The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by Wendy McKay LLB Solicitor (Non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 9 June 2014

Proposed Certificates in respect of the Compulsory Acquisition of

Open Space and Rights over Open Space pursuant to

Sections 131(4A) and 132(3) Planning Act 2008 (as amended)

Draft Thames Water Utilities (Thames Tideway Tunnel) Development Consent Order 2013

Inquiry held on 1 and 2 April 2014
Inspections were carried out on 3 and 4 April 2014
Land at Barn Elms, Putney Embankment Foreshore (Waterman's Green), King George's Park, Falconbrook Pumping Station, Chelsea Embankment Foreshore, Deptford Church Street, King Edward Memorial Park, Putney Embankment Foreshore (foreshore), Albert Embankment Foreshore and King Edward Memorial Park Foreshore (foreshore).
File Ref: APP/TTT/OS

CONTENTS **PARAGRAPHS**

Procedural Matters and Statutory Formalities	1 - 9
The Application Sites	10 - 37
The Thames Tideway Tunnel Project	38 - 43
The Legal Background to the s131/132 certification process	44 - 49
THE CASE FOR THE APPLICANT	
General matters	50
Procedural/Administrative matters	51 - 54
The Statutory Tests – section 131	
Does the land comprise open space?	55 - 59
Does the land form part of a common or a fuel or field garden allotment?	60 - 63
Is there suitable land available to be given in exchange?	64 - 73
King Edward Memorial Park Foreshore	74 - 76
The Putney Hospital Site	77 - 80
Prohibitive cost	81 - 97
The Public Interest	98 - 104
The Statutory Tests – section 132	
General matters	105
Putney Embankment Foreshore	106
Falconbrook Pumping Station	107
King Edward Memorial Park Foreshore	108
Will the land be no less advantageous to landowners?	109
Will the land be no less advantageous to persons having rights of common?	110
Will the land be no less advantageous to the public?	111
THE OBJECTORS	
General Matters	112
The Withdrawn Objections	
The Port of London Authority representation	113 - 115
The Clifford Gardner representation	116 - 118
The Remaining Objections	
Free Trade Wharf Management Company Limited	119
Deptford High Street Community Garden Association	120
The Open Spaces Society	121
Mr Roland Gilmore	122
THE CASE FOR FREE TRADE WHARF MANAGEMENT COMPANY LIMITED	
Introduction and summary	123 - 124
Availability of suitable alternative land	125 - 127
Public interest in the timing of development	128 - 129
Site selection	130
Conclusions	131
THE RESPONSE FOR THE APPLICANT	
General Matters	132
Site selection	133
Availability of suitable alternative land	134 - 138
Public interest in the timing of the development	139

THE CASE FOR DEPTFORD HIGH STREET COMMUNITY GARDEN ASSOCIATION
General matters and concerns 140 - 142

THE RESPONSE FOR THE APPLICANT
The response 143 - 145

THE CASE FOR THE OPEN SPACES SOCIETY
General matters and concerns 146 - 153

THE RESPONSE FOR THE APPLICANT
The response 154 - 155

THE CASE FOR MR ROLAND GILMORE
Introduction 156
The scope of the evidence 157
History 158
Common Ground 159
Common Land 160
The TTT Proposal 161
Metropolitan Open Land 162
Ownership 163
Beverley Brook Way 164 - 165
Options 166
Putney Hospital Site 167 - 169
Beverley Brook 170
Access 171
Bats 172
Sustainability 173
Prohibitive cost 174 - 175
The public interest 176 - 178
Environment Agency requirements 179
Section 132 180

The evidence of Emily Shirley (witness for Mr Roland Gilmore)
The NPS and the need for TTT 181
Public participation 182 - 185
Common Land 186
Prohibitive cost 187

The evidence of Lady Dido Berkeley (witness for Mr Roland Gilmore)
Public participation 188 - 192
The London Plan 193
Replacement Land 194
The public interest 195
Common Land 196
Prematurity and need 197 - 198

THE RESPONSE FOR THE APPLICANT
The response 199 - 212

THE EVIDENCE OF LOCAL RESIDENTS

Mr Ben Mackworth-Praed	213		
Mrs Unity Harvey	214		

INSPECTOR'S CONCLUSIONS

General Matters	215		
The Matters to be addressed	216	-	217
Procedural/Administrative matters	218	-	240
Section 131:			
Whether the land forms part of an open space	241	-	251
Whether the land forms part of a common, or fuel or field garden allotment	252	-	259
Whether any suitable land is available to be given in exchange	260	-	273
Putney Hospital Site	274	-	284
Other matters and conclusion	285	-	293
Whether any suitable land is available only at prohibitive cost	294	-	314
Whether it would be strongly in the public interest for the development to be capable of being begun sooner than is likely to be possible if the order were to be subject to SPP	315	-	332
Other matters	333	-	339
Section 132:	340	-	348
Summary of Conclusions	349	-	352
Formal Recommendation	353	-	354

APPEARANCES AND DOCUMENTS LISTS

File Ref: APP/TTT/OS
Proposed Certificates for the Compulsory Acquisition of Open Space and Rights over Open Space pursuant to section 131(4A) and 132(3) of the Planning Act 2008 (as amended).

- The application for the grant of certificates by the Secretary of State was made under section 131(3) and section 132(2) of the Planning Act 2008 (as amended) by Thames Water Utilities Limited (TWUL) in respect of open space which is the subject of compulsory powers sought under the Draft Thames Water Utilities Limited (Thames Tideway Tunnel) Development Consent Order 2013.
- The application is for the certificates to be issued in lieu of the requirement to undergo Special Parliamentary Procedure (SPP). It concerns 10 sites which are considered by the applicant to form 'open space' within the definition set out in section 19 of the Acquisition of Land Act 1981.
- The relevant application for development consent[1] was submitted to The Planning Inspectorate on 28 February 2013. The examination commenced on 13 September 2013 and closed on 12 March 2014. It seeks to authorise the construction and operation of Thames Tideway Tunnel, which is a wastewater storage and transfer project in London.
- The main grounds of objection to the grant of the certificates are: inadequate consultation regarding the proposed compulsory land acquisition; late or inadequate notification of the holding of the Open Space Certificates Inquiry; insufficient time to consider the Inquiry documentation; no adequate evidence regarding whether any of the land is common land; the assertion that no suitable alternative replacement land exists is untenable; the Old Putney Hospital site represents suitable alternative replacement land; land at Heckford Street should be considered as an alternative combined sewer outfall site; various issues regarding the site selection and mitigation in respect of the proposed combined sewer outfall site at King George's Park; the acquisition of open space adjoining Crossfield Street, Deptford may compromise aspirations for adapting it for local community use; TWUL's valuation of open space is incorrect and it would not be prohibitively expensive to replace it; no compelling case in the public interest to avoid SPP; the Thames Tideway Tunnel project would not result in any ecological improvement and should be seen as a temporary measure and not one that requires the permanent acquisition of land; the proposed rights to be acquired over open space would make it less advantageous than it was before to those using the land.
- Following the publication of the section 131(6) and section 132(6) notices representations were made by The Port of London Authority; Free Trade Wharf Management Company Limited; Clifford Gardner; Jeremy Clyne for the Open Spaces Society; Deptford High Street Community Garden Association; and Mr Roland Gilmore. Prior to the Inquiry, the representations made by the Port of London Authority and Clifford Gardner were withdrawn leaving 4 remaining objectors to the grant of the certificates.

Summary of Recommendation: The Certificates be granted.

PROCEDURAL MATTERS AND STATUTORY FORMALITIES

1. I carried out an accompanied inspection of the 10 application sites as well as the Putney Hospital site and Borthwick Wharf on 3 and 4 April 2014. The Inquiry was held on 1 and 2 April 2014. This report includes a description of the sites and their surroundings, the gist of the representations made at the Inquiry and my conclusions. My formal recommendations are set out at the end of this report. Lists of appearances, Inquiry Documents and Core Documents are attached.

[1] Planning Inspectorate Reference: WW010001

2. The figures in square brackets at the ends of the following paragraphs refer to either the relevant Inquiry Document or Core Document which contain the source of the material being reported upon and which are set out in the aforementioned lists.

3. I shall use the abbreviation "para" for paragraph, "pg" for page, "CD" for core document, "INQ" for Inquiry document and "TW" for the applicant's documents.

4. By letter from the Secretary of State dated 29 November 2013, Thames Water Utilities Limited (TWUL) was directed to give notice of the Secretary of State's proposal to issue the Certificates:

- by publishing the Notice attached to the letter for two successive weeks in the local newspaper or newspapers in which notice of the application for the Thames Water Utilities Limited (Thames Tideway Tunnel) Development Consent Order 2013 (DCO) was published;
- by posting copies of the Notice in at least two locations visible by the public in the vicinity of the sites identified in the schedule of land submitted in support of the application;
- by sending a copy of the Notice to each local authority within section 56A of the Planning Act 2008; and each person who is within one or more categories set out in section 57 of the Planning Act 2008. [CD10]

5. At the Inquiry, the applicant confirmed that it had complied with these requirements. The newspaper notices were first published in The Evening Standard, The London Gazette and The Times on 6 December 2013. Following discovery of various issues concerning publication, they were re-published on 13 December and 20 December 2013. Copies of the relevant newspaper notices were sent to the Secretary of State by letter dated 3 January 2014. Copies of these letters and Notices were submitted at the Inquiry. [TW30]

6. Following representations received in response to the Secretary of State's Notice, the Secretary of State wrote to TWUL by letter dated 20 January 2014 and gave Notice of the holding of a public local inquiry into his proposal to issue the certificates under sections 131 and 132. On 27 January 2014, the applicant published Notices of the public local inquiry and the pre-inquiry meeting, in the same newspapers as set out above and, on the same date, posted copies of the Notices of the same in the vicinity of each of the sites. Copies and photographs of those Notices were also submitted at the Inquiry. [TW30, TW30a]

7. A pre-inquiry meeting (PIM) was held on 18 February 2014. The notes of the PIM gave the contact details of the Programme Officer, Helen Wilson, and drew attention to the Programme Officer's Inquiry webpage where further details of core documents and the Inquiry programme could be found. [INQ/2]

8. The objections that were raised in relation to the consultation process and the notification of the Proposal to issue the Certificates, and the Notice of Inquiry, will be set out in detail and considered later in this report.

9. There were originally six representations made in response to the publication of the Notices pursuant to sections 131(6) and 132(6). As indicated above, two of those representations were withdrawn before the Inquiry, namely, those made by the Port of London Authority (PLA) and Clifford Gardner. The Free Trade

Wharf Management Company Limited (FTWMCL) did not put in any further evidence following its original representation and did not appear at the Inquiry but has not withdrawn its original representation. On behalf of the Open Spaces Society, Mr Jeremy Clyne put in further evidence following his original representation and appeared at the Inquiry. The Deptford High Street Community Gardens Association (DHSCGA) did not put in any further evidence and did not appear at the Inquiry. Mr Roland Gilmore did submit a proof of evidence and appeared at the Inquiry. He also called two witnesses, namely, Lady Dido Berkeley and Emily Shirley. Their evidence is reported below.

THE APPLICATION SITES

10. The application concerns 10 sites which comprise both land-based sites and foreshore sites. These sites are considered by the applicant to fall within the definition of open space set out in section 19 of the Acquisition of Land Act 1981, namely, *"any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground".* The plots are described in the schedule to the application and the purpose of the acquisition of each plot is set out. They are also identified in the submitted extracts from the DCO application Book of Plans. [CD3, CD11, CD17a]

11. The foreshore sites that have been included are considered by the applicant to fall within the definition of open space as public access to the foreshore is possible with access within 800m of the project worksite, and where the affected foreshore area is available to walk on.

12. The land-based open space sites are Barn Elms, (Barn Elms Schools Sports Centre) - 1.83 ha, Putney Embankment Foreshore (Waterman's Green) – 0.046 ha, King George's Park - 0.26 ha, Falconbrook Pumping Station (York Gardens) – 0.10 ha, Chelsea Embankment Foreshore (Ranelagh Gardens and Chelsea Embankment Gardens) - 0.057 ha, Deptford Church Street (Crossfield Street Open Space) – 0.42 ha and King Edward Memorial Park Foreshore – 0.86 ha.

13. The foreshore open space sites are Putney Embankment Foreshore – 0.48 ha, Albert Embankment Foreshore – 0.62 ha, and King Edward Memorial Park Foreshore – 0.27 ha.

14. The application under section 132(3) in relation to permanent rights proposed to be acquired relates to three areas of open space. The land affected comprises Putney Embankment Foreshore (foreshore) – rights of access; Falconbrook Pumping Station (land) – rights of access; and King Edward Memorial Park Foreshore (foreshore) – crane oversailing rights. [CD17a, CD11]

Barn Elms

15. This area of public open space is located at Barn Elms Schools Sports Centre (BESSC) which is in Barnes in the London Borough of Richmond. The BESSC would be directly affected by the Barn Elms combined sewer outfall (CSO) shaft site with about 1.83 ha proposed to be permanently acquired by the Thames Tideway Tunnel (TTT) project.

16. The site lies about 35m from the River Thames and the River Thames and Tidal Tributaries Site of Importance for Nature Conservation. The playing fields comprise a number of marked-out football and cricket pitches which are operated by the London Borough of Wandsworth. The facilities also include an

athletics track, a fishing lake and a number of tennis courts. The surrounding area comprises a combination of open space and residential and community facilities. The London Wetland Centre Site of Special Scientific Interest lies to the north of the site. The northern boundary of the site adjoins the pedestrian section of Queen Elizabeth Walk. There are three residential properties directly to the north of the tennis courts on Queen Elizabeth Walk. To the east, there is a line of mature trees and the Thames Path. Barn Elms Boat House, an existing Council-run rowing club is positioned on the eastern boundary of the site. To the south, the site is bounded by the Beverley Brook footpath. The Thames Path and the Beverley Brook footpath are both public rights of way. There are blocks of flats located beyond Beverley Brook on Horne Way.

Putney Embankment Foreshore – land and foreshore sites

17. At Putney Embankment Foreshore, TWUL seeks powers of compulsory acquisition first, over land that is currently used as open space, namely, '*Waterman's Green*', secondly, over Thames foreshore land that it considers to be publicly accessible, namely, *'Putney Embankment Foreshore'* and thirdly, in respect of foreshore land where only rights over that land are proposed to be acquired by the applicant.

Waterman's Green

18. The applicant seeks to permanently acquire about 0.046 ha of land at Waterman's Green. The site is located in Putney within the London Borough of Wandsworth and falls within a defined flood risk zone and conservation area. It comprises a public open space which is generally rectangular in shape and consists of grass and shrubbery. The River Thames lies to the north with the Grade II listed Putney Bridge to the east. To the west, lies Putney Pier where two residential houseboats are permanently moored on the inner face of the pontoon. The existing Putney Embankment Foreshore slipway adjoins the site to the north. The site is presently used by the public for recreational purposes.

19. A planning permission granted to the occupants of No 2 Putney High Street[2] allows access through the underground vaults onto Waterman's Green via an opening in the river wall. A planning permission granted to the occupants of Nos 4-6 Putney High Street allows access through the underground vaults onto the site via an opening in the river wall. Details of proposals to create a new landscaped terraced area on Waterman's Green are set out in section 9 of the application. [CD17a]

Putney Embankment Foreshore (foreshore)

20. The foreshore would be directly affected by the Putney Embankment Foreshore preferred site. The applicant proposes to permanently acquire about 3,317m^2 of the foreshore for the TTT project with an additional 1,480m^2 of foreshore rights. The application[3] and the schedule thereto set out the plots that would be acquired and the plots where only rights would be acquired. [CD17a]

21. The site consists of foreshore of the River Thames which the applicant considers to be accessible to the general public during periods of low tide. There are two

[2] Reference: 2010/3543
[3] See Table 9.3 page 54

slipways which allow access to the foreshore for water-based recreational activity on the river. The River Thames bounds the foreshore to the north. Putney Bridge lies to the east; Putney Pier is to the west with Waterman's Green to the south.

King George's Park

22. The area of public open space at King George's Park is located within the London Borough of Wandsworth. It is used as a district park and is designated as Metropolitan Open Land (MOL). This site would be directly affected by the King George's Park preferred site. The TTT project proposes to permanently acquire about 0.26 ha of King George's Park. The application[4] and the schedule thereto set out the plot numbers for the permanent acquisition of land and rights sought. [CD17a]

23. The site is positioned at the northern end of the park adjacent to the Buckhold entrance. The land comprises open grassland, footpaths and mature trees. The northern boundary of the site includes an ornamental historic park gate with semi-circular railings at the Buckhold Road entrance. The site also includes part of an avenue of large London plane trees and black poplars along the eastern boundary with Neville Gill Close. To the south, the site is bounded by an ornamental lake.

Falconbrook Pumping Station

24. The Falconbrook Pumping Station is located within an area of public open space known as York Gardens in Battersea in the London Borough of Wandsworth. It would be directly affected by the Falconbrook Pumping Station preferred site. The applicant proposes to permanently acquire about 0.1 ha of this area for the TTT project. The application[5] and the schedule thereto set out the plot numbers for the permanent acquisition of land and rights sought. [CD17a]

25. The land to be acquired comprises hardstanding, shrubbery and public footpath. Falconbrook Pumping Station is currently used as an operational pumping station. The site incorporates the existing access road through York Gardens to the east. It is bounded to the north by York Gardens Adventure Playground with York Gardens Library and Community Centre to the south. To the north, east and south of York Gardens there are residential properties.

Chelsea Embankment Foreshore

26. The Chelsea Embankment Foreshore site consists of an area of the foreshore of the River Thames on the opposite side of the Chelsea Embankment (A3212) from the Bull Ring Gate of the Royal Hospital Chelsea (RHC) South Grounds and a small southern section of Ranelagh Gardens. The applicant proposes to permanently acquire about 0.057 ha of this area for the TTT project. The application[6] and the schedule thereto set out the plot numbers for the permanent acquisition of land and rights sought. [CD17a]

---

[4] See Table 10.1 page 57
[5] See Table 11.1, page 75
[6] See Table 12.1, page 89

27. The foreshore site falls within the Thames Conservation Area and the designated Crossrail 2 Safeguarded Zone. The River Thames is designated as the River Thames (including Chelsea Creek) Site of Nature Conservation Importance (Metropolitan). The site is within Royal Hospital Conservation Area and the gardens are also a Site of Nature Conservation Importance.

28. Chelsea Embankment Gardens provides informal public amenity space whilst Ranelagh Park is a formal park. Chelsea Embankment Gardens is described as public gardens by the London Parks and Gardens Trust. It is described as *"one of the Borough's open spaces"* on the Royal Borough of Kensington and Chelsea's website. Ranelagh Gardens is laid out as a public garden and is a Registered Park and Garden (Grade II). The Chelsea Embankment Foreshore site is bounded to the north by the RHC, the RHC South Grounds and Ranelagh Gardens. To the east, is the Chelsea Bridge Gardens with the River Thames surrounding the foreshore site to the east, south and west. [CD17a, TW02-RA-POE]

Albert Embankment Foreshore

29. The Albert Embankment Foreshore site is located in Vauxhall in the London Borough of Lambeth. It would be directly affected by the Albert Embankment Foreshore preferred site and about 0.62 ha would be permanently acquired. The application[7] and the schedule thereto set out the plot numbers for the permanent acquisition of land and rights sought. [CD17a]

30. The site consists solely of the foreshore of the River Thames which the applicant considers to be accessible to the general public during periods of low tide. It can be used by the public for walking, sitting out and relaxation. There is a slipway which allows access to the foreshore at this location. To the north of the site there is the Tamesis Dock floating pub with the Lambeth Bridge beyond. To the east, there are the Vauxhall Cross and Camelford House office buildings. The River Thames bounds the foreshore to the west and the listed Vauxhall Bridge lies to the south of the foreshore.

Deptford Church Street

31. The Deptford Church Street public open space is located between Crossfield Street and Coffey Street within Deptford in the London Borough of Lewisham. It is presently used as informal public open space and for dog walking. The applicant proposes to permanently acquire about 0.42 ha of this area for the TTT project. The application[8] and the schedule thereto set out the plot numbers for the permanent acquisition of land and rights sought. [CD17a]

32. The site is triangular in shape and there is a high brick wall that runs north-south across it dividing the grass space into two separate areas. There is a gated entrance on Crossfield Street which gives access to the eastern section of the open space. The site is bounded to the north by Coffey Street,to the east by Deptford Church Street and to the south-east by Crossfield Street.

---

[7] See Table 13.1, page 100
[8] See Table 14.1, page 102

King Edward Memorial Park Foreshore - Land and Foreshore sites

33. At King Edward Memorial Park (KEMP) the applicant seeks powers of compulsory acquisition over three different areas of open space. These powers would affect first, the land known as KEMP that is currently used as open space, secondly, the River Thames foreshore land that the applicant considers to be publicly accessible from either steps or a slipway and foreshore land where only rights are proposed to be acquired over it by TWUL.

King Edward Memorial Park (land)

34. The land would be directly affected by the KEMP Foreshore preferred site. The public open space is located in Shadwell in the London Borough of Tower Hamlets and falls within the Wapping Wall Conservation Area. The applicant proposes to permanently acquire about 0.86 ha of this area for the TTT project. The application[9] and the schedule thereto set out the plot numbers for the permanent acquisition of land and rights sought. [CD17a]

35. The public open space comprises grass, shrubbery, trees, all weather football pitch, tennis court, bandstand and children's play area. To the north, on the other side of The Highway (A1203) there are multi-storey residential housing blocks. The River Thames lies to the south and south-east with the Free Trade Wharf, which combines two commercial units with some 208 residential flats, immediately to the east. Shadwell Basin lies to the west with Wapping Woods beyond.

King Edward Memorial Park (foreshore)

36. The area of foreshore is located in Shadwell in the London Borough of Tower Hamlets. The foreshore would be directly affected by the KEMP Foreshore preferred site. The applicant proposes to permanently acquire about 0.2 ha of this area for the TTT project. In addition, some 0.078 ha of foreshore would have rights acquired by the project. The application[10] and the schedule thereto set out the plot numbers for the permanent acquisition of land and rights sought. [CD17a]

37. The site consists solely of foreshore of the River Thames. The steps and slipway are gated and so it is only accessible to those using the Shadwell Basin Outdoor Activity Centre for launching boats. The applicant has also noted from site visits some recreational use of the foreshore that is not associated with the activity centre by people using the gated steps. To the north of the foreshore site is KEMP with the Free Trade Wharf apartment building to the east. To the west, is the Shadwell Basin which is surrounded by residential properties. The River Thames bounds the foreshore to the south.

THE THAMES TIDEWAY TUNNEL PROJECT

38. The TTT project would provide a waste water transfer and storage tunnel. It would largely run beneath the alignment of the River Thames from an existing Thames Water operational site known as Acton Storm Tanks in the west to another Thames Water operational site known as the Abbey Mills Pumping

---

[9] See Table 15.1, page 120
[10] See Table 15.3, page 130

Station in the east. At Abbey Mills Pumping Station, the TTT would connect to a second tunnel that is currently under construction, known as the Lee Tunnel, which would transfer the waste water to the UK's largest sewage treatment works at Beckton which is an existing Thames Water operational site.

39. The applicant indicates that the purpose of the tunnel would be to intercept, and then transfer for treatment, waste water that would otherwise discharge directly into the tidal Thames on a regular basis. The applicant's aim is to ensure compliance with the requirements of the Urban Waste Water Treatment Directive[11] in respect of which the UK has been the subject of successful infraction proceedings in the European Court of Justice. [TW03-JR-POE]

40. The tunnel solution to the problem of waste water that discharges into the tidal Thames has the support of Government policy. The National Policy Statement for Waste Water (NPS), at para 2.6.33, states that: *"The Government considers that detailed investigations have confirmed the case for a Thames Tunnel as the preferred solution."* At paragraph 2.6.34, it continues [CD5]:

"The examining authority and the decision maker should undertake any assessment of an application for the development of the Thames Tunnel on the basis that the national need for this infrastructure has been demonstrated. The appropriate strategic alternatives to a tunnel have been considered and it has been concluded that it is the only option to address the problem of discharging unacceptable levels of untreated sewage into the River Thames within a reasonable time and at a reasonable cost."

41. The TTT has been designed to control the waste water flows from some 34 combined sewer outfalls (CSOs) that currently discharge waste water into the River Thames. In addition to the main tunnel, there would be two long connection tunnels, the Frogmore connection tunnel and the Greenwich connection tunnel, that would transfer flows from CSOs in locations away from the river and then connect into the main tunnel. At the locations where the tunnel would intercept the CSOs there would be shafts that would drop the waste water down from the levels of the CSOs to the much lower levels of the tunnels. These are known as the '*CSO sites'*. In addition, the project would require drive sites and reception sites for the tunnel boring machines.

42. The application for development consent seeks powers to compulsorily acquire the land and rights required for the project. The application includes a Statement of Reasons, a set of Land Plans, a Book of Reference (BOR) and a Funding Statement as required by regulation 5(2) of the Infrastructure Planning (Applications Prescribed Forms and Procedure) Regulations 2009. The examination of the draft DCO has included some 20 compulsory acquisition hearings held under section 92 of the 2008 Act (as amended).

43. Some of the works sites required to construct the project would require the compulsory acquisition of land or rights over land that comprises '*open space'* for the purposes of sections 131 and 132 of the Planning Act 2008 (as amended). The application the subject of this Inquiry concerns open space land at eight TTT CSO shaft sites, comprising the seven areas of dry land and three areas of foreshore set out above.

[11] Directive 91/271/EEC

THE LEGAL BACKGROUND TO THE SECTIONS 131 AND 132 CERTIFICATION PROCESS

44. The effect of the issue of a certificate under sections 131 and 132 of the Planning Act 2008 is to remove the need for an order granting development consent to be the subject of SPP, to the extent that it would authorise the compulsory acquisition of land forming part of a common, open space or fuel or field garden allotment.

45. Section 131(12) and 132(12) state that '*common*', '*fuel or field garden allotment*' and '*open space*' in these sections have "*the same meaning as in section 19 of the Acquisition of Land Act 1981*". Section 19(4) of the Acquisition of Land Act 1981 defines '*open space*' as follows: *"Open space means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground."*

46. Since the TWUL application for development consent was made on 28 February 2013, the section 131/132 aspect falls within the transitional arrangements resulting from the amendments to those sections made by the Growth and Infrastructure Act 2013. This means that section 131 is amended by the insertion of subsection (4A), but subsections (6) to (10) are retained so that the application for a certificate under sections 131/132 is still made directly to the Secretary of State and is not considered as part of the DCO examination. [CD4]

47. The application for a certificate under section 131(3) is made on the grounds set out in subsection (4A) which applies if:

"(a) the order land is, or forms part of, an open space,

(b) none of the order land is of any of the other descriptions in subsection (1),

(c) either –

(i) there is no suitable land available to be given in exchange for the order land, or

(ii) any suitable land available to be given in exchange is available only at prohibitive cost, and

(d) it is strongly in the public interest for the development for which the order grants consent to be capable of being begun sooner than is likely to be possible if the order were to be subject (to any extent) to SPP."

48. The applicant has also applied for certificates in respect of the acquisition of rights over open space land under section 132(2). By virtue of section 132(3), the applicant has to show that:

"..the order land, when burdened with the order right, will be no less advantageous than it was before to the following persons –

(a) the persons in whom it is vested,

(b) other persons, if any, entitled to rights of common or other rights, and

(c) *the public."*

49. By giving the appropriate notice pursuant to sections 131(6) and 132(6), the Secretary of State has indicated that he proposes to issue certificates under section 131(3) and section 132(2). That proposal is without prejudice to his considerations of the separate application for development consent, including the compulsory acquisition of land which is yet to be determined[12]. The Secretary of State's letter of 20 January 2014 sets out the matters on which he particularly wishes to be informed which largely focus on the legal tests set out in sections 131(4A) and 132(3). [CD10, INQ/2]

THE CASE FOR THAMES WATER UTILITIES LIMITED

50. The application before this Inquiry is quite separate from the application for a DCO. It is important to recognise the relatively narrow scope of the question with which this Inquiry is concerned. That question is not whether or not to grant consent for the TTT, nor even whether to grant powers of compulsory acquisition of open space. Instead, the question is simply that of whether or not the Secretary of State should issue certificates pursuant to sections 131 and 132 of the 2008 Act, such that any DCO should not be subject to SPP.

Procedural/Administrative matters

Objector complaints

51. Certain parties objecting to the application have raised complaints regarding matters of procedure. These complaints largely comprise assertions that either (a) the Inquiry/application had been given inadequate publicity; or that (b) the objectors have had insufficient time to consider the documentation relevant to the Inquiry. These complaints are not well-founded. TWUL has carried out each and every measure asked of it by the Secretary of State as regards publicising both the '*proposal*' to issue the certificates and the holding of the Inquiry. Certain of those measures are explained in the Opening Submissions for TWUL, and a comprehensive documentary record of the steps taken has been provided in the form of the '*Compliance Pack'* submitted at the outset of the Inquiry. Additional information has been provided in relation to the Inquiry notices at Barn Elms and the notification of the Greater London Authority (GLA). There is no basis for the criticisms made in this respect. [TW30, TW30a, TW37]

52. As to matters of timing, the objectors (and/or their witnesses) have had adequate time to scrutinise the relevant documentation. The application was lodged on 7 November 2013, following which the application documents, including the Supporting Statement, were posted on the applicant's TTT website on 5 December 2013. Later on, the documentation was made available on the Programme Officer's Inquiry website and also on the PINS website. All the objectors present at the Inquiry submitted written objections to the application, and were informed as to the date of the PIM to be held on 18 February 2014. No procedural complaints were raised at that meeting and, thereafter, TWUL submitted proofs of evidence, witness summaries and the rebuttal proof in accordance with the timetable identified by the Inspector. All

[12] The DCO application has been examined by a panel of five examining inspectors who constitute the Examining Authority.

proofs, summary proofs and rebuttal evidence were posted on the Programme Officer's Inquiry website on or shortly after the date of their submission. [INQ/2]

53. The minute of the PIM which was circulated to all objectors contained contact details for the Inquiry Programme Officer, Helen Wilson. In the event that any objector was concerned that they could not access relevant documentation, it was open to them to raise the matter with her at any time. To the best of TWUL's knowledge, no such contact was made in this regard, until the week before the Inquiry commenced. There is no substance to the complaint that some objectors now seek to raise. All the objectors were written to by the National Planning Casework Unit (NPCU) on 20 January 2014, informing them about the Inquiry. Furthermore, the application documentation has been made available by TWUL as directed, and no issue was raised in respect of its availability until the very eve of the Inquiry, even though objectors had been well aware of both the application and the Inquiry for a period of months. [INQ/2]

Local Authorities

54. Since the PIM, discussions have been held with relevant local authorities that have resulted in their producing written confirmation of the planning policies considered relevant to the application. This correspondence is provided within the bundle of CDs before the Inquiry. The policy position is unchanged since the Supporting Statement was submitted in respect of the application, save in respect of the City of Westminster. The change in that case is limited in extent. Westminster City Council has recently adopted the Westminster City Plan: Strategic Policies (November 2013). Whilst the content of the adopted policies is not materially different to the draft policies to which the correspondence refers, some policy numbers have changed. Accordingly, there is no substantive change in policy content to bring to the Inquiry's attention. [CD15]

The Statutory Tests

Section 131 –

Does the land the subject of the application comprise open space?

55. None of the objectors who actually appeared at the Inquiry indicated in either their original objections or their written submissions any intention to dispute that the land the subject of the application was '*open space*'.

56. The PLA, asserted in its objection that those areas of the application land which comprised '*foreshore*' were not properly to be regarded as '*open space*', or indeed to be regarded as falling within *any* of the categories of land identified in section 131(1).

57. However, the PLA withdrew its objection prior to the Inquiry. The position of TWUL in respect of this issue is as stated by Mr Richard Ainsley and Mr Michael Humphries QC (in answer to questions put by the Inspector), namely, TWUL has identified these areas of foreshore as open space, and has explained its reasoning for so doing. However, TWUL has taken a cautious position on this issue. It is left to the Secretary of State to decide whether the three areas of foreshore are properly to be regarded as open space within the statutory context of sections 131 and 132, and whether it is necessary to issue certificates, if SPP is to be avoided.

58. The evidence of Mr Ainsley clearly demonstrates that the land the subject of the application is indeed '*open space'.* Local planning authorities have in most cases designated the land identified as open space.[13] Site reconnaissance visits of open spaces carried out in June 2011 as part of the Open Space Assessment confirmed that the land in question is open space for the purposes of the statutory definition. [TW02-RA-POE]

59. As regards the foreshore sites, as well as the visits carried out as part of the Open Space Assessment, site visits were also carried out by the applicant in January and October 2013. These site visits were undertaken at low tide in order to confirm whether the foreshore was publicly accessible and used for recreational activities. It was considered to comprise open space where it dried at different stages of the tide and members of the public could, and did, access it from the land either using steps or a slipway. The site visits confirmed that the application land at all these locations is actually used for public recreation and could be considered open space. No comment is made as to whether the recreational activities that have been observed to take place on the foreshore were being carried out lawfully or not. If it is deemed that the land is not open space then the certificates are not required.

Does any of the application land form part of a common, or a fuel or field garden allotment?

60. None of the objectors contended in their original objections or written submissions that the land subject to the application comprised any other type of '*protected land'* identified in section 131(1), as opposed to open space. The issue was therefore addressed with relative brevity in the proof of evidence of Mr Ainsley since it did not appear that there would be any debate upon the point. The matter of common land and fuel or field garden allotments is also considered in the Supporting Statement (Section 5) to the application. This explains that the London boroughs keep comprehensive lists of the allotments allocated within their borough boundaries. None of the listed allotments in the relevant boroughs fall within the limits of the application sites. [CD17a, TW02-RA-POE]

61. Furthermore, none of the application land (including Plot 71) comprises part of a common for the following reasons:

- Land Registry title documentation, on which common land would normally be identified, has been examined. There was no indication that any of the application land comprised common land on any of the title documentation.
- Site visits have been undertaken in respect of the application land. These have revealed nothing that would suggest that any of it comprised part of a common.
- Enquiries have been made of all the relevant commons registration authorities requesting information on special category land. No authority indicated that any of the application land comprised a common, whether registered or unregistered.

[13] See Table 2-1 proof of evidence of Mr Ainsley.

- The database of common land compiled by the Department for Environment, Food and Rural Affairs (Defra) has been consulted. None of the application land was recorded by the database as being common land.
- A desktop study of the history of each individual open space has been undertaken. This examination identified no evidence that would suggest any of the application land was common land.

62. The Wimbledon and Putney Commons Conservators do not object to the application. Mr Stephen Walker gave evidence that TWUL has carried on discussions with the Conservators regarding the project over a period of years both in connection with the Phase 1 and Phase 2 consultations. There were meetings which took place with the Conservators on the 19 July 2011 and the 7 December 2012. The Conservators wrote to the Examining Authority considering the application for development consent for the TTT on the 23 October 2013. From that it can be concluded that they have no dispute in relation to ownership as set out in the Book of Reference (BOR), nor have they objected to the draft DCO. They remain an Interested Party to the DCO examination but have not appeared at any of the hearings. This is significant for two reasons:

- The Conservators own the entirety of Wimbledon and Putney Commons, by virtue of the Wimbledon and Putney Commons Act 1871. There is no part of those commons which is not in their ownership.
- The statutory function of the Conservators is to '*protect*' the Wimbledon and Putney Commons and prevent them being built on, pursuant to section 34 of the Wimbledon and Putney Commons Act 1871.

63. The assertion made by Mr Ainsley, in re-examination, that he was sure that none of the application land (including Plot 71) comprised common land, is entirely justified. The application land (including Plot 71) comprises open space, and not any other category of land identified in section 131(1). The status of Plot 71 is evidenced by a comparison of the submitted copy of the HM Land Registry Title documentation with the Land Plan. This shows that it falls just outside the boundary of the common land. [CD17, TW38-TW39]

Is there any suitable land available to be given in exchange for the application land?

64. There is no land that can reasonably be regarded as being both suitable and available, which might be given in exchange for the application land. The case in support of this proposition is set out largely in the application, and in the evidence of Mr John Rhodes. This provides a sound basis for the conclusion that there is no area which could properly and responsibly be regarded as available replacement land for the open space proposed to be acquired. [CD17a, TW03-JR-POE]

65. At the Inquiry, Mr Rhodes gave answers to questions regarding the approach that he had adopted to the issues of '*suitability*' and '*availability'* in the statutory context. His answers were grounded in the treatment of these issues to be found in his proof, and in the Supporting Statement submitted by the applicant pursuant to the application. [CD17b, TW03-JR-POE]

Suitability

66. On the question of '*suitability*', the Supporting Statement (paras 6.3.6 to 6.3.9) explains that the principles applied were:

- First, the size of the order land; the area of exchange should be at least equivalent in size to the order land or two or more smaller sites in combination could be suitable[14].
- Secondly, the current status of the exchange land; the way in which it is currently used.
- Thirdly, the potential use of exchange land; the future potential use of the land as identified in either local plan allocations or extant or pending planning permissions. [CD17a]

67. Land in the catchment area that was currently in use as a common, open space or a fuel or field garden allotment was omitted from the exercise as this land was already in the same use as the order land and was not therefore suitable. Land in the catchment area that was currently, or could in future be used for essential infrastructure of community value, was also omitted from the exercise as being unsuitable. This includes transport, health, educational, religious and civic uses.

68. The Supplementary Supporting Information submitted by the applicant provides further details of the approach taken to identifying what land might be suitable as exchange land. It explains the rationale for discounting unsuitable uses and the rationale used to identify whether any land might be suitable as exchange land. In considering unsuitability, TWUL identified key strategic land uses which were not surplus to requirements and which would have to be acquired compulsorily. It identified those land uses for which the prospect of obtaining planning permission for the change of use to open space was considered negligible. Since it would be highly improbable that a compulsory purchase order for such land would be confirmed, it was not considered to be suitable as exchange land. It was also considered that in relation to transport, health, education, religious and civic uses, the value that communities would place on such uses would be greater than the value they would place on the open space provided in their place. [CD17b]

69. In terms of suitability, the test applied does not simply assess the intrinsic merits of the land as potential open space but looks also at its merits in planning terms. Sites were considered to be suitable in the first instance if they were both within the catchment area, were of a comparable size to the open space to be included in the order land and were not in an excluded use. The rationale for this was that the exchange land would need to be both accessible for users of the existing open space and that it should be a similar size so as to fulfil a similar space requirement. The sites considered to be suitable on these two key issues were set out in the schedule at Appendix A of the Supporting Statement. A total of 87 '*Dry Land'* sites were initially considered to be '*potential'* replacement land. By applying the relevant criteria, these were reduced to the 39 sites that were then the subject of detailed examination.

[14] See the definition of "replacement land" set out in section 131(12) of the Planning Act 2008

70. Further detailed assessments were then undertaken which are presented in the Supporting Statement. Para 6.3.11, explains that the potential exchange land sites have been considered against four criteria in order to assess whether they would be suitable [CD17a]:

- First, whether a particular site is in single or multiple-ownership; a site in single ownership would be easier to acquire (and thus more suitable) than one in which multiple interests are held.
- Secondly, whether or not a site is '*built*'; given that the function of exchange land would be to provide '*open space'* any existing built form would need to be demolished. Whether or not there is any built form on a particular site, goes directly to the issue of suitability.
- Thirdly, whether a site is in existing use; where a site is in use (as opposed to vacant) the fact that the use would need to be relocated were the site to be provided as open space, falls to be considered in assessing whether or not a site is '*suitable'*.
- Fourthly, there is the matter of planning policy. Where use of a site as open space would be contrary to adopted local or national policy, then that must again bear on its suitability.

71. The methodology for testing the exchange land for the foreshore sites is also set out in the Supporting Statement (paras 6.4.1 to 6.4.13). The principle adopted in relation to foreshore was that this could only be replaced by other foreshore, since its unique qualities could not be replicated by another type of land elsewhere. The approach to replacement land was based upon exploring whether there was any suitable and available foreshore within 400m of the existing access point that was currently inaccessible, but which could be made accessible as replacement land. Land that was already publically accessible was excluded as it would not provide any additional benefit. The 400m catchment area adopted aligns with the GLA accessibility index for local parks[15] which provides an appropriate comparison. A further assessment was then made as to whether it could reasonably be made publicly accessible having regard to the feasibility of physically providing a new access point and obtaining the necessary approvals. [CD17a]

Availability

72. In relation to '*availability'*, TWUL's approach is set out in the Supporting Statement, and the evidence of Mr Rhodes. The Supporting Statement[16] identifies eight criteria for assessing the availability of potentially suitable sites, for example, whether on the market, ownership or occupation structure, whether the land is or planned to be in beneficial use, the prospects for negotiated acquisition and so on. [CD17b, TW03-JR-POE, TW09-JR-APP]

73. None of the potential exchange land sites identified were for sale, or being marketed, and it could not be assumed that they could be compulsorily purchased. In order to compulsorily purchase such land, a compelling case in the public interest would have to be demonstrated and that would be

[15] See GLA Parks Hierarchy
[16] See Supporting Statement paragraph 6.3.12

extremely difficult in relation to community assets such as schools or, indeed, residential dwellings. That would also extend to sites designated for such uses. The potential interference with rights under the Human Rights Act 1998 would make it hard to justify the compulsory purchase of such replacement open space land in circumstances where the open space land to be taken would, for the most part, be returned to public access following construction. No replacement land is both suitable and available in this case.

King Edward Memorial Park Foreshore

74. This site has been referred to in the representation of the FTWMCL. The foreshore that is affected by the proposal is only included in the assessment on a precautionary basis because it can only be reached using the access from the Shadwell Basin Outdoor Activity Centre next to the park. [REP/5]

75. The Supporting Statement (paras 15.3.1 – 15.3.14) points out that access for those using the activity centre would not be affected by the works on the foreshore. It concludes that exchange land is not required at this site and that there is no suitable foreshore which could be provided as replacement land for the land over which rights would be acquired. [CD17a]

76. The Supporting Statement is supplemented by the proof of evidence of Mr Rhodes (para 5.54). He explains that the access from the Shadwell Basin Outdoor Activities Centre next to the Park should only be used by authorised persons, not the general public. The nearest public access to the foreshore is to the south-west of the entrance to the Shadwell Basin. To the south-west of that point, the foreshore is already accessible to the public. To the north-east of the public access, the 400m walking criterion does not reach a point where sufficient safe but currently inaccessible foreshore exists to replace the affected foreshore, most of the distance being the entrance to the Basin, itself. [TW03-JR-POE]

The Putney Hospital Site

77. The only exchange site identified by any of the objectors is the land at Putney Common comprising the '*Putney Hospital site'*. This site is well-known to TWUL; the company considered it and dismissed it as not being suitable or available to provide replacement open space. The Supporting Statement (para 8.1.37) indicates that the site, which has an overall area of 1.00 ha (10,000m^2) is allocated in the Wandsworth Site Specific Allocations Document 2012 for a primary care centre, for residential and the retention of community facility uses. In the rebuttal proof of Mr Rhodes, the plan at Appendix 1, identifies the Putney Hospital site and lists the calculated areas depending upon the purpose of the boundary selected for measurement. This shows that much of the site is already designated as MOL. The part of the allocated site that is not designated as MOL occupies about 0.6 ha and it is this area which has been the focus of planning application proposals for a school and residential development. The development site boundary encloses an area of about 0.49 ha and the difference between these two areas, namely, 0.11 ha is proposed to become MOL as part of the planning consent for that site. The Supporting Statement (para 8.1.3) indicates that about 1.83 ha at Barn Elms would be permanently acquired for the TTT project. The area of potentially available replacement land at Putney Hospital is significantly less than the land to be acquired at Barn Elms. Furthermore, a note was submitted to the Inquiry

relating to relative areas at the Old Putney Hospital (BARE003) and Barns Station and former Goods Yard (BARE001). This shows that the combined '*residential*' areas of those two sites would only be about 0.4 ha. [TW32, TW12-JR-RBP]

78. The High Court action[17] that has been brought against the Wimbledon and Putney Commons Conservators and the London Borough of Wandsworth relates to an application for a declaration as to the lawfulness of the grant by the Conservators of a right to access to the development site. The claim was dismissed by the judge at first instance, Mr Justice Wyn Williams, in a judgment dated 8 November 2013. [TW35]

79. Even if these legal proceedings were ultimately successful, it would not render the Putney Hospital site suitable and available for the purposes of section 131 of the 2008 Act. The site benefits from an existing access over land which does not comprise registered common and also land which, whilst forming part of the common, is already tarmacked in connection with the existing access. In the unlikely event of the High Court proceedings being successful, it would be reasonable to expect that the development of the site would be reconfigured so as to rely on an existing access entailing use of the existing tarmacked area.

80. The applicant considers the Putney Hospital site should be rejected for the following reasons:

- The site is allocated in the adopted Wandsworth Site Specific Allocations Document 2013 for mixed-use "*residential and community facilities development*".
- It is the subject of an extant planning permission[18] for a two storey primary school and associated enabling residential development. That permission was dated 13 December 2013. No legal challenge was made against the grant of planning permission and the time period for doing so has now expired. The High Court action referred to by Mr Gilmore does not relate to the planning permission, itself.[19] The consented site layout plan is shown at Appendix 2 to the rebuttal proof of evidence of Mr Rhodes. The Supporting Statement (para 6.3.8) explains that education is one of the land uses which was not considered as part of the search for suitable alternative sites. Schools are a much-needed community resource. There would be no reasonable prospect of a compulsory purchase order being confirmed if this would cause the loss of school facilities because of the adverse impact this would have on the communities which they serve. The site is not suitable or available in planning terms because of its commitment to an alternative and important use. [TW35, TW12-JR-RBP, CD17a,]
- As Mr Rhodes explained, delivery of the consented development would result not only in the delivery of community infrastructure (in the form of the school), but also in the designation of open land within the application site to the status of MOL (by means of a section 106 agreement). As such, the land

[17] Nicholas Charles Evans v Wimbledon & Putney Conservators and The London Borough of Wandsworth [2013] EWHC 3411 (Admin)
[18] Ref No 2012/0758
[19] Nicholas Charles Evans v Wimbledon & Putney Commons Conservators and the London Borough of Wandsworth [2013] EWHC 3411 (Admin)

not required for the development would become '*open space*' in any event, without any intervention by TWUL. The single site suggested by the objectors as being '*suitable and available'* for provision as '*replacement open space'*, cannot sensibly be regarded as such.

In the event that replacement land is suitable and available, is it available only at prohibitive cost?

The General Approach

81. In the event that any of the identified sites were considered suitable and available, their cost would be prohibitive. There is currently no guidance (either in statute, policy or case-law) as to what amounts to *'prohibitive cost'* in this context. The applicant has therefore devised its own interpretation of the statutory wording.

82. The Supporting Statement explains (paras 6.3.13 to 6.3.21) how the assessment of whether the acquisition of exchange land could be achieved other than at prohibitive cost has been undertaken. The general approach has been to align the test to the commercial considerations one would anticipate from a property developer in considering the opportunity to develop the area of open space that is identified in the order land and for which exchange land would be provided. The stages for the approach are set out in the Supporting Statement (para 6.3.15). The applicant has also provided clarification regarding valuation references in response to queries raised by DCLG[20]. [CD17a, CD17c]

83. The first stage is that the RICS Valuation and standards manual (Red Book) provides guidance on the valuation of specialised properties where it states that the land value to apply should equate to the nearest recognised commercial use. The applicant has therefore adopted an industrial value[21] of the open space to be acquired to reflect the specialised nature of the proposed development which comprises large underground structures, plant and equipment for the transfer of waste water. Mr Walker clarified in response to the Inspector's questions that, although the use proposed by TWUL does not fit precisely into the Class B2 definition, the Red Book[22] guides the valuer in the case of specialised land uses like this one and indicates the most appropriate comparator.

84. Market research was used to establish current market values for industrial development land. This was carried out on a borough-by-borough basis to capture geographical differences. To implement a scheme comprising industrial development of open space land, a property developer would need to provide replacement land. Market research indicates that a developer would not pay more for the replacement land than the land to be developed would be worth as a development site. The developer would pay no more than the full uplift in value of the industrial land in order to acquire the replacement open space.

---

[20] Department for Communities and Local Government
[21] General Industrial Class B2 of the Town and Country Planning (Use Classes) Order 1987 (as amended)
[22] See the Red Book pg 261, section 7, para 7.6

85. An assessment of the value of the potential exchange land sites has been made and the methodology for this is set out in the Supporting Statement (paras 6.3.16 to 6.4.13). In the assessments, the cost becomes prohibitive at the point at which the estimated cost to acquire the exchange land exceeds the industrial development value of the open space to be replaced.

86. The Secretary of State asked TWUL to provide further details of the alternative approaches considered and this was set out in the Supplementary Supporting Information. Following the provision of the information, the Secretary of State indicated that he proposed to issue the certificates. [CD/17b]

87. The Supplementary Supporting Information, at section 3, sets out in detail the rationale for the approach to prohibitive cost. It explains that four alternatives to the one adopted were considered namely, existing use value, Certificates of Appropriate Alternative Use (CAAD), property budget and the '*disproportionate to project costs'* approach. The reasons for rejecting these various alternative approaches are set out in section 3 of the Supporting Statement and are expanded upon in the proof of evidence of Mr Walker. [TW04-SW-POE]

Existing Use Value

88. In relation to existing use value, on account of the management costs and liabilities associated with ownership of land that is dedicated as open space its value is normally recorded as a modest amount. There is very little transactional evidence for public parks and what there is puts this value in the range of £25,000 to £50,000 per ha. In order to show this, a schedule of open space land sales is included at Appendix A to the proof of evidence of Mr Walker. At this nominal value, the land sits at the bottom of the range of land values to be found in London and the purchase of any other land would always appear prohibitive against public open space land values. [TW10-SW-APP]

Certificates of Appropriate Alternative Use

89. Both existing and any emerging planning policy would protect areas of open space from the prospect of '*other*' development, such that any application for a CAAD would almost certainly result in a '*nil'* certificate; that is a certificate that planning permission would not be granted for any other use. This approach would offer no assistance to the task of determining whether the cost of exchange land was '*prohibitive'*. The applicant's responses to questions put by the DCO Examining Authority on this topic are set out in Appendix K to the proof of evidence of Mr Walker. [TW10-SW-APP]

Property Budget

90. As part of the Land Acquisition Strategy for the project, the value of all sites has been estimated and potential costs assessed to provide a property cost budget for the whole project. Since budgets can be set high or low depending on the assumptions adopted, this test would not be objective and could not form the basis of a robust assessment.

'Disproportionate to project costs' approach

91. Another option would be to use the overall capital cost of the project as a comparator. This would be an unsafe means of determining prohibitive cost. For large projects the cost of providing replacement open space would always be

a small proportion of the overall cost of the project. However, a developer should not have to pay more for replacement open space simply because the project it is promoting is large, and it should not have to pay more than the promoter of a smaller project, which had a low cost base.

92. For TTT, the estimated capital cost of the project is over £4bn. The net cost of property acquisition as a proportion of this is estimated at 4%. In those circumstances, the cost of providing exchange land would always appear small. Any test dependent on such criteria would not be objective and would be likely to lead to the conclusion that no cost would be in these terms '*prohibitive'.* This would not be consistent with the spirit of the legislation.

93. Prohibitive cost would be related to the value of the project not the value of the land. It could therefore result in a different level of prohibitive cost being applied to the same land by different projects. The cost of providing replacement open space should relate to the value of the land not the project. It would be irrational for the cost of exchange land ending up being totally disproportionate to the benefit in any given circumstance.

94. TWUL is regulated by OFWAT and must deliver value for money. It would not be appropriate for TWUL to pay disproportionate sums of money for replacement open space in comparison to what other developers would expect to pay.

Conclusion on the approach to prohibitive cost

95. In summary, the applicant has sought to identify an objective test that could be applicable for any form of infrastructure development seeking to acquire replacement open space. First, the character of the development has been looked at and it was concluded that it was closest to industrial development by reference to both RICS guidance and planning use classes. Secondly, what a private sector developer would be prepared to pay for replacement open space in order to carry out a similar form of development was considered. In broad terms an industrial developer could afford to pay the uplift in land value between the open space value and its industrial value. A comparison of the value of open space for industrial development and the likely cost to acquire exchange sites showed the cost to be grossly disproportionate and therefore prohibitive.

96. The approach ultimately selected by TWUL is sound for the following reasons:

- Any assessment as to *'prohibitive cost'* must necessarily be objective so as to apply in like fashion to any particular infrastructure project. Indeed, to produce an assessment methodology that was not objective would be capricious and Parliament cannot have intended such a test;
- Such assessment could not turn on the scale of the project or the resources of the promoting developer, since the question of what was '*prohibitive*' would then turn on the identity of the developer and the nature of the project, rather than the identity and nature of the replacement open space. This would amount, in effect, to a penalty charge on larger projects or wealthier developers and would be unrelated in scale to the effect on the open space to be acquired;
- Consideration of the high regard in which the local community might hold a particular open space could not inform the statutory test, since such

consideration would necessarily be subjective; and ignore the value which the community or individuals might put on potential replacement land sites, such as the site of a school or people's homes, which might also not be reflected in their open market value.

97. The approach adopted is robust, and gives effect to the intention of Parliament in drafting the statutory provision. The test applied does not set the bar so high as to always rule out the possibility of developing open space land in London. Nonetheless, it is acknowledged that certainly within Central London land is in very high demand and extremely expensive to acquire. However, the legislation is designed to be workable across the UK as a whole.

Is it strongly in the public interest for the development for which the order grants consent to be capable of being begun sooner than is likely to be possible if the development consent order were to be subject to Special Parliamentary Procedure?

The Public Interest

98. The Supporting Statement to the application, at section 16, sets out the reasons why it would be strongly in the public interest that there should not be SPP. This is supplemented by the evidence of Mr Rhodes and the explanatory note relating to assumptions for delay caused by SPP that was submitted to the Inquiry. The evidence includes details of the infraction proceedings and the estimated additional costs that would arise as a result of delay caused by SPP. If the project were to be delayed in SPP, there is a real risk of enforcement action and a substantial penalty following the infraction proceedings. The Defra publication *"Creating a River fit for our future – A strategic and economic case for the Tunnel"*[23] is pertinent and estimates that the European Commission would try to seek fines upwards of £100m a year. Since the submission of the application, two judgments relating to similar matters concerning wastewater discharges have been handed down by the European Court of Justice relating to actions by the European Commission against Belgium and Luxembourg.[24] These judgments reinforce the urgency of the situation. They both confirm that the risk of substantial fines being imposed on the UK Government is very real and delay in implementing a solution and not merely taking steps to initiate a solution, is a vital factor. The size of the fines was determined by a formula that took account of the country's ability to pay. There would also be significant risk involved in winding down the workforce with its acquired skills and project history. The project standard '*burn rate*' (i.e. staff, office costs, and overheads during 2013/14) would be £8m per month. It is estimated that the total cost of delay would be about £100m. In addition, given the way that property deals are structured for sites that already have planning permission and are under development, payments of around £10m would be payable for the impact on developers' programmes. [CD17a, TW03-JR-POE, TW31, TW09-JR-APP]

99. In summary, the project should not be delayed because:

[23] See pg 7 attached as Appendix 5 to the proof of evidence of Mr Rhodes

[24] C-533/11 dated 17 October 2013 and C-576/11 dated 28 November 2013 attached as Appendix 6 to the proof of evidence of Mr Rhodes

- The need for the project is established and urgent as set out in the Waste Water NPS[25]. It confirms that there are no other strategic alternatives.
- A substantial cost to the Government would be incurred from fines being imposed on the UK following the EU infraction proceedings that found that the UK is in breach of the Urban Waste Water Treatment Directive.
- Significant additional costs to the project would be caused by the projected delay and these would ultimately have to be passed onto Thames Water customers.

The likely extent of any delay that would be caused by SPP

100. The Supporting Statement (para 16.3.1) explains that only one Planning Act 2008 project has been the subject of SPP to date and that is the 'energy from waste' plant in Bedfordshire known as Rookery South. The SPP process delayed that project by about 16½ months. In that case, only one parcel of land was involved. However, it could be argued that having experienced the Rookery South process, some procedural elements would be dealt with more swiftly for any future process. [CD17a]

101. This matter was also addressed by the evidence of Mr Rhodes. A conservative assessment has been adopted that SPP would result in a delay of some 9 to 12 months (the best estimate being 10 months). Such assessment is conservative, given the period of delay in the Rookery South case. That there would be delay to the commencement of works on the TTT in the event that the DCO were subject to SPP does not appear to be in dispute. [TW03-JR-SOE]

102. In response to the Inspector's questions, an explanatory note was provided to the Inquiry relating to assumptions for delay that would be caused by SPP. This gives an explanation of the likely timetable for SPP, and other factors particular to the TTT project which could cause delay, that have led to the overall prediction of 10 months delay from mid-September 2014 to mid-July 2015. [TW31]

Conclusion

103. The projected construction period is around seven years and there is little scope for reduction of the problem of discharging waste water into the River Thames until completion of the project. Delay of this order – whether it would be 16 months, 12 months, 9 months, or even less – would manifestly be contrary to the public interest. There are various issues which contribute to TWUL's case in this regard; these include the following:

- The likely escalation of the fine payable by the UK in respect of the existing infraction proceedings for breach of the Urban Waste Water Treatment Directive. The recent court cases established the importance of initiating compliance at once and completing the solution as soon as possible.
- The NPS makes clear the national importance of the project. There is ongoing environmental harm caused to the ecological life of the Thames, by reason of the continuing discharges of untreated sewage.

[25] See paras A1.3.6 to A1.3.8

- The additional project costs which would be incurred by reason of a postponement of the start of the construction (which costs would necessarily fall to be borne by the consumer).

104. The scale of the environmental and financial consequences that would be caused by delay to delivery of the TTT is such as to comprise an unanswerable case in support of the application. In terms of section 131(4A)(d), it would be strongly in the public interest for the development to be capable of being begun sooner than is likely to be possible if the order land were to be subject (to any extent) to SPP.

Section 132 – permanent rights

105. The application under section 132(2) is considered in section 17 of the Supporting Statement. For the purposes of section 132(3) of the 2008 Act, the land in question would be no less advantageous to the various parties identified in the provision, were the rights to be granted. The question of what it means for land to be '*no less advantageous'* when burdened by rights is addressed in section 7 of the proof of evidence of Mr Rhodes. These words should be given their ordinary, common-sense meaning; namely, that land should be considered "*no less advantageous*" in circumstances where its use by potentially affected persons is not subject to any material degree of interference by the rights which are to be exercised. The applicant is not seeking to remove any public right that currently exists in respect of the land subject to the section 132 application. [CD17a, TW03-JR-POE]

<u>*Putney Embankment Foreshore (foreshore)*</u>

106. In relation to Putney Embankment Foreshore, the land was included for access rights during the operational period of the project, for the purpose of inspecting the outside of the chamber. Internal inspection would be carried out via the culvert connection. This external inspection would be undertaken infrequently, primarily by foot possibly once a year, and even while the access rights were being exercised, they would not interrupt use by the public of this plot for the purposes it is currently used.

<u>*Falconbrook Pumping Station*</u>

107. As regards Falconbrook Pumping Station, the existing access road over which permanent rights of access are sought is already in use by Thames Water for vehicular access to the unmanned pumping station. This existing use takes place about twice a week and has been exercised for many years. This access is otherwise used to access York Gardens Library and Community Centre and the York Gardens Adventure Playground, and forms part of the access to York Gardens Park. It also acts as informal car parking. Major maintenance of the permanent structures would be required about every 10 years. This would involve two mobile cranes and associated support vehicles, plant and equipment attending the site for a period of several weeks. Apart from this, any slight increase of use by vehicles to inspect land and equipment in this location would be unlikely to be detectable to people using York Gardens.

<u>*King Edward Memorial Park Foreshore (foreshore)*</u>

108. Turning to KEMP Foreshore, the area is currently used by the Shadwell Basin Outdoor Activity Centre for launching boats. Crane oversailing rights would only

be used every 10 years for maintenance of the works and equipment located on the adjacent land. It is not anticipated that a great deal of work would be required with the main purpose of the cranes being to lower personnel into the shaft to carry out routine inspections. If the type of crane activity envisaged was necessary, then for safety reasons, people would have to be prevented from passing underneath. That exclusion would last for about three weeks. The rights sought would have no effect on any users of this part of the foreshore at all, other than for the 10 year maintenance works and, even if crane oversailing was necessary, use would be interrupted for only about three weeks.

Will the application land will be no less advantageous to the persons in whom it is vested when burdened by the rights sought pursuant to the development consent order?

109. Neither the PLA, nor the London Borough of Wandsworth, being the parties in whom the land the subject of the section 132(3) application is vested, contend that the land would be less advantageous to them, should it be burdened by the rights which TWUL seeks. Indeed, there is no party that contends that the landowners would be so disadvantaged.

Whether the application land will be no less advantageous to the persons having rights of common when burdened by the rights sought pursuant to the development consent order?

110. No party claiming such rights has objected to the acquisition of the rights on the basis that the land would be less advantageous to them. Indeed, there is no party that has claimed the existence of any such rights in respect of the section 132 application land.

Whether the application land will be no less advantageous to the public when burdened by the rights sought pursuant to the development consent order?

111. Whilst certain objectors have cited the provisions of section 132, none have raised a relevant complaint in respect of land to which that section actually applies; that is, where TWUL seeks to acquire rights over land, as opposed to compulsory acquisition of the freehold interest in land. There is no member of the public who makes objection that land subject to section 132 of the 2008 Act would be less advantageous to them, when burdened by the rights.

THE OBJECTORS

112. There were representations made by six objectors in response to the proposal prior to the Inquiry. These were from the PLA; FTWMCL; Clifford Gardner; Mr Jeremy Clyne for the Open Spaces Society; DHSCGA; and Mr Roland Gilmore. Prior to the Inquiry the representations made by the PLA and Clifford Gardner were withdrawn leaving four remaining objectors to the grant of the certificates

THE WITHDRAWN OBJECTIONS:

The Port of London Authority's representation

113. The PLA's land the subject of the application comprises:

- Putney Embankment – Plots 17, 18, 24, 38a, 41
- Putney Embankment Foreshore – Plot 46
- Chelsea Embankment Foreshore – Plots 42, 44
- Albert Embankment Foreshore – Plots 14, 15, 20, 22, 23, 28, 29
- King Edward Memorial Park (Foreshore) – Plots 26, 29, 21, 22a, 23a, 24, 25

114. The concern raised by the PLA was that the application sought the issue of certificates in respect of land which did not appear to be open space. The PLA did not dispute that the uses described as having been observed on the relevant areas of foreshore in the Supporting Statement had taken place but questioned whether the identified recreational uses were lawful. It contended that the certificates sought were not therefore required.

115. The representation was formally withdrawn by letter dated 7 March 2014 from Winckworth Sherwood. [INQ/3]

The Clifford Gardner representation

116. The representation was made by GL Hearn on behalf of Clifford Gardner acting by Tim Perkins and Mark Creamer, Joint Fixed Charge Receivers of 4-6 Putney High Street, SWI5 in respect of the freehold interest in 4-6 Putney High Street and long leasehold interest in basement premises adjoining 4-6 Putney High Street and Waterman's Green with rights of access/egress over Waterman's Green. The Waterman's Green open space land is identified in the BOR as Plot 29.

117. The representation identified implications that the proposal could have for the implementation of a planning consent for the development of the basement premises for leisure use including the use of Waterman's Green. In particular, the protection of rights in respect of the emergency access to the basement premises[26] was sought.

118. The representation was formally withdrawn by letter dated 26 March 2014 from CBRE Limited. [INQ/5]

---

[26] Shown as retained in Book of Plans Doc 2.08 drawing no DCO-PP-05X-PUTEF-080014

THE REMAINING OBJECTORS:

Free Trade Wharf Management Company Limited (FTWMCL)

119. This representation relates to KEMP which has been identified as a CSO site. The open space land is identified in the Supporting Statement as being BOR Plot Nos 26 and 29 with rights only to be acquired in respect of Plots 21, 22a, 23a, 24 and 25. Relevant DCO Land Plans are set out in section 25 of the Book of Plans. [CD17a, CD11]

Deptford High Street Community Garden Association (DHSCGA)

120. This representation relates to the Deptford Church Street (Crossfield Street Open Space). It is identified in the Supporting Statement as being BOR Plot Nos 155, 156, 160, 161 and 162. Relevant DCO plans are set out in section 23 of the Book of Plans. [CD17a, CD11]

The Open Spaces Society

121. This representation largely relates to the effect of the proposals on four sites which are public open spaces, namely, Barn Elms, King George's Park, Deptford Church Street (Crossfield Street Open Space) and KEMP. These sites are identified in the Supporting Statement as being BOR Plot Nos 64, 71, 80, 176, 178, 155, 156, 160, 161, 162, and 30. Relevant DCO plans are set out in sections 7, 11, 23 and 25 of the Book of Plans. [CD17a, CD11]

Mr Roland Gilmore

122. This representation generally relates to the effect of the proposals on land at Barn Elms. This site is identified in the Supporting Statement as being BOR Plot Nos 64, 71, and 80. Relevant DCO plans are set out in section 7 of the Book of Plans. [CD17a, CD11]

<u>THE CASE FOR THE OBJECTORS: FTWMCL</u>

(Each main heading below is taken from the FTWMCL representation [REP/5]. Points are recorded in brief.)

<u>*Introduction and summary*</u>

123. The FTWMCL own the freehold to Free Trade Wharf (FTW) which is located immediately to the east of KEMP. There is a two winged listed building to the east which accommodates two commercial uses and a residential development comprising 208 residential flats. FTWMCL also hold a freehold interest in the Thames Path in front of the building including the Newcastle Jetty.

124. In summary, FTWMCL submits that the application should not be granted as provision of alternative open space is not prohibitively expensive when the true value of the park is taken into account and the avoidance of the delay associated with SPP is not strongly in the public interest. The public interest is that TWUL's proposals are given full and proper consideration including application of the full protection afforded by Parliament to open space. [REP/5]

<u>*Availability of suitable alternative land*</u>

125. FTWMCL does not dispute that the number of potentially suitable alternative sites is small but questions TWUL's analysis of whether those which have been

identified would be prohibitively expensive. The Supporting Statement (para 6.3.15) indicates that the applicant has based its assessment on the hypothetical value of an industrial development on the open space land. This assessment does not include any consideration of the actual value of the open space to be lost. [CD17a]

126. The land to be lost at KEMP has been valued at £3m/ha. It is the only park serving the London Borough of Tower Hamlets. The value placed upon it is conservative as the real value of that space to residents is much more. The conclusion reached by the applicant's assessment is misconceived as it depends upon its assessment of the value of KEMP as a comparator.

127. In relation to the KEMP foreshore, the reasoning behind the applicant's view that exchange land is not required in respect of the 2,018m^2 of the foreshore that would be acquired by the TTT project is questioned. The method of access to the open space is immaterial having regard to the definition set out in section 19 of the Acquisition of Land Act 1981. The foreshore is, in fact, used for the purposes of public recreation and comprises open space. The applicant has failed to comply with the requirements of sections 131 and 132 of the 2008 Act in respect of this land

Public Interest in the timing of the development

128. The UK has been in breach of the relevant Directive since 1 January 2001 and action was commenced against the UK on 16 June 2010. The timescales involved in these proceedings are lengthy and measured in years rather than months. Whilst the judgment of the European Court of Justice given on 18 October 2012 points to the need to progress the TTT project, this should not be done at the expense of careful consideration of the design and location of the tunnel. A further delay of 9 to 12 months would not be material to the overall compliance timetable. The NPS establishes a need for the project, not that it is urgent.

129. There would be costs associated with SPP but its importance in the full examination of the TTT project and the implications for open space would be priceless. This stage of the consideration process should not be removed for anything less than "*strong*" public interest. TWUL has not established that avoiding SPP would be "*strongly*" in the public interest.

Site selection

130. There has been significant opposition to TWUL's proposed use of the foreshore at KEMP. If TWUL had selected the alternative site of Heckford Street which would require use of only a small and lesser quality area in the north of KEMP the area of open space to be permanently acquired would be smaller, with a lesser impact on local residents and park users. When comparing the KEMP foreshore with the alternative Heckford and small area of KEMP option, the replacement value of the park should be considered when making an assessment of suitability. The test for compulsory acquisition is not made out as, given the existence of a suitable alternative, the acquisition of the land is not '*necessary*'.

Conclusions

131. In conclusion, the applicant has failed to justify avoidance of SPP in accordance with the statutory tests in sections 131(4A) and 132(4A) of the Planning Act 2008. The applicant's assertion that alternative open space is either prohibitively expensive or not required has not been fully justified, nor has the public interest test been met. It would be strongly in the public interest to retain open space in this area.

THE RESPONSE FOR THE APPLICANT

132. The Opening Statement[27] on behalf of TWUL provides a response to the FTWMCL representation. The representations in relation to section 132(4A) are now redundant as the section 132 application is only being pursued under sub-section (3). The points raised are also considered in the applicant's Closing Statement.[28] [TW29, TW36]

Site selection

133. In relation to site selection and Heckford Street, the FTWMCL comments are not relevant to this Inquiry as they relate to the merits of the various project sites. The suggestion made by FTWMCL that an alternative CSO site should be considered on land at Heckford Street was a line of objection that was pursued during the draft DCO examination. That is a matter within the scope of the DCO application and not within the remit of this Inquiry. The site is not put forward by FTWMCL as replacement open space but as an alternative CSO site. It was considered as replacement open space by TWUL and is referred to in the Supporting Statement as Highway Business Park – Site ID KEMPF002.[29] However, the site is not suitable and available land to be used in exchange for the KEMP open space for the reasons set out therein. [CD17a]

Availability of suitable alternative land

134. The issues raised by FTWMCL have been responded to by the evidence of Mr Ainsley (paras 4.9-4.11), Mr Rhodes (paras 8.15-8.18) and Mr Walker (paras 59-67). [TW05-RA-SOE, TW03-JR-POE, TW04-SW-POE]

135. Mr Rhodes states that the methodology used by the applicant for assessing whether replacement land is only available at prohibitive cost is entirely appropriate. The applicant has regarded the foreshore as open space on a precautionary basis. It has found that suitable foreshore is not available to be given as replacement open space.

136. Mr Walker explains that TWUL has adopted a hypothetical value for its analysis of prohibitive cost. It has not valued the land at KEMP at £3m/ha and does not believe that the open market value of the park is £3m per ha. This is a hypothetical value that is used in their methodology to arrive at a benchmark against which the *'prohibitive cost'* of replacement open space can be measured.

---

[27] Paras 37-40, page11
[28] See paras 56-59, page 16
[29] See paras 15.2.50-15,2,75, pages 125-127

137. It is agreed that the number of potentially suitable sites is small. The restrictive planning policies applying to open space and lack of suitable and available exchange land is why, in reality, developers do not identify and pursue proposals to develop open space. To move away from a financial value in favour of a community value would be inconsistent with a measureable and robust test for prohibitive cost.

138. If the Secretary of State was minded to support the FTWMCL view that '*value*' should reflect the '*real value'* to local residents then the same consideration must be given to any potential exchange land. That assessment would have to take into account the impact on jobs, businesses or lives of individuals who would necessarily be displaced to enable any re-provision of open space. This type of analysis would only add to the challenge rather than assist.

Public Interest in the timing of the development

139. The suggestion that a further delay of 9-12 months is not material relative to the long period of project development is indicative of the kind of complacency that the European Court seeks to eliminate.

THE CASE FOR THE OBJECTORS: DHSCGA

(This is set out in full in the DHSCGA representation [REP/2]. Points are recorded in brief.)

140. There are serious concerns that the DCO, if granted, would have a negative effect on the new resource they have been working so hard to create on this site. It would be devastating for their investment in time and care to be undone at this stage and a great loss to the community.

141. Whilst the need for the TTT project as whole is understood, they are strongly opposed to the use of this site, since there is a far preferable alternative (on the local foreshore) which would have considerably less effect on the local community. That alternative site is located on the Thames foreshore where odour would be carried away by the river, where debris from digging could be moved by water transport and the main long-term concern would only be for visual impact to high value waterfront flats.

142. If TWUL takes control of the site there are concerns as to whether such a valuable amenity would ever be created again and the public would have lost a valuable green space. It seems highly inappropriate for TWUL to be making this application at this stage since The Planning Inspectorate is currently considering whether this site is suitable at all and TWUL should be awaiting the outcome of that proper process before making a further claim to the site.

THE RESPONSE FOR THE APPLICANT

143. The Opening Statement[30] on behalf of TWUL provides a response to the DHSCGA representation. This representation is not directed at the issues engaged by sections 131 and 132. The issues raised are dealt with in the proof

[30] See paras 47-50, pages 12 and 13

of evidence of Mr Rhodes.[31] The points raised are also considered in the applicant's Closing Statement.[32] [TW03-JR-POE, TW36]

144. The objector does not raise any issues about the replacement land considerations or put forward other suggestions for possible suitable and available replacement sites. DHSCGA suggest that TWUL should develop an alternative CSO site on the foreshore at Borthwick Wharf. The alternative CSO site proposal was considered during the TTT draft DCO examination. Indeed, Mr Richardson of DHSCGA has appeared at DCO Open Floor Hearings held in Deptford.

145. Whilst the Crossfield open space would be taken up for project-related purposes until the completion of the works at this location, after that it would be restored to open space. There is no reason why, in principle, the concept and design of the future open space should not be determined in conjunction with local partners, such as DHSCGA, at a later stage when details would be submitted for approval by the local planning authority.

<u>THE CASE FOR THE OBJECTORS: THE OPEN SPACES SOCIETY</u>

(*This is set out in full in the Statement by the Open Spaces Society; the representation, proof of evidence and the oral evidence presented to the Inquiry by Mr Jeremy Clyne*[33]*[REP/6, OSS/1-OSS/2]. Points are recorded in brief.)*

146. The concerns relate to the effect of the proposals on four sites which are public open space, namely, Barn Elms, King George's Park, Deptford Church Street (Crossfield Street Open Space) and KEMP. These are all open spaces within the meaning of the Planning Acts and are subject to special protection in the respective borough Development Plans and Frameworks, the London Plan and the National Planning Policy Framework. They are also subject to special procedures imposed by section 19 of the Acquisition of Land Act 1981.

147. Interference with the public use and enjoyment of open spaces affected would occur during the construction phase which is expected to last between two and a half and four and a half years. There would inevitably be a further period for subsequent restoration of lost vegetation and landscaping. Permanent sewerage shafts and facilities would result in permanent loss of, and damage to, amenity and recreation land.

148. The prominent section of King George's Park which is intended to be used for the project[34] has a very special and historic character. The TWUL plans would involve the destruction of a number of mature trees, introduce hardsurfacing and change the character of the area. The attractive and distinctive feature of the ornamental gateway and curved railings would be lost.

149. Routine inspections would take place and every 10 years "*important maintenance work"* involving access to the shaft and tunnel would occur. The loss of mature trees would be bound to have a significant effect on the species that depend on them including bats and birds. It is not accepted (as stated in

---

[31] See paras 8.7-8.9, pages 44-45
[32] See paras 64-65, page 17
[33] Mr Clyne is the 'Wandsworth correspondent' for the Open Spaces Society
[34] A designated Site of Importance for Nature Conservation

the applicant's Environment Statement) that the development would enhance the park.

150. A number of alternative sites have been considered. Most are currently used for parking. The impacts on those sites would be limited to the construction period and would not have such a permanent and damaging effect as that which would result from the use of an area of the park.

151. Mr Clyne also has concerns regarding consultation and notification matters. The letter from the Open Spaces Society dated 1 April 2014 confirms that it has no record of having been consulted about the rights of way affected by the project. It was also not informed about the current certification process the subject of this Inquiry. It has been difficult to establish what, where, and how to access documentation. TWUL should have provided the information in a clear form. It was not apparent what constituted the Inquiry documentation and this was not available to access at the Inquiry. The route to access the documentation via the applicant's website was difficult. This is unsatisfactory and does not place the objectors in a favourable position. [OSS/2]

152. The letter of notification of the Inquiry included in the matters on which the Secretary of State wished to be informed "*any other matters the Inspector considers relevant to whether the application should be subject to Special Parliamentary Procedure.*" There has been an attempt to narrow down tightly the scope of this Inquiry. The letter gives a large degree of discretion on the part of the Inspector as to whether or not to recommend SPP. [CD10]

153. Mr Walker's summary evidence as to ways of valuing land shows that there is no established way of doing this. It raises profound issues that should be given a full public hearing in Parliament. There is no DCLG guidance as to "*prohibitive cost,*" nor is there any case law precedent. It should be subject to Parliamentary scrutiny to ensure that the matter is decided on a right and open basis.

THE RESPONSE FOR THE APPLICANT

154. The Opening Statement[35] on behalf of TWUL provides a response to the Open Spaces Society representation. The issues raised are dealt with in the proof of evidence of Mr Rhodes.[36] The points raised are also considered in the applicant's Closing Statement.[37] [TW03-JR-POE, TW36]

155. This representation essentially relates to the merits of the site selection process and project mitigation, particularly in respect of the proposed CSO site at King George's Park. It is not directed to the issues engaged by sections 131 and 132. These matters have been fully investigated in the examination of the draft DCO application. They are the same type of representation as those made by Mr Clyne at a compulsory acquisition hearing held on 17 January 2014 into the DCO application. If SPP was required Parliament would be considering the DCO rather than the appropriate tests for the grant of open space certificates pursuant to sections 131 and 132.

[35] See paras 44-46, page 12
[36] See para 8.19, page 47
[37] See paras 60-63, pages 16-17

THE CASE FOR THE OBJECTORS: MR ROLAND GILMORE

(This is set out in full in the representation, the proof of evidence and opening and closing submissions of Mr Roland Gilmore, and the proofs of evidence and oral evidence of Emily Shirley and Lady Dido Berkeley [REP/4], [RG/1], [RE/2a-RG/2e], [RG/3-RG/11]. Points are recorded in brief.)

Introduction

156. Roland Gilmore is a private individual whose working life has been in construction, both building and civil engineering. He is a resident of the London Borough of Wandsworth. The foul drainage from his house is connected to the West Putney CSO. The surface water drainage, as with thousands of properties in the West Putney catchment, is connected directly to Beverley Brook. He has been using the Beverley Brook Walk and Thames Path for the past 17 years.

The scope of the evidence

157. The specific objections are limited to Barn Elms due to the late notification of the holding of this Inquiry and insufficient preparation time granted to the public. Local people are not aware of the application, or of its implications for the locality. The wider London community are probably even less aware. Pre-application consultation in relation to land acquisition was limited and general in its scope. The consultation occurred before the changes to the SPP regime took place in June 2013 and has not therefore been adequate.

History

158. TWUL have created the conditions whereby they now seek compulsory acquisition of public land since they no longer own the land that would have negated any need for this application. The, albeit underperforming, upgrade of Mogden Sewage Treatment Works renders the present west section of the wider TTT proposal unnecessary.

Common Ground

159. It is has been difficult to achieve agreement without the experience or knowledge regarding elements such as the '*prohibitive costs criteria*'. Regarding methodology for testing exchange land (land-based sites), criteria for assessing suitability and criteria for assessing availability etc. as a private individual, he is not in a position to agree them.

Common Land

160. No adequate evidence has been provided as to whether any of the land is common. A particular issue is raised in relation to Plot 71 at Barn Elms.[38] For the applicant, Mr Walker's evidence refers to meetings with Conservators. It is odd that a current Conservator, when asked a couple of days ago by Lady Berkeley, knew nothing about matters relating to the TTT proposals at Barn Elms. It is questioned whether an inspection of the minutes of the Conservators' meetings would reveal any record.

---

[38] During his cross-examination of Mr Ainsley, Mr Gilmore contended that Plot 71 at Barn Elms comprised part of a common and also suggested that it might form part of a '*town green*'.

The TTT Proposal

161. It is not necessary to construct a tunnel connection at Barn Elms, since less costly and sustainable solutions are available. Those solutions have been developed over the past several decades with accelerated research and development occurring during recent years; much of it after the Government's decision to incorporate the construction of the TTT into national policy.

Metropolitan Open Land

162. The draft DCO relates to land that is currently used primarily for purposes of schools sports and public recreation. The land under consideration is designated MOL and is afforded the same level of protection as the Metropolitan Green Belt. Primary legislation would be required if the status of the land in question were to be changed. There is no reference in the application to public rights over this land and that is a significant concern.

Ownership

163. Although the sports fields and facilities are managed by the London Borough of Wandsworth, the owner is the London Borough of Richmond upon Thames. The terms and conditions, under which the London Borough of Wandsworth acquired the freehold, if indeed they have acquired it, requires clarification.

Beverley Brook Way

164. The Beverley Brook Way footpath is a public right of way by use. The application does not make legal provision to ensure continuous use of the footpath by the public. It is used by a great many people on a daily basis. During TWUL's consultation on the TTT proposal, there were 144 objections to loss of open space and recreation. TWUL responded by stating that the works would use approximately 0.8 ha of "*open space*". There is no demonstrable need for TWUL to permanently acquire any land relating to Beverley Brook Way. The Book of Plans indicates acquisition of land up to the crest of Beverley Brook embankment. There is no need for compulsory purchase of that land. [CD11]

165. A right of way would be disrupted at Barn Elms, and the diversion of the right of way might require acquisition of rights over additional land and thus delay the project. There was previously a footbridge at about the location of the existing redundant flood barrier or dam over Beverley Brook. A footbridge over Beverley Brook might help, in part, to satisfy the legal requirements.

Options

166. There is a need for "*independent"* investigation and studies. It must be in TWUL's interest that the TTT be built, since it would increase flows to their sewage treatment works (STW) and provide justification for charging customers to treat rain water (otherwise termed surface or storm water). It is rain that creates conditions whereby overflows from the combined sewers are discharged to the Thames Tideway. The modern solution that most cities across the world are adopting for good financial reasons is to employ a range of sustainable methods of point source control and other measures to prevent overflows. In the case of West Putney, it is believed such measures would cost the public considerably less to implement and maintain than the current TWUL proposal and negate any need to acquire the land under consideration. The study

commissioned by TWUL has been rebutted by Emeritus Professor Richard Ashley. The expert opinion is that it is not necessary to connect West Putney CSO since installation of simpler, low risk, low cost, environmentally sustainable and preferable socio-economic solutions to halting or slowing surface water flows can be instigated. It is not clear that the West Putney CSO needs to be connected to the main tunnel.

The Putney Hospital Site

167. The land area TWUL is seeking to compulsorily acquire, without compensation is 1.71 ha or 17,100m^2. Using Bluebeam software, and a drawing published on the London Borough of Wandsworth's planning website, the drawing has been calibrated and areas have been calculated. The figures have been provided by the Friends of Putney Common and are reliable. They supersede the figures from the original objection.

168. The '*Putney Hospital Site'* that includes the old hospital and nurses' home covers an area of 1.22 ha including established paths that may be a public right of way and common land. The Putney Hospital '*island'* site was acquired from the local Primary Healthcare Trust by the London Borough of Wandsworth at a reputed cost of £4.4m and covers an area of 0.489 ha within the site area[39]. This translates to a value for that discrete parcel of land of £8.18m/ha. The site the London Borough of Wandsworth acquired from the Wimbledon and Putney Commons Conservators for a payment reputed to be £350,000 is 0.731 ha. This gives a combined value for the 1.22 ha of £3.984m/ha. The compensation land at Putney Hospital could therefore be said to have a market value of £6,619,000. When the market value of the compensation land is compared to the cost of other land TWUL has purchased, or is seeking to compulsorily purchase, this appears to be minor when compared to their budget for land acquisitions and is arguably far less than its true value.

169. The London Borough of Wandsworth has granted itself permission to build a 2FE[40] primary school and a block of luxury apartments on the site. The school design includes a playground on the roof. The latest projections of pupil numbers infer that a 1FE[41] school would probably be more appropriate. The original hospital and nurses' home site is outlined in red on the site plan. Under their current strategy, the London Borough of Wandsworth intends to sell part of the site with planning permission to a developer for development as apartments. Their declared intention is to use the receipts to fund the construction cost of the school. If the council could be persuaded that a smaller 1FE school of a superior design would be the best option, and the sale of land for apartments abandoned, this could be enabled by a compensation payment. It has also been argued that the school should, in fact, be built in the east part of the Thamesfield ward where the need is perceived as greater and not in the west of the ward where there are already a proportionately high number of primary schools. These suggestions should be explored. [RG/1]

---

[39] See site plan at p.7 of Roland Gilmore's submissions [RG/1]
[40] Two form entry
[41] One form entry

Beverley Brook

170. Beverley Brook rises from the chalk at Sutton and runs on a gravel bed. The only aesthetically managed section of the brook runs through Richmond Park. Beverley Brook is a degraded waterway, but with huge potential. A few photographs of Beverley Brook have been submitted. The draft DCO does not seek to compulsorily acquire the Brook but the photographs help to show its existing condition. The work that the draft DCO would enable does not recognise Beverley Brook at all and would do nothing toward re-naturalising it in the future but would actually hinder it. [RG/2a, RG/2d]

Access

171. The Consultation Report envisages that, after completion, the site would need to be inspected every three to six months with a more substantial inspection of the shaft, itself, every 10 years. This does not justify the compulsory purchase of the land. TWUL state that they intend to construct a "*Grasscrete*" roadway. This form of reinforced concrete construction would be inappropriate and would permanently remove the area covered from other uses, and would damage the ecology. It might be possible to design another option with a reinforced continuously grassed surface. The current plans for the traffic route could result in damage and/or stress to established trees. There is no requirement for the access route land to be compulsorily purchased or for access to be shared. It is also questioned whether the scheme would, in fact, intrude upon the playing fields themselves and, in particular, prevent the use of an 'Aussie rules pitch' oval playing field. [RG/3]

Bats

172. At Barn Elms seven of the 17 species of bats in the UK have been identified. The impact of the proposed work could only be detrimental to bats and is another reason why the draft DCO proposal would be unacceptable and other sites and routes for a connection should be found.

Sustainability

173. There is a likelihood that the TTT would become a stranded asset soon after the mid-century, as London and the UK move towards sustainability targets and climate change exerts its influence. The provision of a relatively short-term fix cannot justify transfer of ownership of publicly owned land to a privately owned company.

Prohibitive cost

174. The monetary value ascribed to what many would say would be an invaluable loss is incalculable. TWUL's assertion that there would be no suitable replacement land for any of the open space land is untenable. If TWUL's reasoning in relation to '*prohibitive cost*' were correct, then it would frustrate the intentions of Parliament by making section 131(4A) impossible to fulfil and cause unacceptable loss of open space.

175. TWUL has withheld information relating to the budget costs of any part of the project, including land acquisition, on the grounds of financial confidentiality. This has served to frustrate any meaningful comparison of measures that might negate the acquisition of land at Barn Elms on the grounds of cost.

The Public Interest

176. In relation to the Waste Water NPS (para 4.8.13), an assessment by the London Borough of Wandsworth has shown that TWUL intends to compulsorily purchase 18,744m^2 of land that would be surplus to requirements. The SuDS regulations will be instigated from October 2014 and 90% of the reason given for constructing the TTT will have been resolved by 2034-44. The report entitled "*An assessment of evidence on Sustainable Drainage Systems and the Thames Tideway Standard*," by the Environment Agency for Defra dated October 2013 is relevant in this respect. The TTT is programmed for commissioning in 2023, but might only be useful for a period of 11-21 years. It should be seen as a temporary measure and not one that requires the permanent acquisition of land. [RG/11]

177. The applicant has referred to the infraction proceedings of the European Court of Justice against the UK Government. Mr Rhodes said that SPP should be rejected on the grounds of the "*urgency*" of the TTT project. This is not agreed as it is within the Secretary of State's powers to make any Order granted conditional. The UK Government have twice been granted extensions of time of some years to comply with the Urban Waste Water Treatment Directive. The infraction fines, once set by the court, are time-related and would accrue on a daily basis until, in the opinion of the Commission, compliance is achieved. It is not true to state that the proposed compliance in 2013 would somehow reduce the fines. The Water Commissioner is pressing for fines of about 2 billion euros. The risk of TWUL not meeting their intended completion date is evident. To put the infraction fines in perspective, the Water Commissioner's figure equates to a liability of nearly £70 for each and every UK taxpayer.

178. The applicant has not made a compelling case as to why it would be in the public interest to issue certificates in order to avoid the necessity of SPP. The TTT project would take many years to construct, even if the DCO is granted. The SPP process would not have any significant impact upon its progress. It would ensure earlier consultation, wider public participation and a more thorough and meaningful scrutiny of the permanent loss of open space land and rights proposed. The evidence shows that there would be no ecological improvement resulting from the tunnel project. It should be subject to SPP.

Environment Agency requirements

179. The submitted plan[42] of the Barn Elms site shows 8m '*set-offs*' to Beverley Brook. This represents the requirements of the Environment Agency and would have to be accommodated. [RG/7]

Section 132

180. As regards section 132(3), once rights are removed the public are placed in a weaker position. The removal of public rights over this land would result in disadvantages to the public through a permanent loss of enjoyment of that land.

[42] Marked up inset from Thames Water Drawing DCO-LP-000-ZZZZZ-030010-Rev3 of proposed permanent works area 80

The evidence of Emily Shirley - witness for Mr Roland Gilmore

The NPS and the need for TTT

181. The presumption of need for the TTT in the NPS for waste water operates if the adverse impacts can be shown to outweigh the benefits. The recommendation of the TTT examination due in June and the final decision expected in September is therefore not certain. Furthermore, there will be a legal challenge to the DCO, if it is granted, on numerous legal grounds. The substantial loss of public open space, which is likely never to be replaced because of London's pressures, is a matter of supreme public importance that cannot be justified in these circumstances.

Public participation

182. Public consultation and participation in the decision-making process in relation to the acquisition of public open space has been ineffective under sections 131(4A) and 132(3). Warning bells should be ringing in Whitehall when only five (or six if one includes the PLA) objections are received for the eight proposed sites of up to 4 ha of public open space. Pre-application consultation of the TTT DCO was also inadequate. It did not address the detail or methods that would be followed in the acquisition of public open space. Therefore, thousands of people who might potentially be concerned have not necessarily engaged in the TTT process at all.

183. The Growth and Infrastructure Act 2013 was enacted in June 2013 after the DCO application was consulted, submitted and accepted. The public, unless gifted with legal acumen, would not have realised that the SPP process would no longer be available to them, if replacement land was not to be put forward. A further complication was that during the TTT examination, there was nothing specific to this Inquiry placed on the website.

184. The documents pertaining to the proposed certificates only properly surfaced on the 18 February 2014[43], when those engaged with the TTT examination were busy preparing their final submissions for the 11 March 2014. It later transpired that an earlier application for the certificates was available on the website but it was filed under '*other representations'* dated November 2013, and thus not easily discoverable.

185. The mistakes in the notices displayed regarding this Inquiry, the difficulty of the finding the Land Order Plan relating to the plots specified in the schedule to the notice, the incorrect website given for document inspection, and the erratic display of signs in public places, as demonstrated by Lady Dido Berkeley's evidence, would strongly suggest that SPP is required to ensure that the public are properly able to engage in the decision-making process regarding the permanent loss of public open space.

Common Land

186. With regard to all the land being open space and not common, the evidence put forward by Mr Ainsley does not establish that all the land is not common. Normally, one would need to provide from the commons registration authority

[43] The date of the Pre-Inquiry Meeting for the open space certificates proposal

(for each London borough, not the Land Registry) a definitive map and letter of confirmation as to the status of the land. Mere site visits or Land Registry voluntary registration information would not be sufficient. Defra's database has not been updated since around 1993 and therefore cannot be relied upon. There is also the disputed issue of Plot 71. Can one be sure that all of the order land is not common land?

Prohibitive cost

187. The unreasonable tests used by TWUL with regard to replacement land and '*prohibitive cost'* means that section 131(4A) would never be fulfilled in London. This cannot be right and would set a dangerous precedent. It would be unlawful on national and international grounds to issue certificates in these circumstances.

The evidence of Lady Dido Berkeley – witness for Mr Roland Gilmore

Public participation

188. The TWUL consultation has been inadequate. The available information for members of the public has been muddled. This criticism applies to The Planning Inspectorate (PINS) and DCLG. The DCLG contact, Liz Hardy within the NPCU section, was confused about the whereabouts of relevant information. Her e-mail explanation of the notification process and related matters is appended to Lady Berkeley's proof of evidence. Lady Berkeley was referred by her to someone else in PINS, who also did not know where to find that information and she was advised to contact the Programme Officer, Helen Wilson, and on it went. That was an appalling way to run a Public Inquiry, and totally inappropriate management of an Inquiry, as incomplete information was available to those wanting to participate in it. Such a "*paper chase*" is unacceptable and there is a House of Lords judgment[44] to that effect. This proposal has been a paper chase, a telephone chase and an e-mail chase. [RG/6a]

189. Few people have been informed of these proceedings. Lady Berkeley had been to the Barn Elms site the night before the Inquiry opened and had only observed one small A5 notice on the roadside and not within the site. There was evidence from local people that the metal clips attaching the site notices had been cut and the notices taken off. There was also evidence that all the notices had recently been put up again. All those signs were now up, but they had not been there earlier to notify the public and allow consultation and participation in this process.

190. The e-mail from local resident, Henrietta Mayers, dated 1 April 2014 explains that she, or her partner, walk down the towpath and/or the eel brook to Putney Common twice a day. She first saw the three A5 planning notices roughly two months ago secured to a fence in three different locations all leading to Putney Common. She had not seen any along the Thames Riverside towpath or Queen Elizabeth Walk, itself. She is perturbed that more awareness amongst local residents has not been raised in a more realistic way. If more residents, and frequent visitors to the area, had been aware of any plans that there were to

[44] Berkeley v Secretary of State for the Environment and others [2001] 2AC 603

change the area, there would have been much interest, many enquiries and bad feeling. [RG/6a]

191. An e-mail dated 1 April 2014 has been received from Del Brenner of Regents network and a member of the London Waterways Commission (LWC) who had not previously been aware of these proceedings. He expresses concern that the LWC has been allowed to fall out of the loop and has not been kept up to date with all the details and schemes that have developed. There has been a lack of engagement with the LWC, and the public and Londoners generally. In short, TWUL'S process of making information available has been seriously flawed. [RG/6a]

192. The wider public has not been informed. As a result, the effective public and river expert participation has been poor or non-existent. There has been a total lack of effective community involvement. Furthermore, to have two procedures running at the same time, namely, the DCO examination and the open space certificates application, was unreasonable. Lady Berkeley would have liked to have given it more time and presented a greater amount of evidence. There is an essential need for SPP and it would be in the interests of the wider public for the Secretary of State to be aware of the flaws in the case for the project.

The London Plan

193. The London Plan identifies the protection and development of open space as a key issue. This has not been taken properly into consideration, nor has the international importance of the River Thames with its four World Heritage Sites. The Further Alterations to the London Plan should also be considered as emerging policy. The River Thames, itself, is designated as '*open space*' in the London Plan.

Replacement Land

194. There is plenty of land suitable for exchange that would not be prohibitive such as land at Convoys Wharf, Lots Road, the Olympic site, protective wharves, and Thames Gateway. There is plenty of space at the Olympic site and it would be ideal. It would be strongly in the public interest for such a site to be used.

The Public Interest

195. It would be strongly in the public interest to have SPP and it would be strongly not in the public interest to issue the certificates. The statutory involvement of Parliament should not be sidelined and watered down. The full parliamentary process is called for with such an extensive and prominent disposal of land and statutory rights. This matter is of such high public interest and concern that it requires full involvement and debate in Parliament.

Common Land

196. There has been no clear evidence presented by the applicant to show that the order land is not '*common land.*' There is evidence to show that the land is '*common land*'. Lady Berkeley had been in touch with John Horrocks, who is a Conservator, and he did not know about the open space issue.

Prematurity and need

197. TWUL do not need to acquire all this land permanently, only a small portion of it. They could make out a case for using land, especially waterside and open space, for the construction period only, through some sort of licence or temporary agreement. It would be perverse to extend this use of the land beyond its supposed requirement.

198. The NPS has been referred to as demonstrating need for the project. There are a lot of discrepancies and flaws in the NPS. Ministers are now becoming aware of this and becoming concerned about the cost. The latest information shows that CSOs are not needed at Barn Elms. There are many options available and it is premature to grant the certificates. Any decision to grant them would not be based on an informed opinion and the decision would be unlawful. The CSO spill at Barn Elms is minimal and the Barn Elms CSO need not be connected to the TTT. On the basis of the precautionary principle, questions have been asked by the DCO Panel on this issue and the answers to them are now available. It would be premature to grant the certificates when the information to justify this is just not there. It would be unlawful and challengeable. There is nothing significantly urgent that would demonstrate otherwise.

THE RESPONSE FOR THE APPLICANT

199. The Opening Statement[45] on behalf of TWUL provides a response to Mr Gilmore's representation. The issues raised are dealt with in the proof of evidence of Mr Rhodes[46] and his rebuttal proof of evidence.[47] The points raised are also considered in the applicant's Closing Statement.[48] [TW29, TW03-JR-POE, TW12-JR-RBP, TW36]

200. For the most part, Mr Gilmore's representations are not directed to the issues engaged by sections 131 and 132. In the case of Barn Elms, outright acquisition of the land is proposed. This means that section 132(3) and related matters do not arise. Matters such as the question of the accommodation of an 'Aussie Rules' pitch, have been looked at and the proposal would not result in the loss of any pitches or playing fields.

201. The public participation issues raised are dealt with in the applicant's Opening and Closing Statements and are evidenced by the collated documents relating to notification and publicity requirements for the application and the associated Public Inquiry and the '*Note on the site visit to Barn Elms between 7.45 – 8.15 am Wednesday 2 April 2014.'* The e-mail from local resident, Henrietta Mayers in connection with the taking down and putting up of notices at Barn Elms can be explained by the fact that two separate sets of notices were required. The first set gave details of the Secretary of State's proposal to issue the certificates and the second set gave notice of the Inquiry. Her evidence is consistent with the three A5 notices going up about 2 months ago and then being taken down and replaced with the Inquiry notices. [TW29, TW36, TW30, TW30a]

---

[45] See paras 51-56, pages 13-14
[46] See paras 8.12-8.14
[47] See paras 2.7 and section 3
[48] See paras 66-73, pages 18-19

202. Mr Gilmore raises a potential exchange land issue in relation to the Putney Hospital site. This is material to the section 131(4A) application made in respect of the land at Barn Elms. The Putney Hospital site has planning permission[49] dated 13 December 2013 for a mixed use development comprising a two storey primary school and residential flats. No legal challenge was made against the grant of planning permission and the time for doing so has now expired.

203. Mr Gilmore gave evidence relating to ongoing legal proceedings concerning the development of that site. The proceedings in question are not concerned with the grant of planning permission. They relate to an application for a declaration as to the lawfulness of the grant by the Wimbledon and Putney Commons Conservators of a right of access to the development site. The application came before Wyn Williams J at first instance and the claim was dismissed by a judgment dated 8 November 2013. The hearing of 3 April 2014, to which Mr Gilmore referred, was a renewed application for permission to appeal that was heard by the Court of Appeal. These legal proceedings have no material bearing on the matters before this Inquiry. Even if the claimant in those proceedings was ultimately successful, that would not render the Putney Hospital site suitable and available. [TW35]

204. The site is allocated in the adopted development plan for a mixed use development comprising residential and community facilities development. It benefits from an existing access over land which does not comprise registered common and also land which, whilst forming part of the common, is already tarmacked in connection with the existing access. If the legal proceedings were successful it is reasonable to expect that the development of the site would be reconfigured so as to rely on an access entailing use of the existing tarmacked area. It is not therefore likely that success in the current proceedings would mean the end of proposals to develop the Putney Hospital site. It cannot be regarded as an '*exchange site*' for the purposes of section 131.

205. This site was considered as a potential replacement site by the applicant in the Supporting Statement.[50] The conclusion drawn is that the site is not suitable because of its inadequate size and the adverse consequences of foregoing desirable development for the community, if it was turned over to open space. The land is unavailable for practical purposes because of the firm development proposals that have planning permission. Those parts of the overall site that are not already open space are '*not available*' to be purchased and developed as replacement open space. Even if it was available, this land would only be available at '*prohibitive cost*'. The estimated cost of purchase is set out in the Supporting Statement (para 8.1.47) and a summary of the valuation carried out for Barn Elms is set out in the tables appended to the proof of evidence of Mr Walker. [CD17a, TW10-SW-APP]

206. Mr Gilmore has produced a plan of the Barn Elms site showing 8m '*set-offs*' to Beverley Brook which he said represented the requirements of the Environment Agency. The issues raised by this plan do not go to the tests in section 131 and have no bearing on the issues relevant to this Inquiry. [RG/7]

[49] Ref No 2012/0758
[50] Putney Hospital – Site ID BARE003

207. Plot 71 at Barn Elms is included in the application and identified in the schedule of land as having an area of $3m^2$. It falls just outside the boundary of the common land and this is shown by the HM Land Registry plan and Land Plan extract. As regards the other plots which have been queried, Plot 63 does not form part of the application before the Inquiry, as it is not open space but an access track leading to the sports ground and dwellings. The applicant is only seeking temporary use of Plot 76, and not to compulsorily acquire it, so it has not been included in the application, even though it is shown in the BOR as land over which temporary possession is sought. In relation to the Beverley Brook Way, only temporary powers over the footpath are sought save for deep sub-soil powers in some locations which do not engage sections 131/132. [TW38, TW39]

208. Whilst questioning Mr Ainsley, Mr Gilmore contended that Plot 71 comprised part of a common. There is no evidential basis whatsoever for that contention. Emily Shirley adduced no evidence to show that Plot 71 "*may*" comprise part of a common; for example, she produced no extract from the commons register to that effect. Instead, she puts the case on the basis that Thames Water '*cannot be sure*' that the land is not common, and appears to rely on that for a submission that the application should be rejected.

209. The applicant has been in contact with the Wimbledon and Putney Commons Conservators over the years to discuss the TTT scheme. There have been meetings with the Conservators both in relation to the Phase 1 and Phase 2 consultations. The Conservators wrote to the Examining Authority in connection with the DCO examination on 23 October 2013. From that it can be concluded that they have no dispute over matters of ownership as set out in the BOR and no objection to the proposed DCO. They did not appear at any of the DCO Hearings but remain an interested party.

210. Mr Rhodes responded in detail to the points raised by objectors concerning the need for the project and the effects of any delay that might be caused by SPP. The NPS (paras A1.3.6 to A1.3.8) provides clear guidance to the effect that the TTT project represents much-needed infrastructure of national significance. It is national policy that it is urgently required and the planning process should therefore proceed without delay. SPP would delay the whole project and not just the open space aspect of the scheme.

211. The whole of the NPS extract at para 4.8.13 is relevant. The NPS recognises that open space may need to be lost. Para 4.8.1, is also relevant in this respect. It is likely that such infrastructure projects will occur in urban areas where there is strong competition for land and it is not surprising that some will involve the loss of open space. The applicant's proposal complies with the NPS read as a whole.

212. In relation to SuDS, paras 2.6.26 and 3.4.1 of the NPS are relevant. This confirms that it is national policy that strategic alternatives do not need to be assessed and that the TTT is needed in the national interest. The point has also been raised that because of SuDS, the TTT may only be needed temporarily. Even if it is only needed temporarily, it would still need to be constructed and the powers to enable that to take place would still need to be granted. The effects would, in any case, be temporary and largely during the construction period. The applicant seeks to leave behind improved open space.

THE EVIDENCE OF LOCAL RESIDENTS

Mr Ben Mackworth-Praed

213. Mr Mackworth-Praed is the Chairman of the Barnes Community Association Environment Group, a member of the Committee of the Friends of Barnes Common, an officer of the West London River Group and a retired civil engineer. He sought answers to a number of questions. Did TWUL not consider that the permanent transfer of 1.8 ha of MOL from the Council to a private equity company was not so important as to justify SPP? He sought assurances from TWUL that the land that was not required permanently would be returned to Council ownership in a state in which it could be used for its current purposes. He questioned why much of the land was sought to be acquired on a permanent basis, including the access road, and not just on a temporary basis for the construction period. At a meeting with TWUL he had been advised that the land would only be required on a temporary basis.

Mrs Unity Harvey

214. Mrs Harvey is a local resident living close to the Barn Elms site. She expressed concern that an ambiguity had arisen through the use of the words *"to be acquired or used"* in relation to her existing right of way over the access road which passes in front of her home and leads to the Barn Elms Schools Playing Fields. This was also a matter of concern to her immediate neighbours at Nos 5 and 7 Queen Elizabeth Walk. She sought further information from TWUL as regards the nature of the rights sought as the position was unclear. Is the right of way to be acquired by someone else or not? She would like to have an input into the acquisition of her right of way by someone else.

INSPECTOR'S CONCLUSIONS

(The figures in round brackets at the ends of the following paragraphs refer to relevant paragraphs in this report which contain the source of the material relied upon in reaching my conclusions)

General Matters

215. The following general matters are set out in the body of the report as follows:

- The statutory formalities and the steps which have been taken to comply with these are set out in paragraphs 4 to 7 of this report.
- The application sites are described in paragraphs 10 to 37 of this report.
- The Thames Tideway Tunnel project is described in paragraphs 38 to 43 of this report.
- The legal background to the section 131/132 Certification process is set out in paragraphs 44 to 49 of this report.

The Matters to be Addressed

216. The Secretary of State has indicated that he particularly wishes to be informed about the following:

- Where section 131 applies, that the order land is, or forms part of, an open space;
- None of the order land is a common or fuel or field garden allotment;
- There is no suitable land available to be given in exchange for the order land;
- Or any suitable land available to be given in exchange is available only at prohibitive cost;
- And it is strongly in the public interest for the development for which the order granted consent to be capable of being begun sooner than is likely to be possible if the order were to be subject to SPP;
- Where section 132 applies that the order land, when burdened with the order rights will be no less advantageous than it was before to the following persons:
    - ❖ the person in whom it is vested,
    - ❖ other persons, if any, entitled to rights of common or other rights and
    - ❖ the public; and
- Any other matters the Inspector considers relevant to whether the application should be subject to SPP. (47-48)

217. At the start of the Inquiry, I identified the matters on which it would be helpful to have additional information, namely, the methodology for testing the exchange land including the various criteria that have been used in the assessment; and the alternative sites put forward by objectors including the land at Putney Hospital suggested as a suitable available alternative site by Mr

Roland Gilmore. In addition, a number of other issues were raised at the Inquiry by objectors which are set out in the report including procedural/administrative matters, and public participation to which I shall now turn.

Procedural/Administrative matters and public participation

218. Certain of the objectors have raised complaints regarding procedural matters including issues relating to the publicity for both the application and the Inquiry. They also complained of having had insufficient time to consider the relevant documentation. (151-152, 157, 182-185, 188-192,)

219. At the outset of the Inquiry, the applicant provided a comprehensive documentary record of the steps taken to publicise both the '*proposal'* to issue the certificates and the holding of the Inquiry. This '*Compliance Pack*' was also supplemented by additional information in respect of the Inquiry notices at Barn Elms. (51-53)

The notification of, and publicity for, the Secretary of State's proposal to issue the Certificates and the Public Inquiry

220. The applicant submits that it has complied with the Secretary of State's letter dated 29 November 2013 by giving notice of the proposal to issue the certificates in the prescribed manner. The applicant's letter to the Secretary of State dated 3 January 2014 sets out the steps which have been taken in compliance with the Secretary of State's notice requirements and the attached appendices provide further details. (4-6, 51)

221. The first requirement of the Secretary of State was the publication of the notice of the proposal to issue the certificates for two successive weeks in the local newspaper or newspapers for which notice of the application for the DCO was published. The applicant's letter explains that due to various issues affecting the newspaper publications originally advertised on 6 December 2013, a further advertisement was published on Friday 20 December 2013. Taken together with the publication on the 13 December 2013, this provided two consecutive weeks of a full and correct notice. The newspaper notices were published in The Evening Standard, The London Gazette and The Times. The applicant has clearly complied with the requirements of paragraph 2(a) of the Secretary of State's letter dated 29 November 2013. (5-6)

222. The next requirement related to the posting of copies of the notice in at least two locations visible by the public in the vicinity of the sites identified in the schedule of land submitted to the Secretary of State in support of the application for the certificates. Appendix B.1 of the applicant's letter dated 3 January 2014 included a copy of the site notices posted on Friday 6 December 2013 at 38 locations at the sites described in the application submitted by TWUL on 7 November 2013. The applicant has provided maps to indicate the publically visible location of all the notice sites. This shows the extensive nature of the site notice coverage. (6, 51)

223. A specific concern has been raised by Lady Dido Berkeley regarding the display of notices at Barn Elms. She asserts that the metal clips holding the notices in place had been cut and the notices had been taken down. As a result, she claims that the public have not been correctly notified. This is supported to

some extent by an e-mail from local resident, Henrietta Mayers. However, that e-mail is somewhat imprecise in what it states and the local resident does, in fact, confirm that she first saw the planning notices about two months prior to the Inquiry, secured to a fence in three locations. (189-190)

224. At the Inquiry, the applicant provided evidence of a site visit to Barn Elms which had been undertaken between 0745 and 0815 hours on 2 April 2014.[51] This revealed that site notices had been found in good condition at four locations giving notice of the Public Inquiry in the prescribed form. They consisted of an eight page A5 booklet giving notice and setting out the schedule of the land affected. The applicant also produced site location plans and photographs of the various notices being displayed. In cross-examination, Lady Berkeley accepted that the applicant's contention that the earlier notices which had been taken down were those notifying the proposal setting out the period within which representations could be made, and the notices that were subsequently put up were the Inquiry notices, was consistent with the evidence set out in the e-mail from Henrietta Mayers. She also agreed that the relevant notices were being displayed, as required, at the time of the Inquiry. Nonetheless, she relied upon the lack of public participation to support her view that the notification process had simply failed to do its job. She did not consider that it mattered where or when the notices had been placed; the bottom line was that, in her view, the public consultation had been inadequate. (51, 182, 192)

225. Whilst I recognise that the evidence gained at the time of applicant's site visit represents only a snapshot in time, there is no substantial evidence before me to support the view that site notices had been inappropriately removed from the Barn Elms site, or indeed, any other site. When I visited the various application sites, I saw that the relevant notices were all displayed in at least two locations visible by the public in the vicinity of the sites. The applicant has provided a plausible and entirely reasonable explanation for Lady Berkeley's observations in relation to the cutting of the metal clips and the removal of notices. I am entirely satisfied that the applicant has not only met but exceeded the requirements of paragraph 2(b) of Secretary of State's letter dated 29 November 2013.

226. The final requirement of that letter was to send a copy of the notice to: (i) each local authority that was within section 56A of the 2008 Act and; (ii) each person who was within one or more of the categories set out in section 57 of the 2008 Act. The applicant included, at Appendix C.1 of its letter dated 3 January 2014, copies of the notice and covering letter dated 6 December 2013 to the local authorities with order land within their administrative boundaries. A list of the local authorities who received a copy was also included. The notice provided the original deadline of 31 December 2013. Appendix C.2 of the applicant's letter contains copies of the letters dated 18 December 2013 provided to the same local authorities advising them of the extended deadline for comments of 9 January 2014. Appendix C.3 of the applicant's letter includes copies of all letters and the notice issued to all local authorities with a boundary adjoining an authority with order land within it. A list of the local authorities who received a copy of the letter was also included within the Appendix. These authorities, together with the GLA, were advised of the 9 January 2014 deadline for

[51] The second day of the Inquiry

representations. Whilst Lady Dido Berkeley questioned whether the GLA had been informed of the proposal, there can be no doubt that this was, in fact, the case. The applicant has therefore complied with the requirements of paragraph 2(c)(i) of the Secretary of State's letter dated 29 November 2013. (51)

227. The applicant included, at Appendix D.1 of its letter dated 3 January 2014, copies of the notice and covering letter dated 6 December 2013 to all parties who were identified as having an interest in the order land under section 57 of the 2008 Act. This notice included the original deadline of 31 December 2013. Appendix D.2 of the applicant's letter included copies of the letter sent to all section 57 interests on 20 December 2013 confirming that the closing date for representations was extended to 9 January 2014. The applicant has therefore complied with the requirements of paragraph 2(c)(ii) of the Secretary of State's letter dated 29 November 2013. (51)

228. Following the receipt of representations, the Secretary of State gave notice of the holding of a public local inquiry into his proposal to issue the certificates under sections 131 and 132. On 27 January 2014, the applicant published notices of the Public Local Inquiry and the PIM, in the same newspapers as set out above, and, on the same date, posted copies of the notices of the same in the vicinity of each of the sites. The applicant has included copies and photographs of those notices in the Compliance Pack. (51)

229. The evidence of Lady Berkeley also includes an e-mail from Del Brenner of the LWC who had not been previously aware of these proceedings. He expresses concern that there had been a lack of engagement with the LWC and Londoners generally. However, the applicant was not specifically required by the Secretary of State to notify LWC. As indicated above, relevant local authorities, and the GLA, have been notified and adverts placed in newspapers circulating in the London area. (51, 191)

230. At the Inquiry, Lady Dido Berkeley acknowledged that the applicant seemed to have "*ticked all the boxes*" in relation to the Secretary of State's specific requirements for giving notice of the proposal to grant a certificate, and the Inquiry, but complained that the result was ineffectual and that any resulting certificate would therefore be unlawful. She regarded the process as being inherently inadequate given the lack of public participation. She explained that she had spoken to local people who had not been aware of these proceedings who had indicated that they might well have wanted to participate had they been informed. (191-192)

231. Mr Clyne also complained that the Open Spaces Society had not been informed about the open space certification process. However, he did not dispute that the newspaper adverts had been in the prescribed form or that the applicant had carried out its statutory duties in that respect. The Secretary of State's letter dated 29 November 2013 did not include the Open Spaces Society as a party that the applicant was specifically required to notify. Furthermore, by e-mail dated 15 January 2014, Mr Clyne had made a representation in respect of the proposal to issue the certificates on behalf of the Open Spaces Society. He attended the Inquiry and presented evidence on behalf of the Open Spaces Society. He had previously attended a compulsory acquisition hearing held on 17 January 2014 concerning the DCO application. There is no substance in his complaint regarding the lack of notification of these proceedings. I do not find

the Open Spaces Society to have been prejudiced in any material way by the process. (151, 152-153)

232. The nub of the public participation complaint raised by various objectors is that although the applicant may have correctly completed the statutory formalities regarding notification, the public consultation/participation in the decision-making process relating to the acquisition of open space has been ineffective. However, there can be no doubt that the applicant has completed all the statutory formalities applicable to the notification of proposal and the Inquiry. The means of notifying the public have included various newspaper adverts and site notices. The relevant local authorities and the GLA have also been notified. The fact that there have been relatively few objections to the proposal and a fairly low level of public participation does not mean that the statutory process is inevitably flawed or has been applied in an unlawful manner. The reasons behind the level of public participation can only be a matter for speculation and such an assessment simply does not flow from the available facts. (51)

The availability of the documentation

233. The application was lodged on 7 November 2013. The authorisation of the Secretary of State to the publication of the application documentation was given at the end of November 2013. The application documents were then posted on the TTT website on 5 December 2013. The newspaper advertisements and the posted notices of the Secretary State's proposal to issue the certificates indicate that copies of the documents taken into account by the Secretary of State in determining whether to issues the certificates, including the plans, were on deposit at three different locations in London[52] and set out the hours during which these could be seen. The notice of the Inquiry also set out similar information regarding the availability of documentation and gave details of the PIM. (5-6, 51-53)

234. A PIM was held on 18 February 2014. The notes of the PIM gave the contact details of the Programme Officer, Helen Wilson, and drew attention to the Programme Officer's Inquiry webpage where further details of core documents and the Inquiry programme could be found. A link to the TTT website to give further information on the application was also provided at around that time. Details were also available on The Planning Inspectorate website. (7, 52-53, 201)

235. The applicant supplied copies of its proofs of evidence by the 7 March 2014 deadline set at the PIM. It also provided one rebuttal proof by the 21 March 2014 deadline. These proofs were posted by the Programme Officer on the Inquiry website, as were the proofs received from other parties. The proofs of evidence were also available on the applicant's website along with a copy of the application and supporting documentation. (52)

236. The objectors who attended the Inquiry had previously submitted written representations outlining their concerns and had been informed of the date of the PIM. None of those objectors attended the PIM and no procedural complaints or requests for documentation were raised at that meeting. The

[52] The Institute of Civil Engineers, 1 Great George Street, London SW1P 3AA, Linden House, Upper Mall, Hammersmith, London, W6 9TA and Glazier's Hall, 9 Montague Close, London SE1 9DD

minute of the PIM was circulated to all objectors and contained details of the Programme Officer. It would have been open to any objector to raise with her the accessibility of documentation at any time, including prior to the submission deadline for proofs of evidence. No such specific enquiries were made until the week before the Inquiry opened. (53)

237. The essence of the objectors' complaints on this topic is that the documentation was not easy to find on the various websites, including the applicant's website and the Planning Portal. It was described by Lady Berkeley as an unacceptable *"paper chase"*. Mr Clyne asserted that he did not know where to look for the information on the TWUL website and that it was the applicant's job to provide this in a clear form. He also raised concerns that the application and plans were not immediately available to him or members of the public at the Inquiry venue. (151, 184, 188)

238. However, these complaints need to be put into perspective. The notice of the Secretary of State's proposal to issue the certificates which had been correctly publicised had set out the locations at which the relevant documents were deposited and could be seen. The objectors had already sent in representations in response to that proposal. They had also been written to by the NPCU on 20 January 2014 informing them about the Inquiry and again setting out the locations at which the documentation was on deposit. The e-mail sent to Lady Berkeley by Liz Hardy of the NPCU, shortly before the Inquiry also helpfully drew attention to the locations at which the documentation had been deposited and provided details of the Inquiry website. The applicant has made the application documentation available as directed by the Secretary of State both by placing it on deposit and by providing it on their website. (5-6, 51-53, 188, 199)

239. The objectors have been given notice of the application and the Inquiry in the prescribed manner. It is clear that the requisite information was available within the public domain for a very long time before the Inquiry proceedings began. The fact is that certain objectors did not seek to avail themselves of this information until shortly before the Inquiry. As soon as accessibility issues were raised, steps were taken to address them. For example, certain application documents were made available directly as core documents from the Programme Officer's website rather than via a link to the applicant's website. However, this was done to assist objectors rather than as an essential response to a crucial omission. The substance of these complaints is not supported by the available facts. It is unfortunate that some individuals have experienced difficulties in negotiating the various websites and Government departments in their search for information. The ultimate aim must be to have an information system that is as user-friendly as possible, and no doubt lessons will be learned from the helpful feedback received. Nonetheless, those difficulties have not in the end had any material bearing upon the fairness of the proceedings. I am satisfied that objectors have had sufficient time available to them to obtain and consider the relevant documentation; to prepare, submit and consider any necessary proofs of evidence, or rebuttal proofs, and to pursue their arguments against the proposal in a fair and proper manner.

Conclusion

240. The available evidence does not reveal anything fundamentally wrong with the approach to the notification of either the proposal to issue the open space

certificates or the subsequent Inquiry. All the statutory requirements and demands of the Secretary of State have been complied with in this respect. The fairly low number of formal objections and degree of public participation in the process does not show that there has been any inherent failure in the system or that those numbers would have materially increased had any different measures been taken. Those who chose to object to the proposal have had every opportunity to present their cases through the Inquiry process for consideration by the Secretary of State. The proceedings have provided everyone concerned with the opportunity for a fair hearing of the objections raised. There is no merit in the procedural matters which have been raised.

Section 131 – Whether the order land is, or forms part of, an open space?

241. The definition of open space to be followed pursuant to this section of the Planning Act 2008 is that set out in section 19(4) of the Acquisition of Land Act 1981. This defines open space as follows: *"Open space means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground".* (10, 45)

242. The applicant relies upon the evidence of Mr Ainsley in relation to this topic. Local planning authorities have, in most cases, designated the identified sites as open space and this is set out in Table 2.1 of his evidence. The two land-based sites which have no relevant planning designation in the relevant local plan are Putney Embankment Foreshore (Waterman's Green) and Chelsea Embankment Foreshore (Ranelagh Gardens and Chelsea Embankment Gardens). However, Ranelagh Gardens is a Registered Park and Gardens. (28, 58)

243. Site reconnaissance visits of open spaces were carried out in June 2011 as part of the Open Space Assessment. These site visits confirmed the type of open space, the role and function of each open space and what recreational activities they are used for. A brief description of the findings of the applicant's Open Space Assessment has been set out in Mr Ainsley's proof of evidence. For example, Watermans' Green is described as: *"a small publicly accessible open space with limited recreational function, it is used for informal recreation including sitting out. The open space is open to the public via the gated entrance at Lower Richmond Road."* The site visit evidence provided by the applicant in relation to all the land-based sites provides strong support for the view that the land in question is open space for the purposes of the statutory definition. (58)

244. As regards the three foreshore sites,[53] the PLA, asserted in its objection that those areas of the application land which comprised '*foreshore*' were not properly to be regarded as '*open space,'* or indeed to be regarded as falling within *any* of the categories of land identified in section 131(1). The basis for this claim was that the recreational uses described by the applicant as having been observed on the foreshore did not represent a lawful use of the land. However, that objection was withdrawn prior to the Inquiry. (56-57, 113-115)

[53] Putney Embankment Foreshore, Albert Embankment Foreshore and King Edward Memorial Park Foreshore

245. The applicant's position is that it has identified these areas of foreshore as open space, and has explained its reasoning for so doing, but it has taken a cautious position on this issue. The applicant makes no comment as to whether the recreational activities that have been observed to take place on the foreshore were being carried out lawfully or not. It is left for the Secretary of State to decide whether the three areas of foreshore are properly to be regarded as open space within the statutory context of sections 131 and 132, and whether it is necessary to issue certificates if SPP is to be avoided. (56-57)

246. In addition to the visits carried out as part of the Open Space Assessment, site visits were also carried out by the applicant in January and October 2013. These site visits were carried out at low tide in order to confirm whether the foreshore was publicly accessible and used for recreational activities. Foreshore was considered open space where it dried at different stages of the tide and members of the public could, and did, access it from the land either using steps or a slipway. This seems to me to be an entirely satisfactory definition to adopt. (11, 59)

247. The site visits made in respect of Putney Embankment Foreshore and Albert Embankment Foreshore confirmed that they are accessible to the general public during periods of low tide. Access to KEMP foreshore is via the Shadwell Dock Stairs which is gated and authorised access is restricted to the Shadwell Basin Outdoor Activity Centre. Members of the Shadwell Basin Outdoor Activity Centre launch their boats from the Shadwell Dock stairs. (21, 30, 37)

248. The FTWMCL submit that the method of access to the open space is immaterial in the designation of land as open space having regard to the definition set out in section 19 of the Acquisition of Land Act 1981. They indicate that the KEMP foreshore is, in fact, used for the purposes of public recreation in this location. Certainly, when I visited this site I saw that the KEMP foreshore was being used by a member of the public for recreational purposes that did not appear to be associated with the boating activities. (127)

249. Apart from the PLA, none of the objectors who appeared before the Inquiry indicated in their original objections that there was any intention to dispute that the land the subject of the application was '*open space*'. Roland Gilmore raised during his cross-examination of Mr Ainsley the question of whether any part of it was common land or a town green. However, no specific issue was taken by him in respect of the applicant's site visit observations or the local authority designations. The question of whether the land should be regarded as common land will be dealt with later on in this report. (160)

250. In the light of the withdrawal of the PLA objection, there is no contrary evidence before the Secretary of State to indicate that the recreational activities which have been observed by the applicant do not represent a lawful use of the land. In those circumstances, it seems to me that the applicant's site visit observations of members of the public accessing and enjoying these areas for recreational purposes without any obvious interference from the landowner should be taken at face value. It is, of course, a matter for the Secretary of State but, on balance, the applicant's evidence in relation to these areas of foreshore supports the view that they are appropriately to be regarded as open space. If the Secretary of State should take a contrary view on this issue and concludes that the foreshore areas are not open space, then no certificates would be required in respect of them. (56-57, 113-115)

Conclusion

251. I conclude that all the land at the various application sites both land-based and foreshore is either laid out as a public garden and/or is used for the purposes of public recreation and should be considered to fall within the relevant definition of open space set out in section 19(4) of the Acquisition of Land Act 1981.

Whether any of the order land is, or forms part of, a common, or fuel or field garden allotment?

252. Sections 131(12) and 132(12) of the Planning Act 2008 state that *'common'* and '*fuel and field garden allotment'* have the same meanings as in section 19 of the Acquisition of Land Act 1981. Section 19(4) of that Act defines those terms as follows:

- '*Common'* includes any land enclosed as a common under the Inclosure Acts 1845 to 1882, and any town or village green.
- '*Fuel or field garden allotment*' means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act. (45)

253. For the applicant, this matter has been addressed in the proof of evidence of Mr Ainsley, and the Supporting Statement (Section 5). There are a number of reasons why he concludes that the sites are not common land:

- The Land Registry Title documentation has been examined and none of the sites listed in the application are referenced in relation to any Commons Registration Act or Inclosure Act.
- Site visits have shown nothing to indicate the presence of common land.
- Enquiries have been made of the relevant commons registration authorities regarding land and sites falling within the limits of the TTT project and requesting information on special category land. None of these authorities have indicated that any of the application land is common land, whether registered or unregistered.
- None of the application land is identified as common land on the database of registered common land compiled by Defra.
- A desktop investigation of the history of individual open space land-based sites did not reveal any evidence to suggest that any of the application land is common land. (61)

254. As regards fuel or field garden allotments, the Supporting Statement[54] explains that the London boroughs keep comprehensive lists of the allotments allocated within their borough boundaries. Desktop research has shown that the listed allotments in the relevant boroughs do not fall within the limits of the application sites. (60)

255. None of the objectors submitted in their original representations that the application land comprised any other type of '*protected land'* identified in section 131(1), as opposed to open space. At the Inquiry, Mr Roland Gilmore

[54] Section 5, para 5.1.18

and his witnesses questioned whether the applicant's evidence was sufficient to establish that all of the application land was not common. They did not provide any direct evidence themselves to rebut the applicant's case but submitted that inadequate evidence had been provided to show that there was no common land involved. Emily Shirley pointed out that the applicant had not provided from the relevant commons registration authority[55] in each case a definitive map and letter of confirmation as to the status of the land. (60, 160, 186, 196, 208)

256. A particular issue was raised in relation to Plot 71 at Barn Elms which is included in the application and identified in the schedule of land. During his cross-examination of Mr Ainsley, Mr Gilmore contended that it comprised part of a common and also suggested that it might form part of a *'town green'*. However, he provided no substantial evidence of his own to support either stance. For example, no evidence was adduced to suggest that the land had been the subject of a successful application for registration as a town or village green pursuant to the relevant legislation.[56] The applicant has carried out all the investigative exercises outlined above in relation to Plot 71, as part of the application land. It has made enquiries of the relevant commons registration authority for Plot 71, namely, the London Borough of Richmond and there has been no indication that any of the application land within its area, including Plot 71, is a common. (60, 61, 63, 160, 186, 207)

257. At the Inquiry, the applicant submitted a copy of the title documentation for Lower Putney Common and land on the north side of Lower Putney Common which is in the ownership of the Wimbledon and Putney Commons Conservators. A large scale copy of the Land Plan identifying Plot 71 and adjacent plots was also provided. When the two are compared it is clear that Plot 71 comprises a small area of land[57] which falls just outside the boundary of the common land held by the Conservators. (63)

258. The applicant also draws support from the absence of any objection to the application from the Wimbledon and Putney Commons Conservators. The Conservators own the entirety of Wimbledon and Putney Commons and there is no part of those commons that is not within their ownership. Their statutory function is to '*protect*' the Wimbledon and Putney Commons and prevent them from being built on.[58] Mr Walker gave evidence to the effect that TWUL had carried on discussions with the Conservators regarding the project over a period of years both in connection with the Phase 1 and Phase 2 consultations. The Conservators wrote to the TTT Examining Authority on the 23 October 2013. It would seem that they do not raise any ownership disputes in relation to what is set out in the BOR, nor have they objected to the draft DCO. Mr Gilmore alluded to a current Conservator being unaware of the TTT proposal at Barn Elms and Lady Berkeley gave evidence to that effect. However, as a matter of fact, there are no objections before me from the Wimbledon and Putney Commons Conservators. Furthermore, the evidence of Mr Walker confirms that they are, indeed, well aware of the TTT proposal. (62, 160, 196, 209)

---

[55] The relevant London Borough
[56] The Commons Act 1965 or the Commons Act 2006
[57] Identified in the schedule of land as comprising 3m^2
[58] Section 34 of the Wimbledon and Putney Commons Act 1871

Conclusion

259. The applicant has carried out responsible and reasonable investigations to ascertain whether the application land comprises any other type of '*protected land*' identified in section 131(1), as opposed to open space. No substantial evidence has been put forward by any objector to rebut the applicant's conclusion that none of the land falls within the former category. The applicant's investigations have included making enquiries of the relevant commons registration authorities and there has been no indication from those authorities that any of the application land is common land. I conclude, on the balance of probabilities, that none of the order land, including Plot 71, forms part of a common, or fuel or field garden allotment. The absence of definitive maps and confirmatory letters from the relevant authorities does not dissuade me from that view.

Whether there is any suitable land available to be given in exchange for the application land?

260. The applicant's position is that there is no land that can reasonably be regarded as both suitable and available which might be given in exchange for the application land. Its case is largely set out within the Supporting Statement, the Supplementary Supporting Information and the evidence of Mr John Rhodes. I shall deal first with the methodology for testing the exchange land including the various criteria that have been used in the assessment before considering the specific site put forward by Mr Roland Gilmore, namely, the Putney Hospital site. (64-65)

Suitability

261. The term '*suitable*' is not defined in the Planning Act 2008, nor is there any national guidance on the topic. The Supporting Statement (para 7.2), explains that, as part of the exercise which was undertaken to examine whether potential exchange land could be found for the land-based sites, two criteria were used to indicate '*potential*' for being suitable replacement land. These are as follows:

- The land was within the catchment area, or within close proximity of that catchment boundary; and
- The land was at least the same size as the order land or, where it was not, it might be combined if two parcels could be found. (66, 69)

262. The Supporting Statement (para 6.3.7) indicates that land in the catchment area that is currently used as a common, open space or fuel or field garden allotment was omitted from consideration, as this land is already in the same use as the application land. Since the use of protected land as exchange land would still result in a net loss of such land, I agree that it would not be suitable to serve as replacement land. (67)

263. The Supporting Statement (para 6.3.8) sets out categories of land uses within the catchment area which have also been omitted from consideration at the outset as they represent essential infrastructure of community value, including transport, health, education, religious and civic uses. (67)

264. The Supplementary Supporting Information expands upon the information set out in the Supporting Statement (para 6.3.8) and seeks to provide the reasoning behind the process that the applicant has undertaken in omitting these areas of land use from further consideration. TWUL identified key strategic land uses which were not surplus to requirements and which would have to be acquired compulsorily. It identified those land uses for which the prospect of obtaining planning permission for the change of use was considered to be negligible. Since it would be highly improbable that a compulsory purchase order for such land would be confirmed, it was not considered to be suitable exchange land. (68)

265. It was also considered that the acquisition of land of the type set out in the Supporting Statement (para 6.3.8) and its change to open space would have a harmful impact on the communities which live near that land. It was anticipated that the value communities would place on those strategic land uses would be greater than the value they would place on the open space that would be provided in their place. Having regard to the detailed reasoning set out in the Supplementary Supporting Information, I consider that the omission of these strategic uses represents a logical and reasonable interpretation of the legislation. (68)

266. A total of 87 '*Dry Land'* sites that were initially considered to be '*potential'* replacement land are set out in the table at Appendix A to the Supporting Statement. By applying the relevant criteria, these were reduced to the 39 sites that were then the subject of detailed examination. To my mind, there can be no scope for criticism of either the criteria applied, or the initial exercise to determine any potential exchange sites. (69)

267. The next stage was to assess those identified sites in detail and subject them to a planning and property appraisal to determine whether they could, in fact, provide exchange land. In terms of site suitability, the Supporting Statement (para 6.3.11), explains that four criteria were used in order to assess whether the identified sites would be suitable as exchange land:

- First, whether a particular site is in single or multiple-ownership.
- Secondly, whether or not a site currently has buildings on it.
- Thirdly, whether a site is in an existing use that would need to be relocated.
- Fourthly, whether replacing an existing beneficial use with open space would be contrary to current national and adopted local planning policies. (70)

268. Looking at the rationale behind the criteria applied, it is likely that a site in single ownership would be easier to acquire, and thus more suitable, than one in which multiple interests are held. Since the function of exchange land would be to provide '*open space'* any existing built form would need to be demolished. It makes sense to regard sites with buildings that require demolition as being less suitable. The need to relocate existing uses were the sites to be provided as open space, must also be a relevant factor in assessing suitability. Finally, where replacing an existing beneficial use with open space would be contrary to adopted local or national policies, then that must again bear upon its suitability. I conclude that the criteria applied by the applicant provide a sound basis for testing the suitability of potential exchange sites. (70)

269. The methodology for testing the exchange land for the foreshore sites is also set out in the Supporting Statement (paras 6.4.1- 6.4.13). The principle adopted in relation to foreshore was that this could only be replaced by other foreshore, since its unique qualities could not be replicated by another type of land elsewhere. The approach to replacement land was based upon exploring whether there was any suitable and available foreshore within the relevant distance that was currently inaccessible, but which could be made accessible as replacement land. The criterion applied was that access to the foreshore should be within 400m of the existing access point, assuming walking along footways and including land on the opposite bank via bridges. The foreshore that was already publicly accessible was excluded as unsuitable, as it would not provide any additional benefit. (71)

270. There are no borough or GLA pedestrian accessibility standards for foreshore. However, the 400m catchment area adopted by the applicant aligns with the GLA accessibility index for local parks[59] which were considered to be comparable with the foreshore areas identified. Given the type of informal activities for which the foreshore is likely to be used, and that it is only dry during times of low tide, I concur with the applicant that the catchment area is unlikely to be more than could be expected for a local park. The criteria and principles used by the applicant in its assessment of replacement foreshore are entirely appropriate. (59, 71)

Availability

271. The term '*available'* is not defined in the Planning Act 2008, nor is there any national guidance on the topic. The Supporting Statement (para 6.3.12) explains that for suitable *'Dry Land'* sites, a further assessment was then undertaken as to whether the land was available. It identifies eight criteria for assessing the availability of potentially suitable sites, including whether the land is on the market for sale; the ownership or occupation structure; whether the land is, or is planned to be, in beneficial use; the prospects for a negotiated acquisition without having to use compulsory acquisition powers, and the like. (72)

272. In relation to the foreshore sites, if land was identified that was of sufficient size, and not currently publicly accessible, a further assessment was made as to whether it could reasonably be made publicly accessible and thus available. Relevant factors would include the feasibility of physically providing a new access point and obtaining the necessary approvals. (71)

273. No objection has been raised in relation to the means by which the applicant has assessed the availability of any potential exchange land. The criteria used reflect a sensible and pragmatic approach and do not give any cause for concern.

The Putney Hospital site

274. The Putney Hospital site has been suggested by Mr Roland Gilmore as potential exchange land for the Barn Elms application site. The Putney Hospital site is surrounded by the Lower Putney Common which is designated as an area of

[59] See GLA Parks Hierarchy

MOL. It comprises a number of vacant buildings which were formerly used as a hospital. The site is owned by the London Borough of Wandsworth. It is allocated in the Wandsworth Site Specific Allocations Document 2012 as a primary care centre, for residential and community facilities development. (77, 80, 167-169, 202, 204)

275. The applicant identified the Putney Hospital site[60] as a potential exchange site in the Supporting Statement (paras 8.1.33 – 8.1.50) and it has been the subject of a detailed assessment. The Supporting Statement (para 8.1.3) indicates that about 1.83 ha (18,307m^2) at Barn Elms would be permanently acquired for the TTT project. Mr Gilmore, in his proof of evidence, states that the land area that TWUL is seeking to compulsory purchase is 1.71 ha (17,100m^2). However, Table 8.1 of the Supporting Statement suggests that that would be about the size of Plot No 64 alone and that the total area of Plots 64, 71 and 80 is, indeed, about 1.83 ha. (77, 167, 205)

276. The conclusion reached by the applicant was that the site was not suitable as exchange land because first, it is smaller than the land to be replaced, secondly, its use for open space in place of the consented alternative uses would be contrary to local planning policy, thirdly, it is not currently on the market and fourthly, the acquisition cost would be prohibitive. (77, 80, 205)

277. The applicant's case in relation to this site is also set out in the proof of evidence and the rebuttal proof of Mr Rhodes. The site was granted planning permission on 13 December 2013[61] for the erection of a primary school for 420 pupils and the development of 24 flats. No legal challenge was made against the grant of planning permission and the time period for doing so has now expired. (77, 80, 169, 199, 202)

278. The consented site layout plan is shown at Appendix 2 to the rebuttal proof of Mr Rhodes. The Supporting Statement (para 6.3.8) explains that education was one of the land uses which was not considered as part of the search for suitable alternative sites. Schools are a much-needed community resource. There would be no reasonable prospect of a compulsory purchase order being confirmed, if this would cause the loss of school facilities because of the adverse impact this would have on the communities which they serve. (80)

279. The site has an overall area of 1 ha as defined by the Wandsworth Site Specific Allocations Document 2012. This falls well short of the size necessary to replace the 1.83 ha to be compulsorily acquired at Barn Elms. In addition, the 1 ha site area includes not only the area of the existing buildings but also the immediately adjoining open areas which are already MOL and should therefore be excluded from the area of potentially available replacement land at Putney Hospital. (77)

280. This is shown by the Putney Hospital Site Boundary Comparison site plan attached to the rebuttal proof of Mr Rhodes. This indicates that much of the land is already designated as MOL, and the part of the allocated site that is not designated as MOL occupies only about 0.6 ha. It is this smaller area which has been the focus of the application proposals for a school and residential

---

[60] Site ID: BARE003
[61] Reference No 2012/0758

development. The consented site layout plan is also appended to the rebuttal proof of Mr Rhodes (Appendix 2). This reveals that most of the footprint of the development would be taken up by the new school with parts of the hospital site being returned to publically accessible common land. The land not required for the development would therefore provide *'open space'* without any intervention by TWUL. The upshot of this is that the area of potentially available replacement land at Putney Hospital is significantly less than the land proposed to be acquired at Barn Elms. Furthermore, there is no other suitable and available parcel of land with which it could potentially be combined. (77)

281. Mr Gilmore has referred to a High Court action[62] that has been brought against the Wimbledon and Putney Commons Conservators and the London Borough of Wandsworth. This does not directly relate to the planning permission, itself. It concerns an agreement whereby the Conservators agreed to execute a deed of easement in favour of the Council upon receipt of written confirmation from it that a satisfactory planning permission had been obtained in respect of the proposed development of the hospital site. The Claimant in that case asserts that the Conservators are not entitled to grant many of the rights that would be conferred upon the Council, if the Deed of Easement is executed. The rights to be conferred include the right to enter upon the common to construct a "*particular accessway leading from the Lower Richmond Road to and along the boundary of the hospital site*" and to enjoy a right of way over the access way to serve the school and the residential development. (78, 203)

282. The claim was dismissed by a judgment dated 8 November 2013. The judge at first instance, Mr Justice Wyn Williams, concluded that the Conservators were entitled to grant to the Council the various rights which are contained within the Deed of Easement provided the Council obtained a "*satisfactory planning permission*." At the Inquiry, I was advised that permission to appeal to the Court of Appeal was refused by the judge and the hearing of 3 April 2014, to which Mr Gilmore referred, related to a renewed application for permission to appeal, to be heard by the Court of Appeal. The outcome of that application was not available to me before the close of the Inquiry. (78, 203)

283. Whether this claim will be pursued to the Court of Appeal and the eventual outcome is, of course, unknown at this stage. However, the applicant's position is that these legal proceedings have no bearing on the matters before this Inquiry, as even if they are ultimately successful, it would not render the Putney Hospital site suitable and available for the purposes of section 131. The site has an existing access over land which does not comprise registered common and also land which, whilst forming part of the common, is already tarmacked in connection with the existing access. There is therefore scope for the development to be reconfigured so as to rely on an access entailing use of the existing tarmacked area. The applicant's largely unchallenged evidence on this particular point suggests that, even if the current proceedings were to be successful, that would be unlikely to put a stop to the proposal to develop the Putney Hospital site. (79, 80, 204)

---

[62] Nicholas Charles Evans v Wimbledon & Putney Conservators and The London Borough of Wandsworth [2013] EWHC 3411 (Admin)

284. The site would remain allocated in the adopted development plan for mixed use "*residential and community facilities*". The Supporting Statement (para 8.1.45) points out that the use of the site for open space would be contrary to that site allocation. As indicated above, education is one of the strategic land uses that have quite rightly been omitted from consideration. The residential element also complies with the development plan allocation and would contribute to meeting the Borough's housing land requirements. Furthermore, the residential component comprises an area of only about 0.1375 ha. Having regard to all the relevant factors and, in particular, the size of the site and the development plan allocation, I conclude that this site cannot be regarded as being suitable and available to serve as replacement land for the open space land at Barn Elms. (77, 80, 204)

Other matters

285. When giving evidence, Lady Berkeley submitted that there was plenty of land suitable for exchange that would not be at prohibitive cost such as land at Convoys Wharf, Lots Road, the Olympic site, protective wharves, and Thames Gateway. She considered the Olympic site to be ideal given the space available and that it would be strongly in the public interest for such a site to be used. However, these sites were not put forward by Mr Gilmore in either his initial representation or his proof of evidence. No objective analysis or other evidence has been provided to support her assertions made in this respect. These sites have not been identified as such by the applicant despite the extensive exercise that it has undertaken to identify suitable available exchange land. I am unable, on the evidence before me, to regard these other sites as realistically representing potential replacement land. (69, 194)

286. Although not specifically put forward as suitable available replacement sites, other objectors have commented in relation to methodology and/or site selection and, for completeness, I shall deal with the points raised in this section of the report.

287. FTWMCL, in relation to the KEMP foreshore, questions the reasoning behind the applicant's view that exchange land is not required in respect of the 2,018m^2 of the foreshore that would be acquired by the TTT project. In addition, 781m^2 of foreshore would have rights acquired by the project. It submits that the applicant has failed to comply with the requirements of sections 131 and 132 of the 2008 Act in respect of this land. (127)

288. The assessment set out in the Supporting Statement (paras 15.3.1 – 15.3.14) points out that access for those using the activity centre would not be affected by the works on the foreshore. It concludes that exchange land is not required at this site and that there is no suitable foreshore which could be provided as replacement land for the land over which rights would be acquired. (75)

289. The Supporting Statement is supplemented by the proof of evidence of Mr Rhodes (para 5.54). He explains that the access from the Shadwell Basin Outdoor Activity Centre next to the park should only be used by authorised persons, not the general public. The nearest public access to the foreshore is to the south-west of the entrance to the Shadwell Basin. To the south-west of that point, the foreshore is already accessible to the public. To the north-east of the public access, the 400m walking criterion does not reach a point where sufficient safe but currently inaccessible foreshore exists to replace the affected

foreshore; most of the distance being the entrance to the Basin, itself. My observations at the time of my site visit confirmed that to be the case. The FTWMCL did not appear at the Inquiry to rebut the evidence of Mr Rhodes. I find no reason to doubt his conclusion that there is no suitable land available to be given as replacement for the KEMP foreshore. (37, 74-76)

290. FTWMCL also make reference to the site selection process and submit that had TWUL selected the alternative site of Heckford Street, which would require use of only a small and lesser quality area in the north of KEMP, the area of open space to be permanently acquired would be smaller with a lesser impact on the local residents and park users. However, the Heckford Street site is not suggested as potential replacement land in the context of sections 131 and 132 but as an alternative CSO site. As such, this consideration is not a matter within the scope of this Inquiry. (130)

291. In any event, even though the Heckford Street site was not put forward by FTWMCL as replacement open space, it has been considered by the applicant and is referred to in the Supporting Statement (paras 15.2.50 – 15.2.75) as the Highway Business Park.[63] The assessment finds that the site is within the accessibility catchment and meets the size requirement. Nevertheless, it is currently in beneficial use and is occupied by a number of businesses. Having regard to the information set out in the Supporting Statement, I conclude that it does not represent '*suitable land available to be given in exchange for the order land'*. (133)

292. The DHSCGA representation relates to the acquisition of open space adjoining Crossfield Street, Deptford. They suggest that the applicant should instead develop an alternative CSO site on the foreshore at Borthwick Wharf. However, that site is not put forward by them as a potential replacement site for the application land and their representations are not directed to the issues engaged by sections 131 and 132. (141, 144)

Conclusion

293. The terms '*suitable*' and '*available'* are not defined in the Planning Act 2008, nor is there any national guidance or case law on the topic. The criteria applied by the applicant provide a sound basis for testing the suitability and availability of potential exchange sites for both land-based and foreshore sites. No site has either been identified by the applicant, or put forward by any objector, that would meet the relevant criteria and provide appropriate replacement land for any of the application sites. I conclude that there is no suitable land available to be given in exchange for the order land.

Whether any suitable land available to be given in exchange is available only at prohibitive cost?

294. In the event that the Secretary of State should take a contrary view and consider any sites to be suitable and available to be given in exchange, it is necessary to consider whether their cost would be prohibitive. The applicant's position is that whilst no site would satisfy the tests of suitability and availability, the cost of any of the identified sites would be prohibitive. Its

[63] Site ID KEMPF002

approach is set out in detail within the Supporting Statement, the Supplementary Supporting Information, the 'Clarifications regarding valuation references', and the evidence of Mr John Rhodes and Mr Stephen Walker. I shall deal first with the methodology for testing the exchange land including the various criteria that have been used in the assessment before specifically considering the Putney Hospital site referred to by Mr Roland Gilmore. (81-82, 86-87)

The General Approach

295. There is currently no guidance (either in statute, policy or case-law) as to what amounts to *'prohibitive cost'* in this context. The applicant has therefore devised its own interpretation of the statutory wording and has sought to identify an objective test that could be applicable for any form of infrastructure development seeking to acquire replacement open space. In principle, the applicant's aim to seek to devise an objective assessment as to *'prohibitive cost'* must represent a sound approach. I concur with the applicant that to adopt a methodology that was not objective would be capricious and inappropriate. (81, 96)

296. The Supporting Statement explains (paras 6.3.13 to 6.3.21) how the assessment as to whether the acquisition of exchange land could be achieved other than at prohibitive cost has been undertaken. The general approach has been to align the test to the commercial considerations one would anticipate from a property developer in considering the opportunity to develop the area of open space that has been identified in the order land and for which exchange land would be provided. The stages for the approach are set out in the Supporting Statement (para 6.3.15). (82)

297. First, the character of the development has been looked at and it was concluded that it was closest to industrial development. In reaching this assessment regard was had to both the RICS Valuation and Standards Manual (Red Book) and the characteristics of the various planning use classes set out in the UCO.[64] Secondly, what a private sector developer would be prepared to pay for replacement open space in order to carry out a similar form of development was considered. In broad terms an industrial developer could afford to pay the uplift in land value between the open space value and its industrial value. Market research was carried out on a borough-by-borough basis to establish current market values for industrial development land. An assessment of the value of the potential exchange land sites was made and the methodology for this is set out in the Supporting Statement (paras 6.3.16-6.3.21). A comparison was then made of the value of open space for industrial development and the likely cost to acquire exchange sites. (83-85)

298. As far as the mechanics of making such an assessment are concerned, these have not been the subject of any significant criticism from objectors. Whilst the proposed development would not fall within the same use class as Class B2 (general industrial) of the UCO, and no "*industrial process*[65]" would be carried on, further guidance has been provided by the Red Book and industrial development would certainly seem to provide the closest comparator for

[64] See the Town and Country Planning (Use Classes) Order 1987 (as amended)
[65] The definition of "industrial process" is set out in Article 2 of the UCO

valuation purposes. The applicant has clarified[66] that the 2010 list of rateable values is the most recent list provided by the Valuation Office Agency which is updated every five years. Since the Valuation Office Agency provides an extremely useful library of information, these figures have been used to estimate freehold values rather than current market evidence. In relation to the estimated demolition costs and per hectare cost of creating open space, the applicant indicates that the costs of demolition would vary depending on a number of factors but the figure of £75 per m^2 was an average within the range that is currently provided by the RICS Building Cost Information Service. The figure of £300k per hectare for creating open space was taken from the London Borough of Wandsworth CIL charging schedule for the Vauxhall Elms Opportunity area and represents an average of the two figures quoted in the text of that document. The actual figures adopted by the applicant in making the assessment seem reasonable. (82-85)

299. Turning now to the principle of the approach adopted, the FTWMCL questions the applicant's analysis of whether the sites identified would be prohibitively expensive. It submits that the value that the applicant has placed upon the land to be lost at KEMP is conservative, as the real value of that space to local residents is much more. Mr Gilmore also contends that the monetary value placed upon open space by the applicant does not reflect its true value and that the value of its loss is incalculable. (125, 174)

300. Mr Walker explains that TWUL has adopted a hypothetical value for its analysis of prohibitive cost. It has not valued the land at KEMP at £3m per ha and does not believe that the open market value of the park is £3m per ha. The hypothetical industrial land value for the open space at KEMP, which extends to an area of 0.87 ha, is £2,675,000. This provides the benchmark against which the '*prohibitive cost'* of replacement open space can be measured. The Supporting Statement concludes that, based on the comparative land value rate of £3m per ha for KEMP, the acquisition of the three identified potential replacement sites for KEMP could only be achieved at prohibitive cost. (136)

301. The applicant submits that to move away from a financial value in favour of a community value would be inconsistent with a measurable and robust test for prohibitive cost. It contends that, in the event that the approach advocated by FTWMCL was adopted, the same considerations should apply to any exchange land being considered. This would require an assessment of the human cost or '*real*' value of the impact on jobs, businesses or lives of the individuals who would necessarily be displaced to enable any re-provision of the open space. Given the obvious impracticalities of carrying out such an exercise I do not consider that it would provide a workable solution. None of the objectors have put forward a realistic and effective means of calculating the '*real value'* of open space. I appreciate that for many people who use and appreciate open spaces the importance of such facilities to them is something which defies measurement in commercial terms. Nonetheless, for the purposes of the legislative test that must be applied in this case, that is precisely what is required to achieve a fair solution. I do not find a subjective approach based upon the notion of '*real value'* to be helpful in terms of making a rational assessment of '*prohibitive cost*. (138)

[66] See the submitted 'Clarifications regarding valuation references'

302. As can be seen from the staged approach, the choice of using the value of the open space for industrial development as the comparator with the likely cost to acquire exchange sites is crucial to the eventual outcome. It is necessary to consider whether this represents the best approach and whether any alternative assessment method would be more appropriate. The applicant has also considered and rejected, four alternatives approaches to the one that has been adopted, namely, existing use value, Certificates of Appropriate Alternative Development, Property Budget and 'Disproportionate to Project Costs'. I shall now consider each of these in turn. (88-95)

Existing Use Value

303. The applicant has provided evidence in the form of a schedule of open space land sales attached as Appendix A to the proof of evidence of Mr Walker. From the transactional evidence available for public parks, the applicant has placed its value in the range of £25,000 to £50,000 per ha. The open space land therefore lies at the bottom end of the range of land values to be found in London which means that the purchase of any other land would inevitably appear prohibitive against public open space land values. The applicant has therefore confirmed to the Examining Authority in connection with the DCO examination that, in determining prohibitive cost, the existing use value of open space included in the draft DCO for compulsory acquisition would not form the basis of the assessment. I have formed the same opinion that '*existing use*' value should not be used and that the applicant's approach in this respect is appropriate. (88)

Certificates of Appropriate Alternative Development (CAAD)

304. The applicant has also explained to the DCO Examining Authority that both existing and emerging planning policy would protect areas of open space from the prospect of '*other*' development, such that any application for a CAAD would almost certainly result in a certificate that planning permission would not be granted for any other use. This approach would not therefore assist in the determination of whether the cost of exchange land was '*prohibitive*'. I agree that the option of obtaining a CAAD would be unlikely to add any tangible benefit to the assessment process and should therefore be rejected. (89)

Property Budget

305. The project value of all sites has been estimated and potential compensation costs assessed. This has provided a property cost budget for the whole TTT project. The applicant has rejected the use of the budget figures as a comparator. This is because it is the applicant who sets the budget and this could be set high or low depending on the assumptions adopted. I concur that the adoption of the property budget as a comparator would not provide an objective test that could readily be independently verified as to its reliability. (90)

The 'disproportionate to project costs' approach.

306. The applicant has also considered the option of interpreting '*prohibitive*' as meaning '*disproportionate to project costs*' and thus to use the overall capital cost of the project as a comparator. This has been rejected by the applicant on a number of grounds and it contends that such a test would lack objectivity (91-94, 96).

307. In the case of the TTT project, the estimated capital cost of the project is over £4bn. The applicant points out that, compared with the capital cost of the project, the cost of providing exchange land would always appear to be small. This method would be likely to result in a finding that the cost of exchange land could never be '*prohibitive*' which would not seem to be consistent with the spirit of the legislation. If such an approach were to be adopted then it could result in a different level of '*prohibitive cost'* being applied to the same land by different projects. A developer promoting a large expensive project would have to pay more for replacement open space than the promoter of a smaller project with a low costs base. To my mind, such an approach would, indeed, lack the necessary element of objectivity. It could lead to absurd and arbitrary outcomes that were unrelated to the value of the land. (91-94, 96)

Whether the applicant's preferred approach provides a satisfactory and objective test?

308. Some objectors have criticised the approach adopted by the applicant. Emily Shirley submits that the applicant's test is unreasonable and to adopt that approach would mean that the section 131(4A) requirements could never be fulfilled in London. (187)

309. The applicant recognises that there is a significant imbalance between the value of open space and the value of any land not already open space in the reasonable vicinity. For that reason, the '*existing use'* value has not been used as a comparator. It submits that the test applied does not set the bar so high as to always rule out the possibility of developing open space land in London. Nonetheless, the applicant accepts that there are likely to be few, if any, sites within Central London that would not fall foul of its '*prohibitive cost'* test. (88, 97)

310. Nevertheless, the legislation falls to be applied on a national basis and the peculiarities of the Central London property market must be recognised. No objector has put forward a realistic and fair alternative to the applicant's approach that would be capable of judicious application. I consider that the comparison with '*industrial value'* approach represents a fair, objective and logical means of assessing whether potential exchange land would only be available at prohibitive cost.

Putney Hospital

311. Mr Gilmore has put forward reputed figures for the Putney Hospital "*island*" site of 0.498 ha being the area that he claims was acquired from the local Primary Healthcare Trust by Wandsworth Borough Council and for the value of the nearby common land that is currently the subject of the High Court action mentioned above. He submits that the compensation land at Putney Hospital could be said to have a market value of £6,619,000. The £4,400,000 figure provided by Mr Gilmore as the purchase price paid by Wandsworth Borough Council for the Putney Hospital site is the same figure as that used by the applicant; the distinction being that the applicant indicates that this relates to the 1 ha site, whereas Mr Gilmore contends that it was paid in respect of only 0.489 ha. In addition, Mr Gilmore has also included in his overall calculation the figures derived from the transaction between the Wandsworth Borough Council and the Wimbledon and Putney Commons Conservators which he submits places a value of £47,814 per ha on that common land. He used the figures derived from these two sources to give a combined value of £3.984m per ha. However,

the figures provided in respect of the latter transaction have not been verified and they are described by him as "*reputed*" figures. There must therefore be a serious question mark over their accuracy. Furthermore, the High Court judgment indicates that the transaction in question related to the grant of rights over land rather than a freehold purchase. Given these reservations, I am unable to place much reliance upon Mr Gilmore's combined value figure. (77-78, 168, 203, 205)

312. In promoting the Putney Hospital site as exchange land, he submits that its cost would appear to be minor when compared with TWUL's budget for land acquisitions and far less than its true value. He also complains that TWUL has claimed financial confidentiality as a reason not to divulge any budget costs relating to this part of the project including land acquisitions. He submits that this has served to frustrate any meaningful comparison of measures for the purposes of the '*prohibitive cost*' assessment. However, as indicated above, I do not consider that comparison with either the property budget for the project or the '*real value*' represents an appropriate means of assessment. (168-169)

313. Even if the land at Putney Hospital had been suitable and available, the applicant contends that the acquisition cost would be prohibitive. A summary of the valuation carried out for Barn Elms is set out in the tables appended to the proof of evidence of Mr Walker. The Supporting Statement (para 8.1.47) also explains that Wandsworth Borough Council paid £4,400,000 in July 2012 to purchase the site and quite reasonably considers that it would only sell at a price at least equivalent to this. The applicant's estimated cost for acquiring the area of 1 ha at Putney Hospital and creating the open space is estimated to be in excess of £5,000,000. The hypothetical industrial land value for the open space at Barn Elms which extends to an area of 1.83 ha is £4,600,000. I find no reason to question the reliability of the applicant's figures in relation to the Putney Hospital site. On the basis of these figures, the Putney Hospital site would not, in any event, pass the '*prohibitive cost*' test. (205)

Conclusion

314. I conclude that the approach adopted by the applicant provides a fair, objective and logical means of assessing whether potential exchange land would only be available at prohibitive cost. As far as the actual mechanics of the assessment made by the applicant are concerned, the figures used, and the calculations made, seem reasonable and correct. On the basis of that assessment, even if there was any suitable land available to be given in exchange, that land would be available only at prohibitive cost.

Whether it would be strongly in the public interest for the development for which the order grants consent to be capable of being begun sooner than is likely to be possible if the order were to be subject to SPP?

315. The Supporting Statement and the evidence of Mr Rhodes set out the reasons why the applicant submits that it would be strongly in the public interest that there should not be SPP. This has been supplemented by an explanatory note relating to the assumptions made in estimating the delay that would be caused by SPP which was provided to the Inquiry in response to my questions. The first step is to examine how long the project would be likely to be delayed by SPP. (98, 102)

The likely delay that would be caused by the SPP process

316. The only Planning Act 2008 project to have completed the SPP process to date is an 'energy from waste' plant in Bedfordshire known as Rookery South[67]. In that instance, the SPP process delayed the project by some 16½ months. That case involved only one parcel of land whereas there are many more involved in the TTT project. Nonetheless, the changes introduced by the Growth and Infrastructure Act 2013 could reduce the time that SPP would take. The applicant also anticipates that, having experienced the Rookery South process, some procedural elements would be dealt with more swiftly for any future process. The applicant acknowledges that the delays experienced by the Rookery South project are unlikely to be repeated and that it is unusual for SPP to take more than 12 months. A general election might also take place during the consideration of the SPP. The applicant's best estimate of delay due to the DCO having to undergo SPP assumes that a significant number of petitions would be submitted but that Parliament would want to have disposed of the matter before the summer recess in 2015. Taking all these various factors into account, the applicant's estimate of anything between nine and twelve months, with ten months being the most likely scenario, for the delay that would be caused by SPP seems a reasonable assumption to make. (100-102)

The need for the project

317. The National Policy Statement for Waste Water (NPS) establishes the need for a Thames Tideway Tunnel and confirms that there are no strategic alternatives. It states, at para 2.6.34, that: *"The examining authority and the decision maker should undertake any assessment of an application for development of the Thames Tunnel on the basis that the national need for this infrastructure has been demonstrated. The appropriate strategic alternatives to a tunnel have been considered and it has been concluded that it is the only option to address the problem of discharging unacceptable levels of untreated sewage into the River Thames within a reasonable time and at a reasonable cost."* (40, 99, 212)

318. The NPS also establishes that the need is urgent. It states, at para 3.1.2, that: *"Given the level and urgency of need for infrastructure of the types covered by this NPS, set out in Part 2 of this NPS, the decision maker should start with a presumption in favour of granting consent to applications for waste water NSIPS."* (99, 210)

319. The Supporting Statement (section 16) explains that the current sewerage system is subject to significant flows from surface drainage and therefore generates large volumes of combined sewage (sewage mixed with rainwater). It states: *"Rainfall causes combined sewerage systems to surcharge quickly. For this reason, it is normal practice to incorporate overflows that allow excess flows to discharge directly into a water course to reduce flood risk to properties and prevent the sewerage system overloading. It now takes as little as a few millimetres of rainfall to cause some CSOs to discharge combined sewage into the tidal Thames"*. (98)

[67] The Able Marine Energy Park DCO 2014 is currently progressing through SPP but the process is not yet complete.

320. At the Inquiry, certain objectors, including Mr Gilmore and Lady Berkeley, expressed with great vigour their obviously genuinely and passionately held view that the TTT project was not needed and would not provide the best means of resolving the environmental problems of the Thames. Mr Gilmore submits that it is not necessary to construct a tunnel connection at Barn Elms at all, since less costly and more sustainable solutions are available. He contends that, even if there was found to be a need at the present time, then that situation would only exist for a temporary period. (161, 173, 176-177, 198)

321. In support of his argument, he drew attention to a report entitled "*An assessment of evidence on Sustainable Drainage Systems and the Thames Tideway Standard*," by the Environment Agency for Defra dated October 2013 which states: "*Evidence is limited for understanding the timescale for the extensive implementation of SuDS in London. Estimates vary for different scenarios proposed. Timescales include 10% of core urban areas in ten years through redevelopment only, and 20-30 years to provide a reduction of 90% [in the number] of [discharge] events.*" It continues: "*The above evidence suggests that even given extended timescale, there is doubt that wide scale retrofitting could reduce runoff spill volumes from the combined sewer network sufficiently.*" (176)

322. In relation to sustainable drainage systems, the NPS confirms that there are no other strategic alternatives. It recognises, at para 2.4.6, that: "*Another alternative to the construction of new waste water treatment and sewage infrastructure is to reduce the demand for additional capacity by eliminating surface water drainage from combined sewer systems. One option which can contribute to this is the wider use of Sustainable Drainage Systems (SuDS).*" It explains that the Government's policy is to encourage the use of SuDS wherever possible, and this policy was strengthened in the Flood and Water Management Act 2010. However, it concludes at para 2.4.10 that: "*Although SuDS can reduce surface water runoff, there remains a need to invest in sewerage and infrastructure in order to provide sufficient capacity for existing and future water services.*" (99, 210, 212)

323. The NPS gives consideration to alternatives to the Thames Tunnel. For example, at para 2.6.26, it states that: "*A non-intervention strategy is considered not to be feasible due to the frequency and volume of discharges of untreated waste water and consequent environmental impacts*". Part 2 of the NPS provides an overview of the strategic alternatives both to the general nationally significant need for waste water infrastructure and to the project-specific need for the Thames Tunnel. At para 3.4.1, it states that: "*These strategic alternatives do not need to be assessed by the examining authority or the decision maker.*" In concluding on need, the NPS, at para 2.6.33, states that: "*The Government considers that detailed investigations have confirmed the case for a Thames Tunnel as the preferred solution.*" (40, 99, 212)

324. In the light of the clear guidance provided by the NPS in relation to various alternatives, the "*need*" for the TTT project is not a matter that can be open to question in the context of the sections 131 and 132 certification procedure. The aim of the TTT project is to provide a strategic means of addressing the identified environmental problem of discharging unacceptable levels of untreated sewage into the River Thames. Given that the NPS acknowledges the level and urgency of need for this type of infrastructure, it must be strongly in

the public interest for work on the TTT, to begin as soon as possible in the event that consent is granted through the DCO process.

The Infraction proceedings

325. The Supporting Statement (paras 16.5.1 – 16.5.9) also sets out details of the infraction proceedings. The European Commission has brought a successful action against the British Government in the European Court of Justice over sewage spills in the Thames in breach of the Urban Waste Water Treatment Directive.[68] The judgment dated 18 October 2012 determined that, having failed to control discharges in the Beckton and Crossness Sewage Treatment Works catchments, the UK Government was in breach of the Directive. (39)

326. The UK Government is required to take the necessary measures to comply with the judgment. The applicant submits that, if the project is delayed by SPP, there is a real risk of enforcement action and a substantial penalty following these infraction proceedings. It points to the Defra publication *"Creating a River fit for our future – A strategic and economic case for the Tunnel"*[69] which states, when considering the economic case for the tunnel, that *"... any infraction fines imposed due to non-compliance would have financial implications for the UK. Putting a cost on this is difficult because of a lack of precedents but, if we lose the case, we estimate that the European Commission would try to seek fines upwards of £100 million a year."* (98-99, 103)

327. Since the submission of the application, two judgments relating to similar matters concerning waste water discharges have been handed down by the European Court of Justice relating to actions by the European Commission against Belgium and Luxembourg.[70] The Belgium judgment states that, in applying the criteria which must be taken into account in order to ensure that penalty payments have coercive force and that European Union law is applied uniformly and effectively: *"… the Court is required to have regard, in particular, to the effects on public and private interests of failure to comply and to the urgency with which the Member State concerned must be induced to fulfil its obligations."* Where failure to comply with a judgment of the Court was likely to harm the environment, then such a breach is considered to be of a "*particularly serious nature*." Other points to note include that the size of the fines was determined by a formula that took account of the Country's ability to pay; that compliance should be '*initiated at once and completed as soon as possible'* and that the length of time until compliance is a critical factor. (99, 103)

328. The FTWMCL submits that a further delay of 9 to 12 months would not be material to the overall compliance timetable. The applicant's response is that the suggestion that a further delay of that length would not be material relative to the long period of project development is indicative of the kind of complacency that the European Court seeks to eliminate. Having regard to these most recent judgments of the European Court of Justice, I concur with that view. (128, 139)

---

[68] 91/271/EEC
[69] See pg 7 attached as Appendix 5 to the proof of evidence of Mr Rhodes
[70] C-533/11 dated 17 October 2013 and C-576/11 dated 28 November 2013 attached as Appendix 6 to the proof of evidence of Mr Rhodes

329. These judgments, and the penalties imposed on the Member States concerned, can only reinforce the view that there is a real risk of substantial fines being imposed upon the UK Government should implementation of the solution to the identified problem be significantly delayed. The prospect of substantial financial penalties being imposed upon the UK is a factor that supports the view that it is strongly in the public interest that any delay likely to be caused by SPP should be avoided. (99, 103)

Increased project costs

330. The Supporting Statement (paras 16.6.1 – 16.6.6) provides details of increased project costs that might result should the project be delayed by SPP. The applicant contends that, as TWUL is a regulated utility and any such additional costs would ultimately be passed onto the customer, the increase in project costs is a matter of public interest. (99, 103)

331. The applicant indicates that if the project was delayed by 10 months there would be a significant risk involved in winding down the workforce with its acquired skills and project history. To restart the project would lead to recruitment costs and disruption. The applicant estimates that the staff office costs and overheads during 2013/14 would be £8m a month and that the costs of delay over the 10 month period would be £105m. After deducting about £5m for staff leaving the project this would give a total cost of delay of about £100m. In addition, given the way that certain property deals are structured, compensation of about £10m would be payable for the impact on developers' programmes. These represent significant additional costs to the project. As those costs would ultimately be likely to be passed onto customers, it is a matter of interest for that section of the community at the very least. (98, 99, 103)

Conclusion

332. In reaching my conclusion on this topic, I have borne in mind the length of time that the TTT project would take to construct, even if the DCO is granted. Having regard to the urgent need for the project, as established by the NPS; the risk of escalating fines being imposed on the UK in respect of the existing infraction proceedings for breach of the Urban Waste Water Treatment Directive and the significant additional costs to the project that would be caused by the delay, I conclude that it would be strongly in the public interest for the development for which the order grants consent to be capable of being begun sooner than is likely to be possible if the order were to be subject to SPP. Indeed, the urgent need identified by the NPS, on its own, would lead me to that conclusion.

Other matters

333. Mr Gilmore's original representation, and his further written submission together with the evidence presented by both himself, and his witnesses, to the Inquiry, raise a wide range of issues, including the question of other options to the TTT project, the management of Beverley Brook, the justification for the compulsory purchase of the land at Barn Elms, and the presence of bats at Barn Elms. In addition, he introduced a plan of the Barn Elms site showing 8m 'set-offs' to Beverley Brook which he said represented the requirements of the EA. Such matters are quite simply not directed to the issues that are relevant to the

application of sections 131 and 132. They do not therefore have a bearing upon my overall conclusions. (164-166, 170-172, 179, 197-198, 200, 206)

334. Mr Gilmore also draws support from para 4.8.13 of the NPS within the section headed "*Land use including open space, green infrastructure and green belt.*" This states: "*The decision maker should not grant consent for development on existing open space, sports and recreational buildings and land unless an assessment has been undertaken either by the local authority or independently, which has clearly shown the open space or buildings and land to be surplus to requirements or the decision maker determines that the benefits of the project (including need) outweigh the potential loss of such facilities, taking into account any positive proposals made by the applicant to provide new, improved or compensatory land or facilities. The loss of playing fields should only be allowed where applicants can demonstrate that they will be replaced with facilities of equivalent or better quantity or quality in a suitable location.*" (176, 181, 211)

335. The NPS therefore recognises that open space may have to be lost, if need outweighs the potential loss taking into account any positive proposals to mitigate that loss. The applicant contends that the project would comply with the NPS read as a whole. However, that is not a balancing exercise with which this Inquiry should legitimately be concerned. It is a matter for the DCO examination and not the sections 131 and 132 certification process. (211)

336. Mr Clyne raises a number of points on the TTT site selection process and mitigation in respect of the proposed CSO site at King George's Park. He submits that alternative sites should have been selected instead of that site. However, these representations are not directly relevant to the issues raised by sections 131 and 132. I note that Mr Clyne also attended a compulsory acquisition hearing on 17 January 2014 and no doubt the Examining Authority will have regard to the points raised by him in the context of the DCO application. That is the appropriate means by which such matters fall to be considered. As indicated above, the proposal the subject of this report is without prejudice to the Secretary of State's considerations of the separate DCO application. (50, 147-150, 155)

337. Mr Clyne also expresses concern that there is no DCLG guidance as to "*prohibitive cost*" nor is there any case law precedent. He therefore submits that it should be subject to Parliamentary scrutiny to ensure that the matter is decided on a right and open basis. The gist of the point being that the section 131/132 process raises profound issues that should be given a full public hearing in Parliament. However, the procedure is either for the certificates sought to be granted, or for the DCO to be subject to SPP. Parliament would not be considering the grant of the open space certificates and/or the specific section 131/132 tests. (153, 155)

338. Mr Gilmore and his witnesses also submit that SPP is necessary for thorough scrutiny of the proposal to take place. They are opposed to the TTT project and consider it to be unnecessary. In addition to the impact of SuDS referred to above, Mr Gilmore contends that the CSO spill at Barn Elms is minimal and there is no need for a connection at that point at all. However, in the light of the NPS on this topic, the promotion of alternative solutions for dealing with London's waste water discharges into the Thames does not represent a proper

ground for withholding the certificates applied for. (40, 50, 99, 173, 176-178, 181, 198)

339. The DHSCGA representation expresses concern as regards the impact of the TTT project upon their aspirations to adapt the open space at Crossfield Street, Deptford for use by the local community. They suggest that TWUL should instead develop an alternative CSO site at Borthwick Wharf on the Thames foreshore. Whilst these are matters which could reasonably have been raised during the DCO examination, they are not directly relevant to the issues pertinent to the consideration of the section 131 application. (140-142, 143-144)

Section 132

General Matters

340. This element of the application applies to the three areas of open space where TWUL does not seek to acquire land, but instead to acquire rights over it. The applicant is not seeking to remove any public right that currently exists in respect of the land the subject of the section 132 application. (105)

341. The three relevant areas of land are Putney Embankment Foreshore, Falconbrook Pumping Station and KEMP Foreshore. The applicant's evidence is set out in the Supporting Statement (section 17) and the proof of evidence of Mr Rhodes (section 7). (14)

342. For Putney Embankment Foreshore, the rights that are needed are of access to inspect the outside of the CSO interception chamber. This would be undertaken on foot, about once a year. (106)

343. At Falconbrook Pumping Station, rights of access are sought over the existing access road across York Gardens to the project site from the end of Lavender Road. The access is already used around twice a week to access the unmanned pumping station and there would be no significant increase in such routine use. Major maintenance would be required about every ten years with two mobile cranes, other equipment and support vehicles at the site for several weeks. (107)

344. At KEMP Foreshore, crane over-sailing rights are sought over a small area of dry land and a contiguous area of the foreshore a short distance to the east of the Shadwell Dock stairs. These rights would only be exercised every ten years or so for maintenance of the infrastructure in the foreshore structure. (108)

Whether the land, when burdened with the rights, would be no less advantageous than it was before to the person in whom it is vested?

345. The parties in whom the application land is vested are the PLA for the Putney Embankment Foreshore and the KEMP Foreshore, and the London Borough of Wandsworth for the Falconbrook Pumping Station site. Neither the PLA, nor the London Borough of Wandsworth contends that the land would be less advantageous to them in the event that it was burdened by the rights sought by the applicant. The Supporting Statement (para 17.5.4) explains that their interests would be protected by their respective property agreements with TWUL. There is no evidence before me to indicate to the contrary. I conclude that all the order land over which the proposed rights would be exercised would

be no less advantageous than it was before to the people in whom it is vested. (109)

Whether the land, when burdened with the rights, would be no less advantageous than it was before to other persons, if any, entitled to rights of common or other rights?

346. There is no party claiming such rights that has objected to the grant of a certificate on the basis that the land would be less advantageous to them. As the applicant points out, there is no party that has claimed the existence of such rights in respect of the section 132 application land which does not extend, for example, to the land at Barn Elms. Furthermore, the Supporting Statement (section 5) shows why it is that York Gardens is not common land. I conclude, on the balance of probabilities, that there are no other persons who would be entitled to rights of common or other rights over the land that would be affected by the rights sought. (110)

Whether the land, when burdened with the rights, would be no less advantageous than it was before to the public?

347. None of the objectors or members of the public have raised a specific complaint in respect of the land over which TWUL seeks to acquire rights. As regards Putney Embankment Foreshore, the applicant's essentially unchallenged evidence is that whilst rights of access are being exercised, there would be no significant interruption with the use of the land by the public, for example, for walking, sitting-out and relaxation. At Falconbroook Pumping Station, given that the access is already used to access the unmanned pumping station, its use for routine purposes would not have any material impact. Taking into account the infrequency of the major maintenance work, and that the vehicles used would not be stationed on the access road, itself, any effect on the value of public rights would be inconsequential. At KEMP Foreshore, depending on the exact nature of the maintenance work, there might be a need to exclude people from using the area beneath the crane movement for a short period of time whilst those works were being carried out. However, movement along the Thames Path would not be interrupted. Given the infrequency of the exercise of the rights, and the limited nature of any interference caused by the operation of the crane to nearby activities, the public's use of the land would not be essentially prejudiced. I conclude that all the order land over which the proposed rights would be exercised would be no less advantageous than it was before to the public. (111)

Conclusion

348. I conclude that all the order land, when burdened with the order rights, would be no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights and the public.

SUMMARY OF CONCLUSIONS

Section 131

349. I conclude that:

- All the statutory requirements and demands of the Secretary of State have been complied with in respect of the notification procedure for the proposal to issue certificates and the holding of the Inquiry. The level of objection and degree of public participation in the process do not reveal any inherent failure in the system or that those numbers would have materially increased had any different measures been taken. The proceedings have provided everyone concerned with the opportunity for a fair hearing of the objections made. There is no merit in the procedural matters which have been raised.
- All the land at the various application sites both land-based and foreshore is either laid out as a public garden and/or is used for the purposes of public recreation and should be considered to fall within the relevant definition of open space set out in section 19(4) of the Acquisition of Land Act 1981.
- The applicant has carried out responsible and reasonable investigations to ascertain whether the application land comprises any other type of '*protected land*' identified in section 131(1), as opposed to open space. No substantial evidence has been put forward by any objector to rebut the applicant's conclusion that none of the land falls within the former category. The balance of the evidence indicates that none of the order land forms part of a common, or fuel or field garden allotment.
- The criteria applied by the applicant provide a sound basis for testing the suitability and availability of potential exchange sites for both land-based and foreshore sites. No site has either been identified by the applicant, or put forward by any objector, that has been shown to meet the relevant criteria to provide appropriate replacement land for any of the application sites. There is no suitable land available to be given in exchange for the order land.
- The approach adopted by the applicant provides a fair, objective and logical means of assessing whether potential exchange land would only be available at prohibitive cost. The figures used, and the calculations made by the applicant in its assessment seem reasonable and correct. On the basis of that assessment, even if there was any suitable land available to be given in exchange, that land would be available only at prohibitive cost.
- Given the urgent need for the project as established by the NPS; the risk of escalating fines being imposed on the UK in respect of the existing infraction proceedings for breach of the Urban Waste Water Treatment Directive and the significant additional costs to the project that would be caused by the delay, it would be strongly in the public interest for the development for which the order grants consent to be capable of being begun sooner than is likely to be possible if the order were to be subject to SPP.

350. In the light of the above findings, I conclude that the order land complies with section 131(4A) of the Planning Act 2008.

Section 132

351. I conclude that:

- All the order land, when burdened with the order rights, would be no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights and the public.

352. In the light of the above findings, I conclude that the order land complies with section 132(3) of the Planning Act 2008.

RECOMMENDATION

Section 131

353. I recommend that a certificate be issued under section 131(3) of the Planning Act 2008 on the grounds set out in subsection (4A).

Section 132

354. I recommend that a certificate be issued under section 132(2) of the Planning Act 2008 on the grounds set out in subsection (3).

Wendy McKay

INSPECTOR

APPEARANCES

THAMES WATER UTILITIES LIMITED

Mr Michael Humphries QC assisted by Mr Alex Booth of Counsel	Instructed by Berwin Leighton Paisner LLP

They called:

Mr Richard Ainsley CTp MRTPI	Principal Town Planning Consultant, Atkins Ltd
Mr John Rhodes BSc MRICS	Quod
Mr Stephen Walker MRICS	Senior Director, Building Consultancy and Planning Department, CBRE

MR ROLAND GILMORE

He called:

Lady Dido Berkeley	Representing Thamesbank, c\o Ranalagh Sailing Club, The Embankment, London SW15 1LB
Ms Emily Shirley	Netherbury, Meadow Close, Bridge, Kent CT4 5AT

THE OPEN SPACES SOCIETY

Mr Jeremy Clyne	Local Correspondent for Wandsworth

LOCAL RESIDENTS

Mr Ben Mackworth-Praed	Resident of Barnes
Mrs Unity Harvey	Resident of Barnes

DOCUMENTS LIST

[italics denote documents submitted during the Inquiry]

INQUIRY DOCUMENTS	
INQ/1	Agenda for the Pre Inquiry Meeting
INQ/2	Notes of the Pre Inquiry Meeting
INQ/3	Letter dated 7 March 2014 from Winckworth Sherwood on behalf of the Port of London Authority withdrawing their objection
INQ/4	Proposed accompanied site visit itinerary
INQ/5	Letter dated 26 March 2014 from CBRE Limited on behalf of Mr Clifford Gardner withdrawing the objection

REPRESENTATIONS TO THE APPLICATION	
REP/1	Representation on behalf of Clifford Gardner
REP/2	Representation on behalf of Deptford High Street Community Garden Association
REP/3	Representation on behalf of Port of London Authority
REP/4	Representation by Mr Gilmore
REP/5	Representation on behalf of The Free Trade Wharf Management Co Ltd
REP/6	Representation on behalf of the Open Spaces Society

THAMES WATER UTILITIES LIMITED	
TW02-RA-POE	Proof of evidence of Richard Ainsley, Nature of existing Open Spaces and uses
TW05-RA-SOE	Summary proof of evidence of Richard Ainsley, Nature of existing Open Spaces and uses
TW03-JR-POE	Proof of evidence of John Rhodes, Planning
TW06-JR-SOE	Summary proof of evidence of John Rhodes, Planning
TW09-JR-APP	Appendices to proof of evidence of John Rhodes, Planning
TW12-JR-RBP	Rebuttal proof of evidence of John Rhodes, Planning
TW04-SW-POE	Proof of evidence of Stephen Walker, Property & Valuation Issues
TW07-SW-SOE	Summary proof of evidence of Stephen Walker, Property & Valuation issues
TW10-SW-APP	Appendices to proof of evidence of Stephen Walker, Property & Valuation issues
TW29	*Opening Statement on behalf of Thames Water Utilities Limited*
TW30	*Collated documents related to notification and publication requirements for the Section 131/132 Application and the associated Public Inquiry ("Compliance Pack")*
TW30a	*Note on site visit to Barn Elms between 7.45 – 8.15 am Wednesday 2 April 2014*
TW31	*Note relating to assumptions for delay caused by Special Parliamentary Procedure*
TW32	*Note relating to relative land areas at the Old Putney Hospital (BAREL003) and Barns Station and former Goods Yard (BAREL001)*
TW33	*Errata – Appendices of Proof of evidence of Stephen Walker*
TW34	*Compulsory Acquisition Hearings – Agenda 18 November 2013*
TW35	*Lawtel case summary and transcript of judgment for Case CO/3457/2013: Nicholas Charles Evans v Wimbledon & Putney Commons Conservators and the London Borough of Wandsworth [2013] EWHC 3411 (Admin)*
TW36	*Closing Statement on behalf of Thames Water Utilities Limited*
TW37	*Notification letter dated 17 December 2013 sent by Thames Water to the*

	GLA
TW38	*HM Land Registry extract Title no TGL220263 - Lower Putney Common and land on the north side of Lower Putney Common, London*
TW39	*Land Plan extract showing Plot 71 and neighbouring plots*
TW40	*E-mail dated 2 April 2014 sent by Charlotte Cook of TTT to the Programme Officer concerning the evidence of Mr Rhodes*

MR ROLAND GILMORE	
RG/1	Proof of evidence of Roland Gilmore
RG/2a	Photograph of Beverley Brook Dam
RG/2b	Photograph of Dowdeswell Close & The Priory SW outfall
RG/2c	Photograph of Environment Agency Flood Barrier
RG/2d	Photograph of surface water outfall to Beverley Brook
RG/2e	Photograph of West Putney CSO Interceptor
RG/3	5.1 Consultation Report Section13 Barn Elms
RG/4	APP139.11 Order Land Schedule London Borough of Richmond upon Thames
RG/5	*Opening Statement by Roland Gilmore*
RG/6	*Proof of evidence of Lady Berkeley*
RG/6a	*Appendices to proof of evidence of Lady Berkeley*
RG/7	*Marked up inset plan from Thames Water Drawing of proposed permanent works area 80*
RG/8	*Proof of evidence of Emily Shirley*
RG/9	*Closing statement by Roland Gilmore*
RG/10	*E-mail dated 2 April 2014 sent by Mr Gilmore to the Programme Officer*
RG/11	*Extract from Defra publication "An assessment of evidence on Sustainable Drainage Systems and The Thames Tideway Standards".*

THE OPEN SPACES SOCIETY	
OSS/1	Proof of evidence by Jeremy Clyne
OSS/2	Letter dated 1 April 2014 from the Open Spaces Society

CORE DOCUMENTS LIST

[italics denote documents submitted during the Inquiry]

CD1	Open Space Assessment (as submitted with the application for the Thames Tideway Tunnel DCO)
CD2	Planning Act 2008 (Extracts including section 131 and section 132)
CD3	Acquisition of Land Act 1981 (Extracts)
CD4	The Growth and Infrastructure Act 2013 (Commencement No. 1 and Transitional and Saving Provisions) Order 2013
CD5	National Policy Statement for Waste Water (Extracts)
CD6a	National Planning Policy Frameworks (Extracts)
CD6b	London Plan (Extracts)
CD7a	Local Authority Planning Policy (Extracts) – LB Richmond Upon Thames
CD7b	Local Authority Planning Policy (Extracts) – LB Wandsworth
CD7c	Local Authority Planning Policy (Extracts) – RB Kensington &Chelsea
CD7d	Local Authority Planning Policy (Extracts) – City of Westminster
CD7e	Local Authority Planning Policy (Extracts) – LB Lewisham
CD7f	Local Authority Planning Policy (Extracts) – RB Greenwich
CD7g	Local Authority Planning Policy (Extracts) – LB Tower Hamlets
CD8	Royal Institution of Chartered Surveyors Valuation – Professional Standards

	January 2014 (Extracts)
CD9	London Borough of Wandsworth Decision Notice and Committee Report Ref. 2012/0758
CD10	Notices Issued by Secretary of State
CD11	Book of Plans (extracts)
CD12	Letters to Objectors Requesting Engagement
CD12a	*Letter dated 17 December 2013 from Thames Water Utilities Limited to GLA*
CD13	Responses from Objectors to Request for Engagement
CD14	Letters to Local Planning Authorities Requesting Agreement to Local Policies
CD15	Responses from Local Planning Authorities Regarding Local Policies
CD16	Errata Spreadsheet
CD17	*Enlarged A3 portion from Drawing DCO-LP-000-ZZZZZ-030010-Rev3 (showing area including Plot 71 and Official Copies from the Land Registry for title TGL220263)*
CD17a	Application for Certificates in Respect of Compulsory Acquisition of Open Space and Rights over Open Space pursuant to Section 131(4A) and Sections 132(3) and (4a) – Planning Act 2008
CD17b	Application for Certificates in Respect of Compulsory Acquisition of Open Space and Rights over Open Space pursuant to Section 131(4A) and Sections 132(3) and (4a) – Planning Act 2008 – Supplementary Supporting Information
CD17c	Application for Certificates in Respect of Compulsory Acquisition of Open Space and Rights over Open Space pursuant to Section 131(4A) and Sections 132(3) and (4a) – Planning Act 2008 – Clarification regarding valuation references