



By email

Transport Infrastructure Planning Unit
Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
transportinfrastructure@dft.gov.uk

Copy to:

The Planning Inspectorate
LowerThamesCrossing@planninginspectorate.gov.uk

YOUR REF:

OUR REF: RGA/JEK/00239263/21

DATED: 26 September 2024

Dear Transport Infrastructure Planning Unit

Application for development consent for proposed Lower Thames Crossing

We act for Transport Action Network (“**TAN**”), a not-for-profit company that campaigns for more sustainable transport, and which is an interested party in the examination for the Lower Thames Crossing (“**LTC**”) (unique reference 20035823). TAN understands that the LTC is currently being reviewed as part of the review of the Department for Transport (“**DfT**”) capital spend portfolio being carried out by the Secretary of State.

The purpose of this letter is to set out the implications which the outcome of the capital spend review would have for the application for development consent. In particular, if the funding arrangements for the LTC are significantly changed, that would render out of date the assessments put forward by National Highways (“**NH**”) as regards the costs and benefits of the scheme, as well as NH’s transport modelling. TAN does not know whether the Secretary of State is minded to grant development consent, but she would not lawfully be able to do so if the funding position for the scheme were to change.

The funding assumptions in the development consent application

Regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 requires that any application for development consent which would authorise the compulsory acquisition of land (which the LTC scheme would), must include “a statement to indicate how an order that contains the authorisation of compulsory acquisition is proposed to be funded”. The government’s *Guidance related to procedures for the compulsory acquisition of land*¹ explains:

“Applicants should be able to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the order

¹https://assets.publishing.service.gov.uk/media/5a748a8ce5274a7f9902904a/Planning_Act_2008_-_Guidance_related_to_procedures_for_the_compulsory_acquisition_of_land.pdf

being made, and that the resource implications of a possible acquisition resulting from a blight notice have been taken account of.”

It is important that funding is in place to enable the compulsory acquisition of land within the statutory period. That is to avoid a situation where properties are blighted by the grant of development consent without any realistic prospect of property owners being able to sell their properties to the scheme promoter.

NH submitted a Funding Statement [APP-063] as part of the LTC application². The Funding Statement said that the LTC would be “funded through government funding of National Highways”. It noted that LTC was included in Road Investment Strategy (“**RIS**”) 1 and that the funding commitment from DfT had been continued in RIS2. It concluded:

“The Government and National Highways commitments described above demonstrate that the Project will be fully funded by the Department for Transport through the Statement of Funds Available (SoFA). Consequently, the Project is not dependent on funding contributions from other parties or sources, including road user charging.”

As can be seen, the Funding Statement was categorical about the funding sources for the scheme. That assumption fed through into the assessments carried out for the scheme. For example, the Combined Modelling and Appraisal Report³ (“**CMAR**”) [APP-518] submitted by NH, forecast the capital costs, operating and monitoring costs, and revenues generated by the LTC (Table 7.16, page 135).

In any of the three revenue growth scenarios put forward, costs vastly exceeded revenues. Even in the high revenue growth scenario, costs exceeded revenues by £2.626bn (the “Present Value of Costs” or “**PVC**”) in 2010 prices. NH believed the scheme to be viable notwithstanding those costs because of the DfT funding commitment.

The revenue forecasts for the scheme were based on the assumption that any road user charging for the LTC would be “*the same as the charges at the Dartford Crossing and that the charges at both crossings would rise in line with the Retail Price Index*” (CMAR para 7.4.23). That is a requirement of the draft development consent order (“**DCO**”) – see Schedule 12, para 3(2)⁴. Apart from the viability of the scheme, the benefit and cost ratio (“**BCR**”) of the scheme put forward in the CMAR, as well as the other modelling and appraisal, were based on a PVC assuming that road user charging between the LTC and the Dartford Crossing would remain equal.

The assumption as to the permissible road user charges was also important for the other assessments carried out by the applicant. The applicant’s Transport Assessment⁵ [APP-529] notes:

² <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010032/TR010032-001251-4.3%20Funding%20Statement.pdf>

³ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010032/TR010032-001321-7.7%20Combined%20Modelling%20and%20Appraisal%20Report.pdf>

⁴ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010032/TR010032-001247-3.1%20Draft%20Development%20Consent%20Order.pdf>

⁵ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010032/TR010032-001481-7.9%20Transport%20Assessment.pdf>

“A key objective of the Project is to relieve the congested Dartford Crossing which currently experiences levels of demand well in excess of its design capacity.” (para 1.3.7)

Key to achieving that objective is parity of road user charging between the LTC and the Dartford Crossing, because without such parity, and in particular if they are required to pay more to use the LTC, road users may be incentivised to continue to use the Dartford Crossing even where quicker journey times might be achieved by using the LTC. See for example para 3.1.16 of the applicant’s Transport Assessment:

“To align with NPSNN policy and to help the Project meet the Scheme Objectives, it is proposed that road user charges would be levied in line with the Dartford Crossing. Vehicles would be charged for using the new tunnel.”

Any changes to traffic flows as a result of user charging changes would also feed into NH’s other assessments, for example of local air quality and noise impacts, as well as carbon emissions.

Implications of changes to funding position

The government’s commitment to funding the LTC has been put in doubt by the transport infrastructure review. It has been rumoured in the press, in particular in a Financial Times article dated 12 August 2024⁶, that the Chancellor is considering private finance options for funding the scheme. The FT reported: *“Investors in the Lower Thames Crossing would receive returns from the toll road in exchange for bankrolling the project, potentially on indefinite or 125-year contracts, according to two people close to the Treasury discussions.”*

Should the government decide that the scheme will no longer be entirely publicly funded, then NH’s Funding Statement would no longer be accurate. That would mean that there would no longer be certainty that funding will be available within the statutory period for the compulsory purchase of land affected by the scheme. This would have significant implications for the owners of that land, whose properties might be blighted without any prospect of receiving fair compensation were development consent to be granted.

Additionally, if the government is considering funding the scheme through private finance, and that future road user charging revenues will be used to attract investors, then that would undermine the ability of the LTC to meet its key objective. It would also fundamentally change the modelling of the benefits and impacts of the scheme.

As can be seen from the CMAR, the scheme costs are forecast to be significantly more than the revenues it might generate, assuming that user charges for the LTC are equal to those for the Dartford Crossing. In order for investors to receive any return at all on their investment in the scheme, road user charges would need to be significantly increased, either at Dartford or the LTC alone (so that one was higher than the other) or at both the LTC and Dartford Crossing together. In all scenarios, the modelling assumptions used in the application and examination documents would change.

If the LTC charges were higher than those for the Dartford Crossing, then fewer road users would use the LTC. This would lead to a change from the forecast traffic flows, with corresponding changes to, for example, air quality impacts. In this scenario the

scheme would be unlikely to meet its objectives of reducing congestion at Dartford, and any period of relief would be reduced.

Conversely, if the Dartford Crossing charges were increased to a higher rate than charges for the LTC (to pay for the LTC) traffic would significantly increase at the LTC increasing the impacts on the local area.

If charges for both the LTC and the Dartford Crossing were increased to fund the LTC, that might cause users to find alternative routes to the two major crossings. This could increase pressure on the (yet to be commissioned) Silvertown tunnel and existing Blackwall tunnel. It would lead to a divergence from the traffic flows forecast in the Transport Assessment and any modelling based on them.

It is clear that all of these scenarios significantly change the transport economics and impacts of the scheme, and the case put forward in the DCO and examination by NH.

Using private finance to build the LTC would also require higher interest rates than Treasury borrowing, resulting in the scheme costing more to deliver, beyond the £9 billion outlined in the Funding Statement. The cost of borrowing needs to be considered as part of any DCO application, as this could result in even higher road user charges (at the Dartford Crossing and LTC).

Inability of the Secretary of State to grant development consent

Should the funding position of the LTC change so that private funding is needed for the scheme to go ahead, then it would be unlawful for the Secretary of State to grant development consent. That is for the following reasons.

First, the Funding Statement is an essential component of any application for development consent providing for the compulsory purchase of land. That is clear from the statutory requirement for the submission of such a statement and the government guidance referred to above. Now that the examination has closed, there is no ability for NH to make further changes to its application, including changes to the funding statement. Given that the Secretary of State would, if the funding position were to change, know that the Funding Statement was inaccurate, it would be perverse to grant development consent for a scheme.

Second, even if a variation to the Funding Statement were permissible at this stage, statutory consultees, interested parties (including affected persons whose properties are proposed to be compulsorily acquired in accordance with the DCO) and the wider public would have had no opportunity to make representations on the implications. Representations would likely cover:

- i) the PVC and BCR of the scheme;
- ii) the wider modelling of the scheme's impacts on traffic flows and consequent environmental impacts such as on air quality; and
- iii) whether the public benefits of the scheme outweigh its impacts, particularly in the compulsory purchase context where there must be a "*compelling case in the public interest*" (section 122(4) Planning Act 2008).

Third, and similarly, the changes to the scheme's PVC, BCR and other modelling assumptions resulting from the change to the funding model have not been assessed by the applicant or considered by the examining authority as part of the examination. Therefore, the Secretary of State would have no way of understanding the benefits and impacts of the scheme. The only way that could be achieved would be for a new

DCO application to be made, with an amended Funding Statement and amendments to the applicant's assessments.

National Highways' "Road to growth" publication

National Highways recently published a document with Logistics UK entitled "Lower Thames Crossing: Road to growth"⁷, alongside an accompanying "economic assessment"⁸. This makes new and unevidenced claims about the purported benefits of LTC. For example, it claims that the LTC would generate £40 billion over 60 years. No evidence is presented for that figure, which did not form part of the evidence for the DCO application. In fact, it contradicts the evidence base for the DCO.

Obviously, the Secretary of State should ignore any unsubstantiated and unscrutinised claims such as this in her determination of the DCO application.

Conclusion

We invite the Secretary of State to have regard to this letter in her consideration of whether to grant development consent for the scheme. For the reasons set out above, she cannot lawfully grant development consent unless the funding position for the scheme is resolved and the government decides that it will commit to full public funding for the scheme, and the modelling assumptions and environmental impacts used in the DCO application and the examination remain intact. Even if the government does decide to fully fund the LTC, our client's other objections to the scheme, and those of other interested parties such as Thames Crossing Action Group, remain.

Yours faithfully

7

8

[h](#)