

## APPENDIX E6



# The Planning Inspectorate Yr Arolygiaeth Gynllunio

**The Planning Act 2008 (as amended)**

**Thames Tideway Tunnel**

**Report to the Secretary of State for Culture, Media and Sport  
in relation to certificate application under s127 and consent  
under s138**

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**Date: 12 June 2014**

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## INTRODUCTION

- 1 This report records the procedure and issues arising from the examination conducted under sections 127 and 138 of the Planning Act 2008 (as amended) (PA 2008) relating to an application for a Development Consent Order (DCO) for the Thames Tideway Tunnel project.
- 2 Thames Water Utilities Limited (the Applicant) on 28 February 2013 made an application to the Planning Inspectorate for an order granting development consent pursuant to section 37 of PA 2008. The application was for development consent for the construction and operation of a wastewater storage and transfer project in London, known as the Thames Tideway Tunnel Project (the project).
- 3 The project will control combined sewage flows from 34 combined sewer overflows which currently spill untreated waste water into the River Thames and which have been identified as unsatisfactory by the Environment Agency. The project comprises a main tunnel approximately 25km long running from Acton Storm Tanks in west London through to Abbey Mills Pumping Station in Newham in east London. There are also two long connecting tunnels and nine short connection tunnels. Works for the construction and operation of the project are proposed at 24 locations along the route of the tunnels.
- 4 The draft DCO seeks powers of compulsory acquisition in respect of land that is required for the works necessary to construct the tunnel and manage the completed project, or is incidental to the project under section 122 of PA 2008, as well as powers to create new rights and to override any existing easements and rights over the application sites under sections 120(3) and (4) and paragraph 2 of Schedule 5 to PA 2008.
- 5 The application was accompanied by a Statement of Reasons, a Funding Statement and a Book of Reference identifying all the land needed by plot numbers scheduled by reference to the London Borough in which the land is situated.
- 6 Included in the application are plots in which a number of statutory undertakers have a legal interest and these are shown in the final amended schedules of all plots for which the Applicant is seeking certificates under section 127 of PA 2008 and consents under section 138 of PA 2008<sup>1</sup>.

## SECTION 127 AND 138 TESTS AND PROCEDURE

- 7 Sections 127 of PA 2008 (as applicable to this examination)<sup>2</sup> provide safeguards in respect of the compulsory acquisition of land or rights over land acquired by a statutory undertaker for the purposes of its

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<sup>1</sup> APP201 and APP202 submitted to the Examining authority on 11 March 2014

<sup>2</sup> The application of PA 2008 s127 has been amended: see SI 2013/1124. Transitional provisions apply to this application as it was submitted before 25 June 2013 and the procedure described here reflects these provisions

undertaking, in circumstances where a representation has been made about an application for an order granting development consent before the completion of the examination, and the representation has not been withdrawn. In such circumstances and for applications made before 25 June 2013, a DCO may only be granted where the relevant Secretary of State issues a certificate:

- under section 127(2) and (3) to the effect that the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or if purchased can be replaced by other land belonging to or available for acquisition by the undertakers without serious detriment to the carrying on of the undertaking

- 8 For the purposes of section 138, which relates to the extinguishment of rights and removal of apparatus in any circumstances where compulsory acquisition powers are applied for and whether or not a representation has been made, the test for the relevant Secretary of State pursuant to section 138(4) is that he is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the DCO relates and the Secretary of State consents accordingly.
- 9 In the ExA's Rule 8 letter (PD006) at Section 8 the ExA stated that at the Preliminary Meeting the ExA advised that delegations had been put in place to enable the Panel to examine and report upon any land, extinguishment of rights and removal of apparatus of statutory undertakers<sup>3</sup> under sections 127 and 138 of PA 2008. As these matters relate to circumstances where the use of compulsory acquisition powers are sought over statutory undertakers' land, the matters were dealt with at the compulsory acquisition hearings held on 14 to 17 January and 27 and 28 January 2014.
- 10 The information in this report is extracted from, and makes reference to the DCO examination report submitted to the Secretaries of State for Communities and Local Government and Environment, Food and Rural Affairs on 12 June 2014.

## **THE BACKGROUND**

- 11 This report relates to British Telecommunications plc (BT), City of London Telecommunications (Colt), Level 3 and NTL (South East).

### **Section 127**

- 12 No applications are made in relation to any of these Parties for certificates under section 127 of PA 2008.

### **Section 138**

- 13 However, the Applicant requires consents under section 138 of PA 2008 in relation to all of them.

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<sup>3</sup> Including any operators of an electronic communications network

- 14 Section 138, requires the relevant Secretary of State to consider the granting of such consents where there is an application by an Applicant for compulsory purchase powers as is the case here.
- 15 Application for consent under section 138 is made by the Applicant in relation to all the undertakers referred to in paragraph 11.
- 16 The extinguishment of the rights and removal of apparatus are sought by the Applicant because it is necessary for the carrying out of the project.
- 17 Protective provisions in respect of all these undertakers have been agreed between the Applicant and the relevant undertakers and these protective provisions are included in the DCO at Schedule 16 Part 6.

## **THE RECOMMENDATION OF THE PANEL**

- 18 The Panel is satisfied that the protective provisions adequately protect the relevant undertakers' interests and would recommend that consent under section 138 could also be granted by the Secretary of State in relation to these statutory undertakers' interests, subject to our comments regarding BT as set out below.
- 19 The Panel is advised by the Applicant that a schedule of all plots where section 138 consent is required, has been sent to the Department for Culture, Media and Sport under cover of the Applicant's letter of 11 March 2014.

### **British Telecommunications plc (BT)**

- 20 BT on 9 May 2013 submitted representations (RRP132) to the Panel and discussions have been taking place between the Applicant and BT to reach agreement on an Asset Protection Agreement and BT anticipated it should be signed before the end of March 2014. However, as the examination closed on 11 March 2014 the Panel is not aware that it has been concluded.
- 21 Whilst protective provisions have been settled as indicated above the outstanding issues between the Applicant and BT can be summarised as follows:
  - The Asset Protection Agreement which both Parties agree needs to be in place, although the Applicant considers there is sufficient protection within the DCO as supplemented by the provisions of the code of construction practice (CoCP) Part A.
  - An indemnity from the Applicant for losses suffered as a result of damage to BT's wider assets affected by the DCO project.
  - The financial security lacks insurance backing - the Applicant has indicated that an insurance package will be in place and the Panel has considered funding generally in the compulsory acquisition chapter 19 and is satisfied that it is either in place or there are safeguards in place to ensure that it is.

- BT is concerned at what appears to be financial benefit accruing to the Applicant by being classed as a highway, bridge or transport authority to the detriment of BT
- BT sees no reason why compensation should be reduced in certain circumstances
- BT requires an alternative dispute resolution mechanism

22 We would recommend that the Secretary of State should have regard to these outstanding issues when considering the grant of consent under section 138.

23 Further, the schedule information in the letters to the Secretary of State from the Applicant dated 6 and 11 March 2014 are not complete as the plot descriptions are not included, but this information is included in the schedule set out in APP202.