



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

Woodside Link Houghton Regis Bedfordshire

Examining Authority's Report of Findings and Conclusions

and

**Recommendation to the
Secretary of State for Transport**

Glyn Roberts

Examining Authority

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Examining Authority's findings, conclusions and recommendation in respect of the Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order application.

File Ref TR010011

The application, dated 14 May 2013, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on the same day. The applicant is Central Bedfordshire Council.

The application was accepted for examination on 11 June 2013. The examination of the application began on 8 October 2013 and was completed on 4 April 2014.

The development proposed comprises construction of a highway – the Woodside Link - that is proposed to connect to two trunk roads: the existing M1 at a new junction 11a, and the proposed A5-M1 Link Road. As traffic to and from the Woodside Link would necessarily have to come from or be going to a trunk road or a motorway, and one of its purposes would be to provide such access, the applicant considers the project to be a nationally significant infrastructure project under section 22(2)(b) of the Planning Act 2008.

Summary of Recommendation:

I recommend that the Secretary of State makes the Order in the form set out at Appendix D.

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ERRATA SHEET – Woodside Link Houghton Regis Bedfordshire - Ref TR010011

Examining authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport, submitted to him on 4 July 2014

Corrections agreed by the Examining Authority prior to a decision being made

Page No.	Paragraph	Error	Correction
31	3.83	Line 3: "SMLEP"	"SEMLEP"
48	4.21	4 th line: "are"	"area"
48	4.25	Line 5: "experiences"	"experienced"
49	4.25	Line 2 on this page: "alternations"	"alterations"
51	4.38	Contrary to what is suggested by this paragraph as submitted to the SoS, the wording referred to was not incorporated in the Order, either by the applicant or the ExA.	'... The wording suggested by the planning authority appeared to be accepted by the applicant at the relevant Issue Specific Hearing but was not incorporated into the recommended Order. In the interests of minimising unnecessary planning delays to delivery of the project the Secretary of State may wish to clarify the position with the applicant prior to making the Order. I consider this point in more detail at paragraphs 4.238-4.239 below.'
56	4.59	Line 4: "oaths"	"paths"
57	4.65	Line 5: "Pak"	"Park"
65	4.101	5 th bullet, 2 nd line of bullet: "hors"	"hours"
68	4.110	3 rd line: "... site in either side of northern ..."	"... site on either side of the northern ..."

Page No.	Paragraph	Error	Correction
81	4.157	6 th line: "S5-M1"	"A5-M1"
89	4.189	4 th bullet, 12 th line of bullet: ", In"	", in"
92	4.202	1 st line: "Tables 8.5 and 8.5"	"Tables 8.5 and 8.6"
97	4.235	1 st line on this page: "probably"	"probable"
97	4.237	1 st line: "(LIR_2)"	"(LIR_1)"
102	4.255	8 th -9 th lines: "... adjoining the administrative boundary with between administrative ..."	"... adjoining the boundary between the administrative areas"
106	4.274	3 rd line: "... retained adjoining ..."	"retained section of new highway adjoining ..."
108	4.282	2 nd line: "DRMB"	"DMRB". Superfluous bracket deleted at end of sentence.
118	4.237	7 th line: "SFRI"	"SRFI"
119	4.332	3 rd line: "neither the of the"	"neither of the"
119	4.332	3 rd line: "SFRI"	"SRFI"
120	4.336	Missing word(s) in quotation at end of paragraph	for ease of referencing this paragraph's final sentence should read as follows: "...In the Action points agreed at the Issue Specific Hearing, held on 21 January 2014 (HG_6), I requested that the applicant: <i>'Provide written confirmation of quantity of housing that could be in the absence of the Woodside Link Road. It would beneficial if a plan could be provided identifying the location of the land parcels concerned, together with their individual housing capacity.'</i> [sic]

Page No.	Paragraph	Error	Correction
123	4.347	3 rd line on this page: "... would be of relieve show ..."	"...would show..."
126	4.363	1 st line: "... made Houghton ..."	"... made by Houghton ..."
132	4.391	15 th line: "4.271-4.274"	"4.322-4.324"
134	4.401	4 th line: "applicant"	"application"
134	4.403	8 th line: "12031"	"2031"
142	4.436	7 th entry in bulleted list: "Long MEasdown"	"Long Meadow"
148	4.462	6 th line: "oder"	"Order"
151	4.476	2 nd line: "DRMB"	"DMRB"
151	4.477	2 nd and 3 rd lines: "DRMB"	"DMRB"
151	4.478	1 st line: "defined a s corridor"	"defined as a corridor"
152	4.482	4 th line: "since"	"for". Insert missing closing bracket at the end of the same sentence.
156	4.502	4 th line: "S5-M1 Link"	"A5-M1 Link"
188	6.11	6 th line: "... is for that ..."	"... is that ..."
191	6.19	2 nd line of 2 nd bullet: "drive"	"Drive"
194	7.2	13 th line: "... applicant by..."	"... applicant but also by ..."
195	7.3	1 st bullet entirely on this page: "Transport and Works Act"	"Highways Act"
A19		Definition of "DEFRA": "...Environmental ..."	"... for the Environment, ..."

1 INTRODUCTION

- 1.1 The Woodside Link is a new highway intended by its promoter, Central Bedfordshire Council (CBC), to provide a more direct route for traffic between the primary road network (the M1 motorway and the A5) and the Woodside area of Dunstable/Houghton Regis, a major employment area in Bedfordshire. The Highways Agency is currently promoting a northern link road (the 'A5-M1 Link') between the A5 north of its junction with the A505 and the M1. The A5-M1 Link will meet the M1 at a new junction, Junction 11A, to be located between existing Junctions 11 and 12. The Woodside Link scheme would extend from the new Junction 11A to connect with an important intersection between Park Road North, Sandringham Drive, Wheatfield Road, Poynters Road and Porz Avenue which forms part of the existing highway network at the northern edge Woodside Industrial Estate area.
- 1.2 The development proposed is a nationally significant infrastructure project (NSIP) as defined in s22(2)(b) of the Planning Act 2008 (PA 2008) as a highway which is to be constructed for a purpose connected with a highway for which the Secretary of State is or will be the highway authority. The Woodside Link scheme would be managed and maintained by CBC as local highway authority. I explain in detail why I consider that the Woodside Link is a NSIP at paragraph 3.25 *et seq.*
- 1.3 An application for an Order granting Development Consent for the Woodside to M1 Link Road was submitted to the Planning Inspectorate by CBC on 14 May 2013. Following a careful assessment the application was subsequently accepted by the Inspectorate as meeting the provisions of s55(3) of the PA 2008 and thereby accepted for examination on 11 June 2013. I was appointed by the Secretary of State on 16 August 2013 as the Examining Authority (ExA) to examine and report on the application under s83(1)(b) PA 2008. The examination began on 8 October 2013 and was completed on 4 April 2014.
- 1.4 To the extent that the proposed development is or forms part of a NSIP, development consent is required before that project can proceed (s31 PA 2008). Under the PA 2008 procedure development consent may only be granted by the relevant Secretary of State. This report provides the Secretary of State for Transport with my findings and conclusions regarding the application for development consent made by CBC in relation to the Woodside Link. This report also includes my overall recommendation regarding whether consent should be granted for the project together with specific recommendations regarding the detailed provisions to be included within the Development Consent Order (DCO) should the Secretary of State agree with my overall recommendation.

- 1.5 The main examination events arising and procedural decisions made during the examination are detailed in Appendix B. I held a Preliminary Meeting (PM) on 8 October 2013. My procedural decision was issued on 15 October 2013 (PrD_4), with minor variations to the proposed timetable. The examination proceeded broadly in line with this version of the timetable.
- 1.6 As set out in the examination timetable, I held issue specific hearings (ISHs) on 15 November 2013 (HG_4 and HG_5) and 21 January 2014 (HG_8 to HG_10), a Compulsory Acquisition Hearing (CAH) on 22 January 2014 (HG_11 and HG_12) and an Open Floor Hearing (OFH) on 23 January 2014 (HG_14). These hearings were held at the headquarters of Central Bedfordshire Council in Dunstable (Watling House, High Street North, Dunstable, Bedfordshire, LU6 1LF).
- 1.7 In addition to a number of unaccompanied site visits to see the application site and the surrounding area, I carried out inspections of the site in the company of the applicant and interested parties (IPs) on 20 January 2014. The location plan and itinerary for the accompanied site inspections are included in the examination library set out in Appendix A at PrD_7 and PrD_10.
- 1.8 As Appendix A illustrates, 71 relevant representations (RR), written representations (WR) and additional submission (AS) were received from IPs within the statutory period. This is a relatively low number of submissions by comparison with other recent applications for development consent and this may reflect the lengthy period over which the project has been in preparation and consultation.
- 1.9 Councillor Nigel Young (Executive Member for Sustainable Communities - Strategic Planning and Economic Development) provided an opening introductory statement at the OFH on behalf of CBC as applicant (HG_14). Councillor Dr Rita Egan and Mr Alan Winter did not register as IPs. However, I did allow both parties to make oral representations at the OFH (HG_14).
- 1.10 A number of late submissions beyond deadlines set in the timetable were accepted during the examination where the timing and circumstances were such that there was likely to be no serious disadvantage to other parties.
- 1.11 The applicant confirmed in the application form (AD_1) that other consents required to enable implementation of the project would include:
- a Protected Species Licence from Natural England (NE) under regulation 53 of the Conservation of Habitats and Species Regulations 2012, to enable works that would disturb a bat roost;

- a licence from NE under s10 of the Protection of Badgers Act 1992, in order to close one outlier badger sett;
- consent from the Environment Agency (EA) under s109 of the Water Resources Act 1991 in relation to diversion of Houghton Brook and the construction of bridges over Houghton Brook;
- consents under the drainage bylaws of the Internal Drainage Board and the Environment Agency (made under s66 of the Land Drainage Act 1991 and paragraph 5 of Schedule 25 of the Water Resources Act 1991 respectively) may be required to authorise works that interfere with existing drainage facilities
- Environmental permits from the EA under the Environmental Permitting (England and Wales) Regulations 2010 may be required in relation to water discharge activities and waste management.

1.12 In addition I asked questions seeking clarification from the applicant of its intentions in relation to any application under s131/132 of the PA 2008 in relation to replacement open space land at the Preliminary Meeting, in the first Issue Specific Hearing held on 15 November (HG_4 and HG_5) and at my Compulsory Acquisition Hearing held on 22 January (HG_11 to HG_13). The applicant confirmed in its response to my Action Points related to the Compulsory Acquisition Hearing held on 22 January 2014 (R3AP_1) that it intended to submit an application to the Secretary of State for Communities and Local Government (SoSCLG) seeking consent for its arrangements for replacement of open space land that is proposed to be acquired compulsorily under the Woodside Link DCO. It also confirmed that it had been advised by DCLG that if a public inquiry was required then the process might take 4-6 months. It is understood that an application under s131/132 was submitted well before the close of the examination but at the closing date no confirmation had been received as to whether a public inquiry into that application would be necessary nor whether or not the application was approved. The SoSfT may be aware that this matter has potential to create delay in decision-making regarding the Woodside Link DCO.

1.13 Mr A G Hemming is not a registered IP but I exercised my discretion to accept his late submission dated 18 January 2014 (AS_24) and subsequent "additional submissions" (AS_35 and AS_39) into the examination. Mr John Hateley's submission dated 24 January 2014 (AS_26) relates primarily to a public inquiry regarding the A5-M1 – J11a Dunstable by-pass, which is not the focus of this NSIP application. However I accepted this representation into the examination.

1.14 No development consent obligations under s106 of the Town and Country Planning Act 1990 were submitted in respect of the application.

- 1.15 This report sets out in accordance with section 83(1)(b)(i) of PA 2008 my findings and conclusions in respect of the application and my recommendation to the Secretary of State under section 83(1)(b)(ii) of the Act.

2 MAIN FEATURES OF THE PROPOSAL AND SITE

The application

Details of the applicant and the application

- 2.1 Central Bedfordshire Council has applied to the Secretary of State for a Development Consent Order (DCO) to enable construction of a new road linking the existing highway network serving the Woodside Industrial Estate from the junction of Park Road North, Poynters Road and Porz Avenue in Houghton Regis to the planned Junction 11A of the M1. Section 6 of the application form (AD_1) explains that: *'The new highway will run from the existing roundabout serving Porz Avenue, Park Road and Poynters Road in Houghton Regis, Bedfordshire, north east for about 1500m, and then north to meet Sundon Road and the new junction 11a of the M1 that will be constructed as part of the A5-M1 Link project.'*
- 2.2 The project is located within and to the east of Houghton Regis and involves the construction of approximately 2.9 kilometres of new road, comprising approximately 2.55 kilometres of single carriageway road and approximately 0.35 kilometres of dual carriageway.
- 2.3 Section 4 of the application form (AD_1) states that: *'The application is for the construction of a highway – the Woodside Link – that will connect to two trunk roads – the existing M1 at a new junction 11a, and the proposed A5-M1 Link Road. As traffic to and from the Woodside Link will necessarily have come from or be going to a trunk road or a motorway, and one of its purposes is to provide such access, the applicant considers the project to be a nationally significant infrastructure project under section 22(2)(b) of the Planning Act 2008.'*
- 2.4 Section 5 of the application form (AD_1) states: *'The Woodside Link is a new road intended to provide a more direct route for traffic between the primary road network (the M1 motorway and the A5) and the Woodside area of Dunstable/Houghton Regis, a major employment area in Bedfordshire. The Highways Agency (HA) is currently promoting a northern link road (the A5-M1 Link) between the A5 (north of its junction with the A505) and the M1, at a new junction (which will become Junction 11A) between the existing junctions 11 and 12. The Woodside Link would run from the new junction into the Woodside area.'*
- 2.5 The non-technical description of the proposed development included in the application form (AD_1) indicates that the declared purpose of the Link Road is to provide a more direct route for traffic between the M1 motorway and the A5 trunk road and the Woodside area of Dunstable/Houghton Regis. The Central Bedfordshire Council project website for the Woodside Link road as it existed during the period stated in the s48 Notice (16 November

2012 to 25 January 2013) included in the Consultation Report submitted by the Applicant (AD_22) explains that:

'The Woodside Link is a critical piece of new infrastructure, providing a main route through the planned new housing development area north of Houghton Regis. By providing a convenient link between the industrial areas and the trunk road network, the road will not only take heavy goods vehicles away from the centre of Houghton Regis and Dunstable but it will also stimulate further economic investment and will help provide much needed employment and job opportunities for residents throughout the area.'

- 2.6 A related objective is to reduce the proportion of heavy goods vehicle (HGV) traffic passing through Houghton Regis and Dunstable, especially HGVs seeking to access or egress the Woodside Industrial Estate. A significant proportion of HGVs currently uses the A5 and A505 through Dunstable town centre for access to and egress from the industrial estate. The Woodside Link Road would provide an alternative route away from the town centre, effectively avoiding and/or reducing the current congestion in the existing urban areas.
- 2.7 Finally, a further objective for the project is to support the sub-regional economy and to facilitate growth, both in terms of supporting retention of existing employment and the creation of new employment in existing, expanded and new premises at the Woodside Industrial Estate and other local employment areas and also to facilitate the proposed Houghton Regis North Phase 1 (HRN1) mixed use development, which would include a substantial housing development together with business and retail elements.
- 2.8 A new connection between Parkside Drive and the Woodside Link is proposed, allowing vehicles to join the new road from the Parkside area of Houghton Regis. This new connection would cross the Houghton Brook.
- 2.9 The southern part of the route would run through the wedge shaped strip of open space between Houghton Regis and Luton. The proposals allow for this area to be tidied up and laid out as natural open space. An area of replacement open space would be provided in a green corridor adjoining the new link road and the diverted line of Houghton Brook. This is the land that is the subject of the s131/132 application. Two overhead power lines (132kV and 400kV) run through this area and the Woodside Link project proposals would put them underground, removing the pylons associated with them. The application provides for extensive planting to be carried out along the route. A low noise road surface would be secured through the choice of materials under Requirement 10 of the recommended Order. Timber noise barriers would be erected at the southern end of the new highway where the adjoining housing estates in Houghton Regis and Luton

close in around the strip of open space that provides the opportunity for insertion of the new link road (Requirement 8).

- 2.10 Subject to approval of the DCO application the applicant's current programme provides for commencement of advance works before the end of 2014 and for completion of the scheme during 2016/17.

Site description

- 2.11 The open land to be crossed by the proposed road is used as naturally regenerating incidental public open space at its south west end, where the road would extend from its junction with Park Road North along a green strip between two former social housing estates before emerging into a wide strip of open farm land between the Houghton Park Estate in Houghton Regis and the M1 motorway. Shortly after entering the strip of farmland the route of the proposed new road would turn sharply to the north and pass across the farm land to the new motorway junction.
- 2.12 The farm land lies in Green Belt and is the subject of a planning application for the large-scale mixed use development known as Houghton Regis North Phase 1 (HRN1). This planning application was submitted to CBC in its role as the relevant Local Planning Authority by the Houghton Regis North Development Consortium (HRDC) on 21 December 2012. A resolution to grant planning permission subject to the conclusion of a s106 agreement was made by CBC on 4 September 2013. Heads of terms for the s106 agreement had been agreed between the parties before close of examination. Having regard to this position and adopting a precautionary approach, the project is treated as a consented project for the purposes of assessing cumulative environmental effects.
- 2.13 The majority of the farm land to the east of the Houghton Park housing estate is used for a mix of grazing and intensive arable and crop cultivation. Apart from the site of a college and sports centre, the remainder of the area immediately to the east of the housing estate appears to be disused former agricultural land now used by local residents for informal recreation. The proposed road would run east north east across open land through the flood plain of the Houghton Brook, potentially crossing the brook at three locations towards the south west of the scheme before turning north (see land plan (AD_3)). The route would cross the brook again after it turns north towards the proposed new M1 junction. The applicant proposes to reduce the need for two of these crossings on the line of the road by diverting Houghton Brook to the north side of the road.
- 2.14 The proposed line of the Woodside Link Road would cross the administrative boundary between the areas of Central Bedfordshire and Luton Councils. The former social housing area to the south of the road line and a relatively small area of the

Green Belt land separately proposed for development by the HRNDC are located within the area of Luton Borough Council (LBC). The Houghton Park Estate in Houghton Regis, together with the majority of the Green Belt land proposed for the HRN1 development are located within the administrative area of CBC. Almost all the land required for the project ('the order land') lies in CBC's administrative area, but a small area at the southern edge of the order land falls within the area of LBC.

Description of works

- 2.15 The works proposed to be authorised by the DCO are numbered 1-15 and are set out in Schedule 1 to the DCO (see the applicant's submitted draft DCO (AD_8) and my ExA recommended draft DCO (Appendix D).
- 2.16 The principal works comprising the Nationally Significant Infrastructure Project (NSIP) are:

Work No 1 – The construction of a new road, 2.90 kilometres in length, starting at the junction of Park Road North, Poynters Road and Porz Avenue in Houghton Regis and ending at the proposed M1 junction 11A including:

- a 2.55 kilometre section of new single carriageway road between the Porz Avenue roundabout and a proposed new northern roundabout;
- construction of an overbridge and associated wing walls and retaining walls;
- construction of a 0.35 kilometre section of new dual carriageway road between the proposed northern roundabout and the proposed M1 junction 11A;
- construction of an unsegregated footway and cycleway between the proposed junction with the Parkside Link to the proposed northern roundabout, located in the north and west verge;
- construction of an unsegregated footway and cycleway between the proposed junction with the Pastures Way Link and the northern roundabout, located in the south and east verge;
- construction of signal controlled pedestrian cyclist crossings;
- construction of a private means of access to farmland adjacent to the works;
- diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- drainage works, drainage attenuation ponds, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, traffic signals fencing works, landscaping works, noise mitigation barriers and other works associated with the construction of the permanent highway.

- 2.17 In addition to the principal NSIP works the following works of 'associated development' (within the meaning of s115(2) of the PA 2008) are included in the Woodside Link DCO application:

Work No.2 – The improvement of the existing C205 Park Road North, Houghton Regis, at its approach to the junction with Work No.1, to include:

- construction of an unsegregated footway and cycleway between the junction with Sandringham Drive and the junction with Work No.1, located in the east verge;
- diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works , noise mitigation barriers and other works associated with the construction of the permanent highway.

Work No.3 – The improvement of the existing Porz Avenue, Houghton Regis, at its approach to the junction with Work No.1, to include works similar to those for Work No.2 with the exception of the footway and cycleway.

Work No.4 – The improvement of the existing C205 Poynters Road, Dunstable and Luton at its approach to the junction with Work No.1, to include works similar to those for Work No.3.

Work No.5 – The improvement of the existing Wheatfield Road, Luton, to include:

- reconfiguration of the existing Wheatfield Road which is to be stopped up and altered by construction of a turning head;
- construction of a new single carriageway road to link the existing Wheatfield Road with Work No.1;
- works similar to those for Works 3 and 4.

Work No.6 – The construction of an unsegregated footway and cycleway alongside Sandringham Drive, Houghton Regis, between Park Road North and Frogmore Road, located in the south verge, together with works similar to those for Works 3 and 4.

Work No.7 – The construction of an unsegregated footway and cycleway between Frogmore Road, Houghton Regis and Wheatfield Road, Luton, together with works similar to those for Works 3 and 4.

Work No.8 - The diversion of part of Houghton Brook, to include:

- construction of a new section of Houghton Brook, approximately 0.34 kilometre in length;

- diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- drainage works, earthworks, fencing works, landscaping works and other works associated with the construction of the brook.

Work No. 9 – The construction of a new road, 0.32 kilometre in length, starting at the junction of Parkside Drive and Fensome Drive in Houghton Regis and ending at Work No.1, to include:

- construction of a new single carriageway road between Burford Walk and Work No.1, a distance of approximately 0.08 kilometre;
- the widening of the existing Parkside Drive south of the junction with Fensome Drive, a distance of approximately 0.24 kilometre;
- the removal of the existing Parkside Drive carriageway between Work No.1 and Burford Walk;
- construction of an over-bridge and associated wing walls and retaining walls;
- construction of an unsegregated footway and cycleway between the junction with Parkside Link and Work No.1, located in the east verge;
- diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- drainage works, drainage attenuation ponds, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works fencing works, landscaping works, noise mitigation barriers and other works associated with the construction of the permanent highway.

Work No.10 – The construction of an unsegregated footway and cycleway between Work No.1 and the end of Pastures Way, Luton, a distance of approximately 0.12 kilometre, together with:

- the removal of the existing Parkside Drive carriageway between Work No.1 and Pastures Way; and
- works similar to those for Works 3 and 4 and drainage attenuation ponds.

Work No.11 – Works to excavate a borrow pit, to include:

- excavation to a depth not exceeding 2.5 metres below existing ground level, with total excavated material not exceeding 100,000 cubic metres; and
- drainage works, fencing works, landscaping works and other works associated with the creation of the borrow pit.

Work No. 12 – The construction of a new dual carriageway road, 0.45 kilometre in length, between the proposed northern

roundabout and the proposed roundabout junction with Houghton Road, Chalton, together with construction of an unsegregated footway and cycleway between the proposed northern roundabout and the proposed roundabout on Houghton Road, Chalton, located in the south verge, and works similar to those for Works 3 and 4.

Work No.13 – The improvement of the existing C198 Sundon Road, Houghton Regis and Houghton Road, Chalton, between the eastern boundary of Osborne House, northeast for approximately 0.40 kilometre, together with works similar to those proposed for Works 3 and 4.

Work No.14 - The construction of an unsegregated footway and cycleway 1.19 kilometre in length alongside Houghton Brook between the proposed Parkside Link in Houghton Regis and the end of Kestrel Way, Luton, together with works similar to those proposed for Works 3 and 4 and drainage attenuation ponds.

Work No.15 – Construction of a private means of access from Houghton Road, Chalton, to Chalton Cross Farm.

2.18 As may be necessary or expedient to facilitate the above works, and subject to their inclusion within the scope of the environmental impact assessment, the works described in Schedule 1 to the submitted Order also provide for:

- the temporary or permanent alteration of the layout of any street;
- a wide range of street works;
- construction of a range of access measures, embankments, viaducts, walling and abutment measures, shafts, drainage and culverts, highway lighting and fencing;
- works to alter the position of apparatus and to carry out undergrounding, ducting and trenching operations and the removal of redundant equipment as a result of or for the purposes of such alteration;
- works to alter the course of or interfere with a watercourse;
- landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised project;
- works required for the strengthening, improvement, maintenance or reconstruction of any streets, and
- other works, including contractor's compounds, working sites, storage areas and works of demolition.

2.19 The locations of the proposed works are illustrated on the submitted Works Plans (AD_4).

Key location maps and plans

2.20 The principal location plans and maps are included in the examination library as follows:

- Location Plan (AD_2)
- Land Plans (AD_3)
- Works Plans (AD_4)
- Access and Rights of Way Plans (AD_5)
- Environmental Context Plans (AD_6)
- Heritage Asset Plans (AD_7).
- Other plans, drawings and illustrations (including sections and photomontages) are listed in the Examination Library.

Amendments to application during examination

- 2.21 No amendments were made to the description of the authorised development at Schedule 1 to the Order during the examination. However the detail of key application documents including the wording of the proposed DCO and the content listed in the Book of Reference (BoR) were submitted or updated three times during the examination – original submission (AD_12 to AD_21), following the Preliminary Meeting (AS_3 to AS_13) and following the Compulsory Acquisition Hearing before the close of the examination (AS_36 to AS_37). The changes to the documentation seek to address points raised by interested parties and my questions and to reflect improved information and changes arising during the examination, such as changes of ownership, tenancy or other interests listed in the Book of Reference (BoR). The applicant also submitted a range of revised or additional information, including additional photomontages of parts of the proposed project and a revised Flood Risk Assessment. An updated transboundary screening report (AS_34) was provided by PINS acting on behalf of the Secretary of State.
- 2.22 All the additional or revised documentation was accepted into the examination.

Planning history

- 2.23 No previous planning applications have been made in respect of the proposed Woodside Link project. There is, however, a significant history to the scheme in terms of planning policy at regional and local levels. Further information regarding the policy context is set out in the following section.

3 LEGAL AND POLICY CONTEXT

- 3.1 The legal and policy context as understood by the applicant is described in its Statement of Need (AD_54) and in Volume 1, Section 2.3 of the Environmental Statement (AD_37).

Planning Act 2008, as amended by the Localism Act 2011 and by the Growth and Infrastructure Act 2013

- 3.2 The statutory process and requirements set out in the PA 2008 as amended by the Localism Act 2011 and by the Growth and Infrastructure Act 2013 apply to the consideration of the Woodside Link DCO application.

National Policy Statements

- 3.3 Where a relevant National Policy Statement (NPS) is in effect, the Secretary of State must decide an application for a NSIP in accordance with it, subject to certain exceptions (PA 2008 section 104).
- 3.4 Where no relevant NPS is in effect, the Secretary of State is to have regard to certain specified matters in deciding the application (PA 2008 section 105). These are the local impact reports prepared by the relevant planning authorities, matters prescribed by regulations in respect of the type of development concerned, and *'any other matters which the Secretary of State thinks are both important and relevant to [his] decision'*.
- 3.5 By the close of the examination, no NPS had been designated in respect of highway projects. However a National Networks NPS (NNNPS) was published as a draft for consultation on 4 December 2013. The NNNPS consultation closed on 26 February 2014 and the examination of the Woodside Link application closed on 8 April 2014.
- 3.6 In view of the nature and scope of the draft NNNPS policies considered below, the draft NNNPS must be regarded as an emerging statement of relevant Government policy.
- 3.7 My first round written questions (PrD_4) an opportunity was provided to highlight policies of relevance and importance to the examination of the Woodside Link DCO application. The applicant argued in its response to the first round questions (R1Q_2) that the draft NNNPS was relevant and important to consideration of the application. None of the comments received suggested that the NNNPS was not relevant or important to consideration of the application.
- 3.8 In its 'Summary of Need' (p7) the consultation draft NNNPS sets out the Government's vision and strategic objectives for the national road and rail networks:

'The Government will deliver national networks that meet the country's long-term needs; supporting a prosperous and competitive economy and improving overall quality of life, as part of a wider transport system. This means:

- *Networks with the capacity and connectivity to support national and local economic activity and facilitate growth and create jobs.*
- *Networks which support and improve journey quality, reliability and safety.*
- *Networks which support the delivery of environmental goals and the move to a low carbon economy.*
- *Networks which join up our communities and link effectively to each other.'*

3.9 The text that supports the statement of objectives in the "Summary of Need" comments that:

'There is also a need for development on the national networks to unlock regional economic growth and regeneration, particularly in the most disadvantaged areas. Improved and new transport links can create opportunities for regeneration by improving connectivity and performance, opening up new markets, new job opportunities, and new opportunities for growth. They can help rebalance the economy, rather than accentuate existing divisions.

Developments in other sectors will also place pressure on specific parts of the networks. Area of high growth, housing developments, new employment opportunities and development of other large infrastructure projects will have significant impacts on the use of national networks.....

In their current state, without development, the national networks will act as a constraint to sustainable economic growth, quality of life and wider environmental objectives. The Government has therefore concluded that there is a compelling need for development of the national networks. The Examining Authority and the Secretary of State should therefore start its initial assessment of applications for infrastructure covered by this NPS on that basis.'

3.10 The Government's policy in relation to the national road network is explained at paragraph 2.22 of the draft NNNPS:

'2.22 The Government's policy is to reduce congestion and unreliability by focusing on improving and enhancing the existing national road network. Enhancements to the existing national road network will include development beyond the existing highway boundary. Development will include:

- *enhancements such as junction improvements, upgraded technology and new slip roads to address congestion and improve performance and resilience;*

- *implementing "smart motorways" (also known as "managed motorways") to increase capacity and improve performance;*
- *improvements to trunk roads, in particular dualling of single carriageway strategic trunk roads to increase capacity and improve performance and resilience.*

2.23 However, in some cases, to meet the demands on the national road network it will not be sufficient to simply expand capacity on the existing network. In those circumstances new road alignments and corresponding links, including alignments which cross a river or estuary, may be needed to support increased capacity and connectivity to meet the needs created by economic and demographic growth.'

- 3.11 Wider Government policy on the national networks in relation to the environment, safety, technology, sustainable transport and accessibility is set out in Section 3 of the draft NNNPS. Paragraph 3.5 explains that the impact of road development on aggregate levels of emissions is likely to be very small and that the impacts of road development need to be seen against significant projected reductions in carbon emissions and improvements in air quality as a result of current and future policies to meet the Government's legally binding carbon budgets and the European Union's air quality limit values. In relation to accessibility paragraph 3.17 states that:

'The Government expects applicants to look for opportunities to improve access for all on or around the national networks by designing and delivering schemes that take account of accessibility and the diverse requirements of users, and through delivering small-scale improvements that improve accessibility and reduce community severance, where that is appropriate.'

- 3.12 Section 4 of the draft NNNPS sets out the assessment principles and general policies with which applications relating to national networks infrastructure are to be decided:

'4.2 In considering any proposed development, and in particular when weighing its adverse impacts against its benefits, the Examining Authority and the Secretary of State should take into account:

- *its potential benefits including its contribution to meeting the need for national networks infrastructure, job creation and any long-term or wider benefits;*
- *its potential adverse impacts, including any longer-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.*

4.3 In this context, environmental, social and economic benefits and adverse impacts should be considered at national, regional and local levels.'

3.13 Paragraph 4.4 of the draft NNNPS anticipates that applications for development of the road and rail networks will normally be supported by a transport business case based on the Department of Transport's Transport Business Case Guidance and WebTAG guidance. It is further anticipated that the economic case prepared for a transport business case will assess the economic, environmental and social impacts of a development. The paragraph goes on to emphasise that *'The information provided will be proportionate to the development'* and that *'This information will be important for the Examining Authority and the Secretary of State's consideration of the adverse impacts and benefits of a proposed development.'*

3.14 In relation to linear infrastructure, paragraph 4.8 of the NNNPS points out that linear road and rail infrastructure networks:

'are designed to link together separate points. Consequently, benefits are heavily dependent on both the location of the network and the improvement to it.

Linear infrastructure is connected to a wider network, and any impacts from the development will have an effect on pre-existing sections of the network.

Improvements to infrastructure are often connected to pre-existing sections of the network. Where relevant, this may minimise the total impact of development, but may place some limits on the opportunity for alternatives.'

'4.9 In considering applications for linear infrastructure, decision-makers will need to bear in mind the specific conditions under which such developments must be designed.'

3.15 In view of the stated purpose of the draft NNNPS together with the content of the policies set out in it, and in the absence of substantive arguments to the contrary from any other IP, I conclude that the NNNPS is a relevant and important matter in consideration of the Woodside Link DCO application.

3.16 Chapter 4 of this report considers the detailed assessment principles and the likely impacts of the project. However, in relation to the general thrust of the NNNPS and the nature and scope of the proposed project, the following initial broad observations may be drawn from my assessment:

- Connection of the Woodside Link to the national road network would increase the overall capacity and connectivity of the network.
- The applicant's stated purpose for the project is to provide a new more direct route to the M1 enabling heavy goods traffic from employment areas such as the Woodside Industrial Estate to avoid Dunstable Town Centre and the urban section of the A5 trunk road, reducing congestion, improving air

quality in the town centre and supporting regeneration. The new road is also intended to support retention of existing employment and creation of new employment at the Woodside Industrial Estate.

- The new road would include new links to the large Parkside housing Estate in Houghton Regis and housing areas in Luton.
- These objectives and intentions/aspirations for the Woodside Link scheme can be seen to have a potential relationship with the Government's vision and strategic objectives, as also reflected in the way that the project is described in the CBC Local Transport Plan (see paragraph 3.91 *et seq* below).
- The range of assessment principles and policies established in the draft NNNPS covers environmental impact assessment, habitats regulations assessment, alternatives, criteria for "good design", climate change adaptation, pollution control and other environmental protection regimes, common law nuisance and statutory nuisance, safety, security, health and strategic rail freight interchanges. The relevance of these principles to the specifics of the Woodside Link application is considered in Chapter 4 below.

3.17 The statement of Government policy in relation to the national road network set out in paragraphs 2.22 and 2.23 of the draft NNNPS supports various enhancements to the network including new alignments to support increased capacity and connectivity to meet needs created by economic and demographic growth. This policy is framed in a context of sustainable development, as paragraph 2.24 of the draft NNNPS emphasises:

'The Government's policy is to deliver improvements in capacity and connectivity on the national road network to support economic growth and improve quality of life, rather than meet unconstrained traffic growth.'

3.18 The works proposed to be authorised as specified in Schedule 1 of the Woodside Link DCO include provisions that would permit the replacement and relocation of electricity distribution infrastructure as associated development. The content of the application documents including, for example, the description of the proposed development at paragraph 13 of the Statement of Need (AD_54) and paragraphs 9.32-9.33 of the Explanatory Memorandum (EM)(AD_9) confirm that position. The Woodside Link DCO application contains (apart from the works to construct the road itself) associated development proposals for the removal and relocation of a 132kV power line and other apparatus related to the transmission and distribution of electricity. The policies set out in NPS EN-5 (Electricity Networks Infrastructure) are therefore relevant to consideration of the application, although in this context it is recommended that a proportionate approach should be adopted, given that the primary purpose of the application does not relate to electrical transmission and distribution infrastructure.

Over ground electricity lines of 132kV and above are covered by statement EN-5, as are associated infrastructure such as substations and other associated apparatus.

- 3.19 NPS EN-5 is part of the suite of energy NPSs which should be read in conjunction with the overarching energy NPS (EN-1). The latter confirms (inter alia):
- the high level objectives, policy and regulatory framework for new nationally significant infrastructure projects that are covered by the suite of energy NPSs (referred to as energy NSIPs) and any associated development;
 - the need and urgency for new energy infrastructure to be consented and built with the objective of contributing to a secure, diverse and affordable energy supply and supporting the Government's policies on sustainable development in particular by mitigating and adapting to climate change; and
 - the need for specific technologies, including the types of infrastructure covered by NPS EN-5.
- 3.20 Paragraph 3.7 of NPS EN-1 sets out the need for new electricity lines of 132kV and above. Paragraph 2.8.8. of NPS EN-5 states that:
- 'Although Government expects that fulfilling this need through the development of overhead lines will often be appropriate, it recognises that there will be cases where this is not so. Where there are serious concerns about the potential adverse landscape and visual effects of a proposed overhead line, the [decision-maker] will have to balance these against other relevant factors, including the need for the proposed infrastructure, the availability and cost of alternative sites and routes and methods of installation (including undergrounding).'*
- 3.21 NPS EN-5 sets out principles for the assessment of new electricity transmission and distribution infrastructure. Amongst other matters, it emphasises the need to consider infrastructure resilience in the face of flood risk, the implications of any landscape/visual, any ecological, geological and soils impacts and archaeological consequences.
- 3.22 In the case of the Woodside Link, the applicant seeks consent for works associated with the proposed link road that include undergrounding a 132kV power line and removing and relocating existing electrical apparatus. The implications of these associated works are considered in further detail in Chapter 4.
- 3.23 No other National Policy Statement is applicable to the Woodside Link proposals.

Planning Precedent Considerations

- 3.24 The decision by the High Court regarding NSIP status of the Heysham-M6 project provides an important legal precedent relevant to the legal status of the Woodside Link project.
- 3.25 One of the principal issues identified in relation to the application at Acceptance stage was whether it met the statutory criteria for a Nationally Significant Infrastructure Project, as set out at s14 and s22(2) of the PA 2008 as amended as it applied when the application was submitted to the Planning Inspectorate for examination.
- 3.26 A number of points regarding the project may be taken into account in this regard. An important precedent was set by the decision of the Honourable Mr Justice Turner in the High Court (Administrative Court)¹. In that decision the judge considered whether under the terms of the then s122(2)(b) of the PA 2008 the Heysham-M6 dual carriageway project had a 'connected purpose' to the national highway network and whether it was an NSIP as the applicant and the Secretary of State held. The Judge decided that the road connected to the motorway and therefore had a 'connected purpose'.
- 3.27 The applicant submitted in paragraph 2.2 to its Explanatory Memorandum (AD_9) that:

'The Link Road lies wholly within England and includes the construction of a highway for a purpose connected with a highway for which the Secretary of State is the highway authority, the latter highway being the M1 motorway and/or the new A5-M1 link. As a result the proposed development is a nationally significant infrastructure project ("NSIP") for the purposes of sections 14(1)(h) and 22(2)(b) and (3) of the Planning Act 2008.'

- 3.28 During the examination the Heysham-M6 project High Court judgment was challenged at the Court of Appeal. The Court rejected the plaintiff's application for leave to appeal.
- 3.29 In the Second Round of ExA written questions (PrD_9) I provided an opportunity for submissions regarding any recently emerged legal or other factors that might have changed or confirmed the status of the submitted DCO application. The applicant's response (R2Q_1) to Q1(i) was as follows:

'Recently-emerged legal factors confirm that the applicant was correct, and indeed obliged, to make a DCO application in relation to the Woodside Link. These include the Court of Appeal judgment relating to the Heysham to M6 Link Road DCO, which refused the applicant leave to appeal from the High Court. One of the applicant's rejected arguments was that the Heysham scheme was not a DCO scheme because it was not a highway to be constructed

¹ Case No: CO/5073/2013

for a purpose connected with a road for which the Secretary of State was the highway authority. This was rejected on the grounds that the new road joined the M6 and so was constructed for a purpose connected with such a road. There are analogous circumstances in the case of the Woodside Link which connects to the M1.'

- 3.30 No other submissions were received during the examination that would disagree or argue with the position put forward by the applicant.
- 3.31 I have given this matter careful consideration. The Woodside Link is a relatively short section of highway that connects the existing highway network in the area to the M1 Motorway and to the proposed A5-M1 Link trunk road via a new motorway junction that will form part of the latter scheme. There are also indirect relationships of inter-dependency between the Woodside Link and the early implementation of the A5-M1 Link and the HRN1 development.
- 3.32 The latter point is explained in the addendum Statement of Common Ground (SoCG_1) between the applicant and the Highways Agency dated 1 November 2013. The agreement between the HRDC and the HA referred to in paragraph 1.3 of the SoCG is that which is summarised in paragraph 2.4.1 of the SoCG. This agreement is complete and consent for the HRN1 development is subject to the fulfilment of a condition in that agreement which requires HRDC to contribute to the funding of the A5-M1 Link. Paragraph 1.4 of the SoCG notes that the planning permission for the HRN1 development is likely to depend upon the construction of the A5-M1 Link and the Woodside Link. Paragraph 2.4.6 of the Statement of Common Ground (SoCG) goes into more detail, noting the intention that the HRN1 development would, through planning conditions and section 106 obligations, be conditional upon the construction of both the A5-M1 Link and the Woodside Link. The addendum SoCG provides additional clarification of the relevant interdependencies:
- '2.4 The full implementation of the HRN1 development will be dependent on the provision of the A5-M1 Link and the Woodside Link.*
- 2.5 As the full HRN1 development is dependent on the construction of the Woodside Link and A5-M1 Link, if the Woodside Link did not go ahead, their development potential could not be fully realised.*
- 2.6 This could affect the availability of the developers' funding contribution to the A5-M1 Link. The developers' funding contribution to the A5-M1 Link does not affect the constructability of the A5-M1 Link, but possibly the timing of construction.'*
- 3.33 In the light of this evidence it is clear that the timing of the improvement to the A5-M1 trunk road could be influenced by the

decision regarding the Woodside Link DCO application and that the delivery of the full extent of the HRN1 development in turn depends on implementation of both the Woodside Link and the A5-M1 Link. Refusal of the Woodside Link application would set in train a 'domino effect' that would preclude the HRN1 scheme as currently envisaged and that could delay the construction of the A5-M1 Link as a result of the absence of the relevant developer contribution. The Highways Agency confirmed that the latter scheme forms part of the wider strategic upgrade of the London-Scotland route (PsHG_1).

- 3.34 In the light of the High Court judgement in the Heysham-M6 case and of the findings set out above, I conclude that the Woodside Link can properly be regarded as a Nationally Significant Infrastructure Project and as meeting the legal test for a highway NSIP under the terms of s122(2)(b) of the PA 2008 as that legislation was worded at the date of submission of the application.
- 3.35 It is also noted that subsequent to submission of the Woodside Link application the legal position changed. The enactment of the Growth and Infrastructure Act 2013 resulted in amendments to the PA 2008 which mean that the Woodside Link would not now meet the amended criteria for a nationally significant infrastructure project under s14 and s22(2) of the PA 2008. If submitted now the application would be regarded as a 'local' project that would require planning permission from the relevant local authority/ies (i.e. CBC and LBC).
- 3.36 On the basis of the unchallenged transport assessment (TA)(AD_42) discussed in Chapter 4, the Woodside Link, although correctly regarded in law as a Nationally Significant Infrastructure Project (NSIPs) for the purposes of this examination, is clearly intended to perform important local functions as well as functions related to the national highway network. On the basis of my evaluation of the TA included with the ES and all the relevant additional transport-related information submitted during the examination I am satisfied that the scheme would provide important local highway functions in parallel with its 'connected purpose' to the national network.

European Requirements and Related UK Regulations

Habitats Directive (Council Directive 92/43/EEC)

- 3.37 The Habitats Directive (together with the Council Directive 79/409/EEC on the conservation of wild birds (Wild Birds Directive) (Birds Directive)) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites and the strict system of species protection. The Directive protects over 1000 animals and plant species and over 200 habitat types (for example: special

types of forests, meadows, wetlands, etc.), which are of European importance. The directive is transposed into UK law by the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations), considered further below.

- 3.38 The applicant's Environmental Statement (ES) considers that no European Sites in the Natura 2000 network or species protected by the Habitats Directive are likely to be affected significantly by the proposed Woodside Link. This view is shared by the statutory nature conservation body, Natural England (NE) in its Relevant Representation (RR_5). The position in relation to effects on biodiversity, Sites of Special Scientific Interest (SSSIs) and protected species is considered in Chapter 4.

Birds Directive (Council Directive 2009/147/EC)

- 3.39 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. It places great emphasis on the protection of habitats for endangered as well as migratory species. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. However the ES (AD_37) indicates that no SPAs are affected by this project and this conclusion is accepted by NE's Relevant Representation (RR_5). The Birds Directive also bans activities that directly threaten birds, such as the deliberate killing or capture of birds, the destruction of their nests and taking of their eggs, and associated activities such as trading in live or dead birds.
- 3.40 The applicant's ES considers terrestrial ornithology at section 9 of Volume 1 (AD_37) and sets out technical details in Technical Appendix 9.1 (AD_34). No significant issues or concerns have been raised at any stage of the examination process by the applicant, by NE or by any other party regarding the relationship of the Woodside Link proposals to the requirements of the Birds Directive. The position in relation to effects on biodiversity, SSSIs and protected species is considered in Chapter 4. No significant adverse effects upon SPAs or upon bird species have been identified as likely. This matter is considered further in Chapter 4.

Conservation of Habitats and Species Regulations 2010 (as amended) - the Habitats Regulations

- 3.41 The Conservation of Habitats and Species Regulations 2010 replaced The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) in England and Wales. The 2010 Regulations, which are the principal means by which the Habitats Directive is transposed in England and Wales, updated the legislation and consolidated all the many amendments which have been made to the regulations since they were first made in 1994. The 2010 Regulations were subsequently amended by The Conservation of

Habitats and Species (Amendment) Regulations 2012, which came into force on 16 August 2012.

- 3.42 No significant issues in relation to the Habitats Regulations arising from the proposed Woodside Link have been identified by the applicant, by NE or by any other party during the examination.

Water Framework Directive

- 3.43 *Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy* known as the EU Water Framework Directive (the WFD) entered into force on 22 December 2000. Some amendments have subsequently been introduced into the Directive.
- 3.44 The requirements of the Directive are reflected in the provisions of the draft NNNPS in relation to water quality and resources (p81 *et seq*). They are also considered in the applicant's ES (AD_37), for example in relation to any existing baseline contamination and potential for contamination of groundwater, rivers and drinking water. The EA submitted a relevant representation (RR_13) and made comments in relation to the application at various points during the examination, including responses to questions put by myself (R1Q_32 and R2Q_12). The primary focus of the EA comments was upon the issue of flood risk rather than water quality concerns. I consider both these matters in Chapter 4.

Government Transport Policy

- 3.45 The White Paper *Delivering a Sustainable Transport System* (DaSTS) was published by the Department for Transport (DfT) in November 2008. This policy was devised by a previous administration, has been removed from the Government Archive website and in relation to national highway and rail networks is being replaced by the Draft NNNPS. I therefore give weight to the draft NNNPS as the most recent and emerging statement of Government Policy. However, as the DaSTS White Paper is not formally withdrawn and the NNNPS has not yet been designated I consider the former below.
- 3.46 The White Paper sets five goals for transport. These include supporting national economic competitiveness and growth by delivering reliable and efficient transport networks; contributing to better safety, security and health; promotion of greater equality of opportunity and improvement of quality of life. The Paper also includes an objective to reduce transport's emissions of carbon dioxide and other greenhouse gases in order to address climate change and to promote a healthy natural environment.
- 3.47 DaSTS refers to the Climate Change Act 2008 (then only a Bill) with its mandatory target reduction of 80% in greenhouse gas emissions by 2050 but indicates that DfT will be addressing this

issue by such measures as rail electrification and by development of improved road vehicle technology as well as through behavioural change.

- 3.48 In relation to economic priorities, the White Paper accepts the Eddington Study² analysis that localised acute congestion problems lead to delay and unpredictable journey times on strategic routes connecting key urban areas and international gateways. Accordingly, in the short to medium term, a policy of improving reliability and resilience and providing appropriate capacity is advocated, concentrating '*on the lowest carbon transport mode that can actually meet the requirements of the goods or people movement*' (paragraph 2.12).
- 3.49 The Eddington analysis and the White Paper objectives relate closely to the issues at stake in the examination into the Woodside Link DCO. Certain of the arguments regarding the proposed new road revolve around the extent to which the Link would resolve congestion in Dunstable town centre and other urban sections of the A5 trunk road and the local network and whether any resultant improvements in capacity would enable appropriate improvements to accessibility and to network reliability and resilience in order to support economic growth and development.
- 3.50 The principal concerns raised in relation to the proposed Woodside Link when considered in combination with the effects of other proposed development in the sub-region relate to the likely environmental effects of providing the proposed additional capacity, whether it would lead to the creation of congestion in different locations and to the specific potential effects of the subsidiary link between the Woodside Link and the Houghton Park Estate (known as the Parkside Link) which is proposed to be constructed as part of the overall Woodside Link scheme.

Other Legal and Policy Provisions

National legislation

- 3.51 The following section sets out the key legislation and related considerations identified as potentially relevant to the matters considered in this report.

The National Parks and Access to the Countryside Act 1949

- 3.52 The Act provides the framework for the establishment of National Parks and Areas of Outstanding Natural Beauty (AONBs). It also established powers to declare National Nature Reserves, to notify Sites of Special Scientific Interest (SSSIs) and for local authorities to establish Local Nature Reserves.

² The Eddington transport study – www.dft.gov.uk/about/strategy/transportstrategy/eddingtonstudy

- 3.53 The substantive legislation in relation to SSSIs is now in the Wildlife and Countryside Act 1981, considered below.
- 3.54 The proposed Woodside Link project is not located within a National Park or AONB.
- 3.55 Notwithstanding this point, the assessment of the visual envelope in the Landscape Assessment in the applicant's ES (AD_37, paragraph 10.5.6) indicates that the Link lies within 2 kilometres of the Dunstable Downs in the Chilterns AONB to the south, from which distant views of the project would be available. An outlier of the AONB is located a similar distance to the north east of the project site (ES paragraph 10.3.35 (AD_37)).
- 3.56 The ES Landscape Assessment (AD_37) indicates at paragraph 10.5.24 that there would be no direct or indirect effects upon the AONB as it is separated from the scheme by the urban areas of Dunstable and Houghton Regis, nor any effects upon its setting. NE accepts that the Woodside Link project would not have any significant impacts upon the AONB (RR_5).
- 3.57 This matter is considered further in the landscape and visual effects section in Chapter 4.

The Wildlife and Countryside Act 1981 (as amended)

The Wildlife and Countryside Act 1981 is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs). These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in England the relevant body is Natural England). The Act also contains measures for the protection and management of SSSIs.

- 3.58 The Act is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III addresses public rights of way and Part IV deals with miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species licence will be required from Natural England.
- 3.59 This has relevance to consideration of impacts upon SSSIs and on protected species and habitats.
- 3.60 The likely effects of the proposed Woodside Link upon relevant protected species (principally water voles, bats, badgers, breeding birds and reptiles) and upon designated sites including SSSIs and non-statutory sites are considered in Chapter 4.

The Countryside and Rights of Way Act 2000

- 3.61 The Countryside and Rights of Way Act brought in new measures to further protect AONBs, with new duties for the boards set up to look after AONBs. These included meeting the demands of recreation, without compromising the original reasons for designation and safeguarding rural industries and local communities.
- 3.62 The role of local authorities was clarified, to include the preparation of management plans to set out how they will manage the AONB asset. There was also a new duty for all public bodies to have regard to the purposes of AONBs. The Act also brought in improved provisions for the protection and management of SSSIs.
- 3.63 In relation to the application, the Chilterns AONB Conservation Board was a consultee at the pre-application stage and the applicant's ES (AD_37) considers whether any effects upon the AONB would be likely to arise in its Landscape Assessment, as explained above. The AONB Board did not submit a Relevant Representation. This matter is considered further in Chapter 4.

Natural Environment and Rural Communities Act 2006

- 3.64 The Natural Environment and Rural Communities Act (NERC) created the body known as Natural England as successor to English Nature and the Countryside Agency. It made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads.
- 3.65 The Act requires that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the purpose of conserving biodiversity. In complying with this duty, Ministers, Government Departments and the Welsh Government must have regard to the United Nations Environment Programme Convention on Biological Diversity of 1992. The Secretary of State is also expressly required to have regard to the 1992 Convention by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010.
- 3.66 This is of relevance to biodiversity, biological environment and ecology and landscape matters in the proposed development.
- 3.67 Nature conservation and biodiversity effects of the project are assessed in Section 9 of the applicant's ES (AD_37) and are considered further in Chapter 4 of this report.

Transboundary Effects

- 3.68 The Woodside Link application was screened for transboundary effects as part of my examination. Having regard to Regulation 24 of the Infrastructure Planning, Environmental Impact Assessment

Regulations 2009 (EIA Regulations) and on the basis of the information available from the applicant, it is clear that the proposed development would not be likely to have significant effects on the environment in another European Economic Area (EEA) State.

- 3.69 The screening for transboundary effects is conducted by the Inspectorate and the procedural decision regarding the need for any transboundary consultation is made by the Director of Major Applications and Plans. Having regard to the comments of NE and other stakeholders, the transboundary issues consulted under Regulation 24 of the EIA Regulations was not considered necessary. I note the published position and agree with it but do not reach a separate conclusion in that regard as that would fall outside my remit as an ExA. During the examination, no transboundary issues were identified in the application documents by either myself or by any IP.

Local Impact Reports

- 3.70 There is a requirement under s60(2) of PA 2008 to give notice in writing to each local authority falling under s.56A inviting them to submit Local Impact Reports. This notice was given on 15 October 2013 (PrD_4).

- 3.71 Local Impact Reports were submitted by Central Bedfordshire Council acting as local planning authority (LIR_1) and by Luton Borough Council (LIR_2). The principal matters raised in the LIRs are:

- the site and project description, surroundings and history;
- relevant development plan policies;
- highway justification;
- geology/soils;
- water;
- materials;
- cultural heritage/history;
- ecology/nature conservation;
- landscape;
- community and private assets;
- air quality;
- noise and vibration;
- effects on all travellers;
- economic impact, and
- the Development Consent Order.

In addition, LBC's LIR includes a specific section regarding assessment of cumulative effects.

- 3.72 These matters are considered in more detail in Chapter 4 of this report. I have had regard to the content of the LIRs throughout this report.

Relevant Development Plans and Local Transport Plans

Development Plans

Overview

- 3.73 Section 38(3) of the Planning and Compulsory Purchase Act 2004 (as amended) provides that the development plan for an area outside Greater London comprises the relevant regional strategy (if any), adopted development plan documents and any neighbourhood development plan that has been made.
- 3.74 The East of England Regional Spatial Strategy (RSS) was revoked by Order³ on 3 January 2013.
- 3.75 The previous South Bedfordshire Local Plan (2004) and the Luton Local Plan 2001 – 2011 are in the course of being replaced. Some of the policies in the two Local Plans have been saved under a direction from the Secretary of State and still form part of the Development Plan.
- 3.76 National Policy, as set out in the National Planning Policy Framework (NPPF), 2012, and the Pre-submission Luton and Southern Central Bedfordshire Core Strategy are also material considerations in the determination of planning applications.

Local planning policy context

- 3.77 The applicant's ES text (Volume 1) (AD_37) reviews the current development plan policy context.
- 3.78 The route lies mostly within the area of CBC, with a small area only at the southern end of the scheme within the area of LBC. The existing local plans are being replaced by the emerging Local Development Framework (LDF), though this process was delayed by the withdrawal of the Luton and Southern Central Bedfordshire Core Strategy - Pre-Submission draft in September 2011. The Pre-Submission Core Strategy was, however, adopted for development management purposes by CBC in August 2011.
- 3.79 Meanwhile, both LBC and CBC are progressing their own local plans/development strategies.
- 3.80 Consultation on the Pre-Submission Development Strategy for Central Bedfordshire (January 2013) ended on 25 February 2013.
- 3.81 The LIR submitted by CBC in its capacity as Local Planning Authority (LIR_1) confirms that the local planning policy documents relevant to the Woodside Link project include:

³ By The Regional Strategy for the East of England (Revocation) Order 2012

- The South Bedfordshire Local Plan Review 2004;
 - Central Bedfordshire Council 's Local Transport Plan 2011-26;
 - Luton Borough Council's Local Transport Plan 2011-2026;
 - The draft Central Bedfordshire Development Strategy 2013.
- 3.82 In addition, LBC's LIR (LIR_2) points out that in the regional and sub-regional context, since the abolition of the East of England Regional Spatial Strategy on 3 January 2013 and the associated Milton Keynes/South Midlands (MK/SM) sub-regional strategy, the saved policies of the South Bedfordshire Local Plan and the Luton Local Plan are relevant to the proposals.
- 3.83 LBC also argues (LIR_2) that, given that the geographic area covered by the South East Midlands Local Economic Partnership (SEMLEP) is similar to that of the MK/SM sub-region, one recent sub-regional document of relevance is the MK/SM interurban transport strategy published in 2009. Paragraph 3.5 of the LBC LIR (LIR_2) explains that a new Strategic Economic Plan (SEP) is currently being prepared by SEMLEP in line with the document *Growth Deals: Initial Guidance for Local Enterprise Partnerships* published by the Government in July 2013. Whilst that SEP has not yet been published, the LBC LIR (LIR_2) indicates that its development will be informed by an infrastructure investment strategy published by SEMLEP in October 2013.
- 3.84 The two LIRs confirm that replacement development plans for Central Bedfordshire and Luton have not yet progressed sufficiently for any weight to be attached either to emerging early stage documents that may form the basis for future plans (in the case of the Luton Local Plan) or to any early draft version of the Plan (as in the case of the consultation draft Central Bedfordshire Development Strategy now being reconsidered by CBC in its role as local planning authority). LBC has commenced a review of its Local Plan and is currently at the stage of evidence gathering.
- 3.85 In the absence of replacement local plans the local planning policy position in both local authority areas relies upon saved policies - in Central Bedfordshire the saved policies of the South Bedfordshire Local Plan (2004), and the Bedfordshire and Luton Minerals and Waste Local Plan 2005, and in Luton, the Luton Local Plan 2001-2011.
- 3.86 CBC Planning considered that the relevant saved policies of the South Bedfordshire Local Plan are:
- NE10 - Use of agricultural land for other purposes - criteria include loss of versatile land, Green Belt and rural landscape character;
 - BE8 - Design considerations - a general requirement for high quality new development;
 - R3 - Proposed areas of new urban open space in Houghton Regis - designates the wedge between Lewsey Farm Estate

and Houghton Park Estate for enhancement and appropriate management of existing open area for a mix of formal and informal recreation in accordance with detailed proposals to be drawn up by the planning authority;

- R14, 15 - Access to informal countryside recreation and public rights of way - for walkers, horse riders, cyclists especially close to urban areas.

3.87 CBC Planning also indicates that the following saved policies of the Bedfordshire and Luton Minerals and Waste Plan 2005 are relevant:

- M8 - Borrow pits - considers convenience of site to project to be supplied, satisfactory restoration and environmental benefit;
- W5 - Management of waste at source - seeks a waste audit as part of application to minimise and manage waste.

3.88 LBC considered that the relevant saved policies of the Luton Local Plan 2001-2011 are:

- T8 - Walking and Cycling. This policy seeks to protect existing pedestrian and cycle routes and seeks to provide improvements to pedestrian and cycle networks.
- ENV4 - Access to Countryside - seeks to provide improvements to the footpath and bridleway network.
- ENV5 - Protection and enhancement of nature conservation - considers the impact on sites known to have nature conservation, biodiversity or geological interest.
- ENV9 - Design principles - This policy sets out criteria relating to the impact on an area and the need for proposals to respect landforms and natural features and other buildings, views and landmarks.
- T12 - Road Proposals - Although the Woodside Link is not specifically referred to in this policy the preamble to the policy refers to the northern bypass for Luton and Dunstable, to which the Woodside Link would connect and of which the proposed A5-M1 Link trunk road would form part.

Local Transport Plans

3.89 The Woodside Connection (as the scheme was then known) is included in CBC's Local Transport Plan 3 (LTP3) adopted in April 2011 (R2AP_7). This is the Council's strategy for future development of all forms of transport in the local area up to 2026. In the LTP3 it is noted that:

'The Woodside Connection will help promote and support growth north of Houghton Regis and provide improved and more appropriate transport links to the commercial and industrial areas of Dunstable and Houghton Regis. Construction is expected to

start late in 2014/15 but is dependent on the Highways Agency A5-M1 Link Road for a connection to the proposed M1 junction 11a.

The growth, proposed north of Houghton Regis is for an urban extension of 6,950 homes and 83ha of employment land by 2026 with potential for a further 4,050 homes and 17ha employment land after that. In addition, further development is proposed within the existing urban area.

The Woodside Connection serves this development with links to the local road network, the proposed A5-M1 Link road and the M1 motorway. The road will also link the Woodside Industrial Estate with the M1 removing the need for heavy goods vehicles to travel through Dunstable town centre thereby reducing the environmental impacts from noise and vehicle pollutants and help promote the local town centre businesses.'

- 3.90 Paragraph 3.13 within the LBC LIR (LIR_2) observes that the Woodside Link scheme should take account of relevant policies in both the Central Bedfordshire LTP3 and LBC's LTP3, submitted in April 2011. The LIR indicates that Luton's LTP3 supports the principle of the Woodside Link's connection to the new junction 11A on the M1.
- 3.91 The applicant's ES considers the CBC LTP3 at paragraph 2.3.6 and during the examination there was liaison between the two authorities regarding transport planning and related matters, particularly traffic modelling, related noise issues and implications for the existing highway network.
- 3.92 The various written and oral representations and submissions from LBC and from CBC as local planning authority received during the course of the examination raised no objection to the Woodside Link and indicated support for the principle of the proposals, subject to a number of specific queries and qualifications.
- 3.93 For example, LBC's Relevant Representation (RR_7) set out its support but also a number of queries and concerns regarding specific aspects of the proposals. CBC in its role as local planning authority indicated support, subject to the application of specified conditions - for example the LPA's written representation (WR_4) and Local Impact Report (LIR_1). The key points raised by both authorities are addressed in the requirements included in the recommended Order.
- 3.94 LBC's principal concerns related to traffic modelling information and mitigation of traffic noise, flood risk and offsite traffic congestion implications for the existing highway network in Luton. CBC Planning also made a number of specific suggestions in relation to the wording of the Order, which were accepted by the applicant and reflected in the recommended Order.

3.95 These matters are discussed further in Chapter 4.

NPPF and draft NNNPS

3.96 Paragraph 1 of the NPPF states that:

'1. The National Planning Policy Framework sets out the Government's planning policies for England and how these are expected to be applied.'

3.97 Paragraph 3 of the NPPF observes that:

'This Framework does not contain specific policies for nationally significant infrastructure projects for which particular considerations apply. These are determined in accordance with the decision-making framework set out in the Planning Act 2008 and relevant national policy statements for major infrastructure, as well as any other matters that are considered both important and relevant (which may include the National Planning Policy Framework). National policy statements form part of the overall framework of national planning policy, and are a material consideration in decisions on planning applications.'

3.98 As quoted above, the NPPF points out at paragraph 3 that it does not contain specific policies for NSIPs, which are determined in accordance with the PA 2008 and relevant NPSs. However, by close of examination the NNNPS was not yet designated and was only published in draft form. It is therefore reasonable to consider the general planning policies adopted in the NPPF as an important and relevant published statement of Government planning policy providing a context for consideration of the Woodside Link DCO application in addition to consideration of the emerging NSIP-specific draft planning policy within Draft NNNPS.

3.99 It is noted that the applicant in its Statement of Need (AD_54), together with CBC and LBC as local planning authorities (LIR_1, LIR_2) all indicated that they consider the NPPF to be a statement of national planning policy relevant to the examination of this application.

3.100 In this context Government policy in relation to national highway and rail networks is in a transitional stage, as by close of examination consultation had been carried out in relation to the published draft National Networks NPS (NNNPS) but the NPS has yet to be debated in Parliament and designated by the Government. In the light of these circumstances, in the absence of a designated NNNPS the NPPF represents a relevant and important planning policy consideration (particularly where that policy deals with wider non-infrastructure matters) and the draft NNNPS is also a relevant and important consideration.

3.101 Of these two policy documents, relevant policy within the NPPF should be given greater weight because it represents formal

published planning policy in its final form rather than a draft policy statement. However the NNNPS remains highly relevant and important as an initial statement of the Government's intent and direction of travel in relation to national networks policy. Of course if it is designated before the determination of the Woodside Link application then the weight that the Secretary of State may wish to give the NNNPS may change from that accorded to it in this report.

National Planning Policy Framework

3.102 The applicant's Statement of Need (AD_54) indicates at paragraph 17 that the NPPF sets out the Government's overarching policy framework for the planning system at the national level. At paragraph 14 the NPPF sets out a presumption in favour of sustainable development. For decision-making, the framework indicates that this means:

- *'approving development proposals that accord with the development plan without delay; and*
- *Where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*
 - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
 - *specific policies in this framework indicate development should be restricted.'*

3.103 With regard to infrastructure, paragraph 7 of the NPPF emphasises the need to provide infrastructure to facilitate economic growth. It states that there are three dimensions to sustainable development, one of which is economic, which it defines as:

'contributing to building a strong, responsive and competitive economy, by...identifying and coordinating development requirements, including the provision of infrastructure". Paragraph 21 states that "Planning policies should recognise and seek to address potential barriers to investment, including a poor environment or any lack of infrastructure, services or housing.'

In relation to transport, paragraph 29 of the NPPF states that:

'Transport policies have an important role to play in facilitating sustainable development but also in contributing to wider sustainability and health objectives.'

Paragraph 31 of the NPPF emphasises the need for local authorities to work with their neighbours to develop strategies for the provision of viable infrastructure necessary to support sustainable development, including provision for major generators of travel demand in their areas.

- 3.104 The proposed route of the Woodside Link would pass across an area of Green Belt. Paragraph 90 of the NPPF specifies that *'Certain other forms of development are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt'*. The list of relevant forms of development set out in paragraph 90 includes:
- 'local transport infrastructure which can demonstrate a requirement for a Green Belt location.'*
- 3.105 The NPPF also sets out policy regarding flood risk and land use including open space/green infrastructure, agricultural land, waste management and minerals extraction. The policies regarding Green Belt and open space/green infrastructure are of particular relevance to the Woodside Link DCO examination.
- 3.106 The applicant argues in its Statement of Need (AD_54) that the NPPF supports the grant of consent for the application. It makes specific reference to paragraphs 14, 7, 21, 29, 30, 90, 123, 125 and 128 of the Framework.
- 3.107 Paragraph 14 of the NPPF is quoted in full above. The applicant draws attention to the policy that at the heart of the NPPF is a presumption in favour of sustainable development.
- 3.108 Paragraph 7 refers in general terms to the economic dimension of sustainable development and is relevant to the overall objective of Government planning policy. It is noted that Paragraphs 21, 29 and 30 refer to development plan policy-making rather than to determination of applications. They are therefore not relevant to the determination of this application.
- 3.109 Paragraph 90 identifies forms of development that are not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. As indicated above these include *'local transport infrastructure which can demonstrate a requirement for a Green Belt location.'*
- 3.110 Green Belt policy aspects in relation to this application are considered in more detail in relation to the development planning policy context at paragraph 4.105 *et seq* below.
- 3.111 NPPF paragraph 123 quoted by the applicant's Statement of Need indicates that planning policies and decisions should aim (*inter alia*) to:
- *'avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;*
 - *mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;*

- *recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established...'*

3.112 The first two bullet points in paragraph 123 are relevant to consideration of the application while the third is not relevant given that that point relates to existing businesses rather than new infrastructure development.

3.113 NPPF paragraph 125 indicates that: *'By encouraging good design, planning policies and decisions should limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.'* Good design and lighting effects are considered below in Chapter 4 (see paragraphs 4.268-4.273 and related assessment).

3.114 NPPF paragraph 128 states that:

'In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.'

3.115 NPPF paragraph 128 is relevant to consideration of this application and effects upon heritage assets are considered in Chapter 4 below (paragraph 4.194 *et seq*).

Draft National Networks National Policy Statement

3.116 Paragraph 5.158 of the draft NNNPS indicates that:

3.117 *'Where the project conflicts with a proposal in a development plan, the Secretary of State should take account of the stage which the development plan document has reached in deciding what weight to give to the plan for the purposes of determining the planning significance of what is replaced, prevented or precluded. The closer the development plan document is to being adopted by the LPA, the greater the weight which can be attached to the impact of the proposal on the plan.'*

3.118 In this context, neither of the local planning authorities, including Central Bedfordshire Council, sought to argue that the emerging

Local Development Framework should be given significant weight in consideration of the Woodside Link proposals. Both authorities acknowledged in their various submissions that the draft Central Bedfordshire Development Strategy published in 2013 had stalled over disagreements between the two authorities regarding housing matters and that the plan's production was delayed while further work was being carried out by CBC.

3.119 It also became evident over the course of the examination, as a result of CBC's resolution regarding the HRN1 planning application (see paragraph 2.12 above) and of the Secretary of State for Communities and Local Government's (SoSCLG's) subsequent decision not to call in the application as a departure from the development plan, that the outcome of the HRN1 planning application is likely to have significant implications for plan production once that matter is fully resolved through conclusion of the relevant s106 agreement and the grant of planning permission.

3.120 Paragraph 5.164 of the draft NNNPS also states that:

'When located in the Green Belt national networks infrastructure projects may comprise inappropriate development. Inappropriate development is by definition harmful to the Green Belt and there is a presumption against it except in very special circumstances. The Secretary of State will need to assess whether there are very special circumstances to justify inappropriate development. Very special circumstances will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any application for such development.'

3.121 In considering this planning policy matter, as indicated above, paragraph 90 of the NPPF takes a somewhat different position in relation to certain types of local transport infrastructure, as follows:

'Certain other forms of development are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. These are:

.....local transport infrastructure which can demonstrate a requirement for a Green Belt location'....

3.122 Neither the NPPF nor the draft NNNPS explain *why* national networks infrastructure may comprise inappropriate development in Green Belt while local transport infrastructure that can demonstrate a requirement for a Green Belt location is not regarded as inappropriate development in Green Belt provided

green belt openness is preserved and there is no conflict with green belt purposes. It is of course possible that this point may be clarified in the final designated version of the NNNPS.

- 3.123 In any event other factors come into play in the assessment of the relationship between the Woodside Link proposal and saved Green Belt policy. These matters are considered further in relation to compliance with local plan policies at 4.104 *et seq* below.

Changes to the submitted application

The Secretary of State's powers to make a DCO

- 3.124 A number of changes to the application documents were submitted by the applicant at the Preliminary Meeting; various changes to the draft DCO were also submitted by the applicant during the course of the examination. The changes are listed in Chapter 6 of this report.
- 3.125 It is important to consider whether any changes to the application meant that the application had changed to the point where it was a different application and whether the Secretary of State would then have power under s.114 of PA 2008 to make a DCO having regard to the scope of the project for which application had been made.
- 3.126 The Secretary of State will be aware of the letter dated 28 November 2011 from Bob Neill MP, then Parliamentary Under-Secretary of State for Planning⁴ which was sent to the former Infrastructure Planning Commission. That letter referred to the view expressed by the Government during the passage of the Localism Bill that s.114(1) places the responsibility for making a DCO on the decision-maker, and does not limit the terms in which it can be made.
- 3.127 The applicant responded to a number of representations and submissions from other IPs during the examination by introducing changes to the wording of the draft Order. It also introduced other changes to the Order in response to my written and oral questions. No changes were made to the Order limits (Limits of Deviation) and no significant changes were proposed to the scheme itself.
- 3.128 A wide range of additional information and clarification was provided in response to matters arising and points raised during the examination. The Book of Reference was updated twice in order to ensure that it was comprehensive and accurate. However, none of the changes made to the application documentation

⁴ Link: http://infrastructure.planningportal.gov.uk/wp-content/uploads/2011/11/111130_Ltr-from-Bob-Neill-MP-re-s114.pdf

amounted to a significant change to the scope of the proposed scheme.

- 3.129 The scheme as reflected in the final documentation as at close of examination falls within the scope of the ES in its entirety.
- 3.130 Having regard to this assessment I therefore conclude that the SoS has the power to make the recommended Order under s114 of the PA 2008 as amended.

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

Main Issues in the Examination

4.1 In Annex B to the procedural decision set out in my Rule 8 letter dated 15 October 2013 (PrD_4) the preliminary identification of Principal Issues listed 11 issues:

1. Confirmation of NSIP status
2. Planning and transport policies and programmes, cumulative effects and alternatives
3. Traffic, safety and access effects
4. Environmental effects upon the occupants of residential property
5. Hydrological and drainage effects of the project, including any road drainage and water environment effects and flood risk
6. Visual effects of the project
7. Mitigation of any significant ecological effects
8. Economic, social and environmental effects (upon other existing areas, areas proposed for new development, community and private assets) and adequacy of assessment, mitigation and monitoring
9. Compulsory acquisition
10. Necessity for other consents and likelihood of approval
11. Adequacy of the Development Consent Order.

4.2 These principal issues informed the basic structure of the examination, including the examination timetable, the hearing agendas and the key aspects that I sought to clarify through written and oral questioning and, where appropriate, accompanied and unaccompanied site visits.

Issues arising from written submissions

4.3 The issues arising from written submissions broadly followed those listed in the initial assessment of Principal Issues. More specific concerns were raised regarding the following matters, which relate to certain listed principal issues:

- The likely positive and negative implications of construction and operation of the proposed Parkside Link between the main Woodside Link and the Houghton Park housing Estate (raised by a number of IPs who are residents on the Houghton Park Estate, and by Houghton Regis Town Council)
- Whether the proposed Woodside Link represents appropriate or inappropriate development in the Green Belt and whether the DCO application is premature pending adoption of the emerging Central Bedfordshire Development Strategy
- Whether the applicant's Transport Assessment (AD_42) is adequate, including its assumptions regarding levels of HGV movement and the implications of the Local Development Order for the Woodside Industrial Estate proposed by CBC in its capacity as local planning authority
- Whether the applicant's flood risk assessment (AD_23) is adequate in relation to the drainage of the proposed highway scheme and the capacity of Houghton Brook
- Whether adequate provision was being made in the scheme for pedestrian access at the identified 'desire line' between Sandringham Drive on the Houghton Park Estate and the Lewsey Farm Estate on the Luton side of the proposed route of the Woodside Link
- Whether the likely visual and noise impacts of the proposed scheme upon some of the housing on the Houghton Park Estate located closest to the proposed line of the Woodside Link at a point where it would be elevated in its southernmost section would be acceptable or capable of mitigation through the requirements included in the DCO
- Whether, in addition to construction of the Woodside Link, changes should be made to the wider highway network in the area to accommodate the highway pressures likely to arise from the in-combination effects of existing and planned development and general traffic growth in future years.

4.4 I addressed all these matters within the framework established by the Principal Issues in the written and oral questions posed during the examination, as explained in more detail below. All issues raised were considered by the applicant, which reached agreement with the proponents or otherwise contested the unresolved balance of the issues identified. The evolution of key discussions over the period of the examination, together with the development in the positions of the parties and the principal evidence of relevance submitted, is explained in Chapter 4 below.

Issues arising in Local Impact Reports

Central Bedfordshire Council LIR

4.5 The Central Bedfordshire Council LIR (LIR_1) considers the saved Local Plan policies set out in the South Bedfordshire Local Plan Review 2004 (SBLPR) and the Bedfordshire and Luton Minerals and Waste Local Plan 2005 (BLMWLP) which are:

SBLPR:

NE10 - Use of agricultural land for other purposes - criteria include loss of versatile agricultural land, Green Belt and rural landscape character;

BE8 - Design considerations - a general requirement for high quality new development;

R3 - Proposed areas of new urban open space in Houghton Regis - designates the wedge between Lewsey Farm Estate and Houghton Park Estate for enhancement and appropriate management of existing open area for a mix of formal and informal recreation in accordance with detailed proposals to be drawn up by the planning authority;

R14 -15 - Access to informal countryside recreation and public rights of way - for walkers, horse riders, cyclists - especially close to urban areas.

BLMWLP:

M8 - Borrow pits - considers convenience of site to project to be supplied, satisfactory restoration and environmental benefit

W5 - Management of wastes at source - seeks waste audit as part of application to minimise and manage waste.

4.6 In its assessment of how the application complies with these saved policies the CBC LIR (LIR_1) comments at paragraph 3.7 that soils within the site of the Woodside Link as DEFRA category 2 and 3a which are good quality. The LIR indicates that the proposal would result in irreversible loss of this land and that would be at variance with Policy NE 10 of the South Bedfordshire Local Plan Review 2010, which is a saved policy. Soils removed would be re-used on banks or would be available for other purposes. The Applicant's ES (AD_37) identified this as a *slight adverse* impact. However the LIR goes on to highlight that it *'is a highly material consideration that the whole of this landscape is, through the resolution to grant planning permission'...*[for the HRN1 urban extension]... *'earmarked for development with the consequential loss of quality agricultural land.'*

4.7 In relation to landscape impacts, CBC's LIR (LIR_1) comments at paragraph 3.8 that *'these would need to be seen in the context of an engineering operation which has uncompromising physical characteristics and considerable benefits in other subject areas.'*

4.8 A specific point is raised at paragraph 3.5 of the LIR regarding the potential benefit relating to management of green space:

'The planning permission for residential development off Sandringham Drive included provision for management of part of

the Policy R3 area. The instant proposal continues to offer opportunity to manage most of the area for public access with the benefit that it would now be connected to a far longer green corridor to the east.'

4.9 This comment refers to the green wedge of land between the Houghton Park Estate in Houghton Regis (that would be located on the north west side of the proposed Woodside Link) and the Woodside link itself. The works proposed include extension of the green space corridor along the diverted Houghton Brook to the east of the current green space. While some unmanaged green space between the Houghton Park Estate and Lewsey Farm Estate currently used for informal recreation would be lost to the Woodside Link, the green space extension to the east and the proposed active management of the whole green space corridor would offer potential benefits to the local communities using that space.

4.10 In relation to access for pedestrians and walkers, the CBC LIR (LIR_1) comments at paragraph 3.10:

'Access for walkers and cyclists would be safeguarded and enhanced in many ways. The design has been the subject of consultation with local cycling groups to accommodate the improvements that they as users would desire. While the diverted NCR6 [National Cycle Route 6] crosses the main highway through an underpass, in order to minimise super elevation it has been found necessary for other links to cross the proposed highway on the level using toucan crossings. While this is not optimal, it reflects a balance of issues.'

4.11 At paragraph 3.11 the CBC LIR comments in relation to ecological impacts:

'The borrow pit would be located conveniently for construction and would beneficially be restored as a wildflower meadow. There is support for the principle of borrow pits provided they fulfil the criteria set out including demonstration of an overall environmental benefit. A Site Waste Management Plan would be produced. Land raising to support the new highways would benefit the proposal by reducing flood risk for the road.'

4.12 At paragraph 3.12 the LIR assessment concludes:

'It is therefore considered that the proposal is substantially in accordance with the adopted development plans in force for [the] area covered by the proposal although there remain issues in the interim of landscape and noise.'

4.13 The CBC LIR then considers conformity with the emerging pre-submission draft Development Strategy for Central Bedfordshire.

4.14 Relevant policies highlighted by the CBC LIR are:

- 1. Presumption in favour of sustainable development, reflecting the NPPF;*
- 3 - Location of Green Belt - which includes the Woodside Link site within the boundaries of Central Bedfordshire;*
- 6 - Employment land - relates to a key benefit claimed by the [Woodside Link] proposal, which would provide improved access to existing and proposed employment areas;*
- 14 - Dunstable Town Centre - relates to a key benefit claimed by the proposal, which would provide access to the retail and historic core of the town;*
- 16 - Houghton Regis Town Centre - relates to a key benefit claimed by the proposal which (taken together with the A5-M1 Link) would provide access to the retail and historic core of the town;*
- 22 - Leisure and open space provision - the proposal would include substantial areas of new open space and green infrastructure - where open space is lost (near Sandringham Drive) replacement open space of equal size and quality is proposed to the north-east;*
- 23 - Public rights of way - restoring and re-connecting;*
- 25 - Capacity of network - seeking to deliver strategic transport schemes in the LTP of which this is one;*
- 29 - Housing provision - refers to Houghton Regis sustainable urban extension within which this road would be located and which it would partly serve;*
- 36 - Development in the Green Belt - does not mention the exception for local transport schemes found in the NPPF;*
- 43 - High quality development - delivering the highest possible quality of new development including amenity of surrounding properties, landscape and heritage assets;*
- 44 - Protection from environmental pollution – noise, vibration, light, water, contaminated land, airborne require measures to satisfactorily mitigate impacts;*
- 45 - Historic environment - significance of heritage assets and requiring highest quality of design with appropriate mitigation;*
- 48 - Adaptation - ensuring development is resilient and adaptable to climate change through trees, landscaping and SUDs;*
- 48 - Mitigating Flood risk;*
- 50 - Development in the countryside - maintain and enhance intrinsic value having regard to biodiversity, landscape, ecology, accessibility and agricultural value;*
- 56 - Green infrastructure - linked open spaces, quality GI not being fragmented;*
- 57 - Biodiversity and geodiversity - enhancing habitats, restoring fragmentation, protected species;*
- 58 - Landscape - conserved in accordance with Landscape Character Assessments;*
- 59 - Woodlands, trees, hedgerows - protected from loss and damage, promoting new tree cover to enhance and provide cooling effect.*

60 - Houghton Regis North Strategic Allocation - part of the major section supporting the principal policy and which sets the start date for the Woodside Connection (sic) at 2016.

- 4.15 The CBC Minerals and Waste Local Plan: Strategic Sites and Policies, 2012 with Proposed Modifications April 2013, is at an advanced stage of preparation, having been subject to examination. At submission of the LIR the Council was awaiting the Inspector's report. Relevant policies highlighted in the CBC LIR are:

*'WSP6 - Catchment area restrictions - provides for disposal and capacity for waste which arises from within the Plan area;
WSP7 - Including waste management in new built developments - a high standard of mitigation of environmental impacts including climate change and appropriate waste storage and recovery;
WSP8 - Non-hazardous waste transfer and materials recovery;
MSP9 - Borrow Pits - convenient and specific to site and to be restored to provide a net environmental benefit.'*

- 4.16 Paragraph 3.15 of the CBC LIR regards the Woodside Link as sustainable development and a project to be delivered through the Local Transport Plan (LTP). While the proposed project would be located in the Green Belt the LIR notes that the description of the development does not refer to it as a local transport scheme that may be appropriate in the Green Belt. It also comments that the proposal could fairly be described as requiring a Green Belt location and cross-refers to NPPF paragraph 90. It further suggests that:

'it [the Woodside Link project] is more properly considered as a key part of the Houghton Regis North 1 Strategic allocation which is proposed in this [Central Bedfordshire] Development Strategy and which would roll back the Green Belt. The impact of the road would be mitigated to a degree but insofar as it would need to provide a satisfactory relationship with the adjacent existing and new urban areas. The impacts would need to be seen in the context of an engineering operation which has some uncompromising physical characteristics and considerable benefits in other subject areas, especially regenerating employment areas and town centres.'

- 4.17 The CBC LIR also accepts that local cycling and foot traffic linkages would be adequately accommodated and that cultural heritage, ecological mitigation and water management are considered satisfactory subject to requirements. Protection from environmental pollution is considered satisfactory and the borrow pit would provide an overall environmental benefit after restoration and preparation for its new use. Paragraph 3.19 of the LIR also considers that the provision for amendment of the agreed restoration plan should the original quantity of excavated material

not be needed *'would ensure that this emerging policy is complied with'*.

4.18 In relation to the highway justification set out in section 4.0 of its LIR CBC considers that: *'Its delivery is related to the completion of the proposed A5 to M1 road and the new Junction 11a to the M1 motorway to which it is linked at the northern end. Although it would be theoretically feasible to construct parts of the Woodside Link in its entirety without the A5 to M1 road, there would be no Jn 11a to connect to and it would be quite unacceptable to off-load traffic onto C-class Sundon Road. Furthermore, the Link would then be incapable of properly serving new development at Houghton Regis North 1. Its construction alongside a delivered A5-M1 link is therefore essential.'* (paragraph 4.2). Paragraph 4.3 of the LIR also explains that when there is congestion on the M1 the A5 provides a diversionary route, including the A505 through east Dunstable connecting with Junction 11. Serious congestion is often a feature of the local network between Dunstable and Luton. Commercial traffic contributes significantly to this congestion.

4.19 Paragraph 4.4 of the CBC LIR confirms that roads in Dunstable and Houghton Regis that are most congested at peak times include:

- High Street/The Green Houghton Regis (A5120/C198)
- Bedford Road Houghton Regis (A5120)
- Park Road North Houghton Regis (C205)
- Watling Street/ High Street North/High Street South Dunstable (A5)
- Church Street and Luton Road gyratory Dunstable (A505) (although this is a new system which is yet to be surveyed)
- West Street Dunstable (B489)
- Poynters Road and junction with Luton Road Dunstable (C205)/A505)
- Sundon Road /Toddington Road junctions (C198/B579).

4.20 Paragraph 4.5 of the LIR also confirms that: *'...the final route proposed for the Woodside Link would now offer a relatively direct limited access road from the M1 to the main commercial core of Dunstable (the Woodside and Woodside Park Estates) and the town centre, with traffic transferring from the Link to the relatively high capacity highway layout through Woodside Estate. Access could also be gained to Houghton Regis town centre and the western part of Luton. Such traffic would presently pass from Jn12 through the centres of Houghton Regis or from Jn11 along A505 Luton Road, which is subject to a 30mph speed limit. With the completion of the A5-M1 link and the de-trunking of the A5 (with associated traffic calming works) commercial traffic especially, travelling south along the A5, would be diverted to the M1 or, if destined for central Dunstable, then take the Woodside Link, also relieving Houghton Regis (the proposed weight restrictions in para*

9.2.1 of the TA enforce this). The 'Sundon Link' (3.3.15 TA) would also remove some local traffic from Houghton Regis town centre.'

- 4.21 The LIR indicates that the Framework for the proposed HRN1 development allows for the Woodside Link as a more direct link to the Houghton Park Estate and Wheatfield Road (Luton) and forms the essential access to the extensive employment and retail area of the proposed HRN1 urban extension, as well as to approximately 1,000 dwellings. It would provide the final link between the remaining 4,000 dwellings and the employment area and would connect most of the urban extension to the M1.
- 4.22 Paragraph 4.7 of the CBC LIR confirms that the trip generation modelling has taken account of the HRN1 assessment to provide an agreed baseline (paragraph 2.3.4 Transport Assessment (AD_42)) and that the full development scenario assumes completion of HRN1. An opening year of 2016 has been adopted to coincide with the A5-M1 Link and the Design Year selected is 2031. Modelling has been carried out both with and without the Parkside Drive link, as the Transport Assessment (TA) acknowledges that this link is controversial.
- 4.23 The LIR explains that the TA (AD_42) demonstrates that, with full development of HRN1, the main beneficiaries of the Woodside Link would be Park Road North and Sundon Road into Houghton Regis, with High Street Houghton Regis (HR) and Poynters Road also experiencing marked benefits. The former two roads provide access to Houghton Regis town centre.
- 4.24 The LIR confirms that the TA also suggests that Sandringham Drive on the Houghton Park Estate would benefit as it is currently used as a 'rat-run' from Sundon Road to Poynters Road/Porz Avenue despite being a residential distributor road. It also states:
- 'There is relatively little change to traffic volumes on central Dunstable roads. It will be important to appropriately sign the new road to direct heavy traffic from the NE destined for Houghton Regis town centre along the full length of the new road rather than taking a short cut up Sundon Link and along Sundon Road.'*
- 4.25 The LIR notes that certain roads would also experience increased volumes of traffic on the opening of the Woodside Link, for example in 2016, excluding any subsequent effects that may be expected from the HRN1 development once that is implemented, increased traffic volumes would be experienced on the eastern approaches to Junction 11 including the B579 and Sundon Road Chalton. The latter is a winding lane already used as a link between Houghton Regis, Sundon Park Estate and the A6 at Barton. Paragraph 4.9 of the LIR suggests that 'the impact of extra traffic, especially HGVs, will need to be assessed on the very tight 'S' bend to the east of the railway bridge and the performance of the junction with Sundon Park Road:

'There would be adverse impact on the performance of this road if alternations were left until a future M1 to A6 link is provided (4.8.4, 5.6.5 TA). While it is recognised that it would not be desirable for other reasons to make the route from Sundon Park estate to Jn.11a more attractive than the route to Jn. 11, further consideration should be given to the 'S' bend as it has the potential to cause significant conflict between larger vehicles. This does not appear to have the same attention as the Sundon Park Road junction (TA 9.2.3 and 4). It is agreed that the junction itself should be reviewed in due course.'

The LIR (LIR_1) further notes that:

4.26 *'No figures are provided of the existing traffic flows along Parkside Drive with which to compare figures in Table 9 of the TA. It is clear that increased traffic on this road as a consequence of the new connection with the Link would pass through a residential area, impacting on the dwellings nearest Parkside Drive although this could be balanced by a greater number of travel options for residents of the estate.'*

4.27 No adverse impacts are anticipated in relation to geology/soils but the CBC LIR comments that the borrow pit appears to be Grade 3A land and suggests an appropriate requirement in relation to restoration of the borrow pit that could lead to provision of information regarding how the recovered topsoil would be re-used in the restoration.

4.28 The CBC LIR draws attention to Figure 6.1 of the ES, which indicates that the Houghton Brook is a designated surface water course which flows through two areas of 'Floodzone 2' which signifies less than 1% risk, although the drawing states that the level of flood risk is 'greater than 1%'. The applicant's proposal is to cut a new section of the brook near Parkside Dive to slightly straighten it so as to avoid the need for a further bridge, providing drainage swales to flank the new highway for most of its length which would feed into attenuation ponds and thence into the brook. In this regard the LIR comments that:

'6.2 The new road and embankment and the straightening of the brook would not cause significant increase to the area of the floodzone which would not in any case reach residential properties (FRA). However, locally the floodzone would transfer to the north of the road with the diverted brook. In the 1 in 20 year event the only significant length of new foot/cycle way under water would be the Woodside Link Road bridge and Pastures Way toucan crossing (drg 300117/033/003 rev.P0 Hydraulic modelling report).'

4.29 The LIR also notes that during construction various measures are proposed to prevent adverse effects to surface waters and groundwater. In the longer term combinations of sustainable drainage systems (SUDS) measures would treat runoff and

improve water quality. Regular maintenance to de-silt and clean the brook to avoid accumulation would be essential if the brook was to be the centrepiece of the linear open space. Paragraph 6.5 of the LIR concludes that:

'Generally, and taking into account any cumulative aspects with the A5-M1 Link, there would be acceptable impacts to surface and groundwater and a potential to improve the habitat value of the brook and its environs.'

- 4.30 In relation to waste materials paragraph 7.1 of the CBC LIR (LIR_1) notes that *'it is expected that most soil removed would be reused on site and that any construction waste would be recycled at local waste transfer facilities (expected to be only a small quantity).'* (See ES Table 7.2). The LIR notes that the ES (AD_37) indicates no exceedance of the hazardous waste thresholds at any location (AD_37, paragraph 7.3.11) such that site-won materials could be used for earthworks. However there would be a 64,600m³ shortfall of materials for banks. A chalk borrow pit is proposed to be opened adjacent to the Link's northern arm, subject to testing. Further savings could accrue if early work on the proposed HRN1 development produced surplus material prior to the Link road being commenced (AD_37, paragraph 7.4.11).
- 4.31 As regards cultural heritage, paragraph 8.1 of CBC LIR confirms that the site of the Woodside Link lies within an area of archaeological remains dating from the Bronze Age to post-mediaeval and modern periods. The baseline information and analysis contained in the ES is considered adequate and appropriate. The methodology of assessing significance and value of the assets is also considered appropriate. However paragraph 8.2 of the LIR points out that:
- 'no such evaluation can be considered comprehensive and there will be a further possibility of substantial archaeological remains being found within the site when the works commence.'* CBC considers that the presence of identifiable trackways and field systems in CHAGs⁵ 2 and 5 which clearly link to the Roman Settlement in CHAG 4 (see ES Table 8.7) and a probable settlement outside the area of search *'means that they should be considered to have medium to high significance'*.
- 4.32 Additionally, as post-medieval model farming and in particular model farms have been identified as particularly important locally, CBC suggests at paragraph 8.2 that *'the significance of CHAG10 should be medium to high'*. It also suggests that as the sites identified in the third row of ES Table 8.6 are all Scheduled Ancient Monuments and nationally important *'they should be*

⁵ CHAG = Cultural Heritage Asset Group

considered in that context as having high significance rather than as part of the historic landscape.'

- 4.33 Mitigation proposals including recording and archiving are considered acceptable (LIR_1 paragraph 8.3).
- 4.34 Turning to special features, the LIR (LIR_1) agrees that there are no 'listed buildings' or Scheduled Ancient Monuments on or near the site. The nearest conservation area is Houghton Regis. ES paragraph 8.6.5 indicates that there would be some relief to the traffic passing through the north of the conservation area (East End, north of The Green). The LIR also comments that reduced traffic in Dunstable Conservation Area following de-trunking could enable the implementation of traffic calming measures which would improve its character.
- 4.35 Paragraph 8.5 of the LIR indicates that:
- 'The only substantial above-ground historic remains within the site are the hedgerows, which are likely to be 18th century enclosure boundaries, and Chalton Cross Farm which is a fairly complete example of a nineteenth century model farm in its landscape.'*
- 4.36 The farmhouse enclosure and its buildings beyond an intermediate wall/fence would be lost to the Woodside Link scheme.
- 4.37 The LIR notes that the submitted draft DCO (AD_8) contains two Requirements related to cultural heritage (16 and 17). Paragraph 8.6 of the LIR concludes that using a form of condition to cover issues of investigation and recording of archaeological remains and of approving a cultural heritage scheme would be appropriate in principle. However it qualifies this statement by pointing out: *'However, with cultural heritage skewed towards archaeology it would be better to amalgamate the two [requirements] into one'*. Paragraph 16.21 of the LIR points out that the form of Requirements in the submitted DCO is cumbersome and that: *'In particular, if substantial remains are found requiring detailed and lengthy investigation the provisions could result in significant delays to the project while the necessary documents are prepared, submitted and approved.'*
- 4.38 As an alternative, in its LIR CBC as local planning authority proposes a single requirement. The wording suggested by the planning authority was accepted by the applicant and is now incorporated into the recommended Order (see Appendix D).
- 4.39 Section 9.0 of the CBC LIR considers the findings of the applicant's ES in relation to nature conservation and ecology. Paragraph 9.1 of the LIR points out that the Woodside Link site is not within 500m of designated habitats although the River Lea CWS in Luton lies downstream. It suggests that the proposed pollution control

measures for the construction and operation phases should protect this resource.

- 4.40 A single bat roost was found at Chalton Cross Farm and the CBC LIR points out that appropriate process would need to be arranged with Natural England as this building would be demolished under the Woodside Link proposals. A further roost was found in a large poplar near Parkside Drive. Other bat roost potential is recorded in mature and dead trees in woodland near Parkside Drive and the long hedgerows favour flight paths. Due to bat hibernation vegetation clearance would need to take place in winter or at equinoxes. New hedge planting with a good range of native species to connect retained hedges would assist flight lines. This would be augmented by species-rich grassland such as the borrow pit.
- 4.41 The CBC LIR (LIR_1) indicates that badger activity within the site is relatively restricted *'compared to activity immediately in the wider landscape'* and paragraph 9.3 comments that:
- 'Care will need to be exercised clearing dense scrub near the southern arm. As there is a lack of clear foraging routes it would be difficult to plan for fencing, tunnels or other measures to prevent casualties in the web of new and old highways at the north of the site. However the dry underpass alongside the brook would be helpful where the northern arm would cross. This impact should also be seen in the context of HRN1.'*
- 4.42 In the context of considering protected water voles, paragraph 9.4 of the CBC LIR suggests that management of the Houghton Brook should also be incorporated into a SUDS to gain multiple benefits from habitats creation.
- 4.43 Paragraph 9.7 of the LIR concludes that: *'In summary the protected species are well accounted and appropriate mitigation will be in place including NE EPS licences where necessary with regards to badgers and bats. Assumptions on potential impacts are accepted.'*
- 4.44 Section 10 of the CBC LIR considers the landscape impacts of the proposed Woodside Link project. Paragraph 10.1 points out that the South Bedfordshire Green belt covers the great majority of the site and that its principal purpose is to prevent the coalescence and sprawling of settlements. It confirms that the landscape, although visible across the urban area from Blows Downs in the Chilterns AONB, has no particular designation. However it acts as a green wedge between Luton and Houghton Regis.
- 4.45 The Woodside Link site is not readily visible from the AONB outlier at Sundon about 1 mile to the north east. Much of the wedge of land dominated by electricity pylons between Lewsey Farm Estate in Luton and the Houghton Park Estate in Houghton Regis is

allocated in the Local Plan for open space. The LIR confirms that only a small area of this green wedge south of Parkside Drive is maintained.

- 4.46 At paragraph 10.3 the CBC LIR (LIR_1) accepts the ES (AD_37) description of the current landscape in the area proposed to be crossed by the route of the Woodside Link and helpfully summarises it as follows:

'In summary the various landscape character assessments recognise the openness of the arable part of the site but that it is crossed by powerlines and is bordered by raw or lightly screened urban edges and the motorway apart from the north where steel buildings of Chalton Cross Farm stand starkly. The hedgerows and trees are subordinate to the wide fields which are the dominant feature, once the pylons are disregarded. The more overgrown wedge to the south is still influenced by powerlines but is more enclosed yet typical of urban fringe. Although part of it is used for recreation, the relatively tall and dense vegetation of the rest is difficult to access and more benefit accrues from the pleasant outlook to views from overlooking dwellings. It is thus rightly regarded as of medium sensitivity (ES 10.3.32).'

- 4.47 Paragraph 10.2 of the LIR points out that, due to the possibility that the HRN1 proposal may not be implemented, a cautious approach should be adopted and that the landscape assessment should take account both of the 'non-HRN1' and 'with HRN1' scenarios and taking into account the A5-M1 link in order to provide the worst case landscape impact scenario. On the assumption that any planning permission granted for the HRN1 development will be implemented, the LIR considers that:

'Plainly, a new road running through the fields to the east of Houghton Regis will be part and parcel of a newly urbanised landscape and be difficult to distinguish when viewed from Blows Downs, other than by its straight linear axes. It is also understood by the Authority that changes to the land either side of the [Woodside Link] site will be rapid once the HRN planning permission is issued, with landscaping belts. For many years this land will be in transition.'

- 4.48 Paragraph 10.5 of the LIR considers that in the 'no HRN' scenario the proposed new road *'would undoubtedly prejudice the openness of the Green belt by fragmenting the open fields landscape.'* Paragraph 10.6 also concludes that the new road would fragment existing open space in the south part of the route, but points out that it would result in the retained landscape in the wedge playing the role of a landscape buffer. It further qualifies this assessment by setting it in context: *'However, it should be recognised that the narrowness of the wedge at present almost gives it the role as landscaped buffer between the two towns, so the difference, while significant, is less than it could otherwise have been.'*

4.49 Paragraph 10.7 of CBC's LIR indicates that:

'The open space land which would be lost to the new roads would be more than replaced in area by new land taken from arable fields and other, unproductive, land (ES Fig 2.14 and 15). To compensate for fragmentation of the wedge of land, a linear open space would be provided along the rural length of the Houghton Brook. Availability of land from the borrow pit, the need to manage the water environment downstream, and the completion of foot/cycle links would extend this eastwards where no formal access is presently available despite it being much used informally.'

4.50 The LIR (LIR_1) makes a number of other detailed points regarding the landscaping implications of the proposals, including lighting, restoration and aftercare of the borrow pit, removal of power lines, visual impact, screen fencing and the implications for Chalton Cross Farmhouse. In this context it concludes that the removal of powerlines would be a net benefit although the pylons to be removed would be the less dominant of the three lines crossing the heart of the site and the taller structures would remain.

4.51 In relation to visual impact where the project would be viewed from residential properties overlooking the proposed new road, paragraph 10.12 of the LIR notes that the houses within the CBC administrative area closest to the road would be those located near to the section between chainage 150 to 450 in the Houghton Park Estate:

'At Ch150 the carriageway would be on a 2m bank and separated from Milton Way houses (sideways on) by Sandringham Drive and a very narrow 'proposed woodland'. At Ch200 there is an even closer relationship between the new road, now on a 2m high retaining wall, and the rear of houses in Milton Way. These would be separated only by Sandringham Road and a grass strip at the foot of the retaining wall. At Ch300 the new road is stepped up to about 1.5m with Sandringham Drive and a row of new tree planting (which will need time to be effective) separating it from rearward and side views from St. James Close houses.'

4.52 Paragraph 10.13 of the LIR comments on the importance of the detail of fencing, acoustic screening and landscaping in order to minimise adverse impacts upon these properties and their occupants. Paragraph 10.14 notes that Chalton Cross Farmhouse would be severely affected by the Woodside Link construction compound during the construction phase, possibly in combination with any similar effects from construction works relating to the A5-M1 Link. If the farmhouse is to be retained then landscaping would be important to reduce the longer term impacts on this property.

- 4.53 Section 11 of the CBC LIR identifies the principal impacts upon community and private assets as:
- Fragmentation of green space land within 'the wedge';
 - Loss of public open space identified through Local Plan Policy R3 (to be mitigated by provision of replacement and additional new open space to the east along Houghton Brook);
 - Effects on severance of established (informal and formal) pedestrian routes used by local communities;
 - Loss of farmland at Chalton Cross Farm; and
 - Alterations to underground the 132kV power line adjoining route of the proposed Woodside Link.
- 4.54 In relation to air quality Section 12.0 of the LIR (LIR_1) concludes that the principal issue for air quality is dust arising from movement of materials and movement of vehicles in dry weather, for which mitigation would be necessary (AD_37, paragraph 12.6.18). Paragraph 12.2 of the LIR notes that the HRN1 ES⁶ included the Woodside Link as part of its baseline air quality assessment and identified no adverse impacts upon the proposed new housing, which would be closest to the proposed new road, although more work will be needed when the precise position of the proposed new dwellings is known. It also notes that development of the strip of land between the east of the Houghton Park Estate and the Woodside Link is not expected to alter the ES air quality assessment finding and that the Woodside ES reveals no significant air quality effects subject to the implementation of the proposed mitigation measures.
- 4.55 Section 13.0 of the LIR addresses noise and vibration. Paragraph 13.1 notes that there are many properties in Central Bedfordshire within 300m of the proposed Woodside Link site. The LIR refers to the proposed noise barriers (the noise assessment is based on non-absorbent barriers) and emphasises that their ongoing maintenance would be essential. It also comments that construction phase noise would be addressed by the Construction Environmental Mitigation Plan (CEMP) (ES 13.5.6) but paragraph 13.2 comments that:
- 'There would undoubtedly be significant noise impacts for some houses towards the west end of the site although it is stated that vibration levels would be acceptable (ES 13.6.7).'*
- 4.56 General conclusions drawn by the LPA from the ES noise assessment (LIR paragraph 13.3) include the significance of the predicted reduction in noise levels in surrounding parts of Houghton Regis as a result of the Woodside Link, *'the relatively sharp decay in related noise levels moving away from the road'*

⁶ <http://www.centralbedfordshire.gov.uk/portal/index.asp> [Case Number: CB/12/03613]

and 'the overall raising of actual noise levels by a base noise layer due to the influence of the M1 motorway, which pervades the whole map area'. The LIR concludes that the impression from the noise assessment map and Tables 13.8 to 13.10 is of a relatively small number of additionally affected properties. However it points out certain apparent inconsistencies with Figure 13.6 of the NA which suggests that about half of the properties fronting Sandringham Drive would experience an uplift of about 5dB(A) and that other properties would also experience a noise uplift to varying degrees.

- 4.57 The LIR also notes that the ES envisages the likely demolition of Chalton Cross Farmhouse on the basis that the predicted noise uplift of 11.6dB(A) would be further worsened by cumulative development effects (ES Table 15.2). However the LIR points out that the HRN Framework Plan adopted for development management purposes at the CBC Executive on 2 October 2012 is very generalised in this area and could permit residential, mixed use employment, leisure retail or green infrastructure at Chalton Cross. Accordingly it concludes: *'It is therefore premature to write off the continued use of the farmhouse as a dwellinghouse.'*
- 4.58 At paragraph 13.5 the LIR considers the overall position set out in the ES. The LIR highlights that noise assessment prediction figures for all properties (including those in Luton Borough) included at ES 13.7.3 and 5 suggest that at opening year in 2016 there would be a shallow upward curve in the number of houses experiencing improved noise levels as the degree of improvement increases. On the other hand there would be slightly more properties which suffered a worsening noise level and the corresponding curve would rise steeply to 'minor negative' before falling steeply to the 1.4% which would experience 'moderate or major adverse' noise/vibration effects. The NA predictions for the later years of the scheme show that in 2031 a majority of houses would experience 'negligible increase' with a minority experiencing up to a 'minor decrease'. The LIR places importance on the observation that only three properties would qualify for insulation under the Noise Insulation Regulations (ES 13.7.7).
- 4.59 Section 14 of the LIR considers 'effects on all travellers'. It agrees with the ES that the informal use of paths across and near the east and north of the site form a more coherent network than the designated oaths in the same area but argues that they should still be considered as part of the network of existing routes available for use by local people.
- 4.60 The LIR notes that the purpose of the Woodside Link is to provide a more direct route to the A5-M1 Link and that this would improve driver experience [EAQ14(i)]. For pedestrians, some little used paths would be closed and others would be diverted to run alongside the new roads:

'The main routes used by pedestrians are between Parkside and Lewsey Farm estates and some are informal. Most would be confirmed and their crossing of the southern arm [of the Woodside Link] be regulated yielding a neutral benefit [EAQ17(ii)].'

- 4.61 The LIR comments that it needs to be made clear how the Order would deal with the legal process of creation, diversion and extinguishment of public rights of way, both within and outside the site and that lack of certainty in relation to footpaths in the northern part of the site after construction of the A5-M1 and in the HRN1 area needs to be resolved.
- 4.62 In relation to cycling facilities the LIR observes that the National Cycle Network Route 6 is largely complete in Bedfordshire and forms a spine for links to housing areas and facilities in the Luton/Dunstable/Houghton Regis conurbation. It also comments (paragraph 14.6) that the riverside deviation would be an improvement over the neglected length of cycleway at the end of Parkside Drive and the urban section alongside Kestrel Way, notwithstanding the unprotected crossing of Parkside Drive.
- 4.63 The LIR notes that in relation to pedestrian access between the Parkside and Lewsey Farm Estates during construction it is proposed by the applicant that at least one of these links would be passable at any one time, although all three would be closed at various times during the construction stage. It seeks appropriate provision for explanatory signage during construction.
- 4.64 The economic impact of the proposed Woodside Link is considered at section 15.0 of the CBC LIR. It identifies the primary aim of the Woodside Link as provision of a convenient route from the primary road network to the industrial and commercial development around Woodside Industrial Estate and to provide relief for Houghton Regis and Dunstable town centres. The Woodside Link would enable de-trunking of the A5 through Dunstable and a possible HGV ban, which would also have a beneficial effect on conditions in the Air Quality Management Zone. The LIR suggests that: *'a step change and transformational change would be possible so Dunstable town centre can redefine itself and improve as a destination'* (LIR_1, paragraph 15.2). The LIR argues that Houghton Regis town centre would also benefit on a similar basis but to a lesser degree.
- 4.65 The LIR indicates at paragraph 15.3 that the proposed Woodside Link would provide direct access from the strategic road network to the largest single employment area in Central Bedfordshire, including the Woodside Industrial Estate, Woodside Park, Chiltern Pak, Eastern Avenue, Boscombe Road and Townsend Farm Road, which are all commercial areas within a mile of the Poynters Road Roundabout where the Woodside Link would connect to the existing local highway network. The LIR indicates in broad terms that:

'A number of major opportunities to regenerate these areas would benefit from improved access and so increase economic activity and prosperity.'

4.66 The second aim of the Woodside Link identified in the LIR is to provide critical infrastructure to the HRN1 site through which the Woodside Link would run. The Framework Plan for the HRN1 and 2 developments was the basis for the recent planning decision by CBC regarding the proposed HRN1 development scheme. The Woodside Link is set out as a strategic road in the new Framework Plan. The LIR confirms that it is intended to serve not only as a spine for conveying traffic from outside the area towards the M1, but as a primary road to serve new residential areas located to the south of the northern arm of the Woodside Link, to serve employment-generating development located towards the motorway and to be the terminal point for a secondary spine road serving the whole of the remainder of the HRN1 development. On this basis paragraph 15.4 of the LIR (LIR_1) indicates that:

'The importance of the road within the urban extension and its role in connecting it with the strategic [road] network beyond makes it essential to the urban extension itself. The extension in turn is the vehicle to providing housing and fully serviced neighbourhoods, including employment, necessary to enable Dunstable, Houghton Regis and Luton to grow economically.'

4.67 At paragraph 15.5 the CBC LIR therefore concludes that paragraph 45 of the applicant's Statement of Need *'is right to draw attention to government and ministerial statements on the importance of economic growth.'*

4.68 In relation to the submitted draft DCO (AD_8) the LIR makes a number of comments and suggests amendments and additions. The principal amendments and additions to the submitted draft DCO suggested by the CBC LIR are as follows:

- Article 33 - inclusion of reference to British Standard 3998 and to require that works to trees would be overseen if not carried out by suitably qualified arboricultural contractors;
- Requirement 4 - need for provision of wording to ensure that further details of the design are submitted to the LPA for approval (unless the ExA is satisfied that the proposal would be acceptable at the extreme limits of deviation based on Article 3);
- Requirements 5 and 18 - Need for clarification of whether it is the landscape scheme required under Requirement 5 that should be subject to the management plan rather than the mitigation referred to in Requirement 18 and whether BS3998 should be referred to in relation to works to trees;
- Suggestion for a separate requirement in relation to restoration and aftercare of the proposed borrow pit (planting plan and management plan);

- Requirement 12 - approval of details of street lighting - request that the definition of 'link road' should be clarified to include all works including lighting on foot and cycleways remote from the carriageways and that the term 'lighting columns' be clarified to include luminaires as well as the columns themselves;
- Requirements 16 and 17 - Cultural heritage and archaeology - Suggested deletion and replacement with a single consolidated and simplified requirement (suggested wording provided by the LPA)
- Requirement 18 - suggestion to include provision for restoration and management of the borrow pit (see note in relation to Requirement 5 above). Suggested requirement to cover:
 - Phasing excavation of material
 - Stripping, movement, storage and replacement of soil
 - Final levels, profiles, bank design and aftercare (bringing the excavated land to a standard that can sustain the after use)
 - Landscaping
 - Providing for a revised restoration and landscaping scheme should the pit prove to be smaller than initially expected.

4.69 The CBC LIR concludes in section 17.0 that:

'whilst the proposal itself would not create employment, other than during the course of construction, the wider implications of the scheme in allowing additional highway capacity to accommodate development and enabling easier access to the commercial cores of Dunstable and Houghton Regis would result in a positive impact to employment and the ongoing regeneration of the area.' (paragraph 17.2)

4.70 The benefits in terms of social impact are considered to be positive in terms of the benefits of greater employment opportunities (see paragraph 17.4).

4.71 Environmental impact is considered to include loss of informal open space (which it notes will be replaced elsewhere), increased noise levels for some properties (to be mitigated and monitored), improvement in noise experienced by others and improvement in air quality in Dunstable. Paragraph 17.3 of the LIR conclusions notes that impacts upon landscape *'will also be further reduced substantially in places, when the scheme is taken cumulatively with the Houghton Regis North 1 development.'*

4.72 The CBC LIR concludes at paragraph 17.4 that, on balance, *'the social and economic benefits outweigh the negative environmental impacts and the scheme should therefore be supported.'*

Luton Borough Council LIR

- 4.73 The LBC LIR (LIR_2) adopts a similar structure to that applied to the CBC LIR but also includes a heading for consideration of cumulative effects. The LIR notes that the majority of the site lies within the area of Central Bedfordshire Council. Only a small area at the southern end of the Woodside Link scheme lies within the Borough of Luton's administrative boundaries.
- 4.74 In relation to relevant Development Plan policies paragraph 3.3 of the LBC LIR considers that the NPPF and the saved policies of the South Bedfordshire Local Plan and the Luton Local Plan are relevant to the Woodside Link proposal. However it notes at paragraph 3.4 that in the regional and sub-regional context, given that the geographic area covered by the South East Midlands Local Economic Partnership (SEMLEP) is similar to that of the former Milton Keynes/South Midlands sub-region, one recent document of relevance is the MK/SM interurban transport strategy published in October 2013. A new Strategic Economic Plan (SEP) is currently in preparation by SEMLEP in line with the Government's guidance to LEPs: *Growth Deals: Initial Guidance for Local Enterprise Partnerships* published in July 2013. The development of the SEP will be informed by the MK/SM infrastructure investment strategy.
- 4.75 The LBC LIR (LIR_2) confirms that the replacement for the Luton Local Plan 2001-2011 has not progressed to a stage that could be taken into consideration in respect of the Woodside Link proposal. LBC has commenced a review of its Local Plan and is currently at the stage of evidence gathering. The LIR indicates that a draft plan will be issued for consultation in Spring 2014. It therefore confirms that in respect of the development plan framework for Luton saved policies from the Luton Local Plan 2001-2011 apply. These include:
- T8 - Walking and Cycling
 - ENV 4 - Access to the Countryside
 - ENV5 - Protection and enhancement of nature conservation
 - ENV9 - Design principles and
 - T12 - Road proposals.
- 4.76 Although the scheme is not specifically referred to in saved policy T12 the preamble to the policy refers to the northern bypass for Luton and Dunstable which the proposal would link to. The A5-M1 Link forms part of a wider northern orbital highway scheme that has been planned for a number of years.
- 4.77 The LIR confirms at paragraph 3.9 that no relevant SPGs, SPDs or Development Briefs affect the part of the application site within Luton's boundaries.
- 4.78 In relation to the NPPF the LBC LIR suggests that paragraphs 21, 30, 31, 32, 41, 79, 80, 90, 109, 112, 113, 118, 120, 121, 122,

123, 125, 128, 129, 131 and 134 are relevant to consideration of the Woodside Link proposals.

- 4.79 In relation to Local Transport Plans paragraph 3.13 of the LIR indicates that *'the scheme should take account of relevant Policies in both Central Bedfordshire and Luton's third Local Transport Plans (LTP3) submitted to the Government in April 2011. In this context it should be noted that Luton's LTP3 supports the principle of the Woodside Link connecting to the new M1 Junction 11a.'*
- 4.80 The LBC LIR considers that the proposed Woodside Link is in accordance with the adopted development plans in force for the area covered by the proposal.
- 4.81 At paragraph 4.5 of its LIR (LIR_2) in relation to the ES assessment of effects upon geology and soils LBC notes that if, during the course of works, asbestos was to be found on any of the site this should be dealt with appropriately, as if it was not contained and able to become airborne there would be potential (albeit very slight) for it to affect LBC residents.
- 4.82 In relation to flood risk, paragraph 5.5 notes that Requirement 15 [of the submitted DCO (AD_8)] relates to surface water drainage but does not consider the long term approach to the potential for flooding that may arise from the proposal. LBC requests the provision of further details. More specifically, paragraph 5.4 of the LIR observes that: *'the submission does not include details of level to enable the Council to make a full assessment of the potential for flooding. It is noted that local residents have raised concerns and therefore it would seem appropriate that an additional requirement be imposed to allow the local planning authorities to review the methods of surface water drainage and storage, in particular around Gelding Close. The information should include details of levels.'*
- 4.83 Section 6.0 of the LBC LIR considers matters related to materials. Paragraph 6.2 advises that:
- 'Where materials are to be transported from the site, as well as considering use of local sites, details of routing of vehicles should also be included to discourage HGVs from using rural highways, where possible.'*
- It also advises that where contained materials are to be removed from the site these should be transported in a manner that reduces the impact on local residents in terms of dust and emissions.
- 4.84 The LIR notes that in relation to the above matters cumulative impact is a consideration when the project is considered alongside the HRN1 development. This would also apply to the A5-M1 Link if

any construction work was to be carried out upon that project in parallel with completion of the Woodside Link.

- 4.85 In relation to nature conservation, section 8.0 of LBC's LIR notes at paragraph 8.2 that the habitats survey reported in the ES does not include a survey of invertebrates. The LIR notes at paragraph 8.4 that the Phase 1 habitat survey, bat survey and badger surveys referred to as the study area appear to have been based on an earlier road layout and therefore differ from the current scheme. (This point was also raised in the Planning Inspectorate's S51 Advice⁷ following issuance of the acceptance decision on 12 June 2013). Accordingly LBC supports the comments made by NE (RR_5 paragraph 3.1.13 and WR paragraphs 6.2.1-6.2.2) in seeking additional surveys prior to commencement of works on the site and in relation to Requirement 5 (Landscape and Ecology) seeks agreement of the survey area.
- 4.86 Paragraph 8.8 notes that the ES proposes no mitigation for badgers as a lack of clear commuting routes makes underpasses difficult to locate and it is argued that there would be no material increase in mortality. LBC comments that: *'evidence shows that badgers commute across the roads and the proposed monitoring of future impacts should be extended to badgers.'* It further advises that where bats have been found roosting in mature trees proposed for felling, further pre-felling inspection should be undertaken to ensure that no bats are present.
- 4.87 In relation to the Landscape section of the ES reviewed at section 9 of the LIR LBC concludes that, given the levels in the area, any screening incorporated within the design of the scheme will not completely disguise the proposed link road. Paragraph 9.4 of the LIR concludes that: *'The choice of visual receptors is fairly representative in the area and it is accepted that combined with the impacts of HRN1, the landscape will change significantly. However, LBC does not agree that the requirements proposed in the DCO are sufficient with regard to landscape management, and the LBC ecologist advises that a landscape management plan should be produced to manage and enhance the area between Wheatfield Road and Sandringham Drive to recognise the nature conservation and landscape value of this area.'*
- 4.88 Regarding community and private assets section 10 of the LIR notes that the ES proposes measures to reduce the impact of potential community severance including an additional crossing, enhancement of rights of way, undergrounding of overhead lines on part of the route and access to and improvement of public open space. Paragraph 10.1 of the LIR considers that whilst these measures are considered as benefits they do not go far enough as they do not fully mitigate the impact and could go further. The LIR

⁷ Link: <http://infrastructure.planningportal.gov.uk/projects/eastern/woodside-link-houghton-regis-bedfordshire/?ipcsection=advice&ipcadvice=e7cd26b1c0>

argues that the additional crossing points proposed in the ES would not be located on natural desire lines for crossing and that proposed diversions to public rights of way would provide for a longer pedestrian route.

- 4.89 Paragraph 10.5 of the LIR welcomes the partial undergrounding of overhead lines but suggests that this measure could be further enhanced by additional undergrounding that would not only benefit the setting of the Woodside Link but also the surrounding landscape.
- 4.90 As regards air quality, section 11 of the LIR indicates that LBC would expect to see a dust management plan as part of the CEMP. Paragraph 11.3 also highlights the point that, while assessment of HGV movements have not been included within the ES, there are likely to be significant HGV movements associated with the removal of unwanted soil.
- 4.91 Paragraph 11.5 emphasises that LBC considers that monitoring of air quality and noise is required at baseline, construction and operational stages of the scheme. LBC seeks consultation regarding the location of appropriate monitoring sites. Paragraph 11.7 considers that during the construction stage, away from the major junctions at Woodside and the M1 air quality is currently good but that its quality is likely to decrease as the scheme comes into operation, despite predicted minor improvements to the air quality in the Dunstable Air Quality Management Area (AQMA). In the light of this point LBC emphasises that effective monitoring of pollutant levels (NO₂ and PM₁₀) and mitigation is important in order to protect the health of local residents, in particular vulnerable members of the community.
- 4.92 Section 12 of the LIR considers noise and vibration effects. Paragraph 12.1 notes that while LBC accepts the methodology of the transport model, it considered that the prediction in respect of HGV movements along the proposed Woodside Link is lower than would be expected given the developments that the road would expect. LBC observes that the absence of details in respect of HGV movements makes it difficult to establish the environmental impact on neighbouring properties in terms of air quality, noise and vibration. It suggests that local residents living in properties adjoining the route currently live in a relatively quiet environment and that during construction and operation of the scheme they are likely to be affected by traffic noise.
- 4.93 Paragraph 12.3 of the LIR comments that HGV noise has a particularly low frequency and is particularly difficult to attenuate. While details of noise barriers are not included in the application and are reserved for subsequent approval, LBC suggests that due to the height of the vehicles and the levels of the surrounding land the monitoring of air quality and noise is required at baseline, construction and operational stages.

- 4.94 The LIR draws attention to the night time noise assessment included in the ES which shows levels that exceed the World Health Organisation's guidance on night noise. It further suggests that given that the Woodside Link will serve a route from the M1 Jn11a to an industrial area and any employment site developed as part of the HRN1 scheme there would be potential for night time operations involving HGVs, which could have a long term operational impact. Again the LIR emphasises the importance of monitoring and of careful routing of construction traffic as part of the mitigation of potential impacts.
- 4.95 Section 13 of the LIR considers 'Effects on all Travellers'. Paragraph 13.2 notes that the administrative boundary between Luton and Central Bedfordshire runs along the centre of Poynters Road. Homes to the east side of that road are therefore located in Luton. In that context LBC welcomes the proposals for a HGV ban on Poynters Road, together with the introduction of speed control measures, as proposed by CBC outwith (but in association with) the proposals incorporated within the Woodside Link DCO. As a wider consideration relating to effective management of HGV movements in order to minimise environmental effects upon local residents and following the policy set out at Policy 5 of its LTP3, LBC the LIR seeks positive signing of HGV movements at M1 Jn11a together with the introduction of proactive signing of HGVs in the DCO's provisions in relation to the design of the scheme.
- 4.96 Paragraph 13.3 of LBC's LIR (LIR_2) recognises that reduction in traffic levels on some roads in the west of Luton as a result of opening of the Woodside Link could contribute to reduction in road traffic collisions in these areas. However the LIR indicates concerns regarding the safety implications of diverting the cycle crossing of the Woodside Link to a point c.100m east of the existing Poynters Road junction, away from the natural desire line used by cyclists and pedestrians wishing to cross the Woodside Link at the north end of Poynters Road.
- 4.97 While the scheme provides for four Toucan crossings on the E-W section of the Link and the LIR recognises that reduction in traffic volumes on other parts of the network would have a beneficial impact for those communities, LBC states that concerns remain regarding the lack of crossing facilities in the immediate vicinity of the junction between the new road, Poynters Road, Porz Avenue and Park Road North. The proposed location of the Toucan crossing 100m east of the new junction would not be on the desire line referred to above.
- 4.98 Section 14 of the LIR sets out LBC's comments regarding the ES assessment of cumulative effects. Paragraph 14.4 comments that as works has not yet commenced on the A5-M1 Link Road its true impact has not yet been established and any mitigation proposed has not been monitored. LBC considers that it should therefore be reviewed to identify any potential changes since the granting of

the Order by the SoS and any changes identified within the ES for the Woodside Link.

- 4.99 Similarly, whilst acknowledging that the Luton North development is not a commitment until it has been publicly examined through the local plan process, LBC indicates at paragraph 14.7 of the LIR that it should be given some weight in terms of the assessment of the Woodside link proposal. The Borough Council considers that the Luton North proposal would create potential for significant additional traffic to use the Woodside Link as a route to and from the A5 and A6 and to access the employment areas of HRN1 or through the employment areas to employment areas within Dunstable.
- 4.100 LBC considers that all of these schemes play a significant part in the need and justification for the Woodside Link and should therefore be taken into account. It confirmed its view that the projects would generate associated cumulative implications for traffic, drainage, air quality, noise and health. Although paragraph 15.4.3 of the ES (AD_37) refers to the need to take account of impacts of the other proposals as the scheme design progresses, LBC considers that greater consideration of the cumulative impact of all these schemes should be taken into account as part of the Woodside Link proposal, as it is key to the implementation of these other proposals.
- 4.101 Section 15 of the LBC LIR considers the terms of the DCO. The Borough Council's LIR seeks the following amendments and additions:
- Addition of an invertebrate survey to the list of re-construction surveys required by Requirement 5;
 - Extension of the scope of the CEMP required under Requirement 7 to include a Site Waste Management Plan, to ensure that provision is made for any spoil removed from the site;
 - Requirement 10 - (Materials to be used in respect of footpaths and highways) - LBC seeks the use of low noise surfacing materials where the proposed road would be in close proximity to residential properties;
 - Requirement 12 - (Street lighting) - LBC comments that where there is potential for wildlife habitats lighting levels should be kept to a minimum in the detailed design of the scheme;
 - Requirement 13 - (Hours of working) - The LIR notes that the proposed hours of working are an extension to hours of working normally attached by condition to planning permissions in Luton, which are Monday to Friday 0730-1800 hours, Saturday 0800-1300 hours and no working on Sundays or Bank Holidays. The LIR suggests that a construction code of practice could apply different hours in areas closer to housing areas. It suggests that the

requirement be amended to remove the facility to work on Sundays and Bank Holidays.

- Requirement 15 relates to safeguarding of watercourses and drainage in terms of the risk of contamination rather than flood risk. However, in view of concerns raised by local residents [based on previous experience of flooding] the LIR suggests that further consideration be given to potential for flood risk to arise from the scheme. The Borough Council requests that the ExA includes provision to allow the submission of details of surface and foul water drainage by stage and suggests that those details should include a levels survey and an up-to-date Flood Risk Assessment, together with provision for implementation of any measures shown to be necessary. The Council suggests that the EA and Thames Water Utilities should be brought into the appraisal process.

4.102 The LBC LIR (LIR_2) concludes that the proposal itself would not create employment except during construction but the capacity generated by the scheme would accommodate development and would thereby make a positive contribution towards meeting employment and housing needs in Central Bedfordshire and Luton, which would in turn have a positive social impact. In terms of environmental impact the LIR concludes that there would be some loss of public open space and impact upon landscape together with potential increases in noise levels and impacts upon air quality. Although monitoring and mitigation of impacts would be undertaken to offset some impacts, LBC maintains concerns regarding the effectiveness of noise barriers where the proposed road would have potential to carry significant numbers of HGVs. Concerns are also raised regarding potential flood risk, based on local information submitted by Luton residents.

4.103 Luton's LIR (LIR_2) concludes along similar lines to that of CBC (LIR_1) that, on balance, it is considered that the social and economic benefits outweigh the negative environmental impacts and that the scheme should therefore be supported, subject to the mitigation measures proposed and to those suggested by LBC.

Conformity with local plan policies including Green Belt policies

4.104 The relevant saved local plan policies noted by Central Bedfordshire Council and Luton Borough Council are identified at paragraphs 3.86 to 3.88 above.

4.105 During the examination there was disagreement between the applicant (see ES Volume 1 text (AD_37) and Harlington Parish Council (for example see HPC response to my Rule 17 letter dated 5 March 2014 (R17_2_3)) regarding whether the Woodside Link proposal was consistent with, or in conflict with, the saved Green Belt policy. The parish council argued that the landscape impacts of the proposed Woodside Link including night-time lighting would

prejudice the openness of the Green Belt. Towards the end of the examination all parties became aware that the SoSCLG had decided not to call in the HRN1 planning application for which CBC as local planning authority had resolved to grant planning permission.

4.106 Paragraph 216 of the NPPF states that:

'From the date of publication, decision-takers may also give weight [unless material considerations indicate otherwise] to relevant policies in emerging plans according to:

- *the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*
- *the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- *the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in this Framework, the greater the weight that may be given).'*

4.107 Harlington Parish Council (e.g.R2Q_14), argued that the Woodside Link proposals were premature to examination of the emerging Central Bedfordshire Development Strategy and incompatible with paragraph 90 of the NPPF. It was also argued that the proposal is incompatible with the saved Local Plan Green Belt policy.

4.108 As discussed in Chapter 3 above (see paragraph 3.109 *et seq*) Paragraph 90 of the NPPF makes it clear that local transport infrastructure projects which can demonstrate a requirement for a Green Belt location are not inappropriate development in Green Belt *'provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt.'* Paragraph 80 of the NPPF indicates that Green Belt serves five purposes:

- *'to check the unrestricted sprawl of large built-up areas;*
- *to prevent neighbouring towns merging into one another;*
- *to assist in safeguarding the countryside from encroachment;*
- *to preserve the setting and special character of historic towns; and*
- *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.'*

4.109 It was clear by the close of the examination that the saved Green Belt policy for the part of the Central Bedfordshire Green Belt through which the route of the Woodside Link would run must be considered in the light of relevant and important events. In particular the resolution of Central Bedfordshire Council made on 4 September 2013 to approve the planning application for the HRN1

development as a departure from the Development Plan subject to conclusion of a s106 agreement with the scheme promoters has changed the context for the planning assessment of the Woodside Link.

- 4.110 Subject to the final grant of planning permission on completion of the s106 agreement the proposed HRN1 development would occupy the large site in either side of northern section of the Woodside Link. The Woodside Link would also provide the principal access for that development to the motorway and proposed A5-M1 link to the north and to the existing urban highway network to the south. This relevant and important change in the planning context for determination of the Woodside Link application was confirmed when the SoSCLG, Mr Eric Pickles MP, decided not to call in the HRN1 application for examination (see SoSCLG letter issued 30 January 2014⁸).
- 4.111 The decisions taken in relation to the HRN1 application by CBC acting in its capacity as local planning authority and the SoSCLG must be relevant and important considerations material to the future of the Green Belt in this part of the Central Bedfordshire and west Luton area. They must inevitably affect any consideration of the likely lifespan of the boundaries and related Green Belt policy context affecting the route of the Woodside Link. In relation to the land that would be crossed by the Woodside Link, the purposes of Green Belt outlined in the NPPF could not practicably be sustained in the light of the decisions made by the Council and by the SoSCLG.
- 4.112 The Woodside Link application form (AD_1), ES text (AD_37) and Statement of Need (AD_54) all make it clear that the Link would serve a range of local objectives as well as provide an important connection to the trunk road and motorway network. Having regard to the points made above and to these relevant and important local objectives, the Woodside Link may therefore be regarded legitimately as 'local infrastructure', notwithstanding its status as a Nationally Significant Infrastructure Project, as it would serve both local and nationally significant functions.
- 4.113 Accordingly, on the basis of the policy-related submissions before me (and having regard to my assessment in relation to the project's implications for the openness of the Green Belt explained in Chapter 4 at paragraphs 4.222-4.223), I agree with the CBC LIR that the Woodside Link can reasonably be regarded for the purposes of the planning policy assessment as local infrastructure

⁸ Link to SoSCLG letter:

http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&cad=rja&uact=8&ved=0CCAQFjAA&url=http%3A%2F%2Fwam.castlepoint.gov.uk%2FWAM133%2Fdoc%2FOther-289718.pdf%3Fextension%3D.pdf%26id%3D289718%26location%3DVOLUME3%26contentType%3Dapplication%2Fpdf%26pageCount%3D1&ei=i0WXU77iLILLOAWd4YHICg&usq=AFOjCNEif_Q2QEurFeBY9XQB-Mfzo1-huA

that is not inappropriate in Green Belt. The policy set out at NPPF paragraph 90 therefore applies.

- 4.114 In relation to the policy tests set out in paragraph 90 of the NPPF I also agree with the comments by CBC as LPA in paragraph 3.16 of its LIR (LIR_1) *that 'the proposal could fairly be described as requiring a Green Belt location'*, because the constrained choice of land available for routeing meant that only an open land location could reasonably be selected for this type of development (at least for the eastern and northern sections of the route). That open land available is located within Green Belt. Nevertheless, the LIR goes on to say that:

'However it is more properly considered as a key part of the Houghton Regis North 1 Strategic allocation which is proposed in this Development Strategy and which would roll back the Green Belt'.

This position may have been premature when the Council took that view. However, since the Council has resolved to grant planning permission for HRN1 subject to conclusion of a s106 agreement, the heads of terms of the s106 agreement have been agreed and the Secretary of State has decided not to call in the application for his determination these changes to the wider planning context affecting the land through which the Woodside Link is routed must be taken into account. Paragraph 3.10 of LBC's LIR (LIR_2) agrees that paragraph 90 of the NPPF is relevant to consideration of the Woodside Link application. LBC also supports the principle of developing the Woodside Link.

- 4.115 Whilst coming to that conclusion, I am mindful of the possibility that an interested party may seek to disagree and decide to challenge any decision that takes this conclusion into account. In order to be quite clear regarding all the aspects of my assessment of this policy matter I therefore explore the alternative scenario set out below. Had I concluded that the proposal was inappropriate development in the terms of the Draft NNNPS Green Belt policy, I would have considered the wider circumstances of the application, including the relevant and important planning decisions made by CBC and the SoSCLG in relation to the HRN1 development and the SoSfT in relation to the A5-M1 Link. Accordingly I would have concluded that very special circumstances existed that outweighed the harm to the green belt and any other harm arising from the proposal.

- 4.116 The inclusion of the HRN1 proposal and Woodside Link in the pre-submission draft Central Bedford Development Strategy is noted. Those proposals were subject to some objections during consultation and the Strategy is now subject to further work but, given that these matters have to an extent been resolved by recent decisions by CBC as LPA and by the SoSCLG which have changed the planning context for the planning assessment of the

Woodside Link proposals significantly, I give weight to the proposals contained in the emerging Development Strategy, in accordance with paragraph 216 of the NPPF.

- 4.117 In any event, if for some reason the HRN1 development did not proceed and that the Woodside Link was constructed, having regard to all the relevant information submitted during the course of the examination, it is my judgement that the low, landscaped linear form and physical characteristics of the development being proposed, when assessed together with the detailed landscape and visual implications of the road, which are considered in the context of the wider landscape and visual effects assessment in Chapter 4, would be unlikely to lead to any significant diminution of the openness of the Green Belt in this area. Reasons related to consideration of the proposed highway in its open land setting and specific landscape and visual effects are set out in paragraphs 4.252 and 4.259 to 4.279 of the Landscape and Visual section of this Chapter.
- 4.118 No other IP apart from HPC raised concerns regarding the development plan policy status of the Woodside Link project proposal.
- 4.119 I have given careful consideration to the points raised by HPC and to the positions of other parties, including the applicant, CBC as LPA and LBC in the light of the grant of planning permission for HRN1 and of the decision by SoSCLG not to call in the HRN1 application. As discussed above it would be illogical and unreasonable to disregard these relevant and important decisions in considering how to respond to the Green Belt issues in this examination.
- 4.120 Any public benefit that would be associated with the earlier timing of the A5-M1 Link that may be brought about by the full implementation of the HRN1 development, which in turn is to be underpinned by construction of the Woodside Link, is considered below at paragraph 5.77.
- 4.121 In relation to Development Plan policies other than Green Belt policies no substantive planning policy concerns were raised by the two relevant LPAs in their LIRs. The position in relation to Green Belt policy is considered above. After considering all the points raised during the examination with regard to local planning policy and the provisions of the Development Plan I conclude that the Woodside Link proposals are in general conformity with all other relevant Development Plan policies.

The principle of the development

- 4.122 The applicant's Statement of Need (AD_54) considers relevant planning policy and guidance in relation to the proposed development. The policy justification set out in the Statement of

Need relies on NPPF paragraphs 7 (sustainable development including provision of infrastructure), 21 (planning policies to address potential barriers to investment including infrastructure), 30 (encouragement to be given to solutions which support reductions in greenhouse gas emissions and reduce congestion), 90 (appropriate development in Green Belt to include local transport infrastructure which can demonstrate a requirement for a Green Belt location) and takes also account of policy set out at paragraph 123 (noise impacts), 125 (light pollution) and 128 (historic environment). It also draws upon the South Bedfordshire Local Plan Review 2004, Central Bedfordshire Local Transport Plan 2011-26, Luton Borough Council's LTP 2011-2026 and the draft Central Bedfordshire Development Strategy 2013. CBC also has regard to the Joint Core Strategy for Luton and Southern Central Bedfordshire, which it endorsed for development management purposes in August 2011.

- 4.123 As indicated in the Chapter 3 (paragraph 3.6), I consider that the NPPF is a statement of overall national planning policy that is both relevant and important to assessment of the Woodside Link DCO application.
- 4.124 As outlined at paragraph 3.17 above, the Draft NNNPS sets out the need for investment in national road and rail networks. While the NPS has not as yet been designated it does indicate the Government's initial view regarding the issue of need in relation to the principle of improvement to and extension of the national highway network. It is important to note here that the proposed Woodside Link is not intended to be a trunk road or motorway and therefore would not be a highway to be maintained by the Secretary of State. As reviewed above, its stated purpose in relation to the national highway network is therefore to provide improved access to and from the A5-M1 Link and the M1 for important employment areas and planned new large-scale strategic developments.
- 4.125 While Harlington Parish Council sought to argue in its Deadline X (17 March 2014) response (R17_2_3) to my Rule 17 letter dated 5 March 2014 that there was insufficient justification for the Link in the absence of the HRN development its argument appeared to ignore the fact that planning permission had been granted for that development by CBC subject to referral and a s106 agreement and that the SoS CLG had subsequently decided not to call the application in for his determination. It is highly likely that the HRN1 development will now be constructed.
- 4.126 In addition, the applicant's Statement of Need, supported by evidence provided in the applicant's Transport Assessment, included as Part 1 to the ES Technical Appendices (AD_42), highlights existing levels of traffic congestion in west Luton and Dunstable and Houghton Regis town centres, demonstrating local needs for increased capacity in the local network that are not

challenged by any traffic modelling or traffic-related technical evidence submitted to the examination.

- 4.127 Over and above the needs identified in the applicant's Transport Assessment, no IPs suggested during the examination that the likelihood that additional traffic will be generated as a result of the Local Development Order promoted by CBC in respect of the Woodside Industrial Estate should not be taken into account. On the contrary, Luton BC and Harlington PC both argued that it needed to be taken into account.
- 4.128 I find that all the factors outlined above underline the importance of provision of additional capacity in the network connecting the principal employment areas and areas of new strategic development to the A5-M1 link and M1. It does not appear to me that the justification for the Woodside Link rests upon the HRN1 development in isolation. I have had regard to these points, and to the wider national need for investment in the national networks and supporting infrastructure highlighted in the draft NNNPS. Accordingly, in relation to the principle of the development to which the Woodside Link DCO application relates, I accept that there is a clear need for new highway capacity and connectivity with the national network to be created in the area through which the Woodside Link is proposed to be routed.

Conformity with the draft NNNPSs and other key policy statements

- 4.129 In the context of my assessment of the legal precedent set by the High Court judgement regarding the Heysham-M6 DCO application scheme I found that the Woodside Project is not only to be connected directly and physically to the national trunk road and motorway network but that indirectly its implementation may in turn be important to early implementation of the A5-M1 Link as part of the London-Scotland strategic route upgrade and also to delivery of the HRN1 mixed use development, which would play a key role in delivering a significant part of the growth to be provided for in the emerging Central Bedfordshire Development Strategy. Therefore the Woodside Link would be critical to delivery of substantial levels of housing and economic growth in the MK/SM sub-region in addition to its benefit to the national network. This conclusion is supported by the content of the draft Central Bedfordshire Development Strategy (Attachment 1 to R2AP_18), which includes the HRN1 scheme as a major housing and employment land allocation.
- 4.130 Having regard to this finding I conclude that the proposal is in conformity with the statement of Government policy in relation to the national road network set out in paragraphs 2.22 and 2.23 of the draft NNNPS. This policy supports various enhancements to the network including new alignments to support increased capacity and connectivity to meet needs created by economic and

demographic growth. This policy is framed in a context of sustainable development, as paragraph 2.24 of the draft NNNPS emphasises:

'The Government's policy is to deliver improvements in capacity and connectivity on the national road network to support economic growth and improved quality of life, rather than meet unconstrained traffic growth.'

- 4.131 The arguments regarding the potential benefits of the proposed new road are closely inter-related with the prospect of the HRN development and any additional growth and regeneration that may result from additional business and employment growth supported by the new Local Development Order related to the Woodside Industrial Estate and to regeneration of the Dunstable and Houghton Regis town centres, supported by masterplans and planning policies that are being brought forward by the local planning authority.
- 4.132 HPC expressed doubts regarding the justification for the road in the absence of HRN in its response to Deadline X dated 17 March 2014 (R17_2_3) and then expressed concerns regarding the potential additional traffic implications of the emerging HRN2 development proposals in its response to Deadline XI dated 27 March 2014 (R17_4_3). Some other parties expressed concerns regarding the potential off-site network traffic congestion implications related to the level of development currently envisaged, including LBC in its response to question Q10(xii) in ExA first round written questions (R1Q_1) and some residents of the Houghton Park Estate. As noted above, the draft NNNPS has reiterated that the Government's policy is not to meet unconstrained traffic growth but to deliver improvements in capacity and connectivity on the national road network.
- 4.133 I have considered in some detail the applicant's traffic modelling set out in the Transport Assessment (AD_42) and the various submissions of other parties regarding traffic and transportation matters, including concerns raised regarding the traffic implications of a variety of emerging new developments and enhancements or regeneration of existing employment and commercial hubs in the Dunstable-Houghton Regis-west Luton area. It was difficult to identify a detailed assessment of the traffic and transportation position that could be said to be entirely comprehensive and likely to be reliable in every aspect. In large part this position is due to a complex development scenario that is changing rapidly across a wide area and across multiple large-scale development and infrastructure proposals that are not at this stage subject to a comprehensive or up-to-date development plan and evidence base, nor fully examined and consented proposals.
- 4.134 The fluidity of this position must be recognised. The details are necessarily complex and characterised by uncertainties. However,

the main features of the position are clear. The Woodside Link would provide additional capacity and connectivity, linking important routes in the local network to the upgraded trunk and motorway network and serving to support strategic growth in both existing developed areas and proposed new development areas. Although the traffic predictions illustrated in the modelling demonstrate reasonable traffic flows at the modelled dates it may well be, if and when other proposed developments not taken into account in the model are brought forward, that the construction of the Woodside Link may not in itself eliminate congestion.

- 4.135 Further work on the transport network is envisaged to accommodate new growth, for example, completion of the northern bypass to serve the development areas that are being proposed in emerging plans for development north of Luton. In any event, as indicated above, it is not Government policy to cater for unrestrained traffic growth. It is the responsibility of the relevant local planning and highway authorities, working together and in liaison with the private sector, HA and Government, to ensure that the development of the infrastructure network is properly planned and delivered in alignment and co-ordination with growth in housing and economic development, in order to ensure that the pattern of development and infrastructure provision is sustainable.
- 4.136 The emerging development plans for Central Bedfordshire and Luton will play an important role in effecting such coordination and it is therefore very important that any differences of view or approach between the authorities concerned are resolved to enable development to be brought forward within a properly considered local planning framework and not a dysfunctional one. Decisions regarding the HRN, A5-M1 and Woodside Link projects will not remove the need for such agreement, coordination and planning, although they may assist in reducing uncertainty and the scope for disagreement.
- 4.137 In relation to the energy suite of National Policy Statements, in particular the overarching policy statement EN-1 and the *National Policy Statement for Electricity Networks Infrastructure* (EN-5) the applicant proposes to replace the 132kV overhead line infrastructure with an underground line and to relocate or replace associated apparatus. To that end it appeared by the end of the examination that agreement had been or was about to be reached with the relevant operator, Eastern Power Networks Ltd, part of the UK Power Networks group (see R17_1_6 and R17_2_8) regarding a compromise agreement in relation to the diversion of existing apparatus and the provision of rights for alternative apparatus to supplement the protection of existing apparatus resolved through the proposed Protective Provisions included in the DCO at Schedule 10. Part 2 of those Protective Provisions reflects the terms agreed with National Grid (National Grid Electricity Transmission Plc and National Grid Gas Plc) to safeguard

or replace any apparatus that may be affected by the Woodside Link proposals. NG withdrew its representation before the close of the examination (AS_41).

- 4.138 Having regard to all the relevant submissions and information provided during the examination, in relation to compliance with policy I reach the following conclusions.
- (i) As considered at paragraph 3.34 above the proposal meets the criteria for consideration as a Nationally Significant Infrastructure Project and, having regard to the range of information provided and to the purposes identified by the applicant, is also a project that serves local infrastructure purposes. Examination of the local planning policy context (including both the applicant's Statement of Need (AD_54) and consideration of the planning policy assessment submitted by Luton BC as Appendix C to its response to the first round ExA written questions (R1Q_1) has demonstrated that the proposal is broadly in line with the emerging strategic land use planning and transport planning framework set out in the relevant adopted Local Transport Plans (LTP3s) for Central Bedfordshire and Luton, and with the emerging draft Central Bedfordshire Development Strategy which proposes a new Green Belt boundary along the line of the A5-M1 Link, for the HRN1 development and for the Woodside Link.
 - (ii) Having regard to all the submissions and responses from NE and the relevant LIR comments by the two relevant local authorities I am satisfied that no impediment to the making of the Woodside Link DCO is likely to arise in respect of the granting of European Protected Species licences or other wildlife related consents.
 - (iii) Against that background the Woodside Link is generally compliant with the emerging national policy provisions of the draft NNNPS, acknowledging that that document is not yet a designated National Policy Statement. I deal with the question of appropriate development in Green Belt below.
 - (iv) In relation to the NPPF, the applicant's Statement of Need (AD_54) refers to paragraphs 7, 14, 21, 29, 90, 123, 125 and 128 of the NPPF and concludes in relation to that national policy framework that ...*'The scheme will promote sustainable transport choices as advocated by the NPPF through the provision of new cycle/pedestrian routes'; and 'The NPPF identifies that infrastructure projects within the Green Belt can be 'appropriate development' providing that they (as far as possible) seek to reflect Green Belt land use objectives as in this case'.*

The CBC LIR (LIR_1) does not include a specific section regarding the NPPF.

The LBC LIR (LIR_2) considers that paragraphs 21, 30, 31, 32, 41, 79, 80, 90, 109, 112, 113, 118, 120, 121, 122, 123, 125, 128, 129, 131 and 134 of the NPPF are relevant to the assessment of the application.

LBC's response to ExA first round written questions (R1Q_1) provides a helpful policy assessment at Appendix C reviewing the relationship between the relevant local planning policies, the NPPF and the application project. I have reviewed the planning policy assessment provided by LBC and in general concur with the content of the assessment of the policies that are relevant to the application. The LBC assessment is broadly supportive of the Woodside Link proposals and considers them compliant with the national and local planning policy frameworks. The LBC LIR planning policy assessment (LIR_2) is detailed and is therefore not replicated here.

Specific concerns raised in commentary by LBC in relation to the quantum of retail in the HRN1 scheme and the relationship of the HRN scheme to Green Belt policy fall out with the remit of this examination and I take no view on them.

The LBC concerns identified in Appendix C (R1Q_17) regarding the following matters are addressed below in the relevant sections of Chapter 4:

- the robustness of the assessment of air quality and noise, and the lack of effectiveness of noise barriers in attenuating low frequency noise from HGVs
- the need for the Order to incorporate a requirement for preparation, submission for approval and implementation of a landscape and ecological management plan.

Having regard to all policy-related comments submitted not only by LBC in Appendix C (R1Q_17) in its response to ExA first round written questions (PrD_4) but by all relevant parties during the course of the examination, I find that the Woodside Link application is in general conformity with the NPPF for the reasons explained above and in the discussions of Green Belt policy and sustainable development policy considered in this section of the report.

Because of the decisions by CBC to grant planning permission for the HRN1 development and by the SoSCLG not to call in the application, when referred to him as a departure from the saved policies of the adopted Local Plan, I find that, even if

the Woodside Link application anticipated these relevant and important decisions on its submission, by the end of the examination the Woodside Link application could not now be regarded as premature.

I deal with Green Belt policy considerations at paragraph 4.105 *et seq* above.

- (v) The proposed Order and related application proposals would provide for adequate safeguards in respect of the electricity transmission/distribution network that would be affected by construction of the Woodside Link. Agreements reached or otherwise likely to be reached by the applicant with respect to the safeguarding, relocation and replacement of electricity transmission and distribution infrastructure provide support to that finding. Other implications in relation to assessment criteria listed in NPS EN-5 and in the draft NNNPS are considered in more detail below in Chapter 4. However I find that, in the light of the protective provisions and related agreements referred to above and the wider assessment of the project set out below, the proposals are in broad conformity with the principles set out in EN-5 and would not prejudice any of the policy objectives set out in the energy suite of NPSs, including EN-1 and EN-5.
- (vi) Having regard to the documentation submitted by the applicant in respect of the Woodside Link project, it is evident that it has been prepared to a reasonable level of detail. No concerns have been raised by IPs regarding its technical feasibility. The funding of the scheme, and the specific funding available to meet any financial liabilities arising from the compulsory powers proposed in the Order application, are considered in Chapter 5 below.

Environmental Statement and Environmental Impact Assessment (EIA)

Overview

- 4.139 The results of the applicant's environmental impact assessment (EIA) process are set out in its submitted Environmental Statement (ES) (AD26-45). The main text of the Statement is set out in Volume 1 (AD_37). The technical appendices include a series of technical reports detailing specific aspects of the EIA.
- 4.140 I have assessed the full range of ES documentation with support from the Planning Inspectorate. Certain observations may be made regarding the general aspects of the ES (AD-37).

- 4.141 The description of the development provided in the ES provides sufficient detail to understand what is proposed and matches the description of the works set out at Schedule 1 to the DCO.
- 4.142 In relation to alternatives the ES provides a clear description of the process undertaken to select the proposed route but does not summarise any of the results of the public consultation or environmental assessment that influenced the choice of the preferred route that forms the basis for the application. This appeared to be because the applicant sought to take into account the arrangement of the proposed HRN1 development with which the Woodside Link is proposed to interact and which it is intended to support. There was evidence of some liaison between the applicant and the HRN Consortium in various discussions held at the hearings. I am satisfied from my assessment of the HRN application and the wider development plan context that delivery of the emerging proposals set out in the Central Bedfordshire Development Strategy would require a route alignment similar to that proposed in the DCO application.
- 4.143 Prediction and evaluation of impacts generally appears to follow the methodologies recommended in the relevant HA guidance, Volume 11 of the Design Manual for Roads and Bridges (DMRB). This includes the modelling used for the Transport Assessment (AD_42) and the assessments of effects upon air quality and noise that are based on those traffic modelling predictions. As submitted, the ES (AD-37) lacked information regarding the data that was used to populate the models and some of the outputs from the model, including the proportion of HGVs anticipated in the flows predicted. Initially this made it difficult to judge if all the assessments of the scheme effects (including those for noise and vibration and air quality) were justified. Subsequent agreement between the two highway authorities during the examination and reflected in the addendum SoCG (SOCG_6) regarding the basis for the HGV assessment proved helpful in this respect.
- 4.144 Mitigation measures are described in each topic chapter. The assessment of the project effects take into account the mitigation measures proposed for the Woodside Link. Effectively the ES (AD-37) assesses the significance of the residual effects after the proposed mitigation is put in place. The mitigation measures assessed are secured through the DCO, either through the works to be permitted, by specific wording of requirements or through more general wording that provides discretion to the LPA to deal with those particular matters when further information or details required by the Order are submitted for subsequent approval.
- 4.145 The applicant submitted a summary schedule confirming the mitigation measures to be provided and how these would be delivered in relation to the DCO in its response to my first round written questions R1Q_1 (see paragraph 4.3.2 of R1Q_2). The final position reached by close of the examination is similar to that

set out in that summary schedule subject to the introduction of a number of detailed changes to the draft Order made by the applicant in response to points and queries raised during the examination. Some further limited changes are also included in the recommended Order, including more specific provisions in relation to monitoring the effects of the implemented scheme in the Parkside Drive area.

- 4.146 During the examination I considered and, where necessary, explored the aspects of the ES (AD_37) that had raised concerns in the Planning Inspectorate's Scoping Opinion, together with those assessed aspects that had given rise to objections or concerns raised by IPs.
- 4.147 The concerns raised by the Inspectorate on behalf of the Secretary of State at pre-application scoping stage included the following points, numbered in relation to the ordering of the Scoping Opinion (AD-47).
- 4.148 Section 5. *Geology and Soils* - Concerns were raised by PINS regarding hydrocarbon identified in trial pits and boreholes within the scheme footprint and the treatment of contaminated soils. The submitted ES examined these points and concluded that there would be no residual significant adverse effects.
- 4.149 Section 6. *Road drainage and the water environment* - PINS highlighted effects on flood flow routes, the likely effectiveness of Sustainable Drainage Systems and effects on the ecological status of local water bodies. The submitted ES concludes that for most of the aspects considered there would be no significant residual effects. Risks of spillage from accidents during operation are assessed as being within acceptable threshold levels.
- 4.150 Section 8. *Cultural heritage* - PINS sought clarification of the potential impacts upon listed buildings. The submitted ES concluded that there would be a 'slight adverse' effect on archaeological assets but 'neutral' to 'slight positive' effects on the setting of historic features and listed buildings.
- 4.151 Section 9. *Nature conservation* - PINS sought to establish potential impacts on designated wildlife sites. The submitted ES concludes that effects will be either 'minor' or 'negligible'.
- 4.152 Section 10. *Landscape* - PINS emphasised the need to take account of various viewpoints from the Chilterns AONB and to assess the effects of lighting during the construction phase and also sought to clarify the design and form of the bridge across Houghton Brook. The submitted ES concludes that there would be no effects on the views from the Chilterns AONB. It further concludes that the effects on properties would depend on their location and would range from 'large adverse' to 'slight beneficial'. The effects of lighting during the construction phase are assessed

as 'not significant' on the basis of the measures proposed in the outline Construction and Environmental Management Plan. The design and form of the bridge crossing to Houghton Brook and the landscape implications of the related link to Parkside Drive are described in Chapter 2 and Chapter 10 of the ES (AD_37). No significant residual effects are anticipated.

- 4.153 Section 11. *Community and private assets* - The PINS Scoping Opinion suggested that there was a need to explain the nature of the property that would be developed/redeveloped. The submitted ES confirmed that the construction of the Woodside Link would lead to permanent loss of some of the best and most versatile agricultural land, regarded as a 'moderate adverse' effect. Other identified effects arising from the land take for the route of the link road include the loss of public open space (which is to be replaced), severance of existing routes for non-motorised users and effects on development land and above/below ground services. These effects are regarded as 'slight adverse' through to 'slight beneficial'.
- 4.154 Section 12. *Air quality* - The PINS Scoping Opinion confirmed a need to assess air emissions so that the worst case scenario was assessed. It also sought assessment of any adverse air quality effects upon designated nature conservation sites in the vicinity. The submitted ES indicates that local air quality effects on the study area are classed as ranging from 'slight adverse' to 'slight beneficial' depending on the location of the properties affected. Regional air quality would show an increase in overall emissions as a result of the scheme. However, when assessed against the 2009 UK emissions this is viewed as a very small amount. Detailed assessment of air quality emissions on designated nature conservation sites was not undertaken, after confirmation from Natural England (NE) that this would not be necessary.
- 4.155 Section 13. *Noise and vibration* - The PINS Scoping Opinion identified a need to assess noise impacts on people, particularly at night during normal sleeping hours. It also identified the need to take account of noise and vibration caused by traffic moving along the access routes. The submitted ES (AD_37) confirmed that some properties would experience an increase in noise while others would see a decrease. It also stated that the percentage increase in the number of people affected by noise levels is so small in the long term as to be negligible.
- 4.156 Section 14. *Effects on all travellers* - The Scoping Opinion indicated a need to consider the A5-M1 Link within the ES. The submitted ES considers the effects on Public Rights of Way (PRoW) and concludes that during construction they will be moderate adverse but that these effects would be temporary. The effects on informal access routes, driver stress and views from the road are not viewed as significant adverse effects.

- 4.157 Section 15. *Cumulative effects* - The PINS Scoping Opinion provided generic advice regarding the need to undertake cumulative impact assessment and to report the methodology and significance criteria used. The submitted ES concludes that there would be no significant cumulative effects. These conclusions are largely based on the ES for the S5-M1 Link and the HRN1 development, which are quoted in the ES.
- 4.158 Despite the conclusions of the applicant's submitted ES that there are almost no significant residual adverse effects, the relevant representations received raised concerns that there are aspects of the environment that could be affected significantly by the proposed scheme. The principal concerns raised were in relation to landscape character and visual effects, flood risk, effects upon community and private assets and traffic related effects including effects upon air quality, noise and vibration (based on outputs from the Transport Assessment).

Review of Key Issues

- 4.159 In the light of my initial assessment of the principal issues arising from the proposals, including my assessment of the content of the application, comments from statutory consultees, the relevant representations from persons wishing to be regarded as interested parties and my initial unaccompanied visit to the site, the examination of the likely environmental effects of the project was focussed upon:
- *Hydrological and drainage effects of the project, including any road drainage and water environment effects and flood risk implications for properties in the area, having regard inter alia to the issues raised by the EA, Luton BC and local residents (this topic is addressed in Chapter 6 of the ES) and taking account of the application details and the various elements of the ES including the Flood Risk Assessment report;*
 - *Visual effects of the project, including project design and any landscape effects, having regard inter alia to concerns raised by Harlington Parish Council, the Jephson Homes Housing Association and some local residents (topic addressed in Chapter 10 of the ES) and taking account of comments by Natural England, the LIRs produced by CBC and LBC as local planning authorities and comments by other relevant IPs;*
 - *Socio-economic effects, including effects upon relevant existing areas, areas proposed for new development and community and private assets, taking account inter alia of issues raised by relevant statutory undertakers in relation to energy-related infrastructure and by relevant IPs in relation to public open space (addressed in Chapter 11 of the ES);*
 - *Traffic, safety and access effects, as informed by the Transport Assessment and other ES-related application documentation, together with comments from the Highways*

Agency, LBC, Houghton Regis Town Council, Harlington Parish Council and other parties;

- *Related effects on the occupants of residential property in areas located near the proposed project and any other road that may be affected by the project (including air quality and noise/vibration effects as identified in the ES air quality and noise assessments).* These aspects of the examination had regard to concerns raised by LBC, Jephson Homes and local residents (addressed respectively in Technical Appendix 2.1 and Chapters 12 and 13 of the ES), together with comments from statutory consultees, including the HA and Public Health England. I also took account of the respective LIRs and other submissions by CBC and LBC acting in their capacity as local planning authorities and comments by other relevant IPs.

4.160 I also carefully reviewed the implications for cultural heritage assets below, although following that review I do not consider this to be a key issue, for the reasons set out in that section (see paragraph 4.194 *et seq*).

4.161 All paragraph, figure and table references mentioned in the review of key issues below relate to the relevant ES Volume 1 Chapter being reviewed, unless otherwise stated.

4.162 Principal issues concerned with non-environmental aspects of the application are considered in other parts of this report, including:

- Confirmation of NSIP status (see paragraph 3.34 *et seq*)
- Planning and transport policies and programmes, cumulative effects and alternatives (see paragraph 3.1 *et seq*).
- Compulsory acquisition aspects (see Chapter 5)
- Necessity for other consents and likelihood of approval (see paragraphs 1.11 and 7.3)
- Adequacy of the Development Consent Order (see Chapter 6).

Road drainage and the water environment (including flood risk) - considered in chapter 6 of the ES.

Methodology:

4.163 The methodology used for assessing the effects upon surface water run-off and effects on groundwater is based on guidance set out in the DMRB, Volume 11, Section 3, Part 10 (HD 45/09). The HAWRAT tool described in this guidance is used to assess changes in water quality as a result of this scheme (see paragraphs 6.1.4 and paragraphs 6.6.12 to 6.6.29 of the ES)(AD_37).

4.164 The ES states that flood risk has been assessed using the methodology in the Technical Guidance to the NPPF. An existing hydraulic model of Houghton Brook was updated to reflect the changes in flood risk in the area around the Woodside Link

following construction. The changes are explained in paragraph 6.1.7 of the ES (see also Technical Appendix 6.1 Flood Risk Assessment (AD_23)).

Baseline:

Sources of external information regarding the water environment are listed in paragraph 6.1.5 of the ES. Baseline conditions are described in Section 6.3 of the ES.

- 4.165 A Principal Aquifer underlies the site. The eastern and central parts of the study area fall within a Source protection Zone III. The site as a whole also lies within a Nitrate Vulnerable Zone.

Information regarding the existing level of flood risk for the area around the scheme is given in paragraphs 6.3.22 to 6.3.28 of the ES, including a description of recent flood events for the area. The input data for the Flood Risk Assessment are described in Technical Appendix 6.1 *Flood Risk Assessment (FRA)*(AD_23). The hydraulic modelling undertaken is described in a report in Appendix A to the FRA. The site is within Flood Zone 2.

Impact assessment:

- 4.166 Section 6.6 of the ES describes the assessment of effects and Section 6.7 describes the significance of those effects. Effects upon surface water during construction are assessed as being of neutral significance. This is on the basis of the measures suggested in the outline CEMP.
- 4.167 Paragraphs 6.6.12 to 6.6.17 of the ES describe the assessment of effects on water quality for the operational phase of the project using the HAWRAT model. The first run of the HAWRAT model indicated unacceptable impacts in the opening year of the scheme because of sediment build-up. The second run of the model assumed that Houghton Brook would be periodically de-silted and cleared of debris (paragraphs 6.6.16 to 6.6.17). Provision for this is made in the Landscape and Ecology Plan in Appendix 10.2 to the ES. It should be noted that requirement 5 of the applicant's draft DCO which covers the production of the plan does not refer to regular management of Houghton Brook. Delivery of the de-silting of the brook is therefore an important aspect of the overall management required for successful implementation of the Woodside Link scheme. The output from the HAWRAT model is shown in Appendix 6.3 of the ES (AD_37).
- 4.168 The ES states that groundwater could be affected during the operational phase from routine run-off. The effects have been assessed using Method C of HD 45/09 (DMRB Volume 11, Section 23, Part 10). The results are given in Table 6.7.

- 4.169 The ES FRA (AD_23) confirms that flood risk due to fluvial flooding would be increased from a small area immediately upstream of the proposed bridge at Ch1770 (located between the northern edge of the Woodside Link highway curtilage and the site of the proposed borrow pit). The ES concludes that because this area is currently agricultural land there would be no significant effects on property or infrastructure (paragraph 6.6.31 of the ES). Although the area involved falls within the wider proposed HRN1 development site, it is noted that the masterplan for the HRN development does not illustrate physical development in this particular part of the site. (see illustrative HRN masterplan (R1Q_17)).
- 4.170 Overall the flood risk to the road scheme itself is assessed as being negligible. The ES states that flood risk to the wider catchment would not be increased as a result of the scheme (paragraph 6.7.10 of the ES). These conclusions rest on the outcome of the FRA (but see also the comments of the Environment Agency referred to below).

Cumulative impacts:

- 4.171 Unlike other chapters of the ES which assess the baseline cumulative effects with regard to the A5-M1 Link and HRN1 including the 'Shanley land', the baseline used for the assessment of the effects upon the water environment is the existing situation. It does not include any quantitative modelling or analysis of the effects of the A5-M1 Link (ES paragraph 6.8.2). The ES for the HRN1 housing and mixed use development apparently assesses the cumulative impacts of that development with Woodside Link and concludes that there would be no significant effects (ES paragraph 6.8.2). The ES for HRN1 was not presented or summarised within the ES for the Woodside Link application so I have been unable to undertake any further detailed examination of that matter. However, it is noted that, as the relevant LPAs, neither CBC nor LBC raised any concerns regarding this aspect of the ES methodology. Other comments by LBC and the EA regarding flood risk are considered below.
- 4.172 In the submitted ES the cumulative effect of the Woodside Link and the A5-M1 Link upon groundwater and water quality are assessed qualitatively on the basis of the information contained in the ES for the A5-M1 Link. As in the case of the ES for the HRN1 scheme, the ES for the A5-M1 Link is not presented or summarised in the Woodside Link ES (paragraph 6.8.3). The ES concludes that the risk to the aquifer below the Woodside Link scheme from accidental spillage would increase over the existing level of risk to the water environment but the total effect is assessed as being of slight significance. No evidence was presented in the submitted ES to corroborate this statement. Accordingly I followed this point up during the examination (see below).

Mitigation and monitoring:

- 4.173 Mitigation measures are described in Section 6.5 of the ES. Much of the mitigation for effects from construction relies on the CEMP for delivery. An outline version of the plan is included in Technical Appendix 2.2 of the ES (AD_44).
- 4.174 The ES indicates that flood risk during construction is to be addressed through the production of an emergency flood risk plan (paragraph 6.5.5).
- 4.175 Requirement 7 of the applicant's draft DCO does require the submission of the CEMP for LPA approval prior to commencement of construction and that the construction of the authorised development shall be carried out in accordance with the approved CEMP. The Requirement as included in the recommended Order specifies *inter alia* that:

'(1) The construction environmental management plan shall include measures to address-

.....(e) safeguarding of watercourses;

(f) flooding

(g) waste management; and

(h) the mitigation of environmental impacts of construction reflecting the proposals of the environmental document.

(2) In relation to safeguarding watercourses, the construction environmental management plan shall require-

(a) The collection, treatment and disposal of all water entering or arising within the Order limits during highway construction operations, including the removal of suspended solids from surface water runoff, to ensure that there shall be no discharge of contaminated or polluted drainage to ground or surface waters;

(b) All foul drainage arising out of the authorised development to be discharged to a public sewer or else to a sealed tank, the contents of which shall be removed from within the Order limits in its entirety;

(c) Any chemical, oil or fuel storage container within the order limits for the purposes of the authorised development to be sited on an impervious surface with bund walls, and the volume of the bunded area to be equivalent of 110% of the volume of the container and to contain within its curtilage all fill and draw pipes, vents, gauges and sight glasses;

(d) The drainage system of the bund to be sealed with no discharge to any watercourse, land or underground strata.

(3) In relation to flooding the construction environmental management plan shall comply with the requirements of the Luton Borough Council and South Bedfordshire District Council Strategic Flood Risk Assessment.'

- 4.176 Requirement 14 of the recommended Order includes the following provisions:

'14.-(1) No part of the authorised development shall commence until a detailed design of the realignment of Houghton Brook including long and cross sections and a written scheme for the disposal of surface water has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme shall include mitigation measures that reflect those proposed in the environmental document and are considered sufficient by the relevant planning authority having regard to the flood risk assessment within the environmental document.

(3) No infiltration system shall form a part of the scheme of surface water disposal unless the relevant planning authority is satisfied that it does not pose a risk to groundwater quality.

(4) The approved scheme for the disposal of surface water shall be implemented in its entirety unless otherwise agreed in writing with the relevant planning authority.'

- 4.177 Mitigation for the effects of operation of the Woodside Link is largely addressed through the design of the drainage system, which is based upon the principles of Sustainable Urban Drainage Systems (SUDS). The Link's drainage system is designed to intercept water run-off and remove pollutants from run-off near source (paragraph 6.5.9 of the ES (AD_37)). Details of the drainage proposals are given in ES Chapter 2 and shown in figures 2.8 to 2.10. Houghton Brook would also be diverted in order to reduce the number of crossings required. This would also reduce the number of 'pinch points' where water flow would be restricted to two bridge crossings. The diversion of the brook is not included in the list of works in Schedule 1 of the draft DCO but reference is made in the ES to the need to obtain a Flood Defence Consent from the EA which may provide the necessary consent.

Consultation, examination submissions and ExA findings:

- 4.178 In its relevant representation (RR_13) the EA advised that it had been working closely with the applicant but stated that changes to the hydraulic model were required before it was fit for purpose and that a new FRA was required. The EA suggested wording for a number of requirements that it considered should be attached to the DCO in order to protect the Principal Aquifer below the route of the proposed scheme. The EA also advised that a requirement should be attached to the DCO that would prevent development commencing before a scheme for surface water disposal has been submitted for approval.
- 4.179 Some local residents living in homes located on the Luton side of the administrative boundary close to the route of the proposed Woodside Link expressed concerns regarding the proposals, including, for example, Miss Rosemary Lange who made a relevant representation (RR_8) and oral representation (HG_14) regarding

the history of flooding in the properties at/around Gelding Close on the Lewsey Farm Estate in Luton and the risk that the proposed link road might exacerbate the position.

4.180 Miss Lange's relevant representation states:

'We have a problem with flooding in this area. Water will run down the slope & build up in front of the new road which will run alongside the flood plain and at the back of our houses. Poynter's Rd is closed because it has sunk. The new cluster housing which it will run behind was built providing soap from the washing machines & petrol from the cars didn't get into the water supply. There is no guarantee this will not happen with the HGV's'....' I have written to the local authorities about flooding as it affects my neighbours. One has the sewage from the cluster housing by the side of her house & is at risk of it surfacing when it rains. Another has drains under his front room window.'

4.181 Luton BC supported the comments made by the Luton residents in its LIR (LIR_2) at paragraph 5.4 and requested inclusion of a requirement that would enable the relevant local planning authorities to make a full assessment of the potential for flooding. LBC suggested that the version of Requirement 15 included in the submitted Order (now requirement 14 in the recommended Order) did not consider the long term approach to any potential for flooding that may arise from the Woodside Link proposal. LBC requested the inclusion of further details on this topic, including levels, on the basis that this would be helpful to both LBC and residents living near the site of the proposed scheme (LIR_2 paragraph 5.5).

4.182 The applicant's response to Luton's LIR (CoLIR_1, item 7, page 3) commented that this point had been adequately addressed by the wording of Requirement 14 of the draft DCO.

4.183 Discussions at the Issue Specific Hearing held on 21 January 2014 regarding the detailed interface between the Woodside Link and the HRN1 site suggested that there were potential interactions between the drainage and water management and mitigation proposals for the Woodside Link, those for the proposed HRN1 development and a Flood Alleviation Scheme (FAS) being programmed by the Environment Agency. I wrote to the EA under Rule 17 to seek further information regarding these potential interactions (see Appendix A). The EA response (R17_1_3) indicated that the timing of the various proposals coming forward for the A5-M1 Link, the HRN1 scheme and the Woodside Link application had not permitted co-ordination of the drainage and flood mitigation provisions for these schemes with the decision regarding the business case for the Agency's proposed FAS. It emphasised that the Agency has no power to compel the co-ordination of such drainage and flood mitigation schemes even though such co-ordination might be desirable. It indicated that the

EA would negotiate with the various developers as the EA business case for the FAS was brought forward.

- 4.184 In response to the earlier critique of the FRA included in the ES by the EA, the applicant submitted a revised FRA including a number of appendices (AS_28 to AS_33 inclusive). The EA responded to the revised FRA and related information (AS_27).
- 4.185 The applicant subsequently amended the wording of Requirement 14 to comply with the advice of the EA. The revised wording provides the basis for the wording in the recommended Order.
- 4.186 The Environment Agency Flood Zone Map shows in relation to the Woodside Link and HRN1 sites that two separate sections of the land adjoining Houghton Brook crossed by or adjoining the route of the proposed Woodside Link Road lie within Zone 2 flood risk areas. A number of residential properties northeast of the eastern end of Sandringham Drive and Frogmore Road in Houghton Regis would appear to lie within Flood Zone 2 as shown on the EA Flood Zone Map. The properties in and around Gelding Close in the Lewsey Farm Estate, the area where some of the residents have expressed concern regarding flooding and the effects of the Woodside Link on flood risk, would also appear to lie close to, but not within, Flood Zone 2.
- 4.187 The applicant's SOCG with the EA (SOCG_5) confirmed that:
- '4.1 The applicant is working on revisions to the Flood Risk Assessment ("FRA") in consultation with the Environment Agency. A new hydraulic model will be completed by early December. Both parties are confident that the revisions will result in an FRA that is fit for purpose well before the end of the examination period.*
 - 4.2 The Council submitted a revised draft DCO on 7 November 2013. The Requirements in Schedule 2 have been amended so that they will have the same effect as the Requirements requested by the Environment Agency in its relevant representation.*
 - 4.3 The Environment Agency is satisfied that the requirements as drafted in the revised DCO will have materially the same effect as its draft requirements as suggested in its relevant representation.'*

- 4.188 The EA subsequently confirmed its agreement in principle with the revised FRA (AS_27) and in its Rule 17 response (R17_1_3) confirmed its agreement with the Flood Alleviation Scheme proposed by the applicant, subject to the agreement of a number of details. This position is reflected in the wording of the relevant requirements incorporated in the recommended Order (Requirements 7 dealing with mitigation in the construction phase and Requirement 14 dealing with the scheme overall).
- 4.189 It is recognised that the issues of flood risk and safeguarding water quality are important in the context of the geological and water environment characteristics of the site. On balance, having regard to the examination process and findings set out above, it is clear that the concerns raised by LBC and local residents, together with the points conveyed in the EA response to the applicant's revised FRA, can be addressed by the wording now set out within the recommended Order. For this reason I conclude that:
- the Woodside Link is an appropriate form of development for the location proposed, which lies in a Zone 2 flood risk area, having regard to the flood risk assessment agreed between the applicant and the EA (SoCG_5);
 - the recommended Order provides adequate safeguards in relation to water quality, flood risk and the water environment generally;
 - provided the mitigation measures set out in the FRA and required under the provisions of Requirements 7 and 14 of the recommended Order are developed appropriately and applied subject to the consent of the EA and relevant LPAs then no additional flood risk should arise from the project;
 - agreement has been reached regarding the principles of an approach that to minimise the overall level of flood risk through the layout and form of the development (i.e. the diversion to Houghton Brook). These are to be coupled with the appropriate application of SUDS and other measures including those set out within the FRA mitigation proposals and those that have been recommended for inclusion in the detailed surface water drainage scheme required under Requirement 14 to be submitted for approval by the relevant LPA. On this basis, and having regard to all the relevant information provided during the examination regarding flood risk, In the light of the EA's final advice I accept that the applicant's revised FRA now provides an appropriate basis for a decision by the SoS and agree that the Sequential Test is met.
- 4.190 All the other points raised by the various IPs in relation to flood risk, water quality and effects upon the water environment are capable of being addressed through mitigation to be provided in response to Requirements 7 and 14 as set out in the

recommended Order. It would be for the relevant LPA responsible for the discharge of those Requirements (in consultation with the EA where relevant) to specify the detail of the information that it required in order to give proper consideration to the matters covered under each Requirement. This may, of course, include the submission of topographical data (e.g. levels), at the discretion of the relevant LPAs.

- 4.191 Given that the proposal includes construction of the carriageway on a substantial new embankment, I am satisfied that the proposed highway development would be appropriately flood resilient and resistant, including safe access and escape routes, and that any residual risk can be safely managed (NNNPS paragraph 5.91). Given also that the proposed development may have drainage implications (as defined in paragraph 7(2) of Schedule 3 to the Flood and Water Management Act 2010), the Order makes provision for the adoption and maintenance of the SUDS element of the scheme, including any necessary rights of access to property for maintenance purposes. The land reserved for the SUDS element of the scheme will remain in the ownership responsibility of the highway authority, which in this case is Central Bedfordshire Council. The Council will therefore hold the responsibility for maintenance of the SUDS. The Council is an appropriate body for the purposes of maintaining the SUDS.
- 4.192 The origin, destination and land available for construction of the Woodside Link scheme mean that at least two crossings of the Houghton Brook would be unavoidable if the scheme was to connect the points proposed. Through diversion of the brook the applicant has sought to minimise the potential upstream flood risk impacts that might be created by multiple bridge crossing 'pinch points' and reasonable mitigation measures have been considered in consultation with the EA, including attenuation ponds and SUDS measures.
- 4.193 Having regard to the findings and conclusions set out above regarding flood risk, water quality and effects upon the water environment, it is also clear that relevant provisions of the NPPF (in particular paragraph 100-104) and draft NNNPS, namely paragraphs 5.85 to 5.89 and 5.90-5.107, have been addressed satisfactorily within the application documents and in the Order as now recommended.

Cultural Heritage effects

Methodology:

- 4.194 The methodology applied in the ES assessment of cultural heritage (AD_37 chapter 8) follows that advised for a detailed assessment in the DMRB⁹, in order to:
- undertake sufficient assessment to identify the location, type and importance of cultural heritage constraints;
 - characterise and assess the importance of the cultural heritage of the study area;
 - determine the likely nature and scale of potential impacts from construction and operation of the proposed scheme;
 - determine what mitigation measures are required to reduce or remedy any adverse impacts.
- 4.195 The Scoping Opinion issued by the Planning Inspectorate (AD_47) highlighted English Heritage (EH) comments on the need to consider Listed Buildings and Conservation Areas in the vicinity of the scheme.
- 4.196 The archaeological assessment undertaken included a detailed magnetometer survey of around 222.45 hectares of that part of the scheme falling within the HRN1 site (Technical appendix 8.2 to the ES (AD_30); trial trenching to establish the nature and extent of geophysical anomalies and other investigations of the HRN1 site and four additional trenches outside the HRN1 site area and a site visit.
- 4.197 The study area was defined as 500m either side of the proposed route of the Woodside Link. A wider area approximating to the proposed scheme's zone of visual influence (ZVI) was used to assess the historic landscape. Designated heritage assets (Scheduled Ancient Monuments, Conservation Areas, Listed Buildings) were identified up to 2 kilometres from the proposed route.
- 4.198 Criteria used for establishing the value of historic buildings, archaeological assets and historic landscape character units are drawn from the DMRB¹⁰ and summarised in Tables 8.1, 8.2 and 8.3 of the ES (AD_37), using six qualitative categories from very high to negligible and unknown. Impact is defined as '*change resulting from the scheme that affects any component of the cultural heritage resource*' (ES paragraph 8.1.17).
- 4.199 The significance of effects associated with impacts is measured on a scale that relates the magnitude of the impact to the value and

⁹ DMRB 2007, Volume 11, Section 3, Part 2 Cultural Heritage

¹⁰ Volume 11, Section 3, Part 2 Annex 5 (August 2007)

significance of the heritage asset as outlined in the Significance of Effects matrix, Table 5.1 in DMRB Guidance and Table 4.1 in Chapter 4 of the ES (AD_37). Table 8.4 of the ES provides definitions of the relative magnitude of negative and positive impacts.

- 4.200 At section 8.2 the ES refers to the regulatory and policy framework. As the relevant policies of the South Bedfordshire Local Plan were deleted in 2007 the policies set out in the NPPF provide the main framework of planning policy relating to heritage assets, including paragraph 128.
- 4.201 Paragraph 8.2.13-8.2.14 of the ES also refer to relevant English Heritage guidance regarding the setting of Heritage Assets¹¹ and conservation policy, principles and guidelines¹².

Baseline:

- 4.202 Baseline conditions are described in Tables 8.5 and 8.5 of the ES (AD_37). The heritage assets are mapped and illustrated in Appendix 8.2 to the ES (AD_30).
- 4.203 The route of the proposed Woodside Link scheme crosses the eastern part of the proposed HRN1 development which was the subject of large scale archaeological evaluation in 2012. The HRN study provides evidence on the existence or absence of archaeological remains for most of the proposed area.
- 4.204 Heritage Assets located directly within the footprint of the proposed scheme and within the 500 metre study area were grouped into a series of Cultural Heritage Asset Groups (CHAG), which were used to assign value and significance and assess impact. Archaeological Character Areas (ACA) identified during the HRN1 evaluation were used to inform the relevant CHAGs and are cross-referenced in Table 8.5 of the ES.
- 4.205 Heritage Assets within the 2 kilometre study area were grouped into a number of relevant historic landscape categories as defined by the DMRB guidance.
- 4.206 Archaeological remains - Archaeological remains identified within the study area include the following assets.
- 4.207 Neolithic/Bronze Age flint scatters indicating possible occupation sites located on the eastern boundary of the 500m study area. (No substantial settlement sites or activity areas were identified on the site of the proposed scheme).

¹¹ *The Setting of Heritage Assets English Heritage Guidance, 2011*

¹² *Conservation Principles, Policies and Guidance, English Heritage, 2008*

- 4.208 Iron Age and Roman assets formed the majority of assets identified and included a number of Iron Age pottery vessels (found near the southern end of the scheme), an Iron Age/early Roman settlement and trackway, lying in the northern part of the scheme; several Iron Age and Roman settlements, located within the proposed scheme footprint and 500 metre study area; the line of a routeway known as the Theedway (which may have prehistoric origins) running east-west to the north of the proposed scheme, and medieval furrows and field boundaries. Two small quarry pits and the former railway line east of the proposed scheme form more recent heritage assets.
- 4.209 Historic Buildings - a very small number of historic buildings are known in the 500 metre study area. The ES (paragraph 8.3.20 *et seq*) focusses on Chalton Cross Farm in the northern part of the Woodside Link route, which is apparently regarded as an unlisted good example of a 'model farm' built during the mid-19th century 'golden age' of farming as part of the process of agrarian industrialisation. The farm is still a working farm and contains a large number of modern 20th century barns and workshops.
- 4.210 Using EH and NE's guidance notes for traditional farm buildings the ES assessment notes at paragraph 8.3.30 that:
- 'Chalton Cross Farm is an unlisted example of a 'model farm' with a regular courtyard plan that is substantially intact. It is a representative farmstead for the area in both its layout and form and the style of its buildings, even though many of the buildings have been largely changed through alterations and blocking of original openings. The Farmstead dates from the 19th century and still lies in a clear relationship with the post-enclosure landscape of which it formed a component.'*
- 4.211 The grounds of Houghton Hall, a 17th century Grade II* Listed Building with former stable block, a lodge, outbuildings, wall and gate piers set in landscaped grounds extend for 500 metres south of the hall and come within 260m of the southern end of the proposed scheme. The hall itself is located around 700 metres north-west of the southern end of the scheme and is now converted into offices.
- 4.212 The Houghton Regis Conservation Area including the former village green and pound lie to the north of Houghton Hall, together with a further seven Listed Buildings. All Saints Parish Church is a Grade 1 listed Building and lies in the present-day centre of Houghton Regis to the north-west of the Conservation Area.
- 4.213 73 designated historic buildings are catalogued within the 2 kilometre study area, the majority within the Dunstable Conservation Area (the town's historic core), around 1 kilometre to the south west of the site of the proposed Woodside Link scheme.

- 4.214 The village of Chalton and 800 metres to the north of the site of the proposed Woodside Link includes six Grade II Listed buildings.
- 4.215 Lower Sundon 1 kilometre northeast of the site of the proposed Woodside Link has three Grade II Listed buildings. The 13th century Grade 1 listed Church of St Mary lies at its western end.
- 4.216 Historic Landscapes - A number of historically significant hedgerows, boundaries and footpaths survive within the footprint of the proposed scheme and surrounding land (ES paragraph 8.8.39 (AD_37)).
- 4.217 ES Table 8.5 in the ES summarises the Cultural Heritage Asset Groups (CHAG) and their value/significance. ES Table 8.6 summarises the current baseline and value/significance of the relevance historic landscapes and their setting.

Impact Assessment:

- 4.218 Impacts may affect assets materially or affect their setting. Following DMRB guidance, impacts are assessed in terms of their type, immediacy and degree of permanence.
- 4.219 Section 8.3 of the ES confirms that the proposed route of the Woodside Link traverses a landscape of archaeological remains representing concentrated Iron Age/Roman settlement cores as well as peripheral settlement activity and widespread evidence of Iron Age, Roman, Medieval and post-medieval field systems and trackways. The eastern part of the farmyard of Chalton Cross Farm, which has a 19th century core, also lies within the scheme and would be demolished, leaving the Chalton Cross farmhouse and two of its outbuildings standing to the west of the scheme and a modern barn to the east.
- 4.220 Paragraph 8.5.7 of the ES states that: 'The impact of the construction of the proposed scheme on these heritage assets would be direct, destructive and long term. Depending on the location of the asset the destruction of the asset would either be peripheral, partial or whole which also influences the magnitude of the impact. ES Table 8.7 shows that, without mitigation, the impact on the Chalton Cross Farm 19th century model farm complex would be 'high' (although the significance of the asset is regarded as 'low'). The significance of the effects on a number of the archaeological remains from various periods including trackways, field systems, boundaries and hedgerows, pitting activity and a potential Iron Age settlement are assessed as 'moderate'.
- 4.221 In relation to historic landscapes and setting, paragraph 8.5.8 of the ES (AD_37) states:

'Potential impacts on above-ground heritage assets during construction are limited and consist of temporary alterations in

setting or views as well as a temporary increase in traffic, noise, dust and vibration, both within the proposed scheme and on existing roads. The effects of these impacts are short-term and reversible and generally have a slight significance level.'

- 4.222 Paragraph 8.6.1 of the ES confirms that within the footprint of the scheme the potential impacts would be mitigated during construction (see section 8.7 of the ES): *'It is not envisaged that the scheme would have any additional effects on below-ground heritage assets, historic buildings or landscape components directly within the footprint of the proposed scheme.'*
- 4.223 Paragraph 8.6.2 of the ES asserts that: 'The impact of the completed development would be in the form of alteration of the wider setting of above ground heritage assets through the addition of a new road traversing the relatively narrow corridor of agricultural land between Houghton Regis and the M1. This impact is classed as direct, permanent and irreversible.'
- 4.224 The ES goes on to state that :
- 4.225 *'8.6.3 The main impact of the completed scheme on heritage assets within the historic landscape groups would be in the form of a change in the view to and from the assets. While the proposed scheme represents a route to traverse the landscape from north to south, at the same time it introduces an additional boundary that makes it more difficult to traverse and view the landscape from east to west. This may represent a change in the setting for some of the heritage assets.'*
- 4.226 Paragraphs 8.6.4-8.6.7 of the ES make the point that designated heritage assets within the Conservation Areas of Houghton Regis, Dunstable and the villages of Chalton and Sundon are screened and would be separated from the proposed scheme by existing modern developments to the extent that the proposed scheme would not add adversely to this existing change in setting. In addition the scheme might benefit Houghton Regis Conservation Area and listed Houghton Hall by directing some traffic away from the road alongside them
- 4.227 Paragraph 8.6.8 of the ES confirms that the proposed scheme would be visible from the designated scheduled monuments situated along the edge of the higher ground of the Dunstable Downs, around 2 kilometres south of the southern end of the scheme. However the level of significance of the visual impact would be reduced by the scale of the existing highly built up areas of Dunstable and Houghton Regis and the M1 motorway.

Mitigation and monitoring:

- 4.228 Mitigation and monitoring of effects on heritage assets is proposed in the terms of the DCO. Requirement 15 of the recommended Order provides that the authorised development must not

commence until a written scheme of archaeological investigation has been submitted to and approved by the relevant local planning authority. The detail of the requirement wording specifies actions that must be taken in the event of discovery of archaeological remains.

- 4.229 Requirement 16 of the recommended Order specifies that a cultural heritage scheme and programme must be submitted to and approved in writing by the relevant local planning authority before commencement of construction. The scheme must include mitigation measures reflected in the ES and include records to be taken to show the current appearance and setting of historic buildings impacted by the works; and mitigation measures to protect such heritage assets as the scheme and programme identify as requiring protection.
- 4.230 The significance of the residual or net effects after mitigation identified in the ES ranges from slight negative to slight positive, as set out in ES Table 8.10 (AD_37).

ES consultation, examination submissions and ExA findings:

- 4.231 English Heritage (EH) was consulted regarding the ES and its comments were taken into account in the Planning Inspectorate's Scoping Opinion, which highlighted the need for assessment of the effects upon Listed Buildings and Conservations Areas.
- 4.232 EH did not submit either a Relevant Representation or a Written Representation and took no part in the examination of the application.
- 4.233 The LIRs submitted by CBC and LBC both refer to cultural heritage. LBC's LIR confirms that the County Archaeologist serving both authorities is based within Central Bedfordshire. It also notes the archaeology and cultural heritage mitigation conditions included in the draft Order (LIR_2, paragraph 7.4).
- 4.234 CBC's LIR (LIR_1) includes a more detailed section regarding cultural heritage. It confirms at paragraph 8.2 that:

'The baseline information and analysis contained in this chapter [of the applicant's ES] is considered adequate and appropriate. However no such evaluation can be considered comprehensive and there will be a further possibility of substantial archaeological remains being found within the site when the works commence.'

- 4.235 Paragraph 8.2 goes on to indicate in relation to the methodology applied that:

'The methodology of assessing significance and value of the assets is also considered appropriate. However, it is considered that the presence of identifiable trackways and field systems in CHAGs 2 and 5 which clearly link to the Roman Settlement in CHAG 4 (see

ES Table 8.7) and a probably settlement outside the area of search means that they should be considered to have a medium to high significance. Additionally, as post-medieval model farming and in particular model farms have been identified as particularly important locally, it is suggested that the significance of CHAG 10 should be medium to high. The sites identified in the third row of ES Table 8.6 are all Scheduled Ancient Monuments and nationally important; they should be considered in that context as having high significance rather than as part of the historic landscape.'

- 4.236 Notwithstanding the specific points made regarding the classification of the significance of specific assets in Table 8.6, the CBC LIR (LIR_1) confirms at paragraph 8.3 that *'Mitigation proposals are considered acceptable, including recording and archiving.'* In relation to specific features it also confirms at paragraph 8.4 that there are no 'listed buildings' of Scheduled Ancient Monuments on or near the site. The 'Threedway' is an ancient trackway which passes close to the northern end of the Link but its identity would be more affected by the A5-M1 road works.' This paragraph also confirms that the nearest Conservation Area is Houghton Regis, for which the Woodside Link would provide *'some relief to the traffic passing through the north of the Conservation Area (East End, north of The Green) – ES 8.6.5. Reduced traffic in Dunstable Conservation Area following de-trunking could enable the implementation of traffic calming measures which would improve its character.'*
- 4.237 The CBC LIR (LIR_2) also confirms that the only substantial above-ground historic remains within the site of the Woodside Link are the hedgerows, which are likely to be 18th century enclosure boundaries, and Chalton Cross Farm which is 'a fairly complete example of a nineteenth century model farm in its landscape.' It comments that detailed drawings have yet to be prepared for the road but the limits of deviation make it clear that the farm enclosure and its buildings beyond an intermediate wall/fence would be lost to the road. The farm itself would be affected by HRN1 but detailed plans for that development are not yet available, so the future of the farm is uncertain.
- 4.238 At paragraph 16.21 *et seq* the CBC LIR suggests amalgamation of the two proposed heritage requirements (i.e. Requirement 15 - the archaeology requirement and Requirement 16 - the cultural heritage requirement) into a single requirement covering both related topics and proposes an integrated wording for that consolidated and revised requirement. The reasons given by the Local Planning Authority for the suggested consolidation of the two requirements into one is to adopt a similar structure and content to the planning condition accepted for the HRN1 development planning permission. It would therefore provide for the submission of *'details of the structure of mitigation procedure similar to Requirement 16 but would allow the development of a more flexible and responsive approach by including details of suites of*

investigation strategies which can be applied in specific and agreed circumstances.' (LIR_1, paragraph 16.22). The suggested wording of the integrated requirement is set out at paragraph 16.23 of the LIR.

- 4.239 I have considered this matter in some detail. The suggestion by CBC as LPA appeared sensible, but certain procedural considerations apply. While by close of examination CBC in its capacity as local planning authority had resolved to grant planning permission subject to a s106 agreement and the heads of terms for that agreement had been agreed, the final permission was not issued. Also, although the applicant appeared in a brief aside during one of the hearings to be amenable to the CBC LIR suggestion of consolidating the requirements it did not incorporate consolidated wording into its preferred draft Order (R3DCO_1). I have therefore not sought to consolidate the wording in my recommended draft Order included in this report at Appendix D. In the light of the time elapsed since close of examination, the Secretary of State may by now have access to the final wording of the issued planning permission for the HRN1scheme. Accordingly he may wish to consider whether it would be appropriate to adopt the consolidated wording contained in paragraph 16.23 the CBC LIR (LIR_1).
- 4.240 No other IP made any submissions regarding heritage assets or any aspect of the proposals that may create significant effects on heritage assets.
- 4.241 Overall, I find that the assessment by CBC as relevant planning authority provides a reasonable summary of the position in respect of the ES assessment of cultural heritage effects. The methodology and baseline assessment appear robust and (subject to some specific points regarding the classification of the significance of particular assets and impacts) the conclusions of the wider assessment are accepted. Any disagreements regarding the detail of classification of significance are not important to this report; however, as the mitigation provisions of the Order would remain the same irrespective of any differences of emphasis regarding those points.
- 4.242 In relation to cultural heritage, having regard to all the relevant information and evidence before me (including the applicant's ES, the LIRs and other submissions made during the examination) I conclude that, subject to the mitigation proposed in the recommended Order, none of the likely cultural heritage effects of the Woodside Link project that have been identified would be so adverse as to justify refusal of the application. In coming to this view I have had regard not only to the potential for direct effects upon archaeological remains, Scheduled Ancient Monuments, Listed Buildings, Conservation Areas and Historic Landscapes but also to the effect on the settings of above-ground assets and

features including relevant Scheduled Ancient Monuments, Listed Buildings and Conservation Areas.

Cumulative effects:

- 4.243 During the examination the local planning authority resolved to grant planning permission for the HRN1 development subject to a s106 agreement, for which heads of terms were subsequently agreed before close of examination. The SoSCLG decided not to call in the application for his determination. The ES assessment of effects upon heritage assets is clearly set in the context of the HRN proposals. The effects of the proposed Woodside Link scheme must be considered against this background. Adverse effects would be relatively small-scale and in some cases slightly positive effects may result, for example, due to reductions in levels of traffic affecting the setting of Listed Buildings and Conservation Areas in the vicinity.
- 4.244 Having regard to all the circumstances of the Woodside Link DCO application, together with all the relevant information submitted to me during the course of the examination (and in the absence of any evidence or information to the contrary), I conclude that the scheme would give rise to no effects on heritage assets that would be so adverse as to justify refusal of the application. Also the nature and significance of the assets and effects together with the wider circumstances in which the application is considered do not suggest that the cultural heritage effects should be regarded as a key issue in relation to this DCO application.

Landscape and Visual effects

Methodology:

- 4.245 The methodology used in the Landscape section of the ES is based on guidance set out in the Highways Agency Interim Advice Note 135/10 (which replaces the guidance in the DMRB) (ES paragraph 10.1.5). It also refers to the guidance in the 2002 '*Guidelines for Landscape and Visual Impact Assessment*' (GLVIA) produced by the Institute of Environmental Management and Assessment and the Landscape Institute.
- 4.246 On receipt of the ES it was not clear whether any other field work had been undertaken to support the assessment of visual effects. I therefore sought further photomontage information representing other viewpoints. An accompanied site visit and two unaccompanied site visits were also undertaken.
- 4.247 The landscape assessments were carried out for the first winter after scheme opening and for the summer of year 15 after opening (paragraph 15 of Appendix 10.1). The assessment assumes that the proposed planting would be 6 to 8 metres high at year 15 after opening.

4.248 The Zone of Visual Influence (ZVI) was defined by estimating the area from which the development would be visible but the ES states that in practice some limited views of the scheme may be visible from more distant properties or elevated distant vantage points (paragraph 14 of Technical Appendix 10.1). The estimated ZVI is shown in Figure 10.8 and includes a note stating that the extent of the visual envelope shown is approximate and only indicates the area within which the most significant visual effects may be experienced. There may be distant views from outside the visual envelope and there may also be areas within the visual envelope with no views of the project due to local screening. The study area appeared to be defined in relation to the ZVI but this was not explicitly stated (see ES paragraph 10.1.10 (AD_37)).

Baseline:

4.249 The baseline includes the M1 junctions 10 to 13 project which is underway but not yet complete. It also includes the A5-M1 Link on the grounds that the Woodside Link cannot proceed without it (ES paragraph 10.3.3).

Impact assessment:

4.250 The ES states at paragraph 10.5.29 that for all receptors apart from Chalton Cross Farm effects during construction are expected to be broadly similar to those for the first winter after scheme opening. In that case the presence of the construction compound means that the farmhouse would experience large adverse effects during construction. The ES also states in a later paragraph that in general terms the landscape and visual effects during construction would be at slightly higher levels than those for the first winter after scheme completion (paragraph 10.5.32). Although there is some tension between these statements, any difference is marginal and a matter of interpretation and emphasis rather than substance.

4.251 The ES states that the presence of the A5-M1 Link has been assumed as part of the baseline. With the HRN1 development in place, landscape effects on receptors to the north of Parkside Drive would be largely eliminated because HRN1 would enclose and screen the new road. Landscape effects on receptors to the south of Parkside Drive would be largely the same as for Woodside Link considered in isolation. The ES confirms that the in-combination effect of Woodside Link considered together with HRN1 would lead to the urbanisation of the area between the eastern edge of Houghton Regis and the motorway but this would be largely due to the landscape and visual effects of the HRN1 development rather than to those of the Woodside Link project.

Mitigation and monitoring:

The landscape mitigation proposals are described at paragraphs 10.4.2 to 10.4.23 of the ES and shown in Figures 10.3-10.5. The ES indicates that these are not intended as detailed proposals because those would be developed following the making of the Order. Appendix 10.2 to Chapter 10 contains an outline landscape and ecology plan. A detailed landscape and ecology management plan is proposed to be produced as part of the detailed design of the scheme (as secured by Requirement 5 in the Order). Key mitigation measures identified in the outline landscape plan are:

- maintenance of a distance between the proposed Woodside Link project and residential properties;
- replacement of approximately 2.4 kilometres of overhead electricity lines with underground cables;
- retention of areas of existing scrub alongside the road;
- planting of new hedges, grassland, individual trees and woodland alongside the proposed scheme and alongside the proposed new cycle tracks;
- restoration of the borrow pit area as an area of damp, species-rich grassland;
- low mounding along parts of the road; and
- noise barriers and fencing.

ES consultation, examination submissions and ExA findings:

- 4.252 The ES indicates that initial discussions were held with CBC landscape officers with the aim of developing designs that would not only mitigate the effects of the link road but also assist with the delivery of relevant Local Plan policy to develop the area proposed as new urban open space. Luton BC in its Relevant Representations (RR_7) suggested that a landscape management plan be prepared for land between Wheatfield Road and Sandringham Drive in order to recognise its conservation value. It was not made clear how LBC considers that the existing landscape for the area could be improved.
- 4.253 In addition, the Relevant Representation from NE (RR_5) advised that it did not consider that the Woodside Link would have any significant impacts upon the Chilterns AONB due to the scale of the scheme and the distance between the project and the AONB boundaries. No objections or concerns were raised by the Chilterns Conservation Board which was consulted as a statutory consultee prior to submission of the application and which did not register as an IP or submit a representation. Having considered the distance to the designated area and in the absence of any other evidence to the contrary I find that the Woodside Link project would have no significant effect upon the Chilterns AONB.
- 4.254 HPC made a number of submissions (RR_10, R2Q_14, R2AP_18, R17_2_3, R17_4_3, several of which dealt with Green Belt policy and that referred *inter alia* to the openness of the landscape in the area proposed to be crossed by the Woodside Link and to be

developed with the HRN1 scheme. Certain local residents expressed concern regarding individual landscape features, including a magnificent black poplar located in a group of trees that would be located to the Luton side of the proposed Woodside Link, opposite the point at which the pedestrian end of the existing Parkside Drive emerges from the Houghton Park Estate (for example Miss Sally Gray, WR_10).

- 4.255 No IPs argued that the landscape of the land between the Houghton Park Estate and the M1 motorway was particularly attractive, or any form of scenic resource, but it was generally acknowledged that both formal and informal footpaths and tracks across this urban fringe area were widely used for dog walking and informal recreation. Similar points were made by various parties regarding the open wedge of green space between the Parkside and Lewsey Farm Estates, adjoining the administrative boundary with between administrative areas of Central Bedfordshire Council and Luton Borough Council, which provides important routes used to access key public facilities, including the college and sports centre located adjoining the Houghton Park Estate, the medical centre on the Lewsey Farm Estate and a primary school.
- 4.256 Subject to the outcome of the applicant's separate application in relation to s131/132 of the PA 2008 and on the basis of the information in front of me and my accompanied and unaccompanied site visits, the provision of replacement and additional green space along the banks of Houghton Brook as part of the Woodside Link scheme in compensation for green space lost and the proposed extension of the green corridor along the brook provides a positive landscape benefit from the scheme. When considered alongside the proposed provision of diverted public right of way (PROW) through the new open space, this provision should contribute to the public enjoyment and appreciation of the green space network and help to offset the loss of significant areas of open land used for informal recreation and dog walking as a result of the development of the Woodside Link and HRN1.
- 4.257 Over and above points made by the IPs, including the applicant, LBC and local residents, the Jephson Homes Housing Association submitted a Relevant Representation (RR_2) regarding various likely impacts upon tenants of its 159 rented homes on the Houghton Park Estate, particularly 1-7 St James Close, 45 St James Close and 21-37 (odd numbers) Sandringham Drive, whose properties would be located in close proximity to an elevated section of the proposed Woodside Link at a point where the Link would pass through a narrow section of green space on an embankment supported on a substantial vertical retaining wall of up to approximately 3-4 metres in height topped by a 2 metre acoustic barrier (see AS_25).
- 4.258 In addition an important pedestrian route across the Woodside Link on this section of retained embankment would be facilitated

by a disabled access ramp and steps topped by railings and a Toucan crossing. During the examination I sought additional photomontage images for a number of viewpoints not included in the landscape and visual assessment provided within the submitted ES. The images provided for Viewpoint 01N for the existing landscape and the proposed retained embankment, ramp, steps and acoustic barriers off Sandringham Drive when viewed from the north were provided for the accompanied site visit and are shown at Figure 02 of AS_25 in the Examination Library. The relevant cross sections relating to this section of Sandringham Drive (for Chainage 300 and 200) can also be found in the Examination Library at AD_48.

- 4.259 The applicant makes the point in the ES that grant of consent for the HRN1 scheme would mean that the context for the assessment of the landscape and visual implications of the Woodside Link would change. During the examination CBC resolved to grant planning permission for the HRN1 scheme and SoSCLG decided not to call in the application. The likelihood of implementation of that scheme should therefore be regarded as very high and must be taken into account. Having regard to the masterplan informing the HRN1 outline planning permission - application number CB/12/03613¹³ (see applicant's response to Question 1 in Examination Library document R2AP_1) implementation of the HRN1 development is likely to provide additional screening and would certainly change the setting and backdrop against which the road would be seen by those receptors that would still be able to see it.
- 4.260 In the light of the proposals set out in the illustrative masterplan which provides the basis for the HRN1 permission, I accept the applicant's argument that while the properties north of Parkside Drive may still be able to see the proposed Woodside Link during the period that the link and the HRN1 scheme are under construction, by the time that the HRN1 development is substantially completed there would be little or no landscape or visual impacts from the new road because it would be screened by the HRN1 development (and by any development of the 'Shanley land' which may be granted permission in due course). The landscape and visual impacts of the link road for properties overlooking the 'green wedge' in the southern section of the Woodside Link would not be affected by construction of the HRN1

¹³

Links to CBC Committee Report papers as follows:-

Appendix A - HRN1 Draft Committee Report 280813 V4 (R2AP_2)

Appendix B - Original Late Sheet DMC 280813 (R2AP_3)

Appendix C - Amended Late Sheet - for DMC 040913 (R2AP_4)

Appendix D - Extra documents (Errata Sheet) DMC 040913 (R2AP_5)

Appendix E - Section 106 Heads of Terms 191114 as submitted with the package to the Secretary of State for Planning. (R2AP_6)

scheme as it could not be seen from this location and would not therefore serve any screening function. No other IPs challenged the applicant's assessment in those regards.

- 4.261 The likelihood that the HRN1 development will proceed over the early life of the Woodside Link road must be acknowledged. It is therefore likely that any residual landscape impacts arising from the road will disappear over a period of years as the HRN1 scheme is built out and the view from properties adjoining what is presently urban fringe agricultural and open land to the east of the Houghton Park Estate becomes urbanised by the new housing and mixed use development. The properties north of Parkside Drive overlooking the agricultural land will undoubtedly experience significant landscape and visual effects arising from cumulative construction impacts. These are likely to be of a type familiar to residents adjoining any large green field development site.
- 4.262 Once the Woodside Link and HRN1 schemes are developed, the visual context would be that of a new urban area. Much of the quality of the townscape to be created will depend upon the quality of design and construction of the new HRN scheme, which is yet to be determined in detail by CBC as the relevant local planning authority.
- 4.263 Having regard to observations made on the accompanied site visit and to the photomontage provided by the applicant, I find that residents overlooking the southern section of the Woodside Link (i.e residents of properties located both to the north of the new road in Houghton Regis and to the south of the link in Luton) will be presented with an adverse change to varying degrees. Landscape and visual impacts would be more significant along Sandringham Drive where the visual impact of the retained structures, pedestrian ramp, steps, handrails, fencing and acoustic barriers would be prominent, especially between Chainages 200 and 400.
- 4.264 This section of the route would present more technical challenges to the applicant and to the local planning authority in ensuring good design of the structures and landscaping involved. The constrained nature of the site available, including the proximity of housing to the southern side of the green wedge (Wheatfield Road, Luton) restricts consideration of alternatives. The limited width of the very narrow strip of land that would be available for planting between the southern edge of Sandringham Drive and the retained structures along the northern edge of the Woodside Link would also constrain choices in relation to landscape mitigation.
- 4.265 To the south of the proposed new road, overlooking properties located off Wheatfield Road in the Lewsey Farm Estate, Luton, extending east at least as far as properties at the northern end of Pastures Way would also experience a significant change in their views and wider setting. However, because of the topography and

the proposed profile of the new road the visual relationship between this housing area and the road would be less adverse than for the overlooking properties off Sandringham Way. The proposed route would provide more opportunity for landscape mitigation in its eastern section due to the fact that the 'green wedge' becomes broader to the east and the proposed alignment of the road and Order limits would provide larger areas to enable landscape mitigation.

- 4.266 As a general point, since the assessment of landscape and visual effects relies upon delivery of these proposed mitigation measures, during the examination I considered how these measures would be secured within the Order. Maintenance of distance between the link road and residential properties would be achieved through the proposed limits of deviation identified in the Works Plan. Replacement of the overhead electricity lines would be secured through the package of works proposed in Schedule 1 to the Order as 'the authorised development'. Retention of existing scrub alongside the road, the proposed new planting and fencing, restoration of the borrow pit and the provision of low mounding along various parts of the road would all be secured through the landscape and ecology management plan secured under Requirement 5. Acoustic barriers would be secured under the provisions of Requirement 8.
- 4.267 Having regard to the circumstances under which the scheme is being brought forward, I am satisfied that there is a high probability that the mitigation measures proposed would be delivered, although the relevant details would need to be considered and approved by the relevant LPA(s) prior to commencement of construction.
- 4.268 In relation to mitigation of these landscape and visual effects the emerging Central Bedfordshire Development Strategy includes policies encouraging good design. A draft Design Guide was under production by CBC as LPA during the examination period and appropriate professional landscape and structures design expertise is available within the authority and deployed in the applicant's project team. On this basis I am satisfied that the applicant and LPA together have the capacity and capability to address the issues of detailed design for the Woodside Link, both as a whole and in the Sandringham Drive and Wheatfield Road areas in order to provide an appropriate landscape and visual mitigation solution. However I recommend that the applicant and LPA adopt a careful and sensitive approach to resolution of the design details involved.
- 4.269 On the basis of my assessment of the scheme design details presented in the application, in the light of the criteria for 'good design' set out at paragraphs 4.26-4.30 of the draft NNNPS, the information provided by the applicant would provide a design that is reasonably sensitive to the landscape and urban context through which the route would run and which would in general be

functional. Subject to the resolution of the Sandringham Drive section of the route through an appropriate detailed design solution, and to other mitigation and design details required by the recommended Order (including the landscape and ecology management plan) the final detailed scheme should be sufficiently sensitive to the creation of the future of this part of Houghton Regis and to the shorter-term implications for residents of existing properties.

- 4.270 Because it would provide for the needs of non-motorised users as well as helping to remove congestion and facilitate the sustainable urban extension I find that the scheme design would in general be sustainable, subject to the mitigation requirements imposed by the recommended Order. The landscape and ecological management measures proposed would provide further opportunities for the applicant to demonstrate good design through the submission of appropriate design details, including retention and enhancement of important landscape features where practicable.
- 4.271 Overall, for the reasons set out above, I assess the Woodside Link proposals as having met the emerging Government policy criteria for good design set out in the draft NNNPS at paragraph 4.26 *et seq.*
- 4.272 On the basis of the assessment above I conclude that, having regard to the benefits of the Woodside Link project and on balance, while the cumulative effects of the Woodside Link, the HRN1 development and the A5-M1 Link would represent a considerable change from the present landscape of the area, no aspect of the likely landscape and visual effects of the proposed Woodside Link is of such significance as to warrant refusal of the DCO application.
- 4.273 There would be an opportunity for the LPA and Houghton Regis North Consortium to work together closely in order to demonstrate a commitment to good design through submission to the LPA of appropriate design details and detailed landscape/ecology proposals for the Woodside Link in response to the provisions of the recommended Order and through development of quality townscape and green network in the HRN sustainable urban extension. If the recommended Order is made by the Secretary of State, the future of this part of the Dunstable-Houghton Regis-Luton area will depend to a significant extent upon the success of such joint efforts.
- 4.274 The photomontages submitted by the applicant for both daytime (AS_25, Figure 8) and night-time (R5AP_2) views of the scheme show that (other than for the embanked and retained adjoining Sandringham Drive), over the period before it would become screened by the HRN1 development, the visual impact of the Woodside Link would be limited, some distance from existing

properties and in many places partially screened by hedging and groups of trees. Although the section crossing the Green Belt area in the east and north of the route would be located on a low embankment, the backdrop of the M1 motorway (located on a higher embankment) and the planting of hedges along its line would provide the short-term context against which the scheme would be viewed.

- 4.275 Given the distance between the nearest residential properties and the highway, neither the highway itself nor the proposed street lighting columns would in my view create a feeling of enclosure or a significant visual barrier, either during the daytime or at night. This is due in large part to the visual context of the M1 motorway, which provides the main backdrop to views across the fields east of the Houghton Park Estate and north of the Lewsey Farm Estate. At night any highway-related lighting would be seen against the backdrop of lighting associated with the M1, including many vehicles lights, and the lighting of west Luton.
- 4.276 The above findings are relevant to the question of the proposed scheme's effect on the openness of the Green Belt in this area, in addition, the removal of one of the power lines and its associated pylons as provided for in the recommended Order would provide some initial positive landscape change contributing to openness in the short term before the HRN1 development creates a fundamental change to create a new townscape across the HRN1 site granted planning permission by CBC.
- 4.277 In view of these findings regarding the landscape and visual effects of the proposed scheme, which take into account observations made on my accompanied and unaccompanied site visits, I conclude that the visual effects of the road scheme when viewed from the eastern part of the Houghton Park Estate and the northern part of the Lewsey Farm Estate will be marginal. For the reasons explained above, in the short term the openness of the existing Green Belt in this area would not be compromised by the Woodside Link scheme, either during the day or at night. In the medium to longer term the effect of the major planning decisions made in relation to the HRN1 development and A5_M1 Link must be taken into account.
- 4.278 Having regard to the planning decisions made in relation to the HRN1 scheme by CBC as planning authority and by the SoSCLG, the future use and appearance of the land crossed by the Woodside Link is almost certain to change radically from a rural to an urban prospect on a phased basis over a period of years.. Revision of the Green Belt boundary will be examined formally when the draft Central Bedfordshire Development Strategy is submitted to the Planning Inspectorate for examination. The Woodside Link would have visual (and townscape) impacts upon the occupants and properties within any future HRN1 development. However, as concluded in relation to the issue of

good design above, the relevant LPAs and the developer carry responsibility for the assessment and resolution of the visual relationship between these development projects.

- 4.279 Having regard to the findings above, I conclude that none of the landscape or visual effects of the proposed scheme are so significant or adverse as to provide a basis for refusal of the Woodside Link DCO application.

Transport assessment (including Parkside Link)

Methodology:

- 4.280 The transport assessment (AD_42) was based on a model produced and maintained by AECOM on behalf of Central Bedfordshire Council which is referred to in the ES as the Central Bedfordshire and Luton Transport Model (CBLTM).
- 4.281 The CBLTM is comprised of an AM-peak traffic model (derived from an older model) together with a PM-peak and inter-peak model. The modelling software used was SATURN (a type of model recognised in the DMRB and used by many local highways authorities across the country). The model was chosen to inform the design of the highway and junctions. However, AM and PM peak models do not provide the information required for assessment of noise and air quality effects. The inputs that are required for the assessment of noise and air quality effects are described in paragraphs 3.2.5-3.2.6 of the ES (AD_37). Because the model did not provide information regarding the relevant traffic levels they were derived from the AM, PM and inter-peak flows. Details of the conversion factors used were provided in response to my ExA first round written question at Appendix E (R1Q_9).
- 4.282 The CBLTM assumes an opening year for the Woodside Link of 2016 and a design year of 2031, in line with the DRMB guidance for assessment of traffic impacts). The same opening and design years have been used for the A5-M1 Link and HRN1 ESs (Woodside Link ES paragraph 2.4.1 (AD_37)).
- 4.283 Various development scenarios were considered for 2016 and 2031 (see Table 1 of the Transport Assessment (AD_42). The 'do nothing' option is defined as the situation where there is no A5-M1 Link and no Woodside Link. The assumptions made for each scenario are provided at Appendix D to the Transport Assessment.
- 4.284 Roundabout junctions were modelled using an ARCADY analysis (see Appendix G to the TA).
- 4.285 It is not clear how the study area was defined in the CBLTM, nor what parameters were used when developing it. The ES states that the model validation was completed in June 2012 and published by AECOM (paragraph 3.2.3) as the '*Houghton Regis*

Model Improvements Local Model Validation Report'. The validation report was not provided with the application documents. I therefore sought further information through my ExA written questions.

- 4.286 I also take a degree of comfort from the fact that Luton BC is familiar with the model and with the framework upon which the TA was based. Other than its query regarding the assumptions concerning the proportion of HGVs assumed in the traffic flows predicted, LBC has not raised any other significant issues regarding the adequacy of the modelling approach that underpins the assessment. Given the potential for implications for the wider network connecting with the Woodside Link, including the A5-M1 Link and M1, I did seek comments regarding the selection of traffic model and the adequacy of the traffic modelling undertaken from the Highways Agency. However the Highways Agency declined to comment on the basis that this matter fell outside its remit.

Baseline:

- 4.287 A brief description of the existing situation is provided in Section 2.1 of the TA (AD_42). Table 2 shows the predicted 2016 traffic levels on distributor roads around the scheme before Woodside Link has opened (but apparently assuming the A5-M1 Link open). Table 3 shows the predicted 2016 traffic levels for other important links. It also shows the predicted traffic levels in 2016 if neither Woodside Link nor the A5-M1 Link were to be built.

Impact assessment:

- 4.288 Table 2 of the Transport Assessment provides the 24 hour Annual Average Daily Traffic (AADT) figure for the Woodside Link and the distributor roads forming parts of the network immediately around it for each of the assessed development scenarios. Table 3 shows the AADT for other important links in the area for the same scenarios and for the 'do nothing' option. No parties raised objections to the choice of links to be modelled. Based upon all the information available to the examination they provide a reasonable basis for the assessment.
- 4.289 Beyond the information described above, no information regarding the outputs of traffic modelling is provided within the submitted ES TA. Of particular note was the absence of information regarding the predicted number or percentage of HGVs likely to use the Woodside Link and other links in the associated highway network in the area that might be affected by the Woodside Link's construction. LBC made a similar point in its relevant representation (RR_7). As indicated above I did seek clarification (PrD_4) and the relevant information was duly submitted (R1Q_3).

- 4.290 In addition the submitted ES did not provide any assessment of the significance of the changes to traffic flow (and therefore no assessment of the traffic-related implications for relevant local communities) after the design standards and any other mitigation are taken into account. The information was provided in response to written questions that addressed that point as explained above (see R1Q_3).
- 4.291 I followed up these aspects by inviting the two highway authorities to agree the addendum Statement of Common Ground referred to above (SoCG_6), which confirms the agreement of the two authorities regarding the methodology used for calculating HGV movements and related noise impacts. My first round questions also sought clarification regarding the significance of changes to traffic flow (PrD_1), which were addressed satisfactorily by the applicant in its response (R1Q_3).
- 4.292 The transport assessment information (AD_42) provided in support of the ES (AD_37) and supplemented during the examination demonstrates a range of benefits in relation to improvement of traffic flows accessing/exiting the A5 trunk road and M1 motorway and reductions in congestion in Dunstable and Houghton Regis town centres, notwithstanding that over the longer term (and depending on cumulative impacts) the scheme might not eliminate congestion due to overall traffic growth on the strategic and local networks. The Parkside Link element of the scheme would create additional connectivity for the Houghton Park by adding a fourth distributor road link to the wider road network. However this would be at the price of significant environmental effects upon what is now a quiet cul-de-sac. Selective further improvements to specific junctions and the overall capacity of some single carriageway sections of the Woodside Link may eventually be needed depending on the outcome of the wider development programme for the area as a whole.

Cumulative impacts:

- 4.293 Section 8 of the TA (AD_42) provides an outline of the approach used to assess cumulative impacts. It explains that the 2016 scenario assumes that all currently-approved developments (as at April 2012) and the A5-M1 Link have been completed and opened before the Woodside Link opens (paragraph 8.1.3). The 2031 scenario is based on the 2016 assessment but allows for a certain amount of additional regional and sub-regional growth, using the NTEM and TEMPRO models (paragraphs 8.1.4 and 8.1.5).
- 4.294 The development scenarios considered for the traffic model include one which assesses the effect of HRN1 and a second scenario which includes HRN1, additional development referred to as HRN2 and smaller-scale development closer to the Woodside Link. As the impact of each scenario varies depending on the particular road link under consideration, a 'worst case scenario' has been put

together which combines the effects of both. The results of the model run relating to the worst case scenario (referred to as Test 4/9) are reported in Tables 2, 3 and 4.

- 4.295 The ES (AD_37) indicates that in addition, an area to the north of Luton is included within the Draft Central Bedfordshire Development Strategy and that this would have an impact upon the Woodside Link. However, as this proposal is only in its early stages and no development timescale has as yet been specified, it has not been taken into account. The TA acknowledges that as the land north of Luton development would be EIA development any cumulative impacts would need to be taken into account when that draft development plan proposal was submitted for examination (and/or when any planning application was made).
- 4.296 During the examination I sought clarification through first written questions and oral questions at the first Issue Specific Hearing (HG_4 and HG_5) regarding the timetable for the draft Central Bedfordshire Development Strategy. CBC confirmed that no timetable had been set, that further work was required to complete its housing assessment and that the draft plan would not be reconsidered and brought forward for examination until this work had been completed. The development plan for Luton is at a similar stage in its preparation. It was apparent that various disagreements between the parties existed, including disagreements regarding the type and location of housing and retail development. However, while these different approaches might have different outcomes in terms of the types, levels and distribution of traffic flows across the network, there did seem to be higher levels of agreement regarding the need for development of the strategic highway network, whatever the approach adopted towards housing types and tenures. This is reflected in the first SoCG concluded between the two authorities (SoCG_2).

Mitigation and monitoring:

- 4.297 Section 4 of the TA identifies and seeks to justify the different design standards that will be applied to the Woodside Link and the subsidiary new roads that will link to it and which form part of the proposed project. The standards chosen are designed to be appropriate for dealing with the predicted cumulative traffic flows from the Woodside Link, the A5-M1 Link and the HRN development (in so far as this can be identified at present). The results are summarised in Table 5 of the TA.
- 4.298 Additional land will be allocated to permit later widening of the Woodside Link Section C as it may be overloaded by 2031 (paragraph 4.5.2 of the TA). Section 5 of the TA describes and seeks to justify the junction type and design proposed for the Woodside Link. The final design for the priority junction between the Woodside Link and Parkside Drive has not been designed as yet.

- 4.299 Section 9.1 of the TA indicates that CBC will work with the affected local authorities and highways authorities to consult and implement various highway improvement measures that are not currently included within the draft Woodside Link DCO. The TA does not make it clear whether these measures are intended as specific mitigation to address increases in traffic attributable to the effects of the Woodside Link or as general improvements to the wider road network in the area. During the examination the applicant indicated its intention to work with LBC and LBC indicated that it wished to discuss the offsite highway implications with the applicant as part of the wider strategy over traffic routeing including HGV routeing. This point is reflected in the SoCGs agreed between the parties.
- 4.300 The proposed measures are listed in Sections 9.2 and 9.3 of the TA. They include weight restrictions (to prevent or control access by HGVs), speed control measures and a signage strategy. These measures are not part of the provisions made within the DCO. Instead it is proposed that the measures will be progressed separately under the powers of the two highways authorities.
- 4.301 I have considered whether this approach is sufficient to guarantee that adequate measures will be delivered to mitigate the impacts of the Woodside Link scheme. The responses provided by the applicant in response to second written questions (R2Q_1 to R2Q_7) and during the second Issue Specific Hearing (HG_8 to HG_10) indicated that the majority of the measures under consideration are intended to address cumulative effects of the development across the area rather than the specific effects of the Woodside Link in isolation. Funding is available for implementation. LBC in its capacity as highways authority for part of the wider area involved did not object to this approach subject to effective consultation with a view to coordination. No other objections were received that would point to a need for specific requirements regarding such measures to be included in the Woodside Link Order.
- 4.302 The CBLTM predicts that Sundon Road/Sundon Park Road 'T' junction is likely to come under stress from increased traffic levels. Accordingly the TA indicates that it will require a revised junction layout at some point between 2016 and 2031 (paragraph 9.2.4). The TA also indicates that the layout should be reviewed after all the infrastructure has been completed. The ES (AD_37) states that improvements may not be required if the proposed M1-A6 road is completed.
- 4.303 The CBLTM also predicts that the junction between Sundon Road and Luton Road (A5-M1 Local Roads eastern roundabout) should have sufficient capacity to cope with projected traffic levels but the TA suggests that this assessment may be revised once all proposed infrastructure has been completed. The applicant also responded to representations by HRTC (R2Q_1, response to

Q4(ii)) to indicate that it would introduce a 7.5 tonne weight limit on Sundon Road from the Sundon Road junction with the Woodside Link towards the town centre of Houghton Regis. It subsequently included a Requirement (included as Requirement 20 of the draft recommended Order) requiring the promotion of a 7.5 tonne weight limit on the section of highway extending from the proposed junction between Sundon Road and the Woodside Link in the direction of Houghton Regis Town Centre. Apart from those specific provisions that I have included within the recommended Order, the need for a wider set of traffic measures to deal with the cumulative effects of the range of developments now under consideration through the local plan-making process would seem best addressed through liaison between the relevant authorities (including both LBC and the HA as well as the applicant), rather than through any additional prescribed solution within the terms of the Order.

ES consultation, examination submissions and ExA findings:

- 4.304 The trip generation rates to be used in respect of HRN1 were agreed with the HA as the HRN1 development would affect M1 Junction 11A (TA paragraph 2.3.5). It was not initially clear from the applicant's submitted documentation whether any other aspects of the modelling and traffic prediction had been agreed with the HA.
- 4.305 A SoCG between the applicant and HA (SoCG_1) was subsequently submitted in the early stages of the examination and later updated with supplementary information (PshHG_1) and R17_1_7) to clarify specific points. These documents clarified and confirmed a range of important contextual and methodological information. Key points are reviewed below. These evidential points are relevant and important to my overall assessment regarding traffic and transport-related effects.
- 4.306 The SoCG agreed a clear statement of overall strategy for the improvement of the national and sub-regional network in the wider area including the Dunstable and Luton sub-region. This statement confirmed that the strategic road network for which the Secretary of State for Transport is the Highway Authority in the wider sub-region consists of:
- the M1 (including the spur to Junction 10A);
 - the A5;
 - the A421 (M1 Junction 13 to the A1); and
 - the A1.

All other roads form part of the local highway network.

- 4.307 In relation to the strategic road network in the vicinity of the Woodside Link, the HA have carried out the following improvements in the recent past:

- M1 Junction 6A to 10 widening;
 - M1 Junction 10 to 13 improvements (Hard Shoulder Running);
 - M1 Junction 11 Improvements at Luton Dunstable; and
 - New M1 Junction 12.
- 4.308 The HA is also promoting the A5-M1 Link which has passed through the public inquiry stage. An Interim Decision letter is in place from the Secretaries of State. The de-trunking of the existing A5 would be linked to implementation of the A5-M1 Link. The section to be de-trunked would be the existing A5 from a point north of the existing A5-A505 roundabout to Junction 9 of the M1. This section of road falls within the CBC and Hertfordshire County Council highway authority areas.
- 4.309 LBC is also promoting improvements to M1 Junction 10A in association with CBC and the HA (a scheme which is currently out to tender). This new junction will provide access from the M1 towards Luton Airport.
- 4.310 HA plans and programmes also include improvements to the A1/A421 junction and improvements to the M1 between J13 and J19.
- 4.311 Section 2 of the SoCG (SoCG_1) confirms that future plans in the area are also under consideration, as the HA has started work to establish priorities for future investment in the operation, maintenance and enhancement of the strategic road network. Working with local partners HA is developing route-based strategies to cover the whole motorway and trunk road network. Work will focus on roads-based issues that have a direct impact on economic growth and development, both now and in the future. Following an initial information-gathering and stakeholder engagement stage the HA, working with the Department for Transport, will then use this evidence to prioritise and implement a programme of work to identify indicative solutions covering operational, maintenance and, if appropriate, road improvement schemes to inform the next full spending review in 2015 and beyond, engaging again with stakeholders as the solutions are developed. This latter stage should be completed by March 2015.
- 4.312 The SoCG (SoCG_1) also explains that the layout for the new proposed Junction 11A on the A5-M1 Link, which the Woodside Link would connect into, is designed to accommodate both the Woodside Link and the HRN1 development based upon information available at the time of design development for the junction. Planning assumptions were developed in association with the local planning authorities. The Statement confirms that the Woodside Link can be accommodated without compromising on safety, capacity and accessibility.
- 4.313 Paragraph 2.3.3 of the Statement (SOCG_1) further confirms that:

- 4.314 *'The HA Local Area Model, which forms the basis for the A5-M1 Link design, and the Central Bedfordshire and Luton transport Model developed by CBC and Luton Borough Council with support from the HA, each use consistent planning assumptions to assess impacts in 2031. One of the development scenarios tested by the HA (known as the HRD scenario in the HA's Traffic Forecasting Report) was specifically undertaken with provision for the following:*
- *de-trunking of the existing section of the A5 through Dunstable;*
 - *provision of the A5-M1 Link;*
 - *provision of the Woodside Link;*
 - *provision of HRN1 development (from the M1 to the A5120);*
 - *potential development between the A5120 and the existing A5; and*
 - *the provision of the M1 Hard Shoulder Running scheme from Junction 10 to Junction 13 with junction improvements at junction 11(Luton Dunstable) and new Junction 12 (Toddington) and increased capacity provision at M1 Junction 10A.'*
- 4.315 It is clear from the content of paragraphs 2.3.4 - 2.3.6 of the SoCG that the A5-M1 Link and Woodside Link, taken together with the network of principal local roads in the area, are intended to form a network of key routes with adequate capacity to meet the existing and anticipated traffic growth in the area, based on information available at the time of testing, in a safe and sustainable manner.
- 4.316 The SoCG also clarifies the funding relationships between the HRN1 scheme and the A5-M1 Link. These are discussed in more detail in Chapter 5 below.
- 4.317 The applicant agrees with the HA at section 2.5 of the SoCG that:
- '2.5.1 The A5-M1 Link scheme has a robust stand-alone business case and could be constructed without either the proposed Woodside Link or HRN1 being advanced'....'*
- '2.5.2 The proposed Woodside Link is dependent upon the provision of the A5-M1 Link scheme and cannot meet its objectives without Junction 11A being operational.*
- 2.5.3 The completion of the HRN1 development will be dependent on the provision of the A5-M1 Link and Woodside Link due to constraints proposed to be imposed as part of the outline planning permission for the development.*
- 2.5.4 It is envisaged that the phasing of the works for the A5-M1 Link and the Woodside Link would result in both schemes opening at the same time. The programme for the build out of HRN1 is not clear at this time with the exception of their plans to have the*

main B8 commercial building completed but not fitted out by the end of 2016, coincident with the opening of the Woodside Link.

2.5.5 HA and CBC, together with HRDC, are working together to ensure that the phasing of the works and their viability remain optimised.'

- 4.318 It was also agreed that the HA and CBC supported each other's schemes in principle. Points remained to be agreed in relation to a range of practical delivery details and discussions were proceeding.
- 4.319 In its response (R1Q_34) to my first round of written questions (PrD_4) the applicant provided a range of additional information including statistical information and a range of factual and qualitative information in response to other first round questions, regarding the TA.
- 4.320 In response to second round written questions (PrD_9) the applicant provided clarification of a number of points but no additional statistical data. The applicant and LBC also agreed an additional Statement of Common Ground (SoCG_6). I consider the content of this addendum SoCG below.
- 4.321 In response to my Rule 17 requests (PrD_14 to PrD_18) further statistical and qualitative information was also submitted by the applicant (R17_1_4, R17_2_7 and R17_3_2). LBC also submitted comments of relevance to consideration of the transport assessment in response to those requests (R17_1_5, R17_1_5, R17_2_4 and R17_4_1). The additional information provided in response to R17 requests in the main addressed points of clarification rather than adding to the substance of the cases put.
- 4.322 In its Relevant Representation (RR_7) LBC indicated that, whilst in general the Council agreed with the methodology and data used in the applicant's transport assessment, it considered that there was insufficient information in the ES Transport Assessment regarding the proportion of HGVs using the Woodside Link. LBC emphasised that this point was a key factor that would also be relevant to the noise and air quality assessments and the noise and air quality effects on local residents. The initial SoCG between the applicant and Luton BC (SoCG_2) reiterated this point as an area of disagreement between the parties. See also, for example, LBC's comments at R2Q_9.
- 4.323 During the examination I sought further information from LBC regarding the basis for its concerns and from the applicant regarding how the proportion of HGVs had been calculated and whether that calculation could be regarded as robust (see responses R2Q_9 from LBC and R1Q_2 from the applicant). The content of the initial responses was not entirely clear. At the Issue-Specific Hearing it was agreed that LBC and the applicant

would hold further discussions and would submit a SoCG in order to clarify areas of agreement and disagreement regarding the approach adopted by the applicant to assess the proportion of HGVs in its TA calculations and traffic predictions.

- 4.324 After discussions between the parties the addendum SoCG was subsequently submitted (SoCG_6). This statement details the assumptions made and summarises the key points arising from the analysis. At paragraph 5.12 the SoCG states:

'Based on the above assessment of HGV forecast flows, LBC can confirm, therefore, that it considers the percentage of HGVs derived from the CBLTM to be reasonable, and that it addresses the concerns raised in its response to Question 4(i) of the ExA's Second Round Written Questions on the draft Development Consent Order.'

- 4.325 In the light of these points the applicant and LBC agreed in the SoCG that:

'6.1 CBLTM is the appropriate transport model to be used for the assessment of the Woodside Link.

6.2 The 2009 and 2010 ATC surveys will provide a reasonable estimate of HGV movements into and through the Woodside Link study area (Dunstable/Houghton Regis).

6.3 The growth factors applied to HGV movements related to the Woodside Industrial Estate for 2016 and 2031 are unlikely to be exceeded, given that full occupation of the estate is assumed by 2016.

6.4 The HGV traffic routeings from the CBLTM model on which the Woodside Link is based, as stated in the Table at paragraph 5.9, particularly in respect of HGV movements to/from the M1 motorway, are reasonable.

6.5 Given the above, LBC is satisfied that the HGV forecasts for Woodside Link are reasonable and form a suitable basis for assessing noise and vibration impacts.

6.6 The applicant agrees to hold further discussions with LBC's Environmental Protection Officer as part of the detailed design process when considering the type of acoustic screening to be used.

6.7 The applicant and LBC agree that both CBC and LBC, as relevant planning authorities, should be consulted on the discharge of requirements as they affect LBC. The length of acoustic barriers will be included in the details that are submitted to the relevant planning authorities. These amendments are to be clearly stated in the Requirements that affect LBC as the relevant planning authority,

6.8 LBC hereby removes its representations in relation to noise impact.'

- 4.326 Paragraph 5.14 of the SoCG makes it clear that LBC maintained concerns regarding the adequacy of noise barriers in relation to properties on the Wheatfield Road part of the Lewsey Farm Estate, particularly in relation to low frequency noise generated by HGVs using the Woodside Link. This matter is considered further below.
- 4.327 Other concerns raised regarding the traffic prediction figures included in the TA included concerns raised by Houghton Regis Town Council (HRTC), which sought clarification of whether the potential for a development of approximately 600 dwellings to be accessed from Parkside Drive had been taken into account in the modelling (see, for example, R2Q_13). HPC queried whether the potential development of a sub-regional freight interchange (SFRI) at Sundon Quarry and a proposed housing allocation for land North of Luton under consideration by LBC had been taken into account in the Transport Assessment and traffic modelling.
- 4.328 The applicant identified on submission that difficulties encountered in preparing the ES included the fact that the AM and PM peak models used in the TA did not provide the more comprehensive information required for full assessment of noise and air quality effects. The inputs required for assessment of noise and air quality effects are described at paragraphs 3.2.5 and 3.2.6 of the TA. As the model does not provide information regarding the relevant traffic levels they were derived from the AM, PM and inter-peak flows. Details of the conversion factors used are provided in Appendix E to the TA and were not challenged during the examination by any IP.
- 4.329 Other difficulties in preparing the TA reported by the applicant on submission included the facts that Sundon Park Road is on the extreme edge of the transport model report area and some traffic flows had to be inferred, and secondly that the HRN1 application was a mixed use development proposed in outline only and that no applications had been submitted for the rest of the development anticipated in the vicinity of the Woodside Link site. The assessment of cumulative effects was therefore based upon the TA produced for HRN1, which uses the same traffic model output as that used for the Woodside Link TA. Finally, the air quality modelling uses the latest vehicle emission factors and background concentrations available but these are only valid until 2025 so it was assumed that there would be no change between 2025 and 2031.
- 4.330 Clarification regarding these matters was sought from the applicant and other parties through ExA second round written questions (PrD_9) and oral questioning at the Issue-Specific Hearing held on Tuesday 21 January 2014 (HG_8 to HG_10). The applicant's response to Action Points agreed at the hearing (R2AP_1) submitted for Deadline VI and the SoCG agreed between Luton BC and the applicant in relation to HGV assumptions and

related noise implications submitted on 4 February 2014 (SoCG_6) provided further information.

- 4.331 In particular it was apparent that the discussions held between the applicant and Luton BC as a basis for agreement of the SoCG had been helpful in clarifying a number of points, as listed above.
- 4.332 It was also confirmed that the 'Shanley Homes Land' proposed to be accessed from Parkside Drive was also considered in the modelling. However neither the of the outline proposals (the SFRI concept for Sundon Quarry and the potential housing allocation(s) North of Luton) had been taken into account as no planning application had been lodged or land allocation made in respect of those possible schemes. At the end of the examination Harlington Parish Council raised a similar point regarding the HRN Phase 2 development (HRN2) as a public meeting had been held with regard to that proposal. The applicant confirmed in its response to HPC's comments (CoR_1_1) that the HRN2 site had been taken into account in the TA.
- 4.333 It is therefore apparent that the ES reflects a point-in-time assessment and that other proposals may be emerging or may emerge in the relatively near future for which little or no clear information was available at the time work was undertaken on the Transport Assessment report and traffic modelling. In the wider context of growth and planning policy reviews in this part of Bedfordshire and the Luton-Dunstable-Houghton Regis urban area, I consider that the applicant had little practical alternative than to submit the assessment on the basis of the information available at the time of submission.
- 4.334 By close of examination there was still no indication from any IP that additional substantive information might be available that could be taken into account in the technical assessment of traffic and transport effects related to the outline projects that may or may not be emerging. It should, of course, be possible to secure a broad assessment through the SEA to be prepared for the Central Bedfordshire Development Strategy. However that document has not yet been prepared and is not available to me in conducting the Woodside Link DCO examination.
- 4.335 Against this rather uncertain backdrop, and in the light of the agreement reached between the applicant and LBC regarding the robustness of the information and assumptions that form the basis for the traffic and noise/air quality assessments, I accept that the information considered within the ES in relation to these aspects provides an adequate basis for the assessment of the relevant environmental impacts.
- 4.336 The relationship with existing consents is made clear in the ES, which confirms that the Woodside Link proposals rely on the new Junction 11A that will be created as part of the A5-M1 Link. The

SoS issued an interim decision letter in October 2012 stating that he is minded to allow the A5-M1 Link to proceed subject to resolution and confirmation of developer contributions to the scheme. It is expected that the HRN1 development would provide a substantial part of the funding required to bring forward the implementation of the scheme. The HRN1 development cannot be completed as currently proposed without completion of the Woodside Link. In the Action Points agreed at the Issue Specific Hearing I requested that the applicant:

'Provide written confirmation of quantity of housing that could be in the absence of the Woodside Link Road. It would be beneficial if a plan could be provided identifying the location of the land parcels concerned, together with their individual housing capacity.'

4.337 In its response to the Action Points (R2AP_1), the applicant stated:

'The exact quantum of housing is unknown in the absence of the WSL road; however, the transport assessment has identified two areas within the application site that can only take a limited number of dwellings before further off-site highway works are undertaken.'

The applicant also provided at Appendix E to its response (R2AP_6) the Section 106 Heads of Terms dated 19.11.14, agreed with the HRN1 applicants which identify relevant 'triggers' for staged off-site highway works at Section 4.0 – Travel, which confirm its assertion regarding the position.

4.338 The baseline for the cumulative assessment assumes that the A5-M1 Link is operational. The cumulative assessment also considers the effects of the HRN1 development, together with a strip of land lying between the western edge of the HRN1 scheme and the eastern edge of the Houghton Park Estate. No other development is considered.

4.339 Cumulative impacts area assessed in each topic chapter and then summarised in Chapter 15 of the ES. For most of the ES topics, the cumulative impact assessment relies on the results of the ES for the other schemes (A5-M1 Link and the HRN1 development) to reach a conclusion. The results of these ESs are not summarised within the Woodside Link ES so it was not possible to assess independently the adequacy of the approaches adopted. However it is noted that the ES for the HRN1 scheme was considered adequate by CBC as LPA as the basis against planning permission was granted and that the ES for the A5-M1 Link was scrutinised by a planning inspector and found adequate as the basis for the SoS decision regarding that scheme.

The Parkside Link

- 4.340 An important concern raised both by the local residents living on the Houghton Park Estate and HRTC related to the construction and operation of the Parkside Link, a proposed new highway connection between Parkside Drive and the Woodside Link which forms part of the Woodside Link DCO application. This was probably the most controversial issue noted during the examination.
- 4.341 A number of local residents objected strongly to the construction of the link and the re-opening of the southern end of Parkside Drive to vehicular traffic on the grounds of traffic volumes and related road safety, noise and air quality concerns. It was apparent from my accompanied and unaccompanied site inspections and from examination of the Ordnance Survey map for the area that the majority of Parkside Drive is constructed to local distributor standard and was probably planned originally to connect to the wider road network. However, apart from a period when a relatively narrow carriageway extension at the southern end of Parkside Drive had been operated as a bus-only link to the Lewsey Farm Estate in Luton, that end of Parkside Drive south of its junction with Fensome Drive has not been open to vehicular traffic. Local residents living in houses backing onto the section of Parkside Drive south of the Fensome Drive junction have therefore become accustomed to a very peaceful environment.
- 4.342 It was confirmed at the second Issue Specific Hearing (HG_8 to HG_10) and accompanied site visit that the through bus service along the section of busway from the Houghton Park Estate to the Lewsey Farm Estate was stopped after a number of incidents where youths attacked buses passing through the busway with stones and bricks. The bus operators thereafter refused to offer a service on the busway and it was accordingly closed by the local authority. The issue of anti-social behaviour by young people was mentioned by a number of local residents and organisations but it appeared from comments made during the ISH and OFH that the level of such behaviour had reduced somewhat in recent years.
- 4.343 The Woodside Link DCO application includes provision for a highway connection between Woodside Link and Parkside Drive known as the 'Parkside Link'. The description of the development to be authorised set out at Schedule 1 to the DCO includes fifteen separate works. Work No.9 is described as follows:
- 4.344 The construction of a new road, 0.32 kilometre in length, starting at the junction of Parkside Drive and Fensome Drive in Houghton Regis and ending with Work No.1, to include-
- (i) construction of new single carriageway road between Burford Walk and Work No.1, a distance of approximately 0.08 kilometre;

(ii) the widening of Parkside Drive south of the junction with Fensome Drive, a distance of approximately 0.24 kilometre;
(iii) the removal of the existing Parkside Drive carriageway between Work No.1 and Burford Walk;
(iv) construction of an over-bridge and associated wing walls and retaining walls;
(v) construction of an un-segregated footway and cycleway between the junction with Parkside Link and Work No.1, located in the east verge;
(vi) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
(vii) drainage works, drainage attenuation ponds, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works, noise mitigation barriers and other works associated with the construction of the permanent highway.

- 4.345 Residents' objections to the re-opening of Parkside Drive to traffic submitted as Relevant Representations or otherwise raised at the Open-Floor Hearing (SN_1 to SN_8) held on 23 January 2014 came primarily from residents of Fenwick Road and Conway Close whose properties back directly onto the section of Parkside Drive to be reopened to vehicular traffic and from a limited number of residents living in other streets nearby. I allowed oral representations to be made at the Open Floor Hearing from some local residents who appeared to have misunderstood the process and who had not registered as IPs before the start of the examination.
- 4.346 Apart from the specific concerns regarding the Parkside Link and other specific concerns raised regarding the positioning of pedestrian crossing facilities between the Houghton Park and Lewsey Farm Estates and the visual, noise and air quality impacts on properties on St James Close and Sandringham Drive anticipated to arise from the western section of the Woodside Link, the tone of a number of other written submissions towards the Link was not exclusively antipathetic - some were generally supportive.
- 4.347 HRTC argued (WR_6) that although the Woodside Link was not objected to in principle by many residents and the Town Council could accept that there might be benefits in terms of reduction of the volume of HGV traffic passing through Houghton Regis Town Centre, there was widespread opposition to the construction of the proposed Parkside Link. The Town Council challenged the justification for the Link, which it suggested was completely inadequate. The Town Council commissioned advice from a traffic consultancy, Mott Macdonald, which reviewed the applicant's Transport Assessment (AD_42). Mott Macdonald's review report forms the Town Council's written representation (WR_6). In relation to the Sundon Link (the short dual carriageway link between the northern end of the Woodside Link and Sundon Road,

to which the Town Council had originally objected together with the Parkside Link, the report concluded that the Woodside Link would be of relieve show a significant benefit to Sundon Road (which runs through Houghton Regis Town Centre at its urban southwestern end):

'3.1.3 Therefore, if a purely highways improvements scheme (i.e. just the A5-M1 and Woodside Links) is brought forward without HRN, significant benefits would accrue to Houghton Regis. These benefits are diminished when the HRN development is added but not to a degree that Houghton Regis would be worse off than if none of the above happened.'

4.348 On the basis of this advice HRTC withdrew its objection to the Sundon Link.

4.349 Mott Macdonald's report for the HRTC Written Representation (WR_6) is not altogether positive regarding the Woodside Link proposals, however. Paragraph 3.2.1 of the report presents a summary overview of the TA's findings and interprets these in relation to the effects on residents of the Houghton Park Estate:

4.350 *'3.2.1 Parkside Drive is currently a cul-de-sac at its southern end, closed to traffic beyond the junction with Fensome Drive, hence residents here experience very low traffic levels and no through traffic. If Parkside Link was constructed, it is apparent that residents in Parkside Drive would experience different levels of change depending upon whereabouts on the estate they live. According to Table 2 of the TA, (Appendix C of these Representations), residents at the south end of Parkside Drive, many of whom experience little or no traffic movements on Parkside Drive, would be subjected to increases of up to 6,591 vehicles per day in 2016 rising to 8,292 vehicles per day with the HRN development in place. Residents at the north end of Parkside Drive would experience reductions in traffic of approximately 1000 vehicles per day information according to estimates given by Amey. Therefore, although there would be "winners and losers" the losers would lose much more than the winners gain.'*

4.351 The report also points out that Parkside Drive is not considered in the TA Table 4 "Effect on Key Links" (AD_42). The report suggests that:

'If it had, by the criteria set out in Section 3.6 of the TA, the effects of the Woodside Link and Full Development would be "Significant Adverse" because the traffic increase would be greater than 20%. In addition, Section 7 of the TA makes no comment on the increase in traffic on [the] Parkside Link itself. This does cast doubt on the care taken by the scheme promoter to evaluate the effects of opening Parkside Drive to through traffic.'

- 4.352 Paragraph 3.2.3 of the representation report prepared for HRTC by Mott Macdonald also points out that while the Woodside Link ES does acknowledge an increase in traffic flows on Parkside Drive in Table 11.3 when discussing the effects of the Woodside Link on Community and Private Assets, it makes no direct reference to noise, air quality and pedestrian amenity effects of this predicted increase in traffic levels on Parkside Drive *'which is surprising given the level of the change brought about by opening this cul-de-sac to through traffic, as set out in the TA. It is also surprising given that the Parkside Link is not seen by the scheme promoter as essential to the Woodside Link scheme so might have warranted special consideration within the ES to highlight the benefits and disbenefits of including it'*.
- 4.353 Paragraph 3.2.4 of the report goes on to indicate that, even without specific consideration, it *'remains evident that many properties at the south end of Parkside Drive, particularly south of the current road closure, for example in Conway Close and Fenwick Road, would be subject to traffic increases of well in excess of 100%.'*
- 4.354 Paragraph 3.2.8 states that: *'By the standards adopted in the ES, it is clear that the likely effects of additional traffic on many properties in the southern section of Parkside Drive would be higher than significant and require mitigation. No mitigation is proposed for these properties, even though many are directly adjacent to Parkside Drive.'*
- 4.355 The report also points out the possibility that Parkside Link, Woodside Link or Parkside Drive could be used as a vehicular access to 'the Shanley Land' - a site for up to 600 homes being promoted by Shanley Homes - in order to avoid a potential ransom position if access was to be taken via the HRN development to the Woodside Link. It was argued that, if access to the Shanley Site was taken via a new connection with the existing cul-de-sac at the end of Parkside Drive or to the new Parkside Link, additional pressure of traffic could add to the effects upon properties along Parkside Drive.
- 4.356 Various written and oral submissions by local residents, including a detailed Written Representation by Miss Sally Gray (WR_10), made similar points to those raised in the Mott Macdonald report. Miss Gray's submission emphasised that the Statement of need did not provide sufficient justification for the Parkside Link. She argued that any minor benefit for motorists would be outweighed by increased road hazards to the safety of children or the adverse effects of noise, vibration, and pollution on the health of Parkside residents. It would be impossible to restrict access to 'Parkside residents only' and the road would become a short-cut to other parts of Houghton Regis. Miss Gray highlighted the scale of predicted increase in traffic on Parkside Drive from its current negligible level.

4.357 Many of the representations at the OFH by local residents including those by Sally Gray (SN_6), Donovan and Annette Munn-Barron (SN_8), Vonda Bowen (SN_3), Alan Winter (SN_4) and Christine Ballister (SN_5) raised concerns on a wide range of traffic-related grounds, referring to the scale of change in traffic flows, intrusion into a peaceful area, the effects of potentially high levels of traffic noise and air quality reduction. In her response to the applicant's comments on the Relevant Representations submitted for Deadline IV (RoCRR_1) Miss Gray suggested that the increase in traffic noise levels experienced by residents backing on to the currently closed section of Parkside Drive could be as much as 5-10dBA. She also highlighted possible disruptive effects on local landscape and wildlife features.

4.358 The concerns of local residents were strongly supported by the ward councillor, Cllr Dr Rita Egan.

4.359 In its document Applicant's Comments on Written Representations (CoWR_1) the applicant responded to the objections raised to the Parkside Link. In relation to the objection by Miss Sally Gray it commented:

'Parkside Drive link provides a link from the Houghton Park estate to the principal road network. By not providing the Parkside Drive link the residents of the Houghton Park estate will not have easy access to the Woodside Link and the benefits provided by the new development (e.g. employment, retail and leisure facilities).

The Parkside Drive link will promote accessibility to Houghton Park estate residents by providing an alternative access for public transport to access education, medical, employment and retail sites.

Parkside drive and the rest of the roads in the Houghton Park estate are public highways and as such would not be considered now or in the future as 'residents only'.

4.360 The response also explains the distribution of air quality and noise monitoring locations, commenting that no significant adverse effects on air quality in relation to human health are expected as a result of the scheme and that the majority of operational noise effects would be of negligible or minor magnitude, at a level where industry guidance indicates that the change would be unlikely to be noticed.

4.361 In relation to the justification for the Parkside Link I accept that the applicant's Statement of Need (AD_54) does not refer to any specific justification for the Parkside Link. The only reference made in the Statement to the Parkside Link is the description at paragraph 12:

'A new connection with Parkside Drive would be provided, allowing vehicles to join the new road from the Parkside area of Houghton

Regis. This new connection would cross Houghton Brook, which would be diverted at this point to avoid the Woodside Link having to cross the brook three times rather than once.'

- 4.362 This description only refers to traffic joining the Woodside Link from the Parkside Link, but unless access is restricted to one-way movements (and no suggestion has been made that such restriction would be applied) it would also be possible for traffic to join Parkside Drive from the Woodside Link via the Parkside Link. No case is made in the Statement of Need or indeed anywhere in the application documentation for an access of this type and location. Neither do any of the planning or transportation policy documents referred to in the Statement of Need as supporting the applicant's case for the Woodside Link make any specific proposal or explicit policy to support the Parkside Link.
- 4.363 In the light of the comments made Houghton Regis Town Council and its consultants and by local residents I have given the Parkside Link position careful consideration, both during the examination and during preparation of this report. I agree with submissions of HRTC and Miss Sally Gray that the application documents are not clear regarding the case for the Parkside Link. This appears surprising given that it was the most controversial part of the Woodside Link proposals prior to submission of the application and during the examination.
- 4.364 However the absence of clarity in the initial documentation does not necessarily mean that there is no case for the Parkside Link. The applicant's primary focus, after all, has been justification of the overall Woodside Link scheme. Beyond the content of its original submitted documentation the applicant did articulate the case in its subsequent responses to my written questions and at the Issue Specific Hearing.
- 4.365 The Houghton Park Estate is a large residential area that has until now been located on the edge of the Houghton Regis-Dunstable urban area. It has three connections into the wider highway network. It became clear during the examination that the relationship of the estate to its surroundings is about to change significantly due to the construction of the A5-M1 Link and the HRN1 development.
- 4.366 I accept the unchallenged argument put forward by the applicant at the second ISH held on (HG_8 to HG_10) that the addition of a fourth highway link (the Parkside Link) with the wider network (via the Woodside Link to the M1 motorway and A5-M1 Link) could potentially assist the connectivity of the estate as it becomes an embedded part of the wider urban area rather than a peripheral estate. During the examination it was stated by a number of parties that the estate has experienced a degree of socio-economic deprivation. Connection to jobs and social facilities elsewhere in the urban area may have potential to create benefits

to local residents, especially if better public transport links were reinstated.

- 4.367 These points relate well to the principles of sustainable development and the broad thrust of Government development and transport policies. In this context it appeared from the applicant's comments at the second ISH (HG_8 to HG_10) that reinstatement of bus services to the south would only be possible if a road link was established that was not isolated or prone to antisocial behaviour and attacks on public transport vehicles.
- 4.368 A great deal of concern was expressed during the examination by local residents and HRTC and its consultants, not only regarding opening up Parkside Drive to possible through traffic via the Parkside Link but also to the possibility that further traffic might be generated through the residential area by substantial new development proposed on the Shanley Homes land which lies between the eastern edge of the Houghton Park Estate and the HRN1 site. It will be for CBC as LPA to determine any planning application coming forward that included such an access, and that there would be an opportunity for local residents and HRTC to express a view regarding any such proposal at that time. However, in the context of the Woodside Link application it is possible to make observations based on the examination findings regarding the Parkside Link element of the Woodside Link scheme.
- 4.369 First, as confirmed by the HRTC representative at the second Issue Specific Hearing held on 21 January 2014 (HG_8 to HG_10), the concern expressed by the Town Council was focussed upon the potential volume of through traffic rather than the principle of vehicular access to and from the estate.
- 4.370 Second, the applicant has indicated that in conjunction with implementation of the Woodside Link/Parkside Link it would bring forward speed restrictions for the southern end of Parkside Drive to make this section of highway a 20mph zone. This proposal is included at Schedule 3 Part 1 to the draft Order, which proposes a 20mph speed limit from a point on Parkside Drive 50 metres south of its junction with the A5505 Woodside Link (Work No.1) northwards for a distance of 260 metres. This measure would slow down traffic entering the estate from the Woodside Link or leaving the estate to exit onto the Woodside Link but it would not affect traffic within the estate or on the parts of the existing Parkside Drive regularly used by motor vehicles at present.
- 4.371 Third, in response to my questions regarding this matter at the Issue Specific Hearing, the applicant included within Schedule 2 to the Order at Requirement 18 ('Monitoring the effects of the authorised development') a provision that required preparation and implementation of a monitoring scheme. The proposed scope of the monitoring scheme included provision for the monitoring of traffic on Parkside Drive. The applicant's draft Requirement

specified that *'The monitoring scheme shall cover the monitoring of the above effects of the authorised development and their mitigation as set out in the environmental document.'*

- 4.372 The applicant subsequently included at Paragraph (3) of the requirement a specification that should the monitoring of traffic on Parkside Drive show that motorised vehicle movements on Parkside Drive exceed 8300 movements per day averaged over a two week period, CBC would consult people living in the vicinity of Parkside Drive regarding whether to implement further traffic mitigation measures.
- 4.373 During the examination I tested this provision by requesting traffic figures for the existing distributor roads within the Houghton Park estate. The applicant's response (R17_2_7) for the two relevant survey locations on the estate distributor roads (Parkside Drive (North) and Windsor Drive (North of Sandringham Drive)) showed that the surveyed average daily, 5-day and 7-day traffic counts for these distributors were comparable to the levels of traffic currently predicted for the Parkside Link. I then made an unaccompanied site visit to observe the traffic flows along these roads in the evening peak. The environmental conditions for residents along these distributors seemed quite acceptable and within the bounds of normal expectations for residential streets. The environmental conditions were not as peaceful as the current cul-de-sac at the end of Parkside Drive but on the other hand neither were they at a level that would justify the fears expressed by local residents during the examination.
- 4.374 The Council in its role as highways authority would have the ability to manage the flows on this section of road should environmental and/or safety conditions justify it, whilst ensuring that a level of access to and from the estate to jobs and facilities nearby could be achieved in order to benefit local residents. If the new link also led to re-establishment of an enhanced bus service or services then that would provide a further public benefit. The bus operators were not represented at the examination and have made no direct submissions regarding that point, but the Council did suggest at the second ISH that improved bus services might be possible in the event that the Parkside Link was constructed and opened.
- 4.375 A number of options would be available to the Council in its role as Highway Authority in order to control traffic and mitigate any adverse effects attributable to high traffic flows down the Parkside Link/Parkside Drive. For example, if the SoS decides to make the Order the detailed design of the junction of Parkside Drive and the Woodside Link would need to be finalised. It would be possible for the Council to ensure that traffic flows were controlled through appropriate management of the capacity of that junction.
- 4.376 For example, potential technical options might be available, including the construction of a signalised junction. In that event,

phasing of the priority given to the movements into and out of the Parkside Link would allow the Council to control maximum flows by managing the signalised route capacity. Finally, the Council would also have the ability to extend the proposed 20mph speed limit further along Parkside Drive and to introduce other physical measures to slow down traffic and reduce the road's traffic capacity without precluding access. All of these traffic management options would be available to the Council in its capacity as Highway Authority in order to mitigate any effects that were unanticipated or that had reached an inappropriate and unacceptable level for a residential area.

- 4.377 In the light of these findings, based on the applicant's submitted uncontested traffic assessment predictions, I conclude that the proposed Parkside Link is acceptable in traffic and environmental terms, even where the traffic flows associated with the HRN development are taken into account.
- 4.378 Notwithstanding the conclusion set out above, I recognise that there are areas of uncertainty in relation to the longer term traffic implications of future development the other potential sites in the wider area that are now subject to planning discussions. In the absence of robust predictions regarding the cumulative traffic effects of those potential future developments and how they might affect the local network including the proposed Parkside Link/Parkside Drive, it is important to ensure that adequate attention is given to monitoring traffic conditions over the period of the wider development plan programme to ensure that traffic and environmental conditions related to the Parkside Link/Parkside drive are maintained at acceptable levels.
- 4.379 As indicated above, towards the end of the examination in order to address this issue the applicant included an amendment to the monitoring requirement (Requirement 18 in the applicant's final preferred version of the Order (R3DCO_1). I provided an opportunity for comments to be made by any IP regarding that version of the Order before the close of the examination. No further comments were received regarding that proposed wording.
- 4.380 It is noted that the provision suggested by the applicant is not specific regarding the period of years over which traffic conditions are to be monitored. Neither is it clear and specific regarding the consequences or objectives if monitoring were to reveal that traffic levels had exceeded 8300 vehicle movements averaged over a two week period. The principal reason for such a requirement arises from uncertainty regarding the wider cumulative traffic effects of the Woodside Link/Parkside Link project considered together with other projects.
- 4.381 These other projects are currently subject to planning discussions in relation to emerging development plan allocations and policies. They including some proposed schemes where traffic information

is not currently available and could not be included in the Woodside Link DCO application Transport Assessment. They will come forward over the period to be covered by the development implementation programme to be set out in the emerging development plans for Central Bedfordshire and Luton.

- 4.382 In order to address the points underlying the level of public concern raised regarding the Parkside Link and considered above a specific monitoring requirement is justified. Accordingly, I have separated the monitoring of traffic conditions on Parkside Link/Parkside Drive from the generic monitoring requirement included at Requirement 18 to the Order and have included a separate specific requirement in the recommended Order at Requirement 19. In addition I have sought to tighten up the wording of the requirement in order to take account of the uncertainties in the wider development scenario identified above that generated the concerns expressed by a range of parties during the examination, including HRTC, local residents and LBC.
- 4.383 Having regard to all the relevant circumstances, in my judgement this provision would help to provide greater focus by the Highway Authority upon effective control of any potential for significant adverse cumulative effects of traffic upon Parkside Drive that might arise as a result of the proposed construction of the Parkside Link element of the Woodside Link scheme. This should also help to ensure that proper attention would be given to the effective management of conditions in the area concerned as future developments in the wider area move forward.
- 4.384 The wording of the recommended Parkside Drive Requirement (Requirement 19) is intended to provide a degree of safeguard to the local community in the event that traffic levels and/or their environmental effects exceeded the predictions submitted to the examination in the ES and became excessive and intolerable in environmental terms or presented highway safety issues. In my judgement it also meets the policy tests set out in NPPF paragraph 206, including that of precision.
- 4.385 Having regard to the traffic predictions set out in the TA and to the comparable survey figures for the other main estate distributor roads - and subject to the amended wording of the proposed Requirements that is set out in the recommended Order - the construction of the Parkside Link would not be likely to give rise to effects that would be so adverse as to justify refusal of the application. This is because if the level of traffic generated on the Parkside Link meets the predictions set out in the applicant's TA the effects should not be significantly greater than those of the existing estate distributor roads. I accept the argument of local residents and HRTC that there would be a significant change to traffic and environmental conditions in the currently quiet southern section of Parkside Drive, but on the basis of applicant's figures it is unlikely that that change would reach so great a level

as to be unacceptable. As conditions on that section of highway would change to be broadly similar to other existing distributor roads on the estate this is not sufficient to justify rejection of the Parkside Link.

- 4.386 Having regard to this finding, and on balance, I conclude that the potential benefits of the Parkside Link element of the Woodside Link scheme to the Houghton Park Estate and to the surrounding area as a whole are likely to outweigh the level of the relative disbenefit that may be experienced by those residents living close to the southern end of the existing Parkside Drive. This judgement is based on the traffic monitoring and prediction evidence before me and the observations that I have been able to make on site. In any event, given the amount and quality of information that would be available through the monitoring secured under the requirement recommended above, controls available to the Highway Authority are sufficient for the management of traffic and environmental effects should they prove to be greater than predicted and/or if the Highway Authority agrees that environmental conditions are becoming unacceptable.

Air quality

- 4.387 The Statutory Nuisance Statement submitted with the application (AD_24) addresses two potential statutory nuisance issues - 'Fumes and Gas Emitted from Premises' (referring to the operational air quality impacts of the proposed scheme) and 'Dust Arising from Construction Works' referring to the potential air quality impacts of construction activities. The Statement refers to Chapter 12 of the ES which concludes that:
- Given the implementation of the proposed mitigation measures no significant air quality effects in respect of fumes or gases are expected during the either the construction or operation of the scheme;
 - Although there is potential for fugitive dust to be generated during construction of the link road, a range of measures are set out in the submitted Outline Construction Environmental Management Plan (OCEMP)(AD_44). The Statement refers to the conclusion of ES Chapter 12 that, with these measures in place, no significant air quality effects, including those relating to dust generation, are expected during the construction of the scheme and that the development would therefore not emit dust that would be prejudicial to health or a nuisance.
- 4.388 The following section considers the approach taken to the assessment of air quality impacts in Chapter 12 of the ES and then considers the main objections, concerns and comments made in relation to this topic and how these matters were examined before setting out my reasoning and findings in this regard.

Methodology:

- 4.389 For the local air quality assessment screening calculations were undertaken during the Stage 2 scheme assessment process based on the methodology recommended in the Design Manual for Roads and Bridges (DMRB). The results of the screening calculations were not presented in the ES. However the basis for the assessment was the traffic model agreed as appropriate between the applicant and LBC (SOCG_2). The air quality screening matrices were submitted to the examination in response to my first round written questions and are available in the Examination Library at (R1Q_2 and R1Q_5). Chapter 12 of the ES concludes that there would be no significant adverse effects on air quality in relation to human health as a result of the Woodside Link scheme.
- 4.390 Although the results of the screening calculations did not suggest that air quality objectives would be exceeded (paragraph 12.1.5), following discussions with CBC Environmental Health officers (paragraph 12.2.13), nitrogen dioxide (NO₂) levels were monitored for 6 months from January to June 2011. The methodology used was based on guidance in Defra's Local Air Quality Management Technical Guidance 09 (LAQM.TG09).
- 4.391 The results of the monitoring led to a detailed assessment using the methodology advised in the DMRB. Air quality monitoring was undertaken for a baseline year in 2011, the opening year (2016) without the scheme (Test 1) and with the scheme (Test 3) and for 2031 with the scheme (Test 2A) (paragraph 12.1.6). The detailed dispersion model required input data of Annual Average Daily Traffic Flows on the road links and the pollutant emission rate as grams per vehicle kilometre (g/veh-km). The pollutant emission rate was derived using the Defra emission factor spreadsheet. The pollutant emissions rate is based on the assessment year percentage of HGVs and average speeds. I explored during the examination how the figure for the percentage of HGVs was arrived at since this aspect of the methodology was not reported in the TA. The discussion regarding the percentage of HGVs is reported above at paragraphs 4.271-4.274 above.
- 4.392 The model data was further adjusted to take account of the advice in IAN 170/12 to allow for deficiencies in the advice in LAQM.TG09. These deficiencies can lead to overestimates of improvement in air quality over the long term (paragraphs 12.1.7 to 12.1.12). Several versions of the model were run before modelled and monitored data were within 'an acceptable range' and a calibration factor of 5.0 has been used. No objections were raised to the methodology applied in this regard.
- 4.393 Dust generated during construction was considered qualitatively following the methodology in the Institute of Air Quality Management *Guidance on the Assessment of Impacts on Air Quality and the Determination of their Significance*. The

assessment appears to be qualitative; no other information regarding the methodology use is provided in the ES (paragraphs 12.1.15 and 12.1.16).

4.394 The regional air quality assessment was undertaken using the DMRB screening tool and used the following parameters: Annual Average Daily Traffic, percentage of HGVs, average speed and length. The potential effects of the scheme are assessed by reference to the total UK emissions as there are no regional standards or objectives available (paragraphs 12.1.13 and 12.1.14).

Baseline:

4.395 Baseline conditions are discussed in Section 12.3 of the ES. Baseline levels of NO₂ were established through diffusion tube monitoring from January to June 2011 (see Table 12.6 of the ES for results). This appears to be in line with Defra's LAQM.TG09 guidance which requires at least 6 months monitoring including both winter and summer periods.

4.396 Background levels of NO₂ and PM₁₀ (particulate matter up to 10µm diameter) for the study area at a 1 kilometre resolution was obtained from the Defra website. The background level for NO₂ in the Defra data was lower than that gathered through the diffusion tube monitoring. The diffusion tube data was used in the air dispersion modelling (paragraphs 12.3.16-18).

4.397 Receptors were defined by searching for:

- Designated nature conservation sites within 200 metres of the scheme and affected roads (using the online resource Multi-Agency Geographic Information for the Countryside); and
- Properties within 50 metre bands up to 200 metres from the centre line of the proposed scheme.

4.398 No nature conservation sites were found within 200 metres of the scheme (paragraph 12.3.3).

4.399 The estimated number of properties up to 200 metres from the centre line of the scheme is given in Table 12.5 (total number 455) and shown on Figure 12.1 of the ES. Apart from four properties located off the rural section of Sundon Road (including Chalton Cross Farm and Osborne House) 451 other residential properties affected are located within the Houghton Park Estate in Houghton Regis and the Lewsey Farm Estate in Luton. All properties within 200 metres of the centre line were regarded as 'sensitive properties'.

4.400 Air Quality Management Areas (AQMA) have been identified for Dunstable and Luton. Pollutants of concern are NO₂ and PM₁₀. The AQMA for Luton relates to properties adjoining the M1. The AQMA

for Dunstable relates to properties in Dunstable Town Centre along the urban section of the A5 and along the A505 to Junction 11 of the M1.

Impact assessment:

- 4.401 For the construction phase of the project the effects of dust emissions are assessed qualitatively (paragraphs 12.6.1-18). Construction vehicle movements are referred to but not quantified (12.6.17). The applicant site is classed as being at high risk of dust generation but it is assumed that the mitigation in the CEMP would reduce risk to an acceptable level (paragraph 12.6.18).
- 4.402 Emissions from vehicles during construction do not appear to have been assessed. DMRB guidance (Vol 11, Section 3, Part 1) HD207/07, paragraph 3.6) states that if construction is expected to last for more than 6 months then traffic management measures and the effects of the additional construction vehicles should also be assessed as an additional scenario although this may need to be a qualitative assessment. Although at the time of the assessment the project timetable was not yet finalised, it would appear that the construction period could extend from the latter part of 2014 into 2017.
- 4.403 The air quality dispersion model has been used to estimate NO₂ levels at various sample receptors (mainly residential properties) for 2016 with and without the scheme (Tables 12.9 to 12.11). The ES indicates that as the 2013 scenario without the scheme has not been modelled, the modelled future year trends cannot be adjusted in line with long term trends (paragraph 12.6.25). Table 12.12 shows the estimated difference in NO₂ levels at the various receptors between 2016 without the scheme (test 1) and in 12031 with the scheme (Test 2A).
- 4.404 The ES states that the EPUK magnitude of change description is not valid because the change is also due to changes in the background pollution level and not purely as a result for the project. In response to ExA Q27(vi) in my ExA first written questions the applicant confirmed that it was understood when writing the ES that EPUK significance criteria were the most relevant significance criteria available at that time. It was also pointed out that the IAN 174/13: *'Updated advice for evaluating significance of local air quality effects for users of DMRB HA207/07'* (June 2013) was not available at that time.
- 4.405 Effects on PM₁₀ are illustrated at Tables 12.13 to 12.15. Effects are predicted to be better than the relevant Air Quality objectives, with an imperceptible impact upon the Dunstable Air Quality Management Area. It was not obvious from Chapter 12 of the ES how these conclusions were reached. In my written questions I therefore sought comments from the HA regarding the methodology and conclusions with regard to the regional air

quality assessment in relation to PM₁₀. In its response (R1Q_34) the HA confirmed that: *'the methods and conclusions reached in relation to the assessment of PM₁₀ appear appropriate, however please note that the Highways Agency is not an expert in this field.'*

4.406 The results of the air quality assessment are reported in paragraphs 12.6.35 to 12.6.37 of the ES and in Table 12.16. The emissions predicted for 2031 represent an increase of up to 36% in NO₂ emissions but the ES states that the majority of the increase will arise from an increase in traffic volumes on the M1 (paragraph 12.6.37).

4.407 Section 12.11 lists the various assumptions and limitations that apply to the assessments in this chapter of the ES. They include:

- the 2031 assessment does not include the traffic growth resulting from the HRN development;
- only an outline application has been submitted for the HRN1 scheme so the exact locations of the proposed houses are unknown. It has been assumed by the applicant that assessment of the development against national air quality objectives will be made as part of the planning process;
- there are no inherent uncertainties in the traffic and air dispersion modelling; and
- the modelling uses the latest vehicle emission factors and background concentrations available but these are only valid until 2025 so it has been assumed that there will be no change between 2025 and 2031.

Cumulative impacts:

4.408 The ES states that the opening year traffic flows input to the air quality model accounted for traffic using the proposed Junction 11A and A5-M1 Link Road (paragraph 12.8.1). No cumulative assessment of the effect of the development with the Houghton Regis North (HRN1) development has been undertaken. Instead the applicant has relied upon the ES produced for the outline application for the HRN1 development. The assessment concludes that the absolute levels of pollution of the two combined projects (HRN1 and Woodside Link) would be within acceptable limits (paragraph 12.8.4 and 12.8.5). Conclusions are also reported separately in Chapter 15 of the ES which deals with cumulative and in-combination effects but these are effectively a summary of the discussion in the air quality chapter.

Mitigation and monitoring:

4.409 The ES indicates that as the project would actually reduce traffic pollution at sensitive receptors along the road network and so should be viewed as mitigation of the existing air quality problems on the road network in the area (paragraph 12.5.1). Speed limits

would, however, be restricted to 30 or 40 mph in different sections of the Woodside Link (see ES paragraph 12.5.1 and Schedule 3 to the recommended Order).

- 4.410 The mitigation measures proposed for reducing the effect of dust during construction are listed in paragraphs 12.5.3 to 12.5.7. Requirement 7 of the applicant's draft DCO requires that the CEMP must include measures to address dust generation during construction.
- 4.411 It also became clear during the second Issue Specific Hearing held on 21 January 2014 (HG_8 to HG_10) that although the location of secondary site construction depots would be a matter for the appointed contractor, the applicant envisaged that secondary construction traffic routes would pass from the main construction depot to be located off Sundon Road adjoining Chalton Cross Farm down Parkside Drive and through the Houghton Park Estate in order to reach site compounds required to facilitate construction of the proposed Woodside Link. This route could be extended to Wheatfield Road and Kestrel Way on the Lewsey Farm Estate in Luton in order to support a compound likely to be located off Kestrel Way.
- 4.412 Local residents expressed concern regarding the prospect of dust, noise and highway safety issues generated by construction traffic seeking to access the site depots by way of these likely secondary construction traffic routes. I sought clarification regarding these matters both in written questions (PrD_4, PrD_9 and PrD_14 to PrD_17) and at the second Issue Specific Hearing. The applicant confirmed that:
- the site depots would be relatively small by comparison with the main depot near Chalton Cross Farm and each of those site depots would be visited by a relatively manageable number of vehicles delivering construction materials, plant and equipment and by relevant site staff (Issue Specific Hearing);
 - access by construction traffic would be controlled under Requirement 9, which provides that:

*'(1) No part of the authorised development shall commence until the locations and details of the access points for construction traffic from the public highway into the authorised development have been submitted in writing to, and approved in writing by, the relevant planning authority.
(2) All construction traffic shall access the authorised development using an access point approved pursuant to sub-paragraph (1) at all times.'*
 - Hours of working would be controlled under requirement 13. Outside the prescribed working hours specific activities or classes of activities including delivery or removal of materials

or construction works may only be carried out with the prior approval of the LPA.

4.413 The above provisions would have implications for dust, noise and traffic movements associated with the period of construction work. In addition, the CEMP required under Requirement 7 would secure the following in relation to the generation of mud and dust:

- wheel cleaning facilities to be installed and operated throughout the construction of the authorised development to minimise the risk of transfer of dust mud etc onto the public highway;
- measures to be taken during road construction operations to minimise the risk that dust or windblown material is carried on to adjacent property, including the watering of all haul and access roads and the spraying of storage heaps or operational construction areas as necessary during dry weather conditions; and
- all heavy goods carrying materials in and out of the authorised development during construction of the development to be securely sheeted unless the load is otherwise enclosed.

ES consultation, examination submissions and ExA findings:

4.414 Consultation regarding the ES air quality effects was undertaken with CBC Environmental Health officers regarding gathering baseline data on NO₂ levels (paragraph 12.2.13 of the ES). Relevant Representations from a high proportion of the local residents responding to the application have highlighted the potential impact of increased air pollution as a result of the scheme. However, in its Relevant Representation Public Health England stated (RR_17) it was satisfied that public health impacts had been adequately considered in the ES because the main risks would be addressed by the preparation and implementation of the Construction Environmental Management Plan.

4.415 Having regard to the points outlined above I consider that reasonable safeguards have been built into the Order by the applicant in relation to the control of air quality effects including the control of dust in dry weather during the construction period. The controls would also help to manage and mitigate the transfer of any mud generated by the works to public highways nearby. The detailed terms of the Construction Environmental Management Plan will be controlled by the Council in its role as LPA. Having regard to the results of the ES in relation to air quality during the operational phase, I am satisfied that no air quality effects would be so adverse as to justify refusal of the application. This finding takes into account the addendum Statement of Common Ground between the applicant and Luton BC (SoCG_6), in which LBC agreed with the basis on which the calculation of the proportion of HGV traffic using the Woodside Link had been calculated by the

applicant and withdrew its objection regarding HGV traffic predictions and any potential for related environmental effects.

Noise and vibration

- 4.416 Noise and vibration effects are assessed in Chapter 13 of the ES. This section of the report considers the methodology applied to the assessment of the likely noise and vibration effects of the project, the baseline taken into account, the details of the assessed impacts, the cumulative impacts identified, mitigation and monitoring and the ES consultation, examination submissions and my findings regarding this issue.

Methodology:

- 4.417 The methodology applied in the assessment generally follows guidance set out in the Design Manual for Roads and Bridges (DBRM) Volume 11 Section 3 Part 7 HD 213/11.
- 4.418 In relation to noise and vibration effects arising from construction works, the ES indicates that no piling is expected during construction so ground vibration has not been assessed (paragraph 13.1.8). Construction noise predictions have been carried out using the methodology outlined in BS 5228 2009 '*Noise and vibration control on construction and open sites*' (paragraph 13.1.10). This is the approach recommended by the DMRB.
- 4.419 Predicted noise levels have been assessed for the construction stage using the methods set out in the Calculation of Road Traffic Noise (CRTN) recommendations within the DMRB. NoiseMap 5 modelling software, which is based on the CRTN methodology, has been used to create a three-dimensional model of the road scheme and adjacent area using features such as buildings, landform and the proposed noise barriers (paragraphs 13.1.14). The CRTN methodology is described in paragraphs 13.1.14 to 13.1.20. The noise model has been used to predict noise levels for sensitive properties for 2016 without the Woodside Link scheme but taking account of the operation of the A5-M1 Link and J11A (Test 1), 2016 with the Woodside Link scheme (Test 3) and for 2031 with the scheme and Junction 11A and A5-M1 Link operational (Test 2A).
- 4.420 Night time noise assessments refer to the World Health Organisation 2009 '*Night Noise Guidelines for Europe*' document which provides a target objective and an interim target for situations where the target objective is not feasible in the short term (paragraph 13.1.24). The assessment also used the methodology outlined in the 2002 Transport Research Laboratory (TRL) report to convert the relevant UK traffic noise index (L_{A10,18h}) to the EU noise indices. Again this is in line with the approach advised by the DMRB (paragraph 13.1.26).

- 4.421 Modelling for effects at properties has been based upon the assumption that they are 2 storeys high and of a height of 8 metres and that the noise levels are taken at the façade of the buildings (paragraphs 13.11.12).
- 4.422 According to the DMRB increases in noise level of more than 1 dB(A) in the short term and 3 dB(A) in the long term are considered significant and require mitigation. The study area has been defined as the area where roads are predicted to experience a change in noise level of more than 1dB(A) as a result of the scheme in the short term. The DMRB states that this is equivalent to a 25% increase or a 20% decrease in traffic flow. A 3 dB(A) change in noise levels is predicted by the DMRB to be equivalent to a 100% increase or a 50% decrease in traffic flow. The study area was therefore taken to be 300 metres from the extent of the scheme and any other affected roads. It was increased at the northern end of the scheme to 600 metres because the land is more open with fewer structures that would act as barriers to noise propagation (paragraph 13.1.31). The extent of the study area is shown in Figure 13.1.
- 4.423 No evidence was presented in the report to support the statement that the study area does correspond to the areas affected by changes in traffic flow but comparison with the TA does show a reasonable level of correspondence.
- 4.424 The ES also indicates that a qualitative assessment has been undertaken for sensitive receptors outside the study area but within 2 kilometres of the scheme or affected roads.

Baseline:

- 4.425 Information regarding predicted traffic flows was taken from the traffic modelling carried out for the Transport Assessment (TA) (paragraph 13.1.6). A noise monitoring survey was undertaken to provide some verification for the noise modelling using the shortened procedure in paragraphs 13.3.4 to 13.3.10. Daytime measurements were taken at 6 locations (mainly residential property). Night time measurements were only taken at one property. No justification was given in the assessment report for the choice or number of locations used for day and night measurements.
- 4.426 During the examination concerns were expressed by a number of local residents regarding the location of site compounds and traffic routes to those compounds for deliveries of materials by HGV and access by construction site staff. I sought further information in ExA first round written questions regarding the location of the compounds and the levels of traffic anticipated to each location, together with the routes to be adopted by delivery and construction vehicles and by construction site staff vehicles. In response (R2Q_10(ii)) the applicant provided a key plan and

detailed plans showing the location of each of the proposed site compounds and the routes that are proposed to be used to access the compounds by delivery vehicles and staff.

- 4.427 Noting concerns expressed by Miss Sally Gray and HRTC that the number of noise sampling points in the ES noise assessment was inadequate I also sought additional information from the applicant in my ExA second round written questions regarding the number of sampling points used in the ES and whether this was adequate. In response the applicant provided information relating to a number of additional noise receptor sampling points along the eastern edge of the Houghton Park Estate in Houghton Regis and the northern edge of the Lewsey Farm Estate in Luton.
- 4.428 Receptors assessed in the original ES noise assessment (classed as either residential or non-residential) are shown on figure 13.1 of the ES. Additional noise receptor locations and the summary schedule of noise assessment results can be found at PSHG_4 and R2Q_3 in the Examination Library.

Impact assessment:

- 4.429 The noise modelling is based on the assumption that 2 metre high noise barriers would be installed at certain points along the Woodside Link scheme.
- 4.430 For the construction phase, as the details of the construction process for the project are yet to be determined, a worst-case scenario was defined using the reference data in BS 5228 for sound power levels generated by construction plant (paragraphs 13.6.2 to 13.6.7). Table 13.6 of the ES provides the typical sound power levels of different construction equipment. Table 13.7 indicates the predicted construction noise levels at certain sensitive receptors.
- 4.431 For the operational phase Tables 13.8 to 13.10 identify the number of people bothered by noise and vibration in 2016 without the scheme, in 2016 with the scheme and in 2031 with the scheme.
- 4.432 Changes in noise level between the two scenarios in 2016 (without the scheme and with the scheme) and between 2016 (without the scheme) and 2031 (with the scheme) are shown in ES Tables 13.11 and 13.12. They are also shown as noise contour maps in Figures 13.6 and 13.7. The total levels of noise for 2016 with the scheme and 2031 with the scheme are shown in Figures 13.4 and 13.5. The noise contour maps and tables demonstrate that a number of properties in the southern part of the Houghton Park Estate and in the north western part of the Lewsey Farm Estate would be affected by higher levels of noise, with a limited number of properties experiencing levels of higher than 3dB(A) and a few (adjoining the southern end of Parkside Drive currently closed to

through vehicular traffic) would see an increase of 5dB(A) or over in noise levels.

4.433 The map and tables also demonstrate that a range of properties to the north western side of the Houghton Park Estate would experience a reduction in noise levels between the 2016 (no scheme) position and the 2031 (with scheme) position - in some cases of more than 5dB(A). The pattern is therefore one of a redistribution of noise levels within the context of an overall trend of increased traffic and traffic noise.

4.434 The results of the night noise assessment are given at paragraphs 13.6.21 to 13.6.23. Noise levels at different representative receptors are provided for 2016 without the scheme (Test 1), 2016 with the scheme (Test 3) and for 2031 with the scheme (Test 2A). The A5-M1 Link is assumed to be operational for all these scenarios. No reason was given for the choice of receptors. The additional information provided in response to (Question 8(i)) of my second round written questions addresses this point, as explained above.

Cumulative impacts:

4.435 No cumulative assessment of the effect of the development together with the HRN1 development was undertaken. Instead the applicant relied on the ES produced for the outline application of the HRN1 development. This assessment apparently concludes that the HRN1 traffic and the Woodside Link traffic combined would not lead to significant effects (paragraph 13.8.3). Conclusions are also reported separately in Chapter 15 of the ES which deals with cumulative and in-combination effects but these are effectively a summary of the discussion in the noise and vibration chapter. The ES noise assessment reveals that an important consideration is the growth in traffic noise resulting from the growth in traffic volumes using the M1 motorway, which in the eastern part of the study area is likely to increase the overall level of background noise over the period of the assessment.

4.436 The applicant's response to my second round written questions (question 8(i) relating to local concerns regarding the cumulative effects of noise concludes that: *'The conclusion present in the ES that the M1 is the dominant source of both daytime and night-time noise at many locations is confirmed. It dominates at all the locations listed in paragraph 3 above, due to the very high traffic flow rate, speed and percentage of heavy vehicles that it carries. Although noise levels will increase by 2031, this is due to the influence of the M1 rather than the proposed new [Woodside Link] road at the locations listed at paragraph 3 of this response.'* The locations referred to are located in the east of the study area and include the following locations:

- Melton Walk;
- Ashwell Walk;
- Therfield Walk;
- Kirton Way;
- Leaside;
- Fareham Way;
- Long MEasdow;
- Gelding Close;
- Pastures Way, and
- Kestrel Way.

Mitigation and monitoring:

- 4.437 Mitigation measures are described in Section 13.5. This section of the ES indicates that as the scheme is designed to stop HGVs using routes through residential areas it will reduce noise levels at sensitive receptors and should itself be considered as a form of mitigation for existing problems. I note that the noise maps referred to above would appear to support this assertion but only for those sensitive receptors located in the northern and western parts of the Houghton Park Estate.
- 4.438 The ES confirms that for the construction phase noise limits for the scheme would be agreed with the relevant Environmental Health Officer. The CEMP contains a range of measures that would be applied in order to minimise noise levels in line with the requirements of BS 5228 (section 5.11 of the outline CEMP). Requirement 8 of the applicant's draft DCO states that all construction work would be undertaken in accordance with guidance detailed in the BS5228:2009 *Code of Practice for Noise and Vibration Control on Construction and Open Sites*, Parts 1 and 2. In addition, all plant, equipment and other machinery used in connection with the construction of the scheme would be equipped with effective silencing equipment or sound proofing equipment to the relevant standard of design.
- 4.439 In relation to the operational phase, various measures are suggested such as speed limits, a noise-reduction surface and noise barriers (the noise modelling assumes that two simple wooden barriers will be in place at different points along the route of the scheme). Further consideration would be given at the detailed design stage to the shape and composition of the noise barriers (paragraph 13.5.3). The ES notes, however, that the effectiveness of any noise barrier would be diminished because of the noise generated by the M1 (paragraph 13.5.4). Three dwellings would also be eligible for insulation under the Noise Insulation Regulations (paragraph 13.7.7).
- 4.440 Under Requirement 8 of the applicant's draft DCO, the scheme cannot begin until a plan showing the locations of the acoustic barriers and the details of the height, design and materials that will be used has been agreed by the relevant planning authority.

Requirement 10 refers to provisions for the use of low noise road surfacing materials on the highway. Speed limits are specified in Schedule 3.

4.441 With regard to night noise levels, the assessment demonstrates that the WHO standard objective will be exceeded. However, as explained above, the Woodside Link would make a limited contribution to this situation. The ES (AD_37) indicates that in order to achieve the WHO standard objective local policy makers would need to address the issue by taking an overall approach which took all local noise sources into consideration, the potential of alternative transport measures and the locations of vulnerable groups such as the elderly (paragraph 13.6.26). The ES also states that the WHO targets are based on the assumption that people want to sleep with the bedroom window open and do not take account any noise insulation in the property such as double glazing (paragraph 13.9.4) and are therefore worst case scenarios.

4.442 No noise monitoring was proposed in the submitted ES noise assessment.

ES consultation, examination submissions and ExA findings:

4.443 In relation to consultation regarding assessment of noise effects, the ES (AD_37) states that the methodology and choice of receptors was discussed and agreed with the Central Bedfordshire Council Environmental Health Officer on 2 May 2013 (see Table 3.1 of the ES). This action is consistent with the recommendations made in the PINS Scoping Opinion regarding the ES published on 7 November 2012.

4.444 Relevant Representations submitted by local residents (e.g. RR_9, RR_11) and by Jephson Homes Housing Association (on behalf of tenants that it considers likely to be affected) (RR_2) reflect strong concerns regarding likely noise impacts in those areas of the Houghton Park and Lewsey Farm Estate nearest to the route of the proposed Woodside Link and to the section of Parkside Drive likely to be re-opened to vehicular traffic and extended via the Parkside Link to join the Woodside Link.

4.445 In my judgement, the Transport Assessment and related noise assessment reviewed previously in this report demonstrate that these concerns are not without foundation but the level of increase in traffic-related noise levels needs to be understood in its proper context. There would clearly be an increase in noise levels around the southern and eastern periphery of the Houghton Park Estate and for properties along the north western and northern edges of the Lewsey Farm Estate. In some cases the change in noise levels would be significant adverse, in particular for those properties close to the elevated section of the Woodside Link (i.e. properties fronting or backing onto Sandringham Drive) and properties in the western section of Wheatfield Road on the Lewsey Farm Estate.

Properties backing onto the section of Parkside Drive to be reopened to traffic would also experience a sharp increase in noise levels from the negligible levels they currently enjoy. However the sharp increase is relative to that negligible level.

- 4.446 Other areas of the Houghton Park Estate and the wider area of Houghton Regis in particular would benefit from reductions in noise levels, which in some cases would be significantly beneficial. The overall pattern illustrated by the noise map at Figures 13.6 and 13.7 of the ES indicates a re-distribution of road noise effects as a result of the diversion of traffic away from other parts of the local road network onto the Woodside Link.
- 4.447 In broad terms the TA and noise assessment also illustrate an overall growth in traffic and traffic noise across the network as a whole to 2031, much (but not all) of which will be related to the effects of traffic growth on the M1 motorway.
- 4.448 In relation to the Parkside Link at paragraph 3.2.1 of the Houghton Regis Town Council Written Representation (WR_6) the HRTC traffic consultants' observation is that the redistribution of noise effects arising from the Parkside Link will involve 'winners and losers' and that overall the effects on those experiencing growth in noise effects are likely to be greater than the benefits gained by others. (That assessment relates in particular to the traffic and noise benefits and disbenefits of the Parkside Link, not to any wider benefits).
- 4.449 To an extent the tables and noise maps submitted in the TA and noise assessment within the applicant's ES indicate broadly that the same could be said for the noise effects of the Woodside Link scheme overall (including the Parkside Link). However, it is important to understand the reasons for this finding and to consider the implications for the Woodside Link application.
- 4.450 It is very clear from the TA and noise assessment, as detailed above, that there is overall growth in traffic across the wider strategic and local highway networks in the area which provides the backdrop against which the specific effects of the Woodside Link proposal must be assessed. In addition, and subject to any changes that may emerge as a result of the future examination of the Central Bedfordshire Development Strategy, the decisions of the Secretaries of State and CBC in relation to the A5-M1 Link and the HRN1 development respectively point to significant local cumulative effects, as the urban fringe of Houghton Regis becomes a new urban extension to the Houghton Regis-Dunstable-Luton conurbation. The wider pattern of sub-regional growth will in due course be reflected in and supported by the emerging Central Bedfordshire Development Strategy and Luton's new development plan.

- 4.451 The question that must be addressed in the light of this statutory provision is whether the adverse effects of the proposed project following mitigation (taken as a whole) outweigh the benefits of the project taken as a whole, having regard to any national and local policy imperatives and priorities.
- 4.452 I have taken account of the LIRs submitted by CBC as LPA and by Luton BC. In relation to noise and vibration, the CBC LIR (LIR_1):
- accepts that there would undoubtedly be significant noise impacts for some houses towards the west end of the site although it is recognised that the ES states that vibration levels would be acceptable (ES 13.6.7);
 - draws general points from the predicted noise contours illustrated in ES Figures 13.4 to 13.7, including the significance of reduced noise levels in surrounding parts of Houghton Regis as a result of the road, the sharp decay in noise levels moving away from the road, and *'the overall raising of actual noise levels by a base noise layer due to the influence of the M1 motorway, which pervades the whole map area'*;
 - concludes from these noise maps, nevertheless, that there would be *'a relatively small number of additionally affected properties'*;
 - highlights a number of specific points including a reference to: *'Figure 13.6 which suggests that about half of the properties fronting Sandringham Drive (before its junction with Windsor Drive) would experience an uplift of about 5dB(A). Houses further away from the new road and away from Sandringham Drive experience increases of up to 2.1dB(A). Isolated houses at Chalton Cross Farm and Osborne House would experience uplifts of 11.6 and 2.4dB(A) respectively (even with the acoustic fence in place in respect of the former). 2031 (with road) [design date] figures away from Sandringham Drive generally increase by up to 1dB(A) over the 2016 (with road) [opening date] figures'*;
 - draws on figures relating to study area properties (in both CBC and LBC areas) in ES paragraphs 13.7.3 and 13.7.5 to note that
 - a) in 2016 there would be a shallow upward curve in the number of houses experiencing improved noise levels as the degree of improvement increases but
 - b) there would be slightly more properties which suffered a worsening noise level and the corresponding curve would rise steeply to 'minor negative' before falling more steeply down to 1.4% of properties that would experience 'moderate adverse' or 'major adverse' noise effects;
 - goes on to highlight that in 2031 a majority of the houses would experience *'negligible increase'* with a minority experiencing up to a *'minor decrease'*. ES Figure 13.7 suggests that much of the Fensome Way housing would experience significant noise increases in 2031 but that this

would be part of a general picture of an uplift in noise throughout the map area, especially east of Poynters Road and Park Road North.

- The LIR regards it as important that only three properties would qualify for insulation under the Noise Insulation Regulations (ES 13.7.7).
- It also notes that ES 13.8 states that there would not be significant cumulative noise effects when the effects of the HRN1 development are taken into account.

4.453 The CBC LIR (LIR_1) does not object to the Woodside Link on noise grounds, including any aspect of the Parkside Link.

4.454 None of the Interested Parties challenged any aspect of the CBC LIR observations in relation to noise and vibration effects except LBC's specific concerns, which are considered below.

4.455 The LBC LIR (LIR_2) deals with noise and vibration effects at section 12. Key points made include:

- The ES states that no piling works will be required during construction of the Woodside link. The sole source of noise impact assessed is from construction traffic and from traffic using the new highway following its completion. Noise predictions are therefore based on traffic model predictions.
- While the general methodology was accepted, LBC challenged the anticipated level of HGV movements, which it regarded as low.
- Noise from HGVs has a particularly low frequency characteristic and is difficult to attenuate. This is likely to affect residents living in the areas adjacent to the Woodside Link, who currently live in a relatively quiet environment.
- Proposed noise barriers may not be as effective as suggested due to the height of the vehicles and the levels of the surrounding land. LBC considered that monitoring of noise and air quality is required both before and during construction, and during operation of the scheme.
- Working hours specified by Requirement 13 of the submitted draft order '*exceed the normally acceptable hours of work conditions.*' LBC therefore suggested that the hours are not extended. LBC highlighted that the ES night noise assessment shows levels to exceed the WHO guidance target level for night noise. It argued that due to the need for HGVs to service properties on the Woodside Industrial Estate there is potential for night time operations involving HGVs '*which has the potential to be a long term impact*'.
- It was also explained that while Paragraph 13.2.16 of the ES refers to former Luton Local Plan policy ENV15, this policy was not saved as its role duplicated that of PPG24, which has subsequently been superseded by the NPPF. Paragraph 123 of the latter document advises that planning policies and decisions should seek to '*mitigate and reduce to a minimum*

other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions'. LBC requests that its environmental protection specialists be consulted regarding 'all issues that relate to the location of such monitoring sites and noise attenuation measures' and regarding the routing of traffic.

- 4.456 The subsequent addendum SoCG between LBC and the applicant agreed the general methodology for the noise assessment, that LBC also withdrew its objection to the scheme on the grounds of likely noise from HGVs once the basis for the HGV element of the traffic predictions that form the basis for the noise assessment had been clarified by the applicant (SoCG_6). LBC maintained concerns over construction working hours and traffic routing, the details of noise barrier design and the need for ongoing noise monitoring.
- 4.457 In response to LBC's LIR and other submissions, the applicant subsequently amended Requirement 13 (Hours of Working) to reduce working hours during construction to those suggested by LBC as being compliant with its standard approach to planning conditions of this type. This amendment is now reflected in the recommended Order.
- 4.458 Finally the requirement for noise monitoring was accepted by the applicant and this is now reflected in Requirement 18 in the recommended Order (Monitoring of the effects of the authorised development), which includes provision for a scheme of monitoring of noise and vibration effects to be submitted to and approved by the relevant planning authority prior to commencement of construction.
- 4.459 The applicant proposes the use of low-noise highway surfacing materials in the construction of the Woodside Link.
- 4.460 In the light of the Luton LIR observations and the concerns raised by local residents and Houghton Regis Town Council, I have considered carefully whether a requirement should be introduced into the Order that would set a maximum level for emissions of noise from construction and operation when measured at the front elevation of the property receptors defined in the ES. However, based on the findings of the noise assessment and the comments of relevant IPs the evidence suggests that up to 2031 noise attributable to the operation of the proposed new Woodside Link (including the associated Parkside Link) would in general contribute a much smaller proportion of the overall noise environment than the M1. Other sources of noise in the area over the period to 2031 would include the construction and operation of the HRN1 development. That conclusion does not in any way undermine the point that specific areas would experience a notable increase in noise attributable to the Woodside Link/Parkside Link, namely areas close to the southern end of

Parkside Drive. There may also be some effects on properties off Sandringham Drive. (And as indicated above, other areas in the north and west of the Houghton Park Estate area would experience reductions in noise, which for some properties would be significant).

- 4.461 In the light of the above finding it appears likely that there could be practical problems in relation to enforceability arising from the ability to distinguish between noise generated by the Woodside Link works and operation and the other sources of noise likely to affect the area over the period of the works and operation of the Woodside Link project. In relation to safeguards against unacceptable levels of noise and disturbance to occupiers of properties off Parkside Drive I therefore recommend reliance upon the monitoring provision now included in the recommended Order at Requirement 19, bearing in mind that the relevant environmental health authorities have powers and responsibilities that may be exercised should a statutory nuisance be identified and that the highway authority would also have discretion to exercise its range of powers in order to manage traffic flows.
- 4.462 Properties off Sandringham Drive would be safeguarded through the 2m noise barriers specified under Requirement 8. It is therefore important that the design of these barriers is effective. Under Requirement 8 the details of the design would be reserved for subsequent approval by the relevant local planning authority. If the Order is made by the Secretary of State it is recommended that the LBC Environmental Health Officer is consulted by CBC regarding that design in order to draw on that authority's experience of barrier designs used on the M1 and to ensure that appropriate and effective barriers are constructed.
- 4.463 The ES noise assessment predictions to 2031 indicate that only three properties would be eligible for noise insulation under the Noise Insulation Regulations. Noise monitoring at the enhanced range of noise monitoring locations would establish whether further properties would need to be included in the provision for insulation and whether the applicant's noise predictions are accurate.
- 4.464 In relation to statutory nuisance it should be noted that the Order includes a defence to proceedings in respect of statutory nuisance at Part 7, Article 36. However, in the event that monitoring demonstrated that the noise predictions are inaccurate and that levels of noise existed sufficient to trigger statutory nuisance procedures, I consider that it would be open to any responsible local authority to take appropriate steps to address that noise nuisance. Depending on whether the nuisance arose during the construction or operational phases this could be achieved either by mitigating it through measures reflected in the CEMP (such as the routing of vehicles during the construction phase) or by permanent traffic management measures if the issue generating

the nuisance related to operational traffic noise. In the event that mitigation was impracticable in the circumstances applicable, qualifying affected properties could be insulated under the Noise Insulation Regulations.

4.465 The draft NNNPS design and noise policy indicates that:

'5.178 The project should demonstrate good design through optimisation of scheme layout to minimise noise emissions and, where possible, the use of landscaping, bunds or noise barriers to reduce noise transmission.

5.179 The Secretary of State should not grant development consent unless satisfied that the proposals will meet the following aims:

- *avoid significant adverse impacts on health and quality of life from noise as a result of new development;*
- *mitigate and minimise other adverse impacts on health and quality of life from noise from the new development; and*
- *where possible, contribute to improvements to health and quality of life through the effective management and control of noise.'*

4.466 In relation to the draft NNNPS policy in relation to good design, on the basis of my assessment of the submitted Works Plan and my observations during accompanied and unaccompanied site visits, I am satisfied that the proposed Woodside Link has been routed through what is currently green space or agricultural land as far away from residential properties as can reasonably be achieved while still meeting the project's stated objectives. Construction noise would be managed through measures to be included in the CEMP and the routing of construction traffic. Operational noise would be minimised through the use of low noise highway surfacing materials. A landscaping and ecology management plan is also proposed and details are required to be provided and implemented under Requirement 5 of the Order.

4.467 In addition construction impacts would be relatively short term. Although it is accepted that there may well be cumulative effects when the construction of the A5-M1 Link and HRN1 development are taken into account, on the basis of the ES information available (including the ES for the HRN1 scheme) that the construction noise effects should be kept to a manageable level and would not be so adverse as to justify refusal of the Woodside Link application.

4.468 In relation to the three aims set out in the draft NNPS policy at paragraph 5.179 of that document, as quoted above, neither of the two environmental health authorities have sought refusal of the application on noise grounds, although LBC has sought involvement in the specification of the design details of the noise barriers proposed. These details are to be agreed by the relevant LPA under Requirement 8 included in the recommended Order.

4.469 On the basis of the noise assessment information before me I accept that the overall level of noise in the area would be increased and that a limited number of properties would experience a significant increase in noise this would be from a very low level. However, as I have concluded above in relation to the TA, the predicted level of traffic using the Parkside Link would be comparable to levels of traffic using the existing distributor roads within the Houghton Park Estate. Following consideration of the traffic figures for these roads, together with observations made on unaccompanied site visits - and given the proposals for speed restrictions included in Schedule 3 to the Order - I do not consider that the predicted level of noise and disturbance attributable to the predicted traffic movements would be sufficient to justify either omission of the Parkside Link or refusal of the Woodside Link scheme as a whole. Traffic and noise monitoring would be undertaken in response to Requirements 18 and 19 in the recommended Order (including monitoring of traffic using the Parkside Link/Parkside Drive and noise effects on this area). As discussed in relation to traffic effects, under Requirement 19 consultation would be undertaken on additional traffic management measures should traffic levels exceed the predicted level on Parkside Drive.

4.470 Other properties in the northern and western areas of the Houghton Park Estate are likely to experience significant reductions in noise compared to existing levels, albeit against a background of increased noise levels across the area as a whole, only part of which would be attributable to the Woodside Link (including the Parkside Link).

4.471 Having regard to the above points and subject to the mitigation measures provided for in the Order, I conclude that, on balance, none of the noise effects would be so adverse as to justify refusal of the application.

Socio-economic impacts (including community and private assets)

4.472 Apart from the assessment of community and private assets included at Chapter 11, no other socio-economic assessment was included as part of the submitted ES. Luton BC's Relevant Representation (RR_7) indicated that the Borough Council *'requires an economic appraisal and social distribution assessment to be provided in line with the Government's Transport Appraisal Guidance'*. I followed up this point in written questions (PrD_4) requesting that the applicant submit a summary socio-economic assessment, which was subsequently submitted (R2Q_2).

4.473 In relation to community and private assets Chapter 11 of the ES provides an assessment of the effects of the project.

Methodology:

- 4.474 A number of different topics are covered in this chapter of the submitted ES which required different methodologies. In each case the approach selected appears to be based upon guidance set out in the Design Manual for Roads and Bridges.
- 4.475 No particular methodology is set out for the assessment of demolition in the Design Manual for Roads and Bridges. The ES only indicates that one set of buildings including a dwelling may be demolished (Chalton Cross Farm). The HRD consortium has an interest in this farm and it appears from the ES most likely that this demolition would be triggered by the HRN1 development rather than the Woodside Link project, due to the extent of likely cumulative effects generated by HRN1 when added to those of the Woodside project.
- 4.476 The method adopted for assessment of effects upon agricultural land quality and local farming operations is based on DRMB guidance at Section 3, Part 6 as far as is practicable (the published guidance is now out-of date in referring to assessments by public bodies that no longer exist) (paragraph 4.1 of ES Technical Appendix 11.1 (AD_38)).
- 4.477 The assessment of effects on development land is based on paragraphs 5.1 to 5.10 Part 6 of DRMB guidance. Assessment of effects on community assets is based on DRMB Part 6 paragraphs 4.1 to 4.8 in relation to loss of open space and Part 8 sections 5 to 8 for effects on access to local facilities.
- 4.478 The study area was defined as a corridor 500m to either side of the proposed route, together with any land beyond that corridor which was within the same ownership at the time of assessment and also any community facilities beyond that distance that may be affected by the scheme (paragraph 11.1.6). *Prima facie* these parameters do not appear unreasonable in all the circumstances of the application.

Baseline:

- 4.479 For agricultural land quality and farming operations a detailed technical evaluation of the quality of the soils is provided in Technical Appendix 11.1, Section 3 (AD_38). This assessment includes the Agricultural Land Classification for the areas of land involved. A qualitative description of the agricultural business that would be affected by the scheme (Chalton Cross Farm) is provided at Section 4.2 of the Appendix.
- 4.480 Community assets identified and assessed include areas of public open space, informal open space, doctors' and dentists' facilities, schools, shops and libraries, as described in paragraph 11.2.5 of the ES and also as shown on Figure 11.1.

4.481 Two counts of pedestrian and cycle movement were undertaken at locations shown on Figure 11.1 in 2010. The locations were apparently chosen to get an idea of the number of movements across the area covered by the scheme (paragraph 11.2.6). No Interested Party sought to challenge the selection of survey points used as the basis for the non-motorised user surveys undertaken. The results of the counts are shown in Table 11.1 of the ES.

Impact assessment:

4.482 The effects of the project on local agriculture are summarised in Table 4.1 of Technical Appendix 11.1 (AD_38) and further detail is provided in Section 4.4 of the Appendix. It should be noted that the land take since the scheme was finalised after Technical Appendix 11.1 was written (paragraph 11.4.3 of the ES. The latest figures for land take are provided at Table 11.2 of the ES. Despite the increase the significance of the effect is still assessed as 'moderate adverse'. Other effects are assessed as 'negligible'.

4.483 The anticipated loss of public open space is described qualitatively in ES paragraph 11.4.6. In addition to the replacement land proposed in the DCO application (reflected in the s131/132 application submitted to the SoSCLG by the applicant) the ES includes proposals to enhance the management of the open space that will be retained. The ES concludes that the open space is a community asset of high sensitivity but that, taking the mitigation measures into account, the change would only involve 'slight adverse' effects. Figure 2.-14 shows the areas of open space that will be lost, and those that would be retained and the replacement open space.

4.484 Regarding access to community assets the ES indicates that there would be no major disruption to existing routes or to the ability of people to access facilities (ES paragraph 11.4.17). This assessment relies upon the provision of mitigation in the form of Toucan crossings. However, when the DMRB criteria for assessment of severance or relief of severance are applied, severe effects are identified (see ES Table 11.3).

4.485 Paragraphs 11.4.20 to 11.4.24 discuss the value of the methods in the DMRB guidance and put forward reasons why the effect should not be regarded as severe. The ES states that if the scheme is considered in combination with the Houghton Regis North development (HRN1) the effects identified would not lead to any additional effects that would not arise from the developments considered separately (paragraph 11.4.28). This approach to assessment of cumulative effects focusses upon synergistic effects that would arise as a result of the Woodside Link and other developments. No party challenged the approach taken by the ES nor the conclusions reached in this regard.

Mitigation and monitoring:

- 4.486 Mitigation measures to address effects on community assets and above/below ground services are described in Section 11.3 of the ES. These are:
- the provision of crossings;
 - diversions of public rights of way (PROW);
 - the provision of replacement public open space for the land to be lost to the proposed new link road;
 - management to enhance the existing areas of open space that would be retained;
 - transfer of 132kV overhead electricity lines to an underground route;
 - full survey of all underground services in the vicinity of construction works to be carried out in advance of works; and
 - if necessary service diversions to be carried out.
- 4.487 Diversion and protection of public utility apparatus is referred to in the description of authorised works set out in Schedule 1 to the draft DCO for which consent is sought.
- 4.488 Mitigation of the effects upon the Chalton Cross Farm business is referred to in paragraph 11.4.5 of the ES. The mitigation measures envisaged in the ES are:
- replacement of farm buildings to be lost as a result of the proposed new road with buildings of the same capacity and function, prior to the demolition of the existing buildings;
 - reconnection/diversion of drainage systems as necessary; and
 - provision of a new access route from the new road to the fields.
- 4.489 No monitoring of the proposed mitigation of effects on community and private assets was provided for in the submitted draft Order.
- ES consultation, examination submissions and ExA findings:
- 4.490 National Grid's relevant representation (RR_12) indicated that NG was still in discussion with the applicant regarding potential impacts on the Group's existing apparatus (electricity apparatus owned and operated by National Grid Electricity Transmission plc and gas apparatus owned and operated by National Grid Gas plc). The submission outlined the requirements NG wished to be included in the DCO in order to protect its interests.
- 4.491 No representation or submission was initially made by Eastern Power (part of the UK Power Group), although the applicant confirmed in response to Q14(iv) in ExA first written questions (PrD_4) that the apparatus of this undertaker was affected by the authorised works. Eastern Power operates the 132kV overhead

line proposed to be relocated underground by the application, together with local electrical distribution infrastructure.

4.492 I wrote to Eastern Power under Rule 17 towards the end of the examination on 5 March 2014 to seek clarification of Eastern Power's position in relation to the Woodside Link application. The company's parent, UK Power, responded (R17_2_8) confirming that:

'In response to Question 8 on the attached letter, I confirm that UKPN has reached agreement with the Applicant on a draft set of provisions to safeguard UKPN's interests in so far as they are affected by the Woodside Link DCO. The parties are now in the process of executing a formal compromise agreement to supplement the protective provisions in the DCO, which we expect to complete within the next few days.'

4.493 No further communication was received from UK Power or Eastern Power before close of examination. The applicant subsequently included wording for Protective Provisions agreed with NG and UK Power Networks at Schedule 10 to the Order. NG withdrew its representation before the close of examination following the agreement of the protective provisions (AS_41).

4.494 No other party has objected to any of these provisions and on the basis of the information available this aspect of the proposals seems to have been resolved satisfactorily.

4.495 While Luton Borough Council (LBC) acknowledged that the Woodside Link scheme had been revised to take account of concerns that LBC had previously expressed, it sought a social and economic appraisal of the scheme in line with the Government's Transport Appraisal guidance. In light of the absence of relevant information in the ES and in view of the fact that amongst the objectives presented for the Woodside Link were socio-economic objectives related to regeneration, economic development and growth, including new employment, I requested submission by the applicant of a summary socio-economic appraisal. This summary was subsequently submitted by the applicant (R2Q_2) and is considered in relation to socio-economic effects (see below).

4.496 The brief qualitative summary socio-economic assessment confirms that:

- there are elements of socio-economic deprivation in the area including the Houghton Park Estate;
- the proposed Woodside Link would improve access to jobs and services elsewhere in Dunstable and Luton for residents in the area adjoining the Woodside Link, including the Houghton Park Estate;
- the construction of the Woodside Link would relieve traffic congestion on the A5 trunk road in the centre of Dunstable,

- enabling regeneration measures that would help to stimulate new investment and job creation in the town centre;
- improvements would be encouraged in Houghton Regis Town Centre, supported by a reduction in through HGV traffic as a result of the Woodside Link;
- the Link would also support measures to stimulate employment on the Woodside Industrial Estate, where a number of sites remain vacant or underused and where a Local Development Order is being promoted by CBC in its role as LPA, by improving access to the Motorway and trunk road network including the M1 via the new Junction 11A and the A5-M1 Link by means of the same junction;
- the Link would provide essential access infrastructure to underpin the strategic mixed use HRN1 development. The HRN1 planning application demonstrates that the HRN1 scheme incorporates a significant amount of new housing, a large new distribution centre next to the M1 and retail facilities as well as open space. It would therefore provide new employment in distribution and retail as well as new housing;
- there would be a degree of severance of local residents from social and health facilities as a result of the construction and operation of the new road, to be mitigated by new highway crossing facilities and footpath/cycleway diversions.

4.497 No Interested Party challenged the content of the summary socio-economic assessment. On the basis of the information submitted to the examination, the range of examination discussions and submissions and my unaccompanied and accompanied site visits, I accept that this represents a reasonable synopsis of the socio-economic effects of the scheme.

4.498 Based on the socio-economic assessment information submitted to the examination by the applicant, the Woodside Link is clearly a project that makes economic sense for the residents and businesses of Houghton Regis, Dunstable and West Luton. Having regard to the nature of the authorised works, its direct employment implications as a project appear likely to be less significant than the contribution it would make to the wider economy by providing a greatly improved connection between the substantial inner employment area of Dunstable (Woodside Industrial Estate) and the motorway network. Apart from any benefit to that particular industrial estate it would also reinforce the network accessible from a number of other employment areas in Dunstable and west Luton and to Dunstable town centre.

4.499 Evidence was submitted by the applicant and HA (SoCG_1) and by the HRDC (WR_12) that the Woodside Link is critical to successful delivery of the strategic HRN1 development. Paragraph 1.5 of the HRDC's Written Representation confirms this point:

'HRDC is fully supportive of the proposed WSL in principle and views it as critical to the successful delivering of the full planned investment in infrastructure and development to provide much needed jobs and homes for the local population, and resources and infrastructure capacity for local and new potential businesses wanting to locate within the CBC area.'

- 4.500 The Written Representations and responses to ExA written questions submitted by HRDC and by the HA, together with oral submissions made at the Issue-Specific Hearing held on 21 January 2014 (HG_8 to HG_10), indicate that these parties are aware of the details of the Woodside Link application and have assessed its likely effects carefully as part of their wider consideration of the substantial investments proposed.
- 4.501 The SoCG between the applicant and the HA (SoCG_1) confirms the complex interrelationships and interactions between the A5-M1 Link, the HRN1 development and the Woodside Link project. The Woodside Link is essential to the full delivery of the HRN1 project. The HRN1 development in turn would provide a significant financial contribution towards the cost of the A5-M1 Link that would bring forward the timing of its construction beyond the priority it might otherwise be accorded in the Government's transport programmes. Finally, the A5-M1 Link provides an important component of the London-Scotland Route Enhancement Strategy and must be completed before the Woodside Link can come into operation (because the WL depends for its operation on the construction of Junction 11A to the M1 which forms part of the A5-M1 Link project).
- 4.502 The applicant's socio-economic assessment does not take into account some of these wider indirect benefits to which these interdependencies point (such as the benefits associated with acceleration of the S5-M1 Link). It therefore tends to understate the overall potential socio-economic benefits of the Woodside Link scheme.
- 4.503 On a specific point it was indicated by the applicant in the ISH discussion on 21 January 2014 (HG_8 to HG_10) that the Parkside Link would create potential to re-establish improved public transport routes between the Houghton Park Estate and other areas of Dunstable and Luton, subject to the agreement of the relevant bus operators. If the opportunity provided by the Parkside Link were to be taken up by the bus operators it would appear likely that additional socio-economic benefits would be experienced by residents of the estate.
- 4.504 There would be significant effects in the short term upon the PRoW network in the area, including effects upon both the footpath and cycle route during the construction phase, although it appears that the applicant would seek to keep this to a minimum consistent with delivery of the project. However, in the longer term

operational phase the severance evidenced in the ES NMU assessment would to some extent be offset by improved maintenance, including the maintenance of the upgraded and replaced areas of public open space on either side of the Woodside Link.

- 4.505 I also note from observations made on accompanied and unaccompanied site visits that the wedge of open scrub land between Sandringham Drive on the Houghton Park Estate and properties on the Lewsey Park Estate is crossed at three points in total. Pedestrian access to much of the land is precluded by the dense low level scrub vegetation and (in relation to the eastern part of the open wedge) by the line of Houghton Brook. While there would be some disruption to footpath links and the National Cycleway during the period of construction I accept that the applicant would ensure this disruption would be kept to a minimum.
- 4.506 Following completion of construction the Woodside Link scheme would maintain the three primary links through the inclusion of signalised pedestrian crossing points, albeit that diversions would be involved where appropriate to accommodate the design of the new road. Having regard to this point, notwithstanding the DMRB methodology applied, the severance due to the new road identified in the ES would not be substantially greater than the severance that exists at the moment. This is due to the physical condition of the open space land concerned, the density and type of vegetation that occupies much of it and the line of the brook.
- 4.507 The loss of parts of the mainly unmanaged green space between the Houghton Park and Lewsey Farm Estates to the new Woodside Link and Parkside Link roads is proposed to be offset by creation of a substantial area (approximately 6 hectares) of new public open space along the northern edge of the Woodside Link, following Houghton Brook, and by upgrading and improving the management of the existing green space areas to be retained on either side of the south western section of the new road scheme. The new green space would link into a wider network of green space proposed in the HRN illustrative masterplan submitted in support of the HRN1 outline planning application.
- 4.508 The applicant has submitted a s131/132 application to the Secretary of State for Communities and Local Government for his determination in relation to the loss and replacement of open space. It is for the SoSCLG to consider whether to approve that application, but it is apparent that if that consent is not forthcoming the Woodside Link Development Consent Order could not be made by SoSfT as I have recommended.
- 4.509 Having regard to the evaluation of the applicant's socio-economic and community and private assets assessments set out above, I conclude that the Woodside Link would contribute a range of

significant and positive economic and social effects and, on balance, that the Parkside Link could also contribute to the economic and social well-being of local residents on the Houghton Park Estate.

Overall conclusion regarding adequacy of the ES and environmental impact assessment submitted by the applicant

- 4.510 In the light of the above review of the assessment of environmental impacts undertaken by the applicant and provided within the ES documentation I conclude in general terms as follows.
- (i) The methodologies used in the ES are for the most part based on the standard guidance set out in the Design Manual for Roads and Bridges as would be expected for a transport scheme. However the reporting of the results of the ES is sometimes inconsistent and/or incomplete. As a result I needed to ask a series of written and oral questions to seek additional information and to clarify a number of matters that were relevant and important to the examination. The applicant responded positively to my requests for additional information.
 - (ii) The ES often relies on the conclusions of other documents, notably the ES for the HRN1 document, but these documents were not summarised or otherwise included with the application documents. This is particularly the case for the assessment of cumulative effects where the approach was simply to rely on the conclusions of the HRN1 ES.
 - (iii) The assessment of effects is for all topics based on the assumption that the mitigation measures described in the ES will be delivered. However the requirements in the submitted draft DCO did not cover all the mitigation measures identified (for example mitigation of effects on the wider highway network). This point raised questions regarding the certainty of delivery which I considered during the examination.
 - (iv) The ES did not include detailed information regarding the economic and social effects of the scheme, despite the fact that some of the most prominent declared objectives of the project are framed in economic and social terms. The result was that clarification had to be sought through an ExA request for submission of a summary socio-economic assessment (R2Q_2). The information provided was in the main qualitative and the assessment could have presented a stronger range of quantified tabular or map-based information that would have assisted evaluation.

- 4.511 Given that additional information was provided by the applicant during the examination in order to address the specific points identified above, none of the qualifications identified here are sufficient to conclude that the ES is so inadequate as to justify refusal of the application.
- 4.512 It should also be noted in relation to Habitats Regulations Assessment that no significant effects were identified by the ES. Neither Natural England nor any other Interested Party raised any objections or significant concerns regarding the habitats regulations aspects of the application. NE confirmed in its Relevant Representation that no internationally designated sites would be affected.
- 4.513 I am satisfied that all biodiversity matters have been addressed and there are no transboundary matters that would argue against the Order being confirmed.
- 4.514 No significant effects are anticipated in relation to statutory sites and international sites. Other ecological and habitats effects are also limited.
- 4.515 Having regard to the points discussed above I am satisfied that there is no requirement for the Secretary of State to undertake an 'appropriate assessment' under the UK Habitats Regulations and accordingly do not consider the issuance of a Report of the Impacts on European Sites (RIES) to be necessary.
- 4.516 Although at the outset of the examination I identified the 'mitigation of any significant ecological effects' as a principal issue in my Rule 8 letter (PrD_4), it became clear during the early stages of the examination that in fact the points arising were relatively straightforward and were adequately addressed in the terms of the Order. Accordingly this report does not dwell on the detail of those deliberations.
- 4.517 The ES considers alternatives at Section 2.8 of the main text (AD_37). A number of route alignments were considered. Section 2.8 provides a clear description of the process that was undertaken to select the proposed route but does not summarise any of the results of the public consultation or environmental assessments that influenced that choice. However the range of options was constrained by the relationship to nearby residential areas and to the points at which the road scheme could connect to the existing and proposed highway network. It is also clear that the route was in practice constrained by the need to take account of the development proposals being brought forward by the HRDC.
- 4.518 Apart from the Parkside Link element considered in detail above, no Interested Party raised substantive objections to the choice of route for the Woodside Link. Having regard to all the circumstances of the case, I find that the choice of route

represents a reasonable response to the limited options available and the constraints that must be taken into account. The latter include the position of Houghton Brook and associated flood risk, noise and air quality effects, the need to connect to identified points on the existing and proposed highway network and the need to align the route with the HRN1 development proposed on adjoining land.

- 4.519 Mitigation measures are described in each topic chapter. The assessment of the project effects take into account the mitigation measures proposed for the Woodside Link. The ES therefore assess the significance of the residual effects after the proposed mitigation is put in place.
- 4.520 In response to ExA Round 1 (PrD_4) and 2 (PrD_9) written questions (e.g. Q29 in round 1 written questions) and oral questions at the second Issue Specific Hearing (HG_8 to HG_10) the applicant provided a range of additional information regarding the extent and level of mitigation to be delivered. Examples include the schedule of objectives and measures of success in relation to the proposed Landscape and Ecology Management Plan (LEMP)(R2AP_12) and the traffic-related measures (including weight limits and speed limits) included directly within the Order Schedules or otherwise in its transport-related submissions where related to the wider network. The mitigation measures set out in the submitted Order are summarised in the schedule submitted by the applicant in its response to my first round questions (R1Q_2).
- 4.521 Having regard to the review of the ES (AD_37) (as supplemented by the information provided during the examination) contained in this chapter of the report, I conclude that, as supplemented, the ES provides an adequate basis for the assessment of the environmental impacts of the Woodside Link project and for decision-making by the Secretary of State.

Overall conclusion regarding the planning case for the project

- 4.522 In the previous section I concluded that the ES provides an adequate basis for consideration of the environmental effects of the proposed project and that the application is in broad conformity with the relevant adopted national and local planning and transport policies, subject to the detailed consideration of Green Belt policy matters included earlier in this report.
- 4.523 The socio-economic benefits of the proposed project are substantial, clear and address the objectives of national Government transport policies and the emerging Draft Development Strategy for Central Bedfordshire.
- 4.524 In addition to its socio-economic benefits, it is also clear that the project would create local environmental impacts, both negative

and positive. However, on the basis of the information provided in the ES and the other application documents, together with all the relevant information submitted during the course of the examination, subject to the mitigation provisions set out in the recommended Order and discussed above, no aspect of the assessed environmental effects of the development proposed nor the information submitted to this examination regarding any other relevant matter is such as to preclude the grant of consent for the proposed Woodside Link through the making of the Woodside Link Development Consent Order.

- 4.525 Having regard to all the information and evidence submitted to the examination I conclude that the balance between benefits and disbenefits falls clearly in favour of the scheme proposed. The planning case for the development is therefore made and development consent should be granted for this DCO application.

5 COMPULSORY ACQUISITION

5.1 The draft DCO submitted with the application, described in this report as the 'submitted draft Order', (AD_8) contained provisions authorising compulsory acquisition, as did subsequent drafts submitted during examination. No submissions of any kind were made by IPs or by Affected Persons in relation to the compulsory acquisition provisions included within the Order, the Funding Statement or any aspect of the funding of the scheme as a whole. However, the Secretary of State will still wish to be satisfied that the statutory requirements justifying compulsory acquisition have been met. These are considered below.

The Requirements of the Planning Act 2008

5.2 The Department for Communities and Local Government has published guidance on the use of PA 2008 compulsory acquisition powers – '*Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land*' (the CLG Guidance).

5.3 Section 122 (2) of the PA 2008 requires that the land to be acquired must be either:

- required for the development to which the development consent relates, or
- required to facilitate or is incidental to the development,
- replacement land that is to be given in exchange under sections 131 and 132 of the Act.

5.4 The land to be taken must be more than is reasonably required and must be proportionate.¹⁴

5.5 Section 122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. The CLG Guidance¹⁵ states that the Secretary of State will need to be persuaded that there is compelling evidence that the public benefit derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is acquired. It also recognises that '*In practice, there is likely to be some overlap between the factors that the Secretary of State must have regard to when considering whether to grant development consent, and the factors that must be taken into account when considering whether to authorise any proposed compulsory acquisition of land*'.¹⁶

5.6 Section 123 requires that compulsory powers can only be granted if either:

¹⁴ Guidance related to procedures for compulsory acquisition DCLG February 2010

¹⁵ Guidance related to procedure for the compulsory acquisition of land DCLG September 2013. paragraph 13

¹⁶ CLG Guidance paragraph 15

- The application for the order included a request for compulsory acquisition of the land to be authorised, or
- All persons with an interest in the land consent to the inclusion of the provision, or
- The prescribed procedure has been followed in relation to the land.

5.7 In this case the application for the DCO included a request for compulsory acquisition of the land to be authorised.

5.8 A number of general considerations must also be addressed either as a result of following paragraphs 8 to 10 of the Guidance or in accordance with legal duties on decision-makers:

- all reasonable alternatives to compulsory acquisition must be explored
- the Applicant must have a clear idea of how it intends to use the land and to demonstrate that there is a reasonable prospect that funds for acquisition will become available; and
- the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

5.9 The extent to which the Woodside Link Development Consent Order application meets tests set out at s122 and s123 of the PA 2008 and is satisfactory in terms of the general considerations that must be addressed is considered below.

The Request for Compulsory Acquisition Powers

5.10 Although there is no explicit request for the inclusion of compulsory acquisition powers, this is implicit in the application documents:

- The Application Form (AD_1) question 13 response confirms that 'Compulsory acquisition of land or an interest in land or right over land' are issues that are relevant to the application
- The draft development consent order submitted with the application (AD_8) contains provisions relating to compulsory acquisition (Articles 19 to 32)
- the Statement of Reasons for Compulsory Acquisition (SoR)(AD_10), explains the reasons for the compulsory acquisition powers sought as part of the Order;
- the Funding Statement (AD_11) explains how the compulsory acquisition of land, acquisition of relevant new relevant property rights, extinguishment of existing rights and any relevant compensation for injurious affection would be funded;
- the Book of Reference (BoR), includes schedules specifying the plots of land to be acquired and over which new rights are to be secured or existing rights extinguished. There are

five volumes identifying relevant plots in schedules for each of the two local authority areas, making ten BoR volumes in all;

- the Land Plans (AD_3), which show the boundaries of each of the plots referred to in the BoR. These plans illustrate in different colours the land to be acquired (freehold), land required for construction purposes and for the acquisition of new rights and land required for construction purposes only.

- 5.11 The land that is proposed to be acquired compulsorily is located in the administrative areas of Central Bedfordshire Council (CBC) and Luton Borough Council (LBC). Part lies between Houghton Regis and the M1 Motorway south of Junction 12 and is proposed to be acquired for the northern and eastern section of the project. This land is mainly agricultural land and associated buildings, with some open space land. Part lies to the south and west. This latter area is a narrow, elongated wedge of land extending between the two former social housing areas (now mixed tenure) of the Houghton Park and Lewsey Farm Estates.
- 5.12 Part of the land to be acquired compulsorily is intended to provide replacement land for open space that would be lost to the new Woodside Link. This area is located along Houghton Brook to the east of the existing abandoned busway between the Houghton Park and Lewsey Farm housing Estates and is currently used as grazing land.
- 5.13 The land that is required for construction purposes and for the acquisition of new rights and the land that is required only for construction purposes adjoins and is broadly contiguous with the land that is to be acquired compulsorily, all the plots sitting within a linear corridor required to enable construction and/or operation of the proposed project. A substantial area to the east side of the highway corridor is required to provide the borrow pit needed to supply material for the embankments needed to elevate the highway above the floodplain and works associated with the highway including earth mounding.
- 5.14 The land to be acquired is generally fairly flat, although the narrow wedge in the south-west part of the proposed site does include the very shallow valley of the Houghton Brook which includes modest slope from Wheatfield Road in the Lewsey Farm Estate to the south towards Sandringham Drive in the Houghton Park Estate to the north. The latter topographic feature necessitates the retaining structures, ramp and steps proposed to accommodate the Woodside Link and the associated pedestrian crossing facilities proposed in that section of the scheme.

The Purposes for which the Land is Required

- 5.15 The Statement of Reasons (SoR) (AD_10) explains the applicant's purpose in seeking compulsory acquisition at paragraph 1.6:

'The compulsory acquisition powers in relation to the land are necessary to enable the construction of the new road, together with associated development comprising new local road connections, new footways, cycleways, footways, the diversion of Houghton Brook, the construction of drainage attenuation ponds, a borrow pit and extensive landscaping.'

- 5.16 The specific purposes for which each plot or parcel of land subject to outright compulsory acquisition is required are set out in Table 1 in section 6 of the SoR.
- 5.17 Schedule 7 to the Order lists the land over which specific rights are to be acquired or created. Paragraph 6.4 of the SoR states that: *'The rights to be acquired or created are necessary for the purposes of constructing, inspecting and maintaining the works'*.
- 5.18 Schedule 9 lists the land for which temporary possession is required by the applicant. The specific purposes for which this land would be used are stated in the Schedule. In summary these include provision of essential works, site compounds, storage areas, working space to install the drainage ponds, and to carry out diversion works to a number of electricity lines. Paragraph 6.5 of the SoR emphasises that: *'The use of this land is essential to the construction works that form part of the development.'*
- 5.19 The provisions of the proposed Order that would authorise outright acquisition land or interests or rights over land are contained in Article 19, which provides that:
- '19.-(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental, to it or as replacement land.
(2) This article is subject to paragraph (2) of article 21 (compulsory acquisition of rights) and article 27 (temporary use of land for carrying out the authorised development).'*
- 5.20 In addition to the powers contained in Article 19, other compulsory powers are sought in the DCO which similarly relate to land and which might or would interfere with property rights and interests if the Order were to be made by the SoS. These additional powers are as follows.
- 5.21 Article 21 - Compulsory acquisition of rights. Paragraph 3.3.1 of the SoR explains that: *'This article allows for the acquisition of rights over land, and for the imposition of restrictive covenants affecting land, as may be required for any purpose for which land is compulsorily acquired under article 19.'* For land listed in column 1 of schedule 7, Article 21(2) restricts the purpose for which such rights may be acquired, or restrictive covenants may be imposed, to the purpose listed in column 2 of that schedule.

- 5.22 Article 22 - Private rights. Article 22 provides for the extinguishment of:
- private rights over land subject to compulsory outright acquisition (Article 22(1));
 - private rights over land subject to the compulsory acquisition of rights, or subject to the imposition of restrictive covenants, to the extent that continuing the existing rights would be inconsistent with the right acquired or restrictive covenant imposed (Article 22(2)); and
 - private rights over land belonging to the Council and which activity authorised by the DCO would interfere with or breach (Article 22(3)).
- 5.23 Paragraph 6.6.1 of the SoR states that the specific purpose for Article 22 is to *'facilitate construction by ensuring that existing private rights over so much of the land that is subject to outright acquisition under article 19 or acquisition of rights under article 21 are extinguished or suspended so as not to interfere with the construction and operation of the Scheme but such private rights will continue if the Council decides that they can be exercised without interfering with the Scheme.'*
- 5.24 Article 24 - Acquisition of subsoil or airspace only. This article would allow the applicant to acquire only the subsoil or airspace over any land over which it has powers of compulsory purchase under article 19, for the same purposes for which it may acquire the whole of the land under that article.
- 5.25 The specific purpose for Article 24 identified at paragraph 6.6.2 of the SoR (AD_10) is similar to the explanation given immediately above. In relation to this article it is noted that the scheme involves the undergrounding of overhead electricity lines and the installation of drainage systems and structures.
- 5.26 Article 26- Rights over or under streets. This article would allow the applicant, where required for the construction of the scheme, to use the subsoil or airspace under or over any street. Paragraph 3.3.6 of the SoR makes it clear that the powers would not extend to a subway or underground building nor to cellars or similar structures forming part of a building fronting the street (Article 26(3)) but would still interfere with property rights.
- 5.27 The specific purpose attributed by paragraph 6.6.3 of the SoR to Article 26 is similar to the explanation given above.
- 5.28 Article 27 - Temporary use of land for carrying out of the authorised development. The SoR explains at paragraph 3.3.7 that this article would enable the applicant to take temporary possession of the land specified in columns 1 and 2 of Schedule 9 to the DCO and any other Order land provided the applicant has not made a declaration to vest the land itself or entered the land

following a notice of entry in advance of acquisition. Article 27(1)(b)-(d) would enable the applicant to remove buildings and vegetation from the land, construct temporary works (including accesses) and buildings on the land, and construct permanent mitigation works.

5.29 Paragraph 3.3.9 of the SoR (AD_10) makes it clear that:

'The period for temporary possession would be subject to time limits under article 27(3). Unless the owner of the land agreed the Council could not remain in possession: -

(a) as regards any land specified in columns 1 and 2 of Schedule 9 to the DCO, for more than a year after completing that part of the Scheme specified in relation to that land in column 4 of Schedule 9; and

(b) as regards any other land within the Order limits, for more than a year after completing the work for which temporary possession was taken (unless before the end of that period the Council has made a vesting declaration or served notice of entry).'

5.30 The specific justification for Article 27 given in the SoR at paragraph 6.6.4 states that this article would ensure that appropriate work sites, working space and means of access would be available for use during the construction period. It also states that the article would provide space for mitigation and any other permanent works.

5.31 Article 28 - Temporary use of land for maintaining the authorised development. Paragraph 3.3.11 indicates that this article would enable the applicant to take temporary possession of any land within the limits of land to be acquired or used which is reasonably required for the purpose of maintaining the scheme, at any time during the maintenance period (i.e. five years from the date on which that part of the authorised development is open for use). Article 28(1)(b) would permit the applicant to construct temporary works and buildings on the land so far as reasonably necessary for maintenance works.

5.32 Paragraph 3.3.13 of the SoR makes it clear that the applicant would not be able to take temporary possession of a house, nor of a garden belonging to a house, or any other occupied building (Article 28(2)). Article 28(4) provides that the applicant would only be able to remain in possession of land under the article for as long as may be necessary to carry out the maintenance of the part of the scheme for which possession was taken. Also, before giving up that possession, the applicant would be required to remove all temporary works and restore the land to the owner's reasonable satisfaction (Article 28(5)).

- 5.33 The specific purpose for Article 28 identified at paragraph 6.6.5 of the SoR is to ensure *'that the land is available for maintenance works during the five year maintenance period after construction.'*
- 5.34 The BoR specifies the plots of land that are proposed to be acquired compulsorily. These are shown in the Land Plans (AD_3).
- 5.35 The general description of the works and associated development proposed is set at paragraph 1.5 of the SoR (AD_10). The BoR includes Plots where the applicant considers that owners or occupiers may have a range of interests:
- Plots for which Category 1 and Category 2 persons as defined under the PA 2008 (as amended) are interested are set out in BoR Part 1. A person is within Category 1 is the applicant, after making diligent inquiry knows that the person is an owner, lessee, tenant (whatever the tenancy period) or occupier of the land in question¹⁷. A person is in Category 2 if the applicant, after making diligent inquiry, knows that the person-
 - (a) is interested in the land
 - (b) has power-
 - (i) to sell or convey the land
 - (ii) to release the land¹⁸
 - Part 2 of the BoR lists plots of land for which an identified Category 3 person may have an interest. A person is within Category 3 if the applicant thinks that, if the order as sought by the application were to be made and fully implemented, the person would or might be entitled-
 - (a) as a result of the implementing of the order,
 - (b) as a result of the order having been implemented, or
 - (c) as a result of use of the land once the order has been implemented,
 to make a relevant claim under Part 1 of the Land compensation Act 1973.
 - Part 3 of the BoR lists plots for which an identified person is considered by the applicant to have an easement or right over land.
 - Part 4 of the BoR specifies the owner of any Crown interest in the land which is proposed to be used for the purposes of the order for which application is being made¹⁹.
 - Part 5 of the BoR specifies land-

¹⁷ S57(1) Planning Act 2008 as amended.

¹⁸ S57(2) Planning Act 2008 as amended.

¹⁹ Regulation 7(1)(d) Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009.

- (i) the acquisition of which is subject to special parliamentary procedure;
- (ii) which is special category land;
- (iii) which is replacement land.²⁰

- 5.36 Table 1 to the SoR (AD_10) shows that 55 plots are proposed to be acquired outright (freehold) in the administrative area of Central Bedfordshire Council and 4 plots are proposed to be acquired outright (freehold) in the area of Luton Borough Council.
- 5.37 Schedule 7 to the Order identifies 6 plots for which new rights may be acquired.
- 5.38 Schedule 9 specifies that temporary possession would be taken of 40 plots, of which 37 are located within the administrative area of CBC and 3 lie in LBC's area.
- 5.39 Article 22 would extinguish all existing private rights including easements servitudes and other private rights in relation to all plots.
- 5.40 The applicant made a 'nil return' in relation to Crown land as Part 4 of the BoR identifies no Crown interests in any of the land to be acquired.
- 5.41 Section 120(5)(a) of PA 2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO and s.117(4) provides that, if the DCO includes such provisions, it must be in the form of a statutory instrument. The DCO seeks to apply s120(5)(a) by proposing appropriate modifications to compulsory purchase legislation, as explained below. Accordingly, the DCO is drafted in the form of a statutory instrument.
- 5.42 Article 23 of the recommended Order seeks to incorporate the provisions of the Compulsory Purchase (General Vesting Declarations) Act 1981 with appropriate modifications to reflect the context in which the legislation would be applied as detailed in sub-sections 23(3) to (8).
- 5.43 Other than the representation submitted by National Grid and HRDC (see below), no Affected Person or other Interested Party made representations or submissions objecting to any of the compulsory purchase provisions included within the Order. A significant proportion of the plots of land and rights in land to be acquired are currently in the ownership, control or effective control (as lessee, tenant, option-holder or other interest) of the participants in the HRDC or of the two local authorities. During the examination discussions between the applicant and HRDC and the

²⁰ See Regulation 7(1) Infrastructure Planning (Applications: Prescribed Forms and Procedures) regulations 2009.

applicant and LBC were in hand regarding voluntary acquisition of the relevant plots and/or rights.

- 5.44 The interests of statutory undertakers including National Grid Electricity Transmission plc (NGET), National Grid Gas plc (NGG) and Eastern Power (the regional subsidiary of the UK Power Ltd group) are likely to be affected by the project. National Grid made a Relevant Representation on behalf of NGET and NGG. UK Power Ltd did not make a Relevant Representation on behalf of Eastern Power Networks plc but, nearing the end of the examination, UK Power Ltd responded (R17_1_6) to a Rule 17 letter from myself (PrD_14) requesting clarification of its position. In both cases agreement was reached between the applicant and the statutory undertakers regarding the content of the Protective Provisions now included at Schedule 10 to the Order. Part 1 of Schedule 10 provides protection for the interests of UK Power Networks Limited, while Part 2 of Schedule 10 provides for the protection of National Grid's interests. It appears that side agreements were also reached or likely to be reached between the relevant parties, but they do not form part of the examination. National Grid's Relevant Representation was withdrawn by a letter dated 26 March 2014 (AS_41).
- 5.45 No other Interested Party raised any concerns or objections in respect of the proposed Protective Provisions or interference with the interests of the statutory undertakers who provide essential public services to the area.
- 5.46 The Houghton Regis Development Consortium (HRDC) formed by Friends Life Company Limited (FLC) and Lands Improvement Holdings Limited (LIH) made various representations and submissions (see RR_15, RR_16, WR_12, R1Q_33, R2Q_10, R2AP_19 and R17_4_2). While it is clear that the HRDC regards the completion of the Woodside Link as essential to the full delivery of the HRN1 development, it did raise certain questions regarding the interface between the two projects. At the CA Hearing held on 22 January 2014 I sought to clarify the nature of any concerns and whether further information should be submitted regarding any aspect of the two schemes that may have a bearing on the Woodside Link DCO. However, the HRDC representative made it clear that discussions were in hand between the applicant and HRDC and that any specific matters would be resolved through private side agreements rather than through Order provisions. The applicant concurred. In my judgement this was a reasonable response and the preferable way to deal with any such matters of detail outstanding between the parties.

How the case for Compulsory Acquisition was examined

- 5.47 The application was lodged and Relevant Representations were received before the Preliminary Meeting.

- 5.48 At the preliminary Meeting the applicant submitted *inter alia* an updated Book of Reference (AS_13).
- 5.49 Having regard to the content of the application documents, including those listed above that relate to the compulsory acquisition aspects of the Order, together with the content of the Relevant Representations and the updated BoR, I set out my assessment of the Principal Issues regarding the application in my Rule 8 procedural decision letter (PrD_4) following the Preliminary Meeting. Annex B to the procedural decision letter specified a number of issues which included aspects of compulsory acquisition:
- a) whether the compulsory powers sought in the proposed Order are fully justified, necessary and adequate to secure delivery of the project and reasonable in all the circumstances of the application;
 - b) the adequacy of the funding arrangements for the project as a whole and for the proposed compulsory acquisition in particular;
 - c) any delivery-critical dependencies relevant to the application;
 - d) the accuracy and comprehensiveness of the compulsory acquisition land referencing and procedural elements of the application.
- 5.50 Interested Parties subsequently submitted their Written Representations and I issued two rounds of written questions before the hearings
- 5.51 An initial Issue Specific Hearing was held on 15 November 2013 to confirm and clarify the status of the project as an NSIP, the planning and transportation policy background to the scheme and the relationship between the Woodside Link, the A5-M1 Link and the HRN1 scheme. This hearing did not explore the detail of any compulsory purchase aspect to the application.
- 5.52 A detailed Compulsory Acquisition Hearing was then held on 22 January 2014, as part of a sequence of hearings including a further IS Hearing (held on 21 January 2014) and an Open Floor Hearing (held on 23 January 2014).
- 5.53 At my request the applicant provided two updates to the submitted BoR at key stages during the examination. The applicant's final BoR update was submitted for Deadline IX on 19 February 2014 (AS_36). A reason why the applicant found it difficult to update the BoR was identified at the CA hearing (HG_11 to HG_13). It was confirmed by the applicant that because the proposed scheme would pass between and close to two substantial housing areas a significant number of properties was likely to be affected by the project. The turnover of residents, meant that frequent revisions were needed to keep the BoR as up-

to-date and accurate as possible in the circumstances. This issue applied in particular to potential Category 3 Persons which might be entitled to claim for injurious affection under the provisions of section 10 of the Compulsory Purchase Act 1965.

The Applicant's case

- 5.54 The general case for the compulsory acquisition and related compulsory powers included in the Order and explained above are set out in the applicant's SoR (AD_10). Section 7 of the SoR explains the applicant's justification for the use of compulsory acquisition in relation to the tests applicable under s122(2) and s122(3) of the PA 2008, which have been explained above.
- 5.55 The applicant's case for the specific areas of land to be acquired relies on the choice of route and the specific purposes for acquisition as identified in the relevant Schedules to the Order, as reviewed above. As described in detail above, the applicant argues that the land is required (or is incidental to) the purposes of the DCO and that without the land identified the proposed scheme cannot be delivered. Paragraph 7.6 of the SoR confirms that: *'The location of the works on the works plan demonstrates that the land on the land plan is needed to construct the scheme.'*
- 5.56 The applicant argues at paragraph 7.7 of its SoR that (as explained in its ES, Volume 1 Part 2.8 (AD_37)) and summarised in the SoR, the applicant explored alternative routes to that adopted for the scheme application. However, the alternatives were not considered suitable and in any event would not obviate the need for compulsory purchase. It further argues that the land that is proposed to be acquired for the scheme is no more than the minimum needed for it to occupy and for its construction, mitigation and ongoing maintenance.
- 5.57 In relation to alternative routes the SoR explains at paragraph 7.8 that there were two previous assessments of the route for a scheme linking the Woodside industrial Estate to the primary route network. The stage 1 assessment considered two route options to the west of Houghton Regis and one to the East. Extensive public consultation revealed a public preference for an eastern route option. The stage 2 assessment explored a single route corridor due to the constraints imposed by the need to commence at the Porz Avenue/Park Road North/Poynters Road junction and to terminate at the proposed Junction 11A. Three different detailed routes were considered within that single route corridor.
- 5.58 Paragraph 7.10 of the SoR further explains that the three routes considered across land to the south of Parkside Drive were all constrained by the residential areas surrounding that (south western) part of the route but that the routes diverged to a greater extent in the northern section through more open terrain, although all 3 routes had ultimately to join M1 Junction 11A,

whose position has been fixed as a result of the Interim Decision by the SoSfT late in 2012²¹.

- 5.59 Paragraph 7.12 confirms that the route corresponding to the route for the scheme was chosen following discussions with the agent for the principal landowner (then AXA Sun Life Limited, now Friends Life Limited) which was concerned that the applicant should not adopt a route that would compromise future development of its land adjoining the proposed scheme: *'As the route layout suggested by the landowner met the Scheme objectives and could be designed to meet all technical standards, the Council accepted the representation of the landowner.'*
- 5.60 Section 8 of the SoR describes the position in relation to the discussions held with landowners. The scheme boundary encloses approximately 53.0 hectares, of which the scheme requires the freehold acquisition of approximately 34.3 hectares of land, the acquisition of permanent rights over approximately 3.3 hectares and the acquisition of temporary rights over approximately 12.5 hectares - a total of 50.1 hectares. In addition there is slightly less than 2.9 hectares of existing highway within the scheme boundary.
- 5.61 The scheme provides for the acquisition and subsequent demolition of part of Chalton Cross Farm, although the residential part of the farm is not affected by it.
- 5.62 The SoR also confirms that: *'all owners and occupiers with an interest in land will be approached to ask if they would be prepared to enter into negotiations with the Council for the purchase of their interest'*.
- 5.63 The SoR indicates that: *'Detailed negotiations are taking place with the 2 principal landowners (Luton Borough Council and Friends Life), and the Council expects that acquisition by agreement is likely to occur... However, the Council has concluded that acquisition by agreement of all land necessary for the scheme is unlikely to occur in all cases or in any event within sufficient time to ensure that the programme for the construction of the Scheme is met. There are also a few interests, for example where the owner is unknown, where it will not be possible to acquire the interest except by way of compulsory acquisition.'*

The case under s.122

- 5.64 The applicant considers that the points in Section 7.5 to 7.12 of the SoR summarised above demonstrate that the tests to be applied under s122 of the PA 2008 are met. No Interested Party or

²¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/91118/decision-letter.pdf

Affected Person disputed the points made in the SoR in relation to the s122 tests.

Position in relation to s.127 and/or s.138

- 5.65 No Interested Party or Affected Person sustained an objection to the application on the grounds of interference with the apparatus of a statutory undertaker. As reported at paragraphs 4.490 to 4.494 and 5.44 above, agreement was reached between the applicant and National Grid representing the interests of NGET and NGG and UK Power representing the interests of Eastern Power and NG's relevant representation was subsequently withdrawn (AS_41). The agreed Protective Provisions are included in the recommended Order at Schedule 10 (Part 1 is for the protection of UK Power Networks Ltd, Part 2 is for the protection of National Grid).
- 5.66 No certificates therefore need to be issued under s127 or s138 of the PA 2008.

Position in relation to s131/132 'Replacement Land'

- 5.67 The position in relation to the application made to the Secretary of State for Communities and Local Government in relation to replacement land to be provided in the stead of land to be compulsorily acquired for the construction of the Woodside Link is set out at paragraph 1.12 above.

Availability and Adequacy of Funds

- 5.68 The Applicant's case in relation to the availability and adequacy of funds for the project as a whole and in particular to cover any financial liabilities arising from the compulsory acquisition elements of the Order is set out in the Funding Statement (FS) (AD_11) and was confirmed at the Compulsory Acquisition Hearing (CAH) held on 22 January 2014 (HG_11 to HG_13).
- 5.69 I sought further information in relation to the detail of the funding available at the CAH. In response the applicant submitted relevant documentation. This is discussed further below at paragraph 5.106 *et seq.*
- 5.70 In summary the applicant stated that the costs of the scheme as a whole, including the compulsory acquisition element, would be met by Central Bedfordshire Council.
- 5.71 The test to be applied to adequacy of funding is that the applicant is able to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the Order being made, and that the resource implications of a possible acquisition resulting from a blight notice have been taken account of, i.e. that there is a reasonable

prospect of funding being available²² within the timescale set out in the Order.

Conclusions regarding the Case for Compulsory Acquisition Powers

- 5.72 My approach to the question of whether I should recommend the Secretary of State to grant compulsory acquisition powers (and if so what acquisition powers should be recommended) has been to seek to apply the relevant sections of the Act, notably s.122 and s.123, the Guidance²³, and the Human Rights Act 1998. I have also had regard to the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.
- 5.73 The draft DCO deals with both the development itself and compulsory acquisition powers. The case for compulsory acquisition powers cannot properly be considered unless and until I have formed a view on the case for the development overall, and the consideration of the compulsory acquisition issues must be consistent with that view.
- 5.74 I concluded in the preceding section that the planning case was made and that development consent should therefore be granted. The question that I address below is the extent to which, in the light of the factors set out above, the case is made for compulsory acquisition powers necessary to enable the development to proceed.

The Public Benefit

- 5.75 I have taken account of all the information and submissions made during the examination in relation to the public benefits of the proposed Woodside Link project. The socio-economic and transportation benefits reviewed in relation to the project in Chapter 4 above. Socio-economic benefits are assessed at paragraph 4.472 *et seq* (see summary paragraph 4.496). Transport benefits are summarised at paragraph 4.292 *et seq*. Together these provide the principal public benefits, bearing in mind that other benefits such as reductions in noise and improvements to air quality in parts of Houghton Regis to the west and north of the ES study area (for example in the west and north of the Houghton Park Estate, in Houghton Regis Town Centre and along the urban section of Sundon Road) will be offset by disbenefits to local residents in the south and east of the estate.

²² Planning Act 2008, Guidance related to procedures for compulsory acquisition (CLG, 2013) paragraph 9

²³ Planning Act 2008, Guidance related to procedures for compulsory acquisition (CLG, 2013)

5.76 As indicated in my evaluation of the socio-economic benefits, it is clear that the scheme would bring real and lasting benefits to the people and businesses of Houghton Regis, Dunstable and west Luton by improving accessibility and connectivity and thereby facilitating economic growth and urban regeneration, including the regeneration of Dunstable town centre, improvements to Houghton Regis town centre and the full development of the HRN1 development scheme, even though this may result in some environmental impact upon a group of occupiers of properties close to the proposed new road and its associated Parkside Link.

5.77 By facilitating full development of the HRN1 scheme it would also have the indirect effect of supporting the release of private sector funding that may trigger earlier construction of the A5-M1 Link than would otherwise occur. In turn this work would create wider transport benefits by upgrading an important part of the trunk road network, providing additional access to the M1 Motorway and contributing to implementation of the Secretary of State's London-Scotland Route Enhancement Strategy. Although these benefits would only be generated indirectly, without the Woodside Link it appears that they would be unlikely to be realised in the short term.

5.78 The Government's priority for economic growth is reflected in its vision and strategic objectives for the national highway and rail networks highlighted as part of the 'Summary of need' set out on page 7 of the draft *National Policy Statement for National Networks*. It states:

'The Government will deliver national networks that meet the country's long-term needs; supporting a prosperous and competitive economy and improving overall quality of life, as part of a wider transport system. This means:

- *Networks with the capacity and connectivity to support national and local economic activity and facilitate growth and create jobs.*
- *Networks which support and improve journey quality, reliability and safety.*
- *Networks which support the delivery of environmental goals and the move to a low carbon economy.*
- *Networks which join up our communities and link effectively to each other.'*

5.79 The Woodside Link provides a good example of the type of scheme envisaged by the Government's vision and strategic objectives. It would create and support the early development of capacity and connectivity to support national and local economic activity and to facilitate growth and create both jobs and access to jobs (see socio-economic assessment (paragraph 4.472 *et seq*). It would support and improve journey quality, reliability and safety (see the applicant's unchallenged Transport Assessment (AD_42)). Acknowledging that the scheme would have some environmental

disbenefits to occupiers of property in its vicinity, it would support delivery of at least some environmental goals by reducing traffic congestion in the west and north of the study area and in Dunstable and Houghton Regis town centres (see TA) and finally it would provide much improved connectivity between different (existing and proposed) parts of the urban area of Houghton Regis, Dunstable and West Luton.

- 5.80 In addition to the local benefits described above, if the Woodside Link facilitated the full HRN1 development and thereby enabled the proposed substantial developer funding contribution to bring forward the A5-M1 Link earlier than previously programmed by Government, it would have an indirect benefit to the national network of benefit to the upgrading of the London-Scotland strategic route.
- 5.81 On balance, having regard to all the submitted information and evidence, I conclude that the case in relation to the public interest is made, and that the benefits benefit to the area and to the national network would be significant.

Alternatives

- 5.82 The CLG compulsory acquisition guidance²⁴ requires (paragraph 8) that:

'The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored...'

- 5.83 I have considered this in terms of the selection of the site, the scale of the development proposed, the specific characteristics of the development and then in relation to the proposed acquisition of each parcel of land (in the sections on those parcels).

The site selected

- 5.84 The alternative routes considered are reviewed at paragraphs 5.57 to 5.59 above. Interested Parties maintained no objections to the process by which the route for the scheme was selected. I accept that the process was reasonable and that the selection of the route chosen for the scheme is appropriate in all the circumstances of the application.

The specific characteristics of the site

- 5.85 The linear nature of the scheme and its requirement to begin and end at defined points in order to connect with the wider highway network placed constraints upon the choice of route. Also the

²⁴ Planning Act 2008, Guidance related to procedures for compulsory acquisition (CLG, 2013)

constrained relationship with adjoining housing areas and the proposed HRN1 development together with environmental factors also restricted at a practical level how the scheme could be brought forward (see SoR, paragraphs 7.5 *et seq*). The route selected is a reasonable response by the applicant to the circumstances of the application and the various planning, legal and environmental requirements placed upon the project.

The scale of the proposed development

- 5.86 The scale of the proposed development was determined in relation to predicted traffic levels. The northern section of the Woodside Link itself between the Junction 11A and the northern roundabout takes the form of a dual carriageway. In addition the Sundon Link between the northern roundabout and Sundon Road is also proposed as a dual carriageway. Land reservation provides for the possibility of future widening of other sections of the main link route should that be required in the future. In my judgement this approach to the design of the scheme strikes a necessary and appropriate balance between provision of capacity and flexibility to cater for future development.

The case for specific parcels

- 5.87 There was no dispute regarding the compulsory acquisition of specific parcels of land during the examination.
- 5.88 Having regard to all the information and representations submitted by the applicant and other parties during the examination I am satisfied that all of the land proposed for acquisition is fairly and reasonably required for the delivery of the scheme and that the compulsory acquisition proposals are proportionate. This is because the land and rights that are proposed to be acquired are either very clearly related to the proposed works or otherwise incidental to delivery of the scheme as can readily be seen by comparing the Works Plan (AD_4) and Land Plan (AD_3) and by consideration of the information provided by the applicant in relation to the purpose for which the ownership or rights in each plot of land are required.
- 5.89 On this basis the case for the extent of the acquisition proposed is made and in my view has been fully and properly justified.

Human Rights Act²⁵ 1998 considerations

- 5.90 A key consideration in formulating a compelling case is a consideration of the interference with human rights (as defined in the European Convention on Human Rights and transposed into UK legislation by the Human Rights Act 1998) which would occur if compulsory acquisition powers are granted:

²⁵ <http://www.legislation.gov.uk/ukpga/1998/42/contents>

- whether Article 1 of the First Protocol (rights of those whose property is to be compulsorily acquired and whose peaceful enjoyment of their property is to be interfered with) is engaged;
- whether Article 6, which entitles those affected by compulsory acquisition powers sought for the project to a fair and public hearing of their objections, is engaged;
- Whether Article 8, which relates to the right of the individual to '*respect for his private and family life, his home ...*' is engaged.

5.91 Protocol 1 Article 1 of the European Convention on Human Rights provides that:

'(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

(2) The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.'

5.92 The European Court of Human Rights (ECHR) has indicated that Article 1 contains three distinct rules²⁶:

- (1) The general principle of peaceful enjoyment of property (first sentence of the first paragraph of the Article);
- (2) The rule that any deprivation of possessions should be subject to certain conditions (second Sentence, first paragraph);
- (3) The principle that States are entitled to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose (second paragraph).

5.93 Peaceful enjoyment of possessions includes the right of property²⁷. "Possessions" are not limited to physical goods²⁸, but to qualify under this Article the right or interest must have an economic value, or be of a pecuniary nature.

5.94 Article 6 of the First Protocol of the ECHR provides a detailed right to a fair and public hearing by an independent and impartial tribunal within reasonable time. The order decision-making itself is not independent within the meaning of Article 6 but any challenge to it would be available subject to the PA 2008 provisions for judicial review in the High Court.

²⁶ (1) *Sporrying*, (2) *Lonnroth vs Sweden* (1982) 5 EHRR 85

²⁷ *Marck v Belgium* (1979) 2 EHRR 330

²⁸ *Gasus Dosier-und Fordertechnik GmbH v The Netherlands* (1995) 20 EHRR 403

- 5.95 Article 8 provides a right to respect for one's *'private and family life, his home and his correspondence'*, subject to certain restrictions that are *'in accordance with law'* and *'necessary in a democratic society'*. A public authority cannot interfere with these interests unless such interference is in accordance with law and is necessary in the interests of, inter alia, national security, public safety or the economic well-being of the country.
- 5.96 In relation to both Article 1 and Article 8, any interference with possessions must be proportionate and in determining whether a particular is proportionate a fair balance must be struck between the public benefit sought and the interference with the rights in question.
- 5.97 All these provisions are transposed into UK law by the Human Rights Act 1998 (HRA 1998).
- 5.98 Section 9 of the applicant's SoR (AD_10) explains the legal position and the applicant's case in relation to the human rights tests. Paragraph 9.3 states:
- '9.3 The DCO has the potential to infringe the human rights of persons who own property in the Order Land. Such infringement is authorised by law provided: -*
- 9.3.1 The statutory procedures for obtaining the DCO are followed and there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in the DCO; and*
- 9.3.2 any intervention with the Convention right is proportionate to the legitimate aim served.'*
- 5.99 Regarding compliance with the Convention and Human Rights Act 1998 paragraphs 9.4 to 9.10 the applicant argues that:
- the land to be acquired for the scheme has been kept to a minimum and the scheme is designed to minimise interference with the peaceful enjoyment of a person's possessions under Article 1 of the First Protocol of the Human Rights Act;
 - there would be a very significant public benefit arising from the grant of development consent that can only be realised if the development consent is accompanied by the grant of powers of compulsory acquisition: *'The public interest can only be safeguarded by the acquisition of this land and such acquisition would not place a disproportionate burden on the affected land owners'*;
 - these significant public benefits outweigh the effects of the DCO upon persons with property rights in the Land and would not interfere disproportionately with their Article 8 and Article 1 First Protocol rights. In addition, those affected by compulsory acquisition would be eligible for compensation and the applicant has resources to make such payment.

- In relation to Article 6, there has been an opportunity for members of the public to make representations on the application through consultation by the applicant under Part 5 of the 2008 Act, including known owners and occupiers of the Order Land and those who might make claims under s10 of the Compulsory Purchase Act 1965 in respect of injurious affection or Part 1 of the Compensation Act 1973. Beneficiaries of restrictive covenants and other rights overridden by the exercise of powers in the DCO would be capable of making claims under s10 of the Compulsory Purchase Act 1965.
- Furthermore there was an opportunity to make representations in response to notice given under s56 of the PA 2008 and other submissions to the DCO examination.
- Should the DCO be made, *'a person aggrieved may challenge the DCO by judicial review in the High Court if they consider that the grounds for doing so are made out pursuant to section 118 of the 2008 Act'*. The applicant also points out that any affected person in dispute regarding compensation may apply to the Upper Tribunal (Lands Chamber), an independent tribunal.

5.100 Section 9 of the SoR concludes that:

'For the above reasons, any infringement of convention rights of those whose interests are affected caused by the inclusion of powers of compulsory acquisition is in the public interest and according to national and European law, and it would be appropriate and proportionate to make the DCO, including the grant of compulsory acquisition powers.'

5.101 No Interested Party or Affected Person made representations or submissions during the examination regarding any aspect of the proposals or the application or examination processes that they considered had infringed any human right identified in relation to relevant human rights legislation, including the Convention and the HRA 1998.

5.102 In relation to Article 1 the process adopted in relation to the compulsory acquisition is designed to apply UK legislation and procedures set out in CLG compulsory acquisition guidance that are compliant with the three rules established under the ECHR and transposed into UK law under the HRA 1998. Accordingly I agree with the argument made by the applicant in that regard.

5.103 In relation to Article 6 I observe that the process established under the PA 2008 and followed in the conduct of the Woodside Link DCO examination provides a right for any person who has submitted a Relevant Representation to a public hearing, for example the right to speak at an Open Floor Hearing, and to appear before an independent and impartial Examining Authority. In the case of this particular examination, a number of other

persons who had not made a Relevant Representation were also permitted to speak at the OFH at my discretion. I therefore agree with the argument presented by the applicant in that regard.

5.104 In relation to Article 8, in the light of his conclusion in respect of the case for the development, including the public benefits attributable to the scheme, I agree with the case put forward by the applicant. I further note that all submitted information relevant to the examination was published by PINS after redaction of personal details to safeguard privacy and comply with UK data protection legislation.

5.105 In the light of the points made above I conclude that the provisions of the ECHR and HRA 1998 have been fully and properly complied with in relation to the compulsory powers sought within the proposed Woodside Link DCO.

Adequacy of funding

5.106 The CLG Guidance²⁹ provides in relation to resource implications at paragraph 17 that:

'17. Any application for a consent order authorising compulsory acquisition must be accompanied by a statement explaining how it will be funded. This statement should provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required. It may be that the project is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty about the assembly of the necessary land. In such instances, the applicant should provide an indication of how any potential shortfalls are intended to be met. This should include the degree to which other bodies (public or private sector) have agreed to make financial contributions or to underwrite the scheme, and on what basis such contributions or underwriting is to be made.'

The funding required

5.107 The Council agreed the funding for preparation of its proposed scheme to the point where an application could be made to the SoS at its Executive Committee meeting on 2 October 2012 and included the project within its capital programme. The FS (AD_11) also confirms at paragraph 7 that:

'The Council is proposing that it meets the cost of implementing the works to be authorised by the draft DCO, including all compensation which becomes payable, and the costs of acquiring land which is or may be blighted land within the meaning of section 149 of the Town and Country Planning Act 1990. The

²⁹ Planning Act 2008, Guidance related to procedures for the compulsory acquisition (CLG, 2013)

estimated cost of this implementation is £42 million and accordingly the Council has allocated funding of £42 million to underwrite the scheme, with the expectation that substantial external contributions can be recovered in later years.'

5.108 Paragraph 8 states that: *'The Council will seek other funding contributions from private sector sources likely to benefit from the implementation of the proposed road and from other government programmes as may be available.'*

5.109 The FS (AD_11) is a very brief document of only one page containing eight paragraphs. Accordingly, given the scale and likely cost of the project and the importance of this matter, I sought to explore the funding position in more detail during the examination. In response to my questions at the CAH the applicant submitted a copy of the report to Council by the Deputy Leader and Executive Member for Corporate Resources (R3AP_1 to R3AP_3) setting out the Council's draft capital programme for the four year period 2014/15 to 2017/18, which is to operate from 1 April 2014.

5.110 Paragraph 35 of the report (R3AP_2) explains in relation to the Woodside Link:

'The Capital Programme includes expenditure of £36m on the Woodside Link Road over 2014-2017 (total project cost £42m). It was anticipated in the Capital Programme Report to the Executive in February 2013 that this would be initially funded by borrowing and the Council would explore funding sources to offset the borrowing costs of this project. The project has since been awarded £5m of external funding. The Local Transport Board for the South East Midlands has agreed an indicative allocation of a further £10m for this project, subject to an agreed business case which is currently being developed. This represents good progress in securing external funding for this project and justifies the same assumption to be held in regard to this project going forward.'

5.111 The applicant also confirmed during the CA hearing that £5m of Pinch Point programme funding had been allocated by the DfT and £10m was agreed in principle through the Local Economic Partnership for Milton Keynes and South Bedfordshire and the Local Transport Board advising that body. This represents around 35% of the funding required for delivery of the scheme.

5.112 The estimated total cost of the scheme set out in the CBC report on the Draft Capital Programme provided by the applicant is £42m. Provision is made in the Council's forward programme for that funding, which if necessary would be met by Council borrowing. However the report confirms that £15m has already been allocated or approved by external sources, as explained above. £5m has been allocated from the Pinch Points programme and £10m provisionally allocated by the Milton Keynes/South

Bedfordshire Local Economic Partnership on the advice of the Local Transport Board, subject to agreement of the business case.

- 5.113 The report indicates that there are opportunities for further external funding from the public and private sector and that the progress made to date in securing relevant external funding to offset or minimise Council borrowing is good.
- 5.114 Given the progress made to date in securing allocated external funding to the level of 35% of the estimated total cost of the scheme even in advance of a decision by the SoS, together with the ability of the Council to raise funding by borrowing should that be required, I conclude that it is likely that the scheme as a whole can be funded within the five-year timescale for commencement of the project, that funding would be available to fund the compulsory acquisition proposed under the Order and that the resource implications of a possible acquisition resulting from a blight notice have been taken into account as a result of the budgetary provision made by the Council.

Recommendations regarding the grant of CA powers

s.122(2)

- 5.115 In the light of all the information and submissions made regarding the compulsory acquisition aspects of the scheme during the examination together with the findings set out in Chapter 5 above, in relation to the test set out at s122(2) of the PA 2008 I conclude that the land is required for the development to which the development consent relates or is required to facilitate or is incidental to the development or is replacement land that is to be given in exchange under sections 131 and/or 132 of the Act.
- 5.116 In respect of land required for the development, I find that the land that is proposed to be taken is no more than is reasonably required. It is proportionate to the scale and content of the project proposals and has not been demonstrated or assessed as excessive in any way.

s.122(3)

- 5.117 In relation to public benefit I find at paragraph 5.80 above that the case in relation to the public interest is made, and that the benefits to the area and to the national network would be significant. Accordingly, having regard to that finding, I conclude that there is a compelling case in the public interest for the land that is proposed to be acquired compulsorily to be acquired.

s.120(5)(a) and s.126

- 5.118 Having regard to the specific terms of the recommended Order, including Article 23 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981), together with the relevant

information reviewed in this chapter of the report above, I am satisfied that the provisions of the recommended Order including the modification of compulsory acquisition legislation under s120(5)(a) of the PA 2008 are reasonable and appropriate in all the circumstances of the application, and that they are no more than is necessary to apply the compensation provisions to the compulsory acquisition authorised by the Order, as required by section 126

s.127 and s.138

- 5.119 As originally enacted, s127 and s138 of the PA 2008 provided that compulsory acquisition could not be authorised without a separate certificate from the SoS in the event that a Nationally Significant Infrastructure Project interferes with the apparatus of a statutory undertaker and that the relevant undertaker submits a representation which is not withdrawn. Section 23 of the Growth and Infrastructure Act 2013 (GIA) removed the previous requirements for separate certification. However although section 23 came into force on 25 June 2013, Article 6 of the relevant commencement order³⁰ made transitional arrangements, the effect of which was to retain the former requirement for certificates in relation to applications that had been made before that date.
- 5.120 The application for development consent relating to the proposed Woodside Link project was made on 14 May 2013. In the case of the Woodside Link application the applicant proposes a wide range of diversion and protection works to public utility apparatus (see description of the Authorised Development at Schedule 1 to the recommended Order). National Grid did submit a relevant representation in relation to the compulsory acquisition provisions. However Protective Provisions were agreed and the NG representation was withdrawn before the close of the examination (see AS_41 (withdrawal letter)). Protective provisions were also agreed in respect of the interests of UK Power Ltd. No other public utilities were engaged by the examination.
- 5.121 In the light of all the relevant information and submissions received in relation to this matter during the course of the examination, including the agreed Protective Provisions, I conclude that none of the matters considered in relation to s127 or s138 of the PA 2008 give rise to concerns that would preclude the making of the proposed Order.

S131/132

- 5.122 The s131/132 application made to the SoSCLG by the applicant had not been determined by close of examination. The SoSfT may

³⁰ Growth and Infrastructure Act 2013 (Commencement No. 1 and Transitional and Saving Provisions) Order 2013 (SI 2013/1124)

therefore wish to assure himself that the application has been determined and that appropriate replacement land has been adequately provided for prior to making his decision in relation to the Woodside Link DCO as this is a matter that may have potential to preclude the making of the Order within the timescale laid down in the 2008 Act as amended.

Overall recommendation in relation to the grant of Compulsory Acquisition Powers

- 5.123 I recommend that the Secretary of State grants the compulsory acquisition powers sought by the applicant within Part 5 and supporting Schedules to the Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order.

6 THE DEVELOPMENT CONSENT ORDER

Evolution of the DCO

- 6.1 The applicant provided a number of draft Orders during the course of the examination, as explained below. The application received on 14 May 2013 was accompanied by a draft DCO (described in this report as the 'submitted draft Order') and an Explanatory Memorandum (AD_8 and AD_9).
- 6.2 I asked a series of questions regarding issues relating to the submitted draft Order in my first round of written questions on 15 October 2013 (PrD_4). The applicant addressed those questions in its response submitted on 7 November 2013 (R1Q_2 and R1Q_3). It also submitted a revised draft DCO and revised Explanatory Memorandum in both 'clean' and 'track change' versions (AS_16 to AS_19).
- 6.3 In the light of changes made to the submitted draft Order before the first ISH held on 15 November 2013 I asked a question regarding whether the applicant intended to submit a revised Explanatory Memorandum as part of my second round of ExA written questions issued on 19 December 2013 (PrD_9). The applicant's response was received on 13 January 2014 (R2Q_1). A further revised draft DCO and revised Explanatory Memorandum in both clean and track change versions were also submitted (R1DCO_1, R1DCO_2, AS_21 and AS_22).
- 6.4 Relevant aspects of the DCO formed part of the agenda for the Compulsory Acquisition Hearing (CAH) held on 22 January 2014 (PrD_12). Mitigation requirements were also discussed during the second ISH held on 21 January 2014 (HG_8 to HG_10).
- 6.5 In accordance with the examination timetable as varied by my procedural decision (PrD_15), the applicant submitted its final preferred draft Order on 19 February 2014 (R3DCO_1). I accepted an amended track change version of that draft on 11 March (R3DCO_2).
- 6.6 During the course of the examination I made several requests for further information under Rule 17 of the Infrastructure Planning Examination Procedure Rules (EPR). My letter of 18 March 2014 raised a number of points relating to the applicant's preferred draft DCO (PrD_16). The applicant's response was received on 27 March 2014 (R17_3_1 to R17_3_3), but no further draft Order was submitted. Where appropriate, changes to the applicant's preferred draft Order resulting from those responses have been incorporated in the form of DCO that I have recommended at Appendix D.

The recommended draft DCO (Appendix D)

- 6.7 The applicant's preferred draft Order is broadly acceptable as a vehicle to authorise and control the proposed development. The recommended draft Order is therefore based on the preferred draft.
- 6.8 If the application is approved by the Secretary of State, the Order will need to be made as a Statutory Instrument, for which there are strict rules as to layout, format and content. The applicant has confirmed that its preferred draft Order was prepared in conformity with those rules and has supplied a validation report (R17_3_3).
- 6.9 In finalising my recommended draft the preferred draft has been changed in three main ways:
- Where appropriate, a change to the language used in the draft to reflect current legislative drafting practice (e.g. by the use of 'must' instead of 'shall' in appropriate contexts
 - Incorporation of those points made in my letter of 18 March referred to above (PrD_16) that were accepted by the applicant in its responses (R17_3_1 and R17_3_2), and
 - Inclusion of such other changes as I consider otherwise necessary or appropriate in the light of the evidence and information before me.

The applicant's draft DCO of 7 November 2013

- 6.10 A number of my first ExA written questions accompanying the Rule 8 letter (PrD_4) related to the drafting of the Order. Some were straightforward – such as a request that consistent capitalisation be used throughout the draft DCO – and the points made were accepted by the applicant, as noted in its response and incorporated in the draft Order submitted on 7 November and later drafts. Other questions sought clarification or elaboration, which the applicant provided in its response (R1Q_3). The applicant's answers are succinct and clear. I have not therefore sought to summarise them in this report. In most cases, I am satisfied with the answer provided and have not made any changes to the relevant preferred draft wording in the recommended Order.
- 6.11 My first round of written questions included a question regarding the definition of maintenance, to which the applicant provided a satisfactory clarification response (R1Q_3). Following close of the examination I have reflected further regarding the need for inclusion of a definition of 'maintain' within the Order. The applicant's stated intent is for that the completed project will be maintained by CBC in its capacity as local Highway Authority. Under the Town and Country Planning Act 1990 highway maintenance and improvement would not normally fall within the scope of 'development'. In any event, for any works of

maintenance and improvement that would fall within the scope of 'development', Highway Authorities have rights under the General Permitted Development Order 1995 as amended (GDPO).

- 6.12 Part 13 of the GDPO addresses the permitted development powers of local Highway Authorities and provides the following PD rights:

'A. Permitted development

The carrying out by a highway authority—

(a) on land within the boundaries of a road, of any works required for the maintenance or improvement of the road, where such works involve development by virtue of section 55(2)(b) of the Act; or

(b) on land outside but adjoining the boundary of an existing highway of works required for or incidental to the maintenance or improvement of the highway.'

- 6.13 The reference to s55(2)(b) of the Town and Country Planning Act 1990 is because maintenance or improvement of highways by Highway Authorities is not ordinarily development at all:

*'(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—...
... (b) the carrying out on land within the boundaries of a road by a highway authority of any works required for the maintenance or improvement of the road but, in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment.'*

- 6.14 It follows that most operations of maintenance or improvement within or adjoining the highway that are to be delivered by the Highway Authority are likely to be treated as permitted development. While Article 6 of the Order provides that its provisions *'shall have effect solely for the benefit of the Central Bedfordshire Council'*, the draft Order provides at Article 7 (Consent to transfer benefit of Order) that:

'7.- (1) The undertaker may –

(a) Transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) Grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.'

The article goes on to provide at 7(4) that *'the consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made –*

(a) to a highway authority; or

(b) to the Secretary of State.'

6.15 While it is clear that CBC as Highway Authority would maintain the scheme, the detailed arrangements at the edges of the authorised development would need to be resolved with other relevant bodies. For example, the interface with the highway and footpath network proposed within the HRN1 development would need to be resolved, as would interfaces with the A5-M1 Link project and the local highway network within Luton.

6.16 Having regard to the above points I conclude that it seems sensible to retain a definition of 'maintain' within the Order in order to provide the flexibility of detailed arrangements to be reached with other bodies to secure adequate arrangements for proper maintenance of the project.

The draft DCO of 13 January 2014 (R1DCO_1 and R1DCO_2)

6.17 My second round ExA written questions (PrD_9) explored issues around mitigation and other matters but did not include any specific issues relating to the terms of the DCO. However, in accordance with the examination timetable, the applicant submitted a further revision of the DCO for the deadline of 13 January 2014. The revisions made in the 13 January draft Order are shown in blue on the track change version (R1DCO_2) and comprised:

- Changes to the preamble to the DCO
- Correction of typographic errors e.g. in Articles 3(2), 5(b), 8(3), 30
- Introduction of a new paragraph (5) to Article 18 – requiring removal of plant and equipment after entry for survey and investigation
- Additional limitation to Work No. 11 (Borrow Pit) – total excavated material not to exceed 100,000 cu. m.
- Changes to Requirements 4 (detailed design), 5 (landscaping and ecology), 7 (construction environmental management plan), 12 (street lighting), 13 (hours of working), 18 (monitoring)
- Additional Requirement 19 (weight limits)
- Changes to the descriptions of private accesses in Schedule 6
- Changes to Schedule 9 to identify specific Works for which temporary possession of plots shown on the land plans could be taken (previously the Works were unspecified), and the addition of further plots

- Consequential renumbering as necessary.
- 6.18 The changes introduced by the applicant relate closely to points raised or otherwise queried during the examination process. They seek to respond to specific queries raised in my second round ExA written questions (PrD_9), to the detail of written submissions by IPs and to changes included in the relevant schedules of the updated BoR.

The draft DCO of 4 February 2014 (R2DCO_1 and R2DCO_2)

- 6.19 Following the hearings and in accordance with the examination timetable, the applicant submitted a further revision to the draft DCO. The revisions made in the 4 February draft are shown in red and blue on the track change version (R2DCO_2) and comprised:
- Correction of typographic errors, e.g. in Requirements 4 and 8
 - A change to Article 18 (monitoring) to include traffic on Parkside drive, Houghton Regis and consultation on traffic mitigation measures if a limit (unspecified in this draft) is exceeded.
- 6.20 The change to Article 18 was introduced by the applicant in response to the concerns of residents regarding potential for the introduction of very high levels of traffic down Parkside Drive resulting from the construction of the proposed Parkside Link as part of the proposed Woodside Link project and also from other proposed new developments in the area. It also responded to my line of questioning in relation to those concerns, which sought clarification of the levels of traffic experienced on other distributor roads serving the Houghton Park Estate. This matter is considered in more detail in relation to the applicant's transport assessment in Chapter 4 above.

The applicant's preferred draft DCO (R3DCO_1 and R3DCO_2)

- 6.21 The revisions made in the preferred draft of 19 February 2014 are shown in red, green and blue on the track change version (R3DCO_2) and comprised:
- Correction of typographic and other errors e.g. in Articles 2(4), 14
 - Identification of recipients of replacement land in Article 29 (special category land), and minor changes to its wording
 - Introduction of a reference to Schedule 10 (protective provisions) taking effect, in Article 30 (statutory undertakers)
 - Change to Requirement 8 (noise and vibration) so that prior approval of the length of proposed acoustic barriers is required as well as their height, design and materials

- Change to Requirement 14 (surface water disposal) including prior approval of details of the re-alignment of Houghton Brook and related changes
- Change to Requirement 18 (monitoring) to include specific traffic figures for Parkside Drive beyond which consultation on further traffic mitigation measures will take place
- Addition of detailed protective provisions for National Grid in Schedule 10.

6.22 The principal changes introduced by the applicant in its preferred draft Order relate to points discussed at the series of hearings held in January 2014 (Issue Specific Hearing 21 January (HG_8 to HG_10), Compulsory Acquisition Hearing 22 January (HG_11 to HG_13) and Open Floor Hearing 23 January (HG_7 and HG_14). These changes reflect the arrangements agreed in relation to replacement land, the applicant's agreement with National Grid and the resulting withdrawal of its representation (AS_41), a response to concerns regarding the detail of acoustic barriers expressed by LBC, a response to submissions by the EA and further consideration to the concerns raised in relation to traffic levels on Parkside Drive subsequent to opening of the proposed Parkside Link.

6.23 My Rule 17 request of 19 March 2014 (PrD_17) included an invitation to comment on the applicant's preferred draft Order. LBC commented on certain points of detail, in particular supporting the wording of Requirement 10 in relation to the specification of information required in relation to acoustic barriers on the basis that the applicant should be aware of the information to be required by the LPA. No other comments relating specifically to the DCO were received.

ExA Conclusion regarding the Development Consent Order

6.24 Having regard to the process of evolution and development of the draft DCO described above, I recommend that if the Secretary of State is minded to approve the application an Order is made in the form set out in Appendix D to this report.

6.25 The recommended Order includes the following changes to the applicant's preferred draft Order:

- minor amendments to reflect accepted drafting practice as noted above,
- amendment to Requirement 18 to exclude the monitoring of traffic effects on Parkside Drive,
- inclusion of a separate new Requirement (Requirement 19) securing a scheme for the monitoring of traffic conditions on Parkside Drive, and
- related renumbering of the final requirement, which now forms Requirement 20.

- 6.26 Having regard to points raised in relation to the proposed Parkside Link/Parkside Drive during the examination, the reason for amendment of Requirement 18 and introduction of the separate and specific new provision at Requirement 19 in relation to monitoring of traffic conditions on Parkside Drive is to ensure a clearer focus upon that point within the terms of the Order and to ensure greater precision in wording. The aim of that change is to encourage adequate and specific attention to be paid to that matter when the applicant in its capacity as local highway authority comes to implement the Woodside Link/Parkside Link project in the event that the SoS decides to accept my recommendation to make the Order.

7 SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

7.1 In considering the Woodside DCO application the legal test that must be applied in considering whether development consent should be granted for the Woodside Link is set out at s105 of the Planning Act 2008 (as amended). S105(2) provides that:

'In deciding the application the Secretary of State must have regard to-

(a) any local impact report.....

(b) any matters prescribed in relation to the development of the description to which the application relates, and

(c) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.'

7.2 In relation to matters prescribed in relation to nationally significant highway projects I have found no reason on the basis of the matters before me to believe that making the Development Consent Order in the form that I am recommending would lead to the United Kingdom being in breach of its international obligations; lead to the Secretary of State being in breach of any duty imposed on the Secretary of State by or under any enactment or be otherwise unlawful by virtue of any enactment. I have had regard to the LIRs submitted by the two relevant local planning authorities. I have also had regard to the adequacy and content of the applicant's submitted environmental information and relevant additional information provided during the examination not only by the applicant by other IPs.

7.3 In relation to matters which I recommend should be treated as relevant and important my detailed findings and conclusions are set out in the main text of this report. The principal conclusions that I have reached during the examination of the Woodside Link Houghton Regis Development Consent Order are as follows.

- The application proposals are in broad compliance with the relevant national planning and transportation policies set out in the NPPF and the draft NNNPS.
- The submitted proposals comply with the emerging local planning framework contained within the draft Bedfordshire Development Strategy and are consistent with the substance and assumptions set out within the outline planning application for the HRN1 development which was the subject of a resolution by CBC to approve planning permission subject to conclusion of an appropriate s106 agreement (before close of examination heads of terms had been agreed between the parties to that agreement). The application was referred to the SoSCLG as a departure. The SoS decided not to call it in for his determination.
- The CBC planning resolution and the decision by the SoS are relevant and important matters that must be given substantial

weight in the consideration of this application, including when considering Green Belt policy matters.

- The interim decision by the Secretary of State in respect of the Transport and Works Act Order for the A5-M1 Link (Dunstable Northern Bypass) is also a relevant and important matter to be taken into account.
- As supplemented by additional information provided by the applicant during the course of the examination the ES provides an adequate basis for decision-making regarding this application by the Secretary of State.
- No appropriate assessment is required in relation to the Habitats Regulations and (subject to the mitigation provided for in the recommended Order) the ecological effects of the scheme are not such as to be a principal issue.
- None of the submissions or comments received suggest that there would be any impediment to the granting of any relevant Protected Species Licence that may be required in order to construction the proposed scheme.
- None of the identified effects upon cultural heritage assets, including designated sites, buildings, landscapes or gardens and other heritage assets (including archaeological assets) are so adverse as to justify refusal of the application. In the light of the details of any final planning permission issued for the HRN1 development on conclusion of the s106 agreement following close of the Woodside Link examination the Secretary of State may wish to consider consolidation of Requirements 15 and 16 on the basis of the wording suggested by CBC's LIR, paragraph 16.22.
- Clear socio-economic and transport benefits at both local and national levels would accrue if the scheme was implemented.
- Air quality effects would be within acceptable limits and (subject to the requirements set out in the recommended Order) noise would remain within acceptable limits notwithstanding the gradual increase of noise in the area as a whole, due in the main to the effects of the growth of traffic movements on the M1 motorway.
- There would be negative environmental effects (principally an increase in noise and disturbance from current negligible levels) upon occupiers of properties in the areas adjoining the re-opened Parkside Drive/Parkside Link and off Sandringham Drive in the Houghton Park housing Estate, as well as positive environmental benefits to occupiers of properties in the north and west of that estate.
- The degree of both the environmental disbenefits and benefits to some occupiers and properties may be significant given the current environmental position in the locations affected. However

the traffic figures provided by the applicant suggest that environmental conditions in relation to the re-opened section of Parkside Drive and the new Parkside Link would not be significantly different to those for residents living on other estate distributor roads. My site inspection of those other roads indicates that the environmental conditions, although significantly different to those currently experienced by residents adjoining or close to the southern end of Parkside Drive, would not be so noisy or intrusive as to be unacceptable.

- Traffic predictions that take account of the cumulative effects of all proposed and emerging sites currently at the stage of planning discussions were not available before close of examination, although the applicant's transport assessment did take account of those developments where relevant data was available. In the event that the applicant's traffic figures proved to be over-optimistic and that environmental conditions turned out to be worse than predicted, Central Bedfordshire Council in its capacity as both Highways and Environmental Health Authority would have appropriate statutory powers available to ensure that environmental conditions did not deteriorate to the point where they would have substantial adverse impacts upon human health and road safety.
- In addition I have recommended amendment of the wording of the applicant's preferred draft Order to ensure that a clear focus upon the monitoring of levels of traffic on Parkside Drive after the scheme is implemented. Options also remain available that would enable the authority to manage the capacity of Parkside Link following implementation in order to avoid unacceptable impacts. This could be achieved through appropriate decisions regarding the design of the proposed junction between the Woodside Link and the Parkside Link, which is yet to be finalised.
- Visual and landscape impacts may be managed through the mitigation provided in the recommended Order. Design and landscaping details would need to be submitted to and approved by the local planning authority. It is recommended that the applicant and Local Planning Authority pay careful regard to the need for sensitive design of the retaining structures, ramps and noise barriers in the section of the new highway adjoining and overlooking properties on Sandringham Drive.
- Flood risk and water quality would be managed through an appropriate scheme of mitigation, the details of which would be agreed by the LPA. There are no indications that the need for any relevant parallel consents from the EA in relation to s109 of the Water Resources Act 1991 or consents for alternations to existing drainage arrangements under the drainage bylaws of the Internal Drainage Board and EA would present any impediment to delivery of the Woodside Link.

- A number of other matters, including design details and mitigation of visual, landscape and ecological effects, potential effects on heritage assets, contaminated land considerations, management of the environmental effects of construction, mitigation of noise and vibration, access by construction traffic, the materials to be used in constructing the scheme, the details of street lighting, restrictions in relation to hours of working, surface water disposal, provisions in relation to geological conservation, monitoring and weight limits are all addressed in the Requirements set out in the Order at Schedule 2. It is concluded that these requirements are necessary, related to the development, precise and enforceable. Taken together, they provide key mitigation of identified potential adverse effects of the project.
- Having regard to the comments of NE regarding the likely ecological effects and the position in relation to the likelihood of any Protected Species that may be required being granted there appears to be no impediment on those grounds to the making of the recommended Order by the Secretary of State.
- Overall, having regard to the likely net effects of the project following mitigation, the balance of benefits and disbenefits falls in favour of the scheme and the planning case is made.
- The applicant has made adequate financial provision for delivery of the project and it is likely that funding will be available for implementation of the scheme as a whole, including the compulsory acquisition proposed, within the five year commencement timetable set by the Order.
- In relation to the legal tests relating to compulsory acquisition of land and rights in land, in relation to s122(2) of the PA 2008, I am satisfied that the land that is proposed to be acquired is required for the development to which the DCO relates or is required to facilitate or is incidental to the development or is replacement land that is to be given in exchange under s131 or s132 of the Act.
- The Secretary of State will no doubt need to confirm whether consent has been granted by the SoSCLG under s131/132 of the PA 2008 for the open space land to be provided in order to replace the open space that is proposed to be acquired compulsorily under the Woodside Link DCO and may also wish to satisfy himself that the s131/132 consent is in place prior to making the recommended DCO.
- In relation to the test at s122(3) of the PA 2008 it is concluded that the benefit to the area and to the national network would be significant. Accordingly there is a compelling case in the public interest for the land that is proposed to be acquired compulsorily to be so acquired.

- In relation to s120(5)(a) and s126 the provisions of the recommended Order, including Article 23 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981) together with s120(5)(a) of the PA 2008 are reasonable and appropriate and no more than is necessary to apply the compensation provisions to the compulsory acquisition authorised by the Order, as required by s126 of the PA 2006.
- In relation to s127 and s138 of the PA 2008 none of the matters considered in relation to these sections give rise to concerns or procedures that would preclude the making of the Order.
- Accordingly I conclude in relation to the compulsory acquisition of land and rights in land that the provisions of the Order have been fully and properly justified and that the Secretary of State should grant the powers sought by the applicant within Part 5 and supporting schedules to the Order.

7.4 In the light of these conclusions the Secretary of State is recommended to make the Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order in the form set out at Appendix D to this report, including the changes I have recommended to the applicant's preferred draft Order as explained in Chapter 6 of this report.

APPENDICES

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APPENDIX A - EXAMINATION LIBRARY

CONTENTS

The documents are grouped together by document type, and then grouped by the submission deadlines where relevant.

Each document has been given an identification number (ie AoC_1), and all documents are available to view on the Planning Inspectorate's National Infrastructure Planning websites at the Woodside Link Houghton Regis Bedfordshire Project page:

<http://infrastructure.planningportal.gov.uk/projects/eastern/woodside-link-houghton-regis-bedfordshire/?ipcsection=docs>

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RR	Relevant Representations
AS	Additional Submissions
WR	Written Representations
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LIR	Local Impact Report
SoCG	Statement of Common Ground
CoRR	Comments on Relevant Representations
RxAP	Response to Action Points
RoCRR	Response to Comments on Relevant Representations
CoWR	Comments on Written Representations
CoxQ	Comments on responses to Examining Authority's questions
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RxDCO	Revised Development Consent Order
SN	Summary Notes
PsHG	Post Hearing Submissions
R17_x	Response to Rule 17 letter
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DOC REF	TITLE	DATE RECEIVED/SENT
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Application Form		
AD_1	<u>1 Application Form</u>	14/05/2013
Plans		
AD_2	<u>2.1 Location Plan</u>	14/05/2013
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AD_11	<u>4.2 Funding statement</u>	14/05/2013
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PrD_1	<u>Woodside to the M1 Link Road s55 Acceptance Letter</u>	11/06/2013
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PrD_4	<u>Woodside Link Road Rule 8 (Final)</u>	15/10/2013
PrD_5	<u>Agenda for Issue Specific Hearing held 15/11/2013</u>	29/10/2013
PrD_6	<u>Notification of Hearings and Site Visit Woodside</u>	28/11/2013
PrD_7	<u>Accompanied Site Visit_300117-001-500 Rev B</u>	28/11/2013
PrD_8	<u>Notification of Second Round Questions</u>	19/12/2013
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PrD_10	<u>Woodside Accompanied Site Visit Itinerary for 20 January 2014</u>	14/01/2014
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PrD_13	<u>Agenda for Open Floor Hearing 23/01/2014</u>	15/01/2014
PrD_14	<u>Rule 17 and Rule 8(3) notification letter dated 29/01/2014</u>	29/01/2014
PrD_15	<u>Rule 17 and Rule 8(3) notification letter dated 05/03/2014</u>	05/03/2014
PrD_16	<u>Rule 17 and Rule 8(3) notification letter sent to CBC (Applicant) dated 18 March 2014</u>	18/03/2014
PrD_17	<u>Rule 17 and 8(3) letter dated 19 March 2014</u>	19/03/2014
PrD_18	<u>S99 Letter - Notification of Completion of ExA Examination</u>	08/04/2014
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RR_6	<u>Houghton Regis Town Council</u>	24/07/2013
RR_7	<u>Luton Borough Council</u>	24/07/2013
RR_8	<u>Miss Rosemary Lange</u>	25/07/2013
RR_9	<u>Miss Sally Gray</u>	25/07/2013
RR_10	<u>Harlington Parish Council</u>	25/07/2013
RR_11	<u>Mrs Susan V White</u>	26/07/2013
RR_12	<u>National Grid Electricity Transmission Plc and National Grid Gas Plc</u>	29/07/2013
RR_13	<u>Environment Agency</u>	29/07/2013
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AS_3	<u>4.3.1 Book of Reference Part 1 - Land in Central Bedfordshire (Amended)</u>	07/10/2013
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AS_8	<u>4.3.6 Book of Reference Part 1 - Land in Luton Borough Council (Amended)</u>	07/10/2013
AS_9	<u>4.3.7 Book of Reference Part 2 - Land in Luton Borough Council (Amended)</u>	07/10/2013

AS_10	<u>4.3.8 Book of Reference Part 3 - Land in Luton Borough Council (Amended)</u>	07/10/2013
AS_11	<u>4.3.9 Book of Reference Part 4 - Land in Luton Borough Council (Amended)</u>	07/10/2013
AS_12	<u>4.3.10 Book of Reference Part 5 - Land in Luton Borough Council (Amended)</u>	07/10/2013
AS_13	<u>Book of Reference - Final Version with Track Changes (Amended)</u>	07/10/2013
AS_14	<u>8.2 Indicative Cable Alterations Plan (Rev.A) - Minor alterations to sheet 2</u>	07/10/2013
AS_15	<u>Central Bedfordshire Council (Applicant) - Notice of Hearings</u>	23/10/2013
AS_16	<u>Updated Draft Development Consent Order - Clean Version</u>	07/11/2013
AS_17	<u>Updated Draft Development Consent Order - Track Changes</u>	07/11/2013
AS_18	<u>Revised Explanatory Memorandum - Clean Version</u>	13/11/2013
AS_19	<u>Revised Explanatory Memorandum - Track Changes</u>	13/11/2013
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AS_30	<u>Revised Flood Risk Assessment – Appendix B: Hydraulic Modelling Report</u>	05/02/2014
AS_31	<u>Revised Flood Risk Assessment – Appendix C: Highway Drainage Layout and Calculations</u>	05/02/2014
AS_32	<u>Revised Flood Risk Assessment –</u>	05/02/2014

	<u>Appendix D: Preliminary Flood Risk Assessment</u>	
AS_33	<u>Revised Flood Risk Assessment – Appendix E: Geological Data</u>	05/02/2014
AS_34	<u>PINS – Updated transboundary screening following Acceptance</u>	05/02/2014
AS_35	<u>AG Hemming – Comments on response by LBC on 04/02/2014</u>	15/02/2014
AS_36	<u>Revised Book of Reference – Clean Version</u>	18/02/2014
AS_37	<u>Revised Book of Reference – Track Changes</u>	18/02/2014
AS_38	<u>Central Bedfordshire Council (Applicant) – Information for ExA alongside preferred draft DCO</u>	19/02/2014
AS_39	<u>Mr A G Hemming</u>	23/02/2014
AS_40	<u>Draft Development Consent Order (amendments) Track Change v.12</u>	11/03/2014
AS_41	<u>National Grid Electricity Transmission Plc & National Grid Gas Plc</u>	26/03/2014
DEADLINE 1 – 07/11/2013		
Written Representations		
WR_1	<u>Susan Diana Henshaw</u>	18/10/2013
WR_2	<u>Emma Durrant</u>	22/10/2013
WR_3	<u>Mr S Shillcock</u>	23/10/2013
WR_4	<u>Central Bedfordshire Council (LPA)</u>	01/11/2013
WR_5	<u>Central Bedfordshire Council (LPA) - Summary</u>	01/11/2013
WR_6	<u>Houghton Regis Town Council</u>	05/11/2013
WR_7	<u>Rosemary Lange</u>	06/11/2013
WR_8	<u>Natural England</u>	07/11/2013
WR_9	<u>Anglian Water</u>	07/11/2013
WR_10	<u>Sally Gray</u>	07/11/2013
WR_11	<u>National Grid Electricity Transmission PLC and National Grid Gas</u>	07/11/2013
WR_12	<u>Friends Life Company Limited and Lands Improvement Holdings</u>	07/11/2013
Responses to ExA'S First Questions		
R1Q_1	<u>Luton Borough Council</u>	15/10/2013
R1Q_2	<u>Central Bedford Council (Applicant)</u>	01/11/2013
R1Q_3	<u>Central Bedfordshire Council (Applicant)- Drafting the DCO</u>	07/11/2013
R1Q_4	<u>Central Bedfordshire Council (LPA Response)</u>	07/11/2013
R1Q_5	<u>Central Bedfordshire Council (Applicant) Appendix A</u>	07/11/2013

R1Q_6	<u>Central Bedfordshire Council (Applicant) Appendix B</u>	07/11/2013
R1Q_7	<u>Central Bedfordshire Council (Applicant) Appendix C</u>	07/11/2013
R1Q_8	<u>Central Bedfordshire Council (Applicant) Appendix D</u>	07/11/2013
R1Q_9	<u>Central Bedfordshire Council (Applicant) Appendix E</u>	07/11/2013
R1Q_10	<u>Central Bedfordshire Council (Applicant) Appendix F</u>	07/11/2013
R1Q_11	<u>Central Bedfordshire Council (Applicant) Appendix G (Sheet 1 of 5)</u>	07/11/2013
R1Q_12	<u>Central Bedfordshire Council (Applicant) Appendix G (Sheet 2 of 5)</u>	07/11/2013
R1Q_13	<u>Central Bedfordshire Council (Applicant) Appendix G (Sheet 3 of 5)</u>	07/11/2013
R1Q_14	<u>Central Bedfordshire Council (Applicant) Appendix G (Sheet 4 of 5)</u>	07/11/2013
R1Q_15	<u>Central Bedfordshire Council (Applicant) Appendix G - (Sheet 5 of 5)</u>	07/11/2013
R1Q_16	<u>Central Bedfordshire Council (Applicant) Appendix H</u>	07/11/2013
R1Q_17	<u>Central Bedfordshire Council (Applicant) Appendix I</u>	07/11/2013
R1Q_18	<u>Central Bedfordshire Council (Applicant) Appendix J</u>	07/11/2013
R1Q_19	<u>Central Bedfordshire Council (Applicant) Appendix K</u>	07/11/2013
R1Q_20	<u>Central Bedfordshire Council (Applicant) Appendix L</u>	07/11/2013
R1Q_21	<u>Central Bedfordshire Council (Applicant) Appendix M</u>	07/11/2013
R1Q_22	<u>Central Bedfordshire Council (Applicant) Appendix N</u>	07/11/2013
R1Q_23	<u>Central Bedfordshire Council (Applicant) Appendix O</u>	07/11/2013
R1Q_24	<u>Central Bedfordshire Council (Applicant) Appendix P</u>	07/11/2013
R1Q_25	<u>Central Bedfordshire Council (Applicant) Appendix Q</u>	07/11/2013
R1Q_26	<u>Central Bedfordshire Council (Applicant) Appendix R</u>	07/11/2013
R1Q_27	<u>Central Bedfordshire Council (Applicant) Appendix S</u>	07/11/2013
R1Q_28	<u>Central Bedfordshire Council (Applicant) Appendix G: Key Plan</u>	07/11/2013

R1Q_29	<u>Annette Rosetta Munn-Barron</u>	07/11/2013
R1Q_30	<u>Donovan Stuart Munn-Barron</u>	07/11/2013
R1Q_31	<u>Eileen Carroll</u>	07/11/2013
R1Q_32	<u>Environment Agency</u>	07/11/2013
R1Q_33	<u>Friends Life Company Limited and Lands Improvement Holdings</u>	07/11/2013
R1Q_34	<u>Highways Agency</u>	07/11/2013
R1Q_35	<u>Miss V Haxell</u>	07/11/2013
Local Impact Report		
LIR_1	<u>Central Bedfordshire Council</u>	01/11/2013
LIR_2	<u>Luton Borough Council</u>	13/11/2013
Statement of Common Ground		
SoCG_1	<u>Highways Agency</u>	07/11/2013
SoCG_2	<u>Luton Borough Council</u>	07/11/2013
SoCG_3	<u>National Grid</u>	07/11/2013
SoCG_4	<u>Natural England</u>	07/11/2013
SoCG_5	<u>Environment Agency</u>	13/01/2014
SoCG_6	<u>Appendix S - HGV Noise Assessment - Applicants SOCG with Luton Borough Council</u>	04/02/2014
Comments on RR		
CoRR_1	<u>Central Bedfordshire Council (Applicant)</u>	07/11/2013
DEADLINE III – 21/11/2013		
Response to AP from ISH – 15/11/2013		
R1AP_1	<u>Central Bedfordshire Council (Applicant)</u>	21/11/2013
R1AP_2	<u>Central Bedfordshire Council (LPA)</u>	21/11/2013
R1AP_3	<u>Luton Borough Council</u>	21/11/2013
DEADLINE IV – 04/12/2013		
Response to Comments on RR		
RoCRR_1	<u>Sally Gray</u>	23/11/2013
Comments on WRs		
CoWR_1	<u>Central Bedfordshire Council (Applicant)</u>	28/11/13
Comments on responses to ExA's First Questions		
Co1Q_1	<u>Central Bedfordshire Council (Applicant)</u>	04/12/2013
Comments on LIR		
CoLIR_1	<u>Central Bedfordshire Council (Applicant)</u>	04/12/2013
DEADLINE V – 13/01/2014		
Response to ExA's Second Questions		
R2Q_1	<u>Central Bedfordshire Council (Applicant)</u>	13/01/2014
R2Q_2	<u>Central Bedfordshire Council (Applicant) - Annex A</u>	13/01/2014

R2Q_3	<u>Central Bedfordshire Council (Applicant) - Annex B</u>	13/01/2014
R2Q_4	<u>Central Bedfordshire Council (Applicant) - Annex C</u>	13/01/2014
R2Q_5	<u>Central Bedfordshire Council (Applicant) - Annex D</u>	13/01/2014
R2Q_6	<u>Central Bedfordshire Council (Applicant) - Site Compound Locations Q10(ii)</u>	13/01/2014
R2Q_7	<u>Central Bedfordshire Council (Applicant) - Site Compound Routes Q10(ii)</u>	13/01/2014
R2Q_8	<u>National Grid Electricity Transmission and National Grid Gas PLC</u>	13/01/2014
R2Q_9	<u>Luton Borough Council</u>	13/01/2014
R2Q_10	<u>Friends Life Company Limited and Lands Improvement Holdings</u>	13/01/2014
R2Q_11	<u>Miss V Haxell</u>	13/01/2014
R2Q_12	<u>Environment Agency</u>	13/01/2014
R2Q_13	<u>Houghton Regis Council</u>	13/01/2014
R2Q_14	<u>Harlington Parish Council</u>	13/01/2014
R2Q_15	<u>Central Bedfordshire Council (LPA)</u>	13/01/2014
R2Q_16	<u>Sally Gray</u>	01/02/2014
Revised DCO		
R1DCO_1	<u>Revised Draft Development Consent Order - Clean Version</u>	13/01/2014
R1DCO_2	<u>Revised Draft Development Consent Order - Track Changes</u>	13/01/2014
DEADLINE VI – 29/01/2014		
Response to AP from ISH – 21/01/2014		
R2AP_1	<u>Central Bedfordshire Council (Applicant)</u>	29/01/2014
R2AP_2	<u>Central Bedfordshire Council (Applicant) - Appendix A: HRN1 Draft Committee Report</u>	29/01/2014
R2AP_3	<u>Central Bedfordshire Council (Applicant) - Appendix B: Original Late Sheet</u>	29/01/2014
R2AP_4	<u>Central Bedfordshire Council (Applicant) - Appendix C: Amended Late Sheet</u>	29/01/2014
R2AP_5	<u>Central Bedfordshire Council (Applicant) - Appendix D: Extra Documents (Errata Sheet)</u>	29/01/2014
R2AP_6	<u>Central Bedfordshire Council (Applicant) - Appendix E: Section 106 Heads of Terms</u>	29/01/2014
R2AP_7	<u>Central Bedfordshire Council</u>	29/01/2014

	<u>(Applicant) - Appendix F: Local Transport Plan</u>	
R2AP_8	<u>Central Bedfordshire Council (Applicant) - Appendix G: Equality Impact Assessment</u>	29/01/2014
R2AP_9	<u>Central Bedfordshire Council (Applicant) - Appendix H: Pt1 Dunstable & Houghton Regis LAMP background report</u>	29/01/2014
R2AP_10	<u>Central Bedfordshire Council (Applicant) - Appendix L: Additional C-Sections CH50-300</u>	29/01/2014
R2AP_11	<u>Central Bedfordshire Council (Applicant) - Appendix M: Additional C-Sections CH50-300</u>	29/01/2014
R2AP_12	<u>Central Bedfordshire Council (Applicant) - Appendix N: LEMP Objectives and Measures</u>	29/01/2014
R2AP_13	<u>Central Bedfordshire Council (Applicant) - Appendix P</u>	29/01/2014
R2AP_14	<u>Central Bedfordshire Council (Applicant) - Appendix Q: Revised Table</u>	29/01/2014
R2AP_15	<u>Central Bedfordshire Council (LPA) - Placemaking Principles</u>	29/01/2014
R2AP_16	<u>Central Bedfordshire Council (LPA) - Public Art</u>	29/01/2014
R2AP_17	<u>Central Bedfordshire Council (LPA) - Green Infrastructure, Climate Change Adaptation and Sustainable Buildings</u>	29/01/2014
R2AP_18	<u>Harlington Parish Council</u>	29/01/2014
R2AP_19	<u>Friends Life Company Ltd & Lands Improvements Holding</u>	30/01/2014
Response to AP from CA – 22/01/2014		
R3AP_1	<u>Central Bedfordshire Council (Applicant)</u>	29/01/2014
R3AP_2	<u>Central Bedfordshire Council (Applicant) - Appendix I: Draft Capital Programme</u>	29/01/2014
R3AP_3	<u>Central Bedfordshire Council (Applicant) - Appendix J: Extract from Executive report</u>	29/01/2014
R3AP_4	<u>Central Bedfordshire Council (Applicant) - Appendix K: Woodside Committee report 2nd October FINAL</u>	29/01/2014
R3AP_5	<u>Central Bedfordshire Council (Applicant) - Appendix O: Woodside Link Equality Analysis</u>	29/01/2014
R3AP_6	<u>Central Bedfordshire Council</u>	29/01/2014

	<u>(Applicant) - Appendix R: LBC Committee Report</u>	
Response to AP from OFH – 23/01/2014		
R4AP_1	<u>Central Bedfordshire Council (Applicant)</u>	30/01/2014
Summary Notes from OFH		
SN_1	<u>Jephson Homes Housing Association</u>	23/01/2014
SN_2	<u>Vivien Haxell</u>	23/01/2014
SN_3	<u>Vonda Bowen</u>	24/01/2014
SN_4	<u>Alan Winter</u>	24/01/2014
SN_5	<u>Christine Ballester</u>	24/01/2014
SN_6	<u>Sally Gray</u>	24/01/2014
SN_7	<u>Houghton Regis Town Council</u>	24/01/2014
SN_8	<u>Donovan & Annette Munn-Barron</u>	25/01/2014
Post Hearing Submissions		
PsHG_1	<u>Highways Agency</u>	23/01/2014
PsHG_2	<u>National Grid Gas and Electricity Transmission Plc</u>	23/01/2014
PsHG_3	<u>Central Bedfordshire Council (Applicant) - Location of Night Time and additional Noise Receptor Points Plan</u>	29/01/2014
PsHG_4	<u>Central Bedfordshire Council (Applicant) - Likely Proposed 7.5T Weight Restrictions Plan</u>	29/01/2014
PsHG_5	<u>Central Bedfordshire Council (Applicant) - Existing Road Layout Plan</u>	29/01/2014
PsHG_6	<u>Central Bedfordshire Council (Applicant) - Existing Roads to be Stopped Up Plan</u>	29/01/2014
PsHG_7	<u>Central Bedfordshire Council (Applicant) - Exchange Land Plans (Including HRN1, NGET,NGG & UKPN apparatus)</u>	29/01/2014
PsHG_8	<u>Central Bedfordshire Council (Applicant) - Land Plans (Including HRN1, NGET,NGG & UKPN apparatus)</u>	29/01/2014
PsHG_9	<u>Central Bedfordshire Council (Applicant) - Post Development Road Layout Plan</u>	29/01/2014
DEADLINE VII – 04/02/2014		
Response to AP from ISH – 21/01/2014		
R5AP_1	<u>Central Bedfordshire Council (Applicant)</u>	04/02/2014
R5AP_2	<u>Central Bedfordshire Council (Applicant) - Appendix T: Night time montage</u>	04/02/2014

R5AP_3	<u>Luton Borough Council</u>	06/02/2014
Comments on responses to ExA's Second Questions		
Co2Q_1	<u>Applicants comments on 2nd Questions - Harlington Parish Council</u>	04/02/2014
Co2Q_2	<u>Applicants Comments on 2nd Questions - Luton Borough Council</u>	04/02/2014
Revised DCO		
R2DCO_1	<u>Revised Draft Development Consent Order - Clean Version</u>	04/02/2014
R2DCO_2	<u>Revised Draft Development Consent Order - Track Changes</u>	04/02/2014
DEADLINE VII – 05/02/2014		
Response to AP from CA – 22/01/2014		
R6AP_1	<u>Central Bedfordshire Council (Applicant)</u>	05/02/2014
R6AP_2	<u>Central Bedfordshire Council (Applicant) - Appendix A: Annotated Hybrid Map illustrating both the Works and Land to be acquired</u>	05/02/2014
R6AP_3	<u>Central Bedfordshire Council (Applicant) - Appendix B: Interface between A5-M1 Link and the Woodside Link</u>	05/02/2014
Response to r17 letter dated 29/01/2014		
R17_1_1	<u>Alan Winter (Q4)</u>	31/01/2014
R17_1_2	<u>Alan Winter (AG Hemmings)</u>	31/01/2014
R17_1_3	<u>Environment Agency</u>	04/02/2014
R17_1_4	<u>Central Bedfordshire Council (Applicant)</u>	05/02/2014
R17_1_5	<u>Luton Borough Council</u>	05/02/2014
R17_1_6	<u>UK Power Networks</u>	05/02/2014
R17_1_7	<u>Highways Agency</u>	05/02/2014
DEADLINE IX – 19/02/2014		
Revised DCO		
R3DCO_1	<u>Revised Draft Development Consent Order (preferred) - Clean Version</u>	19/01/2014
R3DCO_2	<u>Revised Draft Development Consent Order (preferred) - Track Changes</u>	19/01/2014
DEADLINE X – 17/03/2014		
Response to r17 letter dated 5/03/2014		
R17_2_1	<u>Mr Alan Winter</u>	06/03/2014
R17_2_2	<u>Houghton Regis Town Council</u>	12/03/2014
R17_2_3	<u>Harlington Parish Council</u>	13/03/2014
R17_2_4	<u>Luton Borough Council</u>	14/03/2014
R17_2_5	<u>Donovan & Annette Munn-Barron</u>	14/03/2014

R17_2_6	<u>Central Bedfordshire Council (LPA)</u>	17/03/2014
R17_2_7	<u>Central Bedfordshire Council (the applicant)</u>	17/03/2014
R17_2_8	<u>UK Power Network</u>	17/03/2014
DEADLINE XI – 27/03/2014		
Response to r17 letter dated 18/03/2014		
R17_3_1	<u>Central Bedfordshire Council (the applicant) - Table 1</u>	27/03/2014
R17_3_2	<u>Central Bedfordshire Council (the applicant) - Table 2</u>	27/03/2014
R17_3_3	<u>Central Bedfordshire Council (the applicant) – DCO Validation Report</u>	27/03/2014
Response to r17 letter dated 19 March		
R17_4_1	<u>Luton Borough Council</u>	25/03/2014
R17_4_2	<u>Friends Life Limited and Lands Improvement Holdings</u>	26/03/2014
R17_4_3	<u>Harlington Parish Council</u>	26/03/2014
R17_4_4	<u>Central Bedfordshire Council (LPA)</u>	26/03/2014
DEADLINE XII – 03/04/2014		
Comments on responses received for Deadline XI		
CoR_1_1	<u>Central Bedfordshire Council (Applicant)</u>	01/04/2014
CoR_1_2	<u>Donovan & Annette Munn-Barron</u>	02/04/2014
HEARINGS		
HG_1	<u>Preliminary Meeting Note (Final)</u>	08/10/2013
HG_2	<u>Audio Recording - Preliminary Meeting (08/10/2013)</u>	08/10/2013
HG_3	<u>Actions Points - Issue Specific Hearing held 15/11/2013</u>	15/11/2013
HG_4	<u>Audio Recording - Issue Specific Hearing (15/11/2013): Morning Session</u>	15/11/2013
HG_5	<u>Audio Recording - Issue Specific Hearing (15/11/2013): Afternoon Session</u>	15/11/2013
HG_6	<u>Actions Points - Issue Specific Hearing held 21/01/2014</u>	27/01/2014
HG_7	<u>Actions Points - Open Floor Hearing held 23/01/2014</u>	27/01/2014
HG_8	<u>Audio Recording - Issue Specific Hearing (21/01/2014): Part 1</u>	28/01/2014
HG_9	<u>Audio Recording - Issue Specific Hearing (21/01/2014): Part 2</u>	28/01/2014
HG_10	<u>Audio Recording - Issue Specific Hearing (21/01/2014): Part 3</u>	28/01/2014
HG_11	<u>Actions Points - Compulsory Acquisition Hearing held</u>	28/01/2014

	<u>22/01/2014</u>	
HG_12	<u>Audio Recording - Compulsory Acquisition Hearing (22/01/2014): Part 1</u>	28/01/2014
HG_13	<u>Audio Recording - Compulsory Acquisition Hearing (22/01/2014): Part 2</u>	28/01/2014
HG_14	<u>Audio Recording - Open Floor Hearing (23/01/2014)</u>	28/01/2014

APPENDIX B - EVENTS AND PROCEDURAL DECISIONS

The Table below lists the main 'events' and procedural decisions taken during the examination by the Examining Authority (ExA).

DATE	EXAMINATION EVENT
08 October 2013	Preliminary Meeting and start of examination
15 October 2013	Notification by the ExA of procedural decision under Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) made at and following the preliminary meeting. Including Issue of: <ul style="list-style-type: none">- Procedural timetable- ExA's first written questions- Notification by ExA of date, time and place of Issue Specific Hearing (ISH)
29 October 2013	Agenda for Issue Specific Hearing on 15 November 2013 published
07 November 2013	Deadline I for receipt by the ExA of: <ul style="list-style-type: none">- Comments on relevant representations (RRs)- Any summaries of RR's exceeding 1500 words- Written representations (WRs)- Any summaries of WRs exceeding 1500 words- Local Impact Reports (LIRs) from Local Authorities- Responses to ExA's first written questions- Suggestions by any party on locations to visit for the accompanied site visit- Statements of Common Ground (SoCG) other than between CBC and the Highways Agency- Notification of wish to make oral representations on issue specific or issues being examined at any named Issue Specific (IS) Hearing- Notification of wish to be heard at a Compulsory Acquisition (CA) Hearing by affected persons- Notification by interested parties (IPs) of any wish to be heard at an Open Floor (OF) Hearing
13 November 2013	Deadline II for receipt by the ExA of: <ul style="list-style-type: none">- Any additional information to be submitted by Houghton Regis Town Council regarding local traffic effects
15 November 2013	Issue Specific Hearing on Development Consent Order (DCO) at Central Bedfordshire Council, Dunstable at 10:00
20 November 2013	Publication of actions arising from Issue

21 November 2013	Specific Hearing held on 15 November 2013 Deadline III for receipt by the ExA of: - Post-Hearing documents including any documents/amendments requested by the ExA at the Issue Specific Hearing
28 November 2013	Notification by ExA of confirmed date(s) time(s) and place(s) for: - Issue Specific Hearings - Compulsory Acquisition Hearing - Open Floor Hearings - Accompanied site visits Notification of hearings under Rule 13, and notification of site inspection under Rule 16 of the EPR
04 December 2013	Deadline IV for receipt by the ExA of: - Comments on WRs and responses to comments on RRs - Comments on LIRs - Comments on responses to ExA's first written questions - Comments on any additional information submitted by Houghton Regis Town Council
19 December 2013	Issue by ExA of second set of written questions
13 January 2014	Deadline V for receipt by the ExA of: - Responses to second set of ExA's questions - Applicant's revised draft DCO - Any updated SoCGs - Any s174 obligations - Position statements from parties invited to Issue Specific Hearings
14 January 2014	The itinerary was published for the accompanied site visit on 20 January 2014
15 January 2014	The agendas were published for: - Issue Specific Hearing on 21 January 2014 - Compulsory Acquisition Hearing on 22 January 2014 - Open Floor Hearing on 23 January 2014
20 January 2014	Accompanied site visit
21 January 2014	Issue Specific Hearing at Central Bedfordshire Council, Dunstable at 10:00
22 January 2014	Compulsory Acquisition Hearing at Central Bedfordshire Council, Dunstable at 10:00
23 January 2014	Open Floor Hearing at Central Bedfordshire Council, Dunstable at 10:00
27 January 2014	Publication of actions arising from: - Issue Specific Hearing held on 21 January 2014 - Open Floor Hearing held on 23 January 2014
28 January 2014	Publication of actions arising from Compulsory Acquisition Hearing held on 22 January 2014

29 January 2014	<p>Deadline VI for receipt by the ExA of:</p> <ul style="list-style-type: none"> - Post-Hearing documents including any documents/amendments requested by the ExA at any Issue Specific, Compulsory Acquisition and/or Open Floor Hearings <p>Notification of variation to the timetable under Rule 8 (3), and a request for further information under Rule 17 of the EPR</p>
04 February 2014	<p>Deadline VII for receipt by the ExA of:</p> <ul style="list-style-type: none"> - Any comments on responses to ExA's 2nd questions - Applicant's revised draft DCO - Any s174 obligation - Submission of information requested by the ExA from relevant parties at the Issue Specific Hearing held on 21 January 2014
05 February 2014	<p>Deadline VIII for receipt by the ExA of:</p> <ul style="list-style-type: none"> - Submission of information requested by the ExA from relevant parties at the Compulsory Acquisition Hearing held on 22 January 2014 - Submission of additional information requested by the ExA under rule 17 on 29 January 2014 <p>Publication of updated transboundary screening following acceptance</p>
19 February 2014	<p>Deadline IX for receipt by the ExA of:</p> <ul style="list-style-type: none"> - Applicant's final preferred form of DCO, and any final s174 obligations
05 March 2014	<p>Notification of variation to the timetable under Rule 8 (3), and a request for further information under Rule 17 of the EPR</p>
17 March 2014	<p>Deadline X for receipt by the ExA of:</p> <ul style="list-style-type: none"> - Submission of additional information requested by the ExA under rule 17 on 5 March 2014
19 March 2014	<p>Notification of variation to the timetable under Rule 8 (3), and a request for further information under Rule 17 of the EPR</p>
27 March 2014	<p>Deadline XI for receipt by the ExA of:</p> <ul style="list-style-type: none"> - Any comments on responses due to have been received on 17 March 2014 (Deadline X) - Additional information requested by ExA under Rule 17 on 18/19 March 2014 - Any comments on the applicants final preferred form of the DCO and any final s174 obligations
03 April 2014	<p>Deadline XII for receipt by the ExA of:</p> <ul style="list-style-type: none"> - Any comments on responses received for Deadline XI
04 April 2014	<p>Close of examination</p>

APPENDIX C - LIST OF ABBREVIATIONS

AADT	Annual Average Daily Traffic
AONBs	Areas of Outstanding Natural Beauty
AQMA	Air Quality Management Area
BC	Borough Council
BLMWLP	Bedfordshire and Luton Minerals and Waste Local Plan 2005
BoR	Book of Reference
CAH	Compulsory Acquisition Hearing
CBC	Central Bedfordshire Council
CBLTM	Central Bedfordshire and Luton Transport Model
CEMP	Construction Environmental Mitigation Plan
CHAG	Cultural Heritage Asset Group
CRTN	Calculation of Road Traffic Noise
CWS	County Wildlife Sites
DaSTS	The White Paper Delivering a Sustainable Transport System
dB(A)	A-weighted decibel
DCO	Development Consent Order
DEFRA	Department for Environmental, Food and Rural Affairs
DfT	Department for Transport
DMRB	Design Manual for Roads and Bridges
EA	Environment Agency
ECHR	European Court of Human Rights
EEA	European Economic Area
EIA	Environmental Impact Assessment
EM	Explanatory Memorandum

ES	Environmental Statement
ExA	Examining Authority
FAS	Food Alleviation Scheme
FRA	Flood Risk Assessment
FS	Funding Statement
g/veh-km	grams per vehicle kilometre
GIA	Growth and Infrastructure Act
GLVIA	Guidelines for Landscape and Visual Impact Assessment
HA	Highways Authority
HAWRAT	Highways Agency Water Risk Assessment Tool
HGV	Heavy Goods Vehicle
HPC	Harlington Parish Council
HRA 1998	Human Rights Act 1998
HRDC	Houghton Regis Development Consortium
HRN	Houghton Regis North
HRN1	Houghton Regis North Phase 1 Development
HRN2	Houghton Regis North Phase 2 Development
HRTC	Houghton Regis Town Council
IP	Interested Party
ISH	Issue Specific Hearing
km	Kilometre
kV	Kilovolt
LAQM.TG09	Defra's Local Air Quality Management Technical Guidance 2009
LBC	Luton Borough Council
LDF	Local Development Framework
LIR	Local Impact Report

LPA	Local Planning Authority
LTP	Local Transport Plans
m	Metres
MK/SM	Milton Keynes/South Midlands
mph	miles per hour
NA	Noise Assessment
NE	Natural England
NERC	Natural Environment and Rural Communities Act
NGET	National Grid Electricity Transmission plc.
NGG	National Grid Gas plc.
NNNPS	National Networks National Policy Statement
NO₂	Nitrogen Dioxide
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPS EN-5	National Policy Statement for Electricity Networks Infrastructure
NSIP	Nationally Significant Infrastructure Project
NTEM	The National Trip End Model
OCEMP	Outline Construction Environmental Management Plan
OFH	Open Floor Hearing
OP	Other Person
PA 2008	Planning Act 2008
PM	Preliminary Meeting
PM₁₀	particulate matter up to 10µm diameter
PRoW	Public Rights of Way
RSS	Regional Spatial Strategy
RR	Relevant Representation

SBLPR	South Bedfordshire Local Plan Review 2004
SEMLEP	South East Midlands Local Economic Partnership
SEP	Strategic Economic Plan
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SoSCLG	Secretary of State for Communities and Local Government
SoSfT	Secretary of State for Transport
SPAs	Special Protection Areas
SRFI	Sub-Regional Freight Interchange
SSSIs	Site of Special Scientific Interest
SUDS	Sustainable Drainage System
TA	Transport Assessment
TEMPRO	Trip End Model Presentation Program
TRL	Transport Research Laboratory
WebTAG	The Department for Transport's web-based Transport Analysis Guidance
WFD	The EU Water Framework Directive
WHO	World Health Organization
WR	Written Representation
ZVI	Zone of Visual Influence

APPENDIX D - PROPOSED DEVELOPMENT CONSENT ORDER

STATUTORY INSTRUMENTS

2014 No.

INFRASTRUCTURE PLANNING

HIGHWAYS

The Central Bedfordshire Council (Woodside Link Houghton
Regis) Development Consent Order 2014

Made - - - - 2014

Coming into force - - 2014

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An application has been made to the Secretary of State, in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) for an Order under sections 37, 114, 115, 120 and 122 of the Planning Act 2008(b).

[The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).]

[The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.]

[The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application and consent for ancillary works with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.]

[The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 122 of, and paragraphs 1 to 3, 8, 10 to 17, 24, 26, 33, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—]

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order 201[] and shall come into force on [] 201[].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(d);

“the 1965 Act” means the Compulsory Purchase Act 1965(e);

(a) S.I. 2009/2264

(b) 2008 c.29.

(c) S.I. 2010/103.

(d) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1961 Act which are not relevant to this Order.

(e) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

“the 1980 Act” means the Highways Act 1980(a);

“the 1984 Act” means the Road Traffic Regulation Act 1984(b);

“the 1990 Act” means the Town and Country Planning Act 1990(c);

“the 1991 Act” means the New Roads and Street Works Act 1991(d);

“the 2008 Act” means the Planning Act 2008(e);

“the access plans” means the plans certified as the Access and Rights of Way Plans by the Secretary of State for the purposes of this Order;

“address” includes any number or address used for the purposes of electronic transmission;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 5 and shown as such on the works plans;

“maintain” and any of its derivatives include to inspect, ~~or repair, adjust, or reconstruct~~ the authorised development;

“Order land” means the land shown on the land plans within the limits of deviation, which is land to be acquired or used and is described in the book of reference;

“the Order limits” means the limits within which the authorised development may be carried out and which are shown as the limits of deviation;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(f);

-
- (a) 1980 c. 66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1) (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 1984 c. 27.
- (c) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (d) 1991. c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
- (e) 2008 c. 29.
- (f) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

“the relevant planning authority” means the Central Bedfordshire Council in relation to land in its area and Luton Borough Council in relation to land in its area, and “the relevant planning authorities” means both of them;

“the replacement land” means the land numbered 02/13, 02/14, 02/15, 02/16, 02/17, 02/19, 02/20, 02/28, 02/29, 02/47 and 03/01 in the book of reference and on the land plans;

“the sections” means the sections shown on the drawings certified as the cross section drawings and the longitudinal section drawings by the Secretary of State for the purposes of this Order;

“the special category land” means the land numbered 01/05, 01/06, 01/08, 01/10, 01/12, 01/15, 01/18, 01/20, 01/22, 01/23, 02/01, 02/04, 02/08, 02/09 and 02/42 in the book of reference and on the land plan and forming part of the open space which may be acquired compulsorily under this order and for which replacement land is to be provided;

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“the undertaker” means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act and article 6;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development shall be taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers shall be construed as references to points so lettered or numbered on the access plans.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1.

PART 2 PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Subject to article 5 (limits of deviation) the works numbered in Schedule 1 ~~shall~~ must be constructed in the lines and situations shown on the works plans and to the levels shown on the sections.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

Limits of deviation

5. In carrying out the authorised works the undertaker may—
- (a) deviate vertically from the levels shown on the sections to any extent not exceeding 0.5 metres upwards or downwards; and
 - (b) deviate laterally within the limits of deviation from the lines or situations shown on the works plans to any extent not exceeding 2 metres in any direction.

Benefit of Order

6.—(1) Subject to article 7 (consent to transfer benefit of Order), the provisions of this Order shall have effect solely for the benefit of the Central Bedfordshire Council.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

- 7.—(1) The undertaker may—
- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
 - (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), shall include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made—

- (a) to a highway authority; or
- (b) to the Secretary of State.

PART 3

STREETS

Application of the 1991 Act

8.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway ~~shall~~must be treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or

(b) they are works which might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts) or section 184 of that Act (vehicle crossings over footways and verges).

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned shall, in relation to works which are major highway works by virtue of paragraph (1), be construed as references to the undertaker.

(3) The following provisions of the 1991 Act shall not apply in relation to any works executed under the powers of this Order—

section 56 (directions as to timing);

section 56A (power to give directions as to placing of apparatus);

section 58 (restrictions following substantial road works);

section 58A (restriction on works following substantial street works);

section 73A (power to require undertaker to re-surface street);

section 73B (power to specify timing etc. of re-surfacing);

section 73C (materials, workmanship and standard of re-surfacing);

section 78A (contributions to costs of re-surfacing by undertaker); and

Schedule 3A (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 13 (temporary prohibition or restriction of use of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act referred to in paragraph (4) are—

section 54 (advance notice of certain works), subject to paragraph (6);

section 55 (notice of starting date of works), subject to paragraph (6);

section 57 (notice of emergency works);

section 59 (general duty of street authority to co-ordinate works);

section 60 (general duty of undertakers to co-operate);

section 68 (facilities to be afforded to street authority);

section 69 (works likely to affect other apparatus in the street);

section 75 (inspection fees);

section 76 (liability for cost of temporary traffic regulation); and

section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) shall have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 9 (construction and maintenance of new, altered or diverted streets) shall—

(a) affect the operation of section 87 of the 1991 Act (prospectively maintainable highways), and the undertaker shall not by reason of any duty under that article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or

(b) have effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

Construction and maintenance of new, altered or diverted streets

9.—(1) Subject to paragraph (2), the streets authorised to be constructed, altered or diverted under this Order shall be public highways, and unless otherwise agreed with the highway authority in whose area those streets lie shall ~~be maintained~~—

- (a) ~~be maintained~~ by and at the expense of the highway authority for a period of 12 months from their completion; and
- (b) at the expiry of that period, by and at the expense of the highway authority, provided that the works concerned have been completed to the reasonable satisfaction of the highway authority.

(2) Where a street which is not and is not intended to be a public highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be), unless otherwise agreed with the street authority, shall—

- (a) be maintained by and at the expense of the undertaker for a period of 12 months from its completion; and
- (b) at the expiry of that period by and at the expense of the street authority provided that the street has been completed to the reasonable satisfaction of the street authority.

(3) In any action against the undertaker in respect of damage resulting from its failure to maintain a street to which paragraph (2) applies, section 58 of the 1980 Act shall apply as if that street were a highway maintainable at the public expense.

Classification of roads

10. The new road referred to in Work No. 1 of Schedule 1 shall be classified as the A5505 Woodside Link and shall be—

- (a) a principal road for the purpose of any enactment or instrument which refers to highways classified as principal roads; and
- (b) a classified road for the purpose of any enactment or instrument which refers to highways classified as classified roads,

as if such classification had been made under section 12(3) of the 1980 Act.

Speed limits

11.—(1) Upon completion of the authorised development—

- (a) no person shall drive any motor vehicle at a speed exceeding 20 miles per hour in the lengths of road identified in Part 1 of Schedule 3 to this Order;
- (b) no person shall drive any motor vehicle at a speed exceeding 30 miles per hour in the lengths of road identified in Part 2 of Schedule 3 to this Order; and
- (c) no person shall drive any motor vehicle at a speed exceeding 40 miles per hour in the lengths of road identified in Part 3 of Schedule 3 to this Order.

(2) The speed limits imposed by this Order shall be deemed to have been imposed pursuant to an order under section 84(1) of the 1984 Act and:

- (a) will have the same effect; and
- (b) may be varied by the relevant traffic authority in the like manner,

as any other speed limit imposed pursuant to an order under that section.

(3) No speed limit imposed by this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(a) when used in accordance with regulation 3(5) of those Regulations.

(a) S.I. 2011/935

Stopping up of streets

12.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Parts 1 to 3 of Schedule 4 (streets to be stopped up) to the extent specified and described in column 3 of those Parts of that Schedule.

(2) No street specified in columns (1) and (2) of Parts 1 and 2 of Schedule 4 (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless—

- (a) the new street to be constructed and substituted for it, which is specified in column (4) of those Parts of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) The street specified in columns (1) and (2) of Part 3 of Schedule 4 (being a street to be stopped up for which no substitute is to be provided) ~~shall~~ must not be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the undertaker is in possession of the land; or
- (b) there is no right of access to the land from the street concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the street concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up shall be extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) This article is subject to article 31 (apparatus and rights of statutory undertakers in stopped up streets).

Temporary prohibition or restriction of use of streets

13.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily alter, divert, prohibit or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker ~~shall~~ must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary alteration, diversion, prohibition or restriction of a street under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily alter, divert, prohibit or restrict the use of the streets specified in columns (1) and (2) of Schedule 5 (temporary prohibition or restriction of use of streets) to the extent specified in column (3) of that Schedule.

(5) The undertaker ~~shall~~must not temporarily alter, divert, or prohibit or restrict the use of—

(a) any street specified as mentioned in paragraph (4) without first consulting the street authority; and

(b) any other street, without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent ~~shall~~must not be unreasonably withheld,

except that this paragraph shall not apply where the undertaker is the street authority.

(6) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b) that street authority shall be deemed to have granted consent.

Access to and from works

14. The undertaker may, for the purposes of the authorised development—

(a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule 6 (private accesses to and from works); and

(b) with the approval of the relevant planning authority after consultation with the highway authority (where the highway authority is not the undertaker), form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Traffic regulation

15.—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent shall not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

(a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;

(b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;

(c) authorise the use as a parking place of any road;

(d) make provision as to the direction or priority of vehicular traffic on any road; and

(e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The power conferred by paragraph (1) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (6) any prohibition, restriction or other provision made under paragraph (1) may have effect both before and after the expiry of that period.

(3) The undertaker ~~shall~~must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (4).

(4) The undertaker ~~shall~~must not exercise the powers conferred by paragraph (1) unless it has—

(a) given not less than—

- (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,
- to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).
- (5) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) shall—
- (a) have effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated, as an order under section 32 of the 1984 Act,
 and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
 - (b) be deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement).
- (6) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (1) within a period of 24 months from the opening of the authorised development.
- (7) Before exercising the powers of paragraph (1) the undertaker ~~shall~~must consult such persons as it considers necessary and appropriate and ~~shall~~must take into consideration any representations made to it by any such person.
- (8) Expressions used in this article and in the 1984 Act shall have the same meaning in this article as in that Act.
- (9) The powers conferred on the undertaker by this article with respect to any road shall have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

16.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph 1 shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991^(a) (right to communicate with public sewers).

(3) The undertaker ~~shall~~must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given

(a) 1991 c. 56.

subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

(4) The undertaker ~~shall~~must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker ~~shall~~must not, in carrying out or maintaining works conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker ~~shall~~must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into inland fresh waters or coastal waters of any matter whose entry or discharge into those waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(a).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and

(b) other expressions, excluding watercourses, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those regulations.

Protective work to buildings

17.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

(a) enter the building and any land within its curtilage; and

(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

(a) a right under paragraph (1) to carry out protective works to a building;

(b) a right under paragraph (3) to enter a building and land within its curtilage;

(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or

(d) a right under paragraph (4)(b) to enter land,

(a) S.I. 2010/675

the undertaker ~~shall~~must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 39 (arbitration).

(7) The undertaker ~~shall~~must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker ~~shall~~must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate land

18.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the scope of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) ~~shall~~must, if so required, before or after entering the land produce written evidence of authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes ~~shall~~must be made under this article—

- (a) on land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent shall not be unreasonably withheld.

(5) As soon as practicable following the exercise of any powers under paragraph (1), any apparatus or equipment ~~shall~~must be removed and the land ~~shall~~must be restored to the reasonable satisfaction of the owners of the land.

(6) The undertaker ~~shall~~must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

PART 5 POWERS OF ACQUISITION

Compulsory acquisition of land

19.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental, to it or as replacement land.

(2) This article is subject to paragraph (2) of article 21 (compulsory acquisition of rights) and article 27 (temporary use of land for carrying out the authorised development).

Time limit for exercise of authority to acquire land compulsorily

20.—(1) After the end of the period of 5 years beginning on the day on which the Order comes into force—

- (a) no notice to treat shall be served in respect of the Order land under Part 1 of the 1965 Act; and
- (b) no declaration shall be executed in respect of the Order land under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981^(a) as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised development) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

21.—(1) Subject to paragraph (2) the undertaker may acquire compulsorily such rights over the Order land, or impose restrictive covenants affecting the land, as may be required for any purpose for which that land may be acquired under article 19 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence

(2) In the case of the Order land specified in column (1) of Schedule 7 (land in which only new rights etc., may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land, or the imposition of restrictive covenants affecting the land, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

^(a) 1981 c. 66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). There are other amendments to the 1981 Act which are not relevant to this Order.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights)) where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2) the undertaker shall not be required to acquire a greater interest in that land.

(4) Schedule 8 shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

Private rights

22.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under the Order shall be extinguished in so far as their continuance would be inconsistent with the exercise of the right acquired or the burden of the restrictive covenant imposed—

- (a) as from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over Order land owned by the undertaker shall be extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 30 (statutory undertakers) applies.

(7) Paragraphs (1) to (3) shall have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs shall not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

23.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat) in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are amendments to the 1981 Act which are not relevant to this Order.

Acquisition of subsoil or airspace only

24.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in article 19 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of or rights in the subsoil of or the airspace over land under paragraph (1), the undertaker shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 25 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building, manufactory, park or garden.

Acquisition of part of certain properties

25.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determine that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determine that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determine that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the

additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determine that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event ~~shall~~must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker ~~shall~~must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

26.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) shall not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation shall not be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

27.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column

- (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
- (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any permanent mitigation works.
- (2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker ~~shall~~must serve notice of the intended entry on the owners and occupiers of the land which specifies the purpose for the temporary possession and the part of the authorised development the temporary possession relates to.
- (3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 9; or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker ~~shall~~must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to—
- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d); or
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development.
- (5) The undertaker ~~shall~~must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.
- (7) Nothing in this article shall affect any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- (8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker shall not be precluded from—
- (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 21 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil or of airspace over (or rights in the subsoil or of airspace over) of that land under article 24 (acquisition of subsoil or airspace only).
- (9) Where the undertaker takes possession of land under this article, it shall not be required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory

acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised development

28.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker ~~shall~~must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker ~~shall~~must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker ~~shall~~must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(8) Nothing in this article shall affect any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to the acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article “the maintenance period”, in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Special category land

29.—(1) The special category land shall not vest in the undertaker until the undertaker has acquired the replacement land and the Secretary of State has certified that a scheme for the provision of the replacement land as open space has been implemented to its satisfaction.

(2) On the requirements of paragraph (1) being satisfied, the replacement land shall vest—

- (a) in respect of land numbered 02/13 (part) and 02/14 (part), in Luton Borough Council of Town Hall, George Street, Luton, Bedfordshire LU1 2BQ;

- (b) in respect of land numbered 02/15 (part) in Central Bedfordshire Council of Priory House, Monks Walk, Chicksands, Shefford SG17 5TQ and Aldwyck Housing Group Limited of 6 Houghton Hall Business Park, Porz Avenue, Houghton Regis, Bedfordshire LU5 5UZ;
- (c) in respect of land numbered 02/28 (part), 02/16 (part), 02/17 (part) and 02/47 in Central Bedfordshire Council of Priory House, Monks Walk, Chicksands, Shefford SG17 5TQ; and
- (d) in respect of land numbered 02/19 (part), 02/20 (part), 02/29 and 03/01 (part), in Friends Life Company Limited of Pixham End, Dorking, Surrey RH4 1QA,

subject to the rights, trusts and incidents as attached to the special category land that are to be discharged; and the special category land shall be discharged from all such rights, trusts and incidents to which it was previously subject.

Statutory undertakers

30.—(1) Schedule 10 (Protective Provisions) to the Order has effect.

(2) Subject to the provisions of Schedule 10 and in accordance with section 138 of the 2008 Act, the undertaker may—

- (a) acquire compulsorily or acquire new rights or impose restrictive covenants over the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired and described in the book of reference;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Apparatus and rights of statutory undertakers in stopped up streets

31.—(1) Where a street is stopped up under article 12 (stopping up of streets) any statutory utility whose apparatus is under, in, on, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 12 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker ~~shall~~must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker ~~shall~~must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the

execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) shall not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs shall be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(a).

Recovery of costs of new connections

32.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 30 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 30, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article shall not have effect in relation to apparatus to which article 31 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(a) 2003 c. 21. There are amendments to this Act which are not relevant to this Order.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6 OPERATIONS

Felling or lopping trees

33.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker ~~shall~~must do no unnecessary damage to any tree or shrub and ~~shall~~must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

PART 7 MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

34.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

35. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

36.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Certification of plans, etc.

37.—(1) The undertaker ~~shall~~**must**, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference;
- (b) the land plans;
- (c) the access plans;
- (d) the works plans;
- (e) the sections; and
- (f) any other plans or documents referred to in this Order,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

38.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.
(b) 1974 c.40, as amended at the date of the coming into force of this Order.

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978^(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement shall be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender ~~shall~~must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person ~~shall~~must ~~give~~give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date ~~shall~~must not be less than 7 days after the date on which the notice is given.

(9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

(a) 1978 c. 30.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

39. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) ~~shall~~must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Procedure in relation to approvals, etc., under Schedule 2

40.—(1) Where an application is made to the relevant planning authorities or either of them for any consent, agreement or approval required by a requirement under Schedule 2, the following provisions apply in respect of that application as they would apply if that consent, agreement or approval were required by a condition imposed on a grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions); and
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

Signed by authority of the Secretary of State for Transport

2014

Designation
Department for Transport

SCHEDULES

SCHEDULE 1

Articles 3, 4 and 10

AUTHORISED DEVELOPMENT

In Central Bedfordshire Council and Luton Borough Council—

A nationally significant infrastructure project as defined in sections 14 and 22 of the Act comprising:

Work No.1 — The construction of a new road, 2.90 kilometres in length, starting at the junction of Park Road North, Poynters Road and Porz Avenue in Houghton Regis and ending at the proposed M1 junction 11A, to include—

- (i) construction of new single carriageway road between the Porz Avenue roundabout and a proposed northern roundabout, a distance of approximately 2.55km;
- (ii) construction of an over-bridge and associated wing walls and retaining walls;
- (iii) construction of new dual carriageway road between the proposed northern roundabout and the proposed M1 junction 11A, a distance of approximately 0.35km;
- (iv) construction of an un-segregated footway and cycleway between the proposed junction with Parkside Link to the proposed northern roundabout, located in the north and west verge;
- (v) construction of an un-segregated footway and cycleway between the proposed junction with Pastures Way Link to the proposed northern roundabout, located in the south and east verge;
- (vi) construction of signal controlled pedestrian cyclist crossings;
- (vii) construction of a private means of access to farmland adjacent to the works;
- (viii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (ix) drainage works, drainage attenuation ponds, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, traffic signals, fencing works, landscaping works, noise mitigation barriers and other works associated with the construction of the permanent highway.

Associated development within the meaning of section 115(2) of the 2008 Act comprising:

Work No.2 — The improvement of the existing C205 Park Road North, Houghton Regis, at its approach to the junction with Work No.1, to include—

- (i) construction of an un-segregated footway and cycleway between the junction with Sandringham Drive and the junction with Work No.1, located in the east verge;
- (ii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (iii) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works, noise mitigation barriers and other works associated with the construction of the permanent highway.

Work No.3 — The improvement of the existing Porz Avenue, Houghton Regis at its approach to the junction with Work No.1, to include—

- (i) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (ii) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works, noise mitigation barriers and other works associated with the construction of the permanent highway.

Work No.4 — The improvement of the existing C205 Poynters Road, Dunstable and Luton at its approach to the junction with Work No.1, to include—

- (i) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (ii) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works, noise mitigation barriers and other works associated with the construction of the permanent highway.

Work No.5 —The improvement of the existing Wheatfield Road, Luton, to include—

- (i) reconfiguration of the existing Wheatfield Road (to be stopped up) and construction of a turning head;
- (ii) construction of a new single carriageway road to link the existing Wheatfield Road with Work No. 1;
- (iii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (iv) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works, noise mitigation barriers and other works associated with the construction of the permanent highway.

Work No.6 — The construction of a footway and cycleway alongside Sandringham Drive, Houghton Regis, to include—

- (i) construction of an un-segregated footway and cycleway on Sandringham Drive between Park Road North and Frogmore Road, located in the south verge;
- (ii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (iii) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, fencing works, landscaping works and other works associated with the construction of the permanent highway.

Work No.7 — The construction of a footway and cycleway between Frogmore Road, Houghton Regis, and Wheatfield Road, Luton, to include—

- (i) construction of an un-segregated footway and cycleway between Frogmore Road and Wheatfield Road;
- (ii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works;
- (iii) construction of a signal controlled pedestrian cyclist crossing; and
- (iv) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, fencing works, landscaping works and other works associated with the construction of the permanent highway.

Work No.8 — The diversion of part of Houghton Brook, to include—

- (i) construction of a new section of Houghton Brook, approximately 0.34 km in length;

- (ii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (iii) drainage works, earthworks, fencing works, landscaping works and other works associated with the construction of the brook.

Work No.9 — The construction of a new road, 0.32 kilometres in length, starting at the junction of Parkside Drive and Fensome Drive in Houghton Regis and ending at Work No.1, to include—

- (i) construction of new single carriageway road between Burford Walk and Work No.1, a distance of approximately 0.08 km;
- (ii) the widening of the existing Parkside Drive south of the junction with Fensome Drive, a distance of approximately 0.24 km;
- (iii) the removal of the existing Parkside Drive carriageway between Work No.1 and Burford Walk;
- (iv) construction of an over-bridge and associated wing walls and retaining walls;
- (v) construction of an un-segregated footway and cycleway between the junction with Parkside Link and Work No.1, located in the east verge;
- (vi) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (vii) drainage works, drainage attenuation ponds, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works, noise mitigation barriers and other works associated with the construction of the permanent highway.

Work No.10 — The construction of a new footway and cycleway, 0.12 kilometres in length, starting at the end of Pastures Way, Luton and terminating at Work No.1 in Houghton Regis, to include—

- (i) construction of an un-segregated footway and cycleway between Work No.1 and the end of Pastures Way, a distance of approximately 0.12 km;
- (ii) the removal of the existing Parkside Drive carriageway between Work No.1 and Pastures Way;
- (iii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (iv) drainage works, drainage attenuation ponds, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway.

Work No.11 — Works to excavate a borrow pit, to include—

- (i) excavation to a depth not exceeding 2.5 metres below existing ground level, with total excavated material not exceeding 100,000 cubic metres; and
- (ii) drainage works, fencing works, landscaping works and other works associated with the creation of the borrow pit.

Work No.12 — The construction of a new road, 0.45 km in length, starting at the proposed northern roundabout and ending at the proposed junction with Houghton Road, Chalton, to include—

- (i) construction of new dual carriageway road between the proposed northern roundabout and the proposed roundabout junction with Houghton Road, Chalton, a distance of approximately 0.45km;
- (ii) construction of an un-segregated footway and cycleway between the proposed northern roundabout and the proposed roundabout on Houghton Road, Chalton, located in the south verge;

- (iii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (iv) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works, noise mitigation barriers and other works associated with the construction of the permanent highway.

Work No.13 — The improvement of the existing C198 Sundon Road, Houghton Regis and Houghton Road, Chalton, to include—

- (i) improvement of Sundon Road and Houghton Road between the eastern boundary of Osborne House, north-eastwards for approximately 0.40 km;
- (ii) construction of private means of access to farmland adjacent to the works;
- (iii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and
- (iv) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works, noise mitigation barriers and other works associated with the construction of the permanent highway.

Work No 14 — The construction of a new footway and cycleway 1.19 kilometres in length, alongside Houghton Brook between the proposed Parkside Link in Houghton Regis to the end of Kestrel Way, Luton, to include—

- (i) construction of an un-segregated footway and cycleway between the proposed Parkside Link and the end of Kestrel Way, a distance of approximately 1.19km;
- (ii) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works;
- (iii) drainage works, drainage attenuation ponds, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works landscaping works and other works associated with the construction of the permanent highway.

Work No 15 — Construction of a private means of access from Houghton Road, Chalton, to Chalton Cross Farm.

Further, in connection with such works further development within the Order limits as may be necessary or expedient for the purposes of, or in connection with, the construction of the authorised project, and which falls within the scope of the environmental impact assessment, consisting of—

- (a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (b) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street; works to place or maintain apparatus in a street; works to alter the position of apparatus, including mains, sewers, drains and cables;
- (c) ramps, means of access, footpaths, bridleways, embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, wing walls, highway lighting, fencing and culverts;
- (d) works to alter the position of apparatus, including mains, sewers, drains and cables and to carry out undergrounding, ducting and trenching operations and the removal of redundant equipment as a result of, or for the purposes of, such alteration;

- (e) works to alter the course of, or otherwise interfere with a watercourse other than a navigable watercourse;
- (f) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised project;
- (g) works for the benefit or protection of land affected by the authorised project;
- (h) works required for the strengthening, improvement, maintenance, or reconstruction of any streets; and
- (i) other works, including contractor's compounds, working sites, storage areas and works of demolition.

SCHEDULE 2

Articles 3 and 40

REQUIREMENTS

Interpretation

1. In this Schedule—

“the approved development plans” means the plans certified in accordance with article 37(1);

“commence” means the first carrying out of any material operation, as defined in section 155 of the 2008 Act, for the construction of the authorised development and “commencement” and “commenced” are to be construed accordingly;

“the environmental document” means a document certified in accordance with article 37(1) as the environmental document by the decision-maker for the purposes of this Order;

“heavy goods vehicle” means a heavy goods vehicle of 7.5 tonnes gross vehicle weight or more;

“the landscaping plans” means plans setting out landscape proposals included within the environmental document figures 10.3 to 10.7 inclusive or such replacement plans as are approved in accordance with paragraph 4(2); and

“the link road” means the authorised development.

Time limits

2. The authorised development ~~shall~~must commence no later than the expiration of 5 years beginning with the date that this Order comes into force.

Commencement

3. Notice of commencement of the authorised development ~~shall~~must be given by the undertaker to the relevant planning authorities not later than seven days after the date that the authorised development is commenced.

Detailed design and implementation

4.—(1) No part of the authorised development shall commence until detailed design documents have been approved by the relevant planning authority.

(2) Except as provided for by sub-paragraph (3), the authorised development ~~shall~~must be carried out in accordance with the approved development plans and the landscaping plans.

(3) Replacement landscaping plans may be approved in writing by the relevant planning authority and substituted for the landscaping plans provided that the development so altered accords with the environmental document and falls within the Order limits.

Landscape and ecology

5.—(1) No part of the authorised development shall commence until a written landscape and ecology management plan has been submitted to and approved in writing by the relevant planning authority, in consultation with Natural England.

(2) The landscape and ecology management plan ~~shall~~must include details of—

- (a) landscape and ecological mitigation, enhancement, compensation and nature conservation measures reflecting the proposals of the environmental document;
- (b) the management and monitoring of landscape and ecological mitigation, compensation and nature conservation measures;

- (c) the management and monitoring of water quality in Houghton Brook, including the build up of sediment;
- (d) the restoration of the borrow pit referred to in Work No. 11;
- (e) proposed species for planting;
- (f) repeat surveys to be undertaken to confirm the presence of any European protected species including the location of any active bat roosts;
- (g) the protection of any European protected species from activities associated with the authorised development, including any European protected species identified in the surveys required by sub-paragraph (d);
- (h) surveys to be undertaken to confirm the presence of invertebrate species;
- (i) details of any mitigation and enhancement measures necessary in relation to species identified in the surveys required by sub-paragraph (f);
- (j) the protection of any nationally protected species from activities associated with the authorised development; and
- (k) a programme for implementation of the proposed measures required by sub-paragraphs (f), (g), (h), (i), and (j).

(3) The approved landscape and ecology management plan ~~shall~~must be implemented in its entirety unless otherwise agreed in writing by the relevant planning authority.

(4) “European protected species” has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010.

(5) “Nationally protected species” means any species protected under the Wildlife and Countryside Act 1981.

(6) Any tree or shrub planted as part of the approved landscaping and ecology management plan above that, within a period of five years after planting, is removed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased ~~shall~~must be replaced in the first available planting season with a specimen of the same species as that originally planted, unless otherwise approved by the relevant planning authority.

(7) All hedges and trees forming part of the boundary of the Order limits or situated within them (unless shown to be removed in the landscaping and ecology management plan) ~~shall~~must be protected from any damage and maintained throughout the authorised development.

(8) If any hedge or tree protected under sub-paragraph (6) is removed, uprooted, destroyed or dies it ~~shall~~must be replaced in the first available planting season and thereafter maintained for a period of five years.

(9) All areas of the site left undisturbed, and all soil, soil making material and overburden mounds ~~shall~~must be kept free from injurious weeds and invasive plants throughout the authorised development as defined in this Order.

Contaminated land

6.—(1) Construction of the link road ~~shall~~must not take place in any area identified by the environmental document as requiring land contamination investigation until such an investigation has been carried out in accordance with the methodology set out in the environmental document.

(2) In the event that contaminated materials are identified by an investigation or found at any time when carrying out the authorised development, it ~~shall~~must be reported immediately in writing to the relevant planning authority and the undertaker ~~shall~~must complete a risk assessment of the contamination.

(3) Where the relevant planning authority determine that remediation is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose, ~~shall~~must be submitted to and approved in writing by the relevant planning authority.

(4) The approved scheme ~~shall~~must include details of data to be collected in order to demonstrate that the remediation measures have been implemented successfully and details of

requirements for longer-term monitoring of pollution linkages, maintenance and arrangements for contingency action.

(5) Remediation ~~shall~~must be carried out in accordance with the approved scheme unless otherwise agreed in writing by the relevant planning authority.

(6) If remediation is required at any time during construction of the authorised development, no part of the authorised development shall be opened for public use until a verification report demonstrating completion of remediation in accordance with the approved scheme has been submitted to and approved in writing by the relevant planning authority.

(7) The verification report ~~shall~~must include results of sampling and monitoring carried out in accordance with the approved scheme.

(8) The verification report ~~shall~~must include any plan for longer-term monitoring of pollution linkages, maintenance and arrangements for contingency action as may be required by the approved scheme, and the plan ~~shall~~must be implemented as approved unless otherwise agreed in writing by the relevant planning authority.

Construction environmental management plan

7.—(1) No part of the authorised development shall commence until a written construction environmental management plan has been submitted to and approved in writing by the relevant planning authority.

(2) The construction environmental management plan ~~shall~~must include measures to address—

- (a) generation of dust and mud arising during the construction period;
- (b) the monitoring of PM10 particulates, including the taking of appropriate mitigation measures if National Air Quality Strategy objectives are exceeded or are predicted to be exceeded;
- (c) the routeing of construction vehicles during the construction phase;
- (d) noise and vibration;
- (e) safeguarding watercourses;
- (f) flooding
- (g) waste management; and
- (h) the mitigation of environmental impacts of construction reflecting the proposals of the environmental document.

(3) In relation to safeguarding watercourses, the construction environmental management plan ~~shall~~must require—

- (a) the collection, treatment and disposal of all water entering or arising within the Order limits during highway construction operations, including the removal of suspended solids from surface water run-off, to ensure that there shall be no discharge of contaminated or polluted drainage to ground or surface waters;
- (b) all foul drainage arising out of the authorised development to be discharged to a public sewer or else to a sealed tank, the contents of which ~~shall~~must be removed from within the Order limits in its entirety;
- (c) any chemical, oil or fuel storage container within the Order limits for the purposes of the authorised development to be sited on an impervious surface with bund walls, and the volume of the bunded area to be the equivalent of 110% of the volume of the container and to contain within its curtilage all fill and draw pipes, vents, gauges and sight glasses;
- (d) the drainage system of the bund to be sealed with no discharge to any watercourse, land or underground strata.

(4) In relation to flooding the construction environmental management plan ~~shall~~must comply with the requirements detailed in the Luton Borough Council and South Bedfordshire District Council Strategic Flood Risk Assessment.

(5) In relation to the generation of mud and dust during construction, the construction environmental management plan ~~shall~~must require—

- (a) wheel cleaning facilities to be installed and remain in position and be maintained in full working order, to be used by all heavy goods vehicles throughout the construction of the authorised development to minimise the risk that dust, mud or other deleterious matter is transferred to the public highway by vehicles leaving the authorised development;
- (b) measures to be taken during road construction operations to minimise the risk that dust or windblown material is carried on to adjacent property, including the watering of all haul and access roads and the spraying of storage heaps or operational construction areas as necessary during dry weather conditions; and
- (c) all heavy goods vehicles carrying materials in to or out of the authorised development during the construction of the development to be securely sheeted unless the load is otherwise enclosed.

(6) The construction of the authorised development ~~shall~~must be carried out in accordance with the approved construction environmental management plan.

Noise and vibration

8.—(1) No part of the authorised development shall commence until a plan showing the locations of the acoustic barriers and details of the length, height, design and materials of the acoustic barriers has been submitted in writing to and approved in writing by, the relevant planning authority.

(2) The acoustic barriers ~~shall~~must be erected in accordance with the approved details prior to the opening of the link road and ~~shall~~must be retained in place throughout the life of the road.

(3) All construction work ~~shall~~must be undertaken in accordance with guidance detailed in the BS5228:2009 code of practice for noise and vibration control on construction and open sites, parts 1 and 2.

(4) All plant, equipment and other machinery used in connection with the construction of the link road ~~shall~~must be equipped with effective silencing equipment or sound proofing equipment to the standard of design set out in the manufacturer's specification and ~~shall~~must be maintained in accordance with that specification at all times throughout the development.

Access by construction traffic

9.—(1) No part of the authorised development shall commence until the locations and details of the access points for construction traffic from the public highway into the authorised development have been submitted in writing to, and approved in writing by, the relevant planning authority.

(2) All construction traffic ~~shall~~must access the authorised development using an access point approved pursuant to sub-paragraph (1) at all times.

Building and construction materials – highways

10.—(1) No part of the authorised development shall commence until written details of the materials to be used for the surfacing of the new highway and the adjacent cycleway and footway have been submitted to and approved in writing by the relevant planning authority.

(2) The details submitted under sub-paragraph (1) ~~shall~~must include provision for the use of low noise road surfacing materials on the highway.

(3) The authorised development ~~shall~~must be carried out using the materials approved under sub-paragraph (1).

Building and construction materials – structures

11.—(1) No part of the authorised development shall commence until written details of the building materials to be used for the external facings of all structures, including bridges, retaining

walls and culvert sides and headwalls, have been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development ~~shall~~must be carried out using the materials approved under sub-paragraph (1).

Street lighting

12.—(1) No part of the authorised development shall commence until a scheme of the lighting to be erected along the link road has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme submitted under sub-paragraph (1) ~~shall~~must include details of—

- (a) the areas of the link road to be lit;
- (b) the position of the lighting columns and their heights and designs, including their luminaires and any shielding that is to be incorporated into the lighting columns;
- (c) the extent of the light spread from each column; and
- (d) mitigation measures relating to lighting reflecting the proposals of the environmental document.

(3) The authorised development ~~shall~~must be carried out in accordance with the scheme approved under sub-paragraph (1).

Hours of working

13.—(1) No delivery or removal of materials or construction works shall take place on Public Holidays, Sundays or outside the hours of—

- (a) 0800 to 1800 hours on Mondays to Fridays; and
- (b) 0800 to 1300 hours on Saturdays.

(2) Sub-paragraph (1) shall not prevent—

- (a) the use of pumping equipment or the carrying out of essential on-site repairs to plant and machinery; and
- (b) delivery or removal of materials or construction works carried out with the prior approval of the relevant planning authority,

outside such hours.

(3) Approval given under sub-paragraph (2)(b) may be given for specific activities or classes of activities.

Surface water disposal

14.—(1) No part of the authorised development shall commence until a detailed design of the realignment of Houghton Brook including long and cross sections and a written scheme for the disposal of surface water has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme ~~shall~~must include mitigation measures that reflect those proposed in the environmental document and are considered sufficient by the relevant planning authority having regard to the flood risk assessment within the environmental document.

(3) No infiltration system shall form a part of the scheme of surface water disposal unless the relevant planning authority is satisfied that it does not pose a risk to groundwater quality.

(4) The approved scheme for the disposal of surface water ~~shall~~must be implemented in its entirety unless otherwise agreed in writing with the relevant planning authority.

Archaeology

15.—(1) No part of the authorised development shall commence until a written scheme of archaeological investigation has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development ~~shall~~must be carried out at all times in accordance with the scheme approved under sub-paragraph (1) unless otherwise agreed in writing by the relevant planning authority.

(3) Any archaeological remains not previously identified which are revealed when carrying out the authorised development ~~shall~~must be retained in situ and reported to the relevant planning authority in writing within 3 working days.

(4) No construction operations for the authorised development shall take place within 10 metres of such remains for a period of 14 days from the date of such notification unless otherwise agreed in writing by the relevant planning authority.

(5) If the relevant planning authority are of the view that the archaeological remains require further investigation, no construction operations shall take place within 10 metres of the remains until provision has been made for the investigation and recording of the remains in accordance with details first submitted in writing to, and approved in writing by, the relevant planning authority.

Cultural heritage

16.—(1) ~~No part of the~~The authorised development ~~shall~~must not commence until a written cultural heritage scheme and programme has been submitted and approved in writing by the relevant planning authority.

(2) The scheme ~~and programme must~~ ~~shall~~ include mitigation measures reflecting those proposed ~~in the environmental document and include—~~

- (a) records to be taken to show the current appearance and setting of historic buildings impacted by the works; and
- (b) mitigation measures to protect such heritage assets as the scheme and programme identify as requiring protection.

(3) The authorised development ~~shall~~must be carried out in accordance with the approved scheme ~~and programme.~~

Geology

17.—(1) No part of the authorised development shall commence until a written scheme of geological investigation has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme ~~shall~~must set out criteria for the assessment of geological exposures of scientific interest for the purposes of deciding whether a permanent geological conservation site should be created.

(3) The authorised development ~~shall~~must be carried out in accordance with the approved scheme.

Monitoring of the effects of the authorised development

18.—(1) No part of the authorised development shall be opened for public use until a written scheme for monitoring the following effects of the authorised development has been submitted in writing to, and approved by, the relevant planning authority—

- (a) effects on nature conservation interests;
- (b) effects on access to community and private assets;
- (c) effects on the water environment including water quality, hydrology and flood risk;

- (d) landscape and visual effects;
- (e) effects on air quality; and
- (f) noise and vibration effects; ~~and~~
- (g) ~~traffic on Parkside Drive, Houghton Regis.~~

(2) The monitoring scheme ~~shall~~must cover the monitoring of the above effects of the authorised development and their mitigation as set out in the environmental document.

~~(3) Should the monitoring referred to in paragraph 18(1)(g) show that motorised vehicle movements on Parkside Drive exceed 8300 movements per day averaged over a two week period, Central Bedfordshire Council will consult people living in the vicinity of Parkside Drive on whether to implement further traffic mitigation measures.~~

19.-(1) In this requirement, “the Transport Assessment” means the Woodside Link Transport Assessment forming part of the environmental document.

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(2) No part of the authorised development shall be opened for public use until a written scheme (‘the Parkside Drive Scheme’) for monitoring and assessing the volume and effects of traffic using Parkside Drive, Houghton Regis has been submitted in writing to, and approved by, the relevant planning authority.

(3) The Parkside Drive Scheme must make provision for the monitoring of the volumes of motorised vehicular traffic using Parkside Drive on the basis of the same traffic monitoring methodology used for the Transport Assessment for a period of two weeks commencing on the first anniversary of the Woodside Link scheme opening date and thereafter on the fourth, seventh, tenth, thirteenth and sixteenth anniversaries of that date.

(4) Any scheme which is approved by the relevant planning authority under paragraph (1) must be implemented as approved.

(5) Should the monitoring show that motorised vehicle movements on Parkside Drive exceed 8300 movements per day averaged over a two week period, Central Bedfordshire Council must consult people living within 500 metres of Parkside Drive regarding whether to implement further traffic mitigation measures in order to secure significant amelioration of any adverse traffic, highway safety or traffic-related environmental conditions identified in the assessment.

Weight Limits

~~19.20.~~ Not later than three months after Work no.1 has been brought into public use, Central Bedfordshire Council ~~will~~must initiate the process for making an order under the 1984 Act to introduce a 7.5 tonne weight limit on Sundon Road towards Houghton Regis Town Centre, and then implement any weight restriction agreed as a result of that process.

SCHEDULE 3

Article 11

SPEED LIMITS

PART 1

ROADS SUBJECT TO 20 MPH SPEED LIMIT

<i>(1)</i> <i>Number</i>	<i>(2)</i> <i>Description</i>
1	Parkside Drive, Houghton Regis from a point 50 metres north of its junction with the A5505 Woodside Link (Work No.1) northwards for a distance of 260 metres.

PART 2

ROADS SUBJECT TO 30 MPH SPEED LIMIT

<i>(1)</i> <i>Number</i>	<i>(2)</i> <i>Description</i>
1	The A5505 Woodside Link (Work No.1) from its junction with Park Road North eastwards for a distance of 370 metres.
2	Sundon Road, Houghton Regis, from its junction with Houghton Road, Chalton southwards for a distance of 520 metres.
3	Houghton Road, Chalton from its junction with Sundon Road Houghton Regis northwards for a distance of 125 metres.
4	The unclassified road known as Sundon Link Road from its junction with Sundon Road, Houghton Regis eastwards for a distance of 65 metres

PART 3

ROADS SUBJECT TO 40 MPH SPEED LIMIT

<i>(1)</i> <i>Number</i>	<i>(2)</i> <i>Description</i>
1	The A5505 Woodside Link (Work No.1) from a point 390 metres east of its junction with Park Road North north-eastwards for a distance of 2250 metres.
2	The unclassified road known as the Sundon Link Road from its junction with the A5505 Woodside Link (Work No.1) westwards for a distance of 390 metres.
3	Parkside Drive Houghton Regis from its junction the A5505 Woodside Link (Work No.1) northwards for a distance of 50 metres.

SCHEDULE 4

Article 12

STREETS TO BE STOPPED UP

PART 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
Luton Borough Council	Wheatfield Road	Between points A and B on access plan 1 (being from the junction of Poynters Road eastwards for a distance of 28 metres).	Between points C and D on access plan 1 (being from the new junction with Work No.1 south-eastwards for a distance of 19 metres).
Central Bedfordshire Council	Parkside Drive (currently subject to Prohibition of Driving Order)	Between points E and F on access plan 2 (being from a point 142 metres south of the junction of Parkside Drive and Fensome Drive south-eastwards for a distance of 470 metres to the end of Pastures Way, Luton).	Between points E and G on access plan 2 (being from a point 142 metres south of the junction of Parkside Drive and Fensome Drive southwards for a distance of 170 metres to the junction with Work No.1) – open to all traffic on this section. and Between points H and F on access plan 2 (being from the junction with Work No.1 southwards for a distance of 116 metres to the end of Pastures Way, Luton) – this section to be subject to a Prohibition of Driving Order.
	Footpath 39 (Houghton Regis)	Between points U and V on access plan 1 (being from a point 25m west of the junction of Sandringham Drive and Windsor Drive	Replaced by new shared use footway and cycleway between points U and W on access plan 1 (being from a point 25metres west of the junction of

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
		eastwards for a distance of 25m to the boundary with Luton Borough Council).	Sandringham Drive and Windsor Drive in an easterly and southerly direction, crossing Work No.1, to the boundary with Luton Borough Council, a distance of 196 metres).
	Footpath 8 (Chalton)	In its entirety between points MM and NN as shown on access plans 2 and 3, a distance of 755 metres.	Replaced by new shared use footway and cycleway between points M and N on access plans 2 and 3 (being from ch.1115 of Woodside Link eastwards following the south side of Houghton Brook to Kestrel Way, Luton, a distance of 1191 metres).
	Footpath 7 (Chalton)	Between points P and Q on access plans 4 and 5 (being from ch.2310 of Work No.1 then northwards to just north of Chalton Cross Farm buildings, a distance of 381 metres).	Replace by new shared use footway and cycleway between points P and Q (via T) on access plans 5 and 7 (being from ch.2310 of Work No.1, northwards on the west side of Work No.1, to an uncontrolled crossing point at ch.2510 (point T on access plan 5) of Work No.1, then on the east side of Work No.1, utilising the access road to Chalton Cross Farm buildings to rejoin footpath 7 at point Q, a distance of 443 metres).
	Footpath 6 (Chalton)	Between points R and S on access plan 5 (being from Footpath 7 close to ch.2550 of Work No.1 then north-westwards to Houghton Road, Chalton, a distance of 467 metres)	Replaced by a new shared use footway and cycleway between points T and S on access plan 5 (being from the substitute Footpath 7 at ch.2510 on Work No.1, on the west side of Work No.1, then on the

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
			south side of Sundon Link to ch.SL410, to an uncontrolled crossing point at Sundon Link, then along the south-east side of the old Sundon Road to rejoin Footpath 6 at point S, a distance of 810 metres).

PART 2

PRIVATE ACCESSES FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private access to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>Private access to be substituted</i>
Central Bedfordshire Council	Access to Chalton Cross Farm	Between Points AA and BB on access plan 5 (being from the northern-most point of Chalton Cross Farm yard northwards towards Houghton Road, Chalton for a distance of 164 metres).	Between points AA and CC on access plan 5 (being from the northern-most point of Chalton Cross Farm yard westwards towards Houghton Road, Chalton for a distance of 260 metres).

PART 3

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
Central Bedfordshire Council	Footpath A17 (Houghton Regis)	Entire length as shown on access plans 2, 4 and 6 between points LL and KK, a distance of 864 metres.

SCHEDULE 5

Article 13

TEMPORARY PROHIBITION OR RESTRICTION OF USE OF STREETS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Temporary prohibition or restriction on the use of streets</i>	<i>(3)</i> <i>Extent of temporary prohibition or restriction of use of street</i>
Central Bedfordshire Council	Park Road North	Between Sandringham Drive and Poynters Road, all traffic. Access to frontages to be maintained at all reasonable times.
	Porz Avenue	Between Park Road North and Lovett Way, all traffic. Access to frontages to be maintained at all reasonable times.
	Poynters Road (the boundary between Central Bedfordshire Council and Luton Borough Council runs along the middle of Poynters Road)	Between Porz Avenue and Brunel Road, Luton, all traffic. Access to frontages to be maintained at all reasonable times.
	Sundon Road, Houghton Regis	Between Hillborough Crescent (east) and Houghton Road, Chalton, all traffic. Access to frontages to be maintained at all reasonable times.
	Houghton Road, Chalton	Between Sundon Road and Luton Road, Chalton, all traffic. Access to frontages to be maintained at all reasonable times.
	Parkside Drive	Between points DD and F on access plan 2, all traffic, including pedestrians and cyclists.
	Sandringham Drive	Between Park Road North and Windsor Drive, all traffic. Access to frontages to be maintained at all reasonable times.
	Un-named cycleway between Sandringham Drive and Wheatfield Road	Between points FF and GG on access plan 2 all traffic.
	Footpath 7 (Chalton)	Between points K and P on access plans 4 and 6 and points Q and L on access plan 5.
Luton Borough Council	Wheatfield Road	Between points HH and JJ on access plan 1, all traffic.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Temporary prohibition or restriction on the use of streets</i>	<i>(3)</i> <i>Extent of temporary prohibition or restriction of use of street</i>
		Access to frontages to be maintained at all reasonable times.
	Pastures Way	From points F and Y on access plan 2, all traffic, including pedestrians and cyclists.
	Poynters Road (the boundary between Central Bedfordshire Council and Luton Borough Council runs along the middle of Poynters Road)	Between Porz Avenue Houghton Regis and Brunel Road, all traffic. Access to frontages maintained at all reasonable times.

SCHEDULE 6

Article 14

PRIVATE ACCESSES TO AND FROM WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
Central Bedfordshire Council	At point X1 on access plan 5 (being a point on Houghton Road, Chalton 130 metres north-east of the Chalton parish boundary), a temporary vehicular and pedestrian access to provide safe access and egress for site vehicles and plant and site workers personal vehicles to the construction compound to undertake all of the authorised development
	At point X2 on access plan 2 (being a point on Parkside Drive, Houghton Regis 15 metres south of the junction with Fensome Drive), a temporary vehicular and pedestrian access to provide safe access and egress for site vehicles and plant to undertake the authorised development with Work Nos. 6 to 10 inclusive
	At point X3 on access plan 1 (being a point on Sandringham Drive, Houghton Regis 80 metres east of the junction with Park Road North), a temporary vehicular and pedestrian access to provide safe access and egress for site vehicles and plant and site workers' personal vehicles to undertake the authorised development with Work Nos. 1 to 6 inclusive
	At point X7 on access plan 5 (being a point on the future M1 Junction 11A), a temporary vehicular access to provide safe access and egress for site vehicles and plant and site workers' personal vehicles to undertake all of the authorised development
Luton Borough Council	At point X4 on access plan 1 (being a point on Wheatfield Road, Luton 210 metres east of the junction with Poynters Road), a temporary vehicular and pedestrian access to provide safe access and egress for site vehicles and plant to undertake the authorised development with Work No. 5
	At point X5 on access plan 2 (being a point on Pastures Way, Luton 2 metres south of the junction with Parkside Drive), a temporary vehicular and pedestrian access to provide safe access and egress for site vehicles and plant to undertake the authorised development with Work No. 10
	At point X6 on access plan 3 (being a point at the eastern end of Kestrel Way, Luton), a temporary vehicular and pedestrian access to provide safe access and egress for site vehicles and plant to undertake the authorised development with Work No. 14

SCHEDULE 7

Article 21(2)

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Number of land shown on the land plans</i>	<i>(2)</i> <i>Purpose for which rights over the land may be acquired</i>
01/17	Right to construct, access, keep and maintain underground cables.
01/19	Right to construct, access, keep and maintain underground cables.
01/21	Right to construct, access, keep and maintain underground cables.
02/06	Right of access to land adjacent to existing brook to construct, inspect and maintain road embankment to Work No.1 and the right to construct, access, keep and maintain underground cables.
02/40	Right to construct, access, keep and maintain underground cables.
02/41	Right to construct, access, keep and maintain underground cables.

**MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS
AND RESTRICTIVE COVENANTS**

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply in the case of a compulsory acquisition under this Order of a right or the benefit of a restrictive covenant by the creation of a new right or the imposition of a new restrictive covenant as they apply in respect of compensation on the compulsory purchase of land and interests in land, subject to the modifications set out in this Schedule.

2.—(1) The Land Compensation Act 1973(a) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there shall be substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there shall be substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there shall be substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there shall be substituted the words “right or restrictive covenant is”.

Application of the 1965 Act

3.—(1) The 1965 Act shall have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired
- (b) the restrictive covenant imposed or to be imposed; or
- (c) the land over which the right is or is to be exercisable, or over which the restrictive covenant has or is to have effect.

(a) 1973 c. 26.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right or the benefit of a restrictive covenant by the creation of a new right or the imposition of a new restrictive covenant with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following section—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right or restrictive covenant over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order 2011 [(a) (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right or restrictive covenant and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) S.I. 2011 [[]]

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) shall apply with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired and enjoy the benefit of the restrictive covenant imposed, subject to compliance with that section as respects compensation.

SCHEDULE 9

Article 28

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on the land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Central Bedfordshire Council	01/09	Landscaping, removal of redundant overhead power lines, construction of footway and cycleway alongside Sandringham Drive.	Work No.1 Work No.6 Work No.7
	01/13	Landscaping.	Work No.1 Work No.2 Work No.6
	01/16	Landscaping.	Work No.1 Work No.6
	01/17	Landscaping, installation of underground service ducts.	Work No.1
	01/19	Landscaping, installation of underground service ducts.	Work No.1
	01/21	Landscaping, installation of underground service ducts.	Work No.1 Work No.7
	02/05	Landscaping and works to Houghton Brook.	Work No.1 Work No.8
	02/06	Landscaping, installation of underground service ducts, working space.	Work No.1
	02/10	Improvement of Parkside Drive, access to works.	Work No.8 Work No.9
	02/11	Improvement of Parkside Drive, access to works.	Work No.9
	02/24	Removal of redundant parts of Parkside Drive, landscaping.	Work No.10
	02/25	Storage of topsoil and excavated material.	Work No.1
	02/26	Storage of topsoil and excavated material,	Work No.1

(1) Location	(2) Number of land shown on the land plans	(3) Purpose for which temporary possession may be taken	(4) Relevant part of the authorised development
		haul road, working space.	
	02/27	Storage of topsoil and excavated material, haul road, working space.	Work No.1
	02/30	Landscaping, haul road, working space, removal of redundant overhead power lines.	Work No.1 Work No.14
	02/31	Working space to construct bridge.	Work No.1
	02/32	Working space to construct bridge.	Work No.1
	02/35	Landscaping	Work No.9
	02/36	Landscaping	Work No.9
	02/37	Landscaping	Work No.9
	02/38	Landscaping	Work No.9
	02/39	Landscaping, removal of redundant overhead power lines, improvement of footway and cycleway between Frogmore Road and Wheatfield Road.	Work No.7 Work No.8
	02/40	Landscaping, installation of underground service ducts, improvement of footway and cycleway between Frogmore Road and Wheatfield Road.	Work No.1
	02/41	Landscaping, installation of underground service ducts, working space for the construction of an attenuation pond.	Work No.1
	02/46	Landscaping, installation of underground service ducts.	Work No.1
	02/48	Landscaping, haul road, working space, removal of redundant overhead power line.	Work No.8 Work No.14
	04/02	Construction of a private means of access to proposed	Work No.1

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on the land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
		associated development.	
	04/07	Haul road, working space.	Work No.1
	04/08	Haul road, working space.	Work No.1
	04/09	Haul road, working space.	Work No.1
	04/10	Haul road, working space.	Work No.1
	04/11	Construction of a private means of access to farm buildings.	Work No.1
	04/12	Working space	Work No.1
	05/09	Construction of a private means of access to farm buildings.	Work No.15
	05/10	Site of a construction compound including temporary access for site vehicles.	Work No.1 Work No.12 Work No.13 Work No.15
	05/11	Construction of a private means of access to farm buildings.	Work No.1
	05/12	Construction of a private means of access to farm buildings.	Work No.1
Luton Borough Council	01/14	Landscaping.	Work No.1
	03/05	Access for construction of a footway and cycleway, works to Houghton Brook	Work No.14
	03/06	Access for construction of a footway and cycleway, works to Houghton Brook	Work No.14

PROTECTIVE PROVISIONS

PART 1

FOR PROTECTION OF UK POWER NETWORKS LIMITED

1. In this part—

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by UKPN;

“authorised work” means the construction of any work authorised by this Order;

“the engineer” means an engineer appointed by UKPN for the purposes in question;

“specified work” means so much of any authorised work as relates to the carrying out of any operation to any apparatus; and

“UKPN” means UK Power Networks Limited.

Approval of plans, protective works etc.

2.—(1) The undertaker must before commencing construction of any specified work supply to UKPN proper and sufficient plans of that work and such further particulars available to it as UKPN may within 14 days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 28 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to UKPN the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify—

(a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and

(b) such other requirements as may be reasonably necessary to prevent detriment,

and such protective works must be constructed by the undertaker (or by UKPN at the undertaker’s request) without unnecessary delay and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer’s reasonable satisfaction.

(4) In the event that the undertaker fails to complete the construction of, or part of, the specified works UKPN may, if it is reasonably required in order to avoid detriment, construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the undertaker must reimburse UKPN all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

Construction

3. Any specified or protective works must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled in accordance with this Part and with any requirements made under paragraph 2(3);
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer; and
- (c) in such manner as to cause as little detriment as is reasonably practicable.

PART 2 FOR THE PROTECTION OF NATIONAL GRID

Application

1. For the protection of National Grid the following provisions shall, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficiently than previously;

“apparatus” means—

- (a) in the case of National Grid Electricity Transmission Plc, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by it;
- (b) in the case of National Grid Gas Plc, any mains, pipes or other apparatus belonging to or maintained by it for the purposes of gas supply;

“commence” means the first carrying out of any works relating to the authorised development and commencement shall be construed accordingly;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, improve, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission Plc and National Grid Gas Plc; and

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

3. Except for paragraphs 4 (apparatus in stopped up streets), 6 (acquisition of land) 9 and 10 (retained apparatus: protection), 11 (expenses) and 12 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in stopped up streets

4.—(1) Where any street is stopped up under article 12 (stopping up of streets) and any National Grid apparatus is in the street or accessed via that street National Grid shall be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to National Grid legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway. Any apparatus of National Grid required to be moved by the undertaker ~~shall~~must be dealt with

under paragraphs 7 and 8 of this Schedule not article 31(2) to (8) notwithstanding its inclusion in the Order.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary prohibition or restriction of use of streets), National Grid shall be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by article 17 (protective work to buildings), ~~shall~~must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld or delayed) except in the case of emergency works (as defined in the 1991 Act) in which case the undertaker ~~shall~~must use all reasonable endeavours not to obstruct or render less convenient the access to any National Grid apparatus (save, where such powers are exercised over National Grid operational land, where access must never obstructed or rendered less convenient without the written consent of National Grid).

(2) If by reason of the exercise of the powers conferred by article 17 any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity or gas as the case may be, by National Grid is caused, the undertaker ~~shall~~must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), ~~shall~~must—

- (a) make compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by National Grid, by reason of any such damage or interruption.

(3) Nothing in this paragraph shall impose any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid ~~shall~~must give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without first consulting the undertaker and giving them an opportunity to make representations as to the claim or demand.

Acquisition of land

6. Regardless of any provision in this Order including articles 19, 21, 22, 24, 25, 26, 27 and 28 or anything shown on the land plans or contained in the book of reference to the Order, the undertaker ~~shall~~must not otherwise than by agreement with National Grid—

- (a) acquire by compulsion from National Grid any right or interest in land (including rights in the subsoil of or the airspace over land) or any of National Grid's apparatus, or impose restrictive covenants affecting land in which National Grid has rights or interests, or enter upon land, or override any wayleave, easement or other rights or interests of National Grid;
- (b) take temporary possession of any land that is not public highway so as to interfere with any easement, wayleave or other right relating to National Grid's apparatus.

Removal of apparatus

7.—(1) If, in the exercise of the agreement reached in accordance with paragraph 6 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus ~~shall~~must not be removed under this part of this Schedule and any right of National Grid to maintain that apparatus in that land shall not be extinguished until alternative

apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (8) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it ~~shall~~must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker ~~shall~~must, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account 8(1) below) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid ~~shall~~must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule ~~shall~~must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid ~~shall~~must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to National Grid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights ~~shall~~must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and ~~shall~~must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under 8(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed then the terms and conditions to which those facilities and rights are subject in the matter ~~shall~~must be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection for National Grid Gas Plc

9.—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to, or will or may affect (with reference to the guidance specified at sub-paragraph (11) below), any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise, the undertaker ~~shall~~must submit to National Grid Gas Plc a plan.

(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid Gas Plc under sub-paragraph (1) ~~shall~~must be detailed including a method statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

(3) The undertaker ~~shall~~must not commence the construction or renewal of any works to which sub-paragraph (1) or (2) applies until National Grid Gas Plc has given written approval of the plan so submitted.

(4) Any approval of National Grid Gas Plc required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) shall not be unreasonably withheld or delayed.

(5) In relation to a work to which sub-paragraph (1) or (2) applies, National Grid Gas Plc may as part of the written approval referred to in sub-paragraph (3) require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order ~~shall~~must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (2), as amended from time to time by agreement between the undertaker and National Grid Gas Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by National Grid Gas Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Gas Plc shall be entitled to watch and inspect the execution of those works.

(7) Where National Grid Gas Plc requires any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works ~~shall~~must be carried out to National Grid Gas Plc's satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part thereof) and National Grid Gas Plc ~~shall~~must give notice of such works within 56 days from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If National Grid Gas Plc in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it ~~shall~~must give to National Grid Gas Plc notice as soon as is reasonably practicable and a plan of those works and ~~shall~~must—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

Retained apparatus: protection National Grid Electricity Transmission Plc

10.—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to, or will or may affect (with reference to the guidance specified at sub-paragraph (11) below), any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise, the undertaker ~~shall~~must submit to National Grid Electricity Transmission Plc a plan.

(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid Electricity Transmission Plc under sub-paragraph (1) ~~shall~~must be detailed including a method statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

(3) The undertaker ~~shall~~must not commence the construction or renewal of any works to which sub-paragraph (1) or (2) applies National Grid Electricity Transmission Plc has given written approval of the plan so submitted.

(4) Any approval of National Grid Electricity Transmission Plc required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) shall not be unreasonably withheld or delayed.

(5) In relation to a work to which sub-paragraph (1) or (2) applies, National Grid Electricity Transmission Plc may as part of the written approval referred to in sub-paragraph (3) require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order ~~shall~~must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (2), as amended from time to time by agreement between the undertaker and National Grid Electricity Transmission Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by National Grid Electricity Transmission Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Electricity Transmission Plc shall be entitled to watch and inspect the execution of those works.

(7) Where National Grid Electricity Transmission Plc requires any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works ~~shall~~must be carried out to National Grid Electricity Transmission Plc's satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part thereof) and National Grid Electricity Transmission Plc ~~shall~~must give notice of such works within 56 days from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If National Grid Electricity Transmission Plc in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of

any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(10) The undertaker ~~shall~~must not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it ~~shall~~must give to National Grid Electricity Transmission Plc notice as soon as is reasonably practicable and a plan of those works and ~~shall~~must—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order comply with National Grid's policies for development near over headlines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

11.—(1) Subject to the following provisions of this paragraph, the undertaker ~~shall~~must repay to National Grid on demand all charges, costs and expenses reasonably incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use CPO powers to acquire any necessary rights under 7(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the carrying out of protective works and any necessary works (not otherwise covered by paragraph 13) carried out by National Grid to monitor ground subsidence, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (e) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 39 (arbitration) to be necessary, then, if

such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs ~~shall~~must be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

12.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker ~~shall~~must—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid under its supervision shall not (subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of this sub-paragraph (1)).

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents.

(4) National Grid ~~shall~~must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and considering their representations.

Ground subsidence monitoring scheme in respect of National Grid's apparatus

13.—(1) No works—

- (a) that are near to, or will or may affect (with reference to the guidance specified at paragraph 9(11) above) any National Grid Gas Plc apparatus or alternative apparatus; or
- (b) within 100m of any National Grid Electricity Transmission Plc apparatus or alternative apparatus

shall commence until a scheme for monitoring ground subsidence (referred to in this paragraph as “the monitoring scheme”) within the Order limits (and beyond if necessary and where the undertaker has sufficient rights to undertake such monitoring or where such rights can be provided by National Grid) which is capable of interfering with or risking damage to any of National Grid’s apparatus has been submitted to and approved by National Grid, such approval not to be unreasonably withheld or delayed.

(2) The ground subsidence monitoring scheme described in sub-paragraph (1) ~~shall~~must set out—

- (a) the apparatus which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid’s approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (3).

(3) The monitoring scheme required by sub paragraph (1) and (2) must be submitted within 56 days prior to the commencement of any works authorised by this Order or comprised within the authorised development. Any requirements of National Grid will be notified within 28 days of receipt of the monitoring scheme. Thereafter the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with National Grid.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a “mitigation scheme”) ~~shall~~must be submitted to National Grid for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with National Grid save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of their apparatus and can recover any such costs in line with paragraph (10).

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the relevant planning authority pursuant to Schedule 2 (requirements) the undertaker may submit a revised monitoring scheme or mitigation scheme to National Grid for its approval, such approval not to be unreasonably withheld or delayed; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with National Grid.

Enactments and agreements

14. Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

15. Where in consequence of the proposed construction of any of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 7(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 9 or 10, the undertaker ~~shall~~must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and

taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid ~~shall~~must use its best endeavours to co-operate with the undertaker for that purpose.

Access

16. If in consequence of the agreement reached in accordance with paragraph 6 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker ~~shall~~must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

17. Save for differences or disputes arising under paragraph 7(2), 7(4), 8(1), 9(1) to (3) and (5) to (11) and 10(1) to (3) and (5) to (11), any difference or dispute arising between the undertaker and National Grid under this Schedule ~~shall~~must, unless otherwise agreed in writing between the undertaker and National Grid, be referred to and determined by arbitration in accordance with article 39 (arbitration).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the Central Bedfordshire Council (referred to in this Order as the undertaker) to construct a new road linking the Woodside Industrial Estate in Houghton Regis to the planned Junction 11A of the M1, and carry out all associated works. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose. The Order also makes provision in connection with the maintenance of the new section of highway.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 37 of this Order (certification of plans, etc.) may be inspected free of charge during normal working hours at Central Bedfordshire Council, Watling House, High Street North, Dunstable, Bedfordshire LU6 1LF.