

M25 junction 28 improvement scheme

TR010029

9.99 Applicant's comments on London Borough of Havering and Essex County Council Rule 17 Response

Rule 8(1)(k)

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The Infrastructure Planning (Examination Procedure) Rules 2010

M25 junction 28 scheme

Development Consent Order 202[x]

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1. Purpose and structure of this response

- 1.1.1 This document provides the comments of the applicant, Highways England, in response to London Borough of Havering and Essex County Council's response to the Examining Authority's Rule 17 letter (REP6-038) submitted to the Examining Authority (ExA) at Deadline 6 (27 April 2021).
- 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. REP6-038 London Borough of Havering and Essex County Council's Rule 17 letter

Response reference:	Representation Issue	HE Response
REP6-038-01	<p>Local Authorities position on securing NMU provision through Designated Funds</p> <p>During the Examination, the Applicant has made representations stating that the most appropriate way of securing the NMU route proposed between Harold Hill and Brentwood would be through the Designated Funds process.</p> <p>As Local Highways Authorities responsible for the network that the proposed route would be delivered within, we do not believe this is the most appropriate method of securing this route within the timeframe of the proposed development.</p> <p>Specifically, we have a number of concerns with this approach that are set out below:</p>	See responses below.
REP6-038-02	<ul style="list-style-type: none"> We have concerns over the Applicant's preferred procurement and delivery approach, which would involve Local Highways Authorities leading on these matters. This would require extensive agreement across all parties to agree the financial, legal and works coordination elements. Discussions that Local Authorities have previously had with the Applicant raises concerns that no risk or 	<p>As confirmed in Highways England's letter to the ExA of 7 May 2021 (AS-041) Highways England has now had the funding for the designated funds scheme approved. Highways England is therefore not seeking any financial contribution from the local authorities in relation to the designated funds scheme, as noted in the response to Issue Specific Hearing 3 (ISH3) Action Point 2 in document (TR010029/EXAM/9.97)</p> <p>Highways England is proposing to enter into a planning obligation with (or given to) the London Borough of Havering to the effect that the central section of the integrated NMU scheme (i.e. as it</p>

Response reference:	Representation Issue	HE Response
	<p>contingency funding is included in the cost estimate at this stage.</p>	<p>passes through the junction) will be delivered alongside the DCO scheme. The obligation will be given under section 106 of the Town and Country Planning Act 1990 and be enforceable by the London Borough of Havering as the main local planning authority involved.</p> <p>In order that NMUs can access the route as it passes through the junction it will be necessary for some works to be carried out on Brook Street, which is under the control of Essex County Council (ECC) as highway authority. ECC's co-operation is therefore needed. Delivery of the new NMU route through the junction under the section 106 obligation will require ECC co-operating in the delivery of the central section. It is noted that ECC have indicated in their response to the Rule 17 letter (see REP6-038-10 below) that ECC is able and prepared to give the Applicant the necessary Consents to the use of its land so that these works can be delivered.</p> <p>It is Highways England position that its principal contractor, Grahams, would undertake the delivery of the designated funds scheme, liaising with the relevant local highway authorities as appropriate.</p>

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REP6-038-03	<p>Both Essex County Council and Havering have been approached by the Applicant to establish whether a financial contribution can be made to the scheme. This raises legitimate questions as to whether the Applicant can successfully secure the funding required through Designated Funds.</p> <ul style="list-style-type: none"> Over the last 12 months, the Pandemic has had a significant impact on Local Authority finances with funding and resources being prioritised to front line services. It is not viable for local authorities to make a financial contribution to this scheme in the current climate, nor is that position likely to change in the near future. In addition, we would not be able or willing to take on any additional risk or costs associated with the delivery of this project. It is not considered practical to undertake joint procurement and delivery of the scheme when three different Local Highway Authorities would be involved who have separate procurement arrangements with specific contractors. We would fully expect the Applicant to take on responsibility for both procurement and delivery of the route, and this should be LTN 1/20 compliant. 	<p>As mentioned above, funding for the wider NMU scheme has now been approved through designated funding. Please refer to the response to Action Point 2 in document (TR010029/EXAM/9.97).</p>

Response reference:	Representation Issue	HE Response
REP6-038-05	<p>In summary, Local Authorities do not feel they have any certainty at this stage from the Applicant that the scheme will be delivered via Designated Funds.</p>	<p>Highways England has confirmed in its letter to the ExA dated 7 May 2021 that it will be delivering the central section of the integrated NMU scheme (i.e. as it passes through the junction) alongside the DCO scheme (AS-041). This was also confirmed at ISH3 (TR010029/EXAM/9.96). The proposed mechanism to secure its delivery is by way of a section 106 obligation to be entered into with London Borough of Havering and a draft of the proposed obligation will be put before the ExA before the end of the examination.</p>
REP6-038-06	<p><u>Policy Compliance</u></p> <p>We would invite the ExA to consider that the route proposed is required from a National Planning Policy perspective.</p> <p>We would suggest that the Applicant's current approach to NMU provision within the DCO Application is not policy compliant with National Networks National Policy Statement (NN- NPS) para 3.17 which states <i>"The Government expects applicants to use reasonable endeavours to address the needs of cyclists and pedestrians in the design of new schemes. The Government also expects applicants to identify opportunities to invest in infrastructure in locations where the national road network severs communities and acts as a barrier to cycling and walking, by correcting historic problems, retrofitting the latest solutions and ensuring that it is easy and safe for cyclists to use junctions"</i>.</p>	<p>Regarding compliance with the National Policy Statement for National Networks (NPS NN), the delivery of the central section of the integrated NMU scheme would contribute towards removing an existing barrier to cycling and walking currently posed at the junction and would improve the ability of pedestrians and cyclists to navigate through it. The above-mentioned planning obligation to secure the delivery of the central section would further strengthen the case that the DCO Scheme is compliant with this paragraph of the NPS NN.</p>

Response reference:	Representation Issue	HE Response
REP6-038-07	<p><u>Local Authority suggested approach to securing NMU provision.</u></p> <p>We support the approach advocated by the Applicant in its response to Written Question TA 2.7 at Deadline 5 (REP-041) which discusses how NMU provision from Brook Street through the junction could be secured as part of the DCO. Local Authorities recognise that securing connectivity through the junction from Brook Street is a key priority for a safety perspective. We would consider this as the “do-minimum” option for NMU provision as part of the DCO Application. Given the considerable impact that both LTN 1/20 and the Gear Change Government publications have had we consider that any design should strive to meet these requirements as it is highly unlikely that such a scheme could be introduced in the future after the J28 project has been implemented.</p>	<p>See response REP6-038-02 above and paragraphs 3.1.25 of Highways England’s written summary of ISH3 (TR010029/EXAM/9.96) where delivery of NMU improvements through the Order limits was discussed. It is not practicable or necessary to include the NMU provision as part of the DCO as there is now insufficient time to make a change request. Highways England is of the view that the most sensible way to secure the delivery of the central section of the integrated NMU scheme (i.e. as it passes through the junction) is under section 106 of the Town and Country Planning Act 1990.</p>
REP6-038-08	<p>Given that in its response to Written Question TA 2.7, the Applicant has recognised that consultation on a section of the proposed cycle route could be carried out during the Examination, we see no reason why the entire route cannot form part of a Targeted Consultation. After consultation has been carried out, we would suggest the Applicant could then submit a Change request for the ExA to consider. Should</p>	<p>Please see response to ISH3 action point 1 in (TR010029/EXAM/9.97).</p>

Response reference:	Representation Issue	HE Response
	this Change request be accepted then a requirement for the scheme can be included in the Draft DCO.	
REP6-038-09	In light of our continued concerns regarding the approach to securing the route through Designated Funds, we retain our position for the scheme to be incorporated as part of the DCO Application which would provide certainty to Local Authorities that the policy compliance of the scheme has been met.	Please see responses REP6-038-06 and REP6-038-07 above.
REP6-038-10	<p>In addition, Essex County Council are aware of the comments made by the Applicant in response to Written Question TA 2.7 in submission REP5-041 regarding the Consent required for works taking place in Brook Street that are outside the scheme Order limits.</p> <p>The Applicant is correct to state that Essex County Council as landowner would have to agree for these works to be carried out. Essex County Council is able and prepared to give the Applicant the necessary Consents to the use of its land so that these works can be delivered.</p>	This is noted and Highways England will liaise with Essex County Council accordingly in due course.

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