

Closing Statement to the NLE Inquiry by David Boardman KAPF, on behalf of NLE Community Action

It is salutary to note, given their subsequent invisibility, that the 2009 SkM Transport study NLE/C2 , at para 3.1.1, recorded the VNEB Opportunity Area as then having an existing population of 6,000 and 26,000 jobs (with the jobs evenly split between Lambeth and Wandsworth) .

In our proof we criticised the demographic assumptions and trip generation forecasts which were being made in relation to the high status, low occupancy new dwellings which were being built in the OA. We are not sure whether we have reached fully realistic levels yet, but we are down to 1.8 persons per dwelling and NLE peak hour northbound patronage is down to about 4,500, which suggests we are well on the way to the more realistic levels we argued for in proof, which were principally rebutted by TfL by suggesting underrecording by high status flats in the 2011 Census.

Alternative transport options

Given a realistic assessment of future transport demand, one can proceed to consideration of options. Under Article 5.3(d) of Directive 2011/92/EU on environmental impact, the developer should present “(d) an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects;” Is TfL’s material in this regard, and particularly NLE/C8 fit for purpose?

As Vauxhall’s MP, Kate Hoey said, when TfL was substituted for the bankrupt Treasury Holdings, it did not exercise adequate care in readdressing consultation and options, accepting too readily what had been done and chosen by the increasingly commercially desperate Treasury Holdings. So what had been previously eliminated on cursory grounds “rail options judged infeasible” were not re-examined. Our FoI responses, assumed accurate still show a very limited scrutiny of NR options up to as recently as February 2013, and however NR apply their soothing words and support to whatever discussions have taken place since then, an NLE was by then firm policy. It is plain that the effective choice between an LRT (not the actual DLR, we note) and the NLE was made no later than the 2009 SkM study, rejecting NR options summarily as “infeasible”, and with cost benefit studies skewed in favour of the NLE by the assumption that “the private sector will build it for free” . Given that the VNEB developments are commonly rated at a GDV of £16bn, with developer profits at 20% GDV, this might well have been the case, but sadly is not so.

I rather liked Mr Russell’s comment in evidence that NLE/C8 was like a compilation album of a fading rock star, full of favourite numbers. Despite its dating as 2013, it contains old demographic assumptions, and persistently omits the lower Lambeth strip from the maps (there goes the native population again, with numbers concentrating only on the new build).

In our view C8 is an ex post rationalisation of a decision taken years before on largely capacity and perceived cost benefit grounds. It is said that a picture is worth a thousand words, and that is certainly true of Figure 2 on page 60 of the document. The red line at

22,000 peak hour capacity is subtly pejorative of all the other options, and we defy anyone to read the conclusion section of C8 without taking the message that the peak hour capacity provided by the NLE is the crucial factor. Mr Russell's revised red line, (OBJ123 – 3) at 4,500 actual peak hour patronage on the NLE in 2031 after full build out, intersecting a number of other options, is a useful antidote to this view, and we do not find TfL's repair job compelling (though their corrections will go some way to improving compliance with the Directive).

For the record I note that:

- NLE/C8 presents some of the options without an analysis of capacity, eg 5A (New automated metro from BPS to Charing Cross, which could alternatively have been considered as a section of a future Crossrail 2 line delivered earlier.), 6B (Crossrail 2, see above), some of the Network Rail alternatives, eg 7B and 7C.
- Also, C8 adopts unjustifiable constraints on several of the Network Rail alternatives, eg 7A and 7D, by assuming only a single train shuttle, with 7 minutes downtime after every journey.
- The more logical proposal of a service from Victoria to Waterloo by building a short connecting spur near BPS, is not mentioned despite being described in the minutes of our meeting with TfL in January 2012 (see OBJ/123-App: item 22:-

“(b) Provision of an NR service between Victoria and Waterloo, by creating a short spur line to the ex-Eurostar flyover line, with a station provided adjacent to BPS, and then running through Vauxhall to Waterloo, and using one or more of the vacant Eurostar platforms.” We think this could have achieved 5,000 plus or more easily. Parenthetically we note that If there is such significant WEI relating to BPS, then Network Rail could have been persuaded to accord higher priority to these options.

It was interesting to hear Ms Rosewell say in oral evidence – “you wouldn't do this as a transport scheme” . But it turns out that you would have done it as recently as 2012 (Volterra Study 2012, attached to KAPF Statement of Case, with a benefit cost ratio of 1.5 to 1 in Section 9 Table A1) – what confidence can you have in such appraisals when they change so radically from year to year, with a collapse of transport benefits from £1.6 bn to £380 m both PVs at 2010 prices?

As regards the calculation of WEIs , (eg TfL/6/b Figure 9Ms Rosewell, Ms Rosewell frankly agreed that her calculations had not been peer reviewed, did not conform to WebTAG guidance, and were out of line with other WEI calculations in the overwhelming preponderance of WEIs over conventional transport benefits. They had only been figured in relation to the one option, an NLE. dependant (13 ex 14k) on employment at BPS, on a risky timetable .

Financing issues and the EZ model

As Donald Stark and colleagues have set out in proof (OBJ/254 –F1 to F8), there has been a long-standing concern of residents that the revenue assumptions for the Enterprise Zone and developer contributions are overly generous. We have long suspected that when the time comes, the planned developments will either not materialise or will come on stream late. This is the consistent message of Battersea Power Station for the past thirty years.

The funding solution proposed by TfL, with Tax Increment Financing at its heart, is innovative and potentially exciting. If the underlying assumptions are robust. And if developers do deliver as planned. In our view TfL have not provided enough assurance on these points. The Inspector and the Secretary of State will need to reflect on the importance of ensuring that this model is very carefully assessed, in view of its novelty, and the likelihood that it could be used on other future projects.

Subsequent to the inquiry session on finance, we have met again with TfL and their real estate advisors Jones Lang Lasalle. This was a useful and productive session, and unearthed some useful discussions about why certain variables have been assumed at the levels that have been assumed.

TfL130 attempts to answer our anxieties, but these remain, and main points of concern are:-

(a) that substantial elements of commercial space at BPS and elsewhere may either take much longer to build or be occupied, or may never be built. The concerns in Nat Lichfield and Chase & Partners in section 5 of their August 2013 report (OBJ/206-14) are clear, and background concerns on transport relate to BPS not having the connectivity of other shopping centres of that magnitude (So much for the magic of the NLE!). In effect, this is admitted by Richard Jones of JLL in TfL130. He, rather bravely, suggests that to make it successful it needs to be really big; is that credible with a cul-de-sac tube from the east and only 1,000 car spaces? Also, is it really feasible that 2.26m sq ft of offices in the EZ will be built and occupied, when the existing office market in the area is so sluggish?

(b) the moderate downside scenario looks ‘carefully crafted’. We worry if phases 3-7 will ever be built! Also, we think the commercial elements of the other EZ sites are partially at risk.

(c) in our view the UBR assumption of 56p in 2017 is somewhat high, and we also need to factor in the latest Autumn statement. The combined effect of continuing the 2% cap on rate poundage increases, and adopting 52.5p in 2017 would reduce the EZ ‘take’ over 25 years by about 11%.

(d) if the ‘reset’ in 2021 does not result in London boroughs losing their 30% LGRR share, that would erode the EZ ‘take’ by at least a further 22%. TfL assumes that all incremental business rates post 2021 will be available for the NLE, and none will be redistributed to the local planning authorities. This is a significant assumption, and would be a long term loss to local authorities.

As discussed in the inquiry session, the risk if any of these issues coming to pass will be held by the London Mayor, leaving what we consider to be a potentially significant risk for future London taxpayers, or potential cuts in future London transport provision

Congestion at Kennington Station

.A persistent community concern is whether TfL has got it right in assessing only a 3% increase in Bank Branch passengers immediately post the opening of an NLE in 2020, given the Bank Branch's already congested character. This reflects TfL's view that most NLE passengers will favour the Charing Cross Branch, which has been supported by the analysis in TfL 42, based on employment locations. We note however that that analysis lumped in the employment generating London Bridge area, and its run up stations on the Bank Branch into the "other" category, artificially depressing the likely Bank Branch tally. We find TfL models impenetrable, and delivering central cases only. While end to end analysis appears sound, based on oyster card gateline data, intermediate transfers between stations are estimated by survey, and inherently more uncertain. This is supported by OBJ/206 – 13 in which we reported the results of an invigilation of cross passage movements at Kennington Station, demonstrating that TfL's central estimate of some 15 to 1 was actually 5 to 1 when actually measured. In OBJ/206 – 10 we give a run of peak hour standing passenger levels per square metre, over the years to 2031. There is little relief till NLU2 – the current peak hour level of 4.3 pax per sqm falls to 3.7 Pax/sqm with NLU1 in 2014, then rises with natural growth to 4.1 in 2020. Will there then be a blip to 4.2 or a bump to 4.3 or higher with NLE? There is then the relief of 2.6 with NLU2 in 2022 ,creeping back up to 3.7 in 2031 with natural growth.. Whether blip or bump, we think the jury is still out.

Ground settlement

TfL has given assurances to residents at the inquiry that

- it has used conservative assumptions in determining which properties should be offered a settlement deed;
- any settlement damage to properties would become visible within weeks of a tunnel boring drive, which itself would be only a short period of time after TfL surveyors had carried out a condition survey of any property within the 10mm settlement contour, if the property owner agrees;
- a comprehensive settlement deed will be offered (as set out in the Code of Construction Practice), under which TfL unconditionally offers to pay for any reasonable repair costs for damage caused by settlement.

On this basis, the vast bulk of residents' outstanding concerns on settlement at this stage in the process have been answered. We welcome the clarification under CoCP para 13.2.1 second bullet that all properties within the Order limits, as defined, will receive a TfL funded survey, be subject to the monitoring regime and be offered their survey results. We ask however that TfL be reasonably generous in their consideration of when to offer settlement

deeds in relation to properties outside the Order limits, and that CoCP para 13.2.2 be amended to add the following text, which gives effect to TfL's offer at TfL 13D para 4 (end)

“A property owner who is not offered a settlement deed may pay at their expense for a defects survey to be undertaken. If TfL is given reasonable notice, and is able to witness the survey being undertaken, then in the event of a claim being made, it would treat the survey as evidence to assist in determining whether the damage alleged in the claim is attributable to the construction of the NLE”

Noise

The issue is joined over operating noise and conditions 13(a) and (b), incorporating 35dB LAF_{Max}, hereafter 35dB.

We now well understand the argument that with two sorts of track regime, the plain track and the step plate junctions, each with their own pinch points, the mitigation methods necessary to reduce these noisiest points to no more than 35dB, when applied to the quieter rest of their respective regimes will give us below 30dB in much of the remainder, at least as regards the longer length of the plain track. Since all the guidance says that 35dB is the No Observable Effects Level (NOEL), we are met with the argument that therefore there is no legal warrant to justify prescribing lower levels, even if the pinch point regime delivers it, in most places, by happy circumstance.

But we learnt that the Night Noise guidelines and the National Noise Guidelines all stem from research directed at aircraft and external noise, and have been adjusted to take account of ground bourn noise theoretically, and without further experimental verification. And in the debatable land between 30dB and 35dB, we now have a counterexample, revealed in evidence by Mr Thornley Taylor, of a residential property over the Kennington loop which, for reasons of a temporary track imperfection, is demonstrating a noise level of 38dB in a ground floor kitchen, and 34.5dB in a first floor bedroom. And the effect in the bedroom is to keep one person from falling asleep until trains cease for the night, and to rouse both occupants from sleep when the first train of the day passes. Such a counterexample is a material consideration of great weight, and in consequence, the Secretary of State should give little or no weight to a NOEL of 35dB for ground bourn noise, which is demonstrably in error.

It must follow that the regime mandated by conditions 13(a) and (b) with 35dB risks unacceptable noise at the pinch points, and in consequence we ask the Secretary of State to vary the condition to specify 30dB.

As regards construction noise, we are satisfied that, with

- the amendments to the CoCP to allow LPA approval of Noise and Vibration Management Plans, as part of site specific CoCP Part Bs under para 1.2.4 CoCP Part A,
- the powers of LPAs under Ss 60 and 61 Control of Pollution Act 1974, and

- the “minimise” obligation under para 5.3.8(a) CoCP (Temporary Construction Railway)

our Councils have entirely adequate powers to preserve us from noise and vibration nuisance, whether originating above or below ground, if they are prepared to use them. In this context we restate our view that tunnelling works are works within the scope of S60(b) and/or (d) Control of Pollution Act, and hence susceptible to this control regime. We have also noted TfL assurances that no construction railway will be required in the gallery tunnels, and we look to TfL to ensure that this assurance is carried through contractually to whoever gains the contract for executing these works.

Kennington Station

We turn finally to Kennington Station. I suspect that the Inspector has been amused by the ping pong that TfL and ourselves have been playing over the safety and general fitness for purpose of Kennington Station. (OBJ/206 -2,4,5,6,10,12,13, and 17 on our side and TfL 21, 25,38,39,42,44,46,72, 97, 100, 108, and 127 on TfL’s, assuming I have not missed being rebutted, or appropriated someone else’s). We have measured and counted, and come to the conclusion that the station is not fit for purpose for the major transfer point that it is set to become if an NLE starts to operate. We are particularly exercised at the depth of the station, the 79 steps of the only fixed spiral stair case exit, and the consequent low rate of evacuation in an emergency (3.2 passengers per second maximum by stairs, plus 0.8 passenger a second by lift, if operating, or 4 per second in aggregate at best). We have noted increased transfer numbers between Branches, both from the introduction of fresh passengers with the NLE in 2020 and from the separation of the Branch services with the NLU2 upgrade in 2022, and increased risk of congestion given the foreseeable perturbations in service that we have seen on a daily basis during invigilation, even with generally good services and the best signalling system (that a one off observation on one day). We have examined TfL’s own station standards (NLE/G1), and for the last time we exhibit them here, as we did in proof and in OBJ/206 – 17:

At Section 5.1 Planning for Hazards – Evacuation, we find

“The aim in emergency evacuations is to clear the passengers to a place of safety within six minutes.”[in the absence of fire doors, this means evacuation to street level]

“In practice there may be scope for passengers to be evacuated by train, but the planned station capacity shall not rely on this.”

“Enclosed (formerly known as Section 12) stations shall have at least two alternative means of escape from each platform and two fire-protected routes passing through the station and leading to street level.”

Yet we find TfL standing on its grandfather rights to leave Kennington Station unmodernised, and repeatedly emphasising the facility to evacuate by train, in the face of its own guidance. TfL limits itself to extra cross passages, and rejects our view that they are in denial about evacuation – we must leave the Inspector and the Secretary of State to judge. TfL chides us for using the moving passenger metric rather than the static passenger at platform metric to flag evacuation concerns, when it is the prospect of those large static concentrations on platform having to move (or try to) to evacuate by stair that drives our concerns.

So the view of ourselves and the community interests we speak for, alongside the informed opinion of Mr Hart, an experienced railway safety professional (OBJ/60/12) is that the change brought to operations at Kennington Station by an NLE is of such a scale and nature that it ought to lose its grandfather rights and be required to come up to modern standards. This would require at minimum:

- the surface works to rationalise ingress and egress with an extra gateline
- the installation of additional lift capacity to allow step free access to platform from the existing lift gallery
- two fire protected routes to street level.

If an NLE is to be authorised, we should much prefer these changes to be made conditions precedent to the operation of it. However, given Kennington Station's listed status, we are told that this cannot be done, because detailed plans for such works would have to be available and have been scrutinised now. If there is no legal sleight of hand available (eg imaginative use of the disapplication power), then we must ask the Secretary of State to reject the Order on this ground.

D J BOARDMAN

Chair
KAPF
on behalf of NLE CA

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