

# M25 junction 28 improvement scheme

TR010029

## 9.101 Applicant's response to Transport for London's Deadline 6

Rule 8(1)(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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| <b>Rule Number:</b>                           | Rule 8(1)(k)   |
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| <b>Author:</b>                                | M25 junction 28 improvement scheme<br>Highways England |

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# Table of contents

| <b>Chapter</b>   | <b>Pages</b> |
|--|--------------|
| 1. Purpose and Structure of this document                        | 4            |
| 2. REP6-044 Transport for London's Deadline 6 submissions        | 5            |
| 3. REP6-045 Response to the Examining Authority's Rule 17 Letter | 19           |

## 1. Purpose and Structure of this document

- 1.1.1 This document provides the comments of the applicant, Highways England, in response to the two documents Transport for London (TfL) submitted to the Examining Authority (ExA) at Deadline 6 (27 April 2021) namely;
- Response to Examining Authority's Further Written Questions (ExA WQ2) and Requests for further information (REP6-044)
  - Response to the Examining Authority's Rule 17 Letter (REP6-045).
- 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 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. REP6-044 Transport for London's Deadline 6 submissions

| Response reference: | Representation Issue  | Highways England Response   |
|---------------------|---|---|
| REP6-044-04         | <p>DCO 2.4 – Draft Protective Provisions for Transport for London</p> <p>TfL notes the comments by the Applicant in response to this question on TfL's draft form of protective provisions. Discussions are ongoing with the Applicant on these issues. TfL's comments in response to the Applicant's position on TfL's proposed protective provisions are set out in this subsection.</p> <p>Any statutory undertaker or party having to assume Liability under the DCO should have the benefit of protective provisions in a DCO where it is necessary to do so. If needed for commercial or security reasons, protective provisions can be supplemented by side agreements. The fact that few DCOs to date have provided protective provisions for a highway authority does not mean that there should not be protective provisions where they are appropriate. The Applicant states that in many cases, side agreements have been entered taking issues that would otherwise have been dealt with in protective provisions outside the DCO. TfL is not privy to these side agreements so cannot comment on their content.</p> | <p>It remains Highways England's opinion that it would be better to have an agreement with TfL outside of the dDCO rather than overcomplicating the dDCO with detail of the precise nature of TfL's responsibilities. Highways England remains confident that the parties can reach agreement before the end of the examination. However, as agreed at the Issue Specific Hearing 3 (ISH3) held on 12 May 2021 (AS-041) Highways England has provided protective provisions in draft at Deadline 7 for TfL that it considers appropriate if such agreement cannot be reached (TR010029/EXAM/9.107).</p> |

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| REP6-044-05         | <p>The form of the protective provisions proposed by TfL follows that included in the A303 Sparkford to Ilchester Dualling DCO as made. Many of the points raised by the Applicant are contrary to the protective provisions as made in that DCO.</p>   | <p>As previously explained protective provisions for highways authorities are not generally found in Highways England DCOs. Out of sixteen Highways England DCOs, only one - the A303 Sparkford to Ilchester Dualling DCO - included such protective provisions. Therefore, inclusion of such protective provisions is an exception rather than the norm.</p> <p>Their inclusion in the A303 DCO were specific to the circumstances of that particular scheme and the parties involved. These provisions are not model provisions nor is there an obligation on Highways England to follow precedent of one of their previous DCOs. Highways England has set out its position on TfL's proposed protective provisions in so far as it relates to the Scheme in response to written question DCO2.4 (page 11, REP5-041) and has provided at Deadline 7, protective provisions for TfL it considers appropriate if such agreement cannot be reached (TR010029/EXAM/9.107).</p> |
| REP6-044-06         | <p>At this stage, TfL would particularly Like to comment on the Applicant's observations on costs and a commuted sum. The matters set out in the draft protective provisions that TfL submitted at Deadline 4 are those costs and additional liabilities that TfL will be subject to if responsibility for the new A12 eastbound off slip road is imposed on TfL. TfL will not receive from anywhere else additional funding to take on and maintain the significantly more complex replacement off slip and associated infrastructure, nor any mitigation put in place</p> | <p>Highways England does not have statutory responsibility for the local highway network and insofar as the Scheme involves TfL incurring greater expense for the management of the TLRN, this is matter between Department for Transport (DfT) and TfL. It would be inappropriate to hand over the entire maintenance of the local highway to Highways England, whose statutory responsibility is to maintain the Strategic Road Network (SRN). Any additional cost that TfL may incur as a result of the relevant section of the A12 being replaced, ought to be considered in the context of, and balanced against, the benefits of the Scheme</p>  |

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|                     | to deal with the impact of the new off slip road on adjoining Landowners.   | which will be experienced at local level by the local community and not just on a regional/national basis.  |
| REP6-044-07         | <p>TfL particularly notes the comments in the Recommendation Report of the ExA for the A303 Sparkford to Ilchester Dualling DCO where at paragraph 16.6.50 it was noted: “The ExA is of the view that it is only reasonable that SCC [Somerset County Council] should be recompensed for the additional work which is being occasioned by the Proposed Development. If the Proposed Development was not to take place there would be no additional demand on SCC’s services. In this context there is no difference between an Application under the PA2008 [Planning Act 2008] being promoted by a public sector organisation and a private sector one. Nor, as pointed out elsewhere, is there any prohibition on one public sector organisation paying an appropriate charge to another where necessary.”</p> <p>The position is no different here. In the A303 Sparkford to Ilchester Dualling DCO it was agreed that a commuted sum should be paid to SCC and it was not a matter of contention in the ExA’s Recommendation Report or in the Secretary of State’s decision Letter. TfL does not see why payment of a commuted sum should be a matter of contention here where the Applicant should be fully funded to deal with all the implications arising from the scheme</p> | <p>Highways England would respectfully disagree that this is comparable to a private sector promotion where a developer is expected to recompensate for the additional work being occasioned by a development.</p> <p>Highways England is not building an additional asset that TfL is expected to take on. Instead, Highways England is replacing TfL’s existing asset, albeit with variations, including significant improvements.</p> <p>Highways England’s funding for this Scheme comes from the DfT for the promotion and construction of the Scheme. It is accepted and agreed that local highway authorities should be funded for their statutory responsibility of operation and maintenance of the local highway network, including adopted assets imposed by a DCO. However, this funding is not allocated in Highways England’s budget for the individual projects and is a matter between the DfT and the relevant local highway authority, such as TFL.</p> |

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| REP6-044-08         | <p>TfL also wishes to note at this point that, in relation to Land and rights, Articles 31 (Application of the 1981 Act) and 32 (Modification of the 2017 Regulations) are insufficient for the following reasons:</p> <p>it is unclear where the “express authorization” for the purposes of Article 31 would come from in the draft DCO that would enable Land that has been acquired to automatically vest in TfL;</p> <p>TfL would only want property and rights put into its name (and for which it will become responsible) from the point it is responsible for that Land under the DCO, i.e. for the operational phase and not the delivery phase;</p> <p>there is no obligation on the Applicant in Articles 31 and 32 to ensure that TfL has the necessary Land and rights to operate and maintain the relevant part of the authorized development, only that the Applicant may acquire rights in a third party’s name; and</p> <p>Articles 31 and 32 will not provide TfL with rights which need to be granted to TfL either over Land the Applicant already owns or which the Applicant will acquire but retain for the</p> | <p>Highways England accepts that a mechanism is needed to transfer the necessary land/rights to TfL so that it can fulfil its obligations as highway authority for the TLRN. Highways England is continuing to discuss these issues with TfL and these would be included in the side agreement. Were a side agreement not reached then para 74 of the protective provisions provided by Highways England at Deadline 7 (TR010029/EXAM/9.107) addresses TfL’s concerns.</p> |

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|                     | <p>purposes of the authorized development, for example access rights to facilitate maintenance of infrastructure.</p>   |  |
| <p>REP6-044-11</p>  | <p>Finally, TfL wishes to make further comments on specific aspects of the Applicant's response to the protective provisions put forward by TfL:</p> <p>Road Safety Audits – it is standard commercial practice to settle all costs prior to agreeing to a final approval document such as a Final Certificate (or Defects Certificate if adopting NEC terminology). The Applicant does not explain why such settlement of costs is not appropriate prior to the Final Certificate being issued in this case.</p> | <p>Highways England's point in relation to costs does not relate to timing or issue of the Final Certificate as such. Instead it relates to a more general point of principle of payment of TfL's costs. Highways England maintains its position, that Highways England ought not be required to make payments to TfL for TfL to fulfil its function as the relevant highway authority.</p>  |
| <p>REP6-044-12</p>  | <ul style="list-style-type: none"> <li>• Indemnity – the Applicant states that the proposed indemnity provision is too wide but does not explain why; the Applicant should explain why it believes this.</li> </ul>   | <p>The indemnity is too wide as it does not for example exclude acts as a result of TfL's negligence or consequential loss. It also does not include necessary obligations on TfL as to the conduct of any proceedings or settlement(s) under the terms of the indemnity or obligations as to TfL's mitigation of any loss/costs/expenses. The parties are seeking to agree a form of wording in respect of any indemnity provided by Highways England to TfL in a side agreement. If an agreement cannot be reached then an appropriate form of indemnity provision would be addressed through the protective provisions which Highways England has submitted in draft at Deadline 7 (TR010029/EXAM/9.107).</p> |

| Response reference: | Representation Issue  | Highways England Response   |
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| REP6-044-13         | <p>TfL notes the visual screening proposed by the Applicant that “will be planted on an earthwork slope up to the proposed A12 eastbound off slip carriageway with the trees planted towards the top, providing screening to vehicles on the A12”. The Applicant also proposes a visual screening fence adjacent to the A12 eastbound off slip carriageway. TfL does not accept that it should be responsible for any mitigation arising from the Applicant’s project. The DCO should make clear who is to be responsible for any mitigation, where such mitigation may involve infrastructure for which TfL is being asked to take on responsibility from completion under the terms of the draft DCO.</p> | <p>The split of maintenance responsibility is to be covered in the proposed side agreement between TfL and Highways England. However, the general principle is that where TfL is to become the relevant highway authority, it will also be responsible for any related mitigation measures. If an agreement cannot be reached then the maintenance responsibility would be addressed through the protective provisions Highways England has submitted in draft at Deadline 7 those that it considers appropriate (TR010029/EXAM/9.107).</p> |
| REP6-044-14         | <p>If TfL is to be made responsible for mitigation that is connected with the new A12 eastbound off slip road, then a further issue arises from split responsibility for such mitigation where it might be connected to other parts of the authorized development for which TfL is not to be responsible. For example, if the visual screening fence is to extend along both the A12 eastbound off slip and M25 northbound on slip, then a split maintenance responsibility for this fence would not provide an efficient use of public funds if different organizations are maintaining different parts.</p>   | <p>See response to REP6-044-13.</p>   |

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| REP6-044-15         | <p>Regarding the planting proposed by the Applicant on the earthwork slope of the new A12 eastbound off slip embankment for visual screening purposes, TfL will require assurance that planting trees at the top of an embankment constructed as proposed will not affect the stability of the embankment and will not therefore impose additional maintenance requirements on TfL.</p> | <p>It would be best practice and recommended that tree species are set back from the top of the embankment to avoid potential encroachment into the transport corridor. The native woodland mix contains a mix of tree species (70%) and shrub species (30%), the recommended approach would be to plant these shrub species at the top and bottom of the embankment with tree species planted within these groups. The expectation is that the embankment would be constructed to avoid instability and at a suitable gradient (1:3) to allow the proposed planting to be implemented.</p> <p>Requirement 5(2) of the dDCO states that TfL will be consulted on the landscaping scheme which will reflect the Preliminary Environmental Design as shown on the Figure 2.2 (REP5-020).</p> |
| REP6-044-16         | <p>PC 2.4 – Grove Farm</p> <p>TfL notes that an alternative egress route from Grove Farm onto the proposed new A12 eastbound off slip has been put forward as Change Request 8. TfL will review this proposal and respond to the Applicant's consultation on this matter.</p>   | <p>Highways England has received the consultation response from TfL with regard to Change Request 8. Responses to this are provided in Highways England's Consultation Addendum, Appendix A to the Proposed Changes Report (TR010029/EXAM/10.17) submitted at Deadline 7.</p>  |
| REP6-044-17         | <p>TA 2.2 – Extended intergreen Signalling at Brook Street Roundabout</p> <p>TfL welcomes the inclusion of a new requirement being included in the draft DCO to cover the operation of traffic</p>  | <p>Highways England and TfL have now reached agreement on the wording for Requirement 14 and this is included in the dDCO submitted at Deadline 7 (TR010029/APP/3.1(6)).</p>   |

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|                     | <p>signals on the M25 Junction 28 roundabout (Requirement 14). However, TfL is concerned that as currently worded, the requirement to submit a plan to “manage the risk of delays on the A1023 Brook Street as a result of the authorized development” provides no assurance that delays will not increase on the A1023 caused by the authorized development.</p> <p>TfL considers that the wording it provided in its Deadline 4 response (REP4-038 Appendix A Schedule 2 Part 2) to require that a plan is submitted “with the aim that delays to traffic on the A1023 Brook Street do not increase as a result of the proposed development” is more appropriate. As a factor to take into account in exercising any powers and discretion, this would not fetter the Applicant’s ability to manage the operation of the Strategic Road Network (previously raised as a concern by the Applicant) as the requirement would not specify how not increasing delays is achieved. This wording would provide greater assurance that bus journey times and delays experienced by general traffic will not increase, rather than an implied aspiration to not increase delays as currently worded in the draft DCO.</p> |   |
| REP6-044-18         | <p>TA 2.4 – Outline Traffic Management Plan</p> <p>TfL disagrees with the Applicant’s view that management of overnight closures of the A12 eastbound off slip road does not need to be included in the outline plan because they are “of a</p>   | <p>The Outline Traffic Management Plan (TMP) has been amended to include the proposed short-term overnight road closures and has been submitted into the DCO examination at Deadline 7 (TR010029/EXAM/9.52(1)).</p> |

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|                     | <p>very short duration". Proposed traffic management measures including diversion routes are described in the outline Traffic Management Plan for other night closures including some which are Likely to have Less impact, for example plans for a single overnight closure of the A12 eastbound on slip are presented (REP4-013 Table 2-8 and Appendix B). TfL sees no reason why arrangements for night closures of the A12 eastbound off slip, where presumably a greater number of overnight closures are required, cannot be included in the outline plan.</p>  |   |
| <p>REP6-044-19</p>  | <p>TA 2.7 – Integration of Safe Cycle and Walkway Routes</p> <p>The Applicant has suggested it could submit a change request for improvements to the pedestrian and cycle route around the M25 Junction 28 roundabout in its response to Further Written Question TA 2.7 (REP5-041). TfL considers this would be a suitable approach to secure the improvements to this route which are required to address severance issues caused by the strategic road network at this Location. Given the stage that the Examination has reached, TfL suggests this consultation should be started as soon as possible.</p> <p>TfL considers the only way that the improvement to this route could be secured is through the DCO. TfL provides more</p> | <p>The designated funds scheme for the wider integrated NMU project has been approved and TfL were advised on this on 10 May 2021. Highways England confirmed in its letter to the ExA on 7 May 2021 (AS-041) and at the ISH 3 that those elements of the NMU scheme that fall within the Order limits will be delivered alongside the DCO Scheme. Please see Highways England's ISH3 Oral Submission (TR010029/EXAM9.96) submitted at Deadline 7. Highways England is proposing to enter into a planning obligation / section 106 agreement with the London Borough of Havering to the effect that the central section of the integrated NMU scheme (i.e. as it 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</p> |

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|                     | <p>detail on this view in its separate Deadline 6 response to the ExA's Rule 17 Request for Further Information (PD-017).</p>  | <p>Act 1990 and be enforceable by the London Borough of Havering as the main local planning authority involved.</p>   |
| <p>REP6-044-20</p>  | <p>Applicant's response to TfL's written summary of hearings (REP5-049)</p> <p>Compulsory acquisition</p> <p>With regard to response reference REP4-038-07, TfL remains of the view that the New Roads and Street Works Act 1991 (NRSWA) provides the Applicant with sufficient powers to deliver the utility diversions affecting Plot 1/1a, therefore the permanent rights sought in the DCO over the whole of this plot are not necessary to deliver the proposed development.</p> <p>For Plot 1/3 (REP4-038-10), as most of this plot is not currently highway Land, the NRSWA cannot be used to undertake the works and therefore TfL accepts that permanent rights are required in the DCO.</p> <p>However, TfL maintains that for the part of Plot 1/3 that forms part of the new private means of access to maintain the proposed development, the Applicant should seek permanent acquisition rather than permanent rights (see REP4-038-12). This is because TfL does not wish to have ownership of a small part of the private means of access that does not form</p> | <p>Permanent rights provide Highways England with certainty. In order to implement the Scheme, it needs to guarantee that it can offer utility and telecoms undertakers rights to access their apparatus. Highways England can only guarantee this by taking rights in the draft Order. Temporary rights would not be sufficient as Highways England needs to ensure utility/telecoms undertakers have ongoing rights to access their apparatus, including where there are boundary discrepancies or where NRSWA does not apply. Please also refer to Highways England's comments on Transport for London's response to the Examining Authority's Further Written Questions (REP6-011 at CA 2.2).</p> <p>Highways England has subdivided Plot 1/3 to take account of comments received by TfL. A new Plot 1/3a will be created seeking permanent acquisition of the private means of access (Work No. 19A). The rest of Plot 1/3 remains blue on the land plans for the permanent acquisition of rights. This is shown in Appendix A of this document and a draft copy has been shared with TfL informally by email on 13 May 2021.</p> |

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|                     | part of the TfL Road Network (TLRN). This point was not addressed by the Applicant's response.  |   |
| REP6-044-21         | <p>Pedestrian and cycle route</p> <p>TfL does not consider that the Lack of any accidents involving pedestrians and cyclists at the crossings of the slip roads demonstrates that the crossings are safe (REP4-038-40), given the current Low usage due to the unattractiveness of the existing route around the roundabout, contributing to severance issues. This data provides only an indicative view of the operation of these crossings. The Lack of accidents does not provide evidence to justify not improving the pedestrian and cycle route in Line with the policy aims of the National Policy Statement for National Networks Paragraph 3.17 which states that applicants should address barriers 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".</p> | <p>Highways England has approved funding for the implementation of the designated funds scheme which will deliver NMU improvements at junction 28 and beyond. These improvements will address barriers to cycling and walking by correcting historic problems and ensuring that it is easy and safe for cyclists to use the junction. Highways England in its letter to the ExA on 7 May 2021 (AS-041) proposed that delivery of those NMU improvements at junction 28 included in the designated funding scheme, will be secured by a section 106 agreement with London Borough of Havering requiring completion of the relevant works prior to the opening of the proposed loop road.</p> |
| REP6-044-22         | <p>Split of maintenance responsibilities</p> <p>The Applicant provided further information on its position regarding maintenance responsibilities for the new A12 eastbound off slip road (reference REP4-038-61). The points made by the Applicant do not address FL's concerns and</p>  | <p>See response to REP6-044-13.</p>   |

| Response reference: | Representation Issue  | Highways England Response  |
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|                     | therefore FL's previously made comments in various submissions still stand.   |  |
| REP6-044-23         | TfL is not confident that a side agreement will be completed with the Applicant before the end of the Examination. Accordingly, TfL considers that the split of maintenance responsibilities should be dealt with on the face of the DCO (assuming operation and maintenance of the new A12 eastbound off slip road is imposed on TfL). It is also in the public interest that the split of maintenance responsibility between the Applicant and TfL in connection with the new off slip is clear and visible for the public including by way of a plan illustrating the description in the draft DCO of the split.                             | See response to REP6-044-13.   |
| REP6-044-24         | <p>Claims for compensation under the 1973 Act</p> <p>In Section 3 of the Applicant's response to TfL's written summary of hearings, the Applicant rejected TfL's proposal for a new Article 31 to ensure that the undertaker is responsible for compensation claims despite part of the authorized development becoming a GLA Road upon completion. The Applicant stated this additional article is unnecessary as it would remain responsible for compensation as it would be the "appropriate highway authority" that carried out the construction/alteration of the road under the Applicant's interpretation of Part 1 of the 1973 Act.</p> | <p>Highways England does not consider there to be any ambiguity over who has constructed the new A12 eastbound off slip as the power to construct the road is set out within the dDCO for which Highways England has the benefit.</p> <p>As such it is clear that Highways England would be the highway authority who constructed/ altered the highways for any new areas of the TLRN. Accordingly, any claims under the 1973 Act could only be made against Highways England and not TfL.</p> <p>Highways England agreed at ISH3 held on 12 May 2021 to provide clarity within the explanatory memorandum to the DCO on this point and will include this in the final version of that document. See para 5.1.18 of Highways England's ISH3 Oral Submission (TR010029/9.96).</p> |

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|                     | <p>TfL's proposed Article 31 would remove any doubt that the Applicant would be the relevant authority responsible for dealing with any claims arising from Part 1 of the 1973 Act. By making this clear on the Order this would be both beneficial to the public and remove any doubt about the interpretation of the "appropriate highway authority" in this context. TfL sees no adverse impact to the Applicant in this change being made to the DCO.</p>   |   |
| <p>REP6-044-25</p>  | <p>Changes to the draft Development Consent Order London Permit Scheme</p> <p>TfL notes the addition of sub-paragraphs to Article 10 of the draft DCO regarding the London Permit Scheme. For the record, TfL notes that both TfL<sup>1</sup> and the London Borough of Havering<sup>2</sup> have signed up to the London Permit Scheme. Under this scheme, the 'Activity Promoter' is defined as "a person entitled by virtue of a statutory right to carry out street works or works for road purposes". TfL wishes to understand whether the Applicant considers it falls within the definition of an Activity Promoter in the London Permit Scheme. It is not clear if the power sought under the DCO brings the Applicant within the definition of Activity Promoter.</p> <p><sup>1</sup><br/> <a href="https://www.LegisLation.gov.uk/uksi/2009/3186/contents/made">https://www.LegisLation.gov.uk/uksi/2009/3186/contents/made</a></p> | <p>Highways England would be an Activity Promoter within the Order limits by virtue of the DCO when made.</p> |

| Response reference: | Representation Issue   | Highways England Response   |
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|                     | <sup>2</sup> <a href="https://www.LegisLation.gov.uk/uksi/2012/3103/made">https://www.LegisLation.gov.uk/uksi/2012/3103/made</a>   |   |
| REP6-044-26         | <p>Deer fencing</p> <p>The requirement for deer fencing to be installed prior to the opening of the new Loop road to traffic (Work No. 6) is set out in Requirement 13 (2) of the draft DCO. TfL considers that the opening of Work No. 2 (the new A12 eastbound off slip road) to traffic should also be conditional on deer fencing being in place, given the potential for deer to seek to access the part of the slip road on an embankment west of Maylands Bridge.</p> | <p>Requirement 13 in the draft DCO has been amended to make reference to Work No.2. See dDCO submitted at Deadline 7 (TR010029/APP/3.1(6)).</p> |

### 3. REP6-045 Response to the Examining Authority's Rule 17 Letter

| Response reference: | Representation Issue   | Highways England Response   |
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| REP6-045-01         | <p>1. Introduction</p> <p>1.1 This document provides TfL's response to the Examining Authority's (ExA's) Rule 17 Letter requesting further information on the most appropriate way to secure enhancements to provisions for Non-Motorised Users (NMUs) within the time remaining in the Examination, to ensure that the pedestrian and cycle route would be delivered within the timeframe for the Proposed Development.</p> <p>1.2 TfL's view is that the only way of securing improvements to the NMU route is through the DCO for the reasons set out in this document.</p> | <p>Highways England does not agree that the only way of securing improvements to the NMU route is through the DCO. Highways England has now secured funding for the wider designated fund scheme to upgrade the pedestrian and cycling facilities between Brentwood and Harold Hill, including through M25 junction 28 and advised TfL as such on 10 May 2021.</p> <p>As detailed in Highways England's letter to the ExA on 7 May 2021 (AS-041), Highways England is proposing to enter into a planning obligation with the London Borough of Havering to the effect that the central section of the integrated NMU scheme (i.e. as it 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. For further information as to delivery and cost of the NMU improvements see Highways England's response to action point 2 from ISH3 (TR010029/EXAM/9.97).</p> |
| REP6-045-02         | <p>2. Designated funds approach</p> <p>2.1 The Applicant has stated that it considers the most appropriate way of securing improvements to the NMU route is through the designated funds process. However, there is no guarantee that a bid through the designated funds route will be successful, nor if it was successful would the</p>  | <p>The designated fund scheme has now been approved. See response REP6-045-01 above.</p>  |

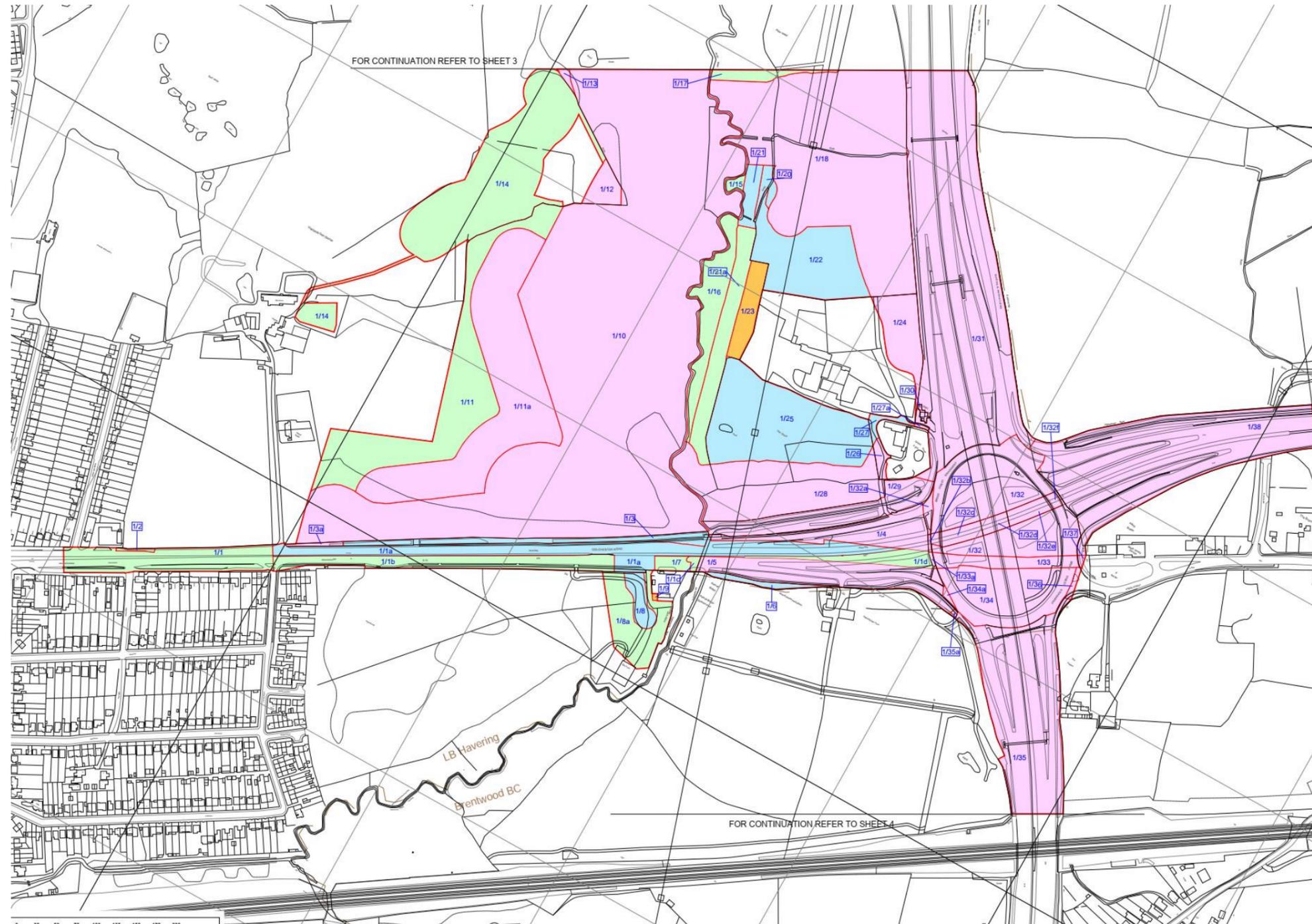
| Response reference: | Representation Issue   | Highways England Response  |
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|                     | <p>timescale for delivery be secured. TfL therefore does not consider this to be an appropriate means of securing improvements to the NMU route within the timeframe of the Proposed Development.</p> <p>2.2 Furthermore, TfL has discussed the designated funds approach with the Applicant and Local authorities and including the Applicant's proposals to split responsibilities for delivery which Leads to several concerns:</p> <ul style="list-style-type: none"> <li>TfL does not consider it viable to split procurement and delivery responsibilities between the Applicant, TfL, the London Borough of Havering and Essex County Council. Each authority has its own procurement arrangements with different sets of contractors. A joint scheme would require complex agreements between the multiple parties and would result in inefficient delivery due to the need for extensive co- ordination.</li> </ul> |  |
| REP6-045-03         | <ul style="list-style-type: none"> <li>TfL and the Local authorities have been asked to consider financially contributing to the scheme, which Leads TfL to conclude that there is no certainty the designated funds bid will be successful. TfL does not currently have a financial settlement to support its operations and delivery into the future and therefore currently needs to focus its available finances on the safe operation of its existing network so it has no</li> </ul>   | <p>The designated fund scheme has now been approved. See response REP6-045-01 above.</p> <p>As confirmed at ISH3 (TR010029/EXAM/9.96) Highways England will be funding the entire designated fund scheme and will not be seeking any financial contribution from others. For further information as to delivery and cost of the NMU improvements see Highways England's response to action point 2 from ISH3 (TR010029/EXAM/9.97).</p> |

| Response reference: | Representation Issue  | Highways England Response  |
|---------------------|---|--|
|                     | <p>funding available for enhancements. Any contribution to facilitate delivery of enhancements to the NMU route within the timescales for the Proposed Development is unlikely to be possible.</p>  |  |
| <p>REP6-045-04</p>  | <ul style="list-style-type: none"> <li>TfL is concerned that it would also be asked to take on risks associated with delivery of the project to upgrade the NMU route, which it is not willing or able to do at the present time.</li> </ul>  | <p>The designated fund scheme has now been approved. See response REP6-045-01 above.</p> <p>Highways England proposes to construct the designated funds scheme. It is not relying upon the local highway authorities to do so but will require their cooperation as the works involve highways for which they are responsible. For further information as to delivery and cost of the NMU improvements Highways England's response to action point 2 from ISH3 (TR010029/EXAM/9.97).</p> |
| <p>REP6-045-05</p>  | <p>2.3 Given these concerns, TfL does not consider that delivering via the designated funds route provides any certainty that the project will be delivered within the necessary timescales.</p>  | <p>See response REP6-045-01 above.</p>   |
| <p>REP6-045-06</p>  | <p>Securing enhancements to the NMU route through the DCO</p> <p>The Applicant has suggested it could submit a change request for improvements to the pedestrian and cycle route around the M25 Junction 28 roundabout. TfL considers this would be a suitable approach to secure the improvements to this route which are required to address the severance issues caused by the strategic road network at this Location. It would provide certainty that the upgrade to the route would</p> | <p>See response REP6-045-01 above.</p>   |

| Response reference: | Representation Issue   | Highways England Response   |
|---------------------|--|---|
|                     | <p>be delivered within the necessary timescales for delivery of the Proposed Development.</p>  |   |
| <p>REP6-045-07</p>  | <p>TfL remains of the view that the Applicant should demonstrate that the crossings of the slip roads are safe as part of any upgrade to the NMU route. As set out in TfL's comments on the Applicant's response to TfL's written summary of hearings also submitted at Deadline 6, TfL is not convinced that a Lack of any accidents involving pedestrians and cyclists over the past ten years at this Location is sufficient evidence that the design of the junction is safe, given the current Low usage of these crossings because of the unattractiveness of the existing route. Upgrading the NMU route including the crossings of the slip roads would ensure compliance with Paragraph 3.17 of the National Policy Statement for National Networks which states that "applicants should use reasonable endeavours to address the needs of cyclists and pedestrians in the design of new schemes" and applicants should address barriers 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".</p> | <p>The design of the designated fund scheme has been subject to an independent road safety audit that has not identified any safety concerns with the proposed crossing arrangements.</p> |

| Response reference: | Representation Issue  | Highways England Response              |
|---------------------|---|--|
| REP6-045-08         | <p>TfL has considered potential alternative approaches for securing improvements to the NMU route in the DCO, either as a requirement or through some other form of planning condition preventing opening of the Proposed Development to traffic until the enhancements to the NMU route are delivered. TfL concluded that modifying the scope of the Proposed Development in the DCO to include the upgrade of the NMU route within the DCO boundary was the optimum approach to ensure there is security that the severance issues caused by the strategic road network at this Location will be addressed by the scheme.</p> | <p>See response REP6-045-01 above.</p> |

## Appendix A. Land plan extract



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