

**Thames Tunnel proposal - Adequacy of consultation representation
report to be submitted to the Planning Inspectorate in accordance with
Section 55 of the Planning Act 2008**

Introduction

The Planning Inspectorate (PINS) has received an application from Thames Water for the proposed Development Consent Order of the Thames Tunnel. PINS must decide by Friday 28th March whether or not to accept the application in accordance with Section 55 of the Planning Act 2008.

When deciding whether it may accept the application PINS must, amongst other matters, have regard to any representation received from the Council about the adequacy of consultation undertaken by the applicant at the pre-application stage. Wandsworth Council has therefore been invited to inform PINS whether it considers that the applicant has complied, in relation to the proposed application, with the following duties:

- Duty to consult (Section 42 of the Planning Act 2008)
- Duty to consult the local community (Section 47 of the Planning Act 2008)
- Duty to publicise (Section 48 of the Planning Act)

The Council has been given until Thursday 14th March in which to respond to PINS under this consultation. As part of its duty under this consultation, PINS has provided the Council with a copy of the developer's 'Consultation Report' which details how Thames Water has complied with the procedures of the Planning Act 2008 relating to consultation and publicity. The content of the Consultation Report has been assessed and is detailed below. This report will form the Council's response to PINS.

Duty to consult (Section 42 of the Act)

Duty to consult

The applicant must consult the following about the proposed application—

- (a) such persons as may be prescribed,**
- (b) each local authority that is within section 43,**
- (c) the Greater London Authority if the land is in Greater London,
and**
- (d) each person who is within one or more of the categories set
out in section 44.**

Sub-section (a) refers to persons as may be prescribed. These persons are listed in Schedule 1 to the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. This list of consultees has been

included in the consultation report and it is considered that Thames Water has complied with its duty under subsection (a).

Thames Water has complied with Sub-section (b) as it has consulted with Wandsworth Borough Council along with bordering Local Authorities.

Thames Water has complied with Sub-section (c) as it has consulted with the Greater London Authority.

Sub-section (d) of section 42 requires Thames Water to consult each person who is within one or more of the categories set out in section 44. These would include amongst others owners, lessees, tenants or occupiers of the land included within the boundary of the proposal; or those who are interested in the land or have power to sell and convey the land or to release the land. Thames Water has provided details of how they have complied with subsection (d) and the Council considers that they have accorded with the provision. However the list of those consulted has not been provided and the Council is unable to comment as to whether all persons covered in section 44 have been included.

In view of the above it is considered in the Council's opinion that the developer's duty to consult under Section 42 has been carried out.

Duty to consult the local community (Section 47 of the Act)

Duty to consult local community

- (1) The applicant must prepare a statement setting out how the applicant proposes to consult, about the proposed application, people living in the vicinity of the land.**
- (2) Before preparing the statement, the applicant must consult each local authority that is within section 43(1) about what is to be in the statement.**
- (3) The deadline for the receipt by the applicant of a local authority's response to consultation under subsection (2) is the end of the period of 28 days that begins with the day after the day on which the local authority receives the consultation documents.**
- (4) In subsection (3) "the consultation documents" means the documents supplied to the local authority by the applicant for the purpose of consulting the local authority under subsection (2).**
- (5) In preparing the statement, the applicant must have regard to any response to consultation under subsection (2) that is received by the applicant before the deadline imposed by subsection (3).**

(6) Once the applicant has prepared the statement, the applicant must publish it—

(a) in a newspaper circulating in the vicinity of the land, and

(b) in such other manner as may be prescribed.

(7) The applicant must carry out consultation in accordance with the proposals set out in the statement.

In accordance with subsection (1) Thames Water prepared a statement of how it proposes to consult about the proposed application with the people living in the vicinity of the land. This Statement of Community Consultation (SoCC) is contained within the consultation report. Details of the consultation methods are contained within the SoCC.

The Council was consulted on the content of the SoCC in December 2009 to March 2010; in May 2010 to June 2010; and due to changes in legislation again in June 2011 to July 2011. In doing so Thames Water has complied with Sub-sections (2), (3) and (4).

Sub-section (5) requires Thames Water to have regard to the Council's response to the consultation referred to under Sub-section (2). The Council is satisfied that Thames Water has generally complied with Sub-section (5) with comments raised being given due consideration in the development of the proposed application.

The SoCC was printed in the Evening Standard thus complying with Sub-section (6)(a). It is unclear whether Sub-section 6(b) has been addressed.

Sub-section (7) requires Thames Water to carry out the consultation in accordance with the proposals set out in the statement. The Council is satisfied that Thames Water have carried out the consultation in accordance with the SoCC.

Duty to publicise (Section 48 of the Act)

Duty to publicise

(1) The applicant must publicise the proposed application in the prescribed manner.

(2) Regulations made for the purposes of subsection (1) must, in particular, make provision for publicity under subsection (1) to include a deadline for receipt by the applicant of responses to the publicity

Thames Water's Consultation report provides details of how it has complied with Section 48. A copy of the Section 48 notice is referenced in Appendix of

the consultation report and shows that it was publicised in the prescribed manner as detailed in paragraph 3 part 4 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

The press notice also provided a deadline for the receipt of responses thus complying with para (2) of Section 48. The timescale (16th July – 5th October) was considered acceptable.

Duty to take account of responses to consultation and publicity (Section 49 of the Act)

Duty to take account of responses to consultation and publicity

(1) Subsection (2) applies where the applicant—

(a) has complied with sections 42, 47 and 48, and

(b) proposes to go ahead with making an application for an order granting development consent (whether or not in the same terms as the proposed application).

(2) The applicant must, when deciding whether the application that the applicant is actually to make should be in the same terms as the proposed application, have regard to any relevant responses.

(3) In subsection (2) “relevant response” means—

(a) a response from a person consulted under section 42 that is received by the applicant before the deadline imposed by section 45 in that person's case,

(b) a response to consultation under section 47(7) that is received by the applicant before any applicable deadline imposed in accordance with the statement prepared under section 47, or

(c) a response to publicity under section 48 that is received by the applicant before the deadline imposed in accordance with section 48(2) in relation to that publicity.

Thames Water's Consultation report has provided details of all responses received under Sections 42, 47 and 48 and how it has taken account of these. This includes how they have addressed the Council's response as well as feedback from the public and prescribed bodies.

In response to Section 49 the following paragraphs contain a breakdown of the issues the Council has regarding the adequacy of Thames Water's

response to the Council's comments relating to the consultation on sites effecting Wandsworth:

Putney Embankment Foreshore

Ref: 14.6.34: In the Section 48 consultation the Council responded to Thames Water regarding the location of the electrical and control kiosk. The Council's preferred option would be to locate the kiosk in the disused vaults and considers that there may still be opportunity to do so. The Council still seeks this as the preferred solution and would welcome discussions on how this could be achieved.

The Council also states that it was unable to support the use of Glendarvon Road for use by heavy construction vehicles as part of its Section 48 response. While the issue is listed in paragraph 14.6.24 it is not contributed to Wandsworth but a community consultee. The issue of the unsuitability of nearby roads to cope with heavy construction vehicles is not just related to Glendarvon Road but the whole of the area around Putney Embankment Foreshore. The Council considers that this area would suffer from the use of heavy construction vehicles either because the carriageways are not wide enough or are heavily trafficked and therefore considers that the use of the river for transportation of construction materials is maximised.

King Georges Park

Ref: 16.6.17: In the Section 48 consultation the Council responded to Thames Water regarding the proposed 'depression' flood risk mitigation measure which was agreed by Thames Water and the Environment agency. The Council made clear that the proposed depression was not acceptable however, no alternative solution has been proposed and no response was given regarding the concerns the Council has with the proposal. The Council does not support the current Thames Water proposal for a flood risk management solution.

The Council also has reservations as to whether residents understand the impact of the flood risk mitigation solution upon the park as the detail has not been explained in the consultation material.

Thames Water has indicated that they will continue to discuss the proposals with both the Environment Agency and the Council and this is welcomed.

Kirtling Street

As a result of the Thames Tunnel proposals there are changes required at the CEMEX site which could impact on proposed development for the adjacent Cringle Dock site. It is accepted that these proposals are a recent modification and are to an extent still forming. However, the Council considers that no specific consultation has taken place on the impact the tunnel proposals would have on the Cringle Dock proposals and account should be taken to ensure that there are no significant consequences for the delivery of a Cringle Dock scheme or the wider regeneration of the Nine Elms Opportunity Area.

Nine Elms provides the most significant redevelopment opportunity in central London. The Opportunity Area Planning Framework as reflected in the Council's Site Specific Allocations Document identifies the potential capacity to provide around 16,000 new homes and 20,000-25,000 new jobs in the Opportunity Area as a whole.

The consultation material states that discussions were had with the riverboat community at Nine Elms Pier; however no evidence has been identified as to the outcome of those discussions and whether Thames Water's response adequately addresses the concerns of the riverboat community.

Heathwall Pumping Station

The Council considers that as part of the consultation for Heathwall Pumping Station Thames Water could have worked further to scope out the full range of options for integration with the wider regeneration area given the comments of the Council and developers of neighbouring sites.

In addition, a comment was raised over the width of the riverside walk in the Council's Section 48 consultation response. This comment has been inadequately addressed in paragraph 22.6.9 of the consultation and not referred to or responded to elsewhere in the report.

Falconbrook Pumping Station

The worksite is adjacent to residential and community uses. Paragraph 18.4.22 states that the design should include a Landscape Management Strategy however it does not appear to be noted in the consultation report, although there is reference to it in 18.4.26 (d).

Conclusion

It is for the consideration of the Planning Inspectorate to determine whether the application submitted by Thames Water meets the requirements of the Planning Act 2008 for the purposes of acceptance. However the Council advises PINS to take into account the contents of this report before making its decision.

The Council considers that Thames Water has complied with the requirements of Section 42, 47 and 48 of the Planning Act 2008.

Other statutory consultees may have wished to comment at this stage but have not been given the opportunity under Section 55 of the Planning Act. However, the Council does not consider it appropriate for it to comment on their adequacy of consultation.

Concern is expressed that further assessment has not been undertaken as part of the pre application work regarding the effect upon the Cringle Dock proposals and the wider effects that this may have on the development of the Nine Elms Opportunity Area.

It is also considered that the issues around the potential impact of flood risk mitigation work to King Georges Park and surrounding areas are still to be resolved.

While the outstanding matters can be dealt with at a future date, most likely through the requirements that are part of the DCO, it is considered that more could have been done to satisfy the Council prior to the DCO submission.

Due to the short timeframe which the Council has had to prepare this report the Council intends to provide further details of the issues at the next stage of consultation.