

Rt Hon SIMON HUGHES MP

Member of Parliament for Bermondsey & Old Southwark
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For the attention of Mark Wilson
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Application Number: WW010001

Dear Mr Wilson,

2nd December 2013

Thames Tideway Tunnel (TTT) application (ref: WW010001): Written Representation

A.Introduction

- 1.I write further to my written representations of 28th May, 28th August, 4th November and my oral submissions of 12th September and 22nd November. I confirm that I remain unpersuaded that the proposed Thames Tideway Tunnel is the best proposal available for meeting the obligations of the UK to improve water quality in the Thames, or that the present proposal and its funding are fair to those who pay water rates to Thames Water and taxes to the UK Treasury. The submissions which I have made orally and which I make here are without prejudice to these wider concerns and objections.
- 2.My principal submission to the inquiry is therefore that the present draft development consent order (DCO) should be amended, in particular to remove Chambers Wharf as a drive site, and make provision for Abbey Mills as a drive site in its place, and that if this amendment is not made by Thames Water, the Secretaries of State should have reject the application.
- 3.I believe such a new scheme option could be incorporated lawfully within the examination and determination of this application and any approved DCO and that the relevant Secretaries of State should agree to this.

B.Request for Examining Authority to make interim recommendation to Secretaries of State and to extend inquiry accordingly

- 4.I refer to powers in the Planning Act 2008 which allow the Secretary of State to amend an applicant's DCO.
- 5.The most important submission I wish to make is to urge the Examining Authority to make an interim recommendation to the relevant Secretaries of State as soon as possible to extend the examination of the Thames Tideway Tunnel application to include

consideration of alternative scheme options for the tunnel, in particular as they affect Chambers Wharf in my constituency and Abbey Mills.

6. I associate myself, endorse and support the arguments made by LB Southwark and other interested parties who have made similar proposals in their written submissions and in their oral submissions of 15th and 22nd November.
7. The Planning Act 2008 section 114 provides powers to the Secretary of State (the decision maker) to both grant or refuse a DCO, and to make a new DCO that is different to the order sought by the applicant. The power in s 114(1) is to grant 'an order', which is nowhere specified as being limited to an order granting consent to the application made by the applicant.
8. Section 114(2) of the Act allows the Secretary of State to make regulations to regulate 'the procedure to be followed if the [Secretary of State] proposes to make an order granting development consent on terms which are materially different from those proposed in the application.' In correspondence¹ in 2011 from the then Parliamentary Under Secretary of State Bob Neill MP to Sir Michael Pitt, the then Chair of the Infrastructure Planning Commission, the Minister outlines the scope of the powers in Section 114, which I believe clearly demonstrates that the Secretary of State (the decision maker) has the powers to grant a new order on different terms to the original application.

My Department has received representations questioning whether section 114(1) empowers the decision-maker to make a development consent order in different terms from that applied for. This was the subject of an amendment laid at the Lords Report stage of the Localism Bill, and in response, Earl Attlee confirmed the Government's view, that section 114(1) clearly places the responsibility for making a development consent order on the decision-maker, and does not limit the terms in which it can be made. It follows from this that the decision-maker has the power under section 114(1) to make a development consent order which is different from that originally applied for, and that no regulations are needed under section 114(2) in order to do so.

9. The letter goes on to set out the limitations of this power. These limitations relate to the need to act reasonably and in accordance with natural justice, and consistently with the principles arising from the *Wheatcroft*² case, requiring that 'anyone affected by amended proposals must have a fair opportunity to have their views heard and properly taken into account regarding them'.
10. I strongly believe alternative options can be considered in the examination of the application and dealt with in accordance with these principles.
11. Further on in the letter, the Minister details the process that should follow from making a new or revised DCO. Accepting that amended DCOs could vary considerably, the Minister clearly states that it is not necessary for him to make further regulations to specify the procedures that should follow from amended DCOs, but rather that the Examining Authority is in the best position to determine what is an appropriate procedure on a case by case basis. The Minister suggests that an aspect of the procedure could include

¹ See http://infrastructure.independent.gov.uk/wp-content/uploads/2011/11/111130_Ltr-from-Bob-Neill-MP-re-s114.pdf

² See the Planning Inspectorate's guidance on the Wheatcroft principle <http://www.lambeth.gov.uk/moderngov/documents/s40639/13b%20PINS%20Good%20Practice%20note%20-%20Wheatcroft%20Principle.pdf>

extending the examination to consult interested parties on the effects of the proposed amendments.

12. I strongly believe that, given no directly relevant regulations under s 114(2) have been made, the Examining Authority can decide in this case to request that alternative scheme options are considered, and consulted on, and the necessary time granted for this to be done. I do not believe that the delay this would cause would be materially significant or that any disadvantage to the applicant would not be outweighed by the wider advantage to the national and public interest and to the communities most directly affected by the application. A delay of some months, even up to approximately one year, does not seem to be critical to the project as a whole. It must be better to take a little longer time in this inquiry into a proposal of national importance and to consider the best alternatives rather than only the first one.
13. I gather that various DCOs granted to date have included amendments made to the original DCO, proposed either by the applicant, the Examining Authority or the Secretary of State.
14. In addition, it follows from s 104 of the Planning Act 2008 which requires the Secretary of State to consider the application in accordance with any National Policy Statement, that the Secretary of State should follow the requirement under the Environmental Impact Assessment Directive Article 6(4) to give the public early and effective opportunities to participate in environmental decision making when all options are open, which can only be fulfilled if there is an opportunity for the DCO to be amended to consider environmentally preferable alternatives.
15. It is not open for Thames Water to rely on the national argument for the Thames Tideway Tunnel as a whole as a reason to persuade the Secretary of State to refuse to amend the DCO at all and not to make provision for alternative designs in the project as a whole. Where the proposed development is bound to have an adverse environmental effect, alternatives are necessarily a material consideration in deciding any application.
16. I remind the Examining Authority of the evidence I gave in my oral submission on 22nd November that the status given to Chambers Wharf in the Site Suitability Report (SSR), in socio-economic, community and noise impact terms, was assessed by the applicant to be 'less suitable'. This status was confirmed in the Phase Two consultation documents, with 'less suitable' applying to its use as a reception site as well as a drive site (Scheme Development Report Appendix R, Paras R 3.59-60). Similar conclusions were drawn at the Section 48 Stage (Report on Site Selection Process, Appendix R, Para R 3.71). Also at the s 48 stage the applicant assessed the impact at Chambers Wharf as including 'significant noise effects' from construction on nearby residences (Project Description and Environmental Information Report, Para 19.3.26) and 'adverse effects on the amenity of nearby residents' (Para 3.29).
17. I believe the *Trusthouse Forte Hotels* case (1986) makes clear that where the proposed development is bound to have an adverse environmental effect alternatives are necessarily a material consideration in the determination of any application.
18. The interference with the private life of residents, businesses, schools, pedestrians and cyclists in and around Chambers Wharf, through six years of continuous work or anything like it and including night time work, and with the consequent effects on noise, air pollution, traffic and other issues might be proportionate if it were the only way to achieve the environmental benefits of TTT. Where there is an alternative which removes a large

proportion of the interference and has much less adverse impact, for example using Abbey Mills as a drive site, it would not be possible to justify the original proposal as proportionate.

19. Ever since Thames Water began consulting on the TTT in 2010 there has been no opportunity to examine costed alternative options, or any impartial technical information about alternatives. The sequence of the development of the project has shown that alternatives have clearly for a long time been in the mind of Thames Water and technically possible. The most obvious example of this is that in the original proposal which proposed King's Stairs Gardens in my constituency as the main Southwark site; the proposal was then that this should be a reception site not a drive site and that Abbey Mills should be the drive site. With no clear explanation, the next variation of the proposal put forward for consultation changed the location of the main Southwark site from King's Stairs Gardens to Chambers Wharf, but then also proposed Chambers Wharf as a drive site and Abbey Mills a reception site – even though the circumstances surrounding Abbey Mills had not changed or certainly did not appear to have changed.
20. The procedure so far, therefore, has only allowed consultation on the specific proposals put forward at the time by Thames Water. This inquiry provides the only opportunity in three years to give consideration to any other options. Now is therefore the opportunity for the two substantial technical alternatives to be considered – the reversal of direction of drive between Abbey Mills and Chambers Wharf and the under-river options recommended in the privately commissioned Ramboll Report. It would not be in the national interest for a gigantic project to go ahead in our country's capital city without it being clear that the proposals had been objectively evaluated and better environmental alternatives considered.

C. Procedural options

21. I believe that the Examining Authority has power to set procedure to require further environmental information and adequate consultation on it, to require consultation of relevant property interests arising from any changes to the application boundary, and to approach the Secretary of State to propose that your Authority extends the examination under s 98 of the Planning Act 2008, to allow the alternatives to be considered and the necessary consultation on them to take place.
22. Under the Planning Act 2008 s 98(4) the Examining Authority has powers to extend the length of the inquiry to allow alternative options to be considered. Furthermore, s 87(1) gives the Examining Authority the discretion to decide how to manage the inquiry.
23. If the Examining Authority concludes that alternative options should be considered, as I hope they will, I would urge the Authority to adopt the procedure proposed by LB Southwark and also supported by other interested parties.
24. The Infrastructure Planning Regulations 2009 require further environmental impact assessments to be made of the proposed alternative options before the Secretary of State can amend a DCO. The Examining Authority should provide an interim recommendation that further assessment of alternatives should take place. This should also require Thames Water to produce, in addition to its existing Environmental Statement, a supplementary assessment of the alternative proposals and, importantly, allow for adequate consultation with all relevant stakeholders and community groups in LB Newham, LB Southwark and other boroughs affected.

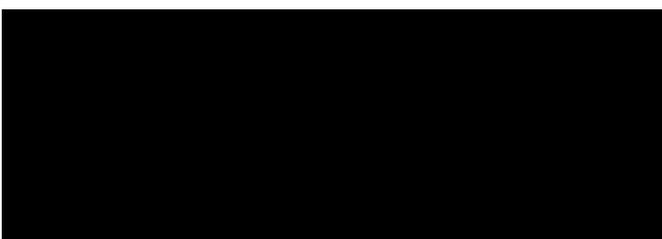
D. Other arguments against Chambers Wharf and in favour of Abbey Mills as a drive site

25. In addition to the current and growing resident population of thousands who live in and around Chambers Wharf, those who work in local businesses, and those who are children and young people in local schools, their parents and carers, and the adults who work with them, the area from Tower Bridge to Rotherhithe has along the bank barge dwellers and their visitors, and very large numbers of pedestrians, cyclists and vehicle users, who use the foreshore, the Thames path and other footpaths and roads in the area on every day of the year. Very few people who live locally have gardens of their own so most rely on public open space for their recreation, and most people do not have their own vehicles and therefore make their journeys in and out of the area by foot or bicycle.
26. I wish to reinforce the significance of the congestion that already exists, particularly during weekday rush hours, for traffic going into and out of the roads that lead into Jamaica Road – which is the only way in and out of the area around Chambers Wharf. This will only be adversely affected by the current proposals. A considerable number of people who live locally work at night and therefore need to sleep during day times, and additional traffic, noise and pollution will be particularly problematical for them. We have also sadly suffered from too many injuries and fatalities on our local main roads in recent years and every opportunity should be taken to avoid adding to this number increasing.
27. By contrast most of the smaller number of people who live, work, study and visit the area surrounding the Thames Water owned site at Abbey Mills would be further away from any drilling and related activity than it is currently proposed the people in the Chambers Wharf area will be from the proposed area for Thames Water activity at Chambers Wharf. Abbey Mills also lends itself, on the advice I have been given by the Port of London Authority and others and from my personal observations, to the largest potential use of barges and / or other vessels to bring materials in and out of the site.

E. Conclusion

28. It is my judgement that there is sound legal basis for the Examining Authority immediately to make an interim recommendation to the Secretaries of State to extend the scope of the inquiry to allow for consideration of alternative construction sites. I do not believe that elements of the current application – specifically the selection of Chambers Wharf as the main drive site – should be further considered without consideration of alternatives, given the very damaging impact the current proposals would have on the local community and environment.

Yours sincerely,



Rt Hon Simon Hughes MP
MP for Bermondsey and Old Southwark