

Thames Water

Further Statement expanding upon previous
representation in respect of Policy CE2

1. Introduction

1.1 Thames Water has been requested by the UK Government to “*proceed urgently with the development and implementation*”¹ of a scheme that includes the Thames Tunnel. This is a major infrastructure project that will convey sewage that currently flows into the Thames from combined sewer overflows around 50 times a year, eastward for treatment at Beckton Sewage Treatment Works. The volume of these spills is currently estimated at 39 million cubic metres in a typical year. The route of the tunnel will mainly follow that of the Thames. Therefore it is likely that the Thames Tunnel will pass under land within the Royal Borough of Kensington and Chelsea. We also know that the Tunnel will need to intercept outfalls within the Royal Borough, one of which is one of the most polluting in London. Construction sites would also, therefore, be needed within the Royal Borough. Full details of the project can be found in the Government’s March 2007 Regulatory Impact Assessment (RIA) (AR/1).

1.2 At all stages in the process of preparing the Kensington and Chelsea Core Strategy Thames Water has sought to persuade the Council to include, within the strategy, policy support for the project. The Project is of national importance² supported by policies in the existing London Plan and draft replacement London Plan. This can be seen in our representations on the proposed submission document. Although the Plan has not amended the plan as we would wish, we have worked hard with officers to get as far as we have, and there is only one change that we need to make, but this is an important change that goes to the heart of the soundness of the document.

1.3 In the interests of clarity it should be recognised that the Thames Tideway Tunnels consists of two tunnels; the Lee Tunnel and the Thames Tunnel. The Lee Tunnel will be constructed entirely within the London Borough of Newham. The Lee Tunnel already has planning permission and works are underway. This representation therefore deals with the Thames Tunnel only. The Thames Tunnel would be constructed between a location in the west of

¹ See paragraph 11.7 page 53 Defra RIA March 2007 (AD/1))

² See Hansard 1 March 2010 Column 93WS – Appendix B

London and the London Borough of Newham, connecting to Combined Sewer Overflows along its route.

2. Drivers for the Thames Tunnel

2.1 The Urban Waste Water Treatment Directive (UWWTD) (91/271/EEC) seeks to protect the environment from the adverse effects of waste water discharges. The directive indicates that pollution from storm water overflows should be limited. The European Commission believes that the UK is in breach of its obligations and has indicated that it is to commence infraction proceedings against the UK Government in respect of the London network in the European Court of Justice. A press release is attached at appendix A. Infraction proceedings could lead to fines against the UK Government consisting of a lump sum and daily payments. These are set at a level at which it is uneconomic not to comply with the directive. It is therefore in the national interest that the issue is resolved, and as set out in the RIA all UK regulators agree that the Thames Tunnel and Lee Tunnel will lead to compliance with the directive.

2.2 The Thames Tunnel and Lee Tunnel also have benefits in terms of the Water Framework Directive in leading to improvements in water quality and the achievement of good status in water bodies by 2027. The Thames River Basin Management Plan identifies on page 79:

“Improvements to the sewage treatment works along the tidal River Thames and the construction of the London Tideway Tunnels are planned to be delivered by Thames Water over the next two river basin cycles. These major projects represent the primary measures to address point source pollution from the sewerage system and are fundamental to the achievement of good status in this catchment.”

Regulation 17 of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 states that each public body must have regard to River Basin Management Plans and supplementary plans, so it is odd that this document is missing from the evidence base.

2.3 It is therefore important to good infrastructure planning that the Thames Tunnel, as a primary measure which is fundamental to achieving good status within the Estuaries and Coastal Waters Catchment, is accorded full support

within the Core Strategy so far as it passes through and/or involves works within the Council's area.

3. Policy Support.

3.1 The national policy on water, *Future Water* was published by Defra in 2008 and it states on page 50 paragraph 17 :

“The Thames Tideway scheme, consisting of large scale infrastructure improvements to London’s combined sewer system and treatment works, will address pollution from sewage, which affects the tidal river Thames and the river Lee. It is expected to be completed by 2020, and will make significant improvements to water quality and the natural environment in London, where there are currently between 50 and 60 overflows per year. The National Policy Statement on water and wastewater treatment infrastructure will include major infrastructure projects such as the Thames Tideway scheme.”

We are surprised that the national policy on water is not within the Council's evidence base.

3.2 Furthermore on 1 March 2010 the then Minister at Defra made a statement to Parliament on the Thames Tunnel. A copy is attached at Appendix B. The important points to come out of this statement are that the tunnel is of national significance and a repeat of the statement that the Thames Tunnel will feature in the Waste Water NPS.

3.3 We believe that a draft NPS will be published this year, possibly before the Inspector reports on this Core Strategy, that will include reference to the Thames Tunnel, and thus the Core Strategy will need to have regard to it.

3.4 However, we do not need to wait until the draft NPS is published to look for strategic policy support for the project. The Thames Tunnel has clear policy support in both the approved London Plan and the draft replacement London Plan (currently the subject of an EiP).

3.5 The approved London Plan states at Policy 4A.17, in part,

“In particular the mayor will, and the boroughs should, support the implementation of the Thames Tideway Sewer Tunnel project and associated infrastructure...”

3.6 Paragraph 4.52 of the approved London Plan correctly sets out the context for the Thames Tunnel. It concludes:

“The mayor supports the timely implementation of the project, which is expected to take up to 2020. Boroughs will need to resolve local matters, for example, design, construction, traffic management, remediation and mitigation. The project directly affects some 12 London boroughs. The principle of the project is strategically important to delivering a more sustainable London”.

3.7 The draft replacement London Plan is structured in a different way and includes specific advice on the content of LDF's. Policy 5.14 of the draft replacement London Plan indicates in the “planning decisions” section:

“The development of the Thames Tideway Sewer Tunnels to address London’s combined sewer overflows should be supported in principle.”

And under the heading “LDF Preparation” it states

“Within LDFs boroughs should identify sewerage infrastructure requirements and relevant (sic) boroughs should support in principle the Thames Tideway Sewer Tunnels.”

3.8 It is noted that in their representations on the Core Strategy the Government Office for London (GOL) did not think that the Kensington and Chelsea Core Strategy was legally compliant, sound or effective for the following reason:

“We note the reference to the Thames Tideway Tunnel in Policy CE2. You will be aware that DEFRA’s Water Strategy for England (February 2008) sets out Government support for the construction of the Thames Tideway Tunnel to limit pollution from sewer overflows. This was preceded by a Ministerial Statement by Ian Pearson, Minister for Climate Change and the Environment on 22 March 2007 on the decision to take the project forward. The Core Strategy should therefore include policy to support the principle of the Thames Tideway Tunnel.”

For ease of reference we attach the GOL representation as appendix C. As noted above the Royal Borough may not have been aware of Future Water as it is not in their evidence base.

3.9 Furthermore the Mayor's draft Water Strategy 2009 (also not in the Council's evidence base) contains a useful summary of the background to the Thames Tunnel in chapter 5. This concludes with Proposal 10:

"The Mayor will work with Thames Water and other partners to support the construction of the Thames and Lee Tunnels, in a cost-effective way and minimising disruption, as a means of greatly reducing storm discharges from the combined sewer system and improving the quality of the water in the River Thames"

4. References to Thames Tunnel in Kensington & Chelsea Core Strategy and its evidence base.

4.1 The Royal Borough of Kensington and Chelsea is a Member of Central London Forward (CLF) which lobbies for central London Councils and as a group they commissioned a report from URS to examine their joint infrastructure requirements. This is known as the Central London Infrastructure Study July 2009 (CD97) and has been used by many of the contributing Councils to inform their Core Strategies. Unfortunately the version on the Council's web site is an early draft not including the executive summary with the key recommendations. This was first drawn to the Council's attention last year. Relevant Correspondence and the executive summary are attached at appendix D.

4.2 This refers to the Thames Tunnel in a number of places, with a detailed and accurate discussion on page 87, and a diagram on page 89, but more importantly table 5 on page xiv of the executive summary places the Thames Tunnel top of a list of central London infrastructure requirements and states as the recommended action "*ensure delivery of Thames Tideway overflow scheme*".

4.3 The Infrastructure Delivery Plan (CD131) was published in January 2010 – that is after consultation on the proposed submission Core Strategy closed. Although this document draws heavily on the URS study for CLF, with many sections being the conclusions of the equivalent section from the URS study, the references to the Thames Tunnel in the URS Study have not been carried

forward into the Infrastructure Delivery Plan (IDP). The URS Study is generally factually correct, but the only reference in the IDP is factually incorrect (paragraph 4.18) as it links the Thames Tunnel with the Environment Agencies TE2100 project and dealing with flood risk, whereas as explained above the Thames Tunnel deals with sewer overflows and the prime driver is the EU Urban Waste Water Treatment Directive.

4.4 The Proposed Submission version of the Core Strategy on which our representation is based refers to the Thames Tunnel on pages 229 and 230, which rather misleadingly refers to flooding.

4.5 The supporting text at paragraph 36.3.19 accurately reports that we have been asked by the Government to develop the Thames Tunnel and that the importance and London wide benefits of the project are recognised by the GLA.

4.6 Policy CE2 sets a number of criteria by which the construction works associated with the Thames Tunnel will be assessed. These mention by inference the locations of the two combined sewer overflows in the Royal Borough that the Environment Agency requires us to intercept. It is reasonable for the Council to seek to mitigate any construction impacts, although the policy tests for a structure that will be mostly underground seem a little odd.

4.7 There is a reference on page 235 at bullet point 6 indicating that the planning department will work with Thames Water to ensure that the:

“timely implementation of the Thames Tideway Tunnel has a minimal impact on the Borough”

4.8 Finally there is also a reference to the Thames Tunnel on page 257 in a table that sets out the key infrastructure requirements within the Borough.

5. Consideration of Planning Issues

5.1 The proposed submission document is close to being acceptable to Thames Water, but although the changes that we suggest are relatively minor they go to the heart of the issues of soundness and without them the Plan is unsound.

5.2 As identified above, the London Plan indicates that Boroughs should support the Thames Tunnel project. We look for this support to be clearly and explicitly made. Ideally we would expect this to be reflected within the wording of a policy. Other Core Strategies that have recently gone through the planning process do this. The Wandsworth Core Strategy has been found to be sound and is expected to be adopted in the autumn. Policy IS6 states (in part) *“The Council will work with Thames Water to support the timely implementation of the Thames Tideway Sewer Tunnel project, including the connection of the combined sewer overflows in the borough.”* The Inspector’s report recommends no changes to this text. Tower Hamlets Core Strategy has been the subject of an examination in April 2010 and the Inspectors report is now awaited. Policy SP04 states (in part) that the Council will achieve its vision by *“Supporting the development of the Thames Tunnel and associated storm relief connections by working closely with Thames Water to facilitate its implementation.”* Extracts from both plans can be found at Appendix E.

5.3 Crucially, in our view, both these boroughs are able to express support for the principle of the Thames Tunnel within policy, in accordance with Policy 4A.17 of the adopted London Plan. In our view both these approaches are in general conformity with the wording and spirit of the existing London Plan by translating the strategic support into local support. The failure of the Royal Borough’s Core Strategy to do the same has been recognised by GOL in its representations.

5.4 Given that the two strategies referred to above are in accordance with the adopted London Plan we see no reason why the other boroughs through which the Thames Tunnel is likely to pass and/or within which works for the Thames Tunnel are likely to be necessary, should not. It would be a failure of strategic planning if consistency were not achieved. This would leave the way open for a piecemeal approach toward local policy support and in relation

to the planning of the tunnel that should be avoided and which the London Plan also seeks to avoid.

5.5 Whilst the existing London Plan is not explicit in explaining how the project should be supported, the draft replacement is, stating that the principle should be supported within LDF's. That support is lacking from the Royal Borough's Core Strategy as it merely records the report in the London Plan, but does not clearly set out the Borough's own support and hence the document is not in general conformity with the draft replacement London Plan. We would expect the proposed policy to be retained in the final version and it would be bizarre if a new Core Strategy were not in general conformity with the new London Plan, so in our view the Core Strategy should be corrected to be in accordance with the draft replacement London Plan and support the principle of the Thames Tunnel.

5.6 As established above it is national policy, following a ministerial decision in 2007 and as set out in Future Water, and in the national interest to construct the Thames Tunnel. We believe that given that the planning applications for the Thames Tunnel will need to be framed as having regard to local policy the support of the potentially affected Borough Councils to the Project will need to be established in their Core Strategies and other planning documents.

6. Proposed Changes

6.1 We remain of the view that the Core Strategy is unsound as it not properly justified, not providing the support to the Thames Tunnel required by its own, partly due to defective evidence base; is not effective and fails the legal tests.

6.2 We would propose that paragraph 36.3.19 be reworded as follows:

“Thames Water has been instructed by the Government to develop and implement a scheme to substantially reduce the amount of untreated sewage that currently overflows directly to the River Thames after rainfall. The proposed Thames Tunnel will capture sewage discharges from existing Combined Sewage Overflows (CSOs) into a new tunnel and transfer the collected sewage for treatment. Two CSOs need to be intercepted within the Royal Borough, one at Lots Road and one located close to the Royal Hospital. The London wide benefits of the Thames Tunnel are recognised by the Greater London Authority and in the Thames River Basin Management Plan which recognises that the tunnel is fundamental to improving the water quality in the Thames catchment. Accordingly the Royal Borough supports the principle of the project and suggests detail policy criteria for managing impacts.”

6.3 This would address the legal tests and make the policy sound. We feel the wording of policy CE2 could also be improved but our concerns with the existing wording do not go to the heart of the tests of soundness.

7 Summary and Conclusions

- National policy and Mayor's Plan support the Thames Tunnel and in the latter case requires relevant local authorities to express their support.
- Current policies in Draft Core Strategy do not express their support or place the need for the Thames Tunnel within the context of a wastewater infrastructure requirement irrespective of growth.
- The Royal Boroughs evidential base includes (or should include) the Thames the Mayor's Water Strategy, the March 2007 Regulatory Impact Statement, the Thames River Basin Management Plan, therefore revisions to the draft Core Strategy are justified by the existing evidence.
- Without the revisions sought by Thames Water, Kensington and Chelsea's draft core strategy would be both inconsistent with other similar core strategies which do respond to London Plan policy requirements. Were the draft strategy not to be amended it would therefore be unsound, unlawful and ineffective in that: it would pay insufficient regard to National Policy, would not generally conform to the London Plan; it would not embrace sound infrastructure planning and would not deliver coherence with other London authorities.