



Department for Transport

Eversheds LLP
Solicitors and Parliamentary Agents
One Wood Street
London
EC2V 7WS

Martin Woods
Head of the TWA Orders Unit
General Counsel's Office
Department for Transport
Zone 1/18
Great Minster House
33 Horseferry Road
London SW1P 4DR

Enquiries: 020 7944 3196
Fax: 020 7944 9637
transportandworksact@dft.gsi.gov.uk

Web Site: www.gov.uk/twa

Our Ref: TWA/12/APP/02

24 January 2013

Dear Sirs,

TRANSPORT AND WORKS ACT 1992 TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION FOR THE PROPOSED CROSSRAIL (KENSAL GREEN) ORDER AND DEEMED PLANNING PERMISSION

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to say that consideration has been given to the report of the Inspector, Mr Alan Boyland BEng (Hons) DipTP CEng MICE MCIHT MRTPI, who held a public local inquiry on 9 October 2012 into the application made by your clients, Crossrail Limited ("Crossrail"), for—

- (a) the Crossrail (Kensal Green) Order ("the Order"), to be made under sections 1 and 5 of the Transport and Works Act 1992 ("TWA"); and
- (b) a direction as to deemed planning permission for the development provided for in the Order, to be issued under section 90(2A) of the Town and Country Planning Act 1990.

2. The Order, if made, would confer powers on Crossrail to take temporary possession of land at the site of the former gas works at Kensal Green in the Royal Borough of Kensington and Chelsea for the provision of a working site in order to support works authorised by the Crossrail Act 2008 and access for construction.

3. Enclosed with this letter is a copy of the Inspector's report, dated 5 November 2012. His conclusions are set out in section 5 of the report, and his recommendations are at section 6.

Summary of Inspector's recommendations

4. The Inspector recommended that the Order be made, subject to modifications, and that planning permission be deemed to be granted, subject to conditions, for the proposed working site and access for construction.

Summary of Secretary of State's decision

5. For the reasons given in this letter, **the Secretary of State has decided to make the Order, with modifications; and to direct that planning permission be deemed to be granted, subject to the conditions set out in Annex 1 to this letter.**

Developments after the inquiry

6. Since the close of the inquiry, National Grid and Sainsbury's Supermarkets Ltd have withdrawn their objections. The terms of the one remaining objection by the Council of the Royal Borough of Kensington and Chelsea ("RBKC") as described in paragraphs 4.3 to 4.11 of the Inspector's report were ratified by the Council on 17 October 2012. The Secretary of State has accordingly considered the Inspector's report (as set out in the following paragraphs) in the light of these developments. Numbers in brackets are references to relevant paragraphs of the Inspector's report.

Justification for the proposals and the main alternatives considered

7. The Secretary of State notes that since the authorisation of the Crossrail project by the Crossrail Act 2008 subsequent design and development has shown that additional land at Kensal Green is required for a temporary compound to support the construction of the Old Oak Common and Paddington Approaches ("the OOCPA works"); and that the OOCPA works are critical to the overall project. He notes further that the need for the compound, to enable the successful and timely delivery of Crossrail with minimum disruption to the existing rail network, is undisputed (5.4-5). The Secretary of State agrees with the Inspector that the site at Kensal Green is the only viable option and that there is no other site or permutation of sites that would enable delivery of the OOCPA works as required and on time (5.6).

Compliance with national, regional and local policy and impacts on other development proposals

8. The Secretary of State agrees with the Inspector that the Crossrail project, the delivery of which requires the proposed compound, is of strategic importance and is supported by planning and transport policy at national, regional and local levels. He agrees also, for the reasons given by the Inspector, that even in the event of an overrun of Crossrail's use of the site, there would be no significant effect on RBKC's proposals for regeneration of this area; and that Crossrail's use of the site would not significantly prejudice RBKC's proposals for a new station at Kensal Green (5.7-13).

Need for the powers in the Order

9. The Secretary of State agrees with the Inspector that the Order is necessary to enable Crossrail's proposals at Kensal Green to be implemented expeditiously. He is satisfied also that, since the working site is necessary for the successful and timely

delivery of the Crossrail project, there is a compelling case in the public interest for conferring the powers in the Order (5.14)

Likely impacts on owners, occupiers, users of rights of way and utility operators

10. Taking into account the withdrawal of the objections by National Grid and Sainsbury's Supermarkets Ltd, the Secretary of State is satisfied that there would be no adverse impacts in these respects. (5.15-16).

Likely environmental impacts and the adequacy of Environmental Statement

11. The Secretary of State notes that in most respects the adequacy of the environmental information in terms of content and procedure was unchallenged. He agrees with the Inspector that, taking into account the further information provided in response to the concerns of RBKC, there would after mitigation be no significant adverse environmental effects in respect of ecological and air quality impacts (5.17-18). He notes in this context that since the close of the inquiry RBKC has not produced any further evidence in support of its final position as ratified by the Council's resolution on 17 October 2012. The Secretary of State considers also that in other respects there would be no significant adverse environmental impacts either in isolation or in combination with other projects (3.29 (6)–(8)).

12. The Secretary of State is satisfied that the environmental information provided in the Environmental Statement ("ES") and in Crossrail's inquiry evidence is sufficient to enable him to assess the impacts of the scheme. He confirms that, in reaching his decision, he has complied with the requirements of paragraphs (a) to (c) of section 14(3A) of the TWA about the consideration of the ES.

13. Under section 14(3AA) of the TWA the Secretary of State is required to describe the main measures to avoid, reduce and, if possible, remedy the major adverse environmental impacts of a scheme. In this case, he does not consider that any of the adverse impacts could be regarded as "major". The main measures to mitigate the adverse effects of the proposals in the Order are the Crossrail Environmental Minimum Requirements and the conditions set out in Annex 1 to this letter.

Conditions to be attached to deemed planning permission

14. The Secretary of State agrees with the Inspector that, subject to the changes referred to in paragraph 15 below, the conditions set out in section 6.1 of the report are appropriate and meet the tests of DOE Circular 11/95, for the reasons given by the Inspector. In particular, he agrees with the Inspector that the 5-year limit for commencement of development proposed by Crossrail is not justified in the circumstances of this case; and that a 3-year limit should be prescribed to avoid prejudicing RBKC's long term redevelopment proposals for the site (5.19-25).

15. The Secretary of State has decided to modify condition 4 to provide expressly for the local planning authority to consult with the Environment Agency in approving a surface water drainage scheme; and to require that the approved scheme is implemented before the development is complete, as proposed by the Environment Agency. He intends also to make some minor drafting amendments to the proposed conditions which do not materially alter their effect. The conditions as amended are set out at Annex 1 to this letter.

Crossrail's funding proposals

16. The Secretary of State is, like the Inspector, satisfied from Crossrail's evidence that the proposals in the Order can be funded within the Crossrail project (5.26).

The Inspector's overall conclusions and recommendations

17. The Inspector concluded that for the reasons given in his report, but subject to any further developments regarding the objections that were outstanding at the close of the inquiry, the proposals in Crossrail's application should be authorised, (5.28). He therefore recommended that the Order, modified in accordance with Inquiry document CD/1.2/1, should be made; and that deemed planning permission should be granted for the proposed working site and construction access, subject to the conditions set out in section 6 of his report (6.1).

The Secretary of State's overall conclusions and decision

18. For the reasons given in this letter, the Secretary of State considers that there is a compelling case in the public interest for authorising the proposed working site to ensure the timely delivery of the Crossrail project. He is satisfied that the benefits of the proposals outweigh the limited adverse impacts of the scheme after mitigation. The Secretary of State has therefore decided to make the Order, subject to a number of modifications (described in paragraph 19 below) which are in addition to those set out in Inquiry document CD/1.2/1; and to give the direction as to deemed planning permission subject to the conditions set out in Annex 1 to this letter.

19. The further modifications which the Secretary of State intends to make to the Order are as follows:

- in article 2 (interpretation), to adjust the definition of "designated works" so as to provide certainty about when the power to remain in possession of land for the purposes of the proposed working site would cease under article 7(3);
- in article 2, to insert a definition of "scheduled works" (being the works specified in column (2) of Schedule 1) and to make consequential changes to the definition of "authorised works" and to article 3, so as to clarify the extent of the power to carry out ancillary works under article 3(3) and (4);
- in article 9 (temporary stopping up of Canal Way), to insert a requirement to consult the street authority before exercising the powers in this article, and to provide for the payment of compensation for any person who suffers loss as a result of the suspension of any private right of way; and
- a number of other minor drafting changes (for example, modernisation of language) which do not materially alter the effect of the Order.

The Secretary of State is satisfied that none of the above modifications to the draft Order or those referred to by the Inspector (at 5.27) would make a substantial change in the proposals such as would require notification to affected persons under section 13(4) of the TWA.

Notice under section 14 of the TWA

20. This letter constitutes the Secretary of State's notice of his determination to make the Order, with modifications, for the purposes of section 14(1)(a) and section 14(2) of the TWA. Your clients are required to publish newspaper notices of the determination in accordance with section 14(4) of the TWA.

Challenges to decisions

21. The circumstances in which the Secretary of State's decisions may be challenged are set out in the note attached at Annex 2 to this letter.

Distribution

22. Copies of this letter and the Inspector's Report are being sent to all those who objected to or made representations on the Order application.

Yours faithfully,

Martin Woods

CONDITIONS WHICH THE SECRETARY OF STATE INTENDS TO ATTACH TO THE DEEMED PLANNING PERMISSION

Interpretation

In these conditions -

"development" means the proposed temporary works described in column (2) of Schedule 1 to the Order;

"EMR" means the Crossrail Environmental Minimum Requirements dated 22nd July 2008. The EMR comprises: General Principles (dated 22nd July 2008); Annex 1 - The Construction Code (dated 31st July 2008); Annex 2 - the Planning and Heritage Memorandum (dated 2nd November 2007); Annex 3 - the Environmental Memorandum (dated 22nd July 2008); and the Register of Undertakings and Assurances (dated August 2011); and

"the Order" means the Crossrail (Kensal Green) Order 2013.

Time Limit

1. The development shall commence no later than the expiration of three years beginning with the date the Order comes into force.

Reason: To ensure that the development is begun within a reasonable period of time.

Crossrail Environmental Minimum Requirements

2. The development shall be carried out in accordance with the EMR.

Reason: To ensure that impacts which have been assessed in the Environmental Statement will not be exceeded, unless any new impact or impacts in excess of those assessed in the Environmental Statement results from a change in circumstances which was not likely at the time of the Environmental Statement.

Fencing and means of enclosure

3. The development shall not commence until details of a means of enclosure of the working site have been submitted to and approved in writing by the local planning authority.

Reason: To protect the amenity of residents, occupiers and highway users.

Surface water drainage

4. Development shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and

hydro-geological context of the development, has been submitted to and approved in writing by the local planning authority in consultation with the Environment Agency. The approved scheme shall be implemented before the development is complete.

Reason: For the protection of water resources and to prevent the increased risk of flooding on and off site.

Ground contamination

5. No work that would result in the excavation or modification of the engineered barrier layer constructed as part of the previous remediation on site shall commence until details of that work have been submitted to and approved in writing by the local planning authority.

Reason: For the protection of previous mitigation measures installed to prevent migration of ground contamination.

Implementation

6. All works or matters that require approval under these conditions shall be carried out in accordance with that approval, or any subsequent revisions that have been submitted to and approved in writing by the local planning authority.

Reason: To ensure that these works or matters are implemented as approved.

END

RIGHT TO CHALLENGE ORDERS MADE UNDER THE TWA

Any person who is aggrieved by the making of the Order may challenge its validity, or the validity of any provision in it, on the ground that-

- it is not within the powers of the TWA, or
- any requirement imposed by or under the TWA or the Tribunals and Inquiries Act 1992 has not been complied with.

Any such challenge may be made, by application to the High Court, within the period of 42 days from the day on which notice of this determination is published in the London Gazette as required by section 14(1)(b) of the TWA. This notice is expected to be published within three working days of the date of this decision letter.

CHALLENGES TO DEEMED PLANNING PERMISSION GIVEN IN CONNECTION WITH A TWA ORDER

There is no statutory right to challenge the validity of the Secretary of State's direction that planning permission shall be deemed to be granted for development for which provision is included in the Order. Any person who is aggrieved by the giving of the direction may, however, seek permission of the High Court to challenge the decision by judicial review.

Any person who thinks they may have grounds for challenging the decision to make the Order or the decision to give a direction as to deemed planning permission is advised to seek legal advice before taking any action.