



Report to the Secretary of State for Transport

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an Inspector appointed by the Secretary of State for Transport

Date: 5 November 2012

**TRANSPORT AND WORKS ACT 1992
TOWN AND COUNTRY PLANNING ACT 1990**

**APPLICATION FOR:
THE CROSSRAIL (KENSAL GREEN) ORDER 20[]
AND
A DIRECTION FOR DEEMED PLANNING PERMISSION**

Date of Inquiry: 9 October 2012

Ref: DPI/K5600/12/17

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CASE DETAILS

- The Order would be made under Sections 1 & 5 of the Transport and Works Act 1992 and is known as the Crossrail (Kensal Green) Order 20[].
 - The Direction as to deemed planning permission would be granted under Section 90(2A) of the Town & Country Planning Act 1990 and would be treated as specific planning permission for the purposes of Section 264(3)(a) of that Act.
 - The draft Order was published on 29 February and 5 & 8 March 2012, and there were 3 objections outstanding to it at the commencement of the Local Inquiry.
 - The Order would confer powers on Crossrail Limited 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. The Order would authorise the temporary possession of the land for the purposes of the works and confer powers in connection with the carrying out of the works.
 - The deemed planning permission would authorise the provision of a working site and access for construction.
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Summary of Recommendations:

That, subject to consideration of any further developments regarding the outstanding objections, the Order be made with modifications and deemed planning permission be granted subject to conditions.

1. PREAMBLE

The Objections

- 1.1 There were 5 objections to the Order. Two of these, by J Murphy & Sons Ltd (ref. OBJ/3) and by Fortress Ltd (OBJ/4), were withdrawn on 4 and 8 October 2012 respectively¹. Fortress Ltd, in doing so, indicated that it had no objection to its objection, statement of case and evidence submitted for the Inquiry being disregarded².
- 1.2 The remaining 3 objections, by National Grid (OBJ/1), Sainsbury's Supermarkets Ltd ("Sainsbury's") (OBJ/2) and the Council of the Royal Borough of Kensington and Chelsea ("RBKC") (OBJ/5) still stood at the time of the Inquiry.
- 1.3 A representation by the Environment Agency (REP/1) indicated that it had no objection or comments to make on the Order but requested that certain conditions be attached to the (deemed) planning permission.

¹ Inquiry docs. CRL/INQ/6 & FL/5/1

² FL/5/1

The Inquiry

- 1.4 I made an unaccompanied visit to the site and its surroundings, viewing the site from public places, on the day prior to the Inquiry. At the Inquiry it was agreed that no useful purpose would be served by my visiting the site or any other location again.
- 1.5 In the light of the withdrawal of some objections, the position regarding others and the absence of any objectors, at the Inquiry I dealt with the usual preliminaries and procedural matters, then heard submissions for Crossrail Ltd ("Crossrail"), on which I report below. In the circumstances Crossrail did not call any witnesses, though they were all available to address any questions by me if necessary. However, the submitted evidence still stands to the extent that it has not been overtaken by events, particularly the late withdrawal of the objection by Fortress Ltd.

The Order

- 1.6 At the Inquiry Crossrail submitted a revised draft Order³ together with a 'tracked changes' version⁴ indicating the amendments made to the Order applied for and a schedule of amendments⁵.

This Report

- 1.7 In this report I set out the case for Crossrail as put in submissions at the Inquiry (including oral submissions) and, briefly as it is available in full, the written evidence.
- 1.8 The Secretary of State, in the Statement of Matters, noted that at the time of issuing the Statement RBKC had not passed a resolution under section 239 of the Local Government Act 1972 (as applied by section 20 of the Transport and Works Act (TWA)) to validate its objection, and may not have done so until after the public inquiry takes place. I was invited to consider and report on RBKC's objection as if the section 239 resolution had been passed, and to the extent that issues in RBKC's objection had not been settled with the promoters before the Inquiry opened. It was indicated that the Secretary of State would consider the position as regards the section 239 resolution at the time when determining the above application.
- 1.9 A draft letter from RBKC to the Secretary of State setting out RBKC's prospective resolution has been submitted⁶. It was expected that RBKC would pass a resolution on 17 October, after the close of the Inquiry but before completion of this report. Nevertheless, I understand that the Secretary of State still wishes me to consider the objection on the above basis, and I have done so.
- 1.10 I then set out my conclusions on the Order and the remaining objections to it, followed by my recommendations. Lists of appearances and Inquiry documents are appended.

³ CD/1.2/1

⁴ CRL/INQ/3

⁵ CRL/INQ/4

⁶ CRL/INQ/10

2. DESCRIPTION OF THE ORDER LAND AND ITS SURROUNDINGS

- 2.1 The Order land is described at various points in the Environmental Statement (ES)⁷, but more conveniently in the Non-Technical Summary within that document⁸.
- 2.2 Briefly, the land comprises an irregularly-shaped area situated in the Ladbroke Grove/Kensal Green area of west London, together with the Canal Way access road from Ladbroke Grove. The surrounding area comprises a mix mainly of residential and commercial/industrial uses.
- 2.3 The Order land is bounded to the north by the Paddington Branch of the Grand Union Canal with Kensal Green Cemetery beyond, to the south by the Great Western main railway line, to the east by a Sainsbury's supermarket and to the west by a National Grid gas works site including two gas holders. It is itself the site of a former gas works, the land having been remediated and comprising a mix of rough grassed areas and hardstandings. Most of it is unused, but part is in use as a compound by former objector J Murphy & Sons Ltd.

3. THE CASE FOR THE APPLICANT (CROSSRAIL LIMITED)

*The material points were*⁹:

Introduction

- 3.1 Crossrail Ltd has applied for an Order to authorise the temporary occupation of land at Kensal Green for the purposes of a working site compound to support works for the delivery of Crossrail ("the Order Land").
- 3.2 The Crossrail project needs no introduction. It will provide a major new suburban rail service for London and the South East. Its overall benefits are well documented and its delivery is authorised by the Crossrail Act 2008. Crossrail is to be delivered as a functioning rail service by December 2019. The project is supported at all levels of policy - national, regional and local¹⁰.
- 3.3 The Order land lies within the administrative area of the Royal Borough of Kensington & Chelsea. It is required for the purposes of a working site compound to support and enable works for the delivery of Crossrail, specifically the works between Old Oak Common and Paddington Approaches referred to in the evidence as the OOCPA works.
- 3.4 The OOCPA works themselves are authorised by the Crossrail Act 2008 and are described in Schedule 1 of the Act. In summary they include the construction of new railway track, extensive installation of switches and crossings and modifications to the existing railway signalling and overhead line electrification systems.
- 3.5 The OOCPA works are critical to the successful and timely delivery of Crossrail. Without these works the layout of the railway infrastructure at Old

⁷ CD/1.16

⁸ Ibid, internal pp.4 & 5 of the summary

⁹ Based on the opening/closing submissions for Crossrail (CRL/INQ/5), oral submissions and written evidence submitted as indicated

¹⁰ CRL/3/1 sections 2.1-2.5

Oak Common and Paddington Approaches would not support the running of Crossrail trains in the area. There is, for example, no dedicated access for Crossrail trains to enter and leave the new Crossrail depot at Old Oak Common. The layout of Paddington Approaches does not provide for access between the Crossrail tunnels and Network Rail infrastructure or access for Crossrail to the main lines. It does not accommodate the Crossrail turnback facility at Westbourne Park.

- 3.6 The works to the existing network to be delivered as part of the OOCA works will allow Crossrail trains access from the central tunnel section to the new depot at Old Oak Common and westwards to Maidenhead.
- 3.7 The need for and authorisation of the OOCA works is not a matter for this Inquiry. This has already been fully addressed through the Crossrail Bill procedure, and as noted above the OOCA works themselves are authorised by the 2008 Act.
- 3.8 This Inquiry is concerned with the requirement for an appropriate site compound to deliver those works. The works will be delivered by Network Rail (Infrastructure Ltd) as delivery partner for Crossrail. Crossrail Ltd's evidence together with that of Network Rail demonstrates the need for the Order land including the justification for its size and the process of site selection. In short, there is no other alternative site which will allow these critical OOCA works to be delivered in accordance with the timetable for opening the overall Crossrail rail service. Any other permutation or disaggregation of works areas will not enable the delivery of the OOCA works as required and on time.
- 3.9 The delivery of the works from the Order land takes into account the realities of delivering a scheme of this complexity together with ensuring the minimum disruption to other day-to-day rail services and the travelling public. Disruption to the wider rail network will be minimised through the swifter and more efficient delivery of the works by the use of the Order land for a relatively limited period of time of approximately 4½ years, after which the Order land will be restored and returned to the landowner.
- 3.10 When all the relevant factors are taken into account and balanced, it is considered that there is a compelling case in the public interest for the Order.
- 3.11 Crossrail Ltd has complied with all the requisite statutory requirements including undertaking an Environmental Impact Assessment following scoping. Consultation has been undertaken with all relevant parties.

The objections

- 3.12 Several objections were received to the Order. As matters currently¹¹ stand all objections have been withdrawn or objectors are very close to reaching agreement with the Promoter on matters so as to enable their objections to be withdrawn. The sole exception is the objection received from the Council of the Royal Borough of Kensington & Chelsea ("the Council") which is addressed below. However, even the Council's latest position is greatly reduced in scope from that set out in its letter dated 18 April 2012.

¹¹ At the time of the Inquiry.

- 3.13 Fortress Ltd, the main landowner, has withdrawn its objection to the Order and confirmed that it no longer relies on the matters raised in its evidence. The letter from their solicitors¹² should have been received by the Department for Transport.
- 3.14 J Murphy and Sons Ltd have also withdrawn their objection by letter dated 4 October 2012¹³.
- 3.15 National Grid had submitted a holding objection. However, it is understood that this objection will be withdrawn pursuant to a land agreement with Network Rail which is very close to finalisation¹⁴. In addition Crossrail Ltd have supplied National Grid with an undertaking to protect its apparatus. National Grid has indicated that it is content with this.
- 3.16 Sainsbury's Supermarkets Ltd had raised an objection. However, the current¹⁵ position is that the terms of an agreement between Crossrail Ltd and Sainsbury's have been finalised and confirmation has been received that this agreement would be signed very shortly resulting in the withdrawal of its objection¹⁶. Details of how Sainsbury's issues have been addressed are set out in the evidence of Crossrail's witnesses¹⁷.
- 3.17 The Council had not, until the day prior to the Inquiry, submitted anything other than its objection letter dated 18 April 2012¹⁸. However a draft letter was sent to Crossrail on the evening before the Inquiry¹⁹. This is undated but apparently is to be considered by the Council on 17 October 2012. This draft letter, which supersedes an earlier draft²⁰, sets out what appears to be the current²¹ state of the Council's objection to the Order.
- 3.18 It is of some importance that the Council has not yet formalised its position by way of a resolution of the Council passed by a majority of the whole number of members of the Council despite being advised of the need to do so by the Department for Transport many months ago. Therefore there must be some doubt as to the status of the original objection letter and the latest draft letter. Neither appears to be the formal position of the Council. However, be that as it may, the latest draft letter²² makes clear that the vast majority of the issues raised by the Council in its 18 April 2012 letter are no longer of concern.
- 3.19 By way of background, Crossrail has sought to engage with the Council and written on several occasions to the relevant officers seeking meetings in order to discuss the outstanding points, most of which in fact

¹² FL/5/1

¹³ CRL/INQ/6

¹⁴ CRL/INQ/7

¹⁵ At the time of the Inquiry.

¹⁶ CRL/INQ/8, SSL/2

¹⁷ Particularly CRL/1/1 paras 5.1.12-14

¹⁸ OBJ/5

¹⁹ CRL/INQ/10

²⁰ CRL/3/2 appx 5

²¹ At the time of the Inquiry.

²² CRL/INQ/10

- sought clarification or further information. The Council officers have regrettably not been able to find time to meet with Crossrail. However, Crossrail has included within its evidence the correspondence with the Council²³ which provided full responses to its letter dated 18 April 2012²⁴.
- 3.20 Crossrail considers that it has addressed all matters raised by the Council and that no matters remain outstanding. This is exemplified in the detailed evidence on environmental issues provided by Crossrail, which addresses the matters raised by the Council in its earlier letter, the overall assessment of the environmental impacts, and specifically items 6-8 and part of 3 in the Secretary of State's Statement of Matters²⁵.
- 3.21 Email correspondence from the Council appeared to concur with Crossrail stating that it does not now maintain any objections on these matters confirming that *"there are no outstanding environmental issues being raised at the public enquiry (sic)"*²⁶. However, a subsequent and apparently contradictory email stated that *"there are ... outstanding issues in both air quality and ecology"*²⁷.
- 3.22 The latest draft undated letter²⁸ however raises 3 issues. These are first that the Council is not satisfied that the works would allow for a station at Kensal Green to be provided in line with the Mayor's three tests. This point is difficult to understand as the draft Undertaking sent to the Council on 15 June 2012 confirmed precisely that the works were consistent with the Assurance 540 given to the Council in this context²⁹. The Mayor's three tests³⁰ would be met through detailed provision.
- 3.23 The draft letter also raises an issue regarding the date for vacation of the Order land. In its 18 April 2012 letter the Council referred to an *'unspecified period of time for which the site is expected to be used'* and indicated that it would be content if Crossrail Ltd returned the Order land by May 2018³¹. Crossrail Ltd has confirmed on several occasions that it intends to complete works by August 2017 and restore the land by October 2017, with a contingency until January 2018. Both dates are within the timescales required by the Council and it is therefore considered that the Council should be satisfied on this point.
- 3.24 The Secretary of State can be satisfied that there would be no significant effect on the Council's proposals for the area particularly bearing in mind that its own draft Issues and Options document does not envisage development on the Order land before 2018. Moreover no decisions have yet been taken by the Council on proposals for the long-term development

²³ CRL/6/2 appx 2

²⁴ OBJ/5

²⁵ CRL/3/1 & 2; CRL/4/1 & 2; CRL/5/1 & 2; CRL/6/1 & 2; CRL/7/1 & 2; CRL/8/1 & 2

²⁶ CRL/INQ/9, email of 3 October 2012 18:59

²⁷ CRL/INQ/9, email of 8 October 2012 13:59

²⁸ CRL/INQ/10

²⁹ CRL/2/2, appx C (tab 3), sheet 19 of 19 (the blue/purple loop shown below 'Kensal Green Compound' symbol makes passive provision for a station)

³⁰ CRL/INQ/10, 3rd para on 4th page

³¹ OBJ/5, last para on 4th page

of this site. Planning is at an early stage, namely consideration of options. Two of the three options under consideration depend on provision of a station here, and all comprise comprehensive development requiring agreement with Fortress, Sainsbury's, National Grid and National Rail. The Local Plan may require a Public Inquiry, as may any planning application. Many of the issues arising from the Fortress Ltd's development aspirations for the site, as detailed in Mr Lough's evidence³², also apply to development envisaged by the Council.

- 3.25 The second issue raised in RBKC's draft letter³³ relates to what the Council regards as insufficient survey details in respect of ecological issues. The more wide ranging points made earlier are not now pursued by the Council and it has accepted Crossrail Ltd's evidence on these matters. The evidence of Mr Canavan addresses the outstanding³⁴ (together with the earlier points that had been raised). Having regard to this evidence on the sufficiency of the surveys it is considered that the Secretary of State can be satisfied that this issue has been adequately addressed.
- 3.26 Finally, the Council raises certain points in respect of the air quality surveys. The evidence of Dr Michael Bull addresses these issues and explains why the approach to air quality and mitigation is satisfactory³⁵. Again it is the case that many of the issues raised by the Council in its earlier letter are not now pursued. Indeed, the recent email from the Council's Environmental Quality Team, who would be expected to be well placed to make such assessments, confirmed that there were no matters outstanding in this context³⁶.
- 3.27 Overall it is submitted that the Secretary of State can be satisfied that all relevant matters in this context have been properly considered and addressed. No other objections remain from the Council. Its previous issues relating to contaminated land and traffic have been satisfied.
- 3.28 There is no objection from the Environment Agency on any grounds subject to the imposition of agreed conditions.

Statement of Matters

- 3.29 Overall, in terms of the Statement of Matters, Crossrail Ltd has demonstrated:

(1) *The justification for the proposals.*

This is addressed particularly in the evidence of Messrs Matthew & David White³⁷.

(2) *The main alternatives considered and the reasons for choosing the proposals.*

³² CRL/3/1 section 4

³³ CRL/INQ/10

³⁴ CRL/6/1 section 3

³⁵ CRL/8/1 section 3

³⁶ CRL/INQ/9, email of 3 October 2012 18:59

³⁷ CRL/1/1, particularly sections 2 & 7; CRL/2/1

Again this is addressed particularly in the evidence of Messrs Matthew & David White³⁸.

- (3) *That there is full compliance with national, regional and local policy including that there would be no significant effects on other development proposals in the area.*

Mr Lough's evidence addresses this³⁹, and the objections and contrary evidence in this respect by Fortress Ltd have been withdrawn. As well as the policy aspects, his evidence responds specifically to the concerns of RBKC regarding its aspirations for the future regeneration of the site⁴⁰.

- (4) *That all the powers in the Order are necessary and that there is a compelling need in the public interest for granting the powers in the Order.*

The evidence of Messrs Matthew & David White demonstrates this⁴¹.

- (5) *The likely impacts on owners, occupiers, users of rights of way to be stopped up and the transmission networks and apparatus of utility companies and that there will be no adverse impact on their ability to carry out their businesses effectively and safely.*

As indicated above, all issues in this respect are, or are close to being, resolved.

- (6)-(8) *The likely environmental impacts of the proposals; the measures proposed to mitigate any adverse effects of the proposals including the application of the Crossrail Construction Code, and the extent to which adverse environmental effects would remain after mitigation; and that the Environmental Statement is adequate and meets all statutory requirements.*

The evidence of Mr Richardson gives an overview of the Environmental Impact Assessment process undertaken, which complies with all necessary legislation and procedural requirements⁴². He also addresses issues relating to noise and vibration, water resources and flood risk⁴³.

Technical evidence on further specific environmental topics is set out as follows:

- (i) Highways – evidence of Mr Daley⁴⁴
- (ii) Ecology - evidence of Mr Canavan⁴⁵

³⁸ CRL/1/1, particularly section 3; CRL/2/1

³⁹ CRL/3/1 sections 2 & 5

⁴⁰ Ibid subsection 2.6

⁴¹ CRL/1/1; CRL/2/1

⁴² CRL/4/1 sections 2 & 3.4 and para 5.1.1

⁴³ CRL/4/1 section 3.2

⁴⁴ CRL/5/1

⁴⁵ CRL/6/1

- (iii) Ground conditions and land contamination – evidence of Mr Owen⁴⁶
- (iv) Air quality – evidence of Dr Bull⁴⁷

Mr Richardson's evidence goes on to demonstrate that with implementation of relevant mitigation measures as set out in the Crossrail Construction Code⁴⁸, which could be secured through planning conditions, there would be no significant adverse environmental impacts either in isolation or in combination with other projects⁴⁹.

- (9) *That conditions proposed to be attached to deemed planning permission meet the tests of Circular 11/95.*

Mr Lough's evidence sets out 4 suggested planning conditions agreed with the Transport and Works Act Order Unit and confirms Crossrail Ltd's acceptance of the 2 further conditions suggested by the Environment Agency. It goes on to explain how all these conditions meet the tests in DoE Circular 11/95 (The use of Conditions in Planning Permissions).⁵⁰

- (10) *That the proposals are fully funded within the overall Crossrail budget.*

Mr Lough's evidence confirms that the Crossrail Project has funding sufficient to reach commercial agreement with the landowner, pay the costs of the Order and Inquiry and establish and operate the site compound⁵¹.

- (11) *That no substantive changes to the draft Order are proposed.*

The amended draft Order submitted at the Inquiry⁵² makes only minor editing changes.

Conclusion

- 3.30 Having regard to the evidence and the critical need to deliver the OOCPA works for the timely opening of Crossrail it is respectfully submitted that there is a compelling need in the public interest for the powers in the Order and it is respectfully submitted that the Order should be made.

⁴⁶ CRL/7/1

⁴⁷ CRL/8/1

⁴⁸ CRL/4/2 appx F (tab 7)

⁴⁹ CRL/4/1 sections 3.2 & 3.3 and paras 5.1.2-5.1.4

⁵⁰ CRL/3/1 sections 3.1-3.3

⁵¹ CRL/1/1 section 4

⁵² CD/1.2/1 (with amendments being identified in CRL/INQ/3 & 4)

4. THE CASES FOR THE OBJECTORS

The material points were:

National Grid

- 4.1 National Grid's concerns relate essentially to the safeguarding of electricity and gas infrastructure within or adjacent to the Order land⁵³.

Sainsbury's Supermarkets Ltd

- 4.2 The Company objects to the Order⁵⁴ on the grounds that:
- (1) No proper assessment has been carried out to consider the impact of the carrying out of the works or of closing Canal Way on the functioning and servicing of the Sainsbury's store and petrol filling station, and subsequent adverse impact on the public;
 - (2) No proper consideration has been given to the availability of alternative locations and or working arrangements so as to remove or reduce the impact of the operation on the Sainsbury's store;
 - (3) There has been insufficient consideration of the impact of the works on the vehicular access to the store and upon the ability of the local highway network to accommodate the works; and
 - (4) The draft Order fails to provide compensation consequent upon the stopping up of Canal Way, or by the carrying out of the works generally and should be amended accordingly.

The Council of the Royal Borough of Kensington and Chelsea

- 4.3 The authority's position at the time of the Inquiry is indicated in its draft letter setting out the expected terms of objection expected to be ratified by its elected Members on 17 October 2012⁵⁵. The main objection is:
- (1) The details of the proposed Crossrail (Kensal Green) Order have failed to demonstrate how this application is consistent with the provision of the Kensal Crossrail station and the ultimate works completion date. The content therefore fails to ensure the Council's future aspiration for the site can be fulfilled as designated within the Core Strategy, specifically policy CA1.
- 4.4 The Council also raises objection on the following grounds:
- (2) The Environmental Statement fails to demonstrate adequate investigation of the ecological conditions on site, and fails to confirm the proposed mitigation is adequate. The development is therefore contrary to adopted policy, including Core Strategy Policy CE4; and
 - (3) The Environmental Statement fails to demonstrate adequate information regarding the proposed development and monitoring methods used to minimise the impact on air quality and mitigate

⁵³ OBJ/1

⁵⁴ OBJ/2

⁵⁵ CRL/INQ/10

exceedences of air pollutants, contrary to policies of the Core Strategy adopted 8 December 2010, in particular policy CE5 and the Air Quality Supplementary Planning Document adopted 17 June 2009.

- 4.5 The draft letter sets out the justification for the objections⁵⁶. In summary, in respect of the main objection the Council refers to designation of 'the wider site' as an Opportunity Area in the London Plan for residential, business and other non-residential uses, as a development opportunity in the Core Strategy for RBKC and as a catalyst for regeneration of the north of the Borough and for north-west-central London as a whole.
- 4.6 The draft letter expresses concern about any activity which jeopardises its commitment to the regeneration and growth benefits of this site. In particular it seeks to avoid risks to the strategic development of the site due to an 'indeterminate date' for the end of works within the Order. It welcomes the commitment by Crossrail to leave the site by October 2017 but notes that the agreement proposed by Crossrail includes provision for a possible extension beyond May 2018 due to circumstances beyond the control of Crossrail.
- 4.7 The draft letter also refers to the absence from the Order of confirmation that the works would allow for passive provision for a Crossrail station in Kensal in line with the three tests set out by the Mayor of London (delivery on time, without further cost to taxpayers and without delay to other rail services).
- 4.8 On the second objection regarding ecology the draft letter acknowledges that further information supplied by Crossrail has satisfied the Council that sufficient invasive plant surveys have been undertaken. However the authority maintains its concerns about the adequacy of the bat, reptile and breeding bird surveys and the proposed mitigation measures to address their potential presence.
- 4.9 On the third objection relating to air quality the draft letter again refers to additional information and accepts the conclusions on dust in the operational stage, but also states that other surveys fail to provide sufficient assurance as to the adequacy of mitigation measures to address air quality impacts.
- 4.10 While the Council does not object on any other grounds, the draft letter comments on a number of sections of the Environmental Statement⁵⁷. It casts doubt on whether remediation of contamination of the site from the last lawful use was ever carried out, and points out that further contamination may have occurred from subsequent uses, the nature of which is uncertain. The Council seeks to review the methodology of further soil sampling and testing that Crossrail has agreed to undertake to ensure its acceptability.
- 4.11 Finally, notwithstanding the provisions of the Crossrail Construction Code, the draft letter seeks monitoring of surface and ground water quality and remediation/mitigation of any contamination that occurs, together with

⁵⁶ CRL/INQ/10 pp.2-5

⁵⁷ CRL/INQ/10 pp.5-6

details of a surface water pond proposed during remediation and, for reference, a maintenance schedule during the temporary development.

(The Report continues on the next page)

5. CONCLUSIONS

Introduction

- 5.1 As invited by the Secretary of State, I have considered the objection by the Royal Borough of Kensington and Chelsea ("RBKC") as if the resolution set out in its draft letter had been passed⁵⁸_[1.8-1.9, 3.17-3.18]. However, I recognise that the elected members are not bound to follow the recommendations of their officers, and it seems that there may be some differences of opinion regarding matters relating to this Order amongst the Council's officers_[3.21]. I understand that the Secretary of State will consider the actual resolution passed.
- 5.2 The Secretary of State has not extended similar invitations in respect of the other two remaining objections, by National Grid and Sainsbury's Supermarkets Ltd ("Sainsbury's") respectively. While neither had been withdrawn at the close of the Inquiry, there is evidence to the effect that agreements have essentially been reached between Crossrail Ltd ("Crossrail") and each objector, subject only to the signing of legal agreements following which the objections would be withdrawn_[3.15-3.16]. In both cases this appears to be a formality, but again I recognise that the possibility of these agreements not being ratified after all remains. I assume that the Secretary of State will have regard to any developments on these matters after the Inquiry.
- 5.3 I turn now to address the matters on which the Secretary of State has asked particularly to inform him for the purposes of his consideration of the application. In doing so I have had regard to the extent to which each relates to matters still in dispute.

Matter 1 : The justification for the proposals

- 5.4 The Crossrail project is authorised by the Crossrail Act 2008. Part of it is the works between Old Oak Common and Paddington Approaches ("the OOCA works")_[3.2, 3.4-3.7].
- 5.5 Successful delivery of Crossrail is a matter of Government and local government policy. The Limits of Deviation for the works authorised by the Act were based on preliminary designs. Subsequent design and development has shown that additional land at Kensal Green is required for a temporary compound to support the construction of the OOCA works, which are critical to the overall project. The need for this, to enable the successful and timely delivery of Crossrail with minimum disruption to the existing rail network, is undisputed._[3.3, 3.8-3.10, 3.29(1), 3.30]

Matter 2 : The main alternatives considered and the reasons for choosing the proposals

- 5.6 Although a number of sites were considered and assessed, the site at Kensal Green was the only viable option. It met all the criteria except that it was outside the Limits of Deviation set by the Act, hence the need for the Order.

⁵⁸ References thus _[2.1] in these conclusions are to previous paragraphs in the report on which I have drawn.

It is undisputed that there is no other site or permutation of sites that would enable delivery of the OOCA works as required and on time.^[3.8, 3.29(2)]

Matter 3 : That there is full compliance with national, regional and local policy including that there would be no significant effects on other development proposals in the area

- 5.7 It is undisputed that the Crossrail project is of strategic importance and is supported by planning and transport policy at national, regional and local levels. As addressed above, the proposals to which the Order relates are necessary for delivery of the project in accordance with the provisions of the Crossrail Act 2008.^[3.2, 3.29(3)]
- 5.8 The Order land is within the Kensal Canalside Opportunity Area identified in the London Plan and forms part of the Kensal Gasworks Strategic Site identified in the Core Strategy for the RBKC. Policy CV5 of that document sets a vision for the regeneration of this area, which is supported by other policies in the Core Strategy, and an Issues and Options paper has been published. ^[3.29(3), 4.5]
- 5.9 RBKC Council expresses concern about the 'unspecified period' for which the site is expected to be used. It would be content if the site were returned by May 2018, but notes that Crossrail proposes contingency for a possible extension beyond that date ^[3.23, 4.6]. Crossrail, however, states that it intends to restore the land by October 2017 with a contingency until January 2018^[3.23, 3.29(3)].
- 5.10 Both dates are of course within the timescale sought by the Council, but Crossrail does recognise the possibility of a need to extend occupation beyond May 2018, for the minimum practicable time, due to circumstances beyond its control⁵⁹. However, I share the view of Crossrail that the Council's aspiration to commence development here in May 2018 is very optimistic given the current early stage on planning reached so far for such a complex scheme.
- 5.11 Crossrail points out that a number of milestones in the Council's programme for the delivery of the wider scheme have already been missed, and it cannot be certain that the proposals will have a smooth passage through the planning and statutory processes. Also the scheme is dependent on the actions of various agencies (not least the decommissioning of 2 gas holders on the National Grid land, the risk of delay to which is recognised in the Council's Core Strategy). It seems to me that there is a significant possibility of slippage of the target date for commencement of development. ^[3.24, 3.29(3)]
- 5.12 For these reasons I conclude that, even in the event of an overrun of the use of this site for Crossrail purposes beyond May 2018, there would be no significant effect on the Council's proposals for it.
- 5.13 Some, but not all, of the Council's options for the site require a new station at Kensal Green. The authority appears to be under the impression that the proposed Order would not allow for this. It seems to me that this is a matter for the Crossrail project itself rather than the temporary 'off line'

⁵⁹ CRL/3/1 para 2.6.5; CRL/3/2 appx 3

proposals provided for by this Order, but in any event evidence for Crossrail shows that passive provision is made for such a station. I do not consider that the Order proposals would significantly prejudice the Council's development proposals in this respect.^[3.22, 3.29(3), 4.7]

Matter 4 : That all the powers in the Order are necessary and that there is a compelling need in the public interest for granting the powers in the Order

- 5.14 The conclusions on matters 1-3 above demonstrate the necessity for proposals for which the Order would provide and that this is the only site that can meet the requirements. It is undisputed that the Order is necessary to enable them to be implemented expeditiously to ensure the successful and timely delivery of the project provided for by the Crossrail Act 2008 and that the powers that would be granted by it are in the public interest.^[3.29(4), 3.30]

Matter 5 : The likely impacts on owners, occupiers, users of rights of way to be stopped up and the transmission networks and apparatus of utility companies and that there will be no adverse impact on their ability to carry out their businesses effectively and safely

- 5.15 The remaining objections in this respect appear to be close to resolution^[3.15-3.16, 3.29(5), 4.1-4.2]. Agreement seems to have been reached in principle that would safeguard the gas and electricity infrastructure of National Grid within or adjacent to the Order land. Similarly the terms of an agreement addressing concerns on the part of Sainsbury's regarding the effects on the operation of its store adjacent to the Order land have been finalised.
- 5.16 I conclude that, subject to confirmation that these agreements have been signed by Crossrail and the respective objectors, there would be no adverse effects in these respects.

Matters 6-8 : The likely environmental impacts of the proposals; the measures proposed to mitigate any adverse effects of the proposals including the application of the Crossrail Construction Code, and the extent to which adverse environmental effects would remain after mitigation; and that the Environmental Statement is adequate and meets all statutory requirements.

- 5.17 I have taken in to account the information in the submitted Environmental Statement together with the further information provided in evidence for the Inquiry. The totality of this comprises the environmental information before the Secretary of State^[3.29(6)-(8)]. For the most part the adequacy of the information in terms of content and procedure is unchallenged. Most of the original concerns in this respect on the part of RBKC seem to have been resolved, subject to ratification by the Council of its draft resolution, but some detailed issues seem to remain^[3.20, 3.25, 3.26]. Crossrail has provided further information on these matters which I consider demonstrates that there would, after mitigation, be no significant adverse environmental effects in the respects raised^[3.29(6)-(8)].
- 5.18 The Secretary of State may care to consider the extent to which RBKC has had regard to this evidence in its resolution on this matter, and the extent to

which it has produced contrary evidence in support of its final position if its objection in this respect is maintained.

Matter 9 : That conditions proposed to be attached to deemed planning permission meet the tests of Circular 11/95

- 5.19 Crossrail has suggested 4 planning conditions said to have been agreed with the Transport and Works Act Order Unit of the Department for Transport, and reasons for them^[3.29(9)]. They relate to (i) securing compliance with Crossrail Environmental Minimum Requirements⁶⁰; (ii) setting a 5-year limit for commencement of development; (iii) securing approval of details of the means of enclosure of the site; and (iv) implementation in accordance with approved details.
- 5.20 So far as the time limit is concerned, section 91 of the Town & Country Planning Act 1990 as amended provides that detailed planning permission will normally be granted with a condition that the development must begin within 3 years from the date of the permission. It does allow for longer or shorter durations where appropriate, but no justification has been put forward for the 5 years suggested in this instance.
- 5.21 Moreover, Crossrail has indicated that use of the site is intended to be completed and the land to be restored and returned to the landowner within about 5 years of the date of the Inquiry^[3.9, 3.23], and it would be less than this by the time the Order came into force, if made. Having regard to the desirability of avoiding prejudice to RBKC's long-term redevelopment proposals here, and of meeting the overall programme for the Crossrail project^[3.2], I can see no necessity for such a timescale for commencement of development here.
- 5.22 Crossrail also accepts 2 conditions suggested by the Environment Agency^[3.29(9)]. These relate to (i) requiring permission to be sought for any excavation or modification of the engineered barrier layer constructed as part of the previous remediation of the site (to 'seal in' ground contamination); and (ii) securing approval and implementation of a surface water drainage scheme for the site to prevent increased risk of flooding⁶¹.
- 5.23 I suggest that the former be reworded slightly for consistency with other conditions, while retaining its intent. The latter as put forward includes details of the principles and some of the parameters of the required scheme. While the main thrust of the condition would be necessary, in my view the detailed provisions would not as the local planning authority would be expected to have regard to such considerations in consultation with the Agency in any event.
- 5.24 I note that the Agency also suggested a further condition regarding measures to prevent the spread of Japanese Knotwood. The aims of this condition are undisputed, and Crossrail recognises the need for relevant procedures⁶². However, there are strict statutory controls in this respect under the Wildlife and Countryside Act 1981. The Circular advises (para 22)

⁶⁰ CRL/4/2 appx C (tab 3)

⁶¹ REP/1

⁶² CRL/6/1 para 2.11.5

that conditions which duplicate the effect of controls under other legislation will normally be unnecessary.

- 5.25 There are no objections to the remaining suggested conditions, or to the absence of any further conditions. In the light of the evidence of Crossrail on the matter, and subject to the above points, I am satisfied that the 6 conditions suggested meet the tests of the Circular^[3.29(9)].

Matter 10 : That the proposals are fully funded within the overall Crossrail budget.

- 5.26 I have seen or heard nothing to lead me to doubt the evidence of Crossrail that the proposals can be funded within the Crossrail project^[3.29(10)].

Matter 11 : That no substantive changes to the draft Order are proposed

- 5.27 An amended draft Order was tabled at the Inquiry, but the proposed amendments address minor drafting errors or clarify details^[3.29(11)]. No substantive changes are proposed, and I have seen nothing to suggest that anyone's interests would be prejudiced by the amendments.

Overall conclusion

- 5.28 For the above reasons, but subject to any further developments regarding the objections by National Grid, Sainsbury's and RBKC, I conclude that the Order should be made subject to the amendments submitted, and that deemed planning permission should be granted subject to the suggested conditions.

6. RECOMMENDATIONS

- 6.1 Subject to consideration by the Secretary of State of any further developments regarding the objections by National Grid, Sainsbury's Supermarkets Ltd and the Council of the Royal Borough of Kensington and Chelsea since the close of the Inquiry, I RECOMMEND that:
- (A) The Crossrail (Kensal Green) Order 20[], modified in accordance with Inquiry document CD/1.2/1, be made; and
 - (B) Deemed planning permission for the provision of a working site and access for construction in accordance with the application be granted subject to the following conditions:
 - (1) The development shall commence no later than the expiration of three years beginning with the date that the Order comes into force.
 - (2) The development shall be carried out in accordance with the Crossrail Environmental Requirements.
 - (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.
 - (4) Development shall not begin until a surface water drainage scheme, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of

the development has been submitted to and approved in writing by the local planning authority.

- (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 until details of that work have been submitted to and approved in writing by the local planning authority.
- (6) All works or matters that require approval under these conditions shall be carried out in accordance with that approval or any subsequent approvals that have been submitted to and approved in writing by the local planning authority.

Alan Boyland

Inspector

APPENDIX B : DOCUMENTS LIST

CORE DOCUMENTS

Application documents

<i>No.</i>	<i>Title/description</i>	<i>Date</i>
CD/1.1	Application	March 2012
CD/1.2	Draft Order per application	March 2012
CD/1.2/1	Amended draft Order ⁶³	9 Oct. 2012
CD/1.3	Explanatory Memorandum	March 2012
CD/1.4	Statement of Aims	March 2012
CD/1.5	Consultation Report	March 2012
CD/1.6	List of all Consents, Permissions or Licences	March 2012
CD/1.7	Funding Statement	March 2012
CD/1.8	Estimate of Costs	March 2012
CD/1.9	Works and Land Plan	March 2012
CD/1.10	Book of Reference	March 2012
CD/1.11	Request for Deemed Planning Permission and Statement of Proposed Conditions	March 2012
CD/1.12	Planning Direction Drawings	March 2012
CD/1.13	Planning Statement	March 2012
CD/1.14	Design and Access Statement	March 2012
CD/1.15	ES Scoping Opinion	March 2012
CD/1.16	Environmental Statement incorporating Non Technical Summary	March 2012
CD/1.17	CRL's Statement of Case	June 2012

Legislation and Policy

CD/2.1	Town and Country Planning Act 1990 [Section 90 (2A)]	1990
CD/2.2	Transport and Works Act 1992	1992
CD/2.3	Control of Major Accident Hazards Regulations 1999	1999
CD/2.4	Control of Major Accident Hazards (Amendment) Regulations 2005	2005
CD/2.6	Transport and Works (Model Clauses for Railways and Tramways) Order	2006
CD/2.7	Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006	2006
CD/2.8	Crossrail Act 2008 (Chapter 18)	2008
CD/3.1	White Paper The Future of Transport – A Network for 2030	July 2004
CD/3.2	White Paper The Future of Rail	July 2004

⁶³ 'Clean' version of doc. CRL/INQ/3 (see also list of amendments at CRL/INQ/4)

CD/3.3	Consultation Zones for Kensal Green Holder Station	2006
CD/3.4	Department for Transport: Delivering a Sustainable Railway	July 2007
CD/3.5	Mayor of London's Transport Strategy – Executive Summary	May 2010
CD/3.6	Core Strategy Proposals Map	Dec 2010
CD/3.7	Core Strategy, with a focus on North Kensington Development Plan Document	Dec 2010
CD/3.8	Planning Advice for Developments near Hazardous Installations	May 2011
CD/3.9	<i>Draft</i> National Planning Policy Framework	July 2011
CD/3.10	London Plan, Spatial Development Strategy for Greater London	July 2011
CD/3.11	National Planning Policy Framework	March 2012
CD/3.12	Issues and Options Paper for Kensal Gasworks	2012

Scheme Project Development Documents

CD/4.1	Consultation Leaflet	Nov 2011
CD/4.2	Crossrail Programme	June 2012
CD/4.3	Site Compound Indicative Layout	June 2012
CD/4.4	Detailed Breakdown of Staff on Site	June 2012
CD/4.5	Detailed Breakdown of Construction Plant on Site	June 2012
CD/4.6	OOCPA Works Programme	June 2012

EVIDENCE FOR CROSSRAIL LIMITED

Proofs of Evidence etc.

CRL/1/1	Proof of Evidence of Matthew White (CRL)	Sept. 2012
CRL/1/2	Appendices to Proof of Evidence of Matthew White	
CRL/1/3	Summary Proof of Evidence of Matthew White	
CRL/1/4	Mathew White's rebuttal of Mr McPhee's Proof of Evidence (Fortress)	Sept. 2012
CRL/2/1	Proof of Evidence of David White (Network Rail)	Oct. 2012
CRL/2/2	Appendices to Proof of Evidence of David White	
CRL/2/3	Summary Proof of Evidence of David White	
CRL/2/4	David White's rebuttal of Mr. Belsten's Proof of Evidence (Fortress)	September 2012
CRL/2/4/A	Deed of Grant between Fortress Ltd and Transport for London relating to Plot 3 Canal Way Royal Borough of Kensington & Chelsea	December 2010
CRL/2/4/B	Agreement between Secretary of State for Transport, Crossrail Ltd & Fortress Ltd	July 2008
CRL/3/1	Proof of Evidence of James Lough (Arups)	
CRL/3/2	Appendices to Proof of Evidence of James Lough	
CRL/3/3	Summary Proof of Evidence of James Lough	
CRL/4/1	Proof of Evidence of Gordon Richardson (Arups)	
CRL/4/2	Appendices to Proof of Evidence of Gordon Richardson	

CRL/4/3	Summary Proof of Evidence of Gordon Richardson
CRL/5/1	Proof of Evidence of John Daley (Arups)
CRL/5/2	Appendices to Proof of Evidence of John Daley
CRL/5/3	Summary Proof of Evidence of John Daley
CRL/6/1	Proof of Evidence of Rory Canavan (Arups)
CRL/6/2	Appendices to Proof of Evidence of Rory Canavan
CRL/6/3	Summary Proof of Evidence of Rory Canavan
CRL/7/1	Proof of Evidence of Richard Owen (Arups)
CRL/7/2	Appendices to Proof of Evidence of Richard Owen
CRL/7/3	Summary Proof of Evidence of Richard Owen
CRL/8/1	Proof of Evidence of Dr Michael Bull (Arups)
CRL/8/2	Appendices to Proof of Evidence of Dr Michael Bull
CRL/8/3	Summary Proof of Evidence of Dr Michael Bull

Submitted at Inquiry

CRL/INQ/1	List of appearances on behalf of the promoter	
CRL/INQ/2	Crossrail Compliance Pack	
CRL/INQ/3	Draft Order amended for the Inquiry (tracked changes version) ⁶⁴	9 Oct. 2012
CRL/INQ/4	Paper of Amendments to the Draft Order as shown on CRL/INQ/3	
CRL/INQ/5	Text of opening/closing submissions on behalf of Crossrail Limited (<i>subject to oral delivery</i>)	9 Oct 2012
CRL/INQ/6	Copy of letter of withdrawal of objection by J Murphy & Sons	4 Oct 2012
CRL/INQ/7	Letter from National Grid to Crossrail Ltd confirming withdrawal of its objection subject to completion of an Agreement, together with copy of the acceptable draft agreement and associated email correspondence.	9 Oct 2012
CRL/INQ/8	Email correspondence between Eversheds LLP (for Crossrail) and Lawrence Graham LLP (for Sainsbury's Supermarkets Ltd) regarding stages in the negotiation of an Agreement between the parties with the aim of securing withdrawal of the Sainsbury's objection.	Various
CRL/INQ/9	Email correspondence between Crossrail Ltd and the Council of the Royal Borough of Kensington & Chelsea.	Various
CRL/INQ/10	DRAFT letter from the Council to Transport and Works Act Orders Unit of DfT setting out the Council's formal objection to the Order subject to ratification at its meeting on 17 October 2012.	(Undated)

⁶⁴ See also docs. CD/1.2/1 & CRL/INQ/4

OBJECTOR DOCUMENTS**Objections & Representations re. Application**

OBJ/1	Holding objection... ... and formal objection by National Grid	16 Mar. 2012 11 April 2012
OBJ/2	Objection by Lawrence Graham LLP on behalf of Sainsbury's Supermarkets Ltd (<i>see also doc. SSL/2</i>)	16 April 2012
OBJ/3	Objection by Gerald Eve LLP on behalf of J Murphy & Sons Ltd (<i>withdrawn – see doc. CRL/INQ/6</i>)	18 April 2012
OBJ/4	Objection by Nabarro LLP on behalf of Fortress Ltd (<i>withdrawn - see doc. FL/5/1</i>)	18 April 2012
OBJ/5	(Holding) objection by the Council of the Royal Borough of Kensington & Chelsea... ... and email setting out objection on highway grounds.	18 April 2012 19 April 2012 @ 10:35
REP/1	Representation by the Environment Agency	11 April 2012

Other Documents Submitted by ObjectorsSainsbury's Supermarkets Ltd

SSL/1	Statement of Case	26 Jun 2012
SSL/2	Email indicating intention not to submit evidence or attend Inquiry and to withdraw the Company's objection once an agreement had been signed	4 Oct. 2012 @ 13:54

Fortress Ltd

FL/5/1	Letter of withdrawal of the objection & covering email	8 Oct 2012
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Inspector's note: As indicated in the body of this Report, in withdrawing its objection Fortress Ltd indicated that it had no objection to its statement of case and evidence submitted for the Inquiry being disregarded. Nevertheless I include them for information as references to them are made in the evidence of Crossrail Ltd.

FL/1/1	<i>Proof of Evidence of Jon McPhee</i>	<i>Sept 2012</i>
FL/1/2	<i>Summary of Proof of Evidence of Jon McPhee</i>	<i>Sept 2012</i>
FL/2/1	<i>Proof of Evidence of Nick Belsten</i>	<i>Sept 2012</i>
FL/2/2	<i>Summary of Proof of Evidence of Nick Belsten</i>	<i>Sept 2012</i>
FL/3/1	<i>Statement of Case</i>	<i>June 2012</i>
FL/3/1.1	<i>Fortress Limited's Master Plan (ref. 718 SK 019) produced by Allies & Morrison</i>	
FL/3/1.2	<i>Extracts from the Royal Borough of Kensington & Chelsea Local Development Framework</i>	
FL/3/1.3	<i>Extracts from the London Plan</i>	
FL/3/1.4	<i>Royal Borough of Kensington & Chelsea Issues and Options Paper for Kensal Gasworks</i>	<i>June 2012</i>

<i>FL/3/1.5</i>	<i>Risk Assessment report and appendices by Renaissance Risk (including examples of planning permissions and associated documents where permission was granted against HSE advice)</i>	
<i>FL/3/1.6</i>	<i>PADHI – HSE’s Land Use Planning Methodology</i>	<i>May 2011</i>
<i>FL/3/1.7</i>	<i>HSE Criteria Document for Land Use Planning Cases of Serious Public Safety Concern</i>	<i>Aug 2011</i>
<i>FL/3/1.8</i>	<i>HSE’s Current Approach to Land Use Planning</i>	
<i>FL/3/1.9</i>	<i>National Grid Gas Distribution – Network Engagement presentation dated</i>	<i>13 Dec 2011</i>
<i>FL/3/1.10</i>	<i>Approved Mayor of London report ref: MD922</i>	<i>24 Feb 2012</i>
<i>FL/3/1.11</i>	<i>Transport for London Board report</i>	<i>21 Sep 2011</i>
<i>FL/3/1.12</i>	<i>Transport for London Board minutes</i>	<i>21 Sep 2011</i>
<i>FL/3/1.13</i>	<i>Eversheds’ letter</i>	<i>23 May 2012</i>
<i>FL/3/1.14</i>	<i>Crossrail letter</i>	<i>23 Mar 2012</i>
<i>FL/3/1.15</i>	<i>Network Rail Works Programme</i>	
<i>FL/3/1.16</i>	<i>Network Rail Scoring Document for Old Oak Common and Paddington Approaches (OOCPA)</i>	
<i>FL/3/1.17</i>	<i>Network Rail OOCPA/IEP Staging Diagrams (Draft)</i>	
<i>FL/3/1.18</i>	<i>Network Rail OOCPA Stage Activities Schedule</i>	
<i>FL/3/1.19</i>	<i>Network Rail Main Works Programme</i>	
<i>FL/3/2</i>	<i>Fortress Limited’s objection letter (duplicate of doc. INQ/4)</i>	<i>18 Apr 2012</i>
<i>FL/4/1</i>	<i>Jon McPhee’s rebuttal of David White’s Proof of Evidence from Crossrail Ltd.</i>	<i>Oct 2012</i>
