

## **M25 junction 28 improvement scheme**

**TR010029**

### **9.56 Written submission of Applicant's case put orally at Issue Specific Hearing 2 on draft Development Consent Order (dDCO) held on 5 March 2021**

Rule 8(k)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

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## Infrastructure Planning

### Planning Act 2008

#### The Infrastructure Planning (Examination Procedure) Rules 2010

### M25 junction 28 scheme

#### Development Consent Order 202[x ]

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## 1. Introduction

- 1.1.1 This document summarises the case made orally by Highways England at the second Issue Specific Hearing (**ISH2**) which took place virtually on 5 March 2021.
- 1.1.2 Mark Challis (**MC**) of BDB Pitmans represented Highways England and was assisted by Evelina Maier (**EM**) (environment consultant lead for Highways England).
- 1.1.3 In what follows, Highways England's submissions on the points raised broadly follow the agenda for the ISH2 set out in the Examining Authority's (**ExA**) agenda published on the Planning Inspectorate website on 26 February 2021.

## 2. Agenda item 1 – Welcome, introduction and arrangements

- 2.1.1 No questions of an introductory or preliminary nature were raised by Highways England or by other attendees of the ISH2.

## 3. Agenda item 2 - Ownership, management and maintenance responsibilities for Transport for London (TfL)

- 3.1.1 The ExA asked for clarification as to the difference between the TfL road network and GLA roads. MC suggested there was no substantive difference in Highways England's understanding. Toni Western (**TW**), solicitor representing TfL, confirmed there is essentially no difference as a GLA road is part of the TfL road network.
- 3.1.2 The ExA asked for confirmation that TfL would be taking ownership of the proposed M25 off-slip and the new A12 off-slip to the Brook Street roundabout. TW explained this was not correct and that it is proposed in the draft DCO that TfL will take responsibility for the A12 eastbound off-slip road but the M25 off-slip will be Highways England's responsibility.
- 3.1.3 MC clarified that there is a difference between ownership and responsibility for maintenance. TfL is responsible for the A12 off-slip and will remain so after the works are built. In terms of ownership there are powers in the draft DCO for Highways England to compulsorily acquire the land needed for the construction of the off-slip. However, even though Highways England seeks to acquire the land permanently, TfL will look after the road once built. MC explained that it is envisaged that the arrangement as regards future ownership of the road would be set out in a side agreement between the parties.
- 3.1.4 The ExA noted that for its, and the Secretary of State's (**SoS**), purposes of determining the application it is Highways England that is taking ownership of, and building, the roads. What happens beyond this would be a matter between Highways England and TfL. MC agreed and explained that the effect of the

proposed draft DCO is to impose the maintenance responsibilities on TfL because the off-slip will be part of TfL's road network. The ExA asked if this was the case for both the two new roads, the M25 off-slip and the A12 off-slip. MC clarified that the A12 off-slip would be TfL's responsibility but there are elements of the M25 which are part of the strategic road network and will therefore be Highways England's responsibility to maintain. MC directed the ExA to the Streets and rights of way and access plans (APP-007) which identifies the dividing line between the two. The ExA sought clarification that responsibility for maintenance of the M25 off-slip remains with Highways England but passes to TfL where this meets the new A12 off-slip. MC confirmed this was correct and noted that TfL maintains the current A12 off-slip and the effect of the draft DCO is to require TfL to maintain the new A12 off-slip.

3.1.5 The ExA noted that TfL currently own the A12 on-slips and off-slips on the London side and asked for clarification that Essex County Council own the on-slips and off-slips on the Essex side. Matthew Rheinberg (**MR**), representing TfL, confirmed that currently TfL is responsible for the slip roads on the London side of the junction on the A12 but it is Highways England, rather than Essex County Council, who is responsible on the Essex side of junction. MC confirmed that was correct.

**Agenda item 2.1** - Discussion on the transfer of benefits and progress on negotiations between the Applicant and TfL and in respect to Part 5, Articles 35 and 36 and Schedule 6 of the draft DCO (REP3A-004).

3.1.6 The ExA noted that the maintenance responsibilities for the A12 off-slip which will become TfL's responsibility were set out under various articles of the draft DCO and asked for an update on discussions between the parties regarding these articles and related responsibilities. MC stated that draft heads of terms were circulating between the parties which contain a variety of provisions relating to the passing of that maintenance responsibility. MC clarified the DCO itself would pass the maintenance responsibility to TfL but in terms of the detailed matters, such as ensuring that the off-slip is constructed in the appropriate way and dealing with inspections, these are details not normally set out within a DCO and therefore continue to be the subject of constructive discussions between Highways England and TfL and formalised in a separate legal agreement.

3.1.7 TW acknowledged that TfL had agreed to take responsibility for maintenance for the off-slip road if suitable arrangements could be agreed and protections in favour of TfL put in place. TfL drafted heads of terms for a legal agreement to cover such arrangements and sent these to Highways England in the mid-February 2021. TW went on to explain that following discussions at the hearings regarding the structure of the off-slip road and environmental mitigation measures TfL had concerns about taking responsibility and believe Highways England should take responsibility.

3.1.8 The ExA asked if TfL owns and maintains the current A12 off-slip. TW confirmed this was correct. The ExA put it to TfL that, that being the case, Highways England was right to say that TfL should take on responsibility for the new off-slip as well. The ExA questioned why, in terms of the general principle of one road replacing another, TfL would not take responsibility for the new off-slip. TW explained that the new off-slip road would be longer and more complex than the existing off-slip and therefore there would be an additional burden on TfL for

which TfL has no resources to maintain at the current time. The ExA stated that the additional burden and required resources were matters that were outside of the examination process and were for discussion between the parties and not a concern for the SoS.

3.1.9 MC pointed out that the latest position as set out in TfL's written submissions was that TfL is willing to accept the maintenance responsibility. MC stated that Highway England's position is that the off-slip would be part of the TfL road network and therefore it follows that TfL should maintain it and whilst it may be a longer and more complicated structure these are not sufficient reasons for Highways England to take on responsibility for maintenance. Highway England's responsibility is to maintain the strategic road network and not TfL's road network.

3.1.10 Charles Clark (**CC**), solicitor representing TfL, noted that TfL is responsible for the current eastbound off-slip but do not own the subsoil or land, which is owned by Highways England. CC added that it was correct that TfL would be willing to have discussions about taking on responsibly but only if there were sufficient protections for TfL related to the construction and ongoing management either in the DCO or a separate agreement.

**Agenda item 2.2** - *Concerns raised in respect to Part 2, Article 9 and Part 3, Articles 11 and 16.*

**Agenda item 2.3** - *Clarification on who would be responsible for the environmental features.*

3.1.11 The ExA asked, assuming TfL takes responsibility of the new off-slip, what TfL's concerns were with the draft DCO as currently drafted. TW explained that TfL felt there was a lack of clarity as to exactly the structures and features TfL would be responsible for, in particular drainage structures, embankments and landscaping. TW acknowledged that Highways England provided a plan in September 2021 which set out indicatively what TfL would be taking on and that there been discussions with Highways England regarding these matters but suggested TfL required clarity in the draft DCO and protective provisions in favour of TfL.

3.1.12 The ExA asked if TfL's concerns were simply a resourcing issue or whether there was a technical reason why TfL could not take on responsibility, was it, for example, because TfL do not have anybody that deals with maintenance of bridges, ponds etc. TW stated this was primarily a resourcing issue but also that TfL does not have any drainage ponds within that area of London which it currently maintains so this would be an additional burden on TfL.

3.1.13 TW stated that Schedule 4, Part 2 of the draft DCO lists the A12 eastbound but as this is already a GLA road it does not need to be designated for the purposes of the Order.

**Post hearing note: Reference to the A12 eastbound has been removed from Schedule 4, Part 2 in the updated draft DCO submitted at Deadline 4. (TR010029/EXAM/3.1(3)). The Streets, Rights of Way and Access Plans [APP-007] will be revised at a later deadline**

3.1.14 In response to points raised by TfL as to the level of detail in the draft DCO, MC explained that the amount of detail in the draft DCO is very typical of a Highways

England DCO and DCOs generally. The provisions mentioned by TfL (article 11(4), article 16(1)(b) and Schedule 4, part 2) are found in numerous made DCOs. MC went on to explain that further detail as to precisely what TfL would take on responsibility for are matters better dealt with in the separate agreement. MC stated that Highways England envisaged that, as the highways authority for the new off-slip, TfL would take on all elements relevant to the highway, therefore if the drainage pond forms part of the drainage system for the highway then TfL would take on responsibility for that. Likewise, for landscaping forming part of the highway.

**Agenda item 2.4 - *The need for Protective Provisions for TfL.***

- 3.1.15 The ExA asked whether it is Highways England's intention to submit protective provisions for TfL. MC confirmed this was not Highway England's intention as protective provisions for highways authorities are not generally found in Highway England DCOs; there is one exception but all other Highways England DCOs do not contain protective provisions for local highway authorities. MC explained it was better to have an agreement with TfL outside of the DCO rather than overcomplicating the DCO with detail of the precise nature of TfL's responsibilities.
- 3.1.16 The ExA asked what the position would be if no agreement was reached between the parties. MC explained the effect of the DCO would be to impose the maintenance obligation on TfL but noted that Highways England is confident the parties can reach agreement. The ExA requested that, if TfL believe that protective provisions are necessary to submit its preferred form of protective provisions in order that Highways England can comment on those and, whereby if an agreement between the parties was not reached, then the SoS has the option to insert those into the DCO. TW confirmed TfL would submit draft protective provisions to the ExA and HE by Deadline 4.
- 3.1.17 CC noted that if TfL had the maintenance of the off-slip imposed upon it would need to change its maintenance contract for maintenance of highways in the area as TfL did not currently have any drainage ponds for which it was responsible for in the vicinity. MC reiterated that matters such as those raised by CC were better dealt with in an agreement outside the examination but felt it would not be unfeasible for TfL to find someone capable of maintaining the highway and ponds on its behalf. MC reiterated that Highways England hope that the parties can come to an agreement on these issues rapidly so there will be no need for protective provisions in the DCO.
- 3.1.18 Emmanuel Pitman (**EP**), representing the Gardens of Peace (**GoP**), noted that the GoP had previously raised that it would be helpful to have agreement between Highways England, TfL and GoP in relation to the screening to the north end of the GoP site. MC responded to confirm that Highways England will continue to have discussions with EP and the GoP as regards arrangements for the GoP and acknowledged that there was some work to be done to get agreement in place but Highways England would be progressing this.

## 4. Agenda item 3 – Matters of concerns raised with the draft DCO

### **Agenda item 3.1 - Part 1 - Definition of “Commence”.**

- 4.1.1 The ExA explained that as archaeology matters had been dealt with earlier in the week during the ISH1, these would not be discussed further today. The ExA noted concern about ‘the establishment of construction compounds’ excluded from the definition of “commence” and asked how construction compounds are controlled, where they would go and whether they would require the removal of trees. EM directed the ExA to figure 2.2 in the Environmental Statement - Chapters 1-4 – Introductory Chapters Figures (APP-039) which provides an indicative location for the site compounds. The main compound would be along the A12 slip road. EM explained that fencing would be required during installation of the main compound and that there would be minimal works and site clearance with no tree or woodland being required to be removed.
- 4.1.2 MC added that definition of “commence” had been cut down by Highways England in the versions of the draft DCO submitted at Deadline 2 and Deadline 3A so now only activities that are not likely to have significant environmental effects remained.

### **Agenda item 3.2- Part 1 – Definition of “Maintain”.**

- 4.1.3 The ExA noted that it was content with Highways England’s response to the written question regarding the definition of “maintain” but remained concerned that this standard definition could allow an unspecified number of maintenance activities to take place which could cumulatively over time result in the development being entirely replaced and asked whether any additional wording should be added to clarify that ‘some but not all’ the development could to be replaced. MC responded to confirm, as noted by the ExA, the definition of maintain is very commonly found in Highways England DCOs. The definition defines maintenance by way of various activities to make it clear what it could cover and is subject to the proviso that the works must not give to any materially new or different significant environmental effects. Therefore, it is limited in scope in practice and as regards the prospect of replacing the entire development, this is extremely unlikely and in any event the proviso would prevent that. Highways England’s view is that the definition, which is commonly found in DCOs, is appropriate as drafted.

### **Agenda item 3.3- London Borough of Havering (LBH) to outline concerns for Articles 13, 18, 19 and 22 of the draft DCO.**

- 4.1.4 In response to LBH’s comment that article 13(1) is too wide and should be restricted to the Order limits, MC explained that article 13 is a very familiar piece of drafting in DCOs. As the Scheme is a Nationally Significant Infrastructure Project, the purpose of a DCO is to give a promoter, such as Highways England, wide powers to get on and ‘get the job done’. MC noted that whilst Highways England did not have any particular street in mind when that broad provision was included, this was a standard piece of drafting.



- 4.1.5 In response to LBH's comments made regarding articles 13(6) (and also 18(11), 19(9) and 22(6)), MC stated that Highways England was very keen to retain the position of deemed consent because otherwise if a consent is not forthcoming from the local authority, or any other authority apart from the SoS, that would have the ability to delay or even stall the project at potentially significant expense. Highways England's position is that the 28 days period is ample time for the authority to consider the consent application which would be made under article 13(4).
- 4.1.6 The ExA asked if there is provision in the draft DCO for circumstances where an authority may require longer than 28 days to respond and make a request to Highways England for a longer response period. MC responded to explain that whilst there is nothing specific in the draft DCO dealing with this, Highways England would not be unreasonable if the local authority needed a bit of extra time and, depending on the circumstances, may be prepared to agree to that. However, as regards provisions in the DCO Highways England needs to be able to progress the project without waiting unduly for approvals from the street authority or anyone else.
- 4.1.7 In response to LBH's comments regarding article 18(2)(c), MC explained that article 18(2)(c) provides for a situation where Highways England is not the traffic authority, and with the consent of the traffic authority, may authorise the use as a parking place of any road. This is a general power intended to give Highways England flexibility in terms of constructing the Scheme. Whilst Highways England may possibly wish to use a road for parking in connection with the scheme, overriding any parking restrictions on a particular road, there is no intention that this would be the case for Woodstock Avenue. As EM outlined earlier, there will be properly controlled construction compounds set up so there would be no need for those working on the scheme to park in Woodstock Avenue. The ExA suggested that this provision could be removed if Highways England did not require the power. MC explained that the general purpose of the DCO is to give the promoter broader powers as it may need the powers when it comes to construct the project but emphasised that there is no intention to use Woodstock Avenue as a parking area. MC noted that Highways England would consider removal of the provision.

*Action 2 – Applicant to consider or provide comment on removing article 18(2)(c) in relation to parking on any road.*

*Response - See Highways England's response to action point 2 in its response to actions points from Issue Specific Hearing 2 (TR010029/EXAM/9.66) submitted at Deadline 4.*

*Agenda item 3.4 - London Borough of Havering and Applicant to confirm whether or not Part 5, Article 35 relates to highway land.*

- 4.1.8 MC explained that article 35 can include highway land but it does not include any highway land within LBH's area. It does include some highway land in TfL's area. Article 35 also includes other land which is not highway land. MC further explained that as regards doing works to the highway article 35 does include highway land but there are also other provisions in the draft DCO about the use

of streets etc so article 35 would not be the only power which applies, as article 13 and other articles deal with streets.

***Agenda item 3.5 - Whether Requirement 4 as worded is adequate***

- 4.1.9 In response to comments raised by TfL regarding Requirement 3, MC responded that as regards the detail of the design and in respect of anything affecting TfL this could be dealt with in the separate agreement proposed with TfL. MC stated that, as regards Requirement 3, it generally follows a very familiar format for Highways England DCOs.
- 4.1.10 In response to comments made by LBH, MC explained that Highways England has submitted a substantial outline CEMP [REP3A-010] and a number of outline environmental plans (outline dust, noise and nuisance management plan, outline surface water management plan, outline arboricultural method statement and outline archaeology management plan). MC explained that producing outlines of all of the plans which would ultimately form part of the final CEMP was not practicable at this preliminary scheme design stage. It will be for the contractor to deal with these detailed matters at the construction stage. MC explained that there is a high level of scrutiny of these documents as the SoS approves the documents and would only do so if he thought appropriate to do so. MC noted that LBH's comments, and others as consultees, would be fully taken account by the SoS.
- 4.1.11 EM added that the other environmental control plans are better provided by the principal contractor who would have to develop their environmental management system in accordance with ISO 14001 and those plans would reflect the construction methodologies proposed for delivering the Scheme. Highways England's position is that it is not practicable at this stage to provide these plans to the level of detail which would be expected by LBH and others. Highways England's view is that these plans should be developed at the detailed design, pre-construction stage, when the Scheme is fully developed and the implementation of it is fully understood in terms of the construction methodologies and all the mitigation required. The REAC [REP3A-011] and Outline CEMP [REP3A-010] provide a good framework in terms of how the final CEMP would need to be developed. Highways England are confident that the application provides enough information to develop the final CEMP to the expectation of the authorities and in line with the relevant legislation.
- 4.1.12 Danial Douglas (**DD**) explained that LBH's concern was that the documents listed in Requirement 4(2) are interlinked e.g. the AMS will link with the ecology and habitat species plan and invasive species management plans. The ExA asked EM whether the AMS is linked to those documents. EM responded that it is not linked with the other management plans listed in the CEMP.

***Agenda item 3.6 - The consultation parties to be applied to Requirements 3, 4, 5, 6, 8 and 10.***

- 4.1.13 MC confirmed that the draft DCO will be updated at Deadline 4 to include TfL as a consultee on matters relevant to its functions in Requirements 3, 5 and 8 but asked why TfL were seeking to be a consultee in Requirement 6, regarding contaminated land and groundwater, as this was not obviously relevant to its functions. TW explained that TfL is being asked to take on responsibility for

certain features including the off-slip road and the attenuation pond and therefore TfL want to be aware of contamination issues and wish to be involved in any remediation works. MC confirmed Highways England has no objection to TfL being added as a consultee on matters related to its function and would add consultation with the highways authority to Requirement 6 in the updated version of draft DCO to be submitted at Deadline 4. The relevant highway authority is already listed as a consultee in relation to Requirements 4 and 10 of the draft DCO.

- 4.1.14 The ExA asked whether Highways England is satisfied that there is provision within part 2 of schedule 2 of the draft DCO (procedure for discharge of requirements) for consultees' comments to be forwarded to the SoS when determining an approval. MC responded that that it would be Highways England's intention to forward on consultee comments and therefore Requirement 17 would be amended to reflect this position.

*Action 3: TfL to be included as a consultee on Requirements 3,5,6 and 8.*

*Action 4: Requirement 17 to be redrafted to include provision that consultee comments are submitted in full to the Secretary of State.*

*Response: The relevant highway authority has been added to Requirements 3, 5, 6 and 8 and Requirement 18 (previously Requirement 17) has been amended in the updated version of the draft DCO submitted at Deadline 4 (TR010029/APP/3.1(3)).*

**Agenda item 3.7** - *Time limits prescribed within Articles 18(5), 18(11), 19(9), 22(2), 35(2) and Requirement 17*

- 4.1.15 The ExA had no further comments on this item, noting that Interested Parties had made their position clear and Highways England had responded. The ExA would consider this matter further.
- 4.1.16 In response to a question raised by Mike Ovenden, representing Brentwood Borough Council, MC explained that there was no particular procedure around how Highways England would carry out consultation under the requirements but all consultee' responses would be provided to the SoS as the approving authority.

## **5. Agenda item 4 – Consents, licenses and other agreements**

**Agenda item 4.1-** *The Applicant will be asked to provide an update of progress and timescales for completion.*

- 5.1.1 MC explained that in terms of the consents to be disapplied under section 150 of the Planning Act 2008, the only outstanding matter was in relation to section 23, 30 and 32 of the Land Drainage Act 1991 for which Highways England await Essex County Council's confirmation that it agrees to that disapplication. Highways England is not aware of any objections on ECC's part to giving this consent but it has not done so yet.

- 5.1.2 In relation to licences, MC explained that Highways England had submitted an application to Natural England for a protected species licence for great crested newts in October 2020. Initial feedback has been provided by Natural England in February 2021 and Highways England would be revising and re-submitting the licence application addressing that feedback.
- 5.1.3 MC explained Highways England is in ongoing discussions with the Environment Agency (EA) regarding the waste recovery permit in relation to controlled waste from Grove Farm. Highways England submitted a waste recovery plan submitted in December 2020 and a response from the EA is expected imminently.
- 5.1.4 The ExA asked whether the site waste information provided to the EA should be incorporated into the environmental plans within the outline CEMP. EM responded to explain that Highways England has made the pre-application to the EA's national permitting team as requested by the EA to ensure that the earthworks strategy drafted is in line with the permitting requirements. Once a response is received from the national permitting team the principal contractor would need to apply for a formal environmental permit to undertake the works. The ExA asked if the information already submitted should be put into the outline CEMP. EM explained that the information produced is based on the data contained in the Ground Investigation Report to inform the quality of material likely to be generated by the Scheme and the type of permit required for the Scheme. This activity would be managed either through the site waste management plan or other management plans which would be developed by the principal contractor.

**Post hearing note: The application and obtaining of any permits required is in the remit of the principal contractor and documentation related to the permitting is outside the scope of the outline CEMP. The waste recovery plan is the pre-application process as part of the environmental permitting procedure (namely obtaining a Deposit for Recovery permit) and therefore would not form part of the outline CEMP.**

**Agenda item 4.2 - The need for section 106 agreements as indicated by London Borough of Havering.**

- 5.1.5 DD explained that there are a number of policies within LBH's local development framework core strategy, soon to be adopted local plan and local implementation plan that LBH feel the Scheme is not policy compliant. LBH suggest that the obligations that it is seeking, as set out in its Local Impact Report (LIR) (REP1-031) will help to make the DCO policy compliant with LBH's policies. The ExA asked if national infrastructure schemes have to be policy compliant with the local plan. DD explained that LBH expects the scheme to be in accordance with its policies.
- 5.1.6 The ExA noted LBH have categorised the obligations into local training and skills, air quality monitoring and sustainable travel agenda. The ExA asked why the obligation in relation to training and skills needed to be met by a financial contribution and why it could not instead be, for example, a commitment in the CEMP to recruit locally. DD explained that the financial contribution LBH is seeking is for an officer to monitor the delivery of a local training skills and job brokerage strategy. The ExA asked what figure LBH were seeking. DD stated that LBH were seeking funding for a part time officer over a three year period

which totalled £107,389.80. The ExA asked how this obligation would meet the three tests set out in paragraph 56 of the National Planning Policy Framework (**NPPF**) (Planning obligations must only be: a) necessary to make the development acceptable in planning terms; b) directly related to the development; and; c) fairly and reasonably related in scale and kind to the development.) DD stated that LBH's position was having that contribution to monitor the strategy would be adequate.

- 5.1.7 The ExA noted that in relation to the contribution LBH were seeking for air quality monitoring, Highways England's position was likely to be that the Environmental Statement reports that the Scheme has no significant effects on air quality during construction or operation and asked for LBH's justification for the obligation. DD stated that LBH have obligations in the local plan and local implementation plan with regards to air quality and LBH want to monitor the effects of the Scheme on the Borough. The ExA asked how much LBH were seeking. DD stated LBH were seeking £59,376.
- 5.1.8 The ExA asked what figure LBH were seeking in respect of sustainable travel agenda. DD explained there are three separate contributions; £450,000 over a five year period to support the smarter travel agenda, £100,000 per year over a three year period for cycling training in the borough and £200,000 per year over a three year period to support active and road safety education.
- 5.1.9 The ExA asked DD if it was correct that underpinning is the financial contributions sought was LBH's local plan policy, to make the Scheme policy compliant. DD confirmed this was correct. The ExA asked LBH that if Highways England was to refuse the payments, would the LBH would be recommending the Scheme be refused on that basis. DD stated that LBH's view would be that the Scheme was not compliant and recommendation should be subject to a section 106 agreement to be agreed.
- 5.1.10 MC explained that Highways England's position is that a s106 agreement is not needed and that it is not proposing to enter into a s106 agreement with LBH. MC also noted that LBH had not raised the need for a s106 before it was referenced in the LIR so this had taken Highways England by surprise.
- 5.1.11 MC explained that the purpose of s106 in general terms is to make a development which is unacceptable in planning terms become acceptable. Highways England's position is that the proposed development is acceptable and therefore there is no justification for any planning obligations. Further, to enter a s106 it would need to be demonstrated that the tests set out in the NPPF, which the ExA had referenced earlier, are met.
- 5.1.12 MC noted that a number of the policies mentioned by LBH are draft policies yet to be adopted and only an emerging strategy in relation to the electric vehicle charging points. None of these policies require or suggest that Highways England should make any contribution along the lines that had been suggested by LBH. MC gave the example of Policy 22 (the local skills and training policy) which is a draft policy which applies to major commercial and mixed used developments. These policies are aimed at commercial developers and are not aimed at a provider of infrastructure such as Highways England. As regards air quality, MC explained that Highways England's assessments have not shown any significant air quality effects and therefore on the terms of policy itself (Policy DC52 of the adopted local plan) there is no basis for any future monitoring to be

carried out or for Highways England to pay the local authority for a monitoring officer. Highways England do not see any justification in those polices or generally for there to be a s106 obligation at all. The ExA requested Highway England's full written response on the polices LBH had cited and why these would not apply. MC confirmed Highways England would respond by Deadline 4.

*Action 6: Applicant to review policies cited by London Borough of Havering as to their justification for a s106 Agreement.*

*Response Highways England has provided a response at (REP3B-006-15) in Highways England's response to LBH Deadline 3B comments (TR010029/EXAM/9.49).*

## 6. Agenda item 5 – AOB

### *Protective Provisions*

- 6.1.1 The ExA requested an update on the status of the schedule 9 protective provisions and discussions with Cadent Gas, the EA and electricity suppliers.
- 6.1.2 MC explained that protective provisions have now been agreed with the EA and these would be inserted in the updated version of the draft DCO submitted at Deadline 4.
- 6.1.3 MC explained that Highways England continue to have constructive discussions with Cadent Gas and that one or two outstanding points related to the protective provisions remained to be agreed. Robert Garden, representing Cadent, noted that Cadent had submitted its preferred form of protective provisions at Deadline 2 which were subject to further discussions with Highways England and noted that positive progress had been made.
- 6.1.4 MC stated discussions between Highways England and UKPN regarding protective provisions were ongoing.
- 6.1.5 In response to points made by Ismal Farouk, representing the GoP, MC agreed there had been a lot of discussion between the parties as to how the works could be carried out in order to cause minimum disruption to the GoP and explained it was now a case of documenting these proposals which Highways England would be progressing as a matter of priority.

*Action 5: Update on the discussions on Protective provisions between Applicant and Environment Agency*

*Highways England has inserted the protective provisions agreed with the EA into the updated draft DCO submitted at Deadline 4 (TR010029/APP/3.1(3))*

### *Requirements*

- 6.1.6 The ExA requested that Highways England consider whether the inclusion of additional requirements in the draft DCO regarding a site specific plan for Grove Farm, Maylands Golf Course and the Arboricultural Method Statement may be appropriate. In addition, the ExA requested that Highways England consider whether the inter-green signalling and cycle link provision could be included within the dDCO.

- 6.1.7 MC noted that Highways England would consider the position as regards cycle link provision further. As regards the inter-green provision, MC explained that Highways England's position is that this did not need to be dealt with as a matter of statutory regulation in the DCO and agreed with TfL's suggestion made at that ISH1 that this matter could be included in the side agreement with TfL.

*Action 7: Applicant to consider and add a Requirement in respect to providing a site-specific plan for Grove Farm to deal with issues of noise prevention and acoustic fencing and landscaping (discussed at ISH1 Day 2).*

Response - See Highways England's response to action point 16 in its response to actions points from Issue Specific Hearing 1 (TR010029/EXAM/9.60) submitted at Deadline 4.

*Action 8: Applicant to insert new Requirement for Arboricultural Method Statement, separating it from the CEMP (discussed at ISH1 Day 2)*

Response - A new Requirement 11 has been added to the updated version of the draft DCO submitted at Deadline 4 (TR010029/APP/3.1(3)).

*Action 9: Applicant to consider how the cycle link provision can be secured in the draft DCO.*

Response - See Highways England's response to action point 9 in its response to actions points from Issue Specific Hearing 2 (TR010029/EXAM/9.66) submitted at Deadline 4.

## **7. Agenda item 6 – Action Points arising from Hearing**

- 7.1.1 The ExA confirmed the actions points for Highways England arising at ISH2. The action points and where Highways England's responses to these can be found has been submitted at (TR010029/EXAM/9.66).

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