



Department  
for Transport

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16 May 2022

National Highways  
Bridge House  
1 Walnut Tree Close  
GU1 4LZ

Dear Sir,

**PLANNING ACT 2008  
APPLICATION FOR THE PROPOSED M25 JUNCTION 28 IMPROVEMENT PROJECT**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:
  - the report dated 16 September 2021 of the Examining Authority (“ExA”), Richard Allen BSc (Hons) PGDip MRTPI (Lead member of the ExA), and Rod MacArthur BSc (Arch) BArch (Hons) RIBA ARIAS who conducted an Examination into the application made by Highways England now known as National Highways (“the Applicant”) for the M25 Junction 28 Improvement Development Consent Order (“the DCO”) under section 37 of the Planning Act 2008 as amended (“the 2008 Act”);
  - post examination correspondence received by the Secretary of State; and
  - responses to post-examination consultations undertaken by the Secretary of State in respect of the application.
2. The application was submitted on 27 May 2020 and accepted for Examination on 24 June 2020. The Examination began on 7 January 2021 and was completed on 7 July 2021. The Examination was conducted on the basis of written and oral submissions submitted to the ExA and by a series of hearings. The ExA also undertook two unaccompanied site inspections.
3. The DCO as applied for would grant development consent for works (“the Proposed Development”) which include:
  - the creation of a new two-lane loop road with hard shoulder, for traffic travelling from the M25 northbound carriageway onto the A12 eastbound carriageway towards Essex;
  - the new loop road would include four new bridges (Alder Wood bridge, Grove Farm bridge, Duck Wood bridge and Grove bridge) and an underpass (Grove Farm underpass) to carry the new loop road over a proposed access track;

- realignment of the existing A12 eastbound exit off-slip road to accommodate the new loop road including the provision of a new bridge (Maylands bridge) and the extension of the existing Grove culvert.
4. The DCO limits lie predominately within the Greater London area and thus within the administrative boundaries of the Greater London Assembly and the London Borough of Havering (“LB Havering”). A small section of the Order land on the eastern side of the M25 and its on-slip road as well as Brook Street are within Essex, specifically within the administrative areas of Essex County Council (“Essex CC”) and Brentwood Borough Council (“Brentwood BC”).
  5. Published alongside this letter on the Planning Inspectorate’s website is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the Report”). All “ER” references are to the specified paragraph in the Report and references to “Requirements” are to those in Schedule 2 to the DCO as recommended by the ExA at Appendix C to the Report.

### **Summary of ExA’s Report and Recommendations**

6. The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the Report under the following broad headings:
  - Legal and Policy Context (Chapter 3);
  - Planning Issues (Chapter 4);
  - Findings and Conclusions in relation to the Planning Issues (Chapter 5);
  - Findings and Conclusions in relation to the Habitats Regulations Assessment (Chapter 6);
  - Conclusions on the case for Development Consent (Chapter 7);
  - Compulsory Acquisition and Related Matters (Chapter 8); and
  - Draft Development Consent Order and Related Matters (Chapter 9).
7. For the reasons set out in the Report, the ExA recommend that the Secretary of State makes the DCO in the form recommended at Appendix C to the Report (ER 10.2.1).

### **Summary of Secretary of State’s Decision**

8. **The Secretary of State has carefully considered the Report and has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this Application.** This letter is the statement of reasons for the Secretary of State’s decision for the purposes of section 116 of the 2008 Act and regulation 31(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“2017 Regulations”).

### **Secretary of State’s Consideration**

9. The Secretary of State’s consideration of the Report, post Examination correspondence and responses to his consultation letters of 14 October 2021, 8 November 2021, 22 December 2021 and 4 February 2022 and other material considerations are set out in the following paragraphs. Where not otherwise stated in this letter, the Secretary of State can be taken to agree with the findings, conclusions

and recommendations set out in the Report and the reasons given for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations.

## **Legal and Policy Context**

10. For the reasons set out in ER 3.2.1, the Secretary of State is content that the Development qualifies as a Nationally Significant Infrastructure Project ("NSIP") under sections 14(1)(h) and 22(1)(b), 22(3) of the 2008 Act. Under section 104(3) of the 2008 Act the Secretary of State must decide this application in accordance with any relevant National Policy Statements ("NPS"), which in this case is the National Networks National Policy Statement ("NNNPS"), subject to certain exceptions set out in section 104(4) to (8) of the 2008 Act, which are not relevant in this case. The Secretary of State agrees with the ExA's assessment of the legislation and other matters that are relevant and important considerations in relation to this application as set out in Chapter 3 of the Report. In a Ministerial Statement issued on 22 July 2021 the Secretary of State for Transport advised that a review of the NNNPS will begin in 2021 to be completed no later than Spring 2023. While the review is undertaken the NNNPS remains relevant government policy and has effect for the purposes of the 2008 Act. The NNNPS will, therefore continue to provide a proper basis on which Examination Authorities can examine, and the Secretary of State can make decisions on, applications for development consent.
11. In accordance with section 104(2) of the 2008 Act in addition to the NNNPS, the Secretary of State has had regard to the Local Impact Reports ("LIR") submitted by Brentwood BC, LB Havering and Essex CC (ER 3.10.2), any matters prescribed in relation to development of the description to which the application relates (which are set out in section 3.5 of the Report), and any other matters which the Secretary of State considers to be important and relevant to the decision (ER 3.3.3). In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken into consideration any matters that are not relevant to the decision.
12. With regard to Brentwood BC's Local Plan the ExA noted that its Examination in Public was due to take place prior to and during the Examination of this application and recommended that the Secretary of State consult the Applicant and Brentwood BC to determine if it had advanced to a stage where the policies within it are important and relevant to the consideration of the application (ER 3.11.18). In his consultation letter of 14 October 2021, the Secretary of State asked for an update on this from both Brentwood BC and the Applicant. In its reply of 18 October 2021, Brentwood BC stated the plan was currently out for consultation ending on 11 November 2021 and that following that it is anticipated it would be adopted in early 2022. It also included a schedule of the main modifications proposed. The Secretary of States notes the plan was adopted on 23 March 2022 and is satisfied that this does not change the ExA's consideration on this matter or the weight given to it by the ExA.
13. The Secretary of State notes that the application was amended during the Examination as set out in Chapter 2 of the Report and agrees with the ExA that the proposed changes are not material so as to constitute a new application (ER 3.12.4 -3.12.5). The Secretary of State is therefore satisfied that it is within the powers of section 114 of the 2008 Act for him to make the Order in the form recommended by the ExA with modifications.

## **FINDINGS AND CONCLUSION IN RELATION TO PLANNING ISSUES**

### **The need for the Development**

14. The Secretary of State notes from the Environmental Statement (“ES”) that currently junction 28 is a heavily used junction and suffers regularly from congestion and that with traffic levels predicted to increase, congestion during peak hours is also predicted to increase. Modelling indicates that by 2037 without further intervention there will be a further deterioration in traffic conditions at junction 28 with delays at over three times those currently experienced and average speeds reduced by 25% (ER 5.2.4). The Secretary of State notes that the Proposed Development will increase capacity and reduce congestion and delays; reduce the incident rate; improve safety and cater for future traffic demands to enable development and economic growth (ER 5.2.5). The Secretary of State also notes that no interested party raised any concern regarding the need for the Proposed Development (ER 5.2.9). Paragraph 2.22 of the NNNPS identifies a compelling need for development of the national road network. The Secretary of State agrees with the ExA that the Proposed Development would contribute to this established need and that the Proposed Development would help ensure that the junction would be able to accommodate additional demand and avoid traffic waiting and, in this respect, the Proposed Development attracts positive weight in the planning balance (ER 5.2.13).
15. Paragraph 4.27 of the NNNPS states that all projects should be subject to an options appraisal (ER 5.3.1). The Secretary of State notes six strategic options were considered (ER 5.3.2), nine further options of highways improvements were subsequently considered (ER 5.3.3) before three sub-options were taken forward (ER 5.3.4) and Option 5F was chosen to form the Proposed Development (ER 5.3.7). No interested parties raised any questions or concerns with the Applicant’s alternatives and options considered (ER 5.3.8).
16. The Secretary notes the ExA’s conclusion at ER 5.3.13. Whilst Option 5F was not the lowest in land take or in its environmental effects, the flaws in the other alternatives would mean that the objective of improving the junction would not have been met. The ExA also accepts that Option 5F enjoyed the greater public support. Thus overall, the ExA accepts that the Applicant reached a balanced judgement in advancing Option 5F. The Secretary of State agrees with the ExA’s findings and that the requirements of the NNNPS and 2017 Regulations have in this respect been met.

### **Traffic and Access**

17. The Secretary of State notes and accepts the policy considerations outlined by the ExA at ER 5.2.2-5.2.11 ER 5.4.1– 5.4.13. The Secretary of State notes the relevant representations received on this matter and the main issues that concerned the Examination (ER 5.4.14 – 5.4.20).
18. The Secretary of State notes concerns expressed by parties about the impact on traffic during construction and operation of the scheme on access to and from local roads and the specific request for a new right turn to be incorporated into the scheme from Woodstock Avenue onto the A12 (ER 5.4.14). This was also raised by parties in correspondence received after the close of Examination.

19. With regard to impacts from construction, the Secretary of State is satisfied that there are measures secured in the DCO to ensure this impact is reduced. This includes requirements for a Traffic Management Plan and a Construction Environmental Management Plan (“CEMP”) to be approved before development commences. These must be carried out in accordance with the Outline Traffic Plan Management Plan and Outline CEMP respectively, and both include measures for reducing construction impacts.
20. With regard to the request for a new right turn from Woodstock Avenue, Transport for London (“TfL”) stated that it would not support this request as it would require a signalised junction and that the substantial adverse impact on journey times for all users of the A12 in this location would significantly outweigh the benefit to the relatively small number of users located in Woodstock Avenue (ER 5.4.21). Like the ExA, the Secretary of State recognises the specific problems faced by residents of Woodstock Avenue when joining the A12, but agrees with the ExA that the impact of addressing their concerns, is predicted to have a significant adverse impact on users of the A12 as a whole. The Secretary of State notes that the ExA were satisfied that the Proposed Development is predicted to reduce journey times around the M25 junction 28 roundabout in its operational phase and that these reductions in journey times are in turn predicted to improve access to the A12 in both directions for residents of Woodstock Avenue (ER 5.4.69).
21. The Secretary of State notes the concerns raised by LB Havering with regard to the traffic modelling and their view that further sensitivity testing was required to take account of housing growth in the borough and as defined in the London Plan. The Secretary of State also notes LB Havering’s view that detailed modelling was required to demonstrate the impacts on the area between Gallows Corner and Gubbins Lane (ER 5.4.24). The Secretary of State notes the Applicant’s response that in its view the sensitivity testing carried out is sufficient and no further modelling was warranted (ER 5.4.25). The Secretary of State agrees with the ExA that the Applicant has demonstrated that the methodology used is reasonable in this case, and that the areas of disagreement between LB Havering and the Applicant do not suggest that the approach taken by the Applicant was unsound (ER 5.4.68).
22. The Secretary of State notes the ExA’s consideration of the Proposed Development’s impact on connectivity and movement of non-motorised users (“NMU”). The Applicant explained that as well as a new NMU route along the A12 of-slip road they were seeking to implement a scheme of further NMU improvements as part of a wider strategy and programme of works to deliver a comprehensive and coordinated approach to improving the corridor along with the A1023 and the A12 between Brentwood and Harold Hill (ER 5.4.39). These further improvements would be implemented as part of the Applicant’s Designated Funds programme, but it was noted that sections of the NMU route subject to the Designated Funds application were outside the Order limits (ER 5.4.40).
23. On 7 May 2021, the Applicant informed the ExA that its application for Designated Funding to implement the full integrated NMU improvement scheme had been approved (ER 5.4.43) and confirmed it will be necessary for some works to be carried out on Brook Street which is under the control of Essex CC as the Highway Authority (ER 5.4.44). The Applicant subsequently submitted a draft unilateral undertaking

which obligated itself to construct the junction section (the section within the order limits). TfL considered the Applicant should commit to delivering the whole NMU route (ER 5.4.46) and a joint response from LB Havering, Essex CC and TfL reiterated TfL's concerns in respect to the need to secure the whole NMU route. However, the Applicant repeated its stance that it would be unreasonable to impose an obligation on it for the delivery of the NMU proposal in its entirety when agreement of other Highway Authorities would be needed (ER 5.4.48).

24. The Secretary of State consulted on this matter in his letter of 14 October 2021 and requested an update on the unilateral undertaking which, at the end of the Examination, had not been agreed. In a joint response from LB Havering, Essex CC and TfL of 29 October 2021, they noted concern as to how the entire NMU route would be secured and suggested the inclusion of a Requirement in the DCO for the Applicant to enter a unilateral undertaking with the local planning authorities to deliver the full NMU route by 2025. Alternatively, they suggested including a Requirement to commit the Applicant prior to the opening of the new loop road (Work No.6), to use best endeavours to enter into agreements with the relevant Highway Authorities to deliver the full NMU route by March 2025. In its response of 29 October 2021, the Applicant again stated that it does not have the necessary powers to deliver the whole of the NMU route.
25. The Secretary of State notes the ExA's view that while the NMU scheme as a whole should be secured in this application – otherwise there is a risk that only the junction section will be completed, and the benefits to NMU route would not be fulfilled –the Applicant should not be responsible for the delivery of those elements outside the Order Limits and as such land outside its control. As no agreement was reached on this point at the close of the Examination (and has not been reached subsequently), the Secretary of State agrees with the ExA that the insertion of a new Requirement 17 (Non-motorised users' route) in the Recommended DCO (Appendix C to the Report) would ensure the NMU scheme is approved and funded, with the Applicant being only responsible for the delivery of the junction section (ER 5.4.50 – ER 5.4.51).
26. The Secretary of State also agrees with the ExA that there is no justification for the Applicant to pay legal costs or a monitoring fee to LB Havering, Essex CC, and TfL as they requested (ER 5.4.52).
27. The Secretary of State notes the Applicant's change request No.8 consisting of a revision of the realignment of the egress road from Grove Farm onto Work No.2 approximately 25m further to the west and the consequential impacts of this (ER 5.4.62). Given this change was introduced late in the Examination process, the ExA recommended the insertion of Requirement 16 (Grove Farm) into the DCO to ensure this meets safety standards (ER 5.4.63). The Secretary of State has considered this and agrees to the inclusion of this Requirement.
28. The Secretary of State agrees with the ExA that the Proposed Development would accord with all legislation and policy requirements and, like the ExA, is satisfied that mitigation is adequately provided for and secured in the DCO for traffic and access issues. The Secretary of State also agrees with the ExA that the Proposed Development attracts positive weight in the planning balance in this respect (ER 5.4.73).

## Air quality

29. The Secretary of State notes the policy requirements relating to air quality as set out in the NNNPS, the National Planning Policy Framework (“NPPF”) and LB Havering’s Local Plan. The Applicant’s ES confirmed there is no likely significant adverse effects during construction and operation of the Proposed Development on air quality (ER 5.5.1 – 5.5.9).
30. The Secretary of State notes there are two Air Quality Management Areas (“AQMA”) that the Proposed Development will impact, one in Brentwood BC and one in LB Havering (ER 5.5.10). LB Havering raised concerns in respect of the assessments undertaken. The Applicant responded that in its view the air quality assessment is robust, and the approach adopted is conservative and that it is not necessary to revise the assessment (ER 5.5.11-5.5.12). LB Havering also had concerns around the clarity of the mitigation measures set out in the outline Dust, Noise and Nuisance Management Plan due to conflicts with the Local Plan. LB Havering also sought the installation of a real time Particulate Matter (PM<sub>10</sub>) continuous monitoring station to provide accurate information on air quality outputs given the uncertainty of the air quality data sets that had been used (ER 5.5.13 -5.5.15).
31. The Secretary of State notes the Applicant’s ES states the construction and operation phases of the Proposed Development would not have significant residual effects on air quality (ER 5.5.17). It was also noted that the receptors in the AQMA are expected to experience an imperceptible change in NO<sub>2</sub> and that there are no expected exceedances of the PM<sub>10</sub> objective (ER 5.5.7). The ExA were satisfied that there would be no likely significant effects on air quality (ER 5.5.27) and noted that the signed Statement of Common Ground (“SoCG”) between the Applicant and LB Havering stated that it is now an agreed matter that the effects of the Proposed Development on air quality are unlikely to be significant (ER 5.5.17 & ER 5.5.21). Therefore, the Secretary of State agrees with the ExA that the need for real time continuous monitoring is not necessary and does not meet the tests set out in paragraph 57 of the NPPF (ER 5.5.26).
32. In respect of assessments and matters of concern regarding the modelling, as set out in ER 5.5.19 – 5.5.20 and which LB Havering found “very uncommon”, the ExA concluded that they were satisfied with the scope and assessment work undertaken (ER 5.5.26). The Secretary of State has no reason to disagree with this conclusion.
33. The Secretary of State is satisfied that the Proposed Development will not result in a zone/agglomeration which is currently reported as being compliant with the Air Quality Directive becoming non-compliant; or affect the ability of a non-compliant area to achieve compliance. The Secretary of State agrees with the ExA that the Proposed Development would have no likely significant effects on air quality and would accord with all legislation and policy requirements and is satisfied that mitigation is adequately secured in the recommended DCO. The Secretary of State agrees with the ExA that, in this respect, the Proposed Development attracts neutral weight in the planning balance (ER 5.5.27).

## **Noise and Vibration**

34. The Secretary of State notes the policy requirements as set out in the NNNPS and the LB Havering's Local Plan (ER 5.6.1-5.6.2) and that the Applicant's ES confirmed no likely significant adverse effects during construction and operation of the Proposed Development on noise and vibration issues (ER 5.6.6).
35. The Secretary of State notes the matters raised during Examination and the ExA's consideration of these 5.6.7-5.6.17. With regard to impacts on the occupants of Grove Farm, this is discussed further in paragraphs 38 to 41 below. Whilst the ExA accepts the Proposed Development would result in an increase in noise and vibration during site preparation and construction, it was satisfied that these impacts would be appropriately mitigated as far as they can be under the Proposed Development and that the impacts would only be felt for a short-term (ER 5.6.15).
36. The Secretary of State agrees with the ExA and is satisfied that the Proposed Development would have no likely significant effects on noise and vibration and would accord with all legislation and policy requirements. Like the ExA, the Secretary of State is satisfied that mitigation is adequately provided for and secured in the recommended DCO and that in this respect, the Proposed Development attracts neutral weight in the planning balance (ER 5.6.17, ER 7.2.17).

## **People and Communities**

37. The Secretary of State notes and accepts the policy considerations outlined by the ExA at ER 5.7.1– 5.7.9.

### Grove Farm

38. The Secretary of State notes that Grove Farm is currently only a short distance from the M25/A12 intersection roundabout, and that Mr and Mrs Jones raised concerns on the effects of the Proposed Development on their living conditions. The two effects are on (i) outlook and visual amenity and (ii) noise (ER 5.7.11-5.7.13). On visual effects, the ExA expressed its concerns that planting mitigation would by itself be insufficient to mitigate the harm to residents of Grove Farm and requested that the Applicant consider whether an additional Requirement be imposed into the draft DCO for a site-specific plan for Grove Farm to consider specific planting and other measures to further reduce the visual impact on the residents of the property (ER 5.7.17). In response, for the reasons set out in ER 5.7.18, the Applicant stated that a Requirement in respect of Grove Farm is not required or appropriate. The ExA was dissatisfied with this response for the reasons set out in ER 5.7.19 and asked the Applicant to work with the occupiers of Grove Farm to find a solution. The Applicant discussed this with the occupiers and come up with additional measures set out in the bullet points under ER 5.7.20. The Secretary of State notes that as part of this exercise, the relocation of the current egress and the introduction of a visual screen were subject to a change request which was accepted into Examination (ER 5.7.21). Whilst Mr and Mrs Jones welcomed the egress change, they remained concerned over the level of noise that would be caused and remained committed to the need for an acoustic fence to be installed instead of a visual screen (ER 5.7.21 – 5.7.22).



39. With regard to noise, the ExA held concerns that peak noise levels had not been accounted for in the ES and as such, could have a severe effect on Mr and Mrs Jones' living conditions as the new A12 off-slip forming Work No.2 would be significantly closer and more visible than the existing off-slip road (ER 5.7.24). In response to the ExA's question about whether a permanent noise barrier was needed at Grove Farm, the Applicant responded that the decision on mitigation is taken in terms of the overall annual average noise levels and since traffic modelling shows that there is no increase in noise level, the boundary to Grove Farm does not meet the criteria for erecting a permanent noise barrier (ER 5.7.29). In response to the ExA's question on the impacts of peak noise events on the occupants of Grove Farm, the Applicant confirmed that a noise barrier would have some mitigation effect on a particularly loud noise, but only while the noise source was directly screened by the sound barrier. The Applicant considered it unlikely that a noise barrier would affect the overall perception of peak noises as those sounds would remain distinctive within the overall noise climate (ER 5.7.32). The Applicant also confirmed that there are no agreed standard methods for predicting peak noise levels from individual vehicles and no means of quantifying the level of disturbance that an individual householder might perceive. The Applicant's position on an acoustic fence did not alter by the close of the Examination (ER 5.7.33).
40. The Secretary of State notes the ExA's conclusion on the effect of the Proposed Development on Mr & Mrs Jones' living conditions, as set out in ER 5.7.79 – 5.7.90. In respect of visual effects, the ExA conclude that the current measures proposed in the Register of Environmental Actions and Commitments and outline Landscape and Ecology Management and Monitoring Plan which control the planting regime across the whole site, are not sufficient to mitigate the harm because such reports are likely to be too generalised and promote planting which may not be adequate for Grove Farm (ER 5.7.81). Thus, the ExA recommends the insertion of Requirement 16 into the recommended DCO. This requires a site-specific plan, which would have specific regard to mitigation for Grove Farm, to be submitted (ER 5.7.83). The Secretary of State agrees to the addition of Requirement 16 as set out in the recommended DCO (Appendix C to the Report).
41. On noise, the Applicant has stated that no methodology exists to predict the peak noises above background noise levels that the occupants of Grove Farm might be subject to in the operational stage of the Proposed Development. The ExA heard no contrary evidence from any other interested parties on this matter (ER 5.7.86). In light of this, the ExA considers that post-construction noise monitoring was not something they could recommend and whilst they were of the view that they could not conclude with any degree of certainty that peak noise levels would not result in potentially likely significant effects to Mr and Mrs Jones, particularly at night, such effects may not be significant as traffic is generally lighter at night (ER 5.7.87 – 5.7.90). It was noted that blight provisions set out in the Town and Country Planning Act 1990 may provide a means of compensation should the disturbance be severe. Furthermore, the ExA have included within new Requirement 16(2)(1) the wording "any other mitigation deemed necessary" which means that, should there be an agreement between the Applicant and Mr and Mrs Jones for other solutions including for the provision of an acoustic barrier, it can form part of the site-specific plan (ER 5.7.90). The Secretary of State agrees to the inclusion of this new Requirement wording.

### Gardens of Peace Muslim cemetery

42. The Secretary of State notes that concern was also raised by the Gardens of Peace, a Muslim cemetery located opposite the Proposed Development, as to the extent of plot 1/8 and the possible no-build easements over land Cadent Gas would acquire. This, it stated, would render 517 allocated burial plots as unusable. It considered the extent of land needed by the Applicant as excessive. Concerns were also raised around a number of other future operational matters that the Gardens of Peace said it had yet to receive assurances over (ER 5.7.39). In response, the Applicant put forward a change request to reduce the land take and Compulsory Acquisition (“CA”) of new rights sought for Plot 1/8 to an area which would be occupied by an access road and this change request was subsequently accepted into the Examination (ER 5.7.40). Outstanding operational matters of concern, related to temporary drainage, temporary car parking, the content of the draft easement with Cadent Gas and concerns over trees adjacent to the boundary with the A12. According to the parties the temporary drainage matter is the most contentious as there was not yet agreement on where the drainage from Plot 1/8 during construction should discharge to (ER 5.7.41).
43. The Secretary of State notes that progress was made on a tri-party agreement between the Applicant, Gardens of Peace and Cadent Gas but that this was not signed before the close of the Examination (ER 5.7.42). In his consultation letter of 14 October 2021, the Secretary of State asked the parties for an update and if the agreement had been signed. The Parties replied that no agreement had yet been reached. Owing to this, the Secretary of State agrees with the ExA’s recommendation regarding the inclusion of new Requirement 19 as set out in the Recommended DCO (Appendix C to the Report) to ensure that drainage matters would be consulted upon and considered by the Secretary of State before any works to Work No.29 commence. Like the ExA, the Secretary of State is satisfied that the new Requirement 19 would provide the assurances Gardens of Peace seeks (ER 5.7.45) and that there would be no likely significant effects on the future operations of the Garden of Peace (ER 5.7.91).

### Maylands Gold Course

44. The Secretary of State notes Work No.32 would permit replacement facilities at Maylands Golf Course, primarily this would have seen the relocation and realignment of hole 2 (ER 5.7.46). Following discussions, the Secretary of State notes that Change Request No. 7, which included the redesign of hole 2 and other associated works, and an extension of the Order limits for Temporary Possession (“TP”) powers (ER 5.7.48) was put forward and accepted into Examination (ER 5.7.48). Whilst Luddington Golf Ltd confirmed it was content with the scope of works for Maylands Golf Course and wished to withdraw its written representation (“WR”) (ER 5.7.49) the ExA highlighted that there was nothing in the draft DCO which compelled the Applicant to deliver the works. In its response, the Applicant stated it was hoped that a side agreement would ensure its delivery, but this was not agreed before the close of the Examination (ER 5.7.50). The Secretary of State in his consultation letter of 14 October 2021 asked the Applicant, Luddington Golf Ltd and Glebelands Estates Ltd, whether a side agreement had been signed. The Secretary of State notes that only the Applicant replied and stated that they were still awaiting a reply from Luddington Golf Ltd on its proposal. As no agreement has been reached, the Secretary of State

accepts the ExA's recommendation regarding the inclusion in the DCO of new Requirement 15. With this in place, the Secretary of State agrees with the ExA that there would be no likely significant effect on the future operations of Maylands Golf Course (ER 5.7.91).

### Developer Contributions

45. The Secretary of State notes that that LB Havering was seeking a total of just over £1 million from the Applicant because the Proposed Development conflicted with a number of its development plan policies (ER 5.7.67 -5.7.69). The ExA concurs with the Applicant that the policies do not apply to the Proposed Development and as such, the request for developer contributions from a public body are not applicable or justified (ER 5.7.70 to 5.7.72). The Secretary of State agrees with the ExA that the contribution requests are without justification and do not meet the tests in paragraph 57 of the NPPF (ER 5.7.93).

### Conclusion

46. The Secretary of State notes the ExA considers the Proposed Development would have no likely significant effects on people and communities and the Proposed Development would accord with all legislation and policy requirements. Moreover, the Secretary of State's notes the ExA is satisfied that mitigation is adequately provided for and secured in the recommended DCO and so, in this respect, the Proposed Development attracts neutral weight in the planning balance (ER 5.7.94). The Secretary of State notes also that because peak noise evidence is absent from the application, the ExA remains of the view that the ExA cannot conclude with any degree of certainty that peak noise levels would not result in potentially likely significant effects to Mrs and Mrs Jones, particularly at night-time hours (ER 5.7.89). While the Secretary of State recognises there could be a significant effect on individuals, he also notes that mitigation has been put in place to reduce this as far as possible. In the light of this, the Secretary of State disagrees with the ExA and considers, in this respect, the Proposed Development would attract a slight negative weight in the planning balance.

### **Design**

47. The Secretary of State notes the policy requirements set out in the NNNPS and NPPF regarding design (ER 5.8.1- 5.8.8).
48. The Secretary of State notes that the design of the Proposed Development was a key consideration during the Examination with the main issues being (i) the level of information submitted by the Applicant to demonstrate that good design had been an integral consideration and (ii) the design process used by the Applicant to ensure the Proposed Development was as aesthetically sensitive, durable, adaptable and resilient as it reasonable could be (ER 5.8.11). The Secretary of State notes that the Applicant stated that the design had been guided by "The Road to Good Design" and the Design Manual for Roads and Bridges ("DMRB") (ER 5.8.21), the former of which was submitted to the Examination for consideration. During the Examination, the ExA sought to understand how the principles of good design set out in "The Road to Good Design" had been embedded into the design of the structures proposed. A number of issues were raised by the ExA as set out in the bullet points in 5.8.20. The Applicant

in response stated that it had not produced aesthetic briefs for structures within the Proposed Development and that it would not be usual to do so for any of its schemes, although it stressed it was guided by the principles set out in “The Road to Good Design” (ER 5.8.21). Remaining dissatisfied, the ExA sought the Applicant’s view on the insertion of the additional wording into the DCO to ensure that the final design of structures be subjected to an independent design review (ER 5.8.22). The Applicant stated that the Proposed Development does not need to go through an independent design review process as a number of structures have limited visibility and public access and that the area of the Proposed Development is not very sensitive in landscape terms (ER 5.8.23). The ExA considered that that the Applicant was unable to demonstrate that it had implemented the fundamental aspects of a design process in relation to visual appearance of the structures and that no evidence had been provided of analysis to inform design decision made regarding the appearance of the structures and bridges (ER 5.8.25).

49. The Secretary of State notes the ExA’s finding that the Applicant cannot reasonably come to the conclusion that the site of the Proposed Development is of no significant landscape value (ER 5.8.26). Notwithstanding this, the ExA noted that the NNNPS does not distinguish between areas of significant landscape value and those without it, when it establishes that good design should be an integral consideration from the outset of a proposal and that visual appearance should be a key factor in considering the design of new infrastructure (ER 5.8.26). The ExA therefore concluded that it could not confirm that this fundamental aspect of design accords with the NNNPS (ER 5.8.27) and recommended that the structures and bridges be subject to an independent review process to ensure the scheme design meets policy objectives (ER 5.8.28). The Secretary of State further notes that the Applicant stated that should the ExA consider that a design review is necessary, it would be appropriate for the review to be undertaken by the Applicant’s panel. In the light of the specific issues in the Examination, the Secretary of State considers it would be reasonable for the design of the bridges and structures to be reviewed. The Secretary of State considers it would be reasonable for the Applicant to conduct the review, having first consulted the relevant planning and Highway Authorities. The Secretary of State has therefore modified the new wording proposed by the ExA in Requirement 3 of the draft DCO to reflect this. The Secretary of State considers that with this wording in place, the Proposed Development would meet the criteria for good design set out in NNNPS. The Secretary of State also agrees that this would, therefore amount to a neutral effect in the planning balance (ER 5.8.35).

## **Landscape and Visual**

50. The Secretary of State notes the policy requirements, as set out in the NNNPS, and the Applicant’s ES findings in relation to landscape and visual effects (ER 5.9.1–5.9.9).
51. The main issues during the Examination concerned the approach to tree loss and replacement and the level of information provided in relation to this (ER 5.9.10). The Secretary of State notes that, during the Examination, following requests from the ExA, the Applicant produced a more detailed Arboriculture Method Statement (“AMS”) which contained more information on the number of trees that will be impacted by the Development and their management. The Secretary of State notes that a total of 1,016 trees would likely be removed from the Order limits and

approximately 11,750 species of replanting would take place comprising 70% trees and 30% shrubs and a section on ancient woodland had also been added (ER 5.9.20).

52. The Secretary of State notes the ExA's conclusion at ER 5.9.29 – 5.9.37. The ExA concluded that that loss of 1,016 trees would be significant and there would be a noticeable scar of lost woodland within Alder Wood and the Grove (ER 5.9.30). The ExA however noted that, potentially, some 8,225 trees would be replanted and was satisfied that with a robust mitigation and management plan, in the longer term, the effects on the Proposed Development could be negligible (ER 5.9.31). The ExA however concluded that this would not be the case for the short to medium terms when the loss of trees would be highly noticeable and would, in the ExA's judgement, cause inevitable landscape harm to the area and have a negative effect on the landscape (ER 5.9.32, ER 5.9.36). The ExA however considered that this impact reduced to a moderate level given the longer-term positive benefits of planting (ER 5.9.37).
53. The Secretary of State agrees with the ExA, that there would be some conflict with NNNPS, and the Proposed Development would amount to a negative effect in the planning balance (NR 5.9.37).

### **Biodiversity and Wildlife**

54. The Secretary of State notes the policy requirements set out in the NNNPS and the LB Havering Local Plan, and the findings set out in Chapter 7 of the Applicant's ES on the effect of the Proposed Development on biodiversity resources (ER 5.10.1 – 5.10.18).
55. The Secretary of State notes the main issues that concerned the ExA were (i) air quality impacts on existing and replacement habitats and (ii) the impact of the Proposed Development on Maylands Golf course and the effect of mitigation works in the proximity of the golf course on habitats and species (ER 5.10.29). On the first point, the Applicant asserts that any slight changes to the grasslands habitats as a result of changes in air quality would not affect the overall integrity of the Ingrebourne Valley Site of Metropolitan Importance ("SMI") and no significant effect on the SMI is anticipated in relation to changes in air quality (ER 5.10.36). The ExA concluded that whilst the Proposed Development would result in a small increase in the loss of habitats within the SMI, this is sufficiently compensated for across the Proposed Development with mitigation works required for habitats and species and secured by requirements in the DCO (ER 5.10.57).
56. As set out in paragraph 44, Work No.32 would permit replacement facilities at Maylands Golf Course, primarily this would have seen the relocation and realignment of hole 2. Change Request No.7 to Work No.32 increases the impact on the SMI as it requires a slightly larger area of land within the non-statutory designated site. However, LB Havering was satisfied Request No.7 includes appropriate compensation for the removal of additional trees and a small area of woodland and that the effects presented in the landscape and visual assessment chapter of the ES will not differ (ER 5.10.43). The Secretary of State notes the ExA is satisfied that the loss of trees that would occur specifically as a result of Work No.32 is adequately compensated for (ER 5.10.58).

57. The Secretary of State notes there are 15 veteran trees within the site and that the Proposed Development will result in a loss of two of these (ER 5.9.21). The Secretary of State notes that it was accepted by LB Havering that this loss was unavoidable and that they welcomed the proposal to replace each lost tree with eight new ones, something which is secured in the outline AMS and Requirement 11 (Trees) of the DCO (ER 5.10.24). The Secretary of State notes that the veteran trees are not located in ancient woodland. The NNNPS states that development consent should not be granted where it will result in the loss of veteran trees found outside ancient woodland, unless the national need for and benefits of the development, in that location, clearly outweigh the loss (paragraph 5.32 of the NNNPS). The Secretary of State notes that footnote 79 to paragraph 5.32 of the NNNPS states that paragraph 5.32 does not prevent the loss of veteran trees which are not located in ancient woodland where the decision-maker is satisfied that their loss is unavoidable. The Secretary of State notes that, as well as LB Havering concluding that the loss of veteran trees is unavoidable (ER 5.10.24), the ExA is similarly satisfied that the loss of trees that would occur is specifically as a result of Work No.32 (ER 5.10.58). The Secretary of State considers, therefore, that the loss of the trees is unavoidable. Moreover, the Secretary of State is satisfied that the need for the Proposed Development outweighs the loss of the two veteran trees and that measures have been included in the DCO to compensate adequately for this loss.
58. The Secretary of State agrees with the ExA's conclusion that the Proposed Development would have no likely significant effects on biodiversity and is satisfied the Proposed Development would accord with all legislation and policy requirements. Furthermore, the Secretary of State concurs with the ExA that mitigation is adequately provided for and secured in the recommended DCO and, in this respect, the Proposed Development attracts neutral weight in the planning balance (ER 5.10.59).

### **Flooding and Water**

59. The Secretary of State notes the policy requirements as set out in the NNNPS and the NPPF and notes the Applicant's Flood Risk Assessment ("FRA") as set out in their ES (5.11.1-5.11.14). The ES identified no likely significant effects from construction and operation of the Proposed Development on the water environment with the implementation of mitigation measures on surface water, flood risk, groundwater, and the Water Framework Directive ("WFD") compliance (ER 5.11.14).
60. The Secretary of State notes the matters brought up during the examination (ER 5.11.15 – 5.11.22). No interested party raised any specific concern in respect to flooding and water within the Order limits or concerns caused by the construction and operation of the Proposed Development (ER 5.11.14). The SoCG signed between the Applicant, Brentwood BC, Essex CC, and the Environment Agency ("EA") agreed all matters in respect to the scope and assessment in the ES and its findings of no likely significant effects (ER 5.11.21). In their LIR, LB Havering stated that officers have input into the appraisal process and consider the approach to be robust and agree with the outcomes of the appraisal, and the proposed mitigation measures which comprise flood compensation areas within the proposal (ER 5.11.22).

61. The Secretary of State notes the ExA concludes that the Proposed Development does not give rise to unacceptable risks in terms of flooding (ER 5.11.23), that the FRA addresses both the sequential and exception tests required by the NNNPS (ER 5.11.23) and that it would be compliant with the WFD and have no unmanaged adverse effects (ER 5.11.24). The Secretary of State agrees with the ExA and is satisfied that mitigation is adequately provided for and secured in the recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance (ER 5.11.26).

## **Geology and Soils**

62. The Secretary of State notes the policy requirements as set out in the NNNPS and NPPF (ER 5.12.1-5.12.5) and the relevant chapters of the ES (ER 5.12.6- 5.12.15). In summary the Applicant's ES stated there would be no likely significant adverse effects during construction and operation of the Proposed Development on geology and soils (ER 5.12.14).
63. The Secretary of State notes during the Examination concern was expressed that the application documents did not include a Ground Investigation Report ("GIR"). A GIR was subsequently submitted by the Applicant and the EA confirmed that the potential mitigation measures set out were acceptable in principle and that contamination and groundwater matters were adequately secured by Requirement 6 of the recommended DCO (ER 5.12.15 -5.12.18).
64. The ExA concludes that the Proposed Development would have no likely significant effects on ground conditions. The Proposed Development would accord with all legislation and policy requirements and the ExA is satisfied that mitigation is adequately provided for and secured in the recommended DCO and that this matter attracts neutral weight in the planning balance (ER 5.12.22). The Secretary of State agrees.

## **Historic Environment**

65. The Secretary of State notes the policy requirements as set out in the NNNPS, NPPF and the LB Havering Local Plan and further notes that Chapter 11 of the ES sets out the cultural heritage assessment of the Proposed Development (ER 5.13.1-5.13.12). The Applicant's ES confirmed no likely significant adverse effects during construction and operation of the Proposed Development on heritage matters (ER 5.13.13).
66. The Secretary of State notes an outline Archaeological Management Plan ("AMP") was provided during the Examination (EX 5.13.14). The ExA asked Interested Parties for comments. Concerns were expressed by the Greater London Archaeology Advisory Service on behalf of LB Havering on the Applicant's approach to trial trenching (ER 5.13.15). The Applicant responded by providing LB Havering with an indicative programme to undertake archaeological trenching in order to establish the potential for nationally significant archaeological remains on the site (ER 5.13.20). The Secretary of State notes that a signed SoCG between the Applicant and LB Havering agreed all matters with respect to the assessment, identification and evaluation of the historic environment and remains and further notes the Applicant's findings of no likely significant effects in the construction and operation of the Proposed Development (ER 5.13.21).

67. The Secretary of State notes concerns expressed in relation to the Applicant's assessment of no adverse effects on cultural heritage with regard to the impact on Tylers farm and one of the extant barns within Grove Farm, which LB Havering stated was a threshing barn dating from the nineteenth century (ER 5.13.22). In its response, the Applicant confirmed that the heritage significance of Tylers Farm was assessed in the ES and would not be affected by the Proposed Development. For Grove Farm, further investigations found no evidence that the buildings themselves have heritage interest that would merit consideration in planning decisions and also that the Proposed Development would not have direct physical impacts on the buildings, and that overall, there would be no harm to the heritage asset (ER 5.13.23).
68. It is noted that at the close of Examination a signed SoCG was agreed between the Applicant and Essex CC and Brentwood BC confirming all matters relating to the historic environment, as assessed by the Applicant were agreed (ER 5.13.26). The ExA concluded that the Proposed Development would have no likely significant effects on the historic environment. The Proposed Development would accord with all legislation and policy requirements. The ExA is satisfied that mitigation is adequately provided for and secured in the recommended DCO and the Proposed Development attracts neutral weight in the planning balance (ER 5.13.28). The Secretary of State agrees.

## **Minerals and Waste**

69. The Secretary of State notes the policy requirements of the NNNPS and NPPF and the findings from the ES (ER 5.14.1- 5.14.8). In summary the ES confirmed no likely significant adverse effects during construction and operation of the Proposed Development on minerals and waste matters (ER 5.14.9). The Secretary of State notes concerns raised by the EA at ER 5.14.10 – 5.14.12 but that a SoCG signed between the Applicant and the EA agreed all matters in respect of the scope and assessment of the ES and its findings of no likely significant effects (ER 5.14.13).
70. The Secretary of State concurs with the ExA that the Proposed Development would accord with all relevant legislation and policy requirements, that mitigation is adequately provided for and secured in the recommended DCO and that in this respect the Proposed Development attracts neutral weight in the planning balance. (ER 5.14.14).

## **Climate Change**

### Background

71. As mentioned in paragraph 10 above, section 104(3) of the 2008 Act states that the Secretary of State must decide an application for a national network NSIP in accordance with the NNNPS except to the extent that one or more of subsections (4) to (8) of section 104 of the 2008 Act apply. These include where the Secretary of State is satisfied that deciding the application in accordance with the NNNPS would lead to the UK being in breach of any of its international obligations (section 104(4)). The UK's international obligations include the Paris Agreement, which was ratified by the UK Government in 2016, after the NNNPS was designated in 2015. The UK has set out how it intends to meet these targets by way of the carbon budgets ("CBs")



under the Climate Change Act 2008 which constrain the total amount of emissions in a given time period.

72. In June 2019, the UK Government announced a new carbon reduction 'Net Zero target' for 2050 which was given effect by the Climate Change Act 2008 (2050 Target Amendment) Order 2019. This is a legally binding target for the Government to cut carbon emissions to Net Zero, against the 1990 baseline, by 2050. The Climate Change Act requires five-yearly CBs to be set 12 years in advance to meet the 2050 target. Six CBs have been adopted. The time periods covering the fourth, fifth and sixth budget are 2023-2027, 2028-2032 and 2033-2037 respectively. Achieving Net Zero will require future greenhouse gas emissions to be aligned with these and any future new or revised CBs that may be set by Government to achieve the target of Net Zero carbon by 2050.
73. As set out by the ExA, paragraph 3.8 of the NNNPS sets out that the impact of road development on aggregate levels of emissions is likely to be very small and that the impacts of road development need to be seen against significant projected reductions in carbon emissions as a result of current and future policies to meet the Government's legally binding carbon budgets. Paragraph 5.17 of the NNNPS sets out that it is very unlikely that the impact of a road project will, in isolation, affect the ability of Government to meet its carbon reduction plan targets. The Secretary of State notes the ExA's view that the Proposed Development on its own would generate imperceptible and negligible increases in carbon emissions such that they would be unlikely to be responsible for an increase in levels that would result in any significant effects on carbon emission targets or climate change (ER 5.15.26).
74. The ExA's report set out that the Applicant stated that construction is expected to commence in spring 2022 and the opening year planned for 2024 which is in the 4CB period. Construction and opening year emissions would have contributed 0.0015% to the 3CB, which is when the construction period and opening year was expected to fall when the Applicant's assessment was initially carried out, and the Applicant confirmed that the contribution would be of a similar order of magnitude for the 4CB (ER 5.15.10 – 5.15.11). An updated assessment based on further clarification of when the proposed development is expected to start and the opening year confirmed the Proposed Development contribution to the 4CB is expected to be 0.001% and reduced the contribution of the Proposed Development for 3CB to 0.0005% (ER 5.15.16). The Applicant maintained that the Proposed Development will not materially impact the UK's ability to meet its carbon budgets and will therefore not generate a significant effect on climate (ER 5.15.16). The ExA also agreed that taken on its own, the Proposed Development would be unlikely to have a material impact on the UK Government meeting the carbon reduction targets for the 4CB (ER 5.15.21).
75. The Secretary of State notes the ExA was unable to reach a conclusion on the cumulative climate change effects of the Government's road building strategy of which the Proposed Development forms a part. Owing to this, the ExA considered they had cause to consider whether section 104(4) and / or 104(5) of the 2008 Act apply in the determination of the application (ER 5.15.22). These relate to exemptions for when the Secretary of State should consider an application in accordance with the relevant NPS, which in this case is the NNNPS. Section 104 (4) applies when the Secretary of State is satisfied that deciding the Application in accordance with the

NNNPS would lead the UK to be in breach of its international obligations and s104(5) applies when the Secretary of State is satisfied that deciding the application in accordance with the NNNPS would lead to the Secretary of State being in breach of any duty imposed on the Secretary of State by or under any enactment. The ExA suggested an answer may have been provided in a High Court judgment which was handed down after the Examination closed. In the case *R(oao Transport Action Network Ltd) vs SoS Transport and Highways England* [2021] EWHC 2095 the judgment concluded that the Road Investment Strategy (“RIS”) 2, which lists this scheme and other planned projects, was written to take account of the Paris Agreement 2015 and the UK’s net zero carbon emissions targets and deadlines. By association therefore, the ExA deemed it reasonable to conclude that the Proposed Development, taken by itself or in-combination with other road projects must accord with, and as such not cause the UK to be in breach of, the Paris Agreement 2015 or cause the Secretary of State to be in breach of the Climate Change Act. The ExA concluded that, accordingly, a cumulative assessment was not necessary or required (ER 5.15.23).

76. To support the Secretary of State’s further consideration of the impact of the Proposed Development on climate change, he issued consultations dated 14 October 2021 and 22 December 2021, requesting additional information from the Applicant with regard to the Proposed Development’s compliance with the fifth and sixth carbon budget and the direct, indirect and cumulative likely significant effects of the Proposed Development with other existing and/or approved projects.

### Carbon Budgets

77. With regard to the Proposed Development’s compliance with the fifth and sixth carbon budgets, the Applicant, in its response of 29 October 2021 to the Secretary of State’s consultation of 14 October 2021, stated that the contribution of the Proposed Development to the 5CB would be 2,667 tCO<sub>2e</sub> (equivalent to 0.00015% of that budget) and the contribution of the scheme to the 6CB would be 3.215 tCO<sub>2e</sub> (equivalent to 0.00033% to the 6CB). These figures reflect the Green House Gas (“GHG”) emissions (measured as carbon dioxide equivalent (and referred to as “carbon emissions”)) for the Proposed Development in net terms between the Do-something (“DS”) and Do minimum (“DM”) scenarios. The Applicant’s response concluded that this does not alter the conclusion of the climate assessment in the ES that the Proposed Development will not cause a significant effect on climate. The Applicant’s response of 26 January 2022 to the Secretary of State’s further consultation question on this matter of 22 December 2021 concluded that the Proposed Development does not cause a significant effect for changes in CO<sub>2e</sub> emissions when compared to carbon budgets. The Applicant also states that this assessment is conservative and likely to be an overestimate as it did not take account of the projected higher uptake of electric vehicles. The Applicant also referenced DfT’s document ‘*Decarbonising Transport: a better, greener Britain*’ (“the Transport Decarbonisation Plan”) published in July 2021 as representing a series of policy and measures Government is considering to decarbonise transport to achieve Net Zero by 2050. The Applicant also highlighted in their response of October 2021 that National Highways has published its own 2030/2040/2050 Net Zero highways plan that includes a commitment to ensure its maintenance and construction activities

become Net Zero by 2040 and road user emissions on the strategic road network become Net Zero by 2050.

78. In response to the Secretary of State's request of 22 December 2021 for additional information relating to the cumulative effects of the scheme on climate, the Secretary of State notes the Applicant states that it follows the advice set out in the DMRB guidance for the design and evaluation of the impact of any of its road schemes.
79. The Secretary of State also notes that as stated in the Applicant's response of 29 October 2021, Chapter 14 of the Applicant's ES includes an assessment of the direct and indirect emissions of the Proposed Development. The Applicant set out that the emissions from construction materials included in the assessment of the construction effects of the Proposed Development are inherently 'indirect emissions' as they are an accumulation of embedded emissions that occur throughout the construction supply chain. The operational tailpipe emissions and construction process emissions from plant/vehicles on site are inherently 'direct' emissions as they are emissions that are directly released to the atmosphere.
80. The Secretary of State notes that the Applicant's response of 26 January 2022 states that the traffic model used to support the scheme assessment is inherently cumulative with regard to operational carbon emissions. This is because traffic models include data on the emissions resulting from the proposed scheme and the adjoining Strategic Road Network and the local road network as well as other schemes promoted by the Applicant in the vicinity of the scheme that have a high certainty of being progressed. The Applicant also sets out that this was informed by discussion with the local planning authority and took account of national Government regional growth rates.
81. The Applicant also provided updated figures on the impact of the scheme on each of the carbon budgets using the newly available Emissions Factor Toolkit ("EFT") v11 (the original assessment used EFT v8) which took account of the higher predicted uptake rates of electric vehicles. The Applicant also presented the results of its sensitivity test to reflect the policies in the Transport Decarbonisation Plan in relation to operational emissions. The Secretary of State notes that for CB3 and CB4 the revised assessment using EFT v11 results in an impact slightly lower than that considered by the ExA based on the Applicant's use of EFT v8 (for CB4 the scheme accounts for 0.0004% vs 0.0005% of this budget and for CB4 0.0012% vs 0.0014%). For CB5 and CB6, the impact using EFT v11 as set out in the Applicant's letter of 26 January 2022, is slightly higher than that using EFT V8. However, overall, the impact using the latest version of the EFT (version 11), demonstrates that the impact on any carbon budget will not be more than 0.001%. The Secretary of State is aware however that the EFT v11 toolkit has some limitations around its use for predictions beyond 2030 where it is being used to estimate carbon for schemes that take traffic on or off London roads. But the Secretary of State recognises that all modelling has limits and includes a level of uncertainty. In this case, this issue could impact the predictions for CB5 and CB6 as these fall in the period after 2030. However, given the figures for both of these CBs result in carbon emissions slightly higher than that predicted using EFTv8 (for which there are no known issues but which do not account for the current

predicted uptake of electric cars), the Secretary of State is satisfied that the figures resulting from the use of EFTv11 for CB5 and CB6 should present a worst case scenario and a precautionary approach.

82. With regard to operational carbon, the Applicant's approach to assessing the impact on carbon emissions is to consider the changes in carbon emissions resulting from the Proposed Development by comparing changes in the road traffic on the Strategic Road Network and local road network between the 'without scheme scenario' and the 'with scheme scenario', with the former providing the baseline for assessment. The Applicant considers that this takes into account the assessment of the Proposed Development and all other developments likely to have an influence on the Proposed Development and on the area the Proposed Development is likely to influence. The Applicant considers that as both the with scheme and without scheme scenarios include all likely developments and traffic growth factors, the assessment is inherently cumulative as regards operational carbon emission.
83. The Secretary of State also notes that the Applicant, like the ExA, sets out that *R (Transport Action Network) v Secretary of State for Transport and Highways England* (2021) EWHC 2095 concludes that the total amount of GHG emissions from the schemes listed in RIS2 is de minimis in the context of appropriate comparators for assessing the effect on climate change. However, the Secretary of State notes the context of that case and the Court's conclusion that a RIS is essentially a high level strategy document, rather than an environmental-decision making document which was required to be supported by an environmental assessment of the type required for the Proposed Development.
84. The Secretary of State considers that as there is no single prescribed approach to assessing the cumulative impacts of carbon emissions, there are a number of ways such an assessment can acceptably be undertaken and that this does not necessarily need to be done at RIS level. The Secretary of State also notes that the impact and effect of carbon emissions on climate change, unlike other EIA topics, is not limited to a specific geographical boundary and that the approach that needs to be taken to assess the cumulative impact of carbon emissions is different from other EIA topics. Noting this and that there is no defined distance for assessing the impact of carbon emissions, the Secretary of State considers that the Applicant's approach to assessing the impact of the Proposed Development on carbon, including its approach to taking into account cumulative effects with existing and approved projects, is acceptable as it takes into account the Proposed Development and all other developments likely to have an influence on the Proposed Development and on the area the Proposed Development is likely to influence and it considers emissions against the CBs. The Secretary of State considers that the assessment is proportionate and reasonable in relation to the information to which the Applicant would have access and it enables the impacts of carbon, including cumulative effects, to be understood and accounted for in the decision making process. The Secretary of State considers that the Applicant's approach overall, to both the assessments of the Proposed Development's impact on carbon emissions and its cumulative impact is adequate, where (amongst other things) journeys will not begin and end within the Proposed Development's boundary.

85. In relation to the cumulative impact of the emissions on climate and the scale used in this assessment, the Applicant has set out that CBs (which as set out above aim to limit the significant effects of climate change) are only set out at a national scale and that these are themselves cumulative as they are a sum of carbon emissions for a range of sectors. The Applicant considered that it was unable to produce a baseline at a local or regional scale and that there was therefore no reasonable basis upon which it can assess the effects of carbon emissions for anything other than at the national level. The Secretary of State accepts that the only statutory carbon targets are those at a national level and notes that neither the Applicant nor any other party has suggested that there are non-statutory carbon targets at any other level that may need to be considered.
86. As well as being a requirement of the NNNPS, the Secretary of State considers that assessing a scheme against the CBs is an acceptable cumulative benchmark for the assessment for EIA purposes with regard to both construction and operation. This is because CBs account for the cumulative emissions from a number of sectors and it is therefore appropriate to consider how the carbon emissions of the Proposed Development compare against this.
87. Overall, the Secretary of State considers that the information provided by the Applicant with regard to the impact of the scheme on carbon emissions (including the cumulative effects of carbon emissions from the scheme with other existing and/or approved projects in relation to construction and operation) is sufficient to assess the effect of the development on climate matters and represents the information that the Applicant can reasonably be required to compile having regard to current knowledge.
88. The Secretary of State considers that the majority of operational emissions related to the scheme result from vehicle usage and that the Transport Decarbonisation Plan includes a range of non-planning policies which will help to reduce carbon emissions over the transport network as a whole over time (including policies to decarbonise vehicles and radically reduce vehicle emissions) and help to ensure that carbon reduction commitments are met. Beyond transport, Government's wider policies around Net Zero such as "The Net Zero Strategy: Build Back Greener" ("Net Zero Strategy"), published by Government in October 2021 sets out policies and proposals for decarbonising all sectors of the UK economy to meet the Net Zero target by 2050. It is against this background that the Secretary of State has considered the Proposed Development. The Secretary of State notes the Applicant's response dated 26 January 2022 take account of the Transport Decarbonisation Plan and that the earlier response states that this plan "will lead to a substantive decrease in CO<sub>2</sub>e emissions from all forms of road transport between now and 2050". Furthermore, the Secretary of State notes that no other party has questioned this assessment carried out by the Applicant in response to the Secretary of State's requests.
89. The Secretary of State acknowledges the importance of climate change at the local, national, and international level and the contribution Green House Gasses (GHGs) make to this. Section 6.2 of the latest IEMA guidance "Assessing Greenhouse Gas Emissions and Evaluating their Significance" ("the IEMA Guidance") notes that "*The*

*2050 target (and interim budgets set to date) are, according to the CCC [Committee on Climate Change], compatible with the required magnitude and rate of GHG emissions reductions required in the UK to meet the goals of the Paris Agreement, thereby limiting severe adverse effects". This guidance also states that, "Carbon budgets allow for continuing economic activity, including projects in the built environment, in a controlled manner".*

90. As to the assessment of the significance of GHG emissions, the latest IEMA guidance (February 2022) at section 6.1 refers back to three overarching principles from its original 2010 guidance that it considered to be particularly relevant in considering significance: first, GHG emissions from all projects will contribute to climate change, the largest interrelated cumulative environmental effect; second, the consequences of a changing climate have the potential to lead to significant environmental effects on all topics in the EIA Directive; and, third, GHG emissions have a combined environmental effect that is approaching a scientifically defined environmental limit and as such any GHG emission or reductions in these might be considered significant. The latest IEMA guidance states that it builds on those principles noting: "when evaluating significance, all new GHG emissions contribute to a significance negative environmental impact; however, some projects will replace existing development or baseline activity that have higher GHG profiles. The significance of a project's emissions should therefore be based on its net impact, which may be positive or negative". The IEMA Guidance goes on to say that where GHG emissions cannot be avoided, the EIA should aim to reduce the project's residual significance of a project's emissions at all stages and where GHG emissions remain significant, but cannot be further reduced, approaches to compensate the project's remaining emissions should be considered.
91. The IEMA guidance considers that the crux of significance is not whether a project emits GHG emissions, nor even the magnitude of GHG emissions alone, but whether it contributes to reducing GHG emissions relative to a comparable baseline consistent with a trajectory towards Net Zero by 2050 (section 6.2). The IEMA guidance addresses significance principles and criteria in section 6.3 and Figure 5 and advises (amongst other things) that: a project that follows a 'business-as-usual' or 'do minimum' approach and is not compatible with the UK's Net Zero trajectory, or accepted aligned practice or area-based transition targets, results in significant adverse effects; a project that is compatible with the budgeted science-based 1.5 degree Celsius trajectory (in terms of rate of emissions reduction) and which complies with up-to-date policy and 'good practice' reduction measures to achieve that has a minor adverse effect that is not significant - such a project may have residual emissions but it is doing enough to align with and contribute to the relevant transition scenario to keep the UK on track towards Net Zero by 2050 with at least a 78% reduction by 2035 and thereby potentially avoiding significant adverse effects; and a project that achieves emissions mitigation that goes substantially beyond the reduction trajectory, or substantially beyond existing and emerging policy compatible with that trajectory, and has minimal residual emissions, is considered to have negligible effect that is not significant and such a project is playing a part in achieving the rate of transition required by nationally set policy commitments.

92. The Secretary of State notes that the Proposed Development will result in an increase in carbon emissions. The view reached by the ExA was that these emissions are imperceptible and negligible and would be unlikely to be responsible for an increase in levels that would result in any significant effects on carbon emissions targets or climate change (ER 5.15.26). The Secretary of State does not consider that Net Zero means consent cannot be granted for development that will increase carbon emissions. The Secretary of State considers, in the light of paragraph 5.18 of the NNNPS, it is necessary to evaluate whether (amongst other things) the increase in carbon emissions resulting from the Proposed Development would have a material impact on the ability of Government to meet its carbon reduction targets. As set out above, the CCC consider that the 2050 target and interim CBs should meet the goals of the Paris Agreement meaning a proposal which is compatible with the 2050 target and interim CBs is consistent with the approach to addressing the severe adverse effects of climate change. The Secretary of State considers this aligns with the approach to significance set out in the 2022 IEMA Guidance. The Secretary of State considers that the approach to considering the impact on carbon emissions as set out in the NNNPS continues to be relevant in the light of international obligations and domestic obligations related to reducing carbon emissions that have come into force since the NNNPS was designated. The Secretary of State notes that the CBs are economy-wide and not just targets in relation to transport. The Proposed Development's contribution to overall carbon levels is very low and the Secretary of State agrees with the ExA that the increase in carbon emissions from the scheme would be unlikely to be responsible for an increase in levels that would result in any significant effects on carbon emissions targets or climate change. The Secretary of State does not consider these would have a material impact on the ability of Government to meet its legally binding carbon reduction targets.
93. In relation to mitigation, the Secretary of State notes that, with regard to construction section 14.1.9 of Chapter 14 of the Applicant's ES sets out how mitigation measures will be used to reduce emissions. Emissions relating to the operational phase, other than vehicle usage, will be reduced where possible through measures such as the use of energy efficient lighting. The Secretary of State is content that these measures will help to reduce carbon emissions where this is possible.
94. With regard to the Paris Agreement, the UK announced its Nationally Determined Contribution ("NDC") in December 2020. NDCs are commitments made by the Parties (including the UK) under the Paris Agreement. Each Party's NDC shows how it intends to reduce its greenhouse gas emissions to meet the temperature goal of the Paris Agreement. The UK's NDC commits it to reduce net GHG emissions by at least 68% by 2030 compared to 1990. This represents an increase of ambition on the fifth carbon budget, which covers the period 2028-2032. The Net Zero Strategy sets out how the UK will therefore need to overachieve on the fifth carbon budget to meet its international climate targets and stay on track for the sixth carbon budget. This strategy sets out the action Government will take to keep the UK on track for meeting the UK's CBs and 2030 NDC and establishes the UK's longer-term pathway towards net zero by 2050. The Secretary of State is content that consenting the Proposed Development will not impact on the delivery of this strategy and will not lead to a

breach of the UK's international obligations in relation to the Paris Agreement or any domestic enactments or duties.

95. Overall, the Secretary of State considers that: over time the net carbon emissions resulting from the operation of the scheme will decrease as measures to reduce emissions from vehicle usage are delivered; the magnitude of the increase in carbon emissions resulting from the Proposed Development is predicted to be below 0.01% of any carbon budget and therefore small; and there are policies in place to ensure these CBs are met, such as the Transport Decarbonation Plan and the Applicant's own Net Zero Highway Plan published in July 2021. The Secretary of State is satisfied that the scheme is compatible with these policies and that the small increase in emissions that will result from the scheme can be managed within Government's overall strategy for meeting Net Zero. The Secretary of State considers that there are appropriate mitigation measures secured in the DCO to ensure carbon emissions are kept as low as possible and that the scheme will not materially impact the Government's ability to meet its CBs and Net Zero target by 2050.
96. With regard to the cumulative impact on climate adaptation, the Applicant noted, in its letter dated 29 October 2021, that Chapter 14 of the ES found that there were no significant direct, indirect or in-combination climate change impacts as a result of the Scheme.
97. In the same response of 29 October 2021, the Applicant supplemented this assessment with an additional assessment to consider whether other strategic transport infrastructure beyond the boundary of the scheme, which may, when subject to climate impacts, have consequences that exacerbate likely significant effects. The Applicant concluded that the assessment demonstrated that the Proposed Development will improve the resilience of the Strategic Road Network to the effects of climate change. It will do this by replacing old less resilient assets and improving accessibility within the study area; thereby improving the flow of traffic. In operation, the Proposed Development will enhance the resilience of the regional transport network to respond to cumulative climate vulnerability effects, i.e. failures of surrounding local and regional transport networks. The Secretary of State notes that this was not disputed by any party.

## Conclusion

98. The Secretary of State is satisfied that both the assessment in the ES and the Applicant's responses to the Secretary of State's consultation questions relating to climate have been drafted by competent experts. The Secretary of State considers that the information provided by the Applicant in response to its consultations is 'any other information' for the purposes of the 2017 Regulations as it builds on previously provided information, and that parties have been given sufficient opportunity to comment on this. The Secretary of State is content that the Applicant has adequately assessed the likely significant effects of the Proposed Development on climate and its cumulative impacts on climate taking account of both construction and operation as required by the 2017 Regulations and this information has been taken into consideration when assessing whether development consent should be granted.



99. The Secretary of State is aware that all emissions contribute to climate change. Whilst the Proposed Development will result in an increase in carbon emissions, as set out above, the Secretary of State considers that the Proposed Development is consistent with existing and emerging policy requirements to achieve the UK's trajectory towards Net Zero. The Secretary of State therefore considers the Proposed Development's effect on climate change would be minor adverse and not significant and this assessment aligns with the IEMA guidance. The Secretary of State is satisfied that the scheme complies with the NNNPS, will not lead to a breach of any international obligations that result from the Paris Agreement or Government's own policies and legislation relating to Net Zero.
100. The Secretary of State notes the ExA's conclusion that the Proposed Development attracts neutral weight in the planning balance. Given that the scheme will increase carbon emissions, the Secretary of State considers it is given negative weight in the planning balance.

### **Green Belt**

101. The Secretary of State notes the policy requirements as set out in the NNNPS and NPPF with regard to Green Belt (ER 5.16.1 – 5.16.4). The Secretary of State further notes that no interested party raised any questions or concerns regarding the location of the Proposed Development within the Green Belt and that a SoCG between the Applicant, LB Havering, Brentwood BC and Essex CC agreed that whilst the Proposed Development lies within the Green Belt it constitutes "very special circumstances" and would not constitute inappropriate development (ER 5.16.6-5.16.7).
102. The Secretary of State however notes the ExA's view that the Proposed Development does not benefit from a direct exclusion within the NPPF, as contended by the Applicant (ER 5.16.5), and that the Proposed Development does constitute inappropriate development in the Green Belt. Inappropriate development by definition is harmful (ER 5.16.9). The ExA noted that the Proposed Development would be in an area where there is currently no development and would therefore cause harm to openness. The ExA concluded that the harm caused by inappropriateness and to openness attracts substantial weight in the planning balance (ER 5.16.10). However, the ExA accepts the need for the scheme is established by national policy and the benefits in relieving existing traffic issues and substantially improving movement and flow would be considerable. The ExA accepts that improvements to Junction 28 cannot avoid the Green Belt and that there are no reasonable alternatives. The Secretary of State agrees with the ExA that these considerations carry very significant weight and outweigh the substantial harm caused by inappropriateness, harm to openness and any other harm (ER 5.16.12). The ExA, conclude the Proposed Development would accord with the requirements of the NPSNN and the NPPF (ER 5.16.13). The Secretary of State agrees with the ExA's consideration of this matter and concurs with the ExA's conclusion.

## **Cumulative and Combined Effects**

103. The Secretary of State notes the policy requirements of the NNNPS (ER 5.17.1-15.17.2) and that Chapter 15 of the Applicant's ES provides an assessment of the in-combination and cumulative effects of the scheme (ER 5.17.3). The ES identified that development of the Lower Thames Crossing ("LTC") could result in adverse cumulative effects on landscape and visual receptors if the construction period of LTC and the Proposed Development align( ER 15.7.4).
104. The ExA consider that although the construction of the Proposed Development would cause some nuisance and disturbance on receptor points, they would be temporary only and limited to a specific time. The ExA is satisfied that as a result it is not likely that there would be any significant cumulative effects from construction activities. The ExA is also satisfied that the Recommended DCO would adequately mitigate against identified likely significant effects (ER 5.17.13). The Secretary of State agrees with this assessment.
105. The Secretary of State understands the LTC application was submitted and then withdrawn. As the LTC application has not yet been re-submitted, the Secretary of State is unable to consider the in-combination effects, having specific regard to the scope and assessment, and any likely significant effects identified in the ES for the LTC Scheme as recommended by the ExA as necessary if the application had been submitted (ER 5.17.4). Like the ExA, the Secretary of State is satisfied that the Proposed Development would have no likely significant effects taken cumulatively with all topics matters, or with other known and planned projects and that in this respect the Proposed Development attracts neutral weight in the planning balance (ER 5.17.15).

## **FINDINGS AND CONCLUSION IN RELATION TO HABITATS REGULATIONS ASSESSMENT**

106. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"), before granting any development consent, the Secretary of State (as the Competent Authority) is required to consider whether the scheme would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European Site. Where a scheme is likely to have such a significant effect, the Secretary of State must undertake an Appropriate Assessment ("AA") of the implications of the scheme for that site in view of that site's conservation objectives. In the light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the scheme will not, either on its own or in combination with other plans and projects, adversely affect the integrity of such a European Site, subject to regulation 64. By regulation 64, if the Secretary of State is satisfied that, there being no alternative solutions, the scheme must be carried out for imperative reasons of overriding public interest, it may agree to the scheme notwithstanding a negative assessment of the implications for the European site.
107. The Secretary of State notes that the Proposed Development is not directly connected with or necessary to the management of any European site and the Proposed Development does not overlap with any European Site or Ramsar site (ER

6.3.1). The Applicant provided a Habitats Regulations Assessment No Significant Effects Report (“HRA NSER”) which Natural England (“NE”) were consulted on and it is noted that in the SoCG between NE and the Applicant, NE agreed with the findings in the HRA NSER and that there were no outstanding issues (ER 6.4.13). The Secretary of State further notes that no other interested parties have raised concerns about the effects of the project on European sites (ER 6.4.14).

108. The Secretary of State notes the ExA is satisfied that the Applicant has correctly identified the relevant European sites and qualifying features/interests for consideration within the HRA NSER and that it has not relied on mitigation measures in reaching its conclusion of no likely significant effects on European Site (ER 6.6.1). The Secretary of State notes this assessment was tested during the Examination and that the ExA were satisfied with the HRA NSER conclusion (ER 6.6.2). The Secretary of State is satisfied that the Proposed Development would have no likely significant effects on any European sites or their qualifying features either alone or in combination with other plans and projects. The Secretary of State agrees with the ExA that sufficient consideration has been given to potential likely significant effects arising from the Proposed Development and that such effects can be ruled out due to the lack of effective pathways between the Proposed Development and the European Sites identified in the HRA NSER and that, on that basis, there is no requirement to undertake an AA of the Proposed Development (ER 6.8.2).

### **Overall Conclusion on the case for Development Consent**

109. The Secretary of State notes that sections 104(2) and 104(3) of the 2008 Act require him to have regard to, and decide the application in accordance with, any NPS except to the extent that one or more of subsections (4) to (8) of section 104 apply (ER 7.3.2). The ExA considers these subsections do not apply (ER 7.3.6 and ER 7.3.12). The Secretary of State notes the ExA considers that the need for the Proposed Development attracts considerable positive weight and that addressing existing congestion, improving safety, promoting economic benefits for the region and improvements for NMUs are also considered to amount to positive planning benefits (ER 7.3.11). The Secretary of State notes the ExA’s conclusion, that on the planning merits, the adverse effects, which include short to medium term landscape harm caused by the tree loss do not outweigh the benefits of the development (ER 7.3.13). Notwithstanding the Secretary of State’s view that the impact of the Proposed Development on carbon and on people and communities as well as its impact on landscape weigh negatively in the planning balance, the Secretary of State agrees with the ExA that the adverse effects do not outweigh the benefits of the Development.

### **Compulsory Acquisition and Related Matters**

#### Legislative Requirements

110. The Applicant is seeking powers for the CA of freehold interests and private rights over land, the creation of new rights in land and TP of land (ER 8.1.1).
111. The 2008 Act, together with related case-law and guidance, sets out that CA can only be granted if certain conditions are met. This includes section 122(2) of the 2008 Act which requires that the land subject to CA must be required for the development to

which development consent relates or is required to facilitate or be incidental to that development. In respect of the land required for the development, the land must be no more than is reasonably required and be proportionate (ER 8.2.2). Section 122(3) of the 2008 Act requires that there must be a compelling case in the public interest for the land to be acquired compulsorily (ER 8.2.3). Section 123 of the 2008 Act requires that one of three procedural conditions must be met, namely: (i) the application for the Order included a request for CA of the land to be authorised, (ii) all persons with an interest in the land consent to the inclusion of the provision, or (iii) the prescribed procedure has been followed in relation to the land (ER 8.2.4). In addition, a number of general considerations from the former Department of Communities and Local Government (“DCLG”) CA guidance need to be addressed (ER 8.2.5).

112. The Neighbourhood Planning Act 2017 (“NPA 2017”) has been enacted and contains provisions which amount to a codification of new TP practice. At the time of submission of the report the relevant provisions had not yet commenced and the ExA set out the Secretary of State may wish to satisfy himself that this remains unchanged prior to his decision. The Secretary of State notes the relevant provisions in NPA 2017 are not yet in force (ER 8.2.8).
113. The Secretary of State notes the summary of the Examination process relating to CA and TP in ER 8.4. No affected party questioned the intended purpose for CA or TP and the ExA did not need to test this evidence in the Examination. Save for paragraph 114 below the ExA is satisfied that the plots sought for CA and TP are connected to the works to which they relate (ER 8.4.9).

#### Plots 4/1 to 4/11 (12 Plots)

114. The Secretary of State notes that Plots 4/1 to 4/11<sup>1</sup> are owned by the Applicant but in all cases Category 1 and 2 persons also hold an interest in the land (ER 8.4.11). The plots are stated as being required either to ensure any rights inconsistent with the Proposed Development can be removed, or to rationalise the Applicant’s ownership (ER 8.4.12). The ExA expressed concerns that there were no works planned for these plots and the Applicant was using the 2008 Act as a way of tidying up its land interests (ER 8.4.13). In response, the Applicant confirmed it wanted to “cleanse” the land and was asking the Secretary of State to grant CA powers accordingly (ER 8.4.14). Having regard to the tests in the 2008 Act the ExA considers there is no justification for the Applicant to request and for the Secretary of State to grant CA powers over Plots 4/1 to 4/11. They are not required for the Proposed Development and the Applicant confirmed that any works on gantries or signage can be undertaken under other legislative provisions (ER 8.4.17). The Secretary of State agrees with the ExA that Plots 4/1 to 4/11 should be stricken from the Book of Reference and does not authorise the CA of these plots (ER 8.4.19).

#### Plots 1/31, 1/35 and 3/5

115. The Secretary of State notes these plots are required in connection for works as set out in ER 8.4.22. However, as set out in ER 8.4.23, there are no works required on the whole of the Order land and the Works Plans illustrate the majority of the

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<sup>1</sup> Namely: Plots 4/1, 4/2, 4/3, 4/4, 4/5, 4/6, 4/7, 4/7a, 4/8, 4/9, 4/10 and 4/11

southbound carriageway has no or little work. The ExA asked the Applicant (in respect of Plots 1/31 and 3/5) if it had been proportionate in its land take and whether the partial deletion of these plots to reflect the works in which they are needed would have any bearing on the delivery of the Proposed Development. The Applicant responded that in its view it had been reasonable and invites the Secretary of State to include these plots within its CA powers (ER 8.4.24). The ExA concluded the need for the CA northbound carriageway must automatically include the southbound carriageway because it is the same road; the two cannot be separated. Accordingly, the land take for plots 1/31, 1/35 and 3/5 is considered to be reasonable (ER 8.4.25). The Secretary of State agrees.

### Funding

116. This scheme is to be funded by the Department for Transport and is not dependent on funding contributions from other parties. With reference to ER 8.4.26-8.4.27, the Secretary of State is satisfied that the necessary funds are in place to make the Order.

### Outstanding Matters to CA and TP

117. Outstanding matters regarding the Gardens of Peace cemetery are set out in paragraphs 42 and 43. The Secretary of State notes that concern was raised about the extent of land needed in connection with plot 1/8 and the easement for the Cadent Gas pipeline and the impact it could have on the use of the land for burials. During the Examination, the area of land to be subject to CA was reduced to an area defined as "1/8a" over which TP powers only were sought (ER 8.6.5). In relation to CA matters relating to the Gardens of Peace, the ExA is content all matters have been resolved and that the extent of the of land needed for Plot 1/8 would not have a detrimental impact on the delivery and operation of the cemetery (ER 8.6.8). The Secretary of State agrees with this conclusion.
118. The concerns regarding Mr and Mrs Jones of Grove Farm are set out in paragraphs 38 to 41 above. The ExA raised the question as to whether the Applicant or Mr and Mrs Jones had considered and/or pursued CA freehold powers for the dwelling, particularly if the dwelling were to become uninhabitable as a result of the Proposed Development (ER 8.6.18). In response Mr and Mrs Jones stated that they did not wish to leave the property and the Applicant confirmed it did not wish to CA the dwelling (ER 8.6.19). Bearing this in mind, the Secretary of State agrees with the ExA that Grove Farm should not be subject to CA powers (ER 8.6.20).
119. The Secretary of State notes that in relation to Plot 1/6 that agreement had not been reached with the owners, Helen Edwards, Rachel Kingston and Patricia Kingston on permanent acquisition rights. The Secretary of State notes that during the Examination it was confirmed that draft Heads of Terms with the party's land was being negotiated. The Secretary of State asked on 14 October 2021 for an update on this agreement and the Applicant responded that no agreement had been achieved. The ExA considered that there would be no impediment to the Applicant reaching private agreement with the relevant parties and that the exercise of powers in the 2008 Act should not be necessary. However, should an agreement not be possible, the ExA considered that taking into consideration that the parties do not object to CA as a matter of principle, they were satisfied that CA of the land meets the tests in the 2008 Act (ER 8.6.23). The Secretary of State concurs.

120. The Secretary of State notes the DCO would engage a number of Articles of the Human Rights Act 1998, including Articles 1,6 and 8 of the First Protocol (ER 8.8.2) and the ExA, having considered the individual rights interfered with and the submissions made by the affected parties, is satisfied the tests under articles have been satisfied (ER 8.8.5). The Secretary of State agrees.

### Special Category Land

121. The Secretary of State notes that the Applicant considered that the Gardens of Peace land potentially falls within the classification under the 2008 Act of Special Category Land (ER 8.7). This is because, as set out in section 7.2 of the Applicant's Statement of Reasons, whilst the land is not designated as open space under the adopted or emerging local plans, the Applicant considers that once construction of the burial ground is complete and the site is open to the public, it may become open space within the meaning of the 2008 Act. In relation to this land, rights are sought to construct, protect, access, operate and maintain a section of underground gas pipeline. Temporary possession is also sought to facilitate construction of the pipeline.
122. The Secretary of State agrees with the Applicant's view regarding the status of the land as open space and therefore considers that section 132 of the 2008 Act is engaged, meaning the Order would be subject to Special Parliamentary Procedure ("SPP") unless one of the exceptions at section 132(3) to (5) apply. The Secretary of State notes that the ExA concluded that the Order land in relation to Open Space, when burdened with the order right, would be no less advantageous than it was before to: persons in whom it is vested; other persons; and the public (ER 8.10.1). Noting the Applicant's Statement of Reasons, the Secretary of State agrees with this conclusion and, because of this, is satisfied that section 132(3) of the 2008 Act applies and that as a result, the Order is not subject to SPP.

### Conclusion

123. Overall, the Secretary of State agrees with the ExA that the for the reasons set out in ER 8.4.42 there is a compelling case in the public interest for the CA powers sought with the exemption of plots 4/1 to 4/11. The Secretary of State is satisfied that with the deletion of these plots, the relevant tests in sections 122 and 123 of the 2008 Act are met. The Secretary of State agrees with the ExA that the Applicant is seeking to acquire the minimum possible rights and interests that would be needed to construct and maintain the Proposed Development (ER 10.1.8) The Secretary of State also agrees with the ExA's conclusion at ER 8.10.1 and is content that the CA and TP powers sought by the Applicant are justified, are necessary to enable the Applicant to complete the Development, that there is a compelling case in the public interest for the land and interests to be compulsory acquired, and that the Applicant has a clear idea of how it intends to use the land and that funds are available for implementation of the Proposed Development.

## **Late Representations (outside formal consultation)**

124. Since the close of the Examination, the Secretary of State has received representations all of which are published on the Planning Inspectorate's website alongside this letter.
125. The Secretary of State does not consider that anything in the correspondence constitutes new evidence, or raises a new issue, which needs to be referred to interested parties before he proceeds to a decision. It does not cause him to take a different view on the matters before him than he would otherwise have taken based on the ExA's report.

## **General Considerations**

### Equality Act 2010

126. The Secretary of State has complied with the public sector equality duty and has had due regard to the matters set out in section 149(1) of the Equality Act 2010 in accordance with section 149(3) to (5) concerning the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The Secretary of State notes the ExA's conclusion that there is no evidence that the Proposed Development would have any specific impact in relation to persons who share a protected characteristic as compared to persons who do not or any indication that allowing the application would have any harmful equality implications (ER 8.9.3). The Secretary of State does not consider that a decision to grant development consent would have significant differential impacts on any of the protected characteristics.

### Natural Environment and Rural Communities Act 2006

127. The Secretary of State, in accordance with the duty under section 40(1) of the Natural Environment and Rural Community Act 2006 ("the 2006 Act"), must have regard to the purpose of conserving biodiversity and, in particular, to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent. The Secretary of State notes that the ExA has had regard to the 2006 Act and the biodiversity duty in the relevant sections of the Report. In reaching a decision to grant development consent, the Secretary of State has had due regard to conserving biodiversity.

## **Draft Development Consent Order and Related Matters**

128. The Secretary of States notes the DCO as applied for (ER 9.2.1) and changes made to the DCO during the Examination as set out in Table 9.1 (ER 9.2.3).

### Ownership of Work No.2

129. The Secretary of State notes the contentious matter of ownership of Work No.2 set out in ER 9.3.4 - 9.3.15. TfL does not want ownership or maintenance responsibilities for the A12 off-slip road forming Work No.2, and considers that it should remain with the Applicant. As it currently stands the DCO would convey ownership and maintenance responsibility of it to TfL (ER 9.3.4). The Secretary of State notes the

reasons why as set out in ER 9.3.5 and the changes required to the DCO if it is to relieve TfL of ownership (ER 9.3.6). The Secretary of State notes the Applicant's position, as set out in ER 9.3.7, and the DCO follows drafting precedent in a number of made Orders and sets out that the Highway Authority(ies) will be responsible for the bridges below the waterproofing membrane of the structure. Thus it, does not place responsibility for the bridge structure on TfL save as regards the highway surface.

130. TfL stated it will "reluctantly" be prepared to take on responsibility for the new slip off-road if the Secretary of State is satisfied that it should and suitable arrangements are agreed and protections in favour of TfL are put in place (ER 9.3.8). Following negotiations between the two parties, TfL stated "it had been able to agree with the Applicant the majority of provisions sought in the protective provisions submitted by TfL and that TfL and the Applicant are proposing to enter into a side agreement in relation to those provisions that have been agreed" (ER 9.3.10). TfL then stated it was no longer seeking further amendments to the recommended DCO, including the need for full Protective Provisions ("PPs"). However, disputes between the Applicant and TfL remain over the issue of commuted sums (ER 9.3.11) and, as described in ER 9.3.11, this affects TfL's final position.
131. With regard to Work No.2, the Secretary of State agrees with the ExA's view that it does not see any logical reason why TfL should not take on responsibilities, as set out in the recommended DCO, and like the ExA is satisfied that TfL should own and manage Work No.2 (ER 9.3.13)
132. The Secretary of State notes that following his consultation letter of 14 October 2021, no agreement had yet been reached in respect of costs and commuted sums and both parties said this was a matter for the Secretary of State to decide. The Secretary of State notes the arguments put forward by TfL in ER 9.5.30 – 9.5.31 and that it should not be responsible for finding the additional funding arising from a third-party scheme. TfL said payments of a commuted sum as well as its reasonable costs are a standard position and to not do so would leave TfL to find funds to pay for a third-party development diverting its limited resources away from other much needed operational matters. In its response, the Applicant stated it 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 Transport for London road network, this is a matter for DfT and TfL (ER 9.5.32). The ExA considered the Proposed Development could potentially increase the responsibilities of TfL over and above the existing situation and stated that TfL's suggested PPs seek only to mitigate against the additional burdens placed upon it (ER 9.5.33). The ExA stated that the Applicant has not disputed the words of TfL's suggested PPs and, on that basis, recommended they be inserted as Part 7 of Schedule 9 to the recommended DCO at Appendix C to the Report (ER 9.5.34). In this context of this application, and for the reasons given by the ExA, the Secretary of State agrees and has included TfL's suggested PPs in the made DCO.

#### Schedule 2 Requirement 4 (CEMP)

133. The Secretary of State notes LB Havering's position that the Secretary of State should not be approving the CEMP at the details stage i.e. after the Order has been made. Its concerns were twofold, first, the wording of Requirement 4 (Construction



Environmental Management Plan) itself and second, the absence of outline Environmental Control Plans (“ECPs”) (ER 9.3.16-9.3.17).

134. The Secretary of State notes in the original draft DCO submitted with the application, Requirement 4 listed none of the ECPs to support the outline CEMP (ER 9.3.18). The ExA shared LB Havering’s concerns, considering the Applicant’s position to be imprecise and non-committal. At Deadline 2, the Applicant updated Requirement 4 and listed the documents which “must” be included within the final CEMP (ER 9.3.19).
135. LB Havering’s other principal concern was the wording “substantially in accordance” and “must reflect” remaining in Requirement 4 (and in other requirements). The Applicant stated that these words should be retained to allow for flexibility (ER 9.3.21). The Secretary of State notes the ExA’s position that it does not agree with the Applicant that such wording is appropriate. While the detailed design stage may well result in some refinement of the mitigation, the ExA is of the firm view that the CEMP, secured by Requirement 4, must not be allowed to depart from the outline CEMP other than in terms of minor changes. The ExA considers that allowing the CEMP to only be “substantially” in accordance potentially allows for a significant departure from it, as “substantially” in accordance is not defined in the final draft DCO. The Secretary of State notes that, in this Examination, the ExA considered a greater degree of certainty was needed and that it was therefore appropriate to use “in accordance”. In the light of this, the Secretary of State agrees with the ExA that these terms should be removed from this Order (ER 9.3.22 – 9.3.23 and Table 9.2). In addition, for the same reason, the Secretary of State agrees with the removal of “substantially” and “must reflect” from the other Requirements, to ensure the documents that come forward are not capable of departing from what has been examined in the application (ER 9.4.4). These changes were included in the recommended DCO at Appendix C to the Report.

#### Code of Construction Practice (“CoCP”)

136. The ExA was initially surprised that the application was not accompanied by a CoCP document (ER 9.4.5). In response, the Applicant stated that its previous schemes did not require the preparation of a CoCP, instead it requires an outline CEMP to be prepared in accordance with, amongst other documents, the design guidelines of DMRB (ER 9.4.6). The ExA requested a signposted document or navigation document explaining where measures normally contained within a CoCP are found in the Examination documentation and how they interdepend on one another, which the Applicant duly provided (ER 9.4.8). The ExA concluded that the Signposting Document demonstrates how scattered such information is and how a CoCP would be a useful and concise document to which the Secretary of State and interested parties could refer (ER 9.4.10). The Secretary of State notes written representations from LB Havering, TfL and the EA supporting a CoCP document and agrees with the ExA recommendation that an additional requirement for a CoCP should be inserted into the recommended DCO (ER 9.4.11). The relevant requirement is Requirement 18.

## Statutory Undertakers

137. The Secretary of State notes PPs for both Cadent Gas and TfL remain outstanding matters not agreed by the close of the Examination (ER 9.5.33). The position with regard to TfL is set out in paragraph 132.

## Cadent Gas

138. In his consultation letter of 14 October 2021, the Secretary of State asked the Applicant and Cadent Gas whether an agreement had been reached on all matters including PPs as these remained outstanding at the end of the Examination (ER 10.1.12). In its response of 21 October 2021, Cadent Gas stated that PPs had been agreed and the Applicant would be submitting these agreed PPs. On the basis these were included in the final made Order, Cadent Gas was withdrawing its objection. The agreed PPs were submitted by the Applicant in its letter of 29 October 2021. These have been included in Part 6 of Schedule 9 (Protective Provisions) to the final Order (subject to minor changes to reflect grammatical, formatting and cross-reference changes).

## Interested Parties

139. The Secretary of State notes changes sought to, and queries on, the draft DCO from LB Havering (9.5.39 - 9.5.45). On its request to remove the term “use of any street” for Part 3, Article 13(1) and (2) as it is too broad a power, the Secretary of State agrees with the ExA that subparagraph (4) acts as the check and balance to the use of the Article and does not propose to remove as requested. (ER 9.5.40). On the query whether Requirement 13(1) or (2) needs updating to ensure fencing to control deer during construction, like the ExA, the Secretary of State is satisfied that this is secured by Requirement 4 (ER 9.5.43).
140. Where not previously stated otherwise, the Secretary is satisfied with the recommended changes to the final draft DCO as set out in Table 9.3 of the Report. The Secretary of State is making a number of other minor textual amendments to the draft DCO in the interests of clarity, consistency and precision.
141. In addition, the Secretary of State has made the following modifications to the draft DCO at Annex C:
- article 2 (interpretation) – the definition of ‘the 2017 Regulations’ has been removed as article 32 (modification of the 2017 Regulations) has not been retained;
  - article 2 (interpretation) – the definition of ‘commence’ has been amended to ensure consistency and clarity;
  - article 2 (interpretation) – the definition of ‘undertaker’ has been amended to reflect ‘National Highways Limited’;
  - article 2 (interpretation) definitions of documents to be certified as listed in Schedule 10 have been added on the basis that the ExA accepts the list to be correct.
  - article 7 (limits of deviation) – the text has been amended to maintain consistency with highways DCOs as no justification given for the variation;
  - article 9 (consent to transfer benefits) sub paragraph 4 added to make explicit that the undertaker alone is liable for any compensation payable pursuant to this provision.

- article 10 (application of the 1991 Act) – the text has been amended to maintain consistency with highways DCOs;
- article 13 (temporary stopping up and restriction of use of streets) – the wording has been amended to maintain consistency with highways DCOs. The wording has been sufficient for Orders of a similar nature and it is unclear why this matter should be distinguished;
- article 22 (authority to survey and investigate the land) amended to ensure consistency with precedents as insufficient justification for inclusion. The explanatory memorandum cites precedents for article 22 but those precedents do not include a provision equivalent to sub-paragraph (1)(c).
- article 23 (felling or lopping of trees and removal of hedgerows) paragraph (5) has been removed as unprecedented in highways DCOs and planning permission is required under a separate regime;
- article 31 (application of the 1981 Act) has been amended as insufficient justification for inclusion;
- article 32 (modification of the 2017 Regulations) has been removed as it is unprecedented and there is a lack of justification as to why needed in this matter;
- in ex-article 35 (temporary use of land for carrying out authorised development) paragraph (3) has been removed due to lack of explanation in the explanatory memorandum;
- in ex-article 35 two years has been reduced to one year as is standard because of the lack of justification as to why it needs to be extended in this matter;
- in ex-article 36(6), the wording from “but the undertaker” to the end has been removed as being unnecessary. The word “restore” means to return something to an earlier or original condition rather than to improve;
- in ex-article 38 (statutory undertakers) paragraph (1)(a) retained precedented language as new provision unprecedented and Secretary of State disagrees that it is confusing;
- in ex-article 44 (defence to proceedings in respect of statutory nuisance) paragraph (2) is unprecedented in highways DCOs and is not discussed in the ExA’s report;
- Schedule 1 - the inclusion of the word “approximately” is redundant by virtue of the wording in article 2(4);
- Schedule 2 – paragraph 3 relating to the independent design review has been amended as Secretary of State does not agree with the view expressed by the ExA;
- Schedule 7 – paragraph 6 has been removed as lack of justification as to why it is needed in this matter.

### **Secretary of State’s overall conclusion and Decision**

142. For all the reasons set out in this letter, the Secretary of State considers that there is a clear justification for authorising the Development. The Secretary of State has decided to grant development consent, subject to the changes in the Order mentioned above. The Secretary of State is satisfied that none of these changes constitutes a material change and is therefore satisfied that it is within the powers of section 114 of the 2008 Act for the Secretary of State to make the Order as now proposed.

**Challenge to Decision**

143. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at Annex A to this letter.

**Publicity for the Decision**

144. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the 2017 Regulations.

Yours faithfully,

Natasha Kopala

## **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the 2008 Act, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The M25 Junction 28 Improvement Development Consent Order 2021 (as made) is being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/m25-junction-28-improvements/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).**