

**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**

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**CLOSING SUBMISSIONS**  
**on behalf of**  
**TRANSPORT FOR LONDON**

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**A.INTRODUCTION**

**(i) The promoter**

1. TfL's relevant functions as promoter are set out in TfL19 at paragraph 2 and 3.

**(ii) The BRE**

2. The BRE is fully described in TfL's evidence.<sup>1</sup> It is further described in summary at paragraphs 4 to 8 of TfL19 as comprising three principal components:

- (a) the provision of remodelled and new railway tracks on the existing railway corridor between Barking station and Renwick Road bridge (2.4 km);

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<sup>1</sup> xxxxx

- (b) the construction of a new twin track viaduct east of Renwick Road bridge (1.6 km); and
  - (c) the construction of a new railway station at the heart of the proposed Barking Riverside development.
3. During the construction phase there would be 3 construction compounds, together with a storage/layover area.
  4. Pursuant to the BRE, 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.<sup>2</sup>
  5. The draft Order 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.<sup>3</sup>

**(iii) Passive provision**

6. 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 for GOB services imposes no material additional cost in circumstances where planning for the prospect of a station is underpinned by the development plan<sup>4</sup> and the realistic prospect of the development of Castle Green.
7. An expansion of such a station to serve 12 car c2c services is not regarded as having any realistic prospect of implementation given the constraints on c2c services. Nevertheless, as explained by Mr. Abrehart on Day 3, the BRE would not preclude provision of additional platforms in so far as there would be no physical interference with any such proposals if they were ever to come forward. An extension of the notional GOB platforms to accommodate 12 car c2c services at some point in the future would similarly not be precluded but “passive provision” would potentially involve wider interventions on the network which could not at present be justified (TfL 33).

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<sup>2</sup> TfL1/A para. 5.5.1

<sup>3</sup> TfL1/A para. 5.3.4 to 5.3.5

<sup>4</sup> LBBB SSA DPD Policy SM35 (BRE/D40); BRE/E1 para. 1.4.5; TfL/1A para. 5.7.5; TfL3/A para. 3.5.9

**(iv) What is not included**

8. A potential further extension of the BRE to Thamesmead/Abbey Wood, subsequent to the provision of the BRE, is referred to in various documents.<sup>5</sup> 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 and would be at a “*very high cost*”<sup>6</sup> of around £1.2 to £1.6 billion, excluding optimism bias and inflation. It was thus not included in the shortlist of schemes to be taken forward for initial consultation but was to be kept under review.<sup>7</sup> The Mayor has recently announced that the case for such a crossing is to be reviewed further<sup>8</sup> but it remains a concept for longer term implementation (2030+), if at all.
9. The prospects of a further extension coming forward are inevitably diminished by the Mayor’s commitment to the DLR crossing at Galleon’s Reach. The supporting paper to the Mayor’s announcement (TfL16/E) recognises that in terms of funding, if such a DLR extension is to proceed, the additionality provided by a BRE extension is limited. As Mr Rhodes explained on Day 3, there is no reliable evidence that such an extension would unlock the development of homes which would not otherwise come forward. In the context of the savings of £2.8 billion that TfL is required to find over the next 5 years (TfL27), this means that the fundamental question of funding a BRE extension remains a substantial hurdle still to be addressed.
10. As part of that study, TfL will doubtless consider a range of factors, including network capacity constraints and opportunities (referred to by Mr Ridley) and to which TfL is obviously very much alive.
11. The notion of incorporating provision for a further extension was raised during consultation but as explained in the response at the time,<sup>9</sup> 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 in substitution for what is proposed. It would result in a net increase in cost for the BRE of £160 million to £210 million, which would make the scheme unaffordable.<sup>10</sup> A variant raised by Mr. Ridley on Day 3 of a more northerly station at lower depth would also be unaffordable, at a net additional cost of at least £30 to £40 million (X

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<sup>5</sup> The OAPF (BRE/D21), the London Infrastructure Plan 2050 (BRE/D13) and Connecting the Capital (BRE/D31)

<sup>6</sup> BRE/E4 p. 150

<sup>7</sup> BRE/E5 p. 86; the upper end of the range is increased to £1.8 billion in the most recent estimate at TfL16/E.

<sup>8</sup> TfL16/B, D and E

<sup>9</sup> TfL/A7 paras. 5.60 to 5.62

<sup>10</sup> 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)

Abrehart and Rhodes Day 3); it would also be in the wrong place, as explained further below, and would result in the scheme before the Inquiry not being able to proceed. Both suggestions, if followed, would be nothing less than disastrous for the achievement of the aims of the Order.

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. By the time that Phase 4 of the Barking Riverside development is expected to commence in 2024, it should be clear whether a further extension is realistic and is to be proceeded with. In addition, as explained by Mr. Porter on Day 3, the existence of the Barking Riverside Steering Group and the Joint Project Board of which TfL, BRL and (in the former case) LBBB are members, would play an important role in this respect and given the Mayor's stake in the development through the land interest of the GLA, there can be further comfort that any further extension would be accommodated.
13. Mr. Porter has explained the various options that would be considered for the station and viaduct in the uncertain event that a southern extension was to be proceeded with, at TfL 7 sections 6.2.3 to 6.2.7. In one of those scenarios, of ultimately removing part of the infrastructure, the expenditure of some £70 million would still have been worthwhile. As Mr Rhodes stated on Day 3, it would have "*done its job*" in releasing the Barking Riverside site for its required development.

**(v) The context of the scheme**

14. The BRE is the principal component of a wider range of transport measures being brought forward both locally and more widely.
15. 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 LBBB and BRL (TfL14).
16. 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.<sup>11</sup>

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<sup>11</sup> TfL1/A paras. 3.5.3, 4.2.1 and 5.6.5 and 6

17. Improvements at Barking station to provide additional station capacity, including new lifts, are planned to be implemented by 2019,<sup>12</sup> with additional capacity and rolling stock for the c2c services also proposed.<sup>13</sup> The completion of the Four Lines Modernisation programme includes the District and Hammersmith & City lines which stop at Barking.<sup>14</sup>
18. 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, a conclusion that is consistent with the withdrawal of the objections of DB Cargo.
19. In terms of non-transport development, the most significant is 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.

**(vi) The powers sought**

20. The Order follows established precedent, as set out in the Explanatory Memorandum. Two amendments are proposed arising from the Inspector's query as to the scope of Article 5(4) and from a typographical error (TfL33)..
21. 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, subject to conditions. The planning directon drawings are only illustrative and should not therefore be incorporated in to the Order. The Environmental Statement does not proceed on the basis that they define the scope of the permission. Nevertheless, over and above the text in the Request, there are other mechanisms which effectively provide further definition of the scope of the permission, as explained in TfL29.
22. Apart from the extensive integral mitigation included in the scheme through design (itself now tied in to the proposed Code of Construction Practice: TfL22 and TfL30), mitigation during construction would be secured through the very extensive requirements of the proposed Code of Construction Practice, developed in consultation with LBBD and Part A of which (at TfL

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<sup>12</sup> TfL1/A para. 3.5.7; TfL23

<sup>13</sup> TfL1/A para. 3.5.6

<sup>14</sup> TfL1/A para. 3.5.4

30)<sup>15</sup> has been agreed with LBBB. Compliance with Part B will generate the need to produce and comply with a set of plans to control the management of traffic, construction logistics, dust management and travel to work. This has been strengthened during the Inquiry by the incorporation of reference to the Environmental Statement and the design principles and proposals of the Design and Access Statement: TfL22 and TfL30. This amendment is also agreed by LBBB. During operation, the mitigation is either inherent in the design or otherwise controlled under the CoCP or would be controlled by self-standing requirements.

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

## **B. THE MATTERS STATED BY THE SECRETARY OF STATE**

24. Each of TfL's proofs of evidence have addressed the Matters in the Statement that are relevant to that proof: TfL 10 collates where those responses are to be found in the proofs. These submissions do not purport to repeat those responses.

### **(vii) Matter 1: the aims of, and the need for the proposed extension**

25. The need for the BRE is both compelling and urgent.
26. 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.<sup>16</sup> That primary aim has been crafted to respond directly to the national, regional and local policy imperative to secure the optimal, sustainable development of Barking Riverside. The further aims of the BRE are each derived from the Mayor's Transport Strategy.
27. There has been no challenge to the aims by any objector.
28. The development of Barking Riverside to its full, sustainable 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.<sup>17</sup>

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<sup>15</sup> BRE/A/17/3 now replaced by TfL30

<sup>16</sup> BRE/A5 para 2.1

<sup>17</sup> Policy SMI (BRE/D40).

29. 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*,”<sup>18</sup> 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*”.<sup>19</sup> Its importance is evident not only in terms of the provision of “*desperately*”<sup>20</sup> and “*urgently*”<sup>21</sup> needed housing—a “national imperative”<sup>22</sup>—including affordable housing but also jobs.
30. As Mr Rhodes explained on Day 1, the vision for Barking Riverside is of a vibrant, sustainable community that will transform one of the largest brownfield sites in the UK (BRE/D21:OAPF p.87). London does not have enough land to meet its housing needs (BRE/D11: London Plan 3.16b – 3.17A) and best use must be made of its principal opportunities. The regeneration of Barking Riverside is part of the first strategic objective of the LBBB Core Strategy (BRE/D38, p.15). The Core Strategy sees the site as a unique opportunity to create a housing-led, mixed use sustainable community (p.24), with Barking Riverside as the first of the key regeneration areas identified for development in the LBBB Site Specific Allocations DPD (BRE/D40).
31. BR’s development can bring about transformational change in a borough which suffers from a poor visual image and which is the 8<sup>th</sup> most deprived local authority in England (LBBB Issues and Options Report: BRE/D44, p.42). The LBBB is seeking growth to change the fortunes of its residents, with growth seen as the key to reduce deprivation.
32. Mr Rhodes also pointed out that LBBB has an exceptional river frontage but it has historically been dominated by heavy (and more recently secondary) industry. Taking the opportunity at Barking Riverside can change perceptions and set the standard for further dramatic change at other neighbouring sites (Creekmouth, Thames Road and Castle Green). As part of this the BRE is not only the means by which future residents of BRE access Barking, central London, jobs and cultural facilities, it is also the means by which borough residents gain access to their riverside (as confirmed in the evidence of Mr Pope for LBBB).

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<sup>18</sup> OAPF Foreword (BRE/D21)

<sup>19</sup> LBBB Statement of Case; BRE/D38 para. 2.21

<sup>20</sup> London Plan para 3.13 (BRE/D11) ; OAPF (BRE/D21 para 2.4.2).

<sup>21</sup> OAPF para. 2.4.2 (BRE/D21)

<sup>22</sup> London Plan para 3.17A

33. The London Plan prioritises growth in east London (Policy 1.1), prioritises areas in need of regeneration (Policy 2.14) and confirms that delivery of housing is a '*particular priority*' (3.14).
34. Policy 2.13 of the London Plan requires the Mayor and others to work '*proactively*' to release the potential of opportunity areas and that the focus in planning for opportunity areas should be on implementation (2.62). Planning policy at every level seeks to optimise the use of scarce brown field land, and this is particularly the case in London where there is a documented insufficiency of land to meet needs and planning authorities are urged to exceed their housing targets wherever practical (London Plan, Policy 3.3). The LBB Development Management DPD confirms that '*in view of the level of housing need, the council will seek optimum use of suitable sites*' (Policy BP10).
35. The BRE also renders the development of BR viable and enables the provision of 50% affordable housing (TfL2/A paras 6.4.13-15).
36. There can be no doubt that at present Barking Riverside is isolated in transport terms, illustrated by it having either very poor or zero PTAL levels.
37. 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*"<sup>23</sup> - and to 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).<sup>24</sup> 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.

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<sup>23</sup> TfL7 para. 7.4.8

<sup>24</sup> 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).

38. As Mr Rhodes explained, that is not just a planning inconvenience. Even if development were possible without the rail link, it would necessarily be of a more suburban nature at a much lower density. As stated at TfL2/A at paras. 6.4.6 and 3.7.3, the development of the site was originally planned for 5,500 - 6,000 homes but those plans were considered to significantly under-develop the site; hence the need for a rail facility. The prospect of the BRE has enabled the site to be planned with 10,800 homes, at densities which respond to the improved transport link, in line with Policy 3.4 of the London Plan. Parking standards have come down from more than 1:1 to a standard of 0.7 on average across the whole development. The phases prior to the BRE have been developed or planned at 0.97 per unit, but following the BRE the planning consent provides for the provision to come down to 0.34. As Mr Carpen's evidence explains, this not only promotes sustainable development, it also means that the housing typologies can change, and a denser masterplan with a genuine sense of place can be developed.
39. The BRE is therefore 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.
40. 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,<sup>25</sup> 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)<sup>26</sup> 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.
41. Not proceeding with the BRE would prevent the achievement of the primary aim of the BRE. If the BRE is not consented, as LBBB advises, the development of Barking Riverside would be "*in jeopardy.*" Mr. Carpen's evidence confirms that development would have to stop, the £27m of infrastructure investment which has been committed at risk would be undermined and the future would become very uncertain. The entire masterplan has been designed around a town centre with the new station as its focus. Not only would a new planning consent be necessary but a new transport solution would be required – not notionally but actually (planned, designed, funded and committed) and with sufficient capacity and quality to

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<sup>25</sup> TfL1/A para. 4.21

<sup>26</sup> SUPP/4, proof of evidence para. 3.7

replicate both the capacity but also the frequency and the reliability inherent in the BRE.

(viii) **Matter 2: the main alternatives considered by TfL and the reasons for choosing the BRE**

42. 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.
43. 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 Reports<sup>27</sup> confirmed that the option now pursued through the Order is the best performing option both as to mode and alignment. There is no dispute in any representation to the Inquiry as to the selection by TfL of the mode and in respect of the alignment, there is no dispute save in so far as Mr Ridley's objection impinges upon this, as considered below.
44. 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.<sup>28</sup> This has included numerous meetings with the freight operators.<sup>29</sup>
45. Consideration was also given to undergrounding the viaduct, rejected on grounds of cost, to an at-grade alignment, rejected on grounds of severance, and to embankment instead of viaduct, rejected on grounds of security, severance and additional landtake, as explained in Tf11/A paras. 4.4.7 to 4.4.10.

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<sup>27</sup> BRE/C11 and 14

<sup>28</sup> BRE/A7

<sup>29</sup> 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)

46. 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.<sup>30</sup>

**(ix) Matter 3: The justification of the particular proposals including the anticipated transportation, environmental and socio-economic benefits of the scheme**

47. These benefits have been largely addressed under Matter 1 above, since BRE holds the key to the optimal and sustainable development of Barking Riverside.

48. The BRE is fundamental to limiting the highway impacts of that development. Public transport mode share would be enhanced with BRE compared to any other scenario (TfL5/B Table 69x2 and Table 3.4 of the TA: BRE/A17/6). Table 69x2 compares the position with a theoretical construct of 10,800 homes without BRE, which is not plausible but included as a "concept check". In respect of the realistic alternative scenarios of 1500 and 4000 homes, there would be also a material increase in modal share with BRE.

49. There would be separate benefits for freight operations.

50. In addition, there would be employment benefits from the construction of the BRE.

51. 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, it would represent value for money at a BCR of 1.2:1 and 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.<sup>31</sup> 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.<sup>32</sup>

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<sup>30</sup> BRE/A7 pp 62 and 63 and Appendix 6

<sup>31</sup> BRE/C22

<sup>32</sup> TfL1/A paras. 9.3.5 to 9.3.6; BRE/C22

(x) **Matter 4: The extent to which the proposals are consistent with the NPPF, the London Plan and with sub-regional and local planning and transport policies**

52. 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 LBBD Local Plan. The LBBD 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.<sup>33</sup> It would also conflict with the strategic regeneration policies of the development plan.
53. TfL2/A sets out the other policies with which the BRE would be consistent. There is no challenge by any objector to this consistency, since ultimately Mr Ridley did agree that BRE was compliant with Policy 6.2 of the London Plan, which was the only policy in dispute.

(xi) **Matter 5: The likely environmental impacts of constructing and operating the scheme**

54. 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 impacts as far as is reasonably practicable and there would be effective mechanisms to secure these.<sup>34</sup>
55. During construction, significant residual adverse effects would be limited to localised moderate adverse effects associated with reduced visual amenity and impacts on townscape.<sup>35</sup>
56. The potential adverse impacts of the BRE are to be mitigated, such that no long term significant impacts arising from its operation are predicted.<sup>36</sup>

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<sup>33</sup> 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.

<sup>34</sup> TfL2/A para. 7.2.3 and 7.2.4, in addition to the protective provisions in the Order.

<sup>35</sup> BRE/A17/1 Table 18.1; TfL2/A para. 7.4.2; TfL4/A paras. 6.3.27 -28 and 6.3.5.2

<sup>36</sup> BRE/A17/1, Table 8.2

57. The long term positive effects will of course include the achievement of the aims of the scheme.
58. The permanent legacy of the BRE in operation will therefore be a solely positive one.
59. There is no objection which asserts any adverse environmental effects of constructing and operating the scheme. Numerous supporters, including the LBBB, share TfL's assessment as to the long-term positive environmental effects of the scheme.

**(xii) Matter 6: The likely effects of constructing and operating the scheme on traffic and on the operation of businesses in the area**

60. The likely effects on traffic in the area during the construction period would not be significant. There is no objection from anybody in respect of any such adverse effects.
61. During operation, the effects of the scheme on traffic would only be beneficial since they would, even with the additional traffic, enhance the public transport mode share.
62. There would be no significant adverse effects during construction on the operation of businesses in the area. Again there is no objection from anybody, including any business, as to any such adverse effects.
63. Given the facilitation of new employment in the area that is opened up by the BRE, there would only be benefit for business arising from the BRE.
64. The Ripple Lane freight marshalling yard enhancements to be funded by Network Rail fall within the definition of redevelopment proposals. There would be material benefit from their inclusion in the scheme, advancing those proposals. The western part of those proposals fall within the scheme irrespective of Network Rail's funding position and would provide material benefit for the freight industry.
65. Utility providers' apparatus and networks would be protected by private agreement, which has been reached with each provider.
66. There would be no adverse impact on any existing surface and sub-surface assets nor any adverse effect on the UK national railway network. Indeed, the BRE would provide a valuable addition to the network.

**(xiii) Matter 7: The measures proposed by TfL to mitigate any adverse impacts**

67. 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.
68. 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.
69. 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.
70. 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.<sup>37</sup>
71. TfL has also established a Hardship Policy in respect of property acquisition which is similar to that operated by Crossrail,<sup>38</sup> although as Mr. Cunliffe confirmed on Day 2, it is not likely that the policy will be invoked by any person in the case of the BRE.
72. Finally, throughout the construction period itself, and as required under the CoCP, there would be a liaison team providing information and responding to concerns.<sup>39</sup>
73. In terms of the sub-headings under Matter 7, the above addresses (a). As to (b), there would be no major or significant impacts arising from the scheme which are required to be avoided, reduced or remedied. As to (c), the only significant adverse environmental effects would be temporary and localised moderate visual and landscape effects during construction. As to (d), the

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<sup>37</sup> TfL4/A para. 6.3.17

<sup>38</sup> TfL6/A section 3.11 and TfL6/B Appendix 3

<sup>39</sup> TfL1/A para. 4.8.5

there is no dispute as to the adequacy of the protective provisions in the Order for the benefit of the statutory undertakers.

**(xiv) Matter 8: The adequacy of the ES and whether the procedural requirements have been met.**

74. There is no challenge to the adequacy of the ES by any objector.

75. 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.<sup>40</sup>

76. The relevant procedural requirements have been met, as set out in TfL11. No-one has suggested otherwise.

**(xv) Matter 9: Compelling case to acquire and use land and whether the land and rights in land are need for implementation**

77. 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.<sup>41</sup>

78. TfL has acted in accordance with the Guidance on Compulsory Purchase<sup>42</sup> 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.<sup>43</sup>

79. Any interference with human rights would be justified and proportionate (TfL2.A para 8.1.6). The BRL letter received on Day 4 has confirmed its position. There is therefore from any person with any land interest to the compulsory acquisition to secure the aims of the scheme.

80. During the process of detailed design, efforts will be made to reduce the landtake where possible.

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<sup>40</sup> TfL4/A para. 6.3.2

<sup>41</sup> TfL3/A section 4.4 and TfL4/A section 6.4

<sup>42</sup> BRE/D3

<sup>43</sup> TfL6/A paras. 5.1.2 and 5.1.3

**(xvi) Conditions**

**(xvii) Matter 10: Conditions**

81. The request was accompanied by draft conditions in Appendix 2. Following dialogue with LBBD, 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 LBBD.
82. In agreement with LBBD, further adjustments have been made to the conditions (TfL31; TfL35).
83. Taken together with the Order, the conditions would be effective in securing the necessary mitigation.
84. The conditions comply with the requisite tests in the PPG.

**(xviii) Matter 11: Funding and implementation**

85. 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.*”<sup>44</sup>
86. 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.<sup>45</sup> As explained by Mr. Porter on Day 1, that sum is ring-fenced for the BRE, through a contractually binding commitment with BRL. 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.
87. 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.<sup>46</sup> The agreement of

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<sup>44</sup> 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.

<sup>45</sup> BRE/D22

<sup>46</sup> 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)

the Crown is required in respect of compulsory purchase affecting its land and that has been obtained.<sup>47</sup>

## **C. REPRESENTATIONS**

### **(xviii) Objections**

88. As of today, taking account of withdrawn objections, there are only 3 objections to the Order: TfL38.
89. There is no objection from any regulatory body, such as the Environment Agency, or from any representative body, including any local authority.
90. There are no statutory objectors within the definition of section 11(4) of the TWA 1992 and Rule 2(1) of the 2004 Rules.
91. 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.<sup>48</sup>
92. The only objector who attended the Inquiry to give evidence was Mr Ridley (OBJ/1), whose principal point was that a potential further extension to Thamesmead/Abbey Wood should not be prejudiced.
93. Mr. Ridley made clear that he was appearing in an individual capacity, and not on behalf of Enfield Transport User Group or Railfuture Eastern Division, of which he is a member. Indeed, Railfuture has expressed its consistent support for the scheme at each stage of consultation and in its letter of support [SUPP/14].
94. Mr. Ridley's initial objection was two-fold. First, that the scheme should incorporate passive provision for a further extension south of the river. And secondly, that passive provision should be made for an eastern chord from the new station to link with the Tilbury Loop Line.
95. TfL has explained why such passive provision at the proposed station would not be realistic, with a net additional cost of £160 million - £210 million, and Mr. Ridley did not pursue this aspect of his objection. In relation to an eastern chord, Mr Abrehart explained how an eastern chord would conflict with

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<sup>47</sup> TfL6/A para. 3.7.3; see also now TfL34.

<sup>48</sup> TfL1/B Appendix 4, section 4

freight operations, and the safeguarded area for freight expansion in the SSA DPD, irrespective of whether such an eastern chord was at grade or grade separated. Mr. Ridley clarified on Day 3 that he was not pursuing that part of his objection in the context of this Inquiry.

96. Mr. Ridley subsequently suggested that it would be sufficient for Barking Riverside to be served by a station at Renwick Road serving both c2c and GOB services. There would be practical difficulties with such a station without any spur or station within the Barking Riverside development, not least given c2c's position on the capacity of the line. In any event, however, it is evident that such a proposal would not fulfil the primary aim of the project and would conflict with Policy 6.2 of the London Plan and the consequences for the development at Barking Riverside would be severe. TfL's views in this respect align with those of BRL and LBBD who were able to respond directly to the suggestion.
97. In his letter received on Day 2 of the Inquiry, Mr. Ridley indicated that he withdrew this proposal and raised instead a separate suggestion for a station in what Mr. Rhodes described as the "*northern fringe*" of the Barking Riverside development area, together with conditions to require details of the passive provision of Station 2 for future 12 car c2c platforms to be provided.
98. In respect of the former, such a proposal would not only be likely to cost at least in the order of a net additional £30 million - £40million (the funding of which has not been identified) but would result also in the refusal of the Order, as Mr. Ridley accepted. It would be many years before a new Order could be brought forward to accord with the suggestion, given the need to seek funding – including seeking to secure the funding which is committed to the Order scheme – and the process of re-masterplanning, negotiation of a section 106 package and consultation. As Mr. Rhodes explained on Day 3, the development of Barking Riverside would have to stop and the money spent to date by BRL would be potentially wasted money.
99. Moreover, if the station was to be moved to this suggested location, there would be a "*serious impact*" on the viability of the development. As Mr. Rhodes explained, having discussed the notion with Mr. Carpen of BRL, the Barking Riverside development has been deliberately designed for a station rooted at the heart of the scheme in the proposed district centre and square. That is the focus of the bus routes and the activity generated by the station is itself important to the vitality of the district centre. Furthermore, the high density component of the development is adjacent to the river for a reason, since the riverside location unlocks value. If the masterplan is in effect "*turned inside out*" by locating the station to the northern fringe, then that would materially affect the viability of the overall development, with potential reversion back to a suburban car-served development (Mr. Rhodes

Day 3). Moreover, Mr Carpen explained that BRL’s ambitions for a Clipper service have been the subject of discussions with the provider which would be consistent with the role of the station area as a multi-modal hub.

100. Underlying Mr. Ridley’s suggestion is his concern that a further extension south of the river should not be prejudiced by the BRE. As stated earlier, the prospect of such an extension is conceptual only, there is no development plan policy which includes protection for the concept, and there would be no preclusion of such an extension by reason of the BRE. There would be no policy justification for a refusal of the draft Order on the basis of Mr. Ridley’s suggested alternative. As he acknowledged on Day 3, London Plan Policy 6.2 would not provide policy support for such a refusal. The London Plan (March 2016) cannot be regarded as out of date in that respect, as hinted by Mr. Ridley, by reason of the Mayor’s announcement that the case for a future extension should be studied. As explained in TfL2A, at paragraphs 9.2.6 to 9.2.10, the “high bar” for the use of prematurity as a legitimate basis for refusing development proposals would not come close to being met.

101. It is telling in this respect that others who support the aspiration for a future extension – such as LBB, LB Bexley and Railfuture- are firmly in support of the scheme since they recognise the imperative and urgency in responding to the aims of the Order proposals. The Mayor has made clear that any long term extension to the south “*is a long term proposition that must, if implemented, build upon the successful and immediate delivery of Barking Riverside as enabled by the extension that is already proposed*” [TfL17].

102. Mr. Ridley is the only objector who contends that the Order should be refused, albeit he did not suggest it was clear-cut. That contention does not appear to be founded in a considered assessment of the consequences of refusal, not least because Mr. Ridley made clear that he did not wish to thwart the sustainable development of Barking Riverside.

103. As to the suggestion of conditions in respect of a station at Renwick Road, passive provision for a subsequent station to serve GOB services is an inherent part of the design. No condition is necessary. There is no realistic potential for a station to serve c2c services but there would be nothing arising from the BRE to preclude it.

#### **(xix) Representations**

104. 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.

(xx) **Support**

105. There are 17 supporters, of whom 14 have been categorised with a supporter number, 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.*"

106. Although not categorised with supporter number, HS1 also note that they "*are happy to be registered as a supporter of the application.*"<sup>49</sup> The Mayor of London has also written in support of the scheme (TfL17). The Environment Agency also expresses its support for the scheme (TfL20).

107. This is all in addition to the 90% of respondents to the consultations in 2014 and 2015 who supported the scheme in principle.

108. 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 progress.

## **D. CONCLUSION**

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

110. The draft Order has been subject to amendments to reflect recent agreements (TfL9) and to address the point raised as to the environmental implications of maintenance (as defined in the Order) (TfL33). It is therefore

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<sup>49</sup> Letter 16 September 2016

requested that the Order, as amended, with its protective provisions, and the application under section 90(2A), subject to the conditions agreed with LBBD, should be made and granted respectively.

21 October 2016

Andrew Tait QC