

## APPENDIX E4



# The Planning Inspectorate Yr Arolygiaeth Gynllunio

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

**Thames Tideway Tunnel**

**Report to the Secretary of State for Environment, Food and  
Rural Affairs  
in relation to certificate application under s127 and consent  
under s138**

---

**Jan Bessell**

**Libby Gawith**

**Emrys Parry**

**Andrew Phillipson**

**David Prentis**

**Date: 12 June 2014**

This page intentionally left blank

## 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

---

<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 The Environment Agency (EA) fully supports the Thames Tideway Tunnel and the need for it. However, as an environmental regulator it must also ensure that the design, construction and operation of the project reduces environmental impacts, mitigates unavoidable impacts and maximises environmental outcomes.
- 12 The Applicant seeks from the Secretary of State a certificate under section 127(2) on the grounds that the requirements of section 127(3) have been met.
- 13 The need for a certificate under section 127 of PA 2008 arises because the EA has property interests in land at Barn Elms, Richmond on Thames

---

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

where surface land is needed for construction works and at Beverley Brook, Wandsworth where subsoil is needed for the construction of the connection tunnel from Barn Elms to the River Thames, and the EA has submitted a representation to the Panel (RRP710) which has not been withdrawn.

- 14 There is no issue between the parties that the land in question is operational land. The Applicant is of the view that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking. The EA does not disagree with this view and has agreed that the deep subsoil may be acquired using compulsory acquisition powers. This has been recorded in the Statement of Common Ground entered into between the Applicant and the EA (APP 215.03).
- 15 No application for consent under section 138 arises.
- 16 The other related issue is protective provisions. These arise and are required by the EA in consideration of the EA agreeing to the disapplication of Flood Defence Consent for the project. Flood Defence Consent (being consent required under section 109 of the Water Resources Act) is a consent to which section 150 of PA 2008 applies. The EA's consent to the disapplication of such consent is conditional upon the agreement of adequate protective provisions.
- 17 The Applicant advised on 11 March 2014 that a set of protective provisions has been agreed with the EA and that the associated agreement with the river regulators has also been completed (APP198.13).
- 18 There does however remain outstanding between the Parties a number of regulatory issues which can be found in the EA's submission on 3 March 2014 (REP440) read together with the Applicant's response of 11 March 2014 (APP198.13).

#### **THE RECOMMENDATION OF THE PANEL**

- 19 The Panel is satisfied on the evidence before it that pursuant to section 127(1)(b) of PA 2008 a representation has been made by the EA about the application and not withdrawn and pursuant to section 127(1)(c) of PA 2008 the land is used for the purposes of the carrying on of the undertaking.
- 20 The Panel on the evidence before it referred to above is satisfied that the operational land and interests required by the Applicant can be taken without serious detriment to the carrying on of the undertaking.
- 21 The protective provisions safeguarding the position relating to the disapplication of Flood Defence Consent are also agreed.
- 22 The Panel notes that the parties are close to settling the outstanding issues and have set a target date for agreement of 30 April 2014.

- 23 However, the Panel notes that the outstanding matters relate to regulatory matters and not the specific issue of operational land.
- 24 Accordingly it recommends that, a certificate pursuant to the provisions of section 127(2) of PA 2008 in the form attached, be issued by the Secretary of State.
- 25 The Panel is advised by the Applicant that the schedule of affected plots to be attached to a certificate in the form set out in the Schedule attached, has been sent to the Department for Environment, Food and Rural Affairs under cover of the Applicant's letter of 11 March 2014.
- 26 In drafting the certificate under section 127 set out below (in the form provided by the Applicant), we have used the information provided to us by the Applicant and sent to the Department on 6 November 2013, and the updated information for the schedules provided to us by the Applicant on 11 March 2014 (REP503).
- 27 Lastly, we have received no draft notice from the Applicant, but we have drafted a notice which the Secretary of State may use if appropriate. 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 APP201.

**DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**

**THE THAMES WATER UTILITIES LIMITED (THAMES TIDEWAY TUNNEL)  
DEVELOPMENT CONSENT ORDER 201[•]**

**CERTIFICATE PURSUANT TO SECTION 127(2) OF THE PLANNING ACT  
2008**

**LAND IN THE OWNERSHIP OF THE ENVIRONMENT AGENCY**

1 The Thames Water Utilities Limited (Thames Tideway Tunnel) Development Consent Order 201[•] which has been submitted by Thames Water Utilities Limited to the Secretaries of State for Environment, Food and Rural Affairs and Communities and Local Government includes the land in the schedule to this certificate.

2 The land was acquired by the Environment Agency for the purpose of its undertaking and the Secretary of State is satisfied that it is used for the purposes of carrying out the undertaking.

3 The Secretary of State, in exercise of his powers under Section 127(2) of the Planning Act 2008, certifies that he is satisfied that the land described in the Schedule hereto can be purchased and not replaced without serious detriment to the carrying on of the undertaking.

**SCHEDULE – THE ENVIRONMENT AGENCY**

<b>Borough</b>	<b>Plot Number</b>
London Borough of Richmond Upon Thames	63, 64
London Borough of Wandsworth	1, 3

## NOTICE UNDER SECTION 127(7) OF THE PLANNING ACT 2008

### THE THAMES WATER UTILITIES LIMITED (THAMES TIDEWAY TUNNEL) DEVELOPMENT CONSENT ORDER 201[•]

The above order, which was made on the [•] by the Secretaries of State for Environment, Food and Rural Affairs and Communities and Local Government, includes provision authorising the compulsory acquisition of land described in the Schedule.

This land was acquired by the Environment Agency for the purposes of their undertaking and the Secretary of State is satisfied that it is used for the purposes of carrying out their undertaking.

The Secretary of State for Environment, Food and Rural Affairs, in exercise of powers under section 127(2) of the Planning Act 2008, has certified that the Secretary of State is satisfied that the nature and situation of the land in question are such that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking.

The certificate becomes operative on [•].

#### SCHEDULE

<b>Borough</b>	<b>Plot Number</b>
London Borough of Richmond Upon Thames	63, 64
London Borough of Wandsworth	1, 3