

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 16 January 2014

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**Thames
Tideway Tunnel**



Creating a cleaner, healthier River Thames

Compulsory Acquisition Hearings Day 17– 16.01.14

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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 16 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 the Applicant’s submissions is broadly structured by reference to the items on that Agenda that were addressed at the hearing on 16 January 2014.

2 BT Openreach

2.1 Legal submissions by Michael Humphries QC

Applications for consent under Section 138 of the Planning Act 2008

- 2.1.1 BT Openreach is an electronic communications code provider and as such, Section 127 does not apply to any land which it holds.
- 2.1.2 Generally for Section 138 plots 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.
- 2.1.3 In relation to the statutory test under Section 138 no representation by the statutory undertaker is required. In this case BT Openreach made a representation on 9 May 2013 in relation to Baynard House.
- 2.1.4 The Applicant submitted a schedule of the plots identified for Section 138 purposes, which was extracted from the information in the submitted general update table for all statutory undertakers and communication code providers (Doc. ref: APP44.1). This sets out BT Openreach's rights and/or apparatus in relation to each plot.

Presentation of the case by the parties

- 2.1.5 In the hearings in the 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.
- 2.1.6 The Applicant has prepared protective provisions which properly protect BT Openreach's rights and/or apparatus. These appear in part 6 of Schedule 16 in the *Draft Development Consent Order (DCO)* as submitted on 13 January 2014. Whilst those protective provisions are not yet agreed, these and an asset protection agreement are being negotiated and are well advanced.

Main issues and discussions

- 2.1.7 The main assets that BT Openreach are concerned about are the St Martins tunnel and the Blackfriars to St Paul's tunnel, which are both deep cable tunnels, and the Baynard House cooling tunnel which is at the Blackfriars Bridge Foreshore site.
- 2.1.8 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'.

- 2.1.9 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*. Evidence and submissions were also made regarding clearances between existing 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 railway tunnels.
- 2.1.10 The protective provisions which will be included on the DCO will properly protect Transport for London's rights and/or apparatus.

Discussions with the statutory undertaker

- 2.1.11 The Applicant can confirm that it has been in discussion with BT Openreach for a considerable length of time. There have been a number of meetings, including technical meetings, to understand the constraints relating to their equipment, and those have particularly related to the options to relocate or otherwise deal with the Baynard House cooling pipe. The Port of London Authority has also been involved in those discussions.

2.2 Submissions from Sue Hitchcock

- 2.2.1 Thames Water noted that the technical assessment works for the deep-level tunnels have been discussed with BT Openreach, and the predicted impacts of construction have been accepted in principle.
- 2.2.2 We are still engaged with BT Openreach in discussions relating to contingency planning.
- 2.2.3 Discussions on the asset protection agreement are progressing well and we hope to be able to complete these shortly. There are some commercial arrangements that are being discussed further.
- 2.2.4 Protective provisions for BT are a standard set for communications network operators and we have sent these to BT for review and are awaiting any further comments in order to finalise them.

2.3 Submission – Section 138 only

- 2.3.1 We understand that the relevant rights or apparatus are conferred on BT Openreach as operator of the CCO network in accordance with the electronic communications code.
- 2.3.2 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. BT Openreach is reviewing a copy of the proposed protective provisions.

- 2.3.3 Discussions are ongoing with BT Openreach in relation to the interfaces of the project with the rights and apparatus of BT Openreach, including proposed utility diversions, interface with the Baynard House Cooling Tunnel and the two BT Openreach Deep Level tunnels.
- 2.3.4 An asset protection agreement is being developed for the Baynard House Cooling Tunnel in the City of London, as well as the two deep tunnels. St Martins Tunnel is in City of Westminster (plots 36, 38, 39, 40) and Blackfriars to St Pauls Tunnel is in the City of London (plots 44 and 47).
- 2.3.5 We have undertaken preliminary impact assessments of the project on the BT deep tunnels, which show that the predicted impact will not cause a serious detriment to the carrying on of the undertaking. The preliminary impact assessments for the two deep tunnels have been submitted to the ExA as shown in Table 2.1 below :

Table 2.1 Preliminary impact assessments on BT deep tunnels submitted to the ExA

Document name	PINS application doc ref.
BT Openreach St Martins Tunnel	9.15.29
BT Openreach Blackfriars to St Pauls Tunnel	9.15.30

- 2.3.6 Other relevant application documents are the [Settlement Information Paper](#) (Doc ref: 7.21); the [Utilities Statement](#) (Doc ref: 7.22); the *Statutory Undertaker Land and Apparatus Schedule - Section127 and Section138* (Doc ref: 9.03.01) and *Order Land Schedule* (Doc ref: 9.06.01 to 9.06.14).

3 Port of London Authority

3.1 Legal submissions by Michael Humphries QC

Applications for certificates under section 127 Planning Act 2008

- 3.1.1 The Applicant submitted an update on which certificates are still required further to the application document (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.
- 3.1.2 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 Ex A of any title amendments as soon as possible. For the Port of London Authority (PLA), the revised schedule identified one additional plot in the City of London (25) and one in the London Borough of Wandsworth (69).

The statutory conditions

- 3.1.3 The Applicant confirms that a representation was made by the PLA on 28 May 2013 and has not been withdrawn. A written representation was also made on 4 November 2013.
- 3.1.4 The Applicant confirms that a certificate is being requested under section 127. The application for a certificate relates to the revised schedule sent on 13 January 2013, subject to any further amendments which may be made as a result of any additional information received.
- 3.1.5 The Applicant understands that the plots of land in the revised schedule are either (i) used for the purposes of carrying on the Statutory Undertakers undertaking, or (ii) held for those purposes. This is subject to any contrary indication by the PLA.
- 3.1.6 The Applicant prepared a schedule for the PLA that is taken from document APP44.1. This identifies all of the Section 127 plots and sets out the interest or right being sought over each plot in the *Draft DCO*. The schedule identifies 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.
- 3.1.7 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 PLA's undertaking, particularly in the context of the protective provisions that the Applicant has put forward.

Presentation of the case by the parties

- 3.1.8 In the hearings in the 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 set out sets out the compelling case in the public interest to its compulsory acquisition of the land and rights sought.

Main issues and discussions

- 3.1.9 In general the land the Applicant is seeking from the PLA is deep subsoil where land for the tunnel is required. There are also foreshore plots where the Applicant is seeking permanent land take; those are at King Edward Memorial Park, Heathwall Pumping Station, Putney Embankment Foreshore, Albert Embankment Foreshore and Blackfriars Bridge Foreshore.

- 3.1.10 In relation to the PLA's concern on the profile of the stratum of land take, the Applicant says this is a commercial point relating to revenue matters rather than the PLA's statutory undertaking. The PLA's point is that if the land is taken by the Applicant it cannot be let to someone else.

- 3.1.11 Section 5 of the Port of London Act 1968 deals with the general powers and duties of the PLA. Section 5(1) sets out that It shall be the duty of the port authority to take such action as they consider necessary or desirable for or incidental to the improvement and conservancy of the Thames. Insofar as the PLA have a duty it is related to what is necessary or desirable for the improvement and conservancy of the River Thames.

- 3.1.12 The provision in Section 5(2) relates to turning their resources to account. This is not a duty; it is a power. This is an important distinction. Section 5(2) says:

'The port authority shall have power, either themselves or by arrangement between themselves or another person, to take such action as the port authority considers necessary or desirable, whether or not in or in the vicinity of the Thames'.

This includes at Section 5(2)(c):

'For the purpose of turning their resources to account so far as not required for the purposes of the undertaking'.

In this context the Applicant accepts that the PLA has a power to turn their resources to account, in other words to use, lease, and sell resources for the purposes of their undertaking. Insofar however as the PLA is required to dispose of land pursuant to compulsory purchase powers, however, it will be compensated properly.

- 3.1.13 The PLA's argument that the Applicant should take slightly less land so that that space can be sold to someone else is, therefore, a commercial consideration which goes to value and, clearly, compensation is not a matter for the current 'examination'.

- 3.1.14 As far as the foreshore is concerned, the PLA are charged with protection of navigation and risks to navigation, and the approach in the protective

provisions proposed is to allow them to approve the details of works in the river to make sure that they are satisfied about such issues. Those protective provisions are still being discussed with the PLA.

- 3.1.15 There are also a number of minor points that are being discussed about where the Applicant will carry out protective works, or replacement works, to areas of river wall. This applies particularly to the shaft sites at Carnwath Road Riverside and Dormay Street and relates to where works are left on the PLA's land after the Applicant has carried out those works under the DCO. Again, the Applicant anticipates that those matters will be resolved prior to the final DCO hearing.

Are there any protective provisions or asset protection agreements?

- 3.1.16 There is no asset protection agreement in the same way as there is with other statutory undertakers. This is because the PLA does not have assets in quite the same way that need to be protected. The Applicant is dealing with a number of matters in what is called the 'four-way legal agreement'.
- 3.1.17 The 'four-way legal agreement' is an agreement between the Applicant, the PLA, the Environment Agency and the Marine Management Organisation. The principal objectives of the four-way agreement relate to the need to seek alignment between the three river regulators, all of whom want to approve works in the river and will have their own statutory jurisdiction to protect. There will also be a property agreement with the PLA, which will deal with the acquisition of the land required from the PLA for the authorised development.

No serious detriment

- 3.1.18 It is the Applicant's position in relation to the PLA's plots that in the context of protective provisions and any other agreements that may be necessary, there is no serious detriment to the PLA's undertaking.

Applications for consent under Section 138 of the Planning Act 2008

- 3.1.19 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.
- 3.1.20 In relation to the statutory test under Section 138 no representation by the statutory undertaker is required. In this case the PLA did make a representation.
- 3.1.21 The Applicant submitted a schedule of the plots identified for Section 138 purposes, which was extracted from the information in the general update submitted as APP44.1. This sets out the PLA's rights and/or apparatus in relation to each plot.

- 3.1.22 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'.
- 3.1.23 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*.
- 3.1.24 The protective provisions which will be included on the DCO will properly protect the PLA's rights and/or apparatus.

3.2 Submissions from Sue Hitchcock

- 3.2.1 Thames Water explained that discussions on a set of protective provisions for the PLA have been ongoing since the beginning of 2013 based on a set that the PLA submitted to Thames Water. Thames Water received a further revised draft of their preferred set of protective provisions on Saturday (11 January 2014), and are arranging to meet with the PLA again next week to progress the matters that are still outstanding.
- 3.2.2 Thames Water anticipates being able to resolve the outstanding matters within the next couple of weeks since the technical works behind a number of these provisions, such as agreement on further development of the scour and accretion strategy, have been discussed with the technical team, so this all needs to be joined up in the final set of protective provisions to reflect this. The four-way agreement between the Applicant, the PLA, EA and MMO has been discussed between all parties and good progress has been made. We have another joint meeting on 28 January to hopefully settle this in its final form.

3.3 Submission – Section 127 and Section 138

- 3.3.1 We understand that the plots are held by PLA for the purposes of its undertaking.
- 3.3.2 The acquisition of 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 which has no impact on the navigational safety of the River Thames neither does it impact on the conservancy of the river.
- 3.3.3 The surface plots include the foreshore sites where the river bed is owned by the PLA are King Edward Memorial Park, Heathwall Pumping Station, Putney Embankment Foreshore, Albert Embankment Foreshore and Blackfriars Bridge Foreshore. There will also be temporary works in the foreshore owned by the PLA at Chambers Wharf, Victoria Embankment Foreshore, Carnwath Road Riverside, Cremorne Wharf and Kirtling Street.
- 3.3.4 For the foreshore sites, the acquisition of the plots or of new rights over the plots is required to construct the project. It is our view that the land and rights can be purchased and not replaced without serious detriment to

the carrying on of the undertaking due to the uniqueness of the River Thames.

- 3.3.5 Technical and environmental works have been undertaken and discussed with the PLA including the development of preliminary navigational risk assessments and a scour and accretion monitoring strategy. Processes are being discussed and agreed with the PLA for approvals and further development and implementation of appropriate mitigation strategies for safety and environmental purposes.
- 3.3.6 Relevant application documents are the *Navigational Issues and Preliminary Risk Assessments* (Doc ref: 7.20) the *Environmental Statement* (Doc ref: 6.2); the *Statutory Undertaker Land and Apparatus Schedule - Section 127 and Section 138* (Doc ref: 9.03.01) and *Order Land Schedule* (Doc ref: 9.06.01 to 9.06.14).
- 3.3.7 Discussions with the PLA's property representatives are ongoing 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 PLA land for the project.

4 Vodafone (previously owned by Cable & Wireless)

4.1 Legal submissions by Michael Humphries QC

Applications for consent under section 138 of the planning act 2008

- 4.1.1 Vodafone is an electronic communications code provider and as such, Section 127 does not apply to any land that it holds.
- 4.1.2 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.
- 4.1.3 In relation to the statutory test under Section 138 no representation by the statutory undertaker is required. In this case Vodafone made no representation. Cable & Wireless (prior to being owned by Vodafone) provided a letter of no objection to the crossing of the main tunnel beneath the Vodafone tunnel.
- 4.1.4 The Applicant submitted a schedule of the plots identified for section 138 purposes, which was extracted from the information in the general update submitted as APP44.1. This sets out the rights and/or apparatus in relation to each plot for Vodafone.
- 4.1.5 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'.
- 4.1.6 Evidence presents 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*.

Presentation of the case by the parties

- 4.1.7 In the hearings in the 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 set out sets out the compelling case in the public interest to its compulsory acquisition of the land and rights sought.
- 4.1.8 The Applicant has prepared standard protective provisions that properly protect Vodafone's rights and/or apparatus. These appear in part 6 of Schedule 16 in the *Draft DCO* as submitted on 13 January 2014. These have not been agreed by Vodafone, but negotiations on these and an asset protection agreement are ongoing.
- 4.1.9 Plot 7 in the London Borough of Southwark (LB Southwark) contains a cable route for the benefit of Vodafone.

- 4.1.10 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.

4.2 Submissions from Sue Hitchcock

- 4.2.1 The Applicant explained that an asset protection agreement has been provided to Vodafone (Cable & Wireless, as was) and they have explained in an email that they are satisfied with the contents of the agreement, subject to the final form of the protective provisions being agreed. Vodafone has a set of the protective provisions that we sent to them as a communications network operator. We are working with them to obtain final agreement on the protective provisions in the next couple of weeks

4.3 Submission – Section 138 only

- 4.3.1 Cable & Wireless is now owned by Vodafone. Our discussions were with Cable & Wireless and then subsequently Vodafone following change of ownership in late 2012.
- 4.3.2 We understand that the relevant rights or apparatus are conferred on Vodafone as operator of the CCO network in accordance with the electronic communications code
- 4.3.3 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.
- 4.3.4 We have undertaken preliminary impact assessments of the project on the Vodafone tunnel, which show that the predicted impact will not cause a serious detriment to the carrying on of the undertaking. The preliminary impact assessment has been submitted to the ExA as shown in Table 4.1 below:

Table 4.1 Preliminary impact assessment on Vodafone tunnel submitted to the ExA

Document name	PINS application doc ref.
Tower subway 1870	9.15.31

- 4.3.5 Cable & Wireless (prior to being owned by Vodafone) has provided a letter of no objection to the crossing of the main tunnel beneath the Vodafone tunnel which is a deep subsoil plot in the River Thames in LB Southwark (plot 7). 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*.

- 4.3.6 Relevant application documents are the [Settlement Information Paper](#) (Doc ref: 7.21); the [Utilities Statement](#) (Doc ref: 7.22); the *Statutory Undertaker Land and Apparatus Schedule* – Section.127 and Section138 (Doc ref: 9.03.01) and *Order Land Schedule* (Doc ref: 9.06.01 to 9.06.14).
- 4.3.7 An asset protection agreement for Tower Subway was sent to Vodafone on 7 November 2013. A response was received on 15 November 2013 explaining that the asset protection agreement was acceptable subject to agreement of suitable protective provisions. Draft protective provisions were then sent to Vodafone on 20 November 2013 and further comments have been requested and are awaited.

5 Colt/Level 3

5.1 Legal submissions by Michael Humphries QC

Applications for consent under section 138 of the planning act 2008

- 5.1.1 Colt/Level 3 is an electronic communications code provider and as such, Section 127 does not apply to any land that it holds.
- 5.1.2 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.
- 5.1.3 In relation to the statutory test under Section 138 no representation by the statutory undertaker is required. In this case Colt/Level 3 made no representation.
- 5.1.4 The Applicant submitted a schedule of the plots identified for Section 138 purposes, which was extracted from the information in the general update submitted as APP44.1. This sets out Colt/Level 3's rights and/or apparatus in relation to each plot.

Presentation of the case by the parties

- 5.1.5 In the hearings in the 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 set out sets out the compelling case in the public interest to its compulsory acquisition of the land and rights sought.
- 5.1.6 The Applicant has prepared standard protective provisions which properly protect Colt/Level 3's rights and/or apparatus. These appear in part 6 of Schedule 16 in the *Draft DCO* as submitted on 13 January 2014. The Applicant is seeking agreement from Colt/Level 3 to these provisions. No asset agreement is offered as the plots affected are deep subsoil acquisitions only.
- 5.1.7 For Section 138 the relevant Secretary of State must be satisfied that the extinguishment of the 'relevant right' or the 'removal of the inland apparatus' is 'necessary'.
- 5.1.8 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.

5.2 Submissions from Sue Hitchcock

- 5.2.1 The Applicant has been discussing the works required for the Thames Tideway Tunnel project with Colt/Level 3 under our set of proposed

protective provisions for communications network operators. We will seek confirmation that they do not have any proposed amendments or concerns by the end of January.

5.3 Submission – Section 138 only

- 5.3.1 Our discussions with Colt/ Level 3 include various individual companies managed by Colt. All those companies are included in the references to Colt/ Level 3 in this response.
- 5.3.2 We understand that the relevant rights or apparatus are conferred on Colt/Level 3 as operator of the CCO network in accordance with the electronic communications code.
- 5.3.3 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.
- 5.3.4 Discussions are ongoing with Colt/Level 3 in relation to the interfaces of the project with the rights and apparatus of Colt/Level 3 in relation to proposed utility diversions in City of London (4 plots) and London Borough Lewisham (11 plots). 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*.
- 5.3.5 Relevant application documents are the [Settlement Information Paper](#) (Doc ref: 7.21); the [Utilities Statement](#) (Doc ref: 7.22); the *Statutory Undertaker Land and Apparatus Schedule – Section 127 and Section.138* (Doc ref: 9.03.01) and *Order Land Schedule* (Doc ref: 9.06.01 to 9.06.14).

6 NTL (South East) Ltd – now Virgin Media

6.1 Legal submissions by Michael Humphries QC

Applications for consent under Section 138 of the Planning Act 2008

- 6.1.1 NTL (South East) Limited is an electronic communications code provider and, as such, Section 127 does not apply to any land which it holds.
- 6.1.2 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.
- 6.1.3 In relation to the statutory test under Section 138 no representation by the statutory undertaker is required. In this case NTL (South East) Limited made no representation.
- 6.1.4 The Applicant submitted a schedule of the plots identified for Section 138 purposes, which was extracted from the information in the general update submitted as APP44.1. This sets out NTL (South East) Limited's rights and/or apparatus in relation to each plot.

Presentation of the case by the parties

- 6.1.5 In the hearings in the 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 set out sets out the compelling case in the public interest to its compulsory acquisition of the land and rights sought.
- 6.1.6 The Applicant has prepared standard protective provisions which properly protect NTL (South East) Limited rights and/or apparatus. These appear in part 6 of Schedule 16 in the *Draft DCO* as submitted on 13 January 2014. The Applicant is seeking agreement from NTL (South East) Limited to these provisions.
- 6.1.7 For Section 138 the relevant Secretary of State must be satisfied that the extinguishment of the 'relevant right' or the 'removal of the inland apparatus' is 'necessary'.
- 6.1.8 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.

6.2 Submissions from Sue Hitchcock

- 6.2.1 Initial discussions have been held with Virgin Media who bought NTL about the works required for the Thames Tideway Tunnel project. The

same protective provisions as proposed to the other communications network operators will apply.

6.3 Submission – Section 138 only

- 6.3.1 We understand that the relevant rights or apparatus are vested in NTL (now part of Virgin Media) for the purpose of carrying on its undertaking.
- 6.3.2 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.
- 6.3.3 NTL has four plots of land in LB Newham (plots, 24, 28, 29 and 30) due to the presence of rights and apparatus on the Abbey Mills Pumping Station site.
- 6.3.4 Relevant application documents are the [Settlement Information Paper](#) (Doc ref: 7.21); the [Utilities Statement](#) (Doc ref: 7.22); the *Statutory Undertaker Land and Apparatus Schedule* – Section 127 and Section.138 (Doc ref: 9.03.01) and *Order Land Schedule* (Doc ref: 9.06.01 to 9.06.14).

7 South London and Maudsley NHS Foundation Trust

7.1 Legal submissions by Michael Humphries QC

The statutory conditions

- 7.1.1 The Applicant confirms that a representation has not been made by the Trust and therefore a Section 127 Certificate is not required. In any event the Applicant's view is that the subsoil plots can be acquired without detriment to the Trust's undertaking.

Are there any protective provisions or asset protection agreements?

- 7.1.2 No asset protection agreement is sought or offered these are deep subsoil plots only. No protective provisions are sought or offered either.

Section 138

- 7.1.3 Section 138 does not apply to Hospital Trusts.

8 Withdrawn applications for Section 127 certificates

8.1 Royal Mail

- 8.1.1 Royal Mail lodged a representation but the Applicant can confirm that this has now been withdrawn and, therefore, a certificate under Section 127 is no longer required. An agreement has been reached allowing Royal Mail to withdraw their representation.

9 Responses to issues raised at the hearing

9.1 Novation of agreements

Issue raised

- 9.1.1 The ExA asked a question in relation to novation of the asset protection agreements.

Response

- 9.1.2 The Applicant confirms that the asset protection agreements allow novation of the contracts either to an Infrastructure Provider or another person to whom the powers under the Act could be transferred. The novation can be full or in part.
- 9.1.3 Under the agreements the liability will generally follow the powers, so that where there is a novation in part the liability will be split. Where particular powers to carry out work or undertake activities or acquire land remains with the Applicant, then the liability would also remain with the Applicant. There will not be joint and several liabilities.

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