



Department for  
Communities and  
Local Government



Department  
for Environment  
Food & Rural Affairs

Mark Morrison  
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(by email)

17 May 2017

Dear Mr Morrison

**PLANNING ACT 2008 (the “2008 Act”)**

**Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (the “2011 Regulations”)**

**THE THAMES WATER UTILITIES LIMITED (THAMES TIDEWAY TUNNEL) ORDER (SI 2014/2384) AS CORRECTED BY THE THAMES WATER UTILITIES LIMITED (THAMES TIDEWAY TUNNEL) (CORRECTION) ORDER (SI 2015/723) AND THE NOTICE OF VARIATION NO 1 TO THE DEEMED MARINE LICENCE**

**Application for a non-material change to Work No. 27: Beckton Sewage Treatment Works associated development**

1. We are directed by the Secretary of State for Environment, Food & Rural Affairs and the Secretary of State for Communities and Local Government (the “Secretaries of State”) to notify you that consideration has been given to the application (the “Application”) which was made by Thames Water Utilities Limited (the “Applicant”) on 28 February 2017 for a change which is not material to the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (“the 2014 Order”) under paragraph 2 of Schedule 6 to the 2008 Act.
2. The original application for development consent under the 2008 Act was submitted to the Planning Inspectorate by the Applicant on 28 February 2013 and was granted consent on 12 September 2014. Consent was granted for the construction and

operation of a wastewater transfer and storage tunnel, known as the Thames Tideway Tunnel, a number of connection tunnels and other associated development and ancillary works at 24 sites in London along the route of the tunnel and works to construct interception structures at 16 combined sewage overflows.

3. The consented works at Beckton Sewage Treatment Works (“STW”) are “associated development” within the meaning of section 115(2) of the 2008 Act. The proposed works at Beckton STW comprise the installation of infrastructure to transfer combined sewage overflows from the Thames Tideway Tunnel to Beckton STW and the connection of a new siphon tunnel to the Lee Tunnel overflow shaft. This will entail the construction of two shafts, a siphon tunnel and the installation of two pumps. The siphon tunnel and associated infrastructure will act as a relief structure to enable combined sewage flows to bypass the Beckton STW and discharge directly into the River Thames from the Lee Tunnel overflow shaft when the tunnel system reaches capacity.
4. Following detailed design work and a constructability review the Applicant is seeking consent for a change to the 2014 Order to allow the variation of the locations and depths of the inlet and outlet shaft to be constructed at Beckton STW. The Applicant considers that these changes would de-risk elements of the construction and reduce excavation waste. The Secretaries of State have found no reason to disagree with the Applicant’s rationale for applying for the changes.
5. The Secretaries of State note that while the Application (Ref: 5147321-D382-BN-GEN-CORR-00272) refers at paragraph 21 to an Explanatory Memorandum, there is no reference to an Explanatory Memorandum in appendix 2 (Schedule of Application Documents) of the Application. The Secretaries of State therefore conclude that an Explanatory Memorandum was not submitted with the Application. They also note that an Explanatory Memorandum is not required to be submitted under regulation 4 of the 2011 Regulations. The Secretaries of State are content that the Application meets the requirements of regulation 4 of the 2011 Regulations.

### **Summary of the Secretaries of State’s Decision**

6. The Secretaries of State are satisfied that the changes requested by the Applicant are not material ones and have decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make an Order amending the 2014 Order as requested in the Application (subject to the minor changes described in paragraph 19 below). This letter is the notification of the Secretaries of State’s decision in accordance with regulation 8 of the 2011 Regulations.

### **Consideration of the Materiality of the Proposed Changes**

7. The Secretaries of State have given consideration as to whether the Application is for a material or non-material change.

8. There is no statutory definition of what constitutes a ‘material’ or ‘non-material’ change for the purposes of Schedule 6 to the 2008 Act and Part 1 of the 2011 Regulations. Paragraph 2(2) of Schedule 6 to the 2008 Act requires the Secretaries of State, when deciding whether a proposed change is material, to have regard to the effect of the changes on the development consent order (DCO) as originally made. The Applicant’s updated assessments confirm that the proposed changes would not result in new or materially different likely significant effects to those previously assessed.
9. The Secretaries of State have considered the materiality of the changes proposed in the Application against characteristics<sup>1</sup> that indicate a change to a consent is more likely to be treated as material, as follows:

- a. *Environmental Statement – a change to a DCO requires an updated Environmental Statement to take account of new, or materially different, likely significant effects on the environment*

The Application considers the likely environmental impacts of the proposed changes against the baseline set out in the Environmental Statement which accompanied the original DCO application. Particular consideration was given to assessing the impacts on traffic and transport; impacts in terms of air quality and odour; impacts on residential and employment occupiers in terms of noise and vibration; the potential for vibration damage to existing structures within Beckton STW; changes to requirements for ventilation and air treatment; impact on duration and/or timing of construction; and overall performance of the system. The Application concludes that the impacts on these associated with the proposed changes are no greater than those previously assessed for the consented scheme, with no resulting change in significance of impacts and no new significant impacts. The Secretaries of State have considered the information provided and have no reason to disagree with assessments and therefore conclude that no update is required to the Environmental Statement as a result of the proposed changes to the 2014 Order.

- b. *Habitats and Protected Species – a change to a DCO would invoke a need for a Habitats Regulations Assessment or the need for a new or additional licence in respect of European Protected Species*

The proposed changes will not impact on a Nature 2000 site (i.e. a Special Area of Conservation or a Special Protection Area) nor a Ramsar site, so there is no requirement for a Habitats Regulations Assessment. The Secretaries of State note

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<sup>1</sup> The Department for Communities and Local Government’s ‘Planning Act 2008: Guidance on Changes to Development Consent Orders’, published in December 2015  
<https://www.gov.uk/government/publications/changes-to-development-consent-orders>

that Natural England raised no objections to the proposed changes and did not advise that an Appropriate Assessment was required. The Secretaries of State also consider that there is no need for a new or additional licence in respect of any European Protected Species.

- c. *Compulsory Acquisition – a change that would authorise the compulsory acquisition of any land, or an interest in or rights over land, that was not authorised through the original DCO*

The Secretaries of State note that the proposed changes are all within the approved order limits as set out in the 2014 Order, all within Thames Water Utilities Ltd land ownership and that no additional compulsory acquisition powers, or powers for the acquisition of any interest in or rights over land, are being sought as part of the Application.

- d. *Impact on Businesses and Residents – the potential impact of the proposed changes on local people*

The Secretaries of State also note that, as the nearest residential area is 750m to the west of the DCO limits, the proposed changes will not have a material effect on businesses and residents with respect to traffic and transport, air quality and odour and noise and vibration. The transport impacts are not significant and are slightly reduced as compared to the impacts under the 2014 Order.

10. Following the publicity and consultation no representations were made disputing the Applicant's position that the proposed changes are non-material in nature. The Secretaries of State have no reason to disagree with the Applicant's assessment of materiality, and having regard to the effect of the changes on the 2014 Order, the Secretaries of State are satisfied that the proposed changes in the Application are appropriately categorised as non-material changes (for the purposes of paragraph 2 of Schedule 6 to the 2008 Act). The Application has therefore been handled in accordance with Part 1 of the 2011 Regulations.

## **Consultation and Responses**

11. Following a request from the Applicant on 3 November 2016 (as updated on 7 and 15 November 2016 and 17 February 2017), on 27 February 2017, the Secretaries of State consented to allow, in accordance with regulation 7(3) of the 2011 Regulations, the Applicant to consult a more limited number of persons than would ordinarily need to be consulted under regulation 7(2). The reasons for that grant of consent are set out in the decision letter issued by the Secretaries of State on 27 February 2017.

12. In accordance with the requirements of regulation 7(1) of the 2011 Regulations specified parties were consulted about the Application by the Applicant. The consultation ran from 1 March 2017 until 5 April 2017.
13. In accordance with regulation 6 of the 2011 Regulations a notice of the Application was also published for two consecutive weeks in the local press, the Newham Recorder, and was made publicly available on the Planning Inspectorate's website, providing an opportunity for anyone not consulted about the Application to also submit representations to the Planning Inspectorate. No representations were received as a result of this publicity.
14. Representations were received during the consultation period from: the Marine Management Organisation, Natural England, the Port of London Authority, Historic England and the London Borough of Newham. A response was received from the Environment Agency on 6 April 2017. This has been accepted by the Secretaries of State on the basis that the Environment Agency are a statutory consultee, that the representation was submitted a day late and that no one was prejudiced by the late submission of this representation.
15. The Secretaries of State have carefully considered these representations and note that none of them raise any objections to or make substantive comments on the Application.
16. The Secretaries of State, having carefully considered all the representations received, do not consider that any further information needs to be provided by the Applicant or that any further consultation of those already consulted or any wider consultation is necessary before determining the Application.

### **Environmental Impact Assessment**

17. The Secretaries of State are satisfied that the information in the Application is sufficient for them to make a determination on the Application. The Secretaries of State have considered whether the Application would be likely to give rise to any new significant effects or materially different effects when compared to the effects set out in the Environmental Statement for development authorised by the 2014 Order and are content that there is no need for completion of an Environmental Impact Assessment.

### **The Secretaries of State's Conclusions and Decision**

18. For the reasons given in this letter the Secretaries of State are satisfied that the changes to the 2014 Order applied for are not material when considered in the context of development authorised by the 2014 Order and, therefore, today are making an Order in the form of a statutory instrument to amend the 2014 DCO. This is

substantially in the form of the draft Order submitted with the application, subject to a number of minor modifications, set out below.

### **Amendments to the Order**

19. The following modifications have been made by the Secretaries of State to the draft Order suggested by the Applicant:
- a. the pre-amble is amended to reflect the Secretary of State's role in the consultation and publicity process carried out under the 2011 Regulations;
  - b. the Secretaries of State have also decided to make various minor drafting changes which do not materially alter the effect of the Order, including changes to conform with current practice for Statutory Instruments, changes in the interests of clarity and consistency (e.g. in relation to footnotes), and changes to ensure that the Order has the intended effect.

### **Challenge to Decision**

20. The circumstances in which the Secretaries of State's decision may be challenged are set out in the note attached as an Annex to this letter.

### **Publicity for Decision**

21. The Secretaries of State's decision on this Application is being notified as required by regulation 8 of the 2011 Regulations.

*Richard Watson*

**Department for Communities and Local  
Government**

*Sarah Fairbrother*

**Department for Environment, Food &  
Rural Affairs**

## ANNEX

### LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118(5) of the Planning Act 2008, a decision under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a change to an Order granting development consent can be challenged only by means of a claim for judicial review. The claim form must be filed before the end of the period of 6 weeks beginning with the day after the day on which the Order making the change is published. The Amending Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/london/thames-tideway-tunnel/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London WC2A 2LL (020 7947 6655).**