

Item No. 8.1	Classification: Open	Date: 16 October 2013	Meeting Name: Council Assembly
Report title:		Representation to proposed Northern Line Extension	
Ward(s) or groups affected:		Newington	
From:		Cabinet	

RECOMMENDATIONS

That Council Assembly:

1. Endorse the council's holding objection to the application for the London Underground (Northern Line Extension) Order, served upon the council on the 30 April 2013, by Transport for London (TfL), and submitted by the council to the Secretary of State for Transport on 17 June 2013, in accordance with Section 239 Local Government Act 1972 and Rule 21 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000 (SI2000 No. 2190) ("the Applications Rules") (Appendix 1); and
2. Agree to the submission of the council's formal objection to the London Underground (Northern Line Extension) Order, served upon the council by TfL on the 30 April 2013, to the Secretary of State for Transport in accordance with Rule 21 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000 (SI2000 No. 2190) ("the Applications Rules") as soon as practicable following the endorsement of paragraph (1) of the recommendation.

BACKGROUND INFORMATION

3. On 30 April 2013 Transport for London (TfL) submitted an application for a Transport and Works Act Order (TWAo) including an application for deemed planning permission pursuant to the Transport and Works Act 1992 and s90(2A) of the Town and Country Planning Act 1990 to construct the Northern Line Extension (NLE) (London Underground (Northern Line Extension) Order ("the Order") to the Secretary of State for Transport. The proposed Order authorises TfL to construct and operate an extension to the Northern line (Charing Cross branch) from Kennington to Battersea, diverging from the existing railway line south of Kennington station from a section of track used by terminating trains (known as the Kennington Loop). The Order also proposes the construction of permanent ventilation and intervention shafts and head houses, temporary shafts and construction tunnels, a terminus station at Battersea Powers Station, an intermediate station in the Nine Elms area, the compulsory purchase and temporary use of land, the temporary stopping up of streets, street works and ancillary works. The proposed development is located in the London Boroughs of Lambeth, Southwark and Wandsworth.
4. Formal representations (for or against) the Order were invited to be made to the Secretary of State by 18 June 2013. The Transport & Works Act 1992 specifies that a resolution of the full council is required in order for a local authority to make a representation. However, guidance published by the Department for Transport acknowledges the difficulties this might cause and allows for a holding

representation, to be endorsed by council assembly at a later date. On 17 June 2013, the council submitted a holding representation to the proposed Order.

5. On 24 July 2013, the Secretary of State for Transport announced that a public inquiry will be held to consider the application, commencing on the 19 November 2013. This is expected to last around four weeks with an independent Inspector appointed to conduct the inquiry and make a recommendation to the Secretary of State for the approval, or refusal of the application. The preliminary meeting into the Inquiry was held on the 13 September 2013.
6. On 27 August 2013, the council submitted a 'Statement of Case' in accordance with Rule 7 of the Transport and Work (Inquiries Procedure) Rules 2004 (SI2004 No. 2018) ("the Inquiry Rules"). This is a written statement containing full particulars of the case which a person puts forward at the inquiry. Rule 7 provides that parties who have stated that they wish to provide oral evidence at the Inquiry will be required to provide a statement within 6 weeks after the start date, being the date of the Secretary of State's letter advising that an Inquiry will be held. On the same date, TfL submitted an Environmental Statement Addendum to the Secretary of State for Transport which included some changes to the scheme. Both matters will be considered by the Inspector as part of the public inquiry.
7. Following the inquiry the Inspector will publish his report and it is anticipated that the Secretary of State will reach a decision in autumn 2014. If the Order is approved, construction will commence (assuming approval and funding are in place) in spring 2015, with the service becoming operational in 2020.

The Northern Line Extension scheme (NLE)

8. The aim of the NLE scheme is to support economic growth in London and facilitate the regeneration of the Vauxhall Nine Elms Battersea (VNEB) Opportunity Area. These proposals are supported by the London Plan (2011), Mayors Transport Strategy and the VNEB Opportunity Area Planning Framework.
9. The new branch would run from Kennington station to new stations at Nine Elms and Battersea, to support intensive development and regeneration in those areas including 16,000 new homes and 20,000 to 25,000 new jobs.
10. Services northbound from Battersea would follow the Charing Cross branch to the north of Kennington, running at up to 30 trains per hour (tph). Currently this branch runs up to 20tph though the improvement is delivered by separate upgrades, not the Extension project. Bank branch trains from Morden, serving Elephant & Castle, Borough and London Bridge stations, would see a similar increase from 22tph to 33tph again through separate upgrade works.

KEY ISSUES FOR CONSIDERATION

11. The new branch line will connect to the existing Kennington Loop (which allows terminating trains to turn just south of the station) at a "step plate" junction under De Laune Street close to Harmsworth Street. This connection gives rise for construction works to be focused at this location and subsequently concerns have arisen. The northbound connection to the loop is at Radcot Street in Lambeth.

12. TfL have described the works in Southwark as being, *“formation of a single bore underground railway (part of Work No.1), diverging from the part of the existing railway known as the Kennington loop by means of a step-plate junction under De Laune Street north of its junction with Harmsworth Street and thence to the borough boundary under Kennington Park Place.”*
13. Given the proximity of the borough boundary to Lambeth, officers have been working closely to ensure the needs of the local community are understood and represented.
14. On 17 June 2013 the council made representations to the Secretary of State, which reiterated in principle support for the NLE however raised a number of concerns with the proposed scheme, of which a copy is provided in Appendix 1.
15. Key concerns raised in the representation include:
 - Impact from the Harmsworth Street temporary shaft construction.
 - Impact from the Kennington Park permanent shaft construction.
 - Ground-borne noise from both tunnel construction and operational railway, requesting TfL to use rail technology to reduce noise and vibration levels.
 - Congestion at Kennington Station, seeking expedient delivery of the cross-passages, and assessment of emergency evacuation and implementation of any remedial works arising.
 - Control of Streetworks, seeking application of sections 56, 56A, 58A, 73A, 73B, 73C and 78A and Schedule 3A of the New Road and Street Works Act 1991.
 - Employment strategy, requesting the preparation and implementation of an Employment strategy.
 - Design considerations for Kennington Park Head House, raising design concerns with the proposed Head House and impact on the conservation area.
 - Dog walking area and ‘Bee Urban’ facilities and nature garden, requesting fencing of the relocated dog walking area and provision for the ‘Bee Urban’ facilities.

Current status of the application

16. On 6 August 2013, TfL wrote to stakeholders stating *‘Following further feasibility work, a decision has been taken by TfL to remove the temporary shafts proposed at Harmsworth Street and Radcot Street on the basis they are no longer required. This means that no above ground works will be undertaken at either of these locations and construction works will be progressed from the proposed worksites at Kennington Park and Kennington Green instead.’* As such no works will take place in Harmsworth and Radcot Streets and this representation is no longer required.
17. On 22 August 2013 TfL wrote to the council and in this:
 - Committed to providing the new cross-passages prior to the NLE
 - Committed to providing an Employment Strategy, of which a draft has now been provided
 - Advised that the community building will no longer be provided following further discussion with Lambeth Council

- Stated that the 'Bee Urban' facility will be relocated and agreed the relocated dog walking area
18. On 27 August 2013, TfL submitted an addendum to the Environmental Statement which confirmed the implementation of cross-passages at Kennington Station prior to the commencement of the operation of the NLE. This addendum also presented a redesigned head house which is reduced in scale and is considered to be more fitting with the locality.
 19. TfL have now prepared a draft Employment Plan and discussions between TfL Southwark, Lambeth and Wandsworth officers are continuing. Southwark are seeking a commitment to London Living Wage.
 20. TfL have commenced discussions of possible mitigation which may be required as a result of the works with parameters established within a Code of Construction Practice. However at this stage no commitments have been made.
 21. TfL has also recently committed to extensively monitoring the ground borne noise at locations suggested by Southwark.
 22. Having considered the information provided the council retains a number of concerns with the proposal and submitted a Statement of Case on 27 August 2013.
 23. The council has been working with TfL and several points of mitigation have been agreed. However the council retains concerns and is seeking further specific mitigation in relation to the Bishops House Early Start Centre. BHESC is used as a multi-use education facility comprising of a day nursery for 41 children, offices, teaching and consulting rooms used by various council departments. The site also includes a large outside space, which is utilised all year around by the nursery as part of their outdoor learning.
 24. Mitigation discussed to date includes works to allow the rear entrance of the Nursery to be used as the main entrance during the works, noise insulation (double/secondary glazing or barrier treatment) and a condition survey of the Grade II Bishops House and the boundary wall. The council's position is that mitigation work should be secured by legal agreement with TfL and carried out prior to the commencement of the main construction works.
 25. The NLE Public Inquiry is due to commence on 19 November 2013. Officers will continue to negotiate with TfL of the outstanding concerns contained within the Statement of Case.
 26. Should these concerns be addressed to the council's satisfaction then it will be unnecessary to present the council's case at the Public Inquiry. Ahead of an Inquiry, Proofs of Evidence will need to be prepared and submitted by 22 October 2013. Inquiry commences 19 November 2013.

Policy implications

27. The NLE proposals are supported by the London Plan (2011), Mayors Transport Strategy and the VNEB Opportunity Area Planning Framework.
28. The statutory development plan for the borough consists of the Core Strategy (2011), saved policies in the Southwark Plan (July 2007), the London Plan (July

2011) and the Adopted Policies Map 2012. Whilst the council in principle supports the NLE, the proposals as submitted by TfL are being considered against these policies.

Financial implications

29. This report recommends that the council assembly endorses the council's holding objection of 17 June 2013 to application by Transport for London for Northern Line extension from Kennington to Battersea.
30. There are no immediate financial implications arising from this report. Officer time to effect the recommendations will be contained within the existing budgeted resources
31. However, it must be noted that if the concerns raised in this report are not addressed to council's satisfaction, it will be necessary to present the council's case at a Public Inquiry. Any financial implications arising from such Public Inquiry cannot be quantified at this stage but will be included in subsequent report for consideration and approval.

Community impact statement

32. Residents in the areas have formed the Kennington & Walworth Neighbourhood Action Group (KWNAG). Officers have been liaising with the local community since April 2013. Key issues raised by KWNAG include:
 - Impact of construction noise (four years for the permanent shaft);
 - Potential settlement of their homes leading to a need to redecorate and re-fit doors and windows;
 - Increased operational noise/vibration from the operational railway;
 - Increased congestion at Kennington Station which, they fear, could lead to morning peak closures;
 - The temporary relocation of the dog walking area;
 - The relocation of the "Bee Urban" hives and visitor facility.
33. In particular the residents have asked whether the connection to the Kennington Loop, and the permanent shaft, can be located further from residents. TfL have explained that a connection further along the loop would require trains in service (i.e. at a reasonable speed, rather than the very slow speed around the loop when trains are empty) to make a very tight turn. This would lead to discomfort to passengers, and higher operational noise and vibration which would lead to on-going maintenance problems. Any relocation of the permanent shaft would remove the option to use the gallery tunnels and therefore make the temporary shaft necessary.
34. Residents also feel that they have been poorly consulted by TfL, especially in regards to the small area consulted and the lack of options presented. Lambeth officers have raised the issue in communications with their residents, and have commissioned engineering consultants (Ramboll) to advise on technical matters.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

35. This report recommends that the council assembly endorses the council's holding objection, dated 17 June 2013, in response to the proposed London Underground (Northern Line Extension) Order ("the Order"), served upon the council on the 30 April 2013 by TfL in accordance with Section 239 Local Government Act 1972 and Rule 21 of the Applications Rules (Appendix 1) and approves the submission of the council's formal objection to the Secretary of State for Transport, in accordance with the respective statutory regulations as soon as practicable following the endorsement of paragraph 1 of the recommendation.
36. Paragraph 3 of the report advises that an application for the Order was submitted to the Department of Transport by TfL on 30 April 2013 pursuant to the Transport and Works Act 1992. Members are advised that the council submitted a holding response setting out 8 grounds of objection to the Department of Transport on 17 June 2013. Following the submission of the holding response the Secretary of State for Transport advised the council that a Public Inquiry would be held into the matter commencing on the 19 November 2013. The Pre-Inquiry meeting was held on the 13 September 2013. Paragraph 6 of the report explained that the council submitted a Statement of Case in accordance with Rule 7 of the Transport and Work (Inquiries Procedure) Rules 2004 (SI2004 No. 2018) ("the Inquiry Rules") on 27 August 2013, which set out the council's position on the Order as of that date. Paragraphs 16-21 of the report further advises that the council has been in on-going negotiations with TfL in regards to its objections and suitable levels of mitigation required to alleviate the harmful amenity impacts of the scheme.
37. Members' are advised that a TWA Order is a statutory instrument made under the Transport and Works Act 1992. TWA Orders are required to authorise the construction or operation of railways, tramways, trolley vehicle systems and other guided transport; the construction or operation of canals; the carrying out of certain works that interfere with rights of navigation in waters in and around England and Wales. The main features of a project that requires authorisation under a TWA Order are that they may involve the construction and/or use of works which affect public rights such a public right of way over a highway and/ or the provision of powers of compulsory acquisition of land and/or the extinguishment of private rights.
38. A typical TWA Order will authorise:
 - The construction and maintenance of the works specified in the Order
 - Compulsory acquisition of Land or rights over land for the works;
 - Compulsory acquisition of any other land required either temporarily or permanently (for construction sites and access or environmental mitigation)
 - Closure or diversion of roads or paths or creation of new rights of way;
 - Other matters needed for the scheme, such as powers to use watercourses, protect adjoining buildings, move utility apparatus, make by-laws or transfer an existing undertaking.

39. The process of seeking and obtaining a TWA Order from the Secretary of State is permissive as opposed to obligatory and will only grant the powers specified in its articles and schedules. The making of a TWA Order does not itself confer planning permission for any development provided for in the order. Therefore, unless the proposed ancillary works are permitted development under the Town and Country Planning (General Permitted Development) Order 1995, planning permission is likely to be required. The procedures for obtaining planning permission have been assimilated into the TWA Order process. Therefore listed structures are affected, any necessary listed building, conservation area or scheduled monument consents will be required. Applications for listed building consent or conservation area consent must be made to the local planning authority and is subject to "call-in" by the Secretary of State for his decision.
40. An applicant, when applying for a TWA Order, can request that the Secretary of State deem the grant of planning permission by way of a direction under section 90(2A) of the Town and Country Planning Act 1990. Alternatively, planning permission may be applied for separately from the respective local planning authority. Conditions may be attached to a planning direction. Similarly, if planning permission had been sought from the local planning authority, the Secretary of State would wish to establish that such permission had been granted before making the order.
41. Applications for TW Orders, other than those relating to Wales, are made to and determined by, the relevant Secretary of State. This is normally the Secretary of State for Transport. There are statutory rules of procedure for making applications and for objecting to them. Currently, these are the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000 (SI2000 No. 2190) ("the Applications Rules"). In addition, there are separate statutory rules of procedure relating to the holding of public local inquiries into TWA applications. These rules – which cover the procedures before, during and after an inquiry – are the Transport and Work (Inquiries Procedure) Rules 2004 (SI2004 No. 2018) ("the Inquiry Rules").
42. A TWA Order may contain provisions modifying or excluding any statutory provision of general application which relates to any matter for which an order could be made. However, guidance issued by the Department of Transport (A TWA Guide to Procedures – Guidance on the procedures for obtaining orders under the Transport and Works Act 1992, relating to transport systems, inland waterways and works interfering with rights of navigation June 2006 ("DfT Guidance") states that the Secretary of State would be unlikely to accept such provisions if the applicant was simply seeking to avoid having to comply with a separate, and custom-made, statutory control process approved by Parliament. Members' are advised that Article 3 of the TWA Order seeks to disapply various sections of the New Road and street works Act 1991. These sections provide the council with powers to control various aspects of street works and assist with the performance of its duties under the Traffic Management Act and Highways Act 1980. This matter forms objection 5 of the council's initial objection and paragraph 8 of the Statement of Case submitted on the 27 August 2013.
43. Members' will also note from paragraph 23 of the report, that the council has a number of concerns in regards to the amenity impacts the Order will have upon the Bishops House Nursery and Early Years Centre and that specific mitigation requirements are sought by the council to address this matter. This is has been fully addressed in the Statement of Case, submitted to the Secretary of State. The council is in continuing negotiations with TfL in regards to this site and will

require this specific mitigation to be secured by way of a legal agreement in order to be acceptable.

44. Rules 21 of the Application Rules sets out a procedure for the handling and objections received by the Secretary of State. This provides that objections and other representations must be made in writing to, and received, by the Secretary of State no later than the expiry date for objections, being no less than 42 days from the date of the application. However, where an authority, which is subject to the provisions of s239 of the Local Government Act 1972 wishes to lodge an objection but is unable to comply with the requirement within this period, it may forward a holding objection. The Guidance provides that this holding objection should set out the initial views of the relevant officers or committee, subject to endorsement by a meeting of authority members.
45. Section 239 Local Government Act 1972 provides that a resolution of a local authority to promote or oppose a Bill must be passed by a majority of the whole number of the members of the authority at a meeting of the authority held after the requisite notice of the meeting and of its purpose has been given by advertisement in one or more local newspapers circulating in the area of the authority, such notice being given in addition to the ordinary notice required to be given for the convening of a meeting of the authority.
46. The Guidance states that where an authority submits a holding objection, it should submit its formal objection as soon as reasonably practicable after the resolution pursuant to the 1972 Act has been passed. Pending formal endorsement, the holding objection will be treated as an effective objection for the purposes of the Rules.
47. Part 3A of the Southwark Constitution 2012/2013, paragraph 18 states that the 'making, amending, revoking, re-enacting or adopting byelaws and promoting or opposing the making of local legislation or personal bills' is reserved to council assembly for decision. Paragraph 22 also reserves 'all other matters which, by law, must be reserved to council assembly'. The endorsement and approval of the recommendations are therefore within the decision making remit of council assembly.
48. The council must have due regard to the Public Sector Equality Duty (PSED) in accordance with s149 Equality Act 2010. This duty requires public authorities to consider the aims of the general equality duty to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not to take prejudice and promote understanding when making decisions and setting policies. The protected characteristics specified under the Equality Act are age, disability, gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation.
49. In discharging the PSED duty, the council must have regard, in particular, to the need to:
 - (a) Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

- (c) Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
50. The amenity impact of the Order potentially engages certain human rights under the Human Rights Act 2008 (“the HRA”). The HRA prohibits unlawful interference by public bodies with conventions rights. The term ‘engage’ simply means that human rights may be affected or relevant. In this instance the following rights are potentially engaged:
- a. **Article 1, Protocol 1 (Protection of Property)** – this raises the potential for interference with individuals’ right to peaceful enjoyment of existing homes.
51. It is important to note that not all rights operate in the same way. There are very few rights are absolute and cannot be interfered with under any circumstances. Other ‘qualified’ rights, including the aforementioned Article 6, and Protocol 1 rights, can be interfered with or limited in certain circumstances. The extent of legitimate interference is subject to the principle of proportionality, whereby a balance must be struck between the legitimate aims. Public bodies have a wide margin of appreciation in striking a fair balance between competing rights in making these decisions. However, Members are advised that the council is not determining the application for the Order, being a decision which will be made by the Secretary of State for Transport in due course and following the closure of the Inquiry process.
52. Therefore providing that the council, its members and officers understand human rights considerations and throughout the decision making process take them into proper account by striving to strike a balance between competing rights, no unlawful interference should be caused.

Strategic Director of Finance and Corporate Services

53. It noted that that there are no immediate financial implications arising from this report as staffing and any other related costs will be contained within existing departmental budgets.
54. It is also noted that the potential financial implications for the council for presenting any unresolved concerns at the proposed Public Inquiry, if required, cannot be quantified at this stage and this will be subject to a further report for approval.

Strategic Director of Environment and Leisure

55. This report recommends that the council assembly endorses the council's holding objection dated 17 June 2013 and agrees the council's formal objection to the application from Transport for London for a Transport and Works Act Order to authorise the construction of the Northern Line Extension. Officers from the community safety and enforcement business unit have been involved in the pre - application discussions and have contributed to the grounds of objection. Officers are currently in the process of informally discussing mitigation with TfL either through suitable planning condition or legal commitment to provide such.

56. The Applicant's proposed Code of Construction Practice will provide safeguards to the amenity of the area. If required, officers from the community safety and enforcement business unit will appear at the Public Inquiry.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
None		

APPENDICES

No.	Title
Appendix 1	Northern Line Extension - plan
Appendix 2	Northern Line Extension – Holding representation

AUDIT TRAIL

Lead Officer	Eleanor Kelly, Chief Executive		
Report Author	Sally Crew, Head of Transport Planning		
Version	Final		
Dated	3 October 2013		
Key Decision?	No		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
	Officer Title	Comments Sought	Comments Included
	Director of Legal Services	Yes	Yes
	Strategic Director of Finance and Corporate Services	Yes	Yes
	Strategic Director of Environment and Leisure	Yes	Yes
	Cabinet Member	Yes	No
	Date final report sent to Constitutional Team	3 October 2013	