

Thames Tideway Tunnel
Thames Water Utilities Limited



Application for Development Consent

Application Reference Number: WWO10001

Written Summaries of the Cases put Orally at the Hearings Held on 14 January 2014

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**Thames
Tideway Tunnel**



Creating a cleaner, healthier River Thames

Compulsory Acquisition Hearings Day 15 – 14.01.14

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1 Introduction

- 1.1.1 This document contains a written summary of the oral submissions made by Thames Water Utilities Limited (the “Applicant”) at the compulsory acquisition hearing held on 14 January 2014 as part of the examination of the application for development consent for the Thames Tideway Tunnel project. The Examining Authority (“ExA”) in respect of the application set out the agenda for the compulsory acquisition hearings (“Agenda”) by way of a letter dated 7 January 2014 addressed to interested parties. This written summary of TWUL’s submissions is broadly structured by reference to the items on that Agenda that were addressed at the hearing on 14 January 2014.

2 Applications for certificates under Section 127 Planning Act 2008

2.1 Legal submissions by Michael Humphries QC

- 2.1.1 The Applicant submitted an update on which certificates are still required further to the Application (Statutory Tests Relating to Statutory Undertakers: Rights, Apparatus and Draft Certificates, Doc ref: 9.03.02) that was submitted to the ExA in September 2013 and also the Applicant's response to the ExA's first written question 4.32 (Doc ref: APP04, Section 32, p.177).
- 2.1.2 The Applicant submitted revised schedules of Section 127 plots to each Secretary of State under cover of a letter dated 13 January 2013. These were copied to the ExA. The Applicant is seeking to agree those revised schedules with each statutory undertaker and will inform the Secretary of State and the ExA of any title amendments as soon as possible.
- 2.1.3 The submission of the update table for all statutory undertakers and communication code providers (Doc. ref: APP44.1) included additional plots to those identified in the original Section 127 applications to the Secretaries of State and some deleted plots.

3 Transport for London

3.1 Legal submissions by Michael Humphries QC

The statutory conditions

- 3.1.1 The Applicant confirms that a representation was made by Transport for London (TfL) on 24 May 2013 and it has not been withdrawn.
- 3.1.2 The Applicant confirmed that a certificate is being requested under Section 127 in respect of TfL's plots. The application for a certificate relates to the revised schedule sent on 13 January 2013, subject to any further amendments as above. For TfL, four plots were identified in the revised schedule for City of London (22, 24, 25 and 26) and three in the London Borough of Wandsworth (12a, 14, and 14a).
- 3.1.3 The Applicant understands that the plots of land in the revised schedule are either:
- used for the purposes of carrying on TfL's undertaking, or
 - held for those purposes.
- This is subject to any contrary indication by TfL.
- 3.1.4 The Applicant prepared a document for TfL which is taken from APP44.1. This identifies all of TfL's Section 127 plots and sets out the interest or right being sought over each plot in the *Draft Development Consent Order (DCO)*. The schedules identify where the Applicant seeks to acquire land, seeks to acquire subsoil only, seeks to acquire rights, seeks temporary use, and combinations of the above. Section 127 certificates are not sought where temporary use only is sought and this data is provided for information only. The schedules do not contain any new information.
- 3.1.5 Some plots identified as containing a TfL land interest may also be subject to a land interest owned by another statutory undertaker. This will be clarified in the schedules to be submitted on 20 January.
- 3.1.6 It is the Applicant's case that the land and rights being sought can be taken without serious detriment to the carrying on of the undertaking, particularly in the context of the protective provisions that the Applicant has put forward.

Presentation of the case by the parties

- 3.1.7 In the hearings in the three weeks commencing on 28 November 2013, the Applicant explained the need for the land in relation to each shaft site and every length of tunnel and connection tunnel. The evidence the Applicant has already submitted sets out the compelling case in the public interest to its compulsory acquisition of the land and rights sought.

Main issues and discussions

- 3.1.8 The Applicant is seeking to acquire deep subsoil plots and also plots where acquisition is not restricted.

Discussions with the statutory undertaker

- 3.1.9 Negotiations with TfL on behalf of its constituent transport companies have been ongoing for a considerable period. The Applicant proposes suitable protective provisions for all the transport companies and is currently engaged in negotiations to agree these. An overarching framework agreement which will include provision for acquisition of property, the terms for the re-provision of Blackfriars Millennium Pier and certain strategic traffic issues is also being negotiated with TfL. Further details are set out in the detailed submission set out in these submissions.

Are there any protective provisions or asset protection agreements?

- 3.1.10 As noted above draft protective provisions for all transport modes will be set out in Schedule 16 of the DCO. The overarching framework agreement also includes asset protection schedules.

No serious detriment

- a. In relation to deep subsoil, the Applicant is not interfering with TfL's assets, and there is no serious detriment to the carrying on of their undertaking from the acquisition of deep subsoil. Insofar as there are issues of settlement in relation to TfL's tunnels or other assets, the Applicant has presented evidence on settlement in relation to such assets and the Applicant says that there is no question of any serious detriment.
- b. At the surface, there are, in broad terms, three types of acquisition. In relation to surface plots of the Docklands Light Railway (DLR) at Bekesbourne Street, there is a small issue of where the Applicant wants to place a vent on some land in which the DLR has an interest. DLR owns the subsoil in the particular plot and the Applicant says that there is no serious detriment to the carrying on of the undertaking of the DLR.
- c. A second type of surface plot is in relation to London River Services. The Applicant is acquiring some land at Blackfriars Bridge foreshore to relocate the Millennium Pier, and the Applicant says that that can be done without serious detriment. The Applicant has made it clear in the requirements but also in its negotiations and discussions with TfL that the new pier will be provided before the old pier is removed. Again, the Applicant says there is no serious detriment.
- d. In relation to TfL in its role as highway authority, there are some small areas of land relating to highway works that the Applicant needs to undertake at Dormay Street, Chelsea Embankment Foreshore, and Albert Embankment Foreshore. Again, it is the Applicant's case that all of those works can be undertaken and that small amount of land taken without serious detriment to TfL's undertaking.

Applications for consent under Section 138 of the Planning Act 2008

- 3.1.11 The Applicant submitted revised schedules of Section 138 plots to each Secretary of State under cover of a letter dated 13 January 2013. These were copied to the ExA. The Applicant is seeking to agree those revised schedules with each statutory undertaker and will inform the Secretary of State and the ExA of any title amendments as soon as possible.
- 3.1.12 In relation to the statutory test under Section 138 no representation by the statutory undertaker is required. In this case TfL did make a representation.
- 3.1.13 The Applicant submitted a schedule for the plots identified for Section 138 purposes that sets out the rights and/or apparatus in relation to each TfL plot. This was extracted from the information in the general update submitted as APP44.1.
- 3.1.14 For Section 138 the relevant Secretary of State must be satisfied that the extinguishment of the 'relevant right' or the removal of the 'relevant apparatus' is 'necessary'.
- 3.1.15 Evidence presented at the compulsory acquisition hearings in November and December 2013 has sought to establish the necessity of compulsory acquisition of all plots identified in the *Book of Reference*.
- 3.1.16 Evidence and submissions were also made regarding clearances between existing TfL tunnels and the tunnels proposed in the authorised development. For deep subsoil plots required for the new tunnels the Applicant would only be able to compulsorily acquire, pursuant to DCO powers, the necessary tunnel strata. Powers sought within the DCO to extinguish rights and remove apparatus can only apply within those strata. Given the depth of the strata, there will be no interference with TfL's tunnels.
- 3.1.17 The protective provisions which will be included in the DCO will properly protect TfL's rights and/or apparatus.

3.2 Submission – Section 127

- 3.2.1 Our discussions with TfL include: DLR; London River Services and London Underground Ltd. All those companies are included in the references to TfL in this response. TfL has lodged a relevant representation with the Planning Inspectorate relating to this project.
- 3.2.2 We understand that the plots or legal interests in the plots are vested in TfL or its subsidiaries for the purposes of its undertaking.
- 3.2.3 The Applicant and TfL have co-operated in the identification of the property and asset protection interfaces between the Applicant and TfL's property and operational assets.
- 3.2.4 The surface and sub-surface (less than nine metres below the surface) property interests identified as required for the project on either a temporary or permanent basis involve relatively small parcels of land.

These interests have been identified at Dormay Street, Chelsea Embankment Foreshore, Albert Embankment Foreshore (all TfL highways), Blackfriars Foreshore (London River Services), and Bekesbourne Street (DLR).

- 3.2.5 The acquisition of the deep subsoil plots is required to construct the main and connection tunnels. It is our view that the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking. This is due to the depth of the tunnel.
- 3.2.6 In such circumstances, where TfL is not the owner of the subsoil interest required for the project, no interest will be compulsorily acquired from TfL and we will seek to enter into an asset protection agreement with TfL in respect of the tunnel or bridge structure. It is our view that subsoil plots can be purchased and not replaced without serious detriment to the carrying on of the undertaking due to the depth of the tunnel.
- 3.2.7 We have undertaken preliminary impact assessments of the project on TfL bridges and tunnels, which show that the predicted impact will not cause a serious detriment to the carrying on of the undertaking. The relevant preliminary impact assessments submitted to the ExA during the examination are set out in Table 3.1 below:

Table 3.1 Preliminary impact assessments on TfL bridges and tunnels submitted to ExA

Document name	Owners	PINS application doc ref.	Site interface assessment doc ref.
Battersea Roadbridge, 1890	TfL	9.15.53	
Vauxhall Roadbridge, 1906	TfL	9.15.56 & 9.15.57	
Lambeth Roadbridge, 1932	TfL	9.15.59	
Westminster Roadbridge, 1862	TfL	9.15.60	
A12 Gillender Street Bridge over Limehouse Cut	TfL	9.15.109	
A1205 Burdett Road Bridge over Limehouse Cut	TfL	9.15.111	
Blackfriars Road Bridge Departure Ramp	TfL	9.15.61	
Armoury Way Road Bridge over River Wandle	TfL	9.15.21	
Deptford Creek DLR Viaduct	DLR	9.15.108	
DLR Langdon Park Bridge over Limehouse Cut	DLR	9.15.110	
DLR Brick Arched Viaduct at Island Row	DLR	9.15.112	
EL31 Lower Road Bridge over railway	London Overground	9.15.113	
EL30 Service Bridge Surrey Quays Station	London	9.15.115	

Document name	Owners	PINS application doc ref.	Site interface assessment doc ref.
	Overground		
PC252 Pipe Crossing Surrey Quays Station	London Overground	9.15.116	
Putney Railbridge, 1888	LUL	9.15.13	
LUL District Line Bridge over Limehouse Cut & River Lee	LUL	9.15.114	
LUL D76C District / Piccadilly Line bridge at Stamford Brook	LUL	9.15.15 to 9.15.19	
LUL D76E District / Piccadilly Line bridge at Stamford Brook	LUL	9.15.15 to 9.15.19	
LUL D76F District / Piccadilly Line bridge at Stamford Brook	LUL	9.15.15 to 9.15.19	
LUL D76 District / Piccadilly Line bridge at Stamford Brook	LUL	9.15.15 to 9.15.19	
LUL D76B District / Piccadilly Line bridge at Stamford Brook	LUL	9.15.15 to 9.15.19	
LUL District / Piccadilly Line bridge at Stamford Brook (west of Welstead Way)	LUL	9.15.15 to 9.15.19	
Retaining Wall D184/W85		9.15.20	
A13 Commercial Road Bridge over Limehouse Cut	RMS (A13) Ltd	9.15.76	
TfL Crossrail Line 1 Tunnels	Crossrail	9.15.120	
London Overground ELL Thames Tunnel (Wapping to Rotherhithe 1843)	LOL	9.15.117 to 119	
LUL Victoria Line Tunnels (Vauxhall & Pimlico 1971) Tunnel Interface	LUL - MN	9.15.62	9.15.63
LUL District & Circle Line Tunnels (at Blackfriars)	LUL - MN	9.15.69	
LUL Waterloo and City Line (Waterloo to Bank 1898) Tunnel Interface	LUL - MN	9.15.71	9.15.72
LUL District & Circle Line Tunnels (Victoria Emb)	LUL - MN	9.15.73	
LUL Northern Line Tunnels (Charing Cross branch 1926)	LUL - TL	9.15.65	
LUL Northern Line Tunnels (Bank branch 1900)	LUL - TL	9.15.67	
LUL Jubilee Line Tunnels (Waterloo to Westminster 1999)	LUL -TL	9.15.64	
LUL Northern Line Tunnel (disused loop)	LUL -TL	9.15.66	
LUL Abandoned C&SLR (Northern Line)	LUL -TL	9.15.68	

Document name	Owners	PINS application doc ref.	Site interface assessment doc ref.
Tunnels 1890			
LUL Bakerloo Line Tunnels (Waterloo to Embankment 1906)	LUL -TL	9.15.70	
LUL Jubilee Line Tunnels (Bermonsey 1999)	LUL -TL	9.15.121	
TfL Rotherhithe Tunnel 1908 (at Thames Tunnel)	TfL	9.15.98	
TfL Rotherhithe Tunnel 1908 (Shaft assessment)	TfL	9.15.99	
TfL Limehouse Link Tunnel at Limehouse Basin	TfL	9.15.99	
Blackfriars Bridge Pedestrian Subway	TfL	9.15.44	
Empsom Street Subway	TfL	9.15.101	

3.2.8 Included in the table of plots to which Section 127 applies are TfL interests where the subsoil interest required is vested in another party but is beneath a TfL operational asset. In these instances an asset protection agreement will apply.

3.2.9 The acquisition of the surface plots or of a new right over the plots is required to construct the project. It is our view that the land and rights can be purchased without serious detriment to the carrying on of the undertaking due to the design works undertaken and ongoing works to address the predicted impacts on TfL plots and rights.

3.2.10 Discussions are ongoing between TfL and the Applicant with the intention of reaching settlement on terms for a property agreement covering the acquisition of and compensation for the temporary and permanent use of TfL land for the project

3.2.11 An overarching framework agreement containing asset protection provisions for the different TfL modes, including London Underground Ltd and DLR has been developed. Protective provisions and property Heads of Terms are also being negotiated with TfL and good progress has been made with these.

3.3 Submission – Section 138

3.3.1 We understand that the relevant rights or apparatus are vested in TfL or its subsidiaries, particularly DLR, London Underground Ltd and London River Services for the purpose of carrying on its undertakings.

3.3.2 Extinguishment of rights or removal of apparatus is necessary where there is a direct conflict with construction works, where land will be permanently acquired within the limits of land to be acquired or used. A clear site is required to allow unrestricted movement and storage of equipment and materials. Apparatus left in place would be at risk of damage and would

adversely impact construction efficiency and production. Where possible, rights and apparatus will be diverted or relocated.

- 3.3.3 Discussions are ongoing with TfL, including DLR, London Underground Ltd and London River Services in relation to the interfaces of the project with the rights and apparatus of TfL. They are aware that the land required for the authorised project is subject to compulsory purchase powers and also that the powers to extinguish rights or remove apparatus within that land are included in the *Draft DCO*.
- 3.3.4 As outlined in paras.3.2.6 and 3.2.7 the construction of the main and connection tunnels in the deep subsoil plots can be carried out without serious detriment to the carrying on of the undertaking due to the depth of the tunnel as shown by the preliminary impact assessments.
- 3.3.5 In addition to assessments of the impact of construction on assets, transport assessments have been carried out for surface plots where there is an interface. The results of these assessments are still being discussed with TfL but in principle demonstrate that subject to appropriate mitigation measures the predicted impacts can be managed.
- 3.3.6 Further discussions are ongoing between the Applicant and TfL in relation to the disapplication of the Traffic Management Act and a bespoke process to be contained within the overarching framework agreement to govern the management of works on the highways for which TfL is the highway authority.

Relevant application documents are:

- a. [Settlement Information Paper](#) (Doc ref: 7.21)
- b. [Utilities Statement](#) (Doc ref: 7.22)
- c. *Statutory Undertaker Land and Apparatus Schedule* – Section127 and Section138 (Doc ref: 9.03.01)
- d. *Order Land Schedule* (Doc ref: 9.06.01 to 9.06.14)
- e. [Transport Assessment](#) (Doc ref. 7.10)
- f. *Environmental Statement* (Doc ref: 6.2).

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