

M25 junction 28 improvement scheme

TR010029

9.103 Applicant's comments on Gardens of Peace Deadline 6 submission

Rule 8(1)(k)

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M25 junction 28 scheme

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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 Savills on behalf of the Garden of Peace Muslim cemetery's Comments on responses to the Examining Authority's Further Written Questions and the Applicant's response to the Gardens of Peace written summary of hearings (REP6-043) 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. REP6-043 Responses to Garden of Peace Deadline 6 submission

Question Number	Savills on behalf of gardens of peace Deadline 6 comments	Highways England Response
CA 2.3	<p>As referred to within the response to the Examining Authority WQ2 submitted on behalf of Gardens of Peace at Deadline 4, Gardens of Peace welcome the changes to the reduction in area subject to acquisition of permanent rights over Plot 1/8, thus not sterilising any land intended for burial plots.</p> <p>This is however based on the premise that, at the date of construction, should the line of the gas main deviate to the west of the line as per drawing "TR010029/EXAM/9.59", the easement width will not move and thus potentially sterilise land prepared for burial plots.</p>	<p>Noted. Cadent Gas Limited ("Cadent") has confirmed to Highways England that the line of the gas main deviates to the west of the line as per drawing "TR010029/EXAM/9.59". The easement width will not move and thus will not sterilise land prepared for burial plots. This commitment is also outlined in the Statement of Common Ground (SoCG) between Highways England and Cadent Gas submitted at Deadline 7 (TR010029/EXAM/9.13(1)).</p>

3. REP6-043 Comments on Applicant's responses to Garden of Peace written summary of hearing

Response reference:	Representation Issue	Highways England Response
REP6-043-02	<p>a) Loss of Service Entrance</p> <p>Whilst the loss of the service entrance will continue to be of concern to the daily running of the cemetery in terms of increased vehicular traffic using the main entrance, Gardens of Peace welcome the recent proposal of Cadent Gas (Drawing Reference PREM518-GEN-0000-0017) to allow access through Plot 1/8, via the service entrance, to collect soil from the soil storage area. This alleviates the concerns of heavy goods vehicles using the internal roads and bring rise to safety issues and damage to internal roads.</p>	<p>Highways England welcomes confirmation from the Trustees of Gardens of Peace (the "Trustees") that the recent proposal from Cadent (Drawing Reference PREM518-GEN-0000-0017) to allow access through Plot 1/8, via the service entrance, to collect soil from the soil storage area is accepted.</p>
REP6-043-03	<p>b) Soil Storage</p> <p>As per the Applicant's response at Deadline 5, a revised soil storage site has been agreed with Cadent Gas, which will fall within the boundary of Plot 1/8. This alleviates the aesthetic and safety concerns with the original proposed soil storage location at the main entrance of the cemetery.</p>	<p>Highways England confirms that the location of the soil storage area which will fall within the boundary of Plot 1/8 (as shown on Drawing Reference PREM518-GEN-0000-0017) has been agreed by all parties.</p>
REP6-043-04	<p>c) Temporary Car Parking</p> <p>Whilst the location of the temporary car park has been agreed on land prepared for burial plots, the effects of the temporary car park on soil compaction still remains. However, the effects of the car park will not become apparent until it is removed. Concerns still remain regarding the safety of aluminium tracking, especially when wet and the planning and insurance provisions of the car park, given it falls outside the Plot 1/8 boundary. The latter two points are referred to further within Section 'iii'.</p>	<p>An alternative material to aluminium tracking can be provided and this has been communicated to the Trustees and can be captured in the draft agreement. Highways England awaits comments on the draft agreement provided to the Trustees on 14 April 2021.</p>
REP6-043-05	<p>d) Loss of Internal Road</p> <p>As with temporary car park, the location is agreed, however concerns surrounding traffic management, compaction to land prepared for burial plots, aesthetics and safety of aluminium tracking remain.</p>	<p>Highways England notes that the location of the temporary car park (as shown on Drawing Reference PREM518-GEN-0000-0017) has been agreed by all parties. An outline Traffic Management Plan (TMP) is submitted at Deadline 7 which deals with management of traffic during construction (TR010029/EXAM/ 9.52(1)). As set out above, an alternative material to aluminium tracking can be captured in the draft agreement to minimise impact on compaction of land, aesthetics and safety.</p>
REP6-043-06	<p>e) Disruption to Utility and Site Infrastructure</p> <p>Whilst the Applicant states the position has not changed since the submission at Deadline 4, this is incorrect as concerns surrounding drainage have been raised and as referred to within Gardens of Peace's submission at Deadline 5. The need for a temporary surface and underground drainage scheme has become apparent and the extent of these works have recently been agreed with Cadent (see Section 'iii' of this submission). The extent of the drainage works falls outside the Plot 1/8 boundary.</p>	<p>Discussions are ongoing with all parties regarding the concerns of the Trustees on surrounding drainage and the need for a temporary surface and underground drainage scheme. There is scope to incorporate the agreed solution in the draft agreement.</p>
REP6-043-07	<p>f) Loss of Burial Plots</p> <p>Gardens of Peace confirm that no burials plots will be affected by the Scheme following the recent amendments to the area subject to acquisition of permanent rights within Plot 1/8. As referred to in Part 1 of this submission, we understand that any deviation in the route of the gas main is minimal (due to the need to bore under the A12) and thus, should at the time of construction there be a need to deviate the route, the adjoining burial land will still remain unaffected.</p>	<p>Highways England welcomes confirmation from the Trustees that they agree that no burial plots will be affected by the Scheme. Please see response to CA 2.3 above.</p>

Response reference:	Representation Issue	Highways England Response
REP6-043-08	<p>g) Easement</p> <p>A draft Easement document has been received and is currently being reviewed by Gardens of Peace legal representative to ensure it does not prohibit Gardens of Peace from operating in the same manner as would have done prior to the Scheme works commencing.</p>	<p>Highways England and Cadent await comments on the draft easement (sent on 15 March 2021).</p>
REP6-043-09	<p>h) Viewpoints</p> <p>Gardens of Peace remain concerned about the existing tree belt between the cemetery and the A12. The tree belt, which acts as a visual screen falls under the management of Transport for London and within Plot 1/1b of the Scheme plans. Gardens of Peace requested formal confirmation that Transport of London would not pollard or fell or alter this tree belt during the construction period, thus opening up the cemetery to the A12 and the M25 Junction 28 improvement Scheme works. In its response, the Applicant directed Gardens of Peace to Transport for London for confirmation that it will not pollard this tree belt. Gardens of Peace deem this an unsatisfactory response and that it should not be left to a claimant to seek such assurances from a third party when it directly involves the Applicant and reducing the visual and sound effects of the Scheme works on the Gardens of Peace cemetery.</p>	<p>The tree belt which runs between the A12 and the proposed Gardens of Peace cemetery and 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.</p> <p>Whilst the Scheme does not involve removing any trees along the tree belt, the Designated Fund Scheme may require the removal of some trees along the A12 for construction of the footpath and for safety reasons.</p>
REP6-043-11	<p>Draft Heads of Terms</p> <p>The Draft Heads of Terms detailing the mitigating measures to be undertaken by the Applicant, were issued to Gardens of Peace on 15th March 2021, being two days prior to Deadline 4 (17th March 2021). Accordingly, Gardens of Peace appointed a legal representative, Sue Irons of Laytons LLP, to oversee the Heads of Terms and the subsequent Tri-party Agreement between the relevant parties thereafter.</p> <p>As referred to in Gardens of Peace's submission at Deadline 5, the Heads of Terms were in a very brief format. Accordingly, due to the significant amount of work required to amend the draft Heads of Terms, Gardens of Peace has not been in a position to respond to these to date, not least because the outcome of meetings with Cadent Gas, Atkins and Highways England held on Wednesday 24th March and Tuesday 20th April were to form part of the Heads of Terms, and the additional issues that have now come to light.</p> <p>To date, Gardens of Peace legal representative has been reviewing the detail and adding to the draft Heads of Terms, which in itself has been a significant amount of work, prior to sending back to the Applicant in preparation for the drafting of the Tri-party Agreement.</p> <p>Notwithstanding this, and prior to the draft Heads of Terms being returned to the Applicant, a draft Tri-party agreement was subsequently issued to Gardens of Peace on Wednesday 14th April. Accordingly, the focus of Gardens of Peace and its professional advisors immediately turned to the Tri-party Agreement.</p>	<p>Highways England notes from the Trustees' submission (REP6-043) that clauses to address outstanding concerns have been added into the draft agreement by the Trustees' legal representative and will be sent back to Highways England for comment. On receipt of comments Highways England will review and issue a further iteration of the draft agreement with the additional clauses included as appropriate.</p>
REP6-043-12	<p>Tri-Party Agreement</p> <p>As referred to in Section 'ii' above, a draft of the Tri-party agreement was issued on 14th April and accordingly, the focus of Gardens of Peace and its professional advisors immediately turned from the draft Heads of Terms to reviewing the detail within the draft agreement.</p>	<p>Highways England welcomes the Trustees' confidence that an agreement to formalise the outstanding issues to satisfy the Trustees will be reached by the end of the examination. Highways England has had some further communication from the Trustees and awaits comments on the draft agreement.</p>

Response reference:	Representation Issue	Highways England Response
	<p>Further to meetings held on 15th March, 24th March and 20th April, a significant amount of work has been undertaken to not only incorporate the outcome of these meetings into the draft Tri-party Agreement, but to include relevant clauses that reflects current concerns of Gardens of Peace and any matters recently agreed between Gardens of Peace and the Applicant. Again, and as with the draft Heads of Terms, this reflects the brief nature of the document provided by the Applicant and the detail that needed to be incorporated following the recent meetings.</p> <p>Despite the amount of work required, Gardens of Peace is working on the amended draft Tri-party Agreement, incorporating all the relevant matters, and will be in a position to send this back to the Applicant within the next three working days.</p> <p>In response to the Applicant's comment within its submission at Deadline 5 that it "is hopeful that an agreement, to formalise the issues outlined in Savills representation at Deadline 4 to satisfy the Trustees, will be reached by the end of the examination", we confirm it is equally the intention of Gardens of Peace and its professional advisors that an agreement is completed in advance of the closure of the examination process.</p> <p>Notwithstanding this, we provide the concerns of Gardens of Peace (as referred to at Submission 5) to demonstrate that, whilst progress has been made since Compulsory Acquisition Hearing 1, a significant amount of work has been involved in reviewing the detail of Gardens of Peace earlier concerns (as referred to in Section 'i') and that through this progress, and legal representation, concerns have been raised and reviewed in subsequent meetings held between parties. Accordingly, these outstanding concerns (detailed below) have been added into the draft Tri-party Agreement by Gardens of Peace legal representative, and will be sent back to the Applicant within the next few working days and we await the applicants comments on these additions into the draft Tri-party Agreement. Until these are accepted and agreed by the Applicant, in the form of a completed Tri-party Agreement, these remaining issues will continue to be of concern to Gardens of Peace.</p>	
REP6-043-13	<p>a) Contingency plan for soil collection – whilst access via Plot 1/8 has been agreed and access during the Applicant's construction works 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 temporarily for any period of time, then a contingency plan must be put in place to prevent soil build up and disruption to the Garden of Peace operation resulting from unsuccessful soil collections. A clause to this effect has been incorporated into the draft Tri-party Agreement.</p>	<p>Highways England confirms that access via Plot 1/8 has been agreed by all parties. The access for soil collection via Plot 1/8 (as shown on Drawing Reference PREM518-GEN-0000-0017) will be arranged between the Trustees and Cadent Gas in advance of any soil collection. 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>
REP6-043-14	<p>b) Timing – A clause has been added into the draft Tri-party Agreement requesting that the notice of Cadent Gas' intention to take possession of Plot 1/8 is to not take effect prior to end of March 2022 (being the earliest Cadent Gas would require possession of Plot 1/8). This ensures the cemetery development can be completed, and which is the premise on which these negotiations have progressed to date.</p>	<p>Highways England awaits comments on the draft agreement including the additional clause on timing and will review this with Cadent Gas.</p>
REP6-043-15	<p>c) Land Reinstatement – a clause has been added confirming that all land will be reinstated post works by the Applicant, in accordance with the provisions of article 35(5) of the draft DCO, and in line with pre occupation surveys and CCTV of drainage. This is imperative in order to allow Gardens of Peace to operate fully, and without issues arising, once all temporary infrastructure has been removed from the site.</p>	<p>Highways England awaits comments on the draft agreement and will review on receipt.</p>

Response reference:	Representation Issue	Highways England Response
REP6-043-16	d) Temporary Tracking and Parking Material – there are concerns surrounding the effectiveness of aluminium non-slip tracking, especially when wet, and therefore an alternative material (for example TuffTrak) needs to be considered for the parking and tracking. Accordingly a clause to this effect has been added into the draft Tri-party Agreement.	See response to REP6-043-04.
REP6-043-17	e) Repair, Upkeep and Insuring of Tracking and Parking – In light of the fact that the temporary track and car park will be used by members of public visiting the cemetery, an obligation on Cadent Gas to be responsible for the repair, upkeep and insurance (including public liability) of the temporary tracking and parking has been added into the draft Agreement. This is specifically relevant to the temporary parking given it falls outside the boundary of the DCO limits.	Highways England awaits comments on the draft agreement and will review on receipt. A copy of the draft agreement has been provided to Cadent Gas. Highways England will discuss the issue of repair, upkeep and insurance with Cadent Gas as part of discussions on the draft agreement.
REP6-043-18	f) Soil Storage – an obligation on Cadent Gas to install concrete buffers around the soil storage area to prevent overspill from soil storage area onto adjacent storage areas.	Highways England awaits comments on the draft agreement and will review on receipt. This has been discussed with all parties and a revised plan (as shown on Drawing Reference PREM518-GEN-0000-0017, Rev D) has been shared which shows concrete barriers around the storage area to prevent overspill from soil storage area onto adjacent storage areas.
REP6-043-19	g) Plot 1/8 Fencing – Whilst the work plans prepared by Cadent Gas confirm that Plot 1/8 will be bounded by Heras fencing, the need for the Heras fencing to be clad with landscape designs to provide a visual barrier of the ongoing works of Plot 1/8 from the cemetery has been incorporated. It is also required that the fence cladding is of a specification that acts as an acoustic barrier, to mitigate the visual and noise impact of the Scheme works during burials. Again, a clause to this effect has been added.	Highways England awaits comments on the draft agreement and will review on receipt.
REP6-043-20	h) Screening – An obligation on the Applicant to ensure 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 (which falls within Plot 1/1b of the Applicant's DCO plans). This is fundamental to the cemetery as any pollarding undertaken will open up the cemetery to the sound and visual effects of the A12 and the M25 Junction 28 improvement scheme works which will cause disruptions to the daily burials. As referred to in Section 'i' we do not deem it satisfactory that Gardens of Peace should seek this confirmation from Transport for London, when it will reduce the effect of the Applicant's Scheme on the cemetery during the construction phase	See response to REP6-043-09 above.
REP6-043-21	i) Costs – A clause is required to obligate the Applicant to bear the costs of all mitigating measures and works, such as concrete buffers, drainage, surveys, fencing, arising in land reinstatement and any 'snagging' matters arising following Plot 1/8 being passed back to Gardens of Peace.	Highways England confirmed in REP5-066-12 in its response to the Trustees at Deadline 6 (REP6-014) that it will bear the costs of reasonable measures such as concrete buffers around the soil storage site and other reasonable costs arising from land reinstatement and any 'snagging' matters following Plot 1/8 being passed back to the Trustees. This aspect will be included in the next iteration of the draft agreement following receipt of the Trustees' response.
REP6-043-22	j) Site Management Plan – A clause is required to obligate the Applicant to prepare a Site Management Plan. This is imperative to Gardens of Peace to ensure noise is kept to a minimum during sensitive times.	The construction environmental management plan (CEMP) submitted in outline at deadline 5 (REP5-027) and the REAC (REP5-028) include mitigation measures for noise required to be implemented when undertaking the construction works. A Dust Noise and Nuisance Management Plan is required as part of the CEMP and is secured through requirement 4(2)(b) of the dDCO (TR010029/APP/3.1(6)).

Response reference:	Representation Issue	Highways England Response
REP6-043-23	<p>k) Archaeology – Following reference to archaeology matters by the London Borough of Havering and the Applicant at Deadline 4 and 5, specifically reference to a programme for evaluation trenching to be conducted during the DCO examination period, Gardens of Peace request within the draft Tri- party agreement that any matters concerning archaeology and Plot 1/8 are put to Gardens of Peace with sufficient notice period, to include contingency measures, should the trenching be undertaken whilst Gardens of Peace is developing its cemetery.</p>	<p>The archaeological trenching raised at Deadline 4 and 5 has now been completed and did not affect the Gardens of Peace site. Highways England awaits comments on the draft agreement and will review on receipt.</p>
REP6-043-25	<p>l) Drainage Provisions – Reference has been made within the draft Tri-party Agreement to the provisions of 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. This includes (and as agreed with Cadent Gas).</p> <ul style="list-style-type: none"> • Control of surface Water <ul style="list-style-type: none"> – CCTV would be completed pre and post Cadent Gas works by a Cadent Contractor – Cadent to block all surface gullies immediately on taking occupation – Mains Work Contractor is to subject to their own PPP / EMP, including permit to pump system. Surface water collected to be discharged within woodland within cemetery • Cut Off Drain <ul style="list-style-type: none"> – Cadent to link Manhole SW1-01 with SW1-11 (thereby acting as a cut off drain and removes the risk of gullies allowing silty water enter the drainage system and into the attenuation tank) <p>A clause to this effect has been incorporated into the Tri-party Agreement which also refers to the repair and upkeep of the drainage, in light of the fact that the drainage provisions fall outside the boundary of Plot 1/8.</p>	<p>Highways England awaits comments on the draft agreement and will review on receipt. Discussions are ongoing with all parties regarding the concerns from the Trustees on surrounding drainage and the need for a temporary surface and underground drainage scheme. There is scope to incorporate the agreed solution in the draft agreement which was provided to the Trustees on 14 April 2021.</p>
REP6-043-26	<p>m) Planning Provision – In reviewing further detail in the Heads of Terms and Tri-party Agreement, it was apparent that, as the temporary car park and part of the temporary drainage provisions fall outside the boundary of plot 1/8, the Applicant would need to prepare and submit the necessary temporary planning application to reflect the change of use from burials to car parking. Accordingly, an obligation to this effect has been added. Without such approval from the London Borough of Havering, there will be significant daily operational limitations to the Gardens of Peace's daily burials for the period of the Scheme works.</p>	<p>With regard to the temporary parking being outside the boundary of the Order limits, a draft plan has been issued to the London Borough of Havering to seek their views on the necessary planning consent required. As outlined in paragraph, 6.1.18 of Highways England ISH3 oral submission (TR010029/EXAM/ 9.96), Highways England confirms that the proposed temporary car park is outside the Order limits and acknowledges that a planning permission application to London Borough of Havering will need to be made in respect of it.</p>
REP6-043-27	<p>n) Contamination – An obligation on the Applicant to not cause any contamination to Plot 1/8 and any resulting impact to the wider ownership of the cemetery and watercourse and that any contamination caused by the Applicant shall be remediated by the Applicant.</p>	<p>The construction environmental management plan (CEMP) required to be in place under requirement 4 of the dDCO will include a Contaminated Land Management Plan, to be secured by requirement 4(2)(f).</p>

Response reference:	Representation Issue	Highways England Response
REP6-043-28	<p>o) Main Cemetery Access – A clause has been added confirming that the Applicant will ensure continued access to the relevant parts of Plots 1/1a and 1/1b to enable Gardens of Peace to;</p> <ul style="list-style-type: none"> i) Complete the main cemetery access ii) To undertake the necessary offsite infrastructure works (as agreed between Gardens of Peace and Transport for London) iii) Complete the cemetery development and thereafter to operate the cemetery, as any restriction of the main access will result in the cemetery being inoperable. 	<p>Highways England awaits comments on the draft agreement and will review on receipt. Highways England confirms that access to the relevant parts of Plots 1/1a and 1/1b will be maintained.</p>
REP6-043-29	<p>p) Professional Fees – A clause confirming that professional fees incurred by Gardens of Peace in reviewing, amending and agreeing Heads of Term's and time in reviewing the Tri-party Agreement are to be paid by the Applicant on completion of the contractual agreement. A fee budget has been incorporated into the draft Tri-party Agreement, as opposed to being "subject of a separate agreement between the Trustees and Valuation Office Agency" as initially proposed by the Applicant in the draft Heads of Terms.</p>	<p>Highways England awaits comments on the draft agreement and will review on receipt.</p>
REP6-043-30	<p>The above clauses have been incorporated into the draft Tri-party Agreement and will be sent back to the Applicant within the next few Gardens of Peace and its advisors wait to hear from the Applicant in regards to the revised draft Tri-party Agreement.</p>	<p>Highways England awaits comments on the draft agreement and will review on receipt.</p>
REP6-043-31	<p>Engagement between Parties Within Gardens of Peace's submission at Deadline 4, reference was made by Gardens of Peace to the lack of meaningful engagement by the Applicant, to which the Applicant in its response at Deadline 5, states it disagrees with this view. Whilst meetings have been held, and there has been forms of engagement between parties since prior to the DCO application, the lack of meaningful engagement has meant that Gardens of Peace's concerns are still yet to be formally confirmed in a contractual agreement. It is the view of Gardens of Peace, and its advisors, that the position Gardens of Peace is currently in, should have been the position many months ago and that a Tri-party Agreement should have been completed by now. Notwithstanding this, in regards to timelines, the Applicant refers to entering into an agreement by the end of the examination period. It is the intention of Gardens of Peace, and despite the slow progress of the Applicant to get where we are today, that an agreement is entered into in advance of the examination period ending.</p>	<p>Highways England welcomes the Trustees' confidence that an agreement, to formalise the outstanding issues and to satisfy the Trustees, will be reached by the end of the examination. Highways England awaits comments on the draft agreement and will review on receipt.</p>
REP6-043-32	<p>Matters concerning professional fees As will be appreciated, due to the sensitive nature of the site, and the cemetery development programme, a significant amount of costs has been incurred to date in meetings with the Applicant, Atkins and Cadent Gas to ensure all concerns are raised, costs are mitigated and mitigating works are agreed ahead of documenting this within the necessary agreement. To ensure Gardens of Peace, being a charitable body, can continue to fund professional advice, interim payments towards such costs are fundamental. Gardens of Peace welcome the recent interim payments towards fees made by the Applicant. Additional</p>	<p>Highways England welcomes confirmation that recent interim payments towards fees made by Highways England have been received. Highways England will review the supporting timesheets and invoices incurred by professional advisors as and when received.</p>

Response reference:	Representation Issue	Highways England Response
	costs incurred by professional advisors has now been provided to Valuation Office with supporting timesheets and invoices.	

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