

## **THAMESLINK 2000 INQUIRY**

### **Ruling on Request for the Appointment of Counsel to the Inquiries**

#### **The Case for the Cathedral Area Residents' Association/Bankside Residents' Forum (CARA/BRF)**

1. At the Pre-Inquiry Meeting held on 26 April 2005 CARA/BRF, Objection 589A, asked that the Inspector request the appointment of Counsel to the Inquiries. The matter of imbalance, or inequality of arms, raised at the Pre-Inquiry Meeting (PIM) for the original Inquiry was reiterated. CARA/BRF alleged that as all other parties were willing to sacrifice the Borough Market area without questioning Network Rail's claims, the whole onus of protecting the area fell on the two Associations, which are voluntary bodies that rely on good will.

2. CARA/BRF face the full resources of Network Rail with its lawyers and transport planners and do not have the wherewithal to employ experts. They maintain that the system is unfair and needs to be redressed. An approach had been made to the Department of Transport but the Associations had been referred to the Legal Services Commission. Another Objector indicated that the Greater London Assembly had provided funds to third parties at the Thames Gateway Bridge Inquiry for professional advice.

3. An alternative to funding would be the appointment of Counsel to the Inquiries, which is provided for in the Tribunals Act. This might be unusual but is not unprecedented. Counsel was appointed to the Rothskill Commission, the London Plan Inquiry in 1970-72 and the Sizewell B Inquiry in 1982-5.

4. In addition to the disparity of resources, the Inquiries raised matters of importance and complexity. The Statement of Matters produced by the Secretaries of State lists 28 wide ranging matters. Many of these are of a specialist nature that would not be efficiently dealt with by the normal adversarial process. There have been many material changes since the original Inquiry and as the scheme is nearly 20 years old the conclusions in the original report should be revisited in the interests of fairness, thoroughness and public trust.

5. The possibility of judicial review would recede if Counsel were appointed to probe matters on behalf of the Secretaries of State. CARA/BRF considers that such an appointment would be cost effective and a benefit to everyone.

#### **The Case for Network Rail**

6. Network Rail considered that the abilities of the CARA/BRF team had been played down. In the original inquiry they had presented their case cogently and well. Counsel to the Inquiry was only appointed in exceptional cases either where there was a wealth of technical material, such as Sizewell B, or where the process was inquisitorial, such as the Shipman Inquiry, to prevent the tribunal

'entering into the fray'.

7. In this case the proceedings are not essentially inquisitorial and there is no wealth of material. The issues raised are comparatively narrow in scope. The concern of the Associations is disparity of resources but Counsel to the Inquiry is not a proxy for a third party objector. The approach has always been for matters to proceed as they do with the Inspector ensuring fairness. Where cases are exceptional funding is made available and could have been in this case. In Networks Rail's view the case is not exceptional.

### **Inspector's Conclusions**

8. The matters to be considered by the Inquiry are important. However, the concern about inequality of arms was the subject of a judicial review following the PIM for the earlier Inquiry. This had not led to any additional funding being made available but it was stated that the Inspector would 'bend over backwards' to ensure that the Objector's case had a fair hearing. The latest Statement of Matters indicates that the original Inquiry is to be re-opened to consider evidence relating to material changes in circumstances since the earlier Inquiry. Although there are a number of matters on which the Secretaries of State wish to be informed, these generally reflect those in the Statements of Matters for the earlier Inquiry. The scope of the re-opened Inquiry is therefore expected to be similar to or narrower than the original inquiry for which Counsel was not appointed.

9. In addition, a concurrent Inquiry will consider the most recent applications for planning permission and listed building consent. These are standard applications which the lead Inspector, who is an architect, is experienced in dealing with. The Inspector does not therefore consider the subject matter for the Inquiries to be so exceptional as to justify the appointment of Counsel to the Inquiries, or any deviation from the normal adversarial process.

10. Moreover, CARA/BRF indicated they had obtained the services of a QC pro bono, as at the earlier Inquiry. The Inspector had indicated that presentation of the CARA/BRF case would, as far as was possible, be programmed around the availability of their Counsel. In these circumstances, the Inspector does not consider that there is a justification for appointment of Counsel to the Inquiries or that either the fairness or thoroughness of the proceedings would be materially affected by a failure to appoint Counsel.

A handwritten signature in black ink that reads "K.D. Barton". The signature is written in a cursive, slightly slanted style.

K D Barton  
Inspector