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(by email)

30 November 2018

Dear Liz

PLANNING ACT 2008 (the "2008 Act")

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

THE THAMES WATER UTILITIES LIMITED (THAMES TIDEWAY TUNNEL) ORDER (SI 2014/2384) AS AMENDED BY THE THAMES WATER UTILITIES LIMITED (THAMES TIDEWAY TUNNEL) (CORRECTION) ORDER (SI 2015/723) AND THE THAMES WATER UTILITIES LIMITED (THAMES TIDEWAY TUNNEL) (AMENDMENT) ORDER (SI 2017/659) AND THE NOTICE OF VARIATION No. 1 AND NOTICE OF VARIATION No. 2 TO THE DEEMED MARINE LICENCE

Application for a non-material change to an approved drawing listed in Schedule 2, Part 4 of Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 ("the 2014 Order") with reference DCO-PP-10X-FALPS-120006-rev 1

1. We are directed by the Secretary of State for Environment, Food & Rural Affairs and the Secretary of State for Housing, Communities and Local Government (the "Secretaries of State") to notify you that consideration has been given to the application (the "Application") which was made by Bazalgette Tunnel Limited (trading as Tideway) (the "Applicant") on 13 of September 2018 for a change which is not material to the 2014 Order under paragraph 2 of Schedule 6 to the 2008 Act.

2. Under the 2008 Act changes to a development consent order may be material or non-material. The process for considering material changes is different to the process for considering non-material changes. In summary, material changes require greater prior

publicity and consultation and consideration following submission. In contrast, non-material changes are subject to a simplified and expedited process. Tideway has applied on the basis that the change requested is non-material.

3. The original application for development consent under the 2008 Act was submitted to the Planning Inspectorate by Thames Water Utilities Limited on 28 February 2013 and was granted consent on 12 September 2014. Consent was granted for the construction and operation of a wastewater transfer and storage tunnel, known as the Thames Tideway Tunnel, a number of connection tunnels and other associated development and ancillary works at 24 sites in London along the route of the tunnel and works to construct interception structures at 16 combined sewage overflows.

4. The Applicant has the benefit of the 2014 Order by virtue of a transfer of powers by Thames Water Utilities Limited dated 24 August 2015 made pursuant to Article 9 of the 2014 Order.

5. The consented works at Falconbrook Pumping Station are set out under Work Numbers 10a, 10b, and 10c in Part 1 of Schedule 1 of the 2014 Order. Work numbers 10a and 10b form part of the nationally significant infrastructure project (as defined in sections 14 and 29(1A) of the 2008 Act) and comprise the Falconbrook Pumping Station CSO drop shaft (Work No 10a) and the Falconbrook connection tunnel (Work No. 10b) which will connect the CSO drop shaft with the main tunnel (west central) (authorised under Work No. 1b). Work No 10c sets out the “associated development” (as defined in section 115(2) of the 2008 Act) and comprises a range of demolition and construction activities.

6. The Applicant is seeking consent for a change to the 2014 Order to replace the existing approved Site works parameter plan for the Falconbrook Pumping Station (Drawing DCO-PP-10X-FALPS-120006-rev 1) with a revised version (Drawing DCO-PP-10X-FALPS-120006-rev 2) and to amend the drawing reference number in Part 4 of Schedule 2 of the 2014 Order accordingly. The revised version of the plan will ensure that the labels on the map correspond with the description of the works in the Section plan (Drawing DCO-PP-10X-FALPS-120010), Permanent works layout plan (Drawing DCO-PP-10X-FALPS-12008), and Kiosk, wall and valve chamber design intent plan (Drawing No.DCO-PP-10X-FALPS-120013) submitted as part of the original application for development consent by deleting a label that incorrectly suggests that the “interception chamber” is an “above ground” structure and adding a “purple zone” line around the CSO drop shaft to denote it as an “above ground structure”. This is in accordance with Table 1 of the Site works parameter plan which lists the specific permanent above ground structures. There is no change to the planned works. The Secretaries of State have found no reason to disagree with the Applicant’s rationale for applying for the changes.

7. The Secretaries of State are content that the Application (Ref: 2530-TDWAY-TTTUN-990-ZZ-CO-700161) meets the requirement of regulation 4 of the 2011 Regulations.

Summary of the Secretaries of State's Decision

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

Consideration of the Materiality of the Proposed Changes

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

10. There is no statutory definition of what constitutes a 'material' or 'non-material' change for the purposes of Schedule 6 to the 2008 Act and Part 1 of the 2011 Regulations. Paragraph 2(2) of Schedule 6 to the 2008 Act requires the Secretaries of State, when deciding whether a proposed change is material, to have regard to the effect of the change, together with any previous changes made under that paragraph, on the development consent order (DCO) as originally made. The Applicant's updated assessments confirm that the proposed change would not result in new or materially different likely significant effects to those previously assessed.

11. The Secretaries of State have considered the materiality of the change proposed in the Application against characteristics[1] that indicate a change to a consent is more likely to be treated as material, as follows:

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

       The Application considers the likely environmental impacts of the proposed change against the scheme assessed in the Environmental Statement which accompanied the original DCO application. The Application concludes that the amendment will not result in any new, or materially different significant effects on the environment. The Secretaries of State have considered the information provided and have no reason to disagree with the assessments and therefore conclude that no update is

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

required to the Environmental Statement as a result of the proposed change to the 2014 Order.

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

   The proposed change will not impact on a Natura 2000 site (i.e. a Special Area of Conservation or a Special Protection Area) nor a Ramsar site, so there is no requirement for a Habitats Regulations Assessment. The Secretaries of State note that Natural England raised no objections to the proposed change and did not advise that an Appropriate Assessment was required. The Secretaries of State also consider that there is no need for a new or additional licence in respect of any European Protected Species.

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

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

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

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

12. A previous application for a non-material change to the DCO was approved in 2017 (SI 2017/659). In considering the materiality of the proposed change, the Application takes into account the effect on the DCO of the previous amendment. The Application concludes that the cumulative impact of both sets of amendments is not considered to result in any material change to the DCO as originally made. The Secretaries of State have considered the information provided and have no reason to disagree with the assessment.

13. Following the publicity and consultation, no representations were made disputing the Applicant's position that the proposed changes are non-material in nature. The Secretaries of State have no reason to disagree with the Applicant's assessment of

materiality, and having regard to the effect of the proposed change, together with the previous changes made under that paragraph, on the 2014 Order as originally made, the Secretaries of State are satisfied that the proposed change in the Application is appropriately categorised as a non-material change (for the purposes of paragraph 2 of Schedule 6 to the 2008 Act). The Application has therefore been handled in accordance with Part 1 of the 2011 Regulations.

Consultation and Responses

14. Following a request from the Applicant on 5 July 2018, on 7 September 2018, the Secretaries of State consented to allow, in accordance with regulation 7(3) of the 2011 Regulations, the Applicant to consult a more limited number of persons than would ordinarily need to be consulted under regulation 7(2). The reasons for that grant of consent are set out in the decision letter issued by the Secretaries of State on 7 September 2018.

15. In accordance with the requirements of regulation 7(1) of the 2011 Regulations specified parties were consulted about the Application by the Applicant. The consultation ran from 13 September 2018 until 20 October 2018.

16. In accordance with regulation 6 of the 2011 Regulations a notice of the Application was also published for two consecutive weeks in the local press, the Wandsworth Guardian, and was made publicly available on the Planning Inspectorate's website, providing an opportunity for anyone not consulted about the Application to also submit representations to the Planning Inspectorate. No representations were received as a result of this publicity.

17. Representations were received during the consultation period from Historic England and the Environment Agency. A representation was also received on 1 November 2018 from the Greater London Authority. This has been accepted by the Secretaries of State on the basis that the Greater London Authority is a statutory consultee and that no one was prejudiced by the late submission of this representation.

18. The Secretaries of State have carefully considered these representations and note that none of them raise any objections to or make substantive comments on the Application.

19. The Secretaries of State, having carefully considered all the representations received, do not consider that any further information needs to be provided by the Applicant or that any further consultation of those already consulted or any wider consultation is necessary before determining the Application.

Environmental Impact Assessment

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

The Secretaries of States' Conclusions and Decision

21. For the reasons given in this letter the Secretaries of State are satisfied that the change to the 2014 Order applied for is not material when considered in the context of development authorised by the 2014 Order and, therefore, have made an Order in the form of a statutory instrument to amend the 2014 DCO. This is substantially in the form of the draft Order submitted with the application, subject to a number of minor modifications, set out below.

Amendments to the Order

22. The following modifications have been made by the Secretaries of State to the draft Order suggested by the Applicant:

    a. the pre-amble is amended to reflect the Secretary of State's role in the assessment of the materiality of the proposed changes;

    b. the pre-amble is amended to recite the correct enabling power for the making of the Order;

    c. the Secretaries of State have also decided to make various minor drafting changes which do not materially alter the effect of the Order, including changes to conform with current practice for Statutory Instruments, changes in the interests of clarity and consistency (e.g. in relation to footnotes), and changes to ensure that the Order has the intended effect.

Challenge to Decision

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

Publicity for Decision

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

Richard Watson

Ministry of Housing, Communities and Local Government

Mary Jeavans

Department for Environment, Food & Rural Affairs

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

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

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

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