

M25 junction 28 improvement scheme

TR010029

9.87 Applicant's comments on Gardens of Peace's response to ExAWQ2

Rule 8(1)(c)(ii)

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M25 junction 28 scheme

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Table of contents

Chapter	Pages
1. Purpose and structure of this response	4
2. REP5-066 Savills on behalf of the Gardens of Peace Muslim Cemetery - Response to the Examining Authority's Further Written Questions and comments on the Applicant's Deadline 4 submission	5

1. Purpose and structure of this response

- 1.1.1 This document provides the comments of the applicant, Highways England, in response to Savills' on behalf of the Gardens of Peace Muslim cemetery's - Response to the Examining Authority's Further Written Questions and comments on the Applicant's Deadline 4 submission [REP5-066].
- 1.1.2 Highways England has sought to provide comments where it is helpful to the Examination to do so, for instance where a representation includes a request for further information or clarification from Highways England or where Highways England considers that it would be appropriate for the Examining Authority (ExA) to have Highways England's views in response to a matter raised by an Interested Party in its representations. Where issues raised within a representation have been dealt with previously by Highways England, for instance in response to a question posed by the ExA in its first round of written questions or within one of the application documents submitted to the Examination, a cross reference to that response or document is provided to avoid unnecessary duplication. The information provided in this document should, therefore, be read in conjunction with the material to which cross references are provided.
- 1.1.3 Highways England has not provided comments on every point made within the representation (for instance, Highways England has not responded to comments made about the adequacy of its pre-application consultation given that Highways England has already provided a full report of the consultation it has undertaken as part of its application for the Development Consent Order (DCO)) and the Planning Inspectorate has already confirmed the adequacy of the pre-application consultation undertaken when the application was accepted for Examination. In some cases, no comments have been provided, for instance, because the written representation was very short, or because it expressed objections in principle to the Scheme or expressions of opinion without supporting evidence.
- 1.1.4 For the avoidance of doubt, where Highways England has chosen not to comment on matters raised by Interested Parties, this is not an indication Highways England agrees with the point or comment raised or opinion expressed.

2. REP5-066 Savills on behalf of the Gardens of Peace Muslim Cemetery - Response to the Examining Authority's Further Written Questions and comments on the Applicant's Deadline 4 submission

Response reference:	Representation Issue	Highways England Response
REP5-066-01	<p>1. <u>Response to Action Point 4 within the Action Points arising from the Compulsory Acquisition Hearing – “Gardens of Peace Muslim Cemetery (Gardens of Peace) to confirm their position on the accepted Change Request no.4 received at D3a”</u></p> <p>As referred to in the submission at Deadline 4 and above in Section 1, Gardens of Peace welcome the changes to Plot 1/8 and work number 4, being the reduction in area subject to acquisition of permanent rights within Plot 1/8. This will eliminate the concerns surrounding loss of burial plots as there will not be an overlap between the easement and burial land.</p> <p>Notwithstanding this, a number of matters and a lot of detail need to be formally reviewed and agreed prior to entering into a contractual arrangement between Gardens of Peace and the Applicant. We provide a list of these matters, which will first be incorporated into the Heads of Terms, and subsequently the contractual arrangement, below in Section 3.</p>	<p>Highways England provided a draft tri-party agreement between Highways England, The Trustees (“the Trustees”) for the Gardens of Peace Muslim Burial Cemetery and Cadent Gas Limited (“Cadent”) on 14 April 2021, of which receipt has been acknowledged by all parties.</p> <p>The draft agreement is intended to document the outcome of the constructive discussions that have been held between the parties, under which both Highways England and Cadent can progress their respective works on a co-operative basis and so as to minimise disruption.</p> <p>The Trustees have instructed solicitors to review the draft agreement and will discuss with Highways England’s solicitors to progress the agreement.</p> <p>Please see responses below (REP5-066-04 to 19) to the list of matters proposed by the Trustees to be incorporated into the draft agreement.</p>
REP5-066-04	<p>Contingency plan for soil collection – whilst access via Plot 1/8 will be arranged between Gardens of Peace and Cadent Gas in advance of any soil collection, should at any point access through Plot 1/8 be restricted for a period of time, then a contingency plan must be put in place to prevent soil build up and costs being incurred in unsuccessful soil collections.</p>	<p>The access for soil collection via Plot 1/8 will be arranged between Gardens of Peace and Cadent in advance of any soil collection and this has been agreed by all parties and is included in the draft agreement being progressed. Therefore, Highways England does not consider that a contingency plan is required.</p>
REP5-066-05	<p>Timing – The 6 months period of occupation by Cadent Gas needs to be incorporated into the draft Heads of Terms.</p>	<p>A copy of the draft agreement has been provided to Cadent and the issue of timings will be raised with them as part of its discussions on the draft agreement.</p>
REP5-066-06	<p>Land Reinstatement – whilst the draft Heads of Terms confirm land will be reinstated post works in accordance with the provisions of article 35(5) of the draft DCO, Gardens of Peace seek confirmation that all land reinstatement will be as per a pre-entry survey of the land and that the land will revert back to Gardens of Peace at the end of the anticipated 6 month occupation period.</p>	<p>In accordance with article 35(5) of the draft DCO, Highways England will “restore the land to the reasonable satisfaction of the owners of the land” (subject to the caveats at article 35(5)(a)-(e)). The draft agreement provided to all parties includes provision for pre-entry survey of the land to be undertaken and the land will be reinstated post works in accordance with the provisions of article 35(5) of the draft DCO so that the land will revert back to Gardens of Peace at the end of the anticipated occupation period.</p>
REP5-066-07	<p>Temporary Tracking and Parking Material – there are concerns surrounding the safety of aluminium tracking, especially when wet, and therefore an alternative material (for example TuffTrak) needs to be considered for parking and tracking.</p>	<p>Highways England has asked the solicitors representing the Trustees to provide comments on the draft agreement provided to them on 14 April 2021. An alternative material to aluminium tracking can be provided due to the safety concerns raised.</p>
REP5-066-08	<p>Repair and Upkeep of Tracking and Parking - Clarification that Cadent Gas are responsible for the repair, upkeep and insurance (including public liability) of the temporary tracking and parking.</p>	<p>A copy of the draft agreement has been provided to Cadent. Highways England will discuss the issue of repair, upkeep and insurance with them as part of its discussions on the draft agreement.</p>

Response reference:	Representation Issue	Highways England Response
REP5-066-09	Soil Storage – Confirmation that Cadent Gas is to install concrete buffers around the soil storage area to prevent overspill from soil storage area onto adjacent storage areas.	This has been discussed with all parties and a revised plan is being prepared to show concrete barriers around the storage area to prevent overspill from soil storage area onto adjacent storage areas.
REP5-066-10	Plot 1/8 Fencing – Whilst the work plans prepared by Cadent following the recent site meeting confirm that Plot 1/8 will be bounded by Heras fencing, Gardens of Peace require that the Heras fencing running along the site boundary between the cemetery and Plot 1/8 is clad with landscape designs to provide a visual barrier of the ongoing works of Plot 1/8 from the cemetery. It is also required that the fence cladding is of a form that acts as an acoustic barrier, to prevent any noise disruption from the works site on any burials.	Highways England has asked the solicitors representing the Trustees to provide comment on the draft agreement provided to them on 14 April 2021. The fencing and its design during construction will be confirmed in the next iteration of the draft agreement, following receipt of those comments.
REP5-066-11	Screening – Confirmation that the Applicant is to incorporate Transport for London's agreement that it will not undertake any pollarding to the existing tree screening belt between the A12 and Gardens of Peace Cemetery.	As stated in Highways England response to the Trustees at Deadline 5 (REP5-045) the tree belt which runs along between the A12 and the Gardens of Peace that provides a visual screening belt will not be affected by the construction of the Scheme. The tree belt is maintained by TfL, as highway authority, and therefore any assurance needed by the Trustees should be sought from TfL. Therefore, Highways England does not consider it appropriate to incorporate TfL's agreement into the tri-party agreement being progressed.
REP5-066-12	Costs – The wording of the draft Heads of Terms fails to confirm that Highways England will bear the costs of measures such as concrete buffers around the soil storage site and costs arising in land reinstatement and any 'snagging' matters following Plot 1/8 being passed back to Gardens of Peace.	Highways England will bear the costs of reasonable measures such as concrete buffers around the soil storage site and costs arising in land reinstatement and any 'snagging' matters following Plot 1/8 being passed back to Gardens of Peace and this requirement will be included in the next iteration of the draft agreement.
REP5-066-13	Site Management Plan – Gardens of Peace require a Site Management Plan is prepared to ensure maximum noise is kept to a minimum during sensitive times.	The Outline CEMP (REP5-027) and the REAC (REP5-028) set out the mitigation measures for noise required to be implemented when undertaking the construction works. Highways England does not consider a Site Management Plan is required as mitigation is secured through Requirement 4 of the dDCO (TR010029/APP/3.1(5)).
REP5-066-14	Archaeology – The written summary of oral submissions put at Hearings submitted by Havering Borough Council to the Examining Authority at Deadline 4 refers to the advice London Borough of Havering are receiving in relation to Archaeological matters. The submission refers the Applicants comment that they would look to see if trenching can be carried out during the Examination to further assess archaeological potential. Should the trenching concern Gardens of Peace land (Plot 1/8), there will be consequences to the Gardens of Peace Cemetery development. We therefore request any matters concerning archaeology are put to Gardens of Peace and its Agent, Savills, at the earliest opportunity to include contingency measures.	At this stage, the proposed archaeological trenching discussed with London Borough of Havering and the Greater London Archaeology Advisory Service (GLAAS) to be undertaken in May 2021 will not affect the Gardens of Peace site.
REP5-066-15	Drainage Provisions – The draft Heads of Terms does not make any provisions for a temporary drainage solution (both underground and surface water) to replace the existing drainage system that falls within and is affected by Plot 1/8 and associated construction works. The existing drainage system prevents contamination of and silt deposits within the adjoining watercourse and	The concern raised by the Trustees in relation to temporary drainage provision was discussed at a meeting on 20 April 2021 and discussions are ongoing.

Response reference:	Representation Issue	Highways England Response
	thus it is fundamental a temporary solution is designed and agreed ahead of finalising the Heads of Terms.	
REP5-066-16	<p>Planning Provision – The wording of the draft Heads of Terms is yet to include confirmation that the Applicant will prepare and submit the necessary temporary planning application for the temporary car park which falls outside the DCO boundary.</p>	<p>This matter will be included in the next iteration of the draft agreement.</p> <p>With regard to a planning application for the temporary overflow car park, Highways England considers that any such planning application would be considered favourably by London Borough of Havering given its short term nature and it being ancillary to the pipeline diversion.</p> <p>Highways England is willing to pay for the reasonably incurred costs associated with preparing and submitting the planning application. The planning application can be prepared and submitted prior to the conclusion of the examination if the Trustees wish to submit it imminently.</p> <p>Alternatively, the Trustees could submit a non-material amendment to their existing planning consent for the Muslim Burial cemetery for the temporary overflow car parking. Highways England is willing to pay for the reasonably incurred costs associated with this.</p>
REP5-066-17	<p>Contamination – The draft Heads of Terms is yet to include a provision obligating the Applicant to not cause any contamination to Plot 1/8 and any resulting impact to the wider ownership of the cemetery and watercourse. Gardens of Peace require confirmation that any contamination caused by the Applicant shall be remediated by the Applicant.</p>	<p>The REAC (REP5-028) which forms part of the Outline CEMP (REP5-027) sets out the mitigation measures to protect against contamination and reference to the REAC will be included in the next iteration of the draft agreement.</p>
REP5-066-18	<p>Professional Fees – confirmation that professional fees incurred by Gardens of Peace in reviewing, amending and agreeing Heads of Term's and time in reviewing the contractual arrangement paperwork are to be paid by the Applicant on completion of the contractual arrangement. A fee budget will be incorporated into the Heads of Terms, as opposed to being "<i>subject of a separate agreement between the Trustees and Valuation Office Agency</i>" as initially proposed by the Applicant.</p> <p>Further iterations of the plan identifying Plot 1/8 works site, access, temporary road and parking etc., are currently being discussed and until finalised, the draft Heads of Terms cannot be completed. Only when such matters are finalised, will Gardens of Peace will be in a position to finalise the draft Heads of Terms, which will incorporate the abovementioned concerns, and to agree these with the Applicant.</p>	<p>The professional fees incurred in preparing and completing the agreement will be dealt with in the draft agreement.</p>

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