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**By Email**

**Date:** 14<sup>th</sup> March 2013

Dear Sir/Madam

**Section 55, the Planning Act (as amended by the Localism Act 2011)**

**Application by Thames Water Utilities Ltd for the proposed Development Consent Order for the Thames Tideway Tunnel (WW010001)**

Thank you for your letter dated 28 February 2013 consulting the London Borough of Southwark on the adequacy of consultation carried out by Thames Water on the proposed Thames Tideway Tunnel project.

For clarification, there are two sites located within the London Borough of Southwark where proposals are located:

**Chambers Wharf** - where it is proposed to receive the main tunnel drive from Kirtling Street and to drive the main tunnel to Abbey Mills Pumping Station.

**Shad Thames Pumping Station** – where works are proposed to control the Shad Thames Pumping Station combined sewer overflow.

In addition, there are two further sites where works are proposed which, whilst not located within the London Borough of Southwark, are likely to result in impacts upon Southwark:

**Earl Pumping Station** - where it is proposed to connect the Earl Pumping Station combined sewer overflow to the Greenwich connection tunnel in order to convey flows to Chambers Wharf where they would be transferred into the main tunnel.

**Blackfriars Bridge Foreshore** – where it is proposed to intercept the existing Fleet Main combined sewer overflow, connect to the northern low level sewer No.1, and connect them both to the main tunnel.

## **Introduction**

The Planning Act 2008 (as amended by the Localism Act 2011) requires the applicant to comply with the following duties as part of the pre-application consultation process:

- Duty to consult (Section 42)
- Duty to consult the local community (Section 47)
- Duty to publicise (Section 48)

Over a period of approximately three years, the applicant has procedurally carried out consultation steps pursuant to these sections of the Planning Act and has also carried out further informal engagement with the Council and other consultees including local residents. However, in order for consultation to be adequate and to accord with Section 55 of the Planning Act (including the requirement for applicants to have regard to the published guidance) it is essential that the applicant makes sufficient information available to allow consultees to properly understand the proposals. The consultation, including the Section 48 publicity, also needs to be carried out at an appropriate time in the process in order that the views of people responding to the publicity can be used to shape and inform the scheme and proposed mitigation.

The associated guidance produced on the pre-application process requires that consultation should be thorough, effective and proportionate and that consultees will need sufficient information on a project to be able to properly recognise and understand the impacts.

Without the availability of the appropriate information, it is not possible for consultees to make properly informed contributions to help shape the development. Everyone with an interest in the application should have the opportunity to be engaged in the process at an early opportunity whether they are a statutory consultee, a local resident or any other member of the public.

For the reasons set out in detail below, the Council raises strong concerns about the effectiveness and meaningfulness of the consultation and considers that it has not complied with the requirements of Section 55(e) of the Planning Act 2008.

### **Section 48 – Duty to publicise**

Section 48 of the Planning Act (2008) requires the applicant to publicise the proposed application in accordance with the Infrastructure Planning (Applications: Prescribed Forms & Procedure) Regulations 2009, and include a deadline for receipt of responses to publicity.

Thames Water carried out its Section 48 publicity of the Thames Tideway Tunnel from Monday 16 July to 5 October 2012. However, the Council has serious concerns about the timing and purposefulness of the Section 48 publicity, which did not provide interested parties with an adequate opportunity to engage in the pre-application process and have their comments taken into consideration.

Section 48 publicity is intended to be clearly part of the pre-application consultation process. Guidance produced at the time (to which applicants must have regard in accordance with section 50(3) of the Planning Act) states that *this publicity is an integral part of the local community consultation*. This wording has been carried

forward into paragraph 41 of the revised pre-application process guidance published in January 2013.

In spite of this guidance, Thames Water has separated its s48 publicity from the remainder of its consultation which is contrary to the pre-application consultation requirements of the Planning Act. The earlier rounds of consultation were aimed at statutory consultees, landowners and the community residing in the immediate area around the site. Indeed Thames Water only notified those residents living within 250m of each site as set out in its Statement of Community Consultation. Therefore, the section 48 publicity represents the only formal opportunity for the wider general public to engage in the process, provide comments and help to shape the application proposals.

Instead of referring to the s48 publicity as a consultation exercise, Thames Water made reference on its website to the finalised plans being published giving the indication to the general public that there would be no opportunity to change them. A press release made at time of publicity (<http://www.thamestunnelconsultation.co.uk/2012/07/13/finalised-thames-tideway-tunnel-plans-published/>) also gave a strong indication that the consultation process had finished and the plans had been finalised including wording such as '*finalised proposals*', '*following extensive consultation*', '*the proposals are due to be submitted*' and '*the formal consultation process may now be over*'.

This is contradictory to the intention of the Planning Act and associated statutory guidance which intends for section 48 publicity to be an integral part of an applicant's pre-application consultation process. In this case, people reading the publicity and referring to the project website would be distinctly of the impression that finalised plans had been published and changes were not possible. It is recognised that the publicity notice does note in small print that any responses to the publicity would be taken into account but this is not the overall impression that is given by the publicity.

As a result it is likely that a reasonable person reading the publicity material would have considered that there is no point in responding as the strong impression had been given that the project had been finalised ready for submission.

This failure of the s48 publicity to be an integral part of the applicant's pre-application consultation process represents a significant failing of the applicant's pre-application consultation process, contrary to the Planning Act 2008 and the associated statutory guidance.

### ***Consultation on site selection methodology***

The Council considers that the information made available concerning the site selection process has not been sufficient to allow either the Council or residents to properly engage in the process. The lack of the appropriate information during the pre-application stages has resulted in a flawed and inadequate consultation.

The Council previously raised concerns with the Site Selection methodology in our Phase One consultation response, sent to Thames Water on 12 January 2011. This response stated that the methodology used to select the preferred sites was far from clear and there was no attempt to use an appropriate weighting mechanism to compare shortlisted sites and evaluate impacts which in turn would inform the sequential approach to site selection. The Council urged Thames Water to reconsider the selection of sites using a systematic and transparent mechanism for assessing the impacts. Many residents of Southwark also raised similar concerns

that sufficient information had not been forthcoming from the applicant on the site selection process making it impossible to properly comment on the proposals.

The Council's response to the Section 48 Publicity again highlighted our concerns with the Site Selection methodology. The response, sent to Thames Water on 5 October 2012, stated that the Council remained unsatisfied that the site selection process followed by Thames Water had been transparent or consistent. The process, described in section R.2 of the Section 48 Report on site selection process (Volume 5 / Eastern site Appendices R to W) involved the creation of a long-list, assessment of long-listed sites to create a short-list, preparation of an engineering options report and assessment by way of a multi-disciplinary optioneering workshop.

Chambers Wharf was included on the original long-list of sites but then excluded from the short-listed sites. At the phase one public consultation stage, Abbey Mill Pumping Station was identified as the preferred site for either a main tunnel shaft or reception site. Thames Water stated that the tunnelling strategy, as described in the phase one consultation, was informed by the Engineering Options report (Spring 2010). The reasons for the identification of Abbey Mills Pumping Station as the preferred site are set out in paragraph W.2.50 of Appendix W (Report on Site Selection Process) and include the fact the Thames Water owns the land and that the site could be developed in accordance with planning policy. Paragraph W.2.55 reiterates that at the phase 1 public consultation stage, Thames Water's view was that Abbey Mills Pumping Station is owned by Thames Water and "should be utilised as far as is reasonably practical".

In order to assess the suitability of sites, Thames Water used the criteria identified in Table 2.2 of the Site Selection methodology (engineering, planning, environment, socio economic and community and property). However, it remains far from clear why Thames Water has selected Chambers Wharf, rather than Abbey Mills, as its main drive site. The only area in which the outcome of the assessment favours Chambers Wharf appears to relate to transport, in that with the extension of the jetty, it has the capacity to accommodate larger barges than Abbey Mills. This one factor appears to have overridden all other positive attributes of Abbey Mills pumping station. However, the initial information on Thames Water's transport strategy which was heavily reliant on the road network for disposal of waste suggests that this capacity is far from being optimised, in turn undermining this reason for site selection.

In response to the concerns raised by the Council and residents during the phase two consultation, Thames Water indicated that it recognised that given the locations in which it is seeking to construct and operate the tunnel, many of the shortlisted sites are constrained (main report on Phase two consultation, table 22.4). However, it remains unclear how Thames Water has evaluated the criteria it set out in the site selection methodology and how Thames Water has balanced the factors which have resulted in Chambers Wharf being identified as the most suitable site for a main tunnel shaft.

The information provided on the site selection process has not been sufficient to allow consultees to come to an informed view on the site selection process. The process has not been either transparent or consistent. In particular, no details have been provided of how the 'optioneering workshops' undertaken by the applicant to inform site selection have weighted each of the relevant selection criteria and what methodology was used for site selection. Transportation reasons seem to be paramount in the decision to utilise Chambers Wharf rather than Abbey Mills as a main drive site though no detail was provided, as part of the consultation process, on how this has been weighted against other factors such as the impact upon local amenity, schools and residential living conditions.

This lack of both the necessary information and transparency in the site selection process represents a major failing in the applicant's pre-application consultation process and is contrary to the statutory guidance requiring that consultees are provided with sufficient information on a project in order to properly consider its impacts and meaningfully engage in the process.

### ***Consultation on construction impacts and Code of Construction Practice***

Despite strong concerns being raised by the Council and local residents in terms of the impacts of the six year construction process, the Council does not consider that sufficient information has been provided to consultees to properly engage on the detail of proposed mitigation measures to alleviate the impacts of the construction works. This is contrary to the statutory guidance requiring sufficient information to be made available in order for consultees to properly understand impacts so appropriate mitigation can be agreed.

In spite of requests from the Council, the applicant has not provided sufficient detail on the specifics of the construction works and activities making it difficult for consultees to properly understand a) whether the site is acceptable for the proposed works and b) what mitigation is necessary. For example, in order to properly understand and assess the impacts of the construction activities detailed drawings and information on the areas of site used for different activities and at different times should have been provided at the pre-application consultation stage. Instead, only general indicative drawings have been provided which have not contained the level of detail required to properly understand the full effects on residential properties and schools in close proximity to the site.

Despite strong concerns being raised, further information on the construction process has not been forthcoming and the proposals have not adequately responded to concerns raised, particularly in terms of the mitigation measures required in order to alleviate the impacts of construction works upon the surrounding area.

Code of Construction Practice Part B is intended to provide specific details of mitigation measures for specific sites but has not been provided to local communities during the consultation process. This document is key to understanding the mitigation to be provided in order to protect local amenities. This is particularly important given the strong objections raised by residents and others to the impacts resulting from construction works on the respective sites. Whilst Part A of the CoCP has been available for comment, this is a generic non-site specific document and does not set out the level of detail required for parties to properly understand the specific impacts of the works for each site and how these will be mitigated.

Part B of the Code of Construction Practice for Earl Pumping Station has not been provided to Southwark Council officers until very late in the process (January 2013), meaning that it was too late for comments to be fed into the development details submitted with the final application (by which time the Council has been informed that the application proposals had been finalised). This is despite the site being located in very close proximity to the boundary with Southwark with properties within Southwark likely to be affected by the works. The Council has therefore not had a meaningful opportunity to comment at the pre-application stage on the specific mitigation measures being proposed for this site.

It is also pertinent to the inadequacy of consultation that proper pre-application engagement has not been carried out with the Council on the design principles, transport impacts, proposed requirements and legal obligations for Earl Pumping

Station, and also Blackfriars Foreshore (which is likely to have transport implications for Southwark), with these documents only being provided in January 2013, too late for consultees to help shape and input into the final application proposals.

The Council also considers that the applicant has not carried out meaningful consultation on the impact of the construction works upon schools, particularly the three schools located in close proximity to Chambers Wharf. Whilst information has been provided on generic impacts, no analysis has been consulted upon in terms of the impacts of approximately six years of construction works upon the learning experience and development of pupils. Furthermore the information on specific impacts such as noise has only been carried out for St Michaels School in the environmental information provided, with a careless assumption that as this is the closest school to the site it will represent the worst case scenario. This does not take into account factors such as wind direction, construction traffic or the location of works on the site. The Council has fed back concerns regarding the potential road safety impact of lorry movements on Bevington Street (past Riverside Primary School) at school start and finish times, but the obvious mitigation measure, to avoid lorry movements during these times, was not addressed within the TA. Such a lack of sufficiently detailed information has not allowed consultees to come to properly informed conclusions on the impacts upon the learning experience of pupils at the schools.

The impacts arising from construction and how they are mitigated is likely to be a major issue in the determination of the applicant and the applicant's failure to provide the necessary information, including the measures to mitigate and control impacts, is contrary to the statutory guidance on the pre application process.

### ***Environmental Data and Information***

In order for adequate consultation to be carried out, sufficient environmental information needs to be made available to those wishing to be involved in the process.

The publication of the baseline data that has been used to inform the site selection process has often been subject to delay or at times, not available at all. The environmental information provided only contains summaries of the methodologies used to inform the site assessments and much of the baseline data has not been provided. The Preliminary Environmental Information Report (PEIR) did not include adequate information on the carbon emissions resulting from the project, consideration of the impact on climate, or an outline of the main project alternatives together with the main reasons for the applicant's choice. The Council considers that without access to such important information, it has not been possible for the Council, residents or other consultees to adequately assess the impact of the proposals and properly participate in the pre-application process.

The applicants have also not provided adequate archaeological information at the pre-application stage to enable an understanding of the archaeological significance of the site. The applicants had been advised to undertake a desk-based assessment and archaeological evaluation of the sites, particularly Chamber's Wharf. The applicants have not undertaken an archaeological evaluation or supplied desk-based studies of the sites in Southwark to enable adequate consultation. It has therefore not been possible to adequately assess the impacts of the proposals as the appropriate baseline information has not been supplied.

This represents further evidence of insufficient information being provided to consultees, contrary to the statutory guidance.

### ***Consultation on Health Impact Assessment***

Despite holding two initial workshops on the production of a Health Impact Assessment (HIA) to support the Development Consent Order, no initial draft of such a document has been submitted to the Council for our comment. The second workshop (in early summer 2012) focussed on the production of community profiles of the populations to be affected and we were told we would be sent the community profiles later in the summer. This would have enabled Council and Public Health Departments, using their detailed knowledge and data to check the accuracy of the community profiles and would also have been helpful in helping council officers (from departments such as education, transport, environmental protections etc) to formulate responses.

As a normal part of stakeholder consultation we would also have expected to see a draft version of the HIA at an earlier stage for Public Health Departments to provide feedback and comments in order to ensure the maximum accuracy and usefulness of the document. However, despite requests for this information both via email and at the progress meetings, no copy of these documents has been provided.

We consider that the absence of such crucial information has restricted our ability to engage with the Thames Water effectively on the preparation of the Development Consent Order and we consider that this has prejudiced our position to provide appropriate responses to Thames Water on the likely impacts of the proposals on residents in Southwark.

### ***Equalities Impact Assessment***

A key consideration in pre-application consultation is equality and making sure that consultation has been undertaken in accordance with the Equality Act 2010. The applicant has failed to provide an Equalities Impact Assessment during the pre-application process and has not made reference in its consultation statement as to how equality has been considered in the pre-application consultation. This is a further example of insufficient information being provided to consultees. Further, in the absence of such information it is not clear how the decision maker will be able to discharge its own duties under the Equality Act 2010.

### ***Conclusions on Adequacy of Consultation***

Whilst the applicant has sought to carry out consultation on the proposals in response to sections 42, 47 and 48 of the Planning Act 2008 (as amended), the Council raises very strong concerns about the adequacy of this consultation which has not met the requirements of the Planning Act and associated statutory guidance on the pre-application process.

The timing and purposefulness of the section 48 publicity has led to this important and integral part of the consultation process being separated from the earlier consultation and has not provided a meaningful or adequate opportunity for people who might have otherwise been engaged by the publicity to properly engage with the process and help to influence the final application proposals. This is contrary to statutory guidance and is a major inadequacy of the applicant's consultation.

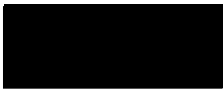
The lack of provision of key environmental and other information regarding important elements of the project has meant that it has not been possible for participants to give proper consideration to matters such as site selection and the controls and mitigation that would be required to protect the areas around the sites. Relevant

information on matters such as those affecting local schools and the Health Impact Assessment has not been forthcoming as part of the consultation process making it difficult for respondents to properly comment in a way which can help to influence the development proposals.

The applicants lack of consultation on documents for sites adjacent to, but still likely to affect the Borough, suggests a lack of a proper understanding on the part of the applicant as to what the full impacts of the proposal are and has prevented key consultees from being properly involved in the consultation process.

The Council concludes that Thames Waters pre-application consultation has been inadequate and does not comply with requirements of Section 55(e) of the Planning Act.

Yours faithfully,

A black rectangular redaction box covering the signature of Simon Bevan.

*S.P.* **Simon Bevan**  
**Interim Director of Planning**