

## M25 junction 28 improvement scheme

TR010029

### 9.123 Applicant's comments on the Garden of Peace's Deadline 8 submission

Rule 8(1)(k)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

Volume 9

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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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### 9.123 Applicant's comments on the Garden of Peace's Deadline 8 submission

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<b>Rule Number:</b>	Rule 8(1)(k)
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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 Trustees of the Gardens of Peace's Comments on the Applicant's Deadline 7 written Submission put orally at Issue Specific Hearing 3, the Applicant's Deadline 7 response to action points from Issue Specific Hearing 3 and responses to the Applicant's comments on Gardens of Peace Deadline 6 submission (REP8-032) submitted to the Examining Authority (ExA) at Deadline 8 (9 June 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 In some cases, Highways England has made no comment to the response provided because in some cases, the written representation does not necessitate a response as the matter is closed.

## 2. REP8-032 Gardens of Peace's comments on the Applicant's Deadline 7 submissions

Response reference:	Question	Highways England Response
REP8-032-02	<p><i>6.1.17 The ExA questioned whether the tri-party agreement with Gardens of Peace (GoP) will be submitted into the examination or whether there will be a SoCG, if there are confidentiality issues.</i></p> <p><i>6.1.18 MC confirmed that Highways England will either submit a redacted version of the actual agreement or a summary of the main points in order to inform the ExA appropriately. MC confirmed that discussions are continuing, and Highways England hopes to finalise the agreement before the end of examination.</i></p> <p><b>Gardens of Peace Comment:</b> Gardens of Peace confirms its continued intention to work towards entering into the Tri-party Agreement by 7th July, being the closing date of the examination. Notwithstanding this, and whilst the detail of the majority of the mitigating measures is being discussed between the legal representatives, there are still four significant issues yet to be finalised</p>	<p>Highways England welcomes confirmation from the Trustees of its continued intention to work towards entering into the tri-party agreement by 7 July 2021 and this is also Highways England's intention.</p> <p>However, if an agreement is not reached by the close of examination on 7 July 2021, Highways England will continue to work with the Trustees to try and reach an agreement as soon as possible and will inform the Secretary of State when an agreement has been reached.</p> <p>If an agreement cannot be reached with the Trustees within a reasonable time-scale then there remains the possibility of the works being the subject of a requirement to be discharged once the order has been made, if the Secretary of State considers such a requirement appropriate. Such a requirement might be worded as follows:</p> <p>(1) No part of Work No. 29 is to commence within plot No.s 1/8a or 1/8 until a site specific construction plan has been submitted to and approved in writing by the Secretary of State following consultation with the Gardens of Peace and Cadent Gas.</p> <p>(2) Work No. 29 within plot No's 1/8a and 1/8 must be constructed in accordance with the approved site specific construction plan referred to in sub-paragraph (1).</p>

Response reference:	Question	Highways England Response
	which we refer to in Part 3 of this submission.	
REP8-032-04	<p><i>6.1.20 MC also confirmed, in response to concerns raised by GoP, that Highways England has no intention of interfering with the tree belt owned by TfL which is within the Order limits but unaffected by the DCO Scheme.</i></p> <p><b>Post-hearing note</b> – Highways England confirms that as part of the DCO Scheme no trees owned by TfL which are within the Order limits would need to be removed to facilitate the DCO Scheme along the A12 verge adjacent to the Gardens of Pease site. However, to facilitate the Designated Funds NMU scheme some trees within the grassed verge adjacent to the Gardens of Peace site that are owned by TfL would need to be felled to allow for the construction of the shared use cycleway. The current number of trees that would need to be removed is 9. The potential to retain any of these trees is being reviewed as part of a detailed design process. Similarly, the potential to compensate for these losses with new tree planting along the verge is being considered and TfL is to be consulted on this matter. No trees within the Gardens of Peace itself would</p>	<p>With regard to the trees within TfL's land, Highways England's position has not changed in that no trees will be affected by the DCO Scheme. However, some of the trees may need to be removed or branches removed as a result of Highways England's NMU Scheme which is separate to the DCO Scheme.</p> <p>Please see Highways England submission at Deadline 9 (TR010029/EXAM/9.125) which shows which trees may be lost as a result of the separate NMU Scheme by way of a series of Google images. Nine trees need to be removed along the A12 that are located on TfL's land. One tree near the bus stop may need its lower branches to be removed that overhang the NMU route that is located on Gardens of Peace land. No pollarding is proposed for any trees.</p> <p>The potential to retain any of these trees is being reviewed as part of a detailed design process.</p> <p>Highways England has contacted TfL to ascertain whether TfL can provide written confirmation that it has no maintenance plans that would affect the tree belt in question.</p> <p>TfL has responded and has explained that notwithstanding the potential loss of trees due to the NMU Scheme, it has no current plans to undertake any maintenance of the tree belt. However, annual tree surveys are undertaken, with the next due shortly, and it is always possible that remedial works may be required, for example if an unsafe tree was identified. It is therefore not possible to guarantee that no works to the tree belt will be necessary that could affect its screening</p>

Response reference:	Question	Highways England Response
	<p>need to be felled for the purposes of the designated funds NMU Scheme.</p> <p><b>Gardens of Peace Comment:</b> Gardens of Peace, and its professional advisors are disappointed and frustrated with the Applicants 'post-hearing note'. Prior to Deadline 7 in both the ISH3 and written submissions, the Applicant had reassured Gardens of Peace that the tree belt concerned will not be affected by the Scheme.</p> <p>Furthermore, and subsequent to the publication of document REP7-018, a video conference was held on 27 May 2021 between the legal representatives of Gardens of Peace, the Applicant and Cadent Gas where the matter of the tree belt was discussed. However at no point was Gardens of Peace legal representative made aware of the above 'post-hearing note' and to the contrary understood that the Applicant to be indicating that Transport for London would be invited to confirm there would be no pollarding in the tree belt (other than for safety reasons) for the period of the Scheme construction works adjacent to the A12.</p> <p>Gardens of Peace request that no tree felling or pollarding takes place within the</p>	<p>function, but TfL can provide reassurance that no works to the tree belt are planned at the present time.</p> <p>TfL did note that some trees and vegetation in this tree belt will be removed as part of the provision of the main access/egress route into and from the burial ground development which could affect the tree belt itself.</p>

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	<p>tree belt between the cemetery and the A12 due to the adverse visual and sounds affects it will cause on the daily operations of the cemetery. Furthermore, Gardens of Peace and its professional advisors urgently require clarification on which trees are being referred to within the 'post-hearing note' and when they are proposed to be felled as any planting up of trees will be insufficient due to time it takes for a tree to mature and thus any planting up will not alleviate the effects of the cemetery being opened up to the A12 and the Scheme construction works.</p>	
<p><b>REP8-032-05</b></p>	<p><b>Part 2: Comments on the Applicants response to action points from ISH3 held on 12 May 2021 (document REP7-019)</b>  For the purpose of Part 2 of this submission, we first provide the Action Point set by the ExA followed by the Applicants response (in italic font). Gardens of Peace's comment is provided thereafter.</p>	<p>No response needed.</p>
<p><b>REP8-032-06</b></p>	<p><i><b>Action Point 14: Update on discussions and submission of a statement confirming agreement has been reached and signed with</b></i></p>	<p>Please see response to REP8-032-02 above.  Highways England is awaiting comments on the second iteration of the draft agreement provided to the Trustees solicitors.</p>



Response reference:	Question	Highways England Response
	<p><i>the Gardens of Peace Muslim Cemetery (Gardens of Peace).</i></p> <p><b>Applicants Response:</b> <i>Highways England is waiting for comments back from the legal advisors for the Trustees of the Gardens of Peace (the Trustees). As outlined by both parties at Deadline 6 and in the ISH3 hearing (paragraph 6.14 of TR010029/EXAM/9.96), it is anticipated that the agreement will be signed by all parties. At the final Deadline of the Examination, Highways England will provide a statement to the ExA with an update on the status of the agreement.</i></p> <p><b>Gardens of Peace Comment:</b> Gardens of Peace legal representative met with the Applicant's and Cadent Gas' legal representatives by video conference on 27 May 2021 to discuss various matters of the Tri-party agreement, having previously returned wording on the initial draft agreement to the Applicant's and Cadent Gas' legal representative. As referred to within Part 1 of this submission, it is Gardens of Peace intention to work towards completing the agreement by the closing date of the examination period, however, this will be subject to four pressing concerns</p>	

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	<p>being agreed, which are referred to below in Part 3 of this submission. The draft agreement was returned to Gardens of Peace's legal representative on 3 June 2021 with comments from the Applicant and Cadent Gas. These are currently being reviewed and will be responded to shortly.</p>	
<p><b>REP8-032-08</b></p>	<p><b>1. Drainage</b> – There is a need for a temporary drainage scheme in order to prevent any run-off and potential pollution during the construction period and Gardens of Peace has been asked to accommodate this within the remainder of the cemetery, which falls outside the Order limits. To date no proposal which meets the operational requirements of the cemetery and is acceptable to the Trustees has been identified. Whilst Gardens of Peace continue to be willing to work with the Applicant to find a suitable solution, it is not clear how the Applicant's Scheme will be deliverable without a privately agreed solution.</p>	<p>Discussions are ongoing with regard to finding an acceptable solution for the temporary drainage.</p> <p>This situation has arisen as Highways England and Cadent, entirely reasonably, considered that the original drainage proposals as put forward by the Trustees were agreed during a number of technical design meetings between Cadent and the Gardens of Peace and the arrangements for the works were designed accordingly with a view to minimising their effects on the operation of the cemetery. Therefore, the drainage arrangements have not been reconsidered during the more recent detailed design discussions on the Cadent gas diversions works where Cadent agreed to reduce the area of works significantly to accommodate the requests from the Trustees, for example, in respect of the location of the temporary soil storage, temporary road, and access for Gardens of Peace for soil removal.</p> <p>It was only very recently that the Trustees made any mention of their intention to use the part of the site intended for drainage for infant burials. Nonetheless, it is still possible to undertake the gas diversion works within the Order limits but this would require some of the previously agreed solutions, for example the location of the temporary</p>

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		soil storage area within the Cadent Gas construction being relocated elsewhere within the cemetery.
REP8-032-09	<p><b>2. Planning Application</b> – As referred to in previous submissions, during the ISH3 and in Part 1 of this submission, there is a need for the Applicant to apply for planning approval for the temporary car park on land within the cemetery which falls outside the order limits. Should approval not be granted for the car park, or should approval be delayed beyond the Applicant taking occupation of Plot 1/8, the cemetery will be without parking for cemetery visitors meaning the cemetery will not be able to operate once the Applicant takes occupation of Plot 1/8. This will cause substantial business disruption and an inability to meet the burial demands of the local Muslim community which the cemetery serves.</p>	<p>Highways England is currently preparing a planning application for the temporary overflow car park in liaison with the Gardens of Peace and hopes to be in a position to submit the planning application by close of the Examination. As stated at Deadline 8 (see response to REP7-038-14 in REP8-016), Highways England does not consider there to be any reason why the planning application will not be granted given the scale of the development and short duration of 6 months.</p> <p>The consented burial ground has provision for 120 car parking spaces within its site and the proposed spaces to be lost temporarily for the gas diversion works are located in relatively isolated parking areas along the A12 border remote from the main pavilion. The main car parking site is adjacent to the pavilion buildings. The temporary loss of 18 car parking spaces for the gas diversion works equates to a 15% loss in the parking provision on the burial site for a period of 6 months only. It is understood from the Gardens of Peace that burials will commence at the western end of the site, where the main car parking site is located and therefore usage for the overflow spaces along the A12, to the eastern end of the site, is likely to be lower therefore minimising any operational impact on the cemetery.</p>
REP8-032-10	<p><b>3. Tree Belt</b> – The existing tree belt between the cemetery and the A12 acts as a visual and sound screen from the A12 and will provide screening from the Scheme construction works outside of the Gardens</p>	<p>Please see response to REP8-032-04 above.</p> <p>Although the Trustees may be disappointed about the potential loss of some of the trees on the A12, the trees are not owned by the Trustees and whether they are to be removed or not is a matter for TfL as the owner of them.</p>

Response reference:	Question	Highways England Response
	<p>of Peace site. Up to the date of Deadline 7, the applicant had reassured Gardens of Peace that the tree belt will not be touched and thus no visual and sound effects over and above those of Plot 1/8, will be caused to the cemetery. However, for Gardens of Peace to read in a submission made by the Applicant at this late stage in the examination process that this is no longer the case is disappointing and frustrating. Any tree felling will not only remove valuable screening form the effects of the Scheme construction works but could additionally cause disruption to the cemetery and daily burials. Gardens of Peace request that at no point should any of the tree belt be felled or pollarded by the Applicant and that the Applicant should make good its indication that TfL will be asked to commit to this.</p>	
REP8-032-11	<p><b>4. Timings</b> – Gardens of Peace are currently reviewing the Applicant's and Cadent Gas' most recent proposal of taking entry on 1st March 2022. Gardens of Peace are reviewing this alongside its development</p>	<p>Highways England awaits Gardens of Peace's response to the proposed 1 March 2022 date for early access by Cadent.</p>

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	<p>timeline and cemetery operational requirements.</p>	
<p><b>REP8-032-12</b></p>	<p>At this late stage of the examination process, we find it concerning that the above four issues are still outstanding. Without these matters mitigated, or otherwise, it puts Gardens of Peace in a very precarious position in terms of the daily effects of the Scheme on the cemetery and the potential substantial business interruption.</p>	<p>Highways England does not agree that these four outstanding issues puts the Gardens of Peace in a very precarious position in terms of the daily effects of the cemetery. Of the four the most significant is the drainage issue, the situation in respect of which is explained above. The planning application ought not be contentious, the trees are not owned by the Trustees and the timing issue can readily be resolved.</p>

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Registered office Bridge House, 1 Walnut Tree Close, Guildford GU1 4LZ  
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