



Department for Levelling Up,
Housing & Communities



Department
for Environment
Food & Rural Affairs

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(by email)

Your Application ref:
2530-TDWAY-TTTUN-990-ZZ-CO-700203

Date: 24 November 2022

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), THE THAMES WATER UTILITIES LIMITED (THAMES TIDEWAY TUNNEL) (AMENDMENT) ORDER 2020 (SI 2020/862), 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) site.

1. We are directed by the Secretary of State for Environment, Food & Rural Affairs and the Secretary of State for Levelling Up, Housing and Communities (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 1 September 2022 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 (DCO) 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 scheme at Victoria Embankment introduces a new permanent area of foreshore constructed over the Tideway operational infrastructure for use as public realm once operational. The current consent allows for the Tattershall Castle to be relocated from its original location at the Victoria Embankment to a temporary mooring a short distance upstream at the Embankment, and then moved 40 metres downstream from there to a new permanent mooring close to the new foreshore area once the foreshore works are completed. The current consent also provides for the service mooring east of the junction of Victoria Embankment and Horse Guards Avenue to be temporarily removed and then reinstated.
7. The Applicant is seeking consent for a change to the 2014 Order to allow the Tattershall Castle to remain permanently in its current location, and for the service mooring east of the junction of Victoria Embankment and Horse Guards Avenue to be permanently removed.

8. The proposed amendment at the VCTEF site involves only changes to the description of the approved works set out in Schedule 1 Part 1 of the 2014 Order; seven drawings referred to in the 2014 Order; amendments to Schedule 2 Part 4 (Approved Plans) and Schedule 3 (Requirements) of the 2014 Order to revise the drawing numbers of the amended plans; Schedule 5 (Streets Subject to Alteration of Layout) of the 2014 Order where reference is made to two locations for the vessel, with no changes to the authorised works themselves at the VCTEF site.
9. The Applicant is seeking consent for the following amendments to the DCO:
 - a. amend the description of the work in Work No 16c (xi) and 16c (xii) of Schedule 1 Part 1 (Authorised Development),
 - b. amend the plans listed below which are referred to in the DCO:
 - i. the Demolition and site clearance (sheet 2 of 2) - DCO-PP-16X-VCTEF-180007 Rev 2,
 - ii. the Site Works Parameter plan - DCO-PP-16X-VCTEF-180008 Rev 4,
 - iii. the Proposed Site Features Plan - DCO-PP-16X-VCTEF-180011 Rev 1,
 - iv. the Proposed Landscape Plan (sheet 1 of 2) - DCO-PP-16X-VCTEF-180012 Rev 2,
 - v. the Proposed Landscape Plan (sheet 2 of 2) - DCO-PP-16X-VCTEF-180013 Rev 1,
 - vi. the Proposed mooring access details - DCO-PP-16X-VCTEF-180027 Rev 1,
 - vii. the As existing and proposed river elevation impact on listed structure (sheet 1 of 2) - DCO-PP-16X-VCTEF-180047 Rev 1.
 - c. revise the references to these plans in Part 4 of Schedule 2 of the DCO,
 - d. revise the references to these plans in Requirements VCTEF 3, VCTEF 4, VCTEF 7, VCTEF 10, and VCTEF 15 in the Table at paragraph 16 of Schedule 3 (Requirements),
 - e. revise the Requirement title of VCTEF 3 and VCTEF 11 to remove references to 'temporary' and 'permanent',
 - f. amend the Description of Alteration in column 3 of Schedule 5 (Streets Subject to Alteration of Layout) for the VCTEF site.
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-700203) 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 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 characteristics¹ 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 resulting from 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 an Appropriate Assessment was required. The Secretaries of State also consider that

¹ 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>

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 site 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 the VCTEF site, and as such will not have a material effect on businesses and residents with respect to traffic and transport, air quality and odour, 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 and SI 2020/862). In considering the materiality of the proposed change, the Application takes account of 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 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 29 June 2022, on 29 July 2022 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 29 July 2022.
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 1 September to 9 October 2022. Representations were received during the consultation period from Historic England, Natural England, the Marine Management Organisation, and the Port of London Authority.

19. In accordance with regulation 6 of the 2011 Regulations a notice of the Application was published for two consecutive weeks in the London Evening Standard, and was also made publicly available on the Planning Inspectorate's website to provide an opportunity for anyone not consulted about the Application to also submit representations to the Planning Inspectorate. No representations were received resulting from this publicity.
20. 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.
21. 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

22. 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

23. 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

24. The following modifications have been made by the Secretaries of State to the revised draft Order suggested by the Applicant on 1 September 2022:
 - a. 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

25. 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

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

Mike Hale

Tony Hitching

Mike Hale

Tony Hitching

**Department for Levelling Up, Housing and
Communities**

**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).