

# M25 junction 28 improvement scheme

**TR010029**

## **9.133 Applicant's comments on Transport for London's Deadline 9 submission**

Rule 8(1)(k)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

Volume 9

July 2021

# Infrastructure Planning

## Planning Act 2008

### The Infrastructure Planning (Examination Procedure) Rules 2010

### M25 junction 28 scheme

### Development Consent Order 202[x ]

---

### 9.133 Applicant's comments on Transport for London's Deadline 9 submission

---

<b>Rule Number:</b>	Rule 8(1)(k)
<b>Planning Inspectorate Scheme Reference</b>	TR010029
<b>Application Document Reference</b>	TR010029/EXAM/9.133
<b>Author:</b>	M25 junction 28 scheme, Project Team, Highways England

<b>Version</b>	<b>Date</b>	<b>Status of Version</b>
0	6 July 2021	Deadline 10

# Table of contents

<b>Chapter</b>	<b>Pages</b>
1. Purpose and structure of this response	4
2. REP9-082 Transport for London's position in relation to amendments sought to the draft Development Consent Order, protective provisions and the Non-motorised Users route	5

## 1. Purpose and structure of this response

- 1.1.1 This document provides the comments of the applicant, Highways England, in response to Transport for London's Deadline 9 submission (REP9-082) submitted to the Examining Authority (ExA) on or before Deadline 9 (30 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 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. REP9-082 Transport for London's position in relation to amendments sought to the draft Development Consent Order, protective provisions and the Non-motorised Users route

Response reference:	Representation Issue	Highways England Response
REP9-082-01	<p><b>Amendments sought to the draft DCO and protective provisions</b></p> <p><b><u>2.1 Summary</u></b></p> <p>2.1.1 TfL has been able to agree with the Applicant the majority of provisions that were sought in the protective provisions submitted by TfL at Deadline 8 (REP8-038 Appendix A). TfL and the Applicant are proposing to enter into a side agreement in relation to those provisions that have been agreed. TfL continues to seek protective provisions in relation to those provisions that have not been agreed with the Applicant.</p> <p>2.1.2 In addition, TfL's position remains that it is would be most cost effective for the Applicant to maintain and operate the new A12 eastbound off slip road once constructed.</p> <p>These issues are dealt with in turn in sections 2.2 and 2.3 of this document below.</p> <p>Other than:</p> <p>a. as set out below in sections 2.2 and 2.3; and</p>	Please see response to REP9-082-02 below.

Response reference:	Representation Issue	Highways England Response
	<p>b. in relation to any requirement that may be needed in relation to the provision of improved Non Motorised User (NMU) infrastructure which is dealt with in section 3 of this submission;</p> <p>TfL no longer seeks any amendments to the DCO.</p>	
<p><b>REP9-082-02</b></p>	<p><b><u>Protective provisions</u></b></p> <p>TfL and the Applicant have agreed the majority of provisions that were previously sought by TfL through protective provisions in the DCO. In summary they cover:</p> <ul style="list-style-type: none"> <li>• the interaction between the works and the TfL Road Network (TLRN);</li> <li>• design of the works;</li> <li>• safety and assurance;</li> <li>• defects;</li> <li>• land and rights required; and</li> <li>• protection from Work No. 29.</li> </ul> <p>The terms of a side agreement between TfL and the Applicant have been agreed in which the matters outlined in paragraph 2.2.1 above will be covered. Accordingly TfL is no longer seeking protective provisions in the DCO in relation to these matters.</p>	<p>As explained by Highways England in its previous submissions throughout the examination, the ongoing responsibility for the operation and maintenance of the A12 eastbound off-slip should remain with TfL as the current and most appropriate highway authority. 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 a matter between the Department for Transport and TfL.</p> <p>It would be inappropriate to hand over the entire maintenance of the local highway to Highways England, whose statutory responsibility is to maintain the SRN. It would also be not appropriate for Highways England to pay TfL to perform their statutory duties. Highways England has sufficient funding for the delivery and implementation of the Scheme including the new off-slip. However, the payment of commuted sums and costs requested by TfL goes far beyond delivery and implementation and is instead a demand to cover TfL's responsibility for long-term maintenance of the replacement off-slip as well as payment of costs for the performance of their statutory duties.</p>

Response reference:	Representation Issue	Highways England Response
	<p>However TfL and the Applicant have not been able to agree all points on the protective provisions. The payment of a commuted sum and TfL's costs are the outstanding issues. TfL therefore continues to seek protective provisions in relation to a commuted sum and TfL's costs.</p> <p>TfL's reasoning for the need for the payment of a commuted sum and TfL's costs was fully set out in paragraphs 2.3.4 to 2.3.8 of its "Deadline 8 submission - Response to submissions made at Deadline 7" (REP8-038). The key points are summarised here:</p> <ul style="list-style-type: none"> <li>• TfL disagrees with the Applicant's position that a local highway authority should be responsible for finding the additional funding arising from a third party scheme, whether from the DfT or elsewhere.</li> <li>• It falls to the promoter of the scheme to ensure that all costs arising from the scheme have been put in place in order to deliver and implement the scheme.</li> </ul>	<p>See Highways England's response on this matter at Deadline 7 (REP7-022) para REP6-044-06.</p> <p>Furthermore, as confirmed by TfL, the parties have now reached an agreement in relation to all matters which TfL have sought to be covered in their proposed Protective Provisions with the exception of the provisions in relation to the commuted sums and costs. These outstanding issues will be a matter for the Secretary of State's determination.</p> <p>Subject to the above, as a result of the parties reaching an agreement which provides suitable protections to TfL as the highway authority for the new A12 eastbound off slip road, in accordance with the draft Order, no protective provisions in the Order for the benefit of TfL are necessary.</p>

Response reference:	Representation Issue	Highways England Response
	<ul style="list-style-type: none"> <li>The Examining Authority (ExA) for the A303 Sparkford to Ilchester Dualling DCO made it clear that a public authority should be recompensed for the additional work occasioned by a development, stating at paragraph 16.6.50 of its Recommendation Report: “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”.</li> <li>If the increased costs associated with the new off slip are not to be covered from the project budget that the Applicant has for this development, then the ExA can have no confidence that TfL will be in a position to apply sufficient resources to work with the Applicant to ensure a suitable detailed design and to safely assure the new off slip, and that following the development the new off slip will be effectively operated. TfL has no budget to deal with those increased costs.</li> </ul> <p>Payment of a commuted sum and costs is a standard position as set out in our previous submissions and to not</p>	



Response reference:	Representation Issue	Highways England Response
	<p>provide a commuted sum and costs would leave TfL to find funds to pay for a third party development diverting its limited resources away from other much needed operational issues. In the appendix to this submission we attach the revised protective provisions that TfL is seeking in the DCO as a result.</p> <p>Justification for inclusion of protective provisions for a local highway authority in the order was covered in paragraphs 2.4 to 2.6 of TfL's "Deadline 6 submission – response to Examining Authority's Further Written Questions and requests for information" (REP6-044).</p> <p><b><u>Responsibility for new A12 eastbound off slip road</u></b></p> <p>TfL's position remains that the Applicant is best placed to operate and maintain the new A12 eastbound off slip road following its construction. The reasoning for this was set out in section 2.2 of TfL's "Deadline 8 submission - Response to submissions made at Deadline 7" (REP8-038). The submissions made in that document have not been repeated here.</p> <p>The following should be noted in relation to the DCO should the Secretary of State determine that the Applicant should be the highway authority responsible for the new A12 eastbound off slip:</p> <ul style="list-style-type: none"> <li>• Article 16(1)(b), Article 16(7) and Part 2 of Schedule 4 would need to be deleted; and</li> </ul>	

Response reference:	Representation Issue	Highways England Response
	<ul style="list-style-type: none"> <li>the protective provisions sought as outlined in section 2.2 above would still be required in relation to the remaining works and changes by the Applicant to the existing A12 main carriageway which will continue to be operated and maintained by TfL.</li> </ul>	
<b>REP9-082-04</b>	<p><b>Other matters</b></p> <p><b><u>Non-Motorised Users route</u></b></p> <p>TfL is aware that the Applicant is planning to submit a unilateral obligation to the London Borough of Havering and Brentwood Borough Council under section 106 of the Town and Country Planning Act 1990 to deliver the central section of the NMU route at the M25 Junction 28 roundabout.</p> <p>TfL remains concerned that, while the Applicant has secured funds to deliver the full NMU route between Harold Hill and Brentwood via its Designated Funds, there is no security in the DCO that the full NMU route will be delivered.</p> <p>TfL proposes that:</p>	<p>The wider NMU is outside the scope of the DCO Scheme. It is a substantial scheme in itself and has been given no consideration by the ExA.</p> <p>Highways England is not in a position to deliver the NMU route as a whole as things stand. It does not have the necessary powers to do so. The NMU route proposals can only be delivered with the agreement of others, namely the highway authorities. It would be unreasonable therefore to impose a requirement obligating Highways England to deliver it.</p>

Response reference:	Representation Issue	Highways England Response
	<ul style="list-style-type: none"> <li>the Applicant should commit to delivering the full NMU route between Harold Hill and Brentwood as part of its unilateral obligation to the London Borough of Havering and Brentwood Borough Council, for example by a unilateral undertaking restricting the opening of the new M25 Junction 28 loop road (Work No. 6) until delivery of the full NMU route has been secured (using reasonable endeavours); and/or</li> <li>a requirement should be included in the DCO to commit the Applicant to, prior to opening the new M25 Junction 28 loop road (Work No. 6), use reasonable endeavours to enter into agreements to deliver the full NMU route between Harold Hill and Brentwood with the relevant highway authorities (London Borough of Havering, Essex County Council and TfL).</li> </ul> <p>This would provide the necessary surety to TfL and other stakeholders that the Applicant will deliver the full upgrade of the NMU route, working with TfL and the other highway authorities, that it has committed to.</p>	

© Crown copyright (2021).

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence:

visit [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/)  
write to the Information Policy Team, **The National Archives, Kew, London TW9 4DU**,  
or email [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Printed on paper from well-managed forests and other controlled sources.

Registered office Bridge House, 1 Walnut Tree Close, Guildford GU1 4LZ  
Highways England Company Limited registered in England and Wales number 09346363