

20 May 2021
20210520 - Gardens of Peace - Response to Deadline 7 - FINAL



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Dear Sir / Madam

Gardens of Peace Muslim Cemetery (Plot 1/8) – Response to Deadline 7

Savills (UK) Ltd has been instructed by the Trustees of Gardens of Peace Muslim Cemetery (“Gardens of Peace”) to act on its behalf in submitting a response to Deadline 7.

Within this submission, we provide the response in two parts;

- **Part 1:** Comments on Responses Submitted at Deadline 6 (specifically document REP6-014)
- **Part 2:** Written summary of oral submission put at Issues Specific Hearing 3

Part 1: Comments on Responses Submitted at Deadline 6

Comments are provided on the submission made by the Applicant at Deadline 6 (REP6-014). For the purpose of this response, we provide, where relevant, the specific issue being referred to, followed by the Applicant’s response reference and response (in italic font), followed by Gardens of Peace’s comment;

REP5-066-01: *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.*

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.

The Trustees have instructed solicitors to review the draft agreement and will discuss with Highways England’s solicitors to progress the agreement.

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.

Gardens of Peace Comment: Gardens of Peace confirm that the draft Tri-party agreement has been reviewed and revised by its Legal Representative. The draft Agreement is being returned to the Applicant and copied to Cadent today. The revised draft includes additional clauses concerning the below matters.



Contingency Plan for Soil Storage

REP5-066-04: *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.*

Gardens of Peace Comment: We take this opportunity to reiterate that a contingency plan was requested by Gardens of Peace to prevent soil build up and disruption to the daily cemetery operations resulting from unsuccessful soil collections in the event of access through Plot 1/8 being restricted temporarily for any period of time.

However, the Applicant's confirmation that a contingency plan in case of such events would not be required, is accepted by Gardens of Peace. Accordingly, any costs associated with failed collection attempts will form part of a compensation claim in due course.

Timing

REP5-066-05: *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.*

Gardens of Peace Comment: As referred to at Deadline 6, Gardens of Peace has added provisions 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) to permit the cemetery works to continue despite the decision on the DCO being confirmed (should it be confirmed) prior to this date. This ensures the cemetery development can be completed, and is the premise on which these negotiations have progressed to date. Otherwise, the cemetery will not be operable for daily burials, which will not only bring rise to significant costs to Highways England in terms of compensation, but also result in Gardens of Peace not being able to provide for the burial requirements of the Muslim community.

This requirement has been discussed verbally with Highways England's Legal representative but is yet to be agreed between parties

Land Reinstatement

REP5-066-06: *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.*

Gardens of Peace Comment: As referred to at Deadline 6, a clause has been added to the draft tri-party agreement 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. This is also to be in line with the 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.

Whilst reference to the reinstatement of land has been included by the Applicant into the draft Tri-party agreement, the revised wording is yet to be agreed between parties.

Temporary Tracking and Parking Material

REP5-066-07: *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.*

Gardens of Peace Comment: Gardens of Peace welcome the Applicant's agreement to use an alternative material to aluminium for the temporary tracking and parking. Preference on material to be used will be TuffTrak, to ensure the safety of cemetery visitors when the surface is wet.

This has been reflected in the draft tri-party agreement.

Repair and Upkeep of Tracking and Parking

REP5-066-08: *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.*

Gardens of Peace Comment: A clause has been added to the draft Tri-party agreement obligating Cadent Gas to be responsible for the repair, upkeep and insurance (including public liability) of the temporary tracking and parking. This is specifically relevant to the temporary parking given it falls outside the boundary of the DCO limits.

This clause is yet to be agreed between parties.

Soil Storage

REP5-066-09: *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.*

Gardens of Peace Comment: Gardens of Peace welcome the Applicant's confirmation that a plan identifying the concrete buffers around the soil storage area is being prepared. Accordingly, an obligation on Cadent Gas to install the concrete buffers around the soil storage area, to prevent overspill from soil storage area onto adjacent storage areas, has been included within the draft Tri-party Agreement.

Plot 1/8 Fencing

REP5-066-10: *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.*

Gardens of Peace Comment: To re-iterate the concerns of Gardens of Peace, 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 into the draft tri-party agreement. It is also required that the fence cladding is of a specification that acts as an acoustic barrier, to mitigate the noise impact of the Scheme works during burials. Again, a clause to this effect has been added.

This clause is yet to be discussed and agreed between parties.

We refer to acoustic fencing further under "Site Management Plan" below.

Screening

REP5-066-11: *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.*

Gardens of Peace Comment: As per the submission on behalf of Gardens of Peace at Deadline 6, we do not deem it satisfactory that Gardens of Peace should seek confirmation from Transport for London (TfL) that it will not pollard the existing tree belt between the cemetery and the A12 during the construction of the M25 / Junction 28 Scheme. The Tree belt acts as a visual and sound screen from the A12 and thus, should TfL pollard the tree belt, it would open up the cemetery to the sound and visual effects during the construction phase of the Scheme, causing great disruption to daily burials.

Given the tree belt falls within Plot 1/1b of the DCO plans, it should be the Applicant who provides the assurance that TfL do not pollard the tree belt, especially given the Applicant is in constant communication with TfL in regards to this Scheme.

Accordingly, an obligation on the Applicant to ensure TfL will not undertake any pollarding has been added to the draft Tri-party Agreement. This was reiterated during the Issue Specific Hearing 3 and supported by TfL. This is referred to further in Part 2 of this submission.

This clause is yet to be discussed and agreed between parties.

Costs

REP5-066-12: *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.*

Gardens of Peace Comment: Gardens of Peace welcome confirmation costs arising in land reinstatement and 'snagging' matters will be borne by the Applicant.

Site Management Plan

REP5-066-13: *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)).*

Gardens of Peace Comment: Gardens of Peace acknowledge the Applicant has prepared an Outline CEMP (REP5-027) and the REAC (REP5-028) which sets out mitigating measures for noise during construction, and thus the Applicant does not consider a site Management Plan is required. However, whilst the Outline CEMP appends (at Appendix F), the Outline Dust Noise and Nuisance Management Plan, there is no a specific reference to Plot 1/8 and the need for acoustic fencing along the boundary of Plot 1/8, whereas under NV2.1 of the REAC, it specifically refers to the Temporary noise barriers or solid fencing being used for Grove Farm, Maylands Cottages and Putwell Bridge Caravan Park (for Cadent Gas Works) during construction. It is therefore fair and reasonable for Gardens of Peace to request that, in the absence of a site management plan, that the Applicant is obligated to erect acoustic fencing (with landscape designs due to the sensitive nature of the cemetery) along the boundary of Plot 1/8 for the period of occupation.

Accordingly, a clause to this effect has been added to the draft Tri-party Agreement but is yet to be discussed and agreed between parties.

Archaeology

REP5-066-14: *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.*

Gardens of Peace Comment: Gardens of Peace welcome confirmation that archaeology matters will not affect Gardens of Peace land.

Drainage Provisions

REP5-066-15: *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.*

Gardens of Peace Comment: Gardens of Peace confirm discussions with Cadent are ongoing as the most recent drainage scheme (which includes drainage from Plot 1/8 onto Gardens of Peace land) is of concern due to potential liability of the Trustees in the events of flooding and contamination and possible incompatibility with temporary drainage within the proposed area of the cemetery.

Gardens of Peace have invited Cadent to propose an alternative option.

Planning Provision

REP5-066-16: *This matter will be included in the next iteration of the draft agreement.*

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.

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.

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.

Gardens of Peace Comment: As referred to at Deadline 6, in reviewing further detail in the Tri-party Agreement, it has become apparent that, as the temporary car park and possibly part of the temporary drainage provision falls outside the boundary of plot 1/8, the Applicant would need to prepare and submit the necessary temporary planning application to reflect the temporary change of use from burial land to car parking.

As referred to in at the Issue Specific Hearing 3, Gardens of Peace deem it unreasonable that the Applicant suggests Gardens of Peace could submit the necessary planning application to the London Borough of Havering. As the need for a temporary car park is as a direct result of the Scheme, Gardens of Peace and its advisors, request that such an application is submitted directly by the Applicant. Accordingly, a clause to this effect has been incorporated into the draft Agreement. Gardens of Peace take this opportunity to confirm that it will work with the Applicant in submitting a planning application and request that it is consulted on the draft application prior to submission by the Applicant.

The significant concern with such a planning application is the timing. Without a temporary car park for visitors, Gardens of Peace will not be able to operate and therefore such an application must be submitted to, and approved by the London Borough of Havering, prior to the Applicant taking occupation of Plot 1/8. This point was reiterated at the Issues Specific Hearing 3 and is referred to further in Part 2 of this submission.

Accordingly, a clause obligating the Applicant to submit the relevant planning application has been added to the draft Tri-party Agreement. This clause is yet to be discussed and agreed between parties.

Contamination

REP5-066-17: *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.*

Gardens of Peace Comment: This is noted and Highways England/Cadent should undertake not cause contamination to Plots 1/8 and 1/8A and the wider cemetery land and adjacent watercourse, promptly remediate any contamination so caused and indemnify Gardens of Peace for an ensuing liability.

Professional Fees

REP5-066-18: *The professional fees incurred in preparing and completing the agreement will be dealt with in the draft agreement.*

Gardens of Peace Comment: Gardens of Peace welcome acknowledgement that professional fees in preparing the Tri-Party Agreement will be dealt with in the agreement, as opposed by separate agreement.

Professional fees up to March were submitted to the Valuation Office, with subsequent queries clarified by Savills on Wednesday 5th May. Savills await a response from the Valuation Office of reimbursement of professional fees up to March.

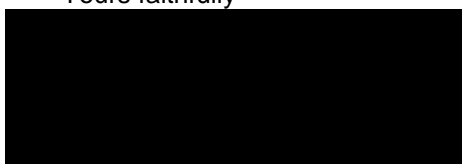
Part 2: Written summary of oral submission put at Issues Specific Hearing 3

Savills represented Gardens of Peace at the Issue Specific Hearing 3. Comments made at the Hearing are summarised below. Savills made comments specifically concerning the draft tri-party agreement, the additional planning requirements for the temporary car park (which falls outside the DCO Limits) and the tree belt (which acts as a visual and sound screen) between the A12 and the cemetery.

1. Concerning the Tri-party Agreement, Savills reiterated the comments made by Mr Challis on behalf of the Applicant in that it is very much Gardens of Peace intention to complete the agreement prior to closure of the examination. In regards to submitting the Tri-Party Agreement into the Examination, it was agreed that such a submission will either be a joint statement between the parties confirming the completion of the agreement, or a redacted version of the agreement. Mr Challis confirmed that it is his intention to submit a summary of the report at Deadline 9 (9th June).
2. Savills made reference to the additional planning requirements for the temporary car park, the location of which falls outside the DCO limits. It was reiterated during the Hearing that the need to have this submitted and approved prior to the Applicant taking occupation is paramount as without parking provisions within the cemetery, Gardens of Peace will not be able to operate. In regards to who should submit the planning application, Savills made reference to the Applicants submission at Deadline 6 which suggests Gardens of Peace should make the application and for the costs to be reimbursed by the Applicant. As the requirement for a temporary car park is as a direct result of the Scheme, Savills, on behalf of Gardens of Peace, request that the Applicant should make the application to the London Borough of Havering. Mr Challis confirmed the Applicant did not have strong views on who submits the planning application, but that aside, the Applicant would be willing to make the submission. During this point, Mr Douglas of the London Borough of Havering contributed, specifically in response to the Applicants submission at Deadline 6 (REP6-043) where the Applicant states that it considered any such planning application would be considered favourably by London Borough of Havering. Mr Douglas confirmed that the London Borough of Havering could not confirm whether such an application would be acceptable without it being formally submitted to the Council with the relevant plans.
3. Regarding the matter of the existing tree belt which borders the northern boundary of the cemetery with the A12, Savills reiterated its concerns that the Applicant directed Gardens of Peace to seek assurances from the TfL (who manage the tree belt) that it will not pollard the tree belt whilst the construction works of the Scheme are ongoing. The tree belt acts as a visual and sound screen to the A12 and consequently, any construction works should the DCO be confirmed. Gardens of Peace deemed it unreasonable that such assurance should be obtained by Gardens of Peace when the tree belt falls within the Order limits. Mr Challis stated he could not talk on behalf of TfL. Mr Rheinberg, on behalf of TfL, contributed and stated that he recognises the concerns and whilst TfL are not promoting the works, it is of the view that it is relevant for the Applicant to provide an undertaking to make it clear that the tree belt will not be touched during the period of construction works. As referred to in Part 1 of this submission, such as obligation has been added into the draft Tri-party Agreement.

We hope we have provided the information you require.

Yours faithfully



Gwyn Church MRICS FAAV
Associate