017 10:48
To: silvertowntunnel
Cc: Catherine.Knight@oneSource.co.uk; murray.woodburn@newham.gov.uk; Amanda.Reid@newham.gov.uk
Subject: Attn: Emre Williams RE: Silvertown Tunnel - Updates on Legal Agreements

Good morning Emre,

Further to our telephone discussion this morning, I would be grateful if you could confirm if the Planning Inspectorate has issued a request to Transport for London to provide updates on legal agreements since the closure of the examination?

Transport for London have this morning advised the Council that such a request has been made. It would appear to me though that such a request would be contrary to Rule 17 (further information) of *The Infrastructure Planning (Examination Procedure) Rules 2010* which provides the Examining Authority the power to request further information "at any time before the completion of the examination"?

I'd be most grateful if you could confirm, and provide a copy of any such request, if one was made.

Thanks in advance and kind regards,

James Burton | Principal Planner | Major Development
Regeneration & Planning
London Borough of Newham
Newham Dockside | 1000 Dockside Road | London E16 2QU
DDI: 020 3373 6944 | Int: 36944

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James Burton

From: Rowe David (ST) <DavidRowe@TfL.gov.uk>
Sent: 13 July 2017 09:34
To: Chester Neil; James Burton
Cc: Murray Woodburn; Catherine Knight; Amanda Reid
Subject: Re: Silvertown Tunnel - LBN legal agreement

James and colleagues

Apologies for my mistake in advising we were still being chased on this matter by ExA post Examination.
David

From: Chester Neil
Sent: Thursday, July 13, 2017 09:29 AM
To: James.Burton@newham.gov.uk <James.Burton@newham.gov.uk>; Rowe David (ST)
Cc: murray.woodburn@newham.gov.uk <murray.woodburn@newham.gov.uk>; Catherine.Knight@oneSource.co.uk <Catherine.Knight@oneSource.co.uk>; Amanda.Reid@newham.gov.uk <Amanda.Reid@newham.gov.uk>
Subject: RE: Silvertown Tunnel - LBN legal agreement

Thanks James.

Obviously I wasn't at the meeting and so don't know exactly what David said, but I'm not aware that the ExA has chased us since the close of the examination. It may have been that in briefing David prior to the meeting I had confused him on this point as we were chased on numerous occasions *prior* to the close of the examination – both formally by the ExA and informally by the case officer. In respect to the latter, he informally advised immediately prior to deadline 7 that if we didn't submit final and signed agreements by the end of the examination, we should submit them when the ExA recommendation report was passed to the Secretary of State. This advice was given in a phone conversation so I can't evidence it but as you can see from my email, there is plenty of precedent on other schemes to corroborate this advice.

It's probably worth me letting you know James, that I'm on leave from COB 26 July and won't be returning until the end of August. Whilst Catherine Timson will be covering my work on Silvertown, if you are minded to progress the legal agreement then it would be helpful to get some of the principles agreed prior to me disappearing.

Happy to discuss anything in this or my previous email as always.

Thanks

Neil

From: James.Burton@newham.gov.uk [mailto:James.Burton@newham.gov.uk]
Sent: 13 July 2017 09:03
To: Chester Neil; Rowe David (ST)
Cc: murray.woodburn@newham.gov.uk; Catherine.Knight@oneSource.co.uk; Amanda.Reid@newham.gov.uk
Subject: RE: Silvertown Tunnel - LBN legal agreement

Thanks Neil,

Receipt acknowledged, we'll consider all of these points and come back to you in due course.

I think I understand, but to be perfectly clear, is it that David was mistaken when he advised us that since the close of the Examination the Examining Authority had chased TfL to provide updates on a legal agreement? I appreciate you weren't able to make it to the meeting, so perhaps David can advise before you confirm.

Otherwise, as agreed in the meeting, we would appreciate copies of these requests.

Kind regards,

James Burton | Principal Planner | Major Development
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From: Chester Neil [<mailto:Chestene@tfl.gov.uk>]
Sent: 12 July 2017 21:11
To: Catherine Knight; Amanda Reid
Cc: Murray Woodburn; James Burton; Rowe David (ST)
Subject: Silvertown Tunnel - LBN legal agreement

Amanda, Catherine,

Further to your discussion with David Rowe this morning and the email exchange between Amanda and David, please find attached:

1. Legal advice from Pinsent Masons to TfL setting out the rationale for not using an agreement under section 106 of the TCPA; and for the alternative proposed by TfL (Word .doc titled 'Note on the application of section 106 to the Silvertown Tunnel).
2. A copy of the 'red line plan' and limits of deviation as applicable to Newham (the .pdf entitled the Silvertown Plans).
3. The legal agreement submitted to the Examining Authority at Deadline 7 (REP7-043) can be found towards the end of the document found [HERE](#). This is the latest version of the agreement that was sent to Newham and by TfL to the ExA. I can forward a copy of my email shortly after the close of the examination that details my queries on the 'LBN version' of the agreement if that helps.

In answer to the query as to why it is appropriate to submit the legal agreement post-examination but pre-decision, it is because this is an outstanding matter which was not resolved during the examination – rather than new evidence. Inevitably, because the agreement was discussed during the examination, with oral submissions being made at the DCO hearing on 29 March, the ExA will have reported to the Secretary of State that the agreement has not yet been resolved. That report was issued to the Secretary of State earlier this week, so it is reasonable that the SoS would expect an update on this to be forthcoming in the next 3 months (i.e. before a decision must be made). Indeed, as TfL submitted into the examination at Deadline 7 as part of its update on the LBN agreement (in document reference REP7-043): "Following the close of the examination, the Applicant will submit a copy of any completed legal agreement to the Secretary of State as soon as possible, such that it can be taken into account during the decision-making process".

Applicants continuing discussions with stakeholders post-examination but pre-decision is common practice, and the Secretary of State regularly seeks updates from applicants and other stakeholders in the three-month decision period. It wouldn't be appropriate to list every example in this email, but examples of post-examination correspondence can be found [HERE](#) in the case of the Keuper Gas Storage Project (including informing the Secretary of State of the completion of a section 106 agreement post-examination), [HERE](#) in the case of the North London Heat and Power Project (including confirmation that a legal agreement between the applicant and National Grid had been completed post-examination), [HERE](#) in the case of the York Potash Harbour Facilities Project (including a replacement section 106 agreement completed post-examination to rectify some errors) and [HERE](#) in the case of the A556 Project (including an agreement entered into by the applicant and a local authority under section 1 of the Localism Act 2011 post-examination).

In terms of whether LBN entering into an agreement would prejudice its previous submissions, I don't think this would be the case. Clearly the agreement would, it is hoped, deal with some issues which were raised during the examination. However, as discussed with David, I would propose to submit any completed legal agreement together with an agreed form of words (which could be incorporated into the covering email/letter to the Secretary of State) making clear that the agreement only deals with LBN's representations made on X, Y and Z and its other submissions all remain outstanding. I'd hope we could agree a form of words, but in any case, LBN would be free to submit something separate to our covering letter on this point. A form of words I would propose is along the lines of:

"In completing this legal agreement, the London Borough of Newham acknowledges that its examination submissions in respect of the legal agreement are no longer valid (i.e. section 8 of its final position statement submitted at Deadline 7). However, both the Applicant and the London Borough of Newham equally acknowledge that the agreement does not satisfy all of the London Borough of Newham's concerns raised to date."

We can and should discuss the proposed form of words in more detail and I'd welcome that discussion if we near an agreement.

I hope this is helpful but if you've got any questions or want to discuss further then please let me know.

Thanks

Neil

Neil Chester
Consents & Environment Manager
Consents Team

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