



Ministry of Housing,  
Communities &  
Local Government



Department  
for Environment  
Food & Rural Affairs

Liz Wood-Griffiths  
Tideway  
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(by email)

Your Application ref:  
2530-TDWAY-TTTUN-990-ZZ-CO-700187

Date: 14 August 2020

Dear Liz

**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) (“the 2014 Order”) AS AMENDED BY THE THAMES WATER UTILITIES LIMITED (THAMES TIDEWAY TUNNEL) (CORRECTION) ORDER (SI 2015/723), THE THAMES WATER UTILITIES LIMITED (THAMES TIDEWAY TUNNEL) (AMENDMENT) ORDER (SI 2017/659), THE THAMES WATER UTILITIES LIMITED (THAMES TIDEWAY TUNNEL) (AMENDMENT) ORDER (SI 2018/1262), THE THAMES WATER UTILITIES LIMITED (THAMES TIDEWAY TUNNEL) (AMENDMENT) ORDER (SI 2020/268), AND THE NOTICE OF VARIATION No. 1 (17 MARCH 2015) AND NOTICE OF VARIATION No. 2 (17 AUGUST 2017) TO THE DEEMED MARINE LICENCE.**

**Application for a non-material change in relation to the Victoria Embankment Foreshore (VCTEF) and Blackfriars Bridge Foreshore (BLABF) sites.**

1. We are directed by the Secretary of State for Environment, Food & Rural Affairs and the Secretary of State for Housing, 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 Bazalgette Tunnel Limited (trading as Tideway) (the “Applicant”) on 21 May 2020 for a change which is not material to the 2014 Order under paragraph 2 of Schedule 6 to the 2008 Act.

2. Under the 2008 Act changes to a development consent order may be material or non-material. The process for considering material changes is different to the process for considering non-material changes. In summary, material changes require greater prior publicity and consultation and consideration following submission. In contrast, non-material changes are subject to a simplified and expedited process. Tideway has applied on the basis that the change requested is non-material.
3. The original application for development consent under the 2008 Act was submitted to the Planning Inspectorate by Thames Water Utilities Limited 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.
4. The Applicant has the benefit of the 2014 Order by virtue of a transfer of powers by Thames Water Utilities Limited dated 24 August 2015 made pursuant to Article 9 of the 2014 Order.
5. The consented works at Victoria Embankment Foreshore (VCTEF) are set out under Work Numbers 16a, 16b and 16c of Part 1 of Schedule 1 to the 2014 Order. Work numbers 16a and 16b form part of the nationally significant infrastructure project (as defined in sections 14 and 29(1A) of the 2008 Act) and comprises 16a: the Victoria Embankment Foreshore CSO drop shaft, and 16b: the Regent Street connection tunnel which will connect the CSO drop shaft with the main tunnel (east central) (authorised under Work No. 1c). Work No 16c sets out the “associated development” (as defined in section 115(2) of the 2008 Act) and comprises a range of demolition and construction activities.
6. The consented works at Blackfriars Bridge Foreshore (BLABF) are set out under Work Numbers 17a and 17b of Part 1 of Schedule 1 to the 2014 Order. Work number 17a forms part of the nationally significant infrastructure project (as defined in sections 14 and 29(1A) of the 2008 Act) and comprises the Blackfriars Bridge Foreshore CSO drop shaft, which will connect directly with the main tunnel (east central) (authorised under Work No. 1c). Work No 17b sets out the “associated development” (as defined in section 115(2) of the 2008 Act) and comprises works to intercept and divert flow from the main Fleet CSO and connect the northern Low-Level Sewer No 1 to the CSO drop shaft. Work No 17b also includes a range of demolition and construction activities.
7. The Applicant is seeking consent for a change to the 2014 Order to ensure that the permitted works at the VCTEF and the BLABF sites can be completed as originally intended.
8. The proposed amendment at the VCTEF site involves only correcting an anomaly in the approved site works parameter plan and corresponding text in the DCO, with no changes to the authorised works. The Applicant is seeking consent for the following amendments to the DCO:
  - a. Amendments to the Site works parameter plan (Drawing DCO-PP-16X-VCTEF-180008-rev 3) so that the shaft parameter within the site is expanded slightly westwards to match the actual shaft construction works approved by

the DCO. There are no changes to the size and location of the shaft on the ground within the site. The revised drawing (DCO-PP-16X-VCTEF-180008-rev 4) shows the amended shaft parameter.

9. The proposed amendments at the BLABF site involve the below-ground demolition of part of the existing Low-Level Sewer No 1 and pipe subway above it, to facilitate the construction of the overflow weir chamber required as part of the interception of the sewer to divert the waste water flow into the main tunnel. The sewer and pipe subway will then be rebuilt around the new construction. The pipe subway is a City of London asset, and the DCO requires that any part of it removed during construction must be reinstated in accordance with details approved by the City of London planning authority. The agreed design for this now requires amendments to three of the approved drawings for the BLABF site. The Applicant is seeking consent for the following amendments to the DCO:
  - a. Minor adjustments to the Site works parameter plan at two locations to accommodate the necessary construction in the agreed design for the sewer interception and weir chamber, shown on drawing 4601-FLOJV-BLABF-150-ZZ-DR-400300, and corresponding amendment of the reference to the amended plans in Part 4 of Schedule 2 of the DCO.
  - b. Amendments to the Extent of loss of listed river wall plan (drawing DCO-PP-17X-BLABF-190023) to allow for the permanent loss of the listed structure above the level of the Low-Level Sewer No 1 interception, and related revision to the plan reference in the DCO.
  - c. Addition of an informative note to Extent of loss of listed river wall plans at BLABF (drawings DCO-PP-17X-BLABF-190022-rev 1 and DCO-PP-17XBLABF-190023) to make it clear that the permanent loss of the listed river wall authorised under the DCO extends to the toe of the river wall.
  - d. Amendment to the Demolition and site clearance plan (drawing DCO-PP-17XBLABF-190007-rev 2), so that the area for demolition is consistent with the changes proposed to the Site works parameter plan and Extent of loss of listed river wall plan, and reference to granite river wall facing is removed from the informative note.
  - e. Amendments to the Demolition and site clearance plans (drawings DCO-PP-17X-BLABF-190006-rev 1 and DCO-PP-17X-BLABF-190007-rev 2) at the western end of the site where a new vehicular access to the foreshore is to be provided.
  - f. Revision of the references to the amended plans in Part 4 of Schedule 2 of the DCO; and
  - g. Revision of the reference to the Extent of loss of listed river wall plans referred to in Requirement BLABF 11 – Details of works to listed buildings.
10. The Secretaries of State have found no reason to disagree with the Applicant's rationale for applying for the changes and are content that the Application (Ref: 2530-TDWAY-TTTUN-990-ZZ-CO-700187) meets the requirement of regulation 4 of the 2011 Regulations.

## Summary of the Secretaries of State's Decision

11. 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. This letter is the notification of the Secretaries of States' decision in accordance with regulation 8 of the 2011 Regulations.

## Consideration of the Materiality of the Proposed Changes

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

13. 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 change, together with any previous changes made under that paragraph, 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.

14. 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 Environment 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 scheme assessed in the Environmental Statement which accompanied the original DCO application. The Application concludes that the amendment will not result in any new, or materially different significant effects on the environment. The Secretaries of State have considered the information provided and have no reason to disagree with the assessments, and therefore conclude that no update is required to the Environmental Statement as a result of the proposed change 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 Natura 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 that Natural England raised no objections to the proposed changes and did not advise that

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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>

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 at the VCTEF and BLABF sites do not involve a requirement for compulsory acquisition of any land, or an interest in or rights over land, that was not authorised through the original DCO.

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

The Secretaries of State also note that the proposed changes do not constitute a change to the planned works at either the VCTEF or the BLABF sites, and as such will not have a material effect on businesses and residents with respect to traffic and transport, air quality and odour and noise and vibration.

15. Previous applications for a non-material change to the DCO were approved in 2017 (SI 2017/659), in 2018 (SI 2018/1262), and in 2020 (SI 2020/268). In considering the materiality of the proposed change, the Application takes into account the effect on the DCO of the previous amendments. The Application concludes that the cumulative impact of the previous sets of amendments and this one is not considered to result in any material change to the DCO as originally made. The Secretaries of State have considered the information provided and have no reason to disagree with the assessment.
16. 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 proposed change, together with the previous changes made under that paragraph, on the 2014 Order as originally made, 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**

17. Following a request from the Applicant on 25 September 2019, on 12 December 2019 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 12 December 2019.
18. 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 21 May to 28 June 2020.

19. Representations were received during the consultation period from Historic England, the Environment Agency, the Greater London Authority, the Port of London Authority, the City of London, the City of Westminster, and Natural England.
20. 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 London Evening Standard, 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.
21. The Secretaries of State have carefully considered the representations received and note that none of them raise any objections to, or make substantive comments on, the Application.
22. 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**

23. 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 States' Conclusions and Decision**

24. For the reasons given in this letter the Secretaries of State are satisfied that the change to the 2014 Order applied for is not material when considered in the context of development authorised by the 2014 Order and, therefore, have made 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**

25. The following modifications have been made by the Secretaries of State to the revised draft Order suggested by the Applicant on 21 May 2020:
  - a. the Secretaries of State have removed the third paragraph in the pre-amble, referring to the consultation responses, as largely duplicating the purpose of the fourth paragraph;
  - b. the Secretaries of State have also decided to make various 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**

26. 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**

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

*Stephen Jewell*

*Mary Jeavans*

**Stephen Jewell**

**Mary Jeavans**

**Ministry of Housing, Communities and  
Local Government**

**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:

<https://infrastructure.planninginspectorate.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).**