

TRANSPORT AND WORKS ACT 1992

TOWN AND COUNTRY PLANNING ACT 1990

TRANSPORT AND WORKS (INQUIRIES PROCEDURE) RULES 2004

LONDON OVERGROUND (BARKING RIVERSIDE EXTENSION) ORDER
PUBLIC INQUIRY

OPENING STATEMENT
on behalf of
TRANSPORT FOR LONDON

(1) Procedural requirements

1. The relevant procedural requirements have been met, as set out in TfL11.

(2) The promoter

2. Transport for London (“TfL”) is the promoter of the draft Order and the applicant for associated direction under section 90(2A) of the Town and Country Planning Act 1990 (“the TCPA”). The draft Order, together with the deemed grant of planning permission, would empower TfL to acquire the land for, to construct and to operate the Barking Riverside Extension (“BRE”).
3. TfL is responsible for the operation of the London Overground train network, including the Gospel Oak to Barking (“GOB”) services of which the BRE would form part.¹ TfL’s promotion of the BRE is also carried out pursuant to its wider role as the integrated body with responsibility for London’s transport system and for the implementation of the Mayor’s Transport Strategy.²

¹ It assumed this responsibility in 2007: TfL1/A para. 4.2.1

² BRE/A11: Promoter’s declaration of its status.

(3) Description of the BRE and the powers sought

4. The BRE is fully described in TfL's evidence. In summary it comprises:
 - (a) the provision of remodelled and new railway tracks on the existing railway corridor between Barking station and Renwick Road bridge (2.4 km);
 - (b) the construction of a new twin track viaduct east of Renwick Road bridge (1.6 km): compared to embankment and at grade provision, a viaduct would allow a degree of permeability. An underground alignment would be at significantly greater cost;³ and
 - (c) the construction of a new railway station at the heart of the proposed Barking Riverside development, the layout, scale and external appearance of which are reserved for subsequent approval by the London Borough of Barking and Dagenham ("LBBD").
5. During the construction phase there would be 3 construction compounds, together with a storage/layover area.
6. GOB trains would no longer terminate at platform 1 at Barking station and would be diverted to platforms 7 and 8. No works comprising development are required to be carried out at Barking station.⁴
7. The draft Order would authorise the construction and operation of the BRE and the associated compulsory acquisition and temporary use of land for the purposes of the BRE. It would also enable the works proposed by Network Rail of remodelling the eastern part of the Ripple Lane freight marshalling yard to be undertaken at the same time as the construction of the BRE. These powers are necessary so as to minimise the requirement for track possessions and thus the effect upon other users of the railway.⁵
8. Passive provision is included for a future station near Renwick Road to serve GOB services. The passive provision takes the form of signalling and track alignment. This provision imposes no material additional cost in circumstances where planning for the prospect of such a station is underpinned by the development plan.⁶

³ TfL1 paras 4.4.7 to 4.4.12

⁴ TfL1/A para. 5.5.1

⁵ TfL1/A para. 5.3.4 to 5.3.5

⁶ LBBD SSA DPD Policy SM35 (BRE/D40); BRE/E1 para. 1.4.5; TfL/1A para. 5.7.5; TfL3/A para. 3.5.9

9. A potential further extension of the BRE to Thamesmead/Abbey Wood, subsequent to the provision of the BRE, is referred to in various documents.⁷ Substantial work is required to ascertain whether such an extension would be feasible or worthwhile. It remains a concept only. The work that has been undertaken thus far (in 2015) has concluded that the concept does not offer significant resilience benefits, would be at a “*very high cost*”⁸ of around £1.2 to £1.6 billion and may be difficult to justify on present information. It was thus not included in the shortlist of schemes to be taken forward for initial consultation but was to be kept under review.⁹ The Mayor has recently announced that the case for such a crossing is to be reviewed further¹⁰ but it remains a concept for longer term implementation, if at all.
10. The notion of incorporating provision for a further extension was raised during consultation but as explained in the response at the time,¹¹ such provision cannot be justified given the status of the potential extension and the very high cost of incorporation, which could only be by undergrounding the Barking Riverside station. It would result in a net increase in cost for the BRE of £160 million to £210 million, which would make the scheme unaffordable.¹² The construction of the BRE does not, however, preclude subsequent provision of a potential crossing, as recognised by LBBB and the London Borough of Bexley, both supporters of BRE.
11. The request for a direction that planning permission be deemed to be granted relates to the development sought to be authorised by the Order, in particular those aspects of the proposals identified in paragraph 4 and Appendix 1 to the Request for deemed planning permission. The request was accompanied by draft conditions in Appendix 2. Following dialogue with LBBB, Condition 7 has been slightly amended as set out in TfL2/B Appendix 2 and TfL15. All the draft conditions in TfL15 have been agreed with LBBB.
12. Apart from the extensive integral mitigation included in the scheme through design, a regime for subsequent control of details of the station by LBBB is proposed pursuant to the proposed planning conditions, with mitigation during construction secured through the very extensive requirements of the proposed Code of Construction Practice, developed in consultation with LBBB and Part A of which (at Appendix 4.2 of the ES)¹³ has been agreed with LBBB.

⁷ The OAPF (BRE/D21), the London Infrastructure Plan 2050 (BRE/D13) and Connecting the Capital (BRE/D31)

⁸ BRE/E4 p. 150

⁹ BRE/E5 p. 86; the upper end of the range is increased to £1.8 billion in the most recent estimate at TfL16/E.

¹⁰ TfL16/B, D and E

¹¹ TfL/A7 paras. 5.60 to 5.62

¹² TfL1 paras. 5.8.14 and 5.8.16; at a time when TfL is required to find savings of £2.8 billion (BRE/C11 para. 5.3.5)

¹³ BRE/A/17/3

13. The result is a well-controlled set of works which can be brought about in the most timely and efficient manner possible.

(4) The need for the BRE

14. The need for the BRE is both compelling and urgent.

15. The primary aim of the BRE is to support economic development and population growth by unlocking the full residential development of the Barking Riverside area through the provision of new sustainable infrastructure.¹⁴ The further aims of the BRE are each derived from the Mayor's Transport Strategy.

16. The development of Barking Riverside to its full potential forms a crucial component of the policy of the London Plan, as elaborated in the London Riverside OAPF. It is also a critical component of LBBB's spatial strategy, embodied both in its Core Strategy and the site specific allocation for 10,800 homes in LBBB's Site Specific Allocations DPD approved in 2010.¹⁵

17. Barking Riverside is the key development area within the London Riverside Opportunity Area ("LROA"), capable of accommodating 10,800 homes (a population of 27,000) and providing 4,600 jobs. It is a site with "massive potential for change,"¹⁶ acknowledged to be London's single largest housing development and described in the LBBB Core Strategy 2010 as "*the largest brownfield site in Western Europe*".¹⁷ Its importance is evident not only in terms of the provision of "*desperately*"¹⁸ and "*urgently*"¹⁹ needed housing, including affordable housing, but also jobs..

18. There can be no doubt that at present Barking Riverside is isolated in transport terms, with in part zero PTAL levels.

19. The development of Barking Riverside to its required potential has long been recognised as dependent on the provision of new transport infrastructure. More specifically, that potential is dependent on new railway infrastructure to serve the development directly. That dependency arises by reason of the need to give the necessary uplift to Barking Riverside, so as to overcome the perception, and the reality- of remoteness- "*to put it on the map*"²⁰ and to

¹⁴ BRE/A5 para 2.1

¹⁵ Policy SMI (BRE/D40).

¹⁶ OAPF Foreword (BRE/D21)

¹⁷ LBBB Statement of Case; BRE/D38 para. 2.21

¹⁸ London Plan para 3.13 (BRE/D11)

¹⁹ OAPF para. 2.4.2 (BRE/D21)

²⁰ TfL7 para. 7.4.8

ensure that the development is sustainably served. The higher densities, and reduced parking levels, necessary for the accommodation of 10,800 homes are reliant on the assumption of a new transport link at the centre of the development. The dependency is cemented by the planning requirements of LBB, which are to be included in the section 106 agreement to accompany the proposed grant of planning permission under section 73 of the TCPA for the development (consistent with the current section 106 agreement where the tie was to the now defunct proposed DLR extension).²¹ Those planning requirements preclude development beyond 4000 units prior to operation of the BRE and limit development to 1500 units until a TWAO for the BRE has been granted.

20. The BRE is essential to unlock the required potential of the development of Barking Riverside. It would also act as a catalyst for the development of the LROA more widely, with a capacity for 26,500 new homes in total and 16,000 new jobs.
21. Given that the scheme's primary aim is to unlock development, the conventional BCR tool does not effectively capture the full benefits of the BRE. Nevertheless, on the basis of the costs attributable to TfL, there would be a BCR of just under 2:1. That assumes a conservative optimism bias which does not reflect TfL's project experience; based on that experience, the BCR would be 2.5:1.²² The uplift in land values associated with the BRE has been estimated as £261 million which substantially exceeds "*the large beneficial threshold.*" This provides a qualitative measure that can be applied alongside the quantitative tool of BCR.²³
22. Given the above, it is not surprising that the BRE is specifically supported in all recent policy, including the London Plan in Policy 6.1, the OAPF and the emerging LBB Local Plan. The LBB Core Strategy and AAP predate the development of the BRE; so in so far as they refer to the predecessor DLR scheme, they are out of date to that extent. Deemed planning permission for the BRE would accord with the provisions of the development plan. Indeed, given the terms of Policy 6.2 of the London Plan, frustrating or delaying the BRE would not be consistent with the development plan.²⁴ It would also conflict with the strategic regeneration policies of the development plan.

²¹ LBB resolved to grant the section 73 application on 27 July 2016 (BRE/C21 and E7). The GLA is content that permission be granted (BRE/E6). More recently, the transport strategy has been agreed between BRL and LBB (TfL14).

²² BRE/C22

²³ TfL1/A paras. 9.3.5 to 9.3.6; BRE/C22

²⁴ TfL proceed on the basis that section 38(6) should either be treated as applicable to determinations under section 90(2A) notwithstanding the High Court judgement in *Samuel Smith Old Brewery (Tadcaster) v Sec of State for Energy* (2012) 2 All ER 849 (applicable to section 90(2ZA)) or that it can be assumed that the Secretary of State would wish to attach significant weight to whether the proposals accord with the development plan, not least because this forms one of the matters upon which he wishes to be informed.

23. Just under seven years have elapsed since the decision in 2009 to withdraw the then proposed DLR extension on grounds of unaffordability. Although re-appraisal commenced in 2010,²⁵ the process of technical study, option appraisal and three stages of consultation, together with engagement with BRL, the developers of Barking Riverside, (involving 3 years of discussions)²⁶ has meant that only now is TfL in a position to promote the scheme. After so long, the site is at last poised for development to its full potential, subject only to the outcome of this Inquiry.
24. Not proceeding with the BRE would prevent the achievement of the primary aim of the BRE. Delaying the BRE would at best defer the achievement of that aim and at worst undermine it, as made clear in the evidence of behalf of BRL.

(5) The evolution of the scheme

25. As stated above, the scheme now presented for approval is the product of several years work by TfL, undertaken to ensure that the solution presented is the most appropriate one to address the aims of the BRE.
26. TfL was concerned to ensure, prior to submission of its draft Order, that the decisions it had taken over the course of the development process remained the correct ones, and commissioned a review of the option decisions taken. The resulting Backcheck Reports²⁷ confirmed that the option now pursued through the Order is the best performing option both as to mode and alignment.
27. With one exception, there is no dispute in any representation to the Inquiry as to the selection by TfL of the mode and the alignment. That exception is Mr Ridley (OBJ/1) who contends that a station near Renwick Road serving c2c services and GOB services, supplemented by buses, should be preferred. Leaving aside the practicability of such a suggestion, particularly given c2c's concern as to capacity, such a suggestion would not be a scheme which would directly serve the development. It would not bring a railway to the heart of the BRE, its district centre. It would demonstrably fail to meet the primary aim underlying the BRE scheme. It would be likely to stunt the growth of Barking Riverside to the more modest caps upon development which have been in place since the initial grant of planning permission in 2007 and which are to be re-imposed in the fresh grant. In so far as purporting to serve Barking Riverside, rather than other aspirations, it would be at odds with the objectives

²⁵ TfL1/A para. 4.21

²⁶ SUPP/4, proof of evidence para. 3.7

²⁷ BRE/C11 and 14

of the London Plan and the OAPF and inconsistent with the policies within those documents which specifically support the BRE.

28. An integral part of the development of the scheme has been the extensive consultation undertaken, starting in the autumn of 2014, followed by spring/summer 2015 and the winter of 2015/16. As to both principle and detail, the evolution of the scheme has been informed by the views expressed by stakeholders and the public at large. Consultation on the scheme has comprised not only the formal (but non-statutory) process, involving leaflets and public exhibitions, but also a considerable body of meetings, correspondence, and direct liaison with those affected or otherwise interested, the detail of which is set out in the Statement of Consultation.²⁸ This has included numerous meeting with the freight operators.²⁹
29. It is a testament to the rigour of the consultation process but also to the soundness of the outcome that there are so few objections. There has been extensive engagement with residents' groups, for example, with a number of concerns raised and addressed, including assessment of an alternative alignment (Alignment 7) that had been suggested by residents. The outcome of the process is that there is no objection from any residents' group.³⁰

(6) The context of the scheme

30. The BRE must also be viewed in context as part of a wider range of transport measures being brought forward both locally and more widely.
31. Locally, these comprise the package of transport measures associated with the development of Barking Riverside, including highway improvements, enhanced bus services and measures, including layout, to encourage cycling and walking. The transport strategy for the section 73 application is now agreed by LBBD and BRL (TfL14).
32. In respect of GOB services, further to the doubling of service frequency that TfL has already instituted, electrification of the line is now being undertaken with a completion date of 2017 and new Class 710 four car trains will be in service from 2018.³¹

²⁸ BRE/A7

²⁹ BRE/A7 pp. 67 and 68 deals with dialogue from 2014 to March 2016 and there has been a large number of meetings since, some of which are referred to in TfL6/A at paras. 9.4.4(i) and 9.5.4(i)

³⁰ BRE/A7 pp 62 and 63 and Appendix 6

³¹ TfL1/A paras. 3.5.3, 4.2.1 and 5.6.5 and 6

33. Improvements at Barking station to provide additional station capacity, including new lifts, are required to be implemented by 2019,³² with additional capacity and rolling stock for the c2c services also proposed.³³ The completion of the Four Lines Modernisation programme includes the District and Hammersmith & City lines which stop at Barking.³⁴
34. The above measures are complementary to the BRE scheme.
35. In the case of Network Rail's proposals to enhance the Ripple Lane freight marshalling yard, they will be directly advanced by the Order powers; and there would be no adverse effects on other aspirations for development of freight operations.
36. In terms of non-transport development, the most significant is plainly the development of Barking Riverside which lies at the core of the justification for the BRE. It will plainly transform the land use context against which the effects of the BRE fall to be assessed.

(7) Environmental impact assessment

37. There is no challenge to the adequacy of the ES in any evidence.³⁵
38. The Environment Agency is content with the Flood Risk Assessment Addendum provided as BRE/E2. The Addendum concludes that the BRE scheme would have a negligible effect on water resources and flood risk during construction and operation. There is no change to the assessment of significant effects in the ES.³⁶

(8) The BRE under construction

39. It is inevitable that the construction of a project such as BRE, which is proposed to be carried out over 3 ½ years between late 2017 and early 2021, will give rise to some adverse impacts. TfL has, however, designed the scheme and the associated mitigation measures so as to minimise those

³² TfL1/A para. 3.5.7

³³ TfL1/A para. 3.5.6

³⁴ TfL1/A para. 3.5.4

³⁵ Legal and General has asserted in its Statement of Case that indirect effects on rail freight movements are not assessed; however, minimising the effect on freight operations has played a major part in the option selection process and no significant adverse effects on freight operations arising from the selected option have been identified: TfL4/A paras 8.3.2 and 8.3.6. L&G has not presented any evidence to support its assertion. The process of railway possessions is regulated by the Network Change provisions and minor changes through regulation by that process do not comprise adverse effects.

³⁶ TfL4/A para. 6.3.2

impacts as far as is reasonably practicable and there would be effective mechanisms to secure these.³⁷

40. During construction, significant residual adverse effects would be limited to localised moderate adverse effects associated with reduced visual amenity and impacts on townscape.³⁸
41. TfL would be committed to the implementation of a Code of Construction Practice (CoCP) via the imposition of conditions to be attached to the deemed planning permission. The CoCP will therefore be binding on TfL and on the appointed contractors and enforceable by LBBD for the relevant worksites.
42. Part A of the CoCP sets out the standards and procedures for managing the environmental impact of constructing the BRE. It requires the application of Best Practicable Means to reduce noise impacts from all activities. This is in addition to the controls that already exist to require the application of Best Practicable Means by virtue of section 61 of the Control of Pollution Act 1974 which are enforceable by LBBD.
43. The CoCP would also secure the provision of a Dust Management Plan, Traffic Management Plans, a Construction Logistics Plan and a Framework Travel Plan, the fine detail of which would be developed pursuant to Part B of the CoCP. A Waste Management Plan would be provided in any event, pursuant to separate legislation.
44. Part A of the CoCP also makes provision for noise insulation and temporary re-housing, if necessary, and further details would be approved under part B consistent with TfL's Noise and Vibration Policy which is attached to Part A.³⁹
45. TfL has also established a Hardship Policy in respect of property acquisition which is similar to that operated by Crossrail.⁴⁰
46. Finally, throughout the construction period itself, and as required under the CoCP, there would be a liaison team providing information and responding to concerns.⁴¹

(9) The BRE in operation

³⁷ TfL2/A para. 7.2.3 and 7.2.4, in addition to the protective provisions in the Order.

³⁸ BRE/A17/1 Table 18.1; TfL2/A para. 7.4.2; TfL4/A paras. 6.3.27 -28 and 6.3.5.2

³⁹ TfL4/A para. 6.3.17

⁴⁰ TfL6/A section 3.11 and TfL6/B Appendix 3

⁴¹ TfL1/A para. 4.8.5

47. The potential adverse impacts of the BRE are to be mitigated, such that no long term significant impacts arising from its operation are predicted.⁴²
48. The long term positive effects will of course include the achievement of the aims of the scheme
49. The permanent legacy of the BRE in operation will therefore be a solely positive one.

(10) Funding and implementation

50. The relevant test in respect of the funding of Transport and Works Act projects is that “*a scheme is reasonably capable of attracting the funds required to implement it, rather than expecting funding to have been secured.*”⁴³
51. In fact, funding for the scheme has been secured. In respect of the total out-turn cost of £263 million (i.e. including construction inflation), £172 million would be provided by BRL pursuant to a funding agreement dated 9 March 2016 and £91 million would be provided by TfL. That sum is included in its 2016 Business Plan.⁴⁴ Together those sums would meet the non-operating costs of the scheme. The operating costs of £3.1 million a year would come from TfL’s operating budget. There can therefore be confidence that the funding test is met.
52. Assuming that the powers are granted, there is no impediment to implementation of the BRE. It is reasonable to proceed on the basis that other consents, licences and approvals are likely to be obtained.⁴⁵ The agreement of the Crown is required in respect of compulsory purchase affecting its land and that has been obtained.⁴⁶

(11) Landtake

53. The construction of the BRE necessitates the acquisition of land on both a permanent and a temporary basis. There is also a need for permanent and temporary landtake for environmental mitigation.⁴⁷

⁴² BRE/A17/1, Table 8.2

⁴³ BRE/D10: Guide to TWA Procedures para. 1.34. The Guidance on Compulsory Purchase Process (BRE/D3) at para. 8 expressly refers to this specific TWAO guidance.

⁴⁴ BRE/D22

⁴⁵ TfL1/A paras. 4.3.3 and 4.3.4; this also applies to any protected species licence (TfL4/A paras 6.3.31 and 32)

⁴⁶ TfL6/A para. 3.7.3

⁴⁷ TfL3/A section 4.4 and TfL4/A section 6.4

54. TfL has acted in accordance with the Guidance on Compulsory Purchase⁴⁸ and has sought to minimise the extent of land and rights to be acquired permanently under the Order so that only land and interests necessary for the implementation and operation of the BRE are taken.⁴⁹
55. During the process of detailed design, efforts will be made to reduce the landtake where possible.

(12) Representations

56. As of today, taking account of withdrawn objections, there remain 8 objections to the Order.⁵⁰
57. There is no objection from any regulatory body, such as the Environment Agency, or from any representative body, including any local authority.
58. Of the extant objections, 5 are statutory objectors.⁵¹ Agreements have been reached with 3 of those objectors (OBJ/11, 12 and 13) which will entail withdrawal of the objections. In respect of DB Cargo and L&G (OBJ/8 and 9) agreement is considered to be close. TfL has been willing to give a collection of assurances to provide comfort as to the interface between the BRE works and the freight operations and assets, underpinned by the statutory processes for Network Change that govern physical and operational alterations to the railway network.⁵²
59. In respect of the 3 non-statutory objectors, TfL has sought to contact OBJ/2 and 3, but to no avail (TfL12). Their concerns as to the capacity of the GOB line should be assuaged by the fact of the substantial capacity enhancements already implemented and further programmed.⁵³ The initial case of Mr Ridley (OBJ/1) was expressed as seeking passive provision for an extension of the BRE south of the river. Mr. Ridley now appears to accept that such provision, which would inevitably involve placing the new station underground, cannot be regarded as viable and instead seeks as a principal alternative to the BRE a station on Renwick Road, supplemented by bus services. Such provision instead of the BRE would fail to meet the primary aim underlying the scheme

⁴⁸BRE/D3

⁴⁹ TfL6/A paras. 5.1.2 and 5.1.3

⁵¹ Section 11(4) of the TWA 1992 (BRE/E2) and Rule 2(1) of the TW (Inquiries Procedure)(England and Wales) Rules 2004 (BRE/B7)

⁵² TfL1/A paras 5.6.20 to 5.6.27

⁵³ TfL1/B Appendix 4, section 4

and would be contrary to policy. There is no evidence that such a substitute for the BRE would any command any support.

60. In respect of those who have made representations, there has been dialogue with each, as explained in TfL12. No amendment to the scheme is sought in any representations. The PLA accept TfL's explanation as to why the wharf is not to be used during the construction.
61. There are 14 supporters including LBBB, BRL, Network Rail, the independent campaign group Railfuture and DP World who welcome the facilitation of the Ripple Lane freight marshalling yard works which "*will enhance significantly the ability to integrate freight services into the passenger timetable, add operational flexibility and increase capacity to the mutual benefit of both passengers and freight.*"
62. Although not categorised as a supporter, HS1 also note that they "*are happy to be registered as a supporter of the application.*"⁵⁴ The Mayor of London has also written in support of the scheme (TfL17).
63. This is all in addition to the 90% of respondents to the consultations in 2014 and 2015 who supported the scheme in principle.
64. These expressions of support reflect a widely shared view that the BRE is the right scheme to meet the need and are consistent with a fair description of the BRE as a carefully and responsively evolved scheme, with continued constructive engagement with affected parties as the detailed design development progresses.

(13) TfL's evidence

65. Each of the 6 TfL witnesses addresses the matters contained in the Secretary of State's Statement of Matters in a separate section of their evidence; those sections have been collated as single response in TfL10..

(14) Conclusion

66. It will be submitted therefore that the BRE is the appropriate, and urgently required, response to addressing the identified need. It is consistent with policy, accords with the development plan and is itself sustainable development. It will further be submitted that compulsory acquisition and use of the land identified in the draft Order is necessary to allow the scheme to proceed; and that there is a compelling case in the public interest to justify the

⁵⁴ Letter 16 September 2016

requisite interference with property rights, having regard also to the provision of compensation under the Compensation Code.

67. The draft Order has been subject to amendments to reflect recent agreements (TfL9). It will therefore be submitted that the Order, as amended, and the application under section 90(2A), with a raft of appropriate protective provisions, should be made and granted respectively.

18 October 2016

Andrew Tait QC