

## APPENDIX E5



# The Planning Inspectorate Yr Arolygiaeth Gynllunio

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

**Thames Tideway Tunnel**

**Report to the Secretary of State for Energy and Climate Change  
in relation to certificate application under s127 and consent  
under s138**

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**Jan Bessell**

**Libby Gawith**

**Emrys Parry**

**Andrew Phillipson**

**David Prentis**

**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**

### **Section 127**

- 11 No applications are made in relation to any of these parties for certificates under section 127 of PA 2008. We would add that in its letter to the Department dated 11 March 2014 the Applicant stated that in the case of Southern Gas only a schedule for the purposes of section 127 was included. This was on the basis that a representation might be made to the Panel before the close of the examination. We can confirm that no representation was received so the certificate is not required.

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

## Section 138

- 12 In relation to section 138, the section 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. An application for consent under section 138 is made by the Applicant in relation to the following statutory undertakers:
  - Southern Gas Networks
  - British Gas
  - London Power Networks (which includes for these purposes UK Power Networks and EDF Energy).
- 13 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.
- 14 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 1.
- 15 The Panel is satisfied that the protective provisions adequately protect the relevant undertakers interests and recommend that consent under section 138 could also be granted by the Secretary of State in relation to these statutory undertakers' interests.
- 16 The Panel is advised by the Applicant that the schedule of affected plots where section 138 consent is required, has been sent to the Department of Energy and Climate Change under cover of the Applicant's letter of the 11 March 2014.
- 17 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.