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TRANSPORT AND WORKS ACT 1992
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(APPLICATIONS AND OBJECTIONS
PROCEDURE)(ENGLAND AND WALES)
RULES 2006
PROPOSED LONDON UNDERGROUND
(VICTORIA STATION UPGRADE) ORDER

OPENING SUBMISSIONS OF VICTORIA
PALACE

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PROPOSED LONDON UNDERGROUND (VICTORIA STATION UPGRADE) ORDER

**OPENING SUBMISSIONS ON BEHALF OF VICTORIA PALACE (AN UNLIMITED
COMPANY)**

1. There is a need to improve Victoria Underground Station. There is a problem with pedestrian congestion particular in the morning peak period. The scheme which LUL has promoted to solve that problem, however, has been formulated without proper regard to statute, to policy and (in particular) to the impact which it will have upon the Victoria Palace Theatre (“VPT”).

The VPT

2. The VPT is a Grade II listed building. It is on a site on which music halls stood since 1832. It was built in 1910-1911 to a design of Frank Matcham who was one of the greatest architects of British theatres. It is a splendid building – which will be fully described by Mr John Earl in his evidence. Over the years it has hosted numerous well known productions and is currently home to the long run being enjoyed by the musical *Billy Elliot*. A site visit will be arranged so that the interior of the theatre and its structure can be fully appreciated.
3. The theatre is now owned by Victoria Palace (an unlimited company) and managed by Sir Stephen Waley-Cohen who put in place some sympathetic restoration and upgrading in the early 1990s. The theatre is an important local business but one whose importance goes beyond its immediate locality because it forms part of London’s “Theatre Land”. You will hear, however, that for the theatre to continue to perform its important role in Theatreland its facilities need further improvement: to that end Land Securities (which owns the land to the north of the theatre) has indicated that it will make available a 6 m strip on which a new fly

tower can be constructed which will enable the theatre to continue to host significant west end shows. These improvements are supported by the City of Westminster.

The impact of the VSU scheme on the VPT

4. The effect of the promoted VSU scheme on the VPT may be summarised quite simply.
 - a. During construction there will be
 - i. a significant risk of structural damage due to settlement or collapse as a result of the construction of the PAL and the escalators at the northern end of the theatre: this is partly because LUL has misunderstood the structure of the VPT in its assessments (investigations and plans show VPT was constructed using steel stanchions, not load bearing masonry as indicated in LUL's environmental assessments) and partly because of the anticipated method of tunnelling (jet grouting) (see Mr Wilson Obj 21/P10 and Mr Chapman Obj 3/P3);
 - ii. noise and vibration (see Mr Greer Obj 21/P4); and
 - iii. disruption of access and transportation (see Dr Loveday Obj 21/P5)
 - b. Following construction (assuming that the effects during construction leave the VPT as a working theatre):
 - i. without mitigation (which would involve upgrading the track on the relevant short section of the Victoria Line or relocation of the VSU works) there will be noise and vibration caused to the VPT as a result of the connection which would be created between the station and the theatre by the northern escalators and PAL (see Mr Greer Obj 21/P4);
 - ii. the future development of the VPT will be compromised because those escalators conflict with the 6 m strip which the City of Westminster, Land Securities and the VPT wish to see used for improvements to the theatre to ensure that it remains successful (see Mr Satow Obj 21/P6 and Mr Wilson Obj 21/P10);
 - iii. there will be possible harm on visual impact due to setting because no proper scheme for the development of demolished buildings has been worked up (see Mr Earl Obj 21/P2 and Mr Edge Obj 21/P3);

- iv. there will be prejudice to the viability of the VPT as a working theatre - a use which has strong protection under Development Plan policies (Earl Obj 21/P2, Edge Obj 21/P3, Satow Obj 21/P6; see too Stoneman Obj 21/P8, Conley Obj 21/P1).

Failure to comply with policy

- 5. Improvements of Victoria Underground station are supported by policy. On the other hand, the VSU scheme which is promoted by LUL conflicts with strong and important policies which protect the VPT both as a Grade II listed building and as an important part of Theatreland (e.g. UDP policy TACE 6). There has been no proper acknowledgment of this by LUL. The conflicts with policy are summarised in the evidence of Mr Edge. In particular, LUL's VSU scheme as promoted through the draft order conflicts with policy because of
 - a. the effect which the VSU scheme would have on the fabric of the VPT as a listed building (PPG15; UDP policies STRA 29 and TRANS 5(E));
 - b. the effect which the VSU would have on the VPT building due to noise and vibration not only during the currency of the works but subsequently (PPG24 para 14; CLP Policy 4A.20; UDP Policy ENV 6);
 - c. the prejudice it will cause to Land Securities' VTI scheme and to VPT's own proposals for improvement the need for which is recognized in adopted policy (adopted Victoria Area Planning Brief paras 1.5 and 5.29-5.31 VSU.C42; see also UDP Policy TACE 6);
 - d. the impact on the setting of the VPT as a listed building (PPG15 paras 2.12-2.17 and 5.2-5.3; UDP Policies STRA 29, DES 1, DES 10);
 - e. the likely economic consequences on the VPT (PPG 15 paras 1.4-1.6, 3.8; Victoria Area Planning Brief); and
 - f. the inadequacy of measures to protect VPT from these prejudicial effects both during and after construction (in particular PPG15).
- 6. VPT's importance to the surrounding locality, the protection and improvement of the VPT is recognized both by CoW and by Land Securities. Improvement of the VPT is seen as an important part of the regeneration of the Victoria Area and goes hand in hand with the VTI scheme promoted by Land Securities: it is envisaged that Land

Securities will make available the 6 m strip to VPT for the improvement of the theatre as part of its regeneration proposals under the VTI scheme (see Satow Obj 21/P6; see O'Shea Obj3/P1 para 5.5.13). The VSU scheme will prejudice both the protection and the improvement of the VPT in this way. It is thus inconsistent with the objective of the regeneration of the Victoria area as a whole.

Failure to comply with statute

7. There has been a failure to comply with domestic and European law in the manner in which the Environment Statement and Supplemental Statement have been produced.
8. The purpose of the EIA process, as was made clear by the House of Lords in *Berkeley v Secretary of State for the Environment* [2001] 2 AC 603 at 615 C ff, is to ensure that the *public* is given an opportunity to express its opinion on the environmental issues *by means of a particular process*. It is essential to that process that an Environmental Statement complies with the statutory requirements for an Environmental Statement: EU and domestic law require that a particular process will be followed. It is not sufficient to say that it will all come out in the wash at a public inquiry or that the inquiry gives *the Secretary of State* enough information to make an informed decision. Further, if the process is to fulfil its purpose as explained in *Berkeley* an Environmental Statement must not only appear to have the form set out in the statutory requirements but must contain sufficient information for the public to express its opinions as part of the EIA process on the matters which are required to be included within an Environmental Statement.
9. VPT will submit that this process has not been gone through in this case and there was simply insufficient material to enable the public *through the EIA process* to express its opinions on the matters included within the ES and SES. The ES and SES prepared on behalf of LUL are inadequate in a number of crucial respects in the way in which it dealt with the impact of the VSU scheme on the VPT and how this impact can be mitigated. A full written submission on the law will be made as part of VPT's case identifying the key points in respect of which the ES and SES were deficient.

LUL's attitude to VPT and to its VSU scheme?

10. The failure to provide within the VSU scheme details of the replacement for buildings demolished which affect the setting of the VPT is a specific example of the general approach to the development of the area. VPT endorses Land Securities' submission that the TWAO application is premature (compare O'Shea Obj3/P1 para 5.3.13). The VSU scheme has been formulated without proper regard to its impact on the regeneration of the area as a whole and without proper regard to the protection and improvement of the VPT in particular.
11. How the scheme has come to be formulated in this way will be explored in evidence. One can infer that the VSU scheme has been formulated having regard solely (or almost solely) to transportation solutions lighted upon without a proper understanding of the history, architecture and physical construction of the VPT, without a proper understanding of policy and without proper regard being had to requirements of statute. The way in which the VPT has been considered by LUL is entirely consistent with the way in which other objectors have perceived LUL's attitude in negotiations. This attitude is that "VSU should be delivered at all costs" (O'Shea Obj 3/P1 para 4.9). This is not an approach which the Secretary of State can properly endorse having regard to clear government policy about the importance of the historic environment and the more general requirements of good planning.

Alternatives?

12. VPT will leave to Land Securities' witnesses the detailed evidence providing a critique of the optioneering process undertaken by LUL. It appears to have been deeply flawed. VPT's analysis has identified two alternatives which have less impact on the VPT both of which do not appear to have been properly weighed up in the optioneering process.
13. First, "Option 2B/C" provides the benefits of the adopted VSU scheme without the significant harm to the VPT. This option was formulated by LUL itself. In particular it locates the "Paid Area Link" away from the VPT. The reasons for the rejection of this option will be explored. On the evidence and documentation which VPT has seen it is

difficult, if not impossible, to see how or why Option 2B/C has been dismissed particularly if the potential impact on the VPT had been properly considered. We will obviously hear from LUL's witnesses. Attempts now at *ex post facto* rationalisation for the rejection of this option by LUL, however, ought to be treated with some scepticism.

14. Secondly, Land Securities' Option 1a as shown in exhibit 12 to the evidence of Mr Chapman (Obj 3/P3) appears to overcome many of the difficulties created by the promoted VSU scheme. This is similar in alignment to LUL's own "Option 2A" but with a tunnelling method which on Land Securities' evidence is more secure. Refinement of the route of Option 1a has now been suggested by Land Securities. If this refinement can be achieved without conflicting with the structure of the VPT, then this route (with the methods of construction suggested by Mr Chapman) may create far less harm to the VPT than the route promoted by LUL. Indeed, if there is no conflict with the structure of the VPT and with additional safeguards for the VPT this option might provide significant benefits over the promoted VSU scheme. Again, at present, it is difficult if not impossible to see why this option was dismissed

15. If a VSU is to be implemented it will also be necessary to relocate the escalators and tunnels containing them from the location presently proposed by LUL. As presently located on LUL's proposal
- a. (without upgrading of the track as described in the evidence of Mr Greer) they will enable the transmission of noise and vibration into the auditorium of the theatre from the railway, in particular from south bound Victoria Line trains;
 - b. they will prevent development necessary to protect and improve the future of the theatre (because the escalators conflict with the 6 m strip);
 - c. they will prejudice the structure of the VPT during the tunnelling process (due to settlement or tunnel collapse).

These effects are unacceptable given the importance of the VPT. LUL's evidence at present does not at present adequately address these points. Indeed, original plans for various VSU options show that the escalators were envisaged as being located in a position some 5 m further north so that they would not have these adverse effects.

16. These alternatives (2B/C, Land Securities Option 1a; moving the escalators), however, are suggestions for how a VSU scheme might be implemented while minimizing harm to the VPT. On the other hand, it is VP's primary case the VSU scheme as promoted has been formulated on a misconceived basis without proper regard to the environmental and policy constraints which the existence of the theatre ought to put upon any scheme. If LUL considers these alternatives unacceptable then it is submitted that it must go back to the drawing board to consider still further alternatives which provide proper protection for the theatre which it has so far singularly failed to respect.

Protection of the VPT

17. The technical need for protection for the VPT is identified in VP's evidence. How such protection can be provided, will be a matter for legal submission and drafting. Where relevant, suggested revisions to the form of the Order and planning conditions will be provided following discussion with LUL. At this stage, there appear to be a number of choices

No PAL under VPT and removing the escalators from conflict with VPT?

18. To ensure the fullest protection of the VPT it is necessary (1) to move the PAL away from the Theatre (e.g. Option 2B/C) and (2) to move the northern escalators so that they do not conflict with the 6 m strip required for the improvement of the VPT and/or do not prejudice the structure of the theatre and/or do not transmit noise and vibration to the VPT. If an Option such as 2B/C were preferred it would be necessary for new or supplemental orders to be published.

If PAL provided under the VPT, a different alignment

19. If a PAL is to be provided under the VPT at all then the Order should be amended or provision made so as to require LUL

- a. to construct a shorter PAL in such a manner that it would not conflict with the structure of the VPT (this would require a supplemental order to enlarge the limits of deviation) *and in any event*

- b. to adopt a method of construction which will minimize the risk of harm to the VPT (as suggested by Land Securities under Option 1A); and
- Any such alignment must not have adverse impacts in terms of noise and vibration. This, however, would still leave the issue of the impact of the northern escalators.

Northern Escalators

20. If confirmed, the order should be amended so that the northern escalators are located so that they do not conflict with the 6m strip identified in the evidence of Mr Satow, do not provide a connection through which noise and vibration will affect the VPT as identified in the evidence of Mr Greer, and do not prejudice the structure of the theatre.

21. Alternatively, if the northern escalators are not so relocated, then

- a. the Order should be amended or provision made to ensure in a legally enforceable manner that the limits on noise and vibration which would be suffered by the VPT without mitigation and which are identified by Richard Greer are not breached (it is anticipated that these limits will be agreed); as Mr Greer explains in his evidence, this can be achieved by a track upgrade; and
- b. the Order should be amended or provision made (i) to ensure that the VSU scheme is constructed in such a manner that it will be able to accommodate future development of the VPT on the 6 m strip and (ii) to ensure that the structure of the VPT is not put at risk; LUL has yet to show that this is possible; it seems LUL are exploring the matter further; indeed, LUL's engineers for the first time last Thursday – 23rd October 2008 - tabled details of a possible engineering solution which appeared to allow for the accommodation of VPT's objective of developing the 6 m strip to provide a fly tower; however, the method of tunnelling presently employed appears still substantially to prejudice the structure of the theatre; LUL's possible solution, therefore, would seem to leave VPT with the prospect of being able to build a new fly tower to serve a seriously compromised and endangered theatre.

Protection during construction etc

22. If confirmed, specific protection should be given to VPT from the effects of and disruptions caused by construction. These will be discussed further with LUL. It is important that the VPT be kept alive as a working, viable theatre: it is not satisfactory for losses to be left simply to the usual compensation provisions. This is an important listed building with living use. Seven years of construction works and the disruption which they will cause will prejudice the viability of the theatre unless specific protective provisions are included.

Summary of submissions

23. In essence, we submit that the VSU scheme is ill thought out. It is difficult if not impossible to see why the option promoted was chosen when one consider the likely impact which the scheme will have on the VPT. Indeed, it appears from what can be seen from the documents at this stage little serious consideration was given to the implications of the VSU scheme for the theatre. This has led LUL to promote a scheme

- a. which has failed properly to comply with the requirements for Environmental Impact assessment;
- b. which conflicts with policy; and
- c. which would, if implemented, (i) put the theatre at serious risk from damage to its structure, (ii) prejudice its continuing ability to survive because of the transmission of noise and vibration and (iii) cause severe disruption to the theatre during the seven years in which it will be surrounded by construction works.

Unless substantial protection can be provided through a modified order (with or without supplemental orders), the Order should not be confirmed at all and the consequent applications for listed building consent should be refused.

JONATHAN KARAS Q.C.

CHRISTOPHER BOYLE