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THAMES GATEWAY BRIDGE: POST-INQUIRY SUBMISSION

DAVID BLACK/ OBJECTOR 1944

Dear Sir or Madam,

I write in respect of the TGB inquiry. I understand from the final transcript that I can forward, to your department, any additional matters that have arisen and are relevant to the proposal before the Inspectors and the Secretaries of State. I was unable to attend the closing session of the inquiry, unfortunately, because I had already left the UK and was in France. I have noted a number of misapprehensions on the part of the developer, Transport for London (TfL), with respect to my proofs of evidence, presentation and cross-examinations. I appreciate that the aspects concerned would normally be examined carefully by the Inspectors and the Secretaries of State. I was unable to draw their attention to these, however, due to my absence at the closing session and I am anxious to avoid any possible misrepresentation of my evidence, by TfL, inadvertently or otherwise. Please accept the following submission, which is intended for consideration by the Secretaries of State.

I am in Portugal at present and will be for some months to come. I would be grateful if you could acknowledge receipt of this submission. My mail is forwarded from the above address.

Response to TfL's Closing Submission (TfL 334)

-1/ P.198 (5.68.9) To quote: 'The issues raised in the Mogridge articles [1944/1/A2] are to be distinguished for the reasons discussed in Mr Black's cross-examination (T 79/188 to /197) and by Mr Smith (T 78/207 to /214). The TGB is not involved with opening a new road parallel to an exiting (existing?) road both carrying traffic with the same origins and destinations but with taking 5 miles out of a journey. Even if it is a congested journey, it will be much faster because it is not as long as existing alternatives (T 78/214/4-6).'

The essential part of my argument, in extrapolating from Dr. Mogridge's article (1944/1/A2/Annex II/3), is given in 1944/1/A2 (P.6, 6.4.7). TfL contends that Dr. Mogridge proposes that we allow roads to fill up with traffic, to promote the use of rail; such a proposal is not made in this article (T 78, P.209, 18-22). The article is not dealing with the opening of a new road parallel to an existing road, nor a bypass; it looks at the situation where two alternatives are available to motorists, in order for them to travel from one location to another. The article also examines the situation where a road and rail link both connect the same given locations. Dr. Mogridge is not dealing with trip ends; motorists and passengers using his postulated alternative routes could have origins and destinations outside the locations connected by the alternative routes. This applies to road and rail links; the Woolwich DLR Extension and the TGB would thus be two such competing alternative routes, connecting two, similar locations, north and south of the Thames.

I refer you here to my closing submission (1944-13, P.10). This explains, quite clearly, the relevance of Dr. Mogridge's article. A rail link, as an alternative to the TGB, would reduce journey times without a congested journey, in comparison with the alternative crossings referred to by TfL, presumably the A102M, the M25 at Dartford and the Woolwich Ferry. It would also not compete with the DLR Extension at Woolwich, as would the TGB, though it could encourage modal transfer from car to rail. The 3 existing, alternative crossings referred to can deal with the transport of freight, together with any additional provision by river, thus avoiding the adverse environmental impact of another road crossing.

I was asked why the proposed toll on the TGB would differ from a road congestion charge, in that both were taxes on road users. The proposed TGB toll is a *differential* one for a proposed river crossing by road; the

congestion charge alluded to by TfL is a *fixed* charge on an existing road network. The proposed TGB differential toll is presented as a means of discouraging 'non-local' use of the proposed river crossing, to prevent car, LGV and HGV drivers from outside the local area making use of the crossing as a shortcut between the A2 and M11/M25, and other strategic routes. Taxes can have both 'positive' and 'negative' effects; the inland revenue does not, one presumes, levy income tax in order to discourage people from working. TfL seems to view taxes or tolls as disincentives for particular courses of action, as well as sources of revenue. Taxes or tolls *may* affect drivers' behaviour; how they do so, and to what extent they are analogous, is another matter.

-2/ (5.68.11) To quote: 'Mr Black raises 5 legal submissions relating to the ES.'

(5.68.12) 'The first is that the scheme should have been assessed as a Schedule 1 rather than Schedule 2 development. This appears to be because he considers that the TGB proposal should be regarded as the "Construction of a new road of four or more lanes... where such new road... would be 10 kilometres or more in a continuous length" (para 7c of Schedule 1 to the T&CP (EIA) Regs 1999). His only reason for this is that "no legally binding guarantee exists that would prevent [its likely] extension to the A2 [1944-13 p.7]. Such an extension is not likely, and is no basis for treating the TGB as Schedule 1 development, nor is TfL guilty of breaking up projects into smaller sections "in order to frustrate the intention of [the] Directive". This leads on to his claim that the ES is deficient under Article 3 of EIA Directive 85/337, as amended, for failing to "identify, describe and assess" an extension to the A2 [1944-13 p.7]. For the same reason this is simply wrong.'

This is a misapprehension on the part of TfL. The TGB extends the existing A406 North Circular; the new section of road would thus be more than 10 kms in a continuous length, as part of the A406. This does not require the future extension of the TGB to the A2, as assumed by TfL (T 79, P.65, lines 10-22). It should therefore be classified as an Annex I project, as described by Directive 97/11/EC (Annex I, 7c). One reason it has not been classified as such, by TfL, is an attempt to conceal its strategic, as opposed to its purported local, function.

The relevant part of my closing submission should in fact be two separate paragraphs, rather than one (1944-13, P.7, final para). The first paragraph should end at: '...No legally binding guarantee exists that would

prevent the said extension.’ The rest of this paragraph should be separate, referring to the nature of the TGB as Annex I or II, and commencing: ‘The project has been described as Annex II...’ and ending ‘...in order to frustrate the intention of this section of the Directive.’ The two paragraphs refer to different aspects of the TGB scheme and should be treated as such.

P.199 (5.68.15) To quote: ‘The fourth relates to alleged deficiencies in not properly assessing “light and heavy rail alternatives... before a preferred option was selected”. This is said to be contrary to Art 5(1) and (3) of the Directive [1944-13, p.8]. All Art 5(3) of the Directive requires is “an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects” (see also para 2 of Part 1 of Schedule 4 to the Regulations). Therefore there is no obligation under the Directive to assess alternatives. It is left to the developer to decide what if any alternatives he will study, and (if he does study alternatives) to refer to the “main alternatives” in the ES. This was done here. Heavy rail was not considered to be a “main alternative”, and therefore were not included in the ES but DLR and tram options were considered (4.6 of D808).’

The Directive, at Art 5(3), does not say that an outline of the main alternatives studied by the developer is required, *if* the developer chooses to consider any alternatives. It is also clear that the developer cannot give ‘the main reason for his choice’, if he has not considered any alternatives. Heavy rail clearly would constitute a main alternative, especially in view of the absence of proposals to develop freight transport by rail, in east London. DLR and tram options were not considered as separate projects, but as part of the current proposal: TGB +/- DLR and TGB +/- tram; these are not main alternatives, they are variations of one option, the current proposal. WEBTAG confirms the need for an assessment of alternatives, in my view to be regarded as separate options rather than variations of one option. The WEBTAG guidance (Section 3, Unit 3.2, P.6, 1.3.3-1.3.5) is dated February 2004, before the ES was published (see 1944-13, P.9, para 3). The belated assessments carried out by TfL lack adequate detail, which does not permit a viable comparison with the TGB proposal to be made.

I reiterate this point because I believe that the Directive does in fact require an assessment of distinct/main alternatives. I do not agree with TfL’s conclusions on my other legal submissions but our differences are obvious, and a matter for the Inspectors and the Secretaries of State to consider. I must stress that in my view the construction of the TGB would imply and

facilitate the construction of a further extension of the A406 North Circular orbital route to the A2. This would be a likely consequence of the construction of the TGB and thereby an effect of it; this effect should be considered in the EIA process, it would be a good reason for refusing development consent. The TGB would not be a local connecting road, it would be part of the strategic highway system.

-3/ P.200 (5.69.1) To quote: The TGB 'is to be tested against PPS9 and not PPG9 and accords with PPS9 policy for the reasons stated in the submissions made in response to the SoS's matter 4(d)....'

Other aspects of my conclusions are clearly matters of disagreement with the promoter of the TGB project, for the Inspectors and the Secretaries of State to consider. With respect to the above, the call-in letter refers to PPG9; I was not aware until the last moments, of this change in the policy document concerned. I submit, therefore, that I should be able to comment upon PPS9, as I was not directly informed of the change of policy document. Please accept the following submission on this matter.

The TGB would result in species disturbance, degradation and destruction of habitat and thus species loss in several SMIs and SBIs. A large area of habitat chain recognised by the London Biodiversity Plan, as important for nature conservation, would be lost; the replacement habitat would not be equal in area or advantage, like would not be replaced by like. Three bat species, clearly of international significance, may be affected; vertebrate and invertebrate species of national significance would also be affected (please see my closing submission, 1944-13, P.6, para 2).

Traffic increases are likely to affect Lesnes Abbey/Bostall Woods; the need for widening of Knee Hill (A2041) would have a deleterious effect on Lesnes Abbey Woods. These are ancient woodlands and I have covered the possible impact in some detail during cross-examination of TfL's ecology witness, with reference to my Appendix 2 (1944/1/B2). This can be found in T 74, pages 40-56.

The conclusions reached in 1944-13 (P.15), under matter (d) of the call-in letter hold, in my view, for PPS9, and should be assessed in this way. The TGB has a significantly detrimental impact on nature conservation grounds; its acceptance or rejection is therefore dependent upon alleged economic/regeneration benefits. My further observations and conclusions are as follows.

PPS9 (P.5, para 2) states that: 'The policies set out in this PPS will need to be taken into account... by the Mayor of London in relation to the spatial development strategy for London...'

P.6 (para.1) continues: '...planning, construction, development and regeneration should have minimal impacts on biodiversity and enhance it wherever possible.'

In moving towards this vision, the government's objectives for planning are

- to promote sustainable development by ensuring that biological and geological diversity are conserved and enhanced as an integral part of social, environmental and economic development...
- to conserve, enhance and restore the diversity of England's wildlife and geology by sustaining, and where possible improving, the quality and extent of natural habitat and geological and geomorphologic sites; the natural physical processes on which they depend; and the populations of naturally occurring species which they support.
- to contribute to rural renewal and urban renaissance by:
 - enhancing biodiversity in green spaces and among developments so that they are used by wildlife and valued by people, recognising that healthy functional ecosystems can contribute to a better quality of life and to people's sense of well-being; and
 - ensuring that developments take account of the role and value of biodiversity in supporting economic diversification and contributing to a high quality environment...

It is difficult to see how, by building the TGB, biological diversity would be enhanced and conserved. It is also uncertain how the biological diversity of England's wildlife would be conserved, enhanced or restored by sustaining, and where possible improving, the quality and extent of natural habitat; the natural physical processes on which they depend; and the populations of naturally occurring species that they support. Biological diversity would be reduced, not conserved, enhanced, restored or improved, if the TGB were to be built.

PPS9 (P.7) states that: '(ii) Plan policies and planning decisions should aim to maintain and enhance, restore or add to biodiversity and geological conservation interests. In taking decisions, local planning authorities should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; and to biodiversity and geological interests within the wider environment.'

'(vi) The aim of planning decisions should be to prevent harm to

biodiversity and geological conservation interests. Where granting planning permission would result in significant harm to those interests, local planning authorities should ensure that, before planning permission is granted, adequate mitigation measures are put in place. Where a planning decision would result in significant harm to biodiversity and geological interests which cannot be prevented or adequately mitigated against, appropriate compensation measures should be sought. If that significant harm cannot be prevented, adequately mitigated against, or compensated for, then planning permission should be refused.'

Bexley and Newham cannot comply with (ii). Bexley also cannot comply with (vi) as it cannot adequately mitigate against the general impact, or obtain adequate compensation, in particular with regard to Lesnes Abbey/Bostall Woods. Newham will suffer a loss of biological diversity, compensation for which is not adequate in nature conservation terms.

PPS9 continues (P.10, 10.): '... Local planning authorities should identify any areas of ancient woodland in their areas that do not have statutory protection (eg as an SSSI). They should not grant planning permission for any development that would result in its loss or deterioration unless the need for, and benefits of, the development in that location outweigh the loss of the woodland habitat...'

I have already referred to this aspect above (P.5, para 4). Bexley residents would suffer a deterioration in the quality of their physical environment, due to the TGB. The inevitably adverse impact upon Lesnes Abbey/Bostall Woods would add to this loss.

PPS9 states, finally (P.11, 16.): 'Other species have been identified as requiring conservation action as species of principal importance for the conservation of biodiversity in England... planning authorities should refuse permission where harm to the species or their habitats would result unless the need for, and benefits of, the development clearly outweigh that harm.'

The alleged benefits of this scheme have not been shown to outweigh its predicted and potentially deleterious effect on nature conservation, biological diversity, and habitat/species loss.

This conclusion was also reached under (f) in my 1944-13 (P.15), in that the alleged regeneration benefits do not outweigh the adverse environmental impact. I have referred to the SACTRA 1999 report on a

number of occasions; the inquiry reference is ADD/015 (P.7/11 and P.12/40), given at 1944-13 (P.4, final para).

-4/ P.200 (5.69.1) Finally ‘... Mr Black produced no substantial evidence to counter these submissions. Indeed his extensive cross-examination of TfL witnesses served only to reveal the strength of the case for the grant of planning permission for the TGB.’

This is, again, misleading. I produced detailed evidence with regard to the strategic nature of the TGB, its strategic aspects as part of the strategic highway system. My ‘extensive cross-examination’ of TfL witnesses revealed a range of weaknesses in the promoter’s case. The witnesses lacked an understanding of the historical context of the TGB and its relation to the discredited A406 ELRC, which included deficiencies in the information provided by TfL, as corrected in my proofs of evidence (1944/1/A2/ADDENDUM, P.7/8, 3.1-3.1.2), and 1944-13 (P.2, paras 2&3). I refer you to my cross-examination of Mr. Adams, T 66 (P.149/150 and P.157); my cross-examination of Prof. Rosewell, T 69 (P.130/131); and my cross-examination of Henry Abraham, T 78 (P.42-48).

The witnesses were generally not aware of the likely environmental impact of any main alternatives to the TGB, in particular heavy and light rail crossings. I refer you to my cross-examination of Prof. Rosewell, T 69 (P.124-128 and 136/137); my cross-examination of Dr. Jo Hughes, T 74 (P.9-10, lines 16-19; P.66 and P.78-81); my cross-examination of Michael Clarke, T 74 (P.110-112; 118-120 and 123-124); my cross-examination of Henry Abraham, T 78, (P.69-70 and 79-82); and my cross-examination of Prof. Laxen, T 78 (P.168-171).

The lack of information regarding alternatives, in particular public transport (rail rather than road crossings) was evident in my cross-examination of Mr Smith, T 78 (P.231/232; 250-259 and 268-276). No assessment of heavy rail/freight transport was carried out (T 78, P.283-286). The witness tended to stray considerably, at times, from the subject of the questions posed by me. This lack of adequate appraisal of alternatives was also apparent when I was cross-examined; the matter was rather confused due to the lack of appraisal of alternatives and TfL’s barrister appears to have been uncertain about the logistical details of rail crossings and their locations, for this reason (P.139-147). See also T 79, P.167-171.

I was also unable to ascertain, from witnesses, why the TGB was categorised as an Annex II/Schedule 2 project but was subject to a full EIA; TfL's rationale for this remains unclear. I refer you to T 66, P.164/165; and T 74, P.137-139.

Additional Legal Submissions

I request the Secretaries of State to consider the following additional legal submissions. I became aware of these aspects quite recently, while pursuing a complaint made to the European Ombudsman, by Jacqueline Atkinson and myself. The initial observations relate to EU primary legislation, the context in which one must consider the implications of the secondary legislation, including the Directives.

- 1/Environmental Protection

The relevant articles of the EC Treaty are given below.

Art.2 - 'The Community shall have as its task...to promote throughout the Community...a high level of protection and improvement of the quality of the environment...'

Art.3(1) - 'For the purposes set out in Art.2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:

... (l) a policy in the sphere of the environment....

Art.6 of the EC Treaty establishes the integration principle, pursuant to which 'environmental protection requirements must be integrated into the definition and implementation of the Community policies referred to in Art.3 of the Treaty, in particular with a view to promoting sustainable development'.

The phrase 'environmental protection requirements' is to be viewed as referring to the objectives, principles and criteria set forth in Art.174 EC. The word 'implementation' appears to cover not only the enactment of Community secondary legislation, but also its application by Member States. The environmental integration clause does not merely imply that protection of the environment is at least taken into consideration when another Community policy is involved; indeed the Court has stressed that this clause constitutes an expression of the principle whereby 'all Community measures must satisfy the requirements of environmental protection'.¹ (¹ refers to the

European Court of Justice judgement of 29.3.90, C-62/88, Greece v. Council, ECR 1990, p.1-1527, para 20)

Art.174 (ex Art.130r) states that:

1. Community policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment
- protecting human health
- prudent and rational utilisation of national resources
- promoting measures at international level to deal with regional or worldwide environmental problems

2. Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay....'

3. In preparing its policy on the environment, the Community shall take account of:

- available scientific and technical data
- environmental conditions in the various regions of the Community
- the potential benefits and costs of action or lack of action
- the economic and social development of the Community as a whole and the balanced development of its regions....'

I submit, in taking account of the primacy of environmental protection, in the implementation of Directives and the need for development to be sustainable, the TGB project, as part of the London Plan, is not consonant with the requirements of the European Union Treaty (with particular reference to Art.174 (1) at the first 3 indents; (2); and (3) at all indents). I have referred to Directive 85/337/EEC above (P.3&4); I have dealt with sustainable development throughout my proofs of evidence and in my closing submission (1944-13, P.11/12). The environmental impact of the TGB would be adverse; TfL has justified this by spurious arguments about the regeneration benefits that would accrue if the scheme were to proceed. The developer fails to establish a causal link between alleged socioeconomic benefits, which TfL presents as an aspect of sustainable development, and the TGB. TfL's approach is not only fallacious, it is also disingenuous. If a crossing at Gallions Reach is deemed necessary, then it must be by public transport only, which means rail, with cyclist and pedestrian facilities.

- 2/Human Rights

The Charter of Fundamental Rights of the EU (Brussels 28/09/00) contains the following articles, under Chapter II FREEDOMS.

- Art.6 Right to liberty and security

Everyone has the right to liberty and security of person

- Art.7 Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

- Art.37 Environmental Protection (CHAPTER IV)

A high level of env. protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

The European Convention on Human Rights and Fundamental Freedoms (Rome 4/11/50). The Convention was signed by members of the Council of Europe; it endorses certain of the principles contained in the Universal Declaration of Human Rights, made by the General Assembly of the UN, 10/12/48). The relevant article is:

-Art.8

1. Everyone has the right to respect for his private family life, his home and his correspondence

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Paul Berry is Objector 340. He lived at 44, Lakeside Avenue, close to where Eastern Way would be divided into 8 lanes. His giving of evidence and cross-examination are in T 81, P.11-98.

Mr. Berry moved to Madison Gardens, Bexleyheath, due to the threat posed by the construction of the TGB to his right, and that of his family, to respect for his home and family life. The human rights issue is referred to by him in T 81 (P.18, lines 3-11; P.40-42). He refers to the lack of consultation by TfL with local people who would be affected by the scheme (P.18-21); mitigation measures (P.29-30); traffic increases on local roads

(31-35); and environmental impact (bottom of P.36; P.38-40). He is obviously not alone in this matter of the abuse of human rights constituted by the construction of the TGB. The impact of the road would affect many others adversely, the degree and extent of this depending on where they live in relation to the bridge and its effect upon the local communities and their road networks, their homes, schools and places of work. Local residents and others should not have to move to another area to avoid the main impact zone of the TGB, even if they are able to do so.

Prof. Laxen confirms that there would be increases in the concentrations of pollutants due to the TGB, in T 78 (P.149, lines 13-16). There are problems regarding air quality in Greenwich, and also but to a lesser extent in Bexley, alongside busy roads ('exceedances' of air quality objectives), due to the road traffic at present, which would be exacerbated by the TGB. Newham is similar to Greenwich in this respect. Problems for Barking and Dagenham/Redbridge also exist, though to a lesser extent and would be exacerbated by the construction of the TGB (T 78, P.149/150). Mitigation measures, in particular speed reduction, could actually increase emissions (T 78, P.166-167).

I have referred to the decline in air quality and increase in noise and accidents in 1944/1/A2/ADDENDUM (P.13-15, 5.1-5.4.4) and 1944-13 (P.7, para 1), aspects of the environmental impact of the current proposal, which I have dealt with throughout my evidence. It is quite clear that local residents will suffer a decline in the quality of their environment, due to the construction of the TGB. The extent and location of this deterioration is academic, in that traffic forecasts are not reliable; the adverse environmental impact of the TGB is not in question. This constitutes an abuse of human rights, as indicated above, with respect to the articles cited. Article 37 of the Charter endorses the articles cited by me under environmental protection (P.9) above; the TGB project does not accord with it.

- 3/The Belvedere Incinerator

It is my understanding, finally, that the Belvedere incinerator proposal has been approved. The implications are that traffic and thus emissions will increase, due to additional vehicular trips/kilometres travelled, which would be generated by the presence of the incinerator. The emissions from the incinerator will also add to the burden imposed (by the TGB) upon the local area and other areas affected. The combined emission of carbon dioxide and other greenhouse gases also requires further consideration, in view of national and international concern about the anticipated impact of global

warming. The impact of this project should be evaluated in conjunction with that of the TGB, before any decision can be made about the TGB.

The legitimate criticisms made of the TGB project, by myself and others, can only be intensified in view of the combined impact of these two highly unsustainable projects, which constitute a flagrant abuse of human rights for the individuals, families and communities affected by them. I refer you also to my conclusions (a) and (h) of 1944-13 (P.14 and 16), regarding the application of Directive 2001/42/EC to the revision of the London Plan and its inclusion of the TGB. This should also be re-assessed in view of the approval of the incinerator project.

Conclusion

The right to enjoy a decent quality of life and thereby a high standard of environmental protection is fundamental to the notion of sustainability. The TGB is anachronistic; it is part of the former, discredited A406 East London River Crossing. The TGB is an antiquated development project that has no place in a sustainable society, one in which the citizens have the right to respect for their homes, offices and family life, for the quality of the environment in which they live, work and study. I respectfully request the Secretaries of State to consider the additional material I have presented and to reject the Thames Gateway Bridge proposal.

Yours sincerely,

D Black
