

National Infrastructure Planning
Temple Quay House
2 The Square
Bristol BS1 6PN

Date: 23rd February 2023

Our ref: 140703.00010

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Dear Sirs,

PLANNING INSPECTORATE SCHEME REF: TR010032

**THE A122 (LOWER THAMES CROSSING) DEVELOPMENT CONSENT ORDER
RELEVANT REPRESENTATIONS ON BEHALF OF TARMAC BUILDING PRODUCTS LIMITED IN RESPECT OF
TARMAC LINFORD BLOCKS PLANT**

1. INSTRUCTION

- 1.1. Gateley Hamer are instructed by Tarmac Building Products Limited (“Tarmac”), who are the freehold owners of an 85-acre concrete block plant at Buckingham Hill Road, Linford, to act on their behalf and submit written representations in respect of National Highway’s (“the Applicant”) application under the Planning Act 2008 for a Development Consent Order (“DCO”) relating to the Lower Thames Crossing (“the Scheme”).
- 1.2. In brief, the Lower Thames Crossing project comprises a new 23km highway, with a tunnel under the River Thames, that will provide a connection between the A2 and M2 in Kent with a new junction on the M25 (south of junction 29) in Essex. To deliver the Scheme, the Applicant is seeking compulsory purchase powers, that are contained within the DCO, to permanently acquire land, temporarily occupy land and secure new permanent rights over land which is within Tarmac’s ownership.
- 1.3. These representations deal solely with the application for compulsory purchase powers, and we will address both the permanent and temporary plot acquisitions where, subject to technical review, it is acknowledged that there is justification for some acquisitions but no justification in relation to others. We also address the proposed acquisition of new permanent rights over land where there is no justification and which does not appear to be necessary for delivery of the Scheme. Tarmac is therefore seeking to limit the land take, particularly the temporary possession of land, and the imposition of new permanent rights over land.
- 1.4. In order for the DCO to be confirmed, amongst other matters, the Applicant needs to be able to demonstrate that the land and rights set out within the Compulsory Purchase Order (CPO) are limited to those which are required for the Scheme. These representations are therefore written to assist the members of the Public Inquiry in deciding whether the proposed land and rights which are said to be required are limited to those which are needed for the Scheme.



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2. THE PLANNING ACT 2008

2.1. Section 122 of the Planning Act 2008 (“the Act”) provides that a DCO that includes compulsory acquisition powers may be granted only if the conditions in s.122(2) and s.122(3) of the Act are met:

2.2. S.122 Purpose for which compulsory acquisition may be authorised

(1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the decision-maker is satisfied that the conditions in subsections (2) and (3) are met.

(2) The condition is that the land—

- (a) is required for the development to which the development consent relates, -
- (b) is required to facilitate or is incidental to that development, or
- (c) is replacement land which is to be given in exchange for the order land under section 131 or 132.

(3) The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily.

2.3. In the following section we consider these provisions against the plots owned by Tarmac, alongside the development proposals for the Scheme and the supporting DCO documents.

3. ACQUISITION OF LAND, RIGHTS AND TEMPORARY POSSESSION IN THE DCO

3.1. A summary of the various plots that are contained in the Land Plans and submitted as part of the draft DCO documentation and which are relevant to Tarmac is set out below:

3.3.1	Permanent Acquisition of Land Plots:	27-31, 27-32 and 27-43
3.3.2	Temporary Possession of Land and Permanent Acquisition of Rights Plots:	27-37, 27-39, 24-41, 27-44, 27-51, 27-53, 27-54, 27-67, 27-68 , 27-70 and 27-71
3.3.3	Temporary Possession of Land Plots:	27-35, 27-40, 27-49, 27-52, 27-55, 27-56, 27-65, 27-66 and 27-72

LOTS WHERE LAND REQUIREMENT IS UNDERSTOOD BUT IMPACT IS SIGNIFICANT

3.2. After considering the Land Plans, draft DCO and the Statement of Reason the requirement for the acquisition of land and / or rights in relation to the following plots is understood. However, we have concerns regarding the severe negative impact of acquiring these plots in the current circumstances.

Permanent Acquisition Plots (Pink Land)

3.3. **Plots 27-31, 27-32 and 27-43** are understood to be required to provide the physical space for the construction of the new road and realignment of an existing side road. Whilst the land requirement is understood, these plots form part of an Environment Agency (EA) permitted

landfill site and their acquisition will make it impossible for Tarmac to continue to carry out routine surface water and groundwater monitoring obligations (as set out in the EA Permit), because at least one borehole (BH1) is within land being permanently acquired. The relevant regulations stipulate that there must be one upgradient and two downgradient boreholes and BH1, which is one of the two downgradient boreholes, will need relocating but an acceptable relocation site is yet to be determined (if available) and agreed. Additionally, these plots also form part of a wider area of land that is subject to a land restoration programme pursuant to a local authority planning permission.

3.4. Tarmac will incur severe penalties (fines commensurate with Tarmac's business turnover and ultimately custodial sentences for company directors) and reputational damage if they are unable to fulfil the EA monitoring obligations and / or the restoration programme. Initial discussions have taken place with the Applicant to outline these issues, but as yet, no resolution has been identified. As a result, Tarmac, object to the proposed permanent acquisition of these plots until such time as appropriate measures have been agreed to address both the EA Permit monitoring obligations and the land restoration planning conditions (see planning reference 14/00323/FUL).

3.5. *Temporary Possession of Land Plots (Green Land)*

3.6. **Plot 27-35** is said to be required to provide working space for the construction of the new road. Whilst the temporary land requirement is understood, this plot similarly forms part of both the Environment Agency (EA) permitted landfill site and the wider land restoration area. As above, Tarmac, also object to the proposed temporary possession of this plot until such time as appropriate measures have been agreed to address both the EA Permit monitoring obligations and the land restoration planning conditions.

PLOTS WITHOUT CLEAR JUSTIFICATION

3.7. After considering the Land Plans, draft DCO and the Statement of Reason the requirement and justification for the acquisition of land, rights and / or temporary possession, of several plots is, in our opinion, neither clear nor justified as does not meet the tests set out in S.122 of the Planning Act 2008 . We set out below the analysis of each plot where we have concerns.

Temporary Possession of Land and New Permanent Rights Plots (Blue Land)

3.8. **Plots 27-37 and 27-39** are said to be required for diversion of multi-utilities, to include installation or diversion of underground utilities within a multi-utility corridor, located north of the new realigned Hoford Road.

3.9. We understand that the rights required in relation to this plot relate to an existing water main. Whilst we do not contest that there may be a requirement to divert the underground utility apparatus within the subsoil of these plots, we believe the relevant utility operator (Northumbrian Water) already has the rights to undertake these works under the Water Act.

3.10. **Plots 24-41, 27-44, 27-51, 27-53, 27-54** are said to be required for overhead line diversion works to the UK Power Networks ("UKPN") to include:

- (a) the permanent diversion of the overhead line between existing pylons PAB12 and PAB17 and proposed new pylons PAB13R, PAB14R, PAB15R, PAB16R and PAB17R (approximately 1,455 metres);
 - (b) the dismantling of existing pylons PAB13, PAB14, PAB15 and PAB16;
 - (c) earthing works on existing pylons PAB11, PAB18 and PAB19; and
 - (d) to facilitate the above: the installation of conductors, insulators and fittings between pylons PAB12, PAB17 and PAB18 (approximately 1,650 metres).
- 3.11. We do not dispute that there may be a requirement to undertake the works set out above (a)-(d), but the relevant utility operator (UKPN) already has existing rights to undertake these works, they are set out in the wayleave agreement dated 31st March 1958. In the agreement (see the Third schedule) the operator has full rights to enter to install, maintain, repair, renewal, inspect, improve and remove the apparatus.
- 3.12. Such wayleaves provide a working strip of 8m either side of the centre line of the overhead line with further working areas for pulling cables through and tensioning. This working space arrangement corresponds with the proposed corridor (PAB Route) and the circular area of land reserved at apparatus PAB17, as set out in the Land Plans. Accordingly, we see no justification for the burden of new permanent rights to serve the same purpose as those rights that are already vested with UKPN, and it is our firm opinion that these plots should be entirely removed from the draft DCO.
- 3.13. **Plots 27-67, 27-68 , 27-70 and 27-71** are said to be required for overhead line diversion works to the National Grid Electrical Transmission network (“NGET”) to include:
- (a) the permanent diversion of the overhead line between existing pylon ZJ010 and proposed new pylons ZJ011A, ZJ011B, ZJ011C, ZJ012R (approximately 890 metres);
 - (b) the installation of a new pylon ZJ014R on the existing alignment;
 - (c) the dismantling of existing pylons ZJ011, ZJ012 and ZJ014;
 - (d) earthing works on existing pylons ZJ007 and ZJ019; and
 - (e) to facilitate the above: the installation of conductors, insulators and fittings between pylons ZJ008, ZJ009, ZJ013, ZJ015, ZJ016, ZJ017 and ZJ018 (approximately 3,580 metres).
- 3.1. Again, we do not dispute that there may be a requirement to undertake the works set out above (a)-(e), but the relevant utility operator (NGET) already has existing rights to undertake these works, they are set out in the deed dated 25th August 1960. In the deed (see clause 1) the operator has full rights to enter to install, maintain, repair, renewal, inspect, improve and remove the apparatus.
- 3.2. Such deeds provide a working strip of 25m either side of the centre line of the overhead line with further working areas for pulling cables through and tensioning. This working space arrangement corresponds with the proposed corridor (JZ Route) set out in the Land Plans. Accordingly, we see no justification for the imposition of new permanent rights to serve the

same purpose as those rights that are already vested with NGET, and it is our firm opinion that these plots should be entirely removed from the draft DCO.

Temporary Possession of Land Plots (Green Land)

- 3.3. **Plots 27-40, 27-49, 27-52, 27-55, 27-56, 27-65 and 27-72** are said to be required for provision of temporary access for overhead lines diversion works.
- 3.4. Again, it is not disputed that access to the relevant apparatus will be required to undertake overhead line diversion works but, as pointed out above, the relevant network operators already have rights of access, so there is no justification for the imposition of new temporary rights to serve the same purpose as the rights that are already vested with UKPN and NGET in the deeds dated 31st March 1958 and 25th August 1960 respectively.
- 3.5. Tarmac therefore objects to the proposed temporary access route firstly on the grounds that there is no justification for imposing new temporary rights to create an access route when there are existing rights of access and secondly the proposed access route unnecessarily carves through central areas of an intensively used operational site when there is a less intrusive access route available (if it is deemed necessary to reserve an access route at all). Because there are already appropriate access rights available to UKPN and NGET, we are of the firm opinion that these plots should be entirely removed from the draft DCO.
- 3.6. **Plot 27-66** is said to be required to facilitate overhead line diversion works and to provide temporary storage, laydown areas and working space all be in relation to the NGET apparatus.
- 3.7. We do not deny that there may be a requirement to undertake the diversion works and a need for working space, but as set out above, NGET already has appropriate rights that are set out in the deed dated 25th August 1960 which allows for a working area. Tarmac therefore object to the inclusion of this plot in the draft DCO firstly because it is unnecessary as there are already appropriate rights available and secondly an alternative less intrusive area is available (if it is deemed necessary to reserve a laydown area and / or working space at all).

4. OVERVIEW OF PROPOSED LAND AND RIGHTS ACQUISITIONS

- 4.1. For ease of consideration, we set out below a tabulated summary of the position:

Land Plans Plot No.	Land requirement	DCO Works No.(s) and Purpose for which the land is required	Tarmac Comment
27-31	Permanent Acquisition of Land	<p>Work No. 6C Construction of a section of the new realigned Hoford Road, including construction of realigned Hoford Road.</p> <p>Work No. MU37 Utility works, including the installation or diversion of underground utilities within a multi-utility corridor.</p>	<ul style="list-style-type: none"> The land is subject to both an EA Permit requiring routine monitoring and Local Authority land restoration planning conditions. No arrangements have been agreed between the parties for Tarmac to fulfil its future obligations if the land is permanently acquired.
27-32	Permanent Acquisition of Land	<p>Work No. 6C Construction of a section of the new realigned Hoford Road, including construction of realigned Hoford Road.</p>	<ul style="list-style-type: none"> The land is subject to both an EA Permit requiring routine monitoring and Local Authority land restoration planning conditions. No arrangements have been agreed between the parties for Tarmac to fulfil its future obligations if the land is permanently acquired.
27-35	Temporary Possession of Land	<p>Work No. 6C To facilitate the construction of realigned Hoford Road, and to provide temporary storage, laydown areas and working space.</p> <p>Work No. OH5 Provision for temporary access for overhead lines diversion works.</p>	<ul style="list-style-type: none"> The land is subject to both an EA Permit requiring routine monitoring and Local Authority land restoration planning conditions. No arrangements have been agreed between the parties for Tarmac to fulfil its future obligations during temporary occupation. Pursuant to existing legal agreements, both UKPN and NGET possess rights enter the Tarmac site and so imposing new temporary rights is unnecessary.
27-37	Temporary Possession of Land and Permanent Acquisition of Rights	<p>Work No. MU37 Utility works, including the installation or diversion of underground utilities within a multi-utility corridor.</p>	<ul style="list-style-type: none"> The relevant utility operator (Northumbrian Water) already has the rights to undertake the proposed works to their apparatus under the Water Act and new permanent rights should not be imposed.
27-39	Temporary Possession of Land and Permanent Acquisition of Rights	<p>Work No. MU37 Utility works, including the installation or diversion of underground utilities within a multi-utility corridor.</p>	<ul style="list-style-type: none"> The relevant utility operator (Northumbrian Water) already has the rights to undertake the proposed works to their apparatus under the Water Act and new permanent rights should not be imposed.

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27-40	Temporary Possession of Land	Work No. OH5 Provision for temporary access for overhead lines diversion works.	<ul style="list-style-type: none"> Pursuant to existing legal agreements both UKPN and NGET possess rights enter the Tarmac site and so imposing new temporary rights is unnecessary.
27-41	Temporary Possession of Land and Permanent Acquisition of Rights	Work No. OH5 Overhead lines diversion works, including the removal of existing overhead lines and pylons, construction of new overhead lines and pylons and works to existing overhead lines and pylons.	<ul style="list-style-type: none"> Full rights to enter to install, maintain, repair, renewal, inspect, improve and remove the UKPN apparatus already exist pursuant to the wayleave agreement dated 31st March 1958. There is no justification for imposing new permanent rights to serve the same purpose as those already vested with UKPN. This plot should be entirely removed from the draft DCO.
27-43	Permanent Acquisition of Land	Work No. 6A Construction of the new A122 Lower Thames Crossing, a new highway three-lane dual carriageway. Work No. OH5 Overhead lines diversion works, including the removal of existing overhead lines and pylons, construction of new overhead lines and pylons and works to existing overhead lines and pylons.	<ul style="list-style-type: none"> If the land is permanently acquired Tarmac have no comment. But, if the draft DCO is amended, it should be noted that UKPN already have existing rights for the proposed works and new permanent rights should not be imposed.
27-44	Temporary Possession of Land and Permanent Acquisition of Rights	Work No. OH5 Overhead lines diversion works, including the removal of existing overhead lines and pylons, construction of new overhead lines and pylons and works to existing overhead lines and pylons.	<ul style="list-style-type: none"> Full rights to enter to install, maintain, repair, renewal, inspect, improve and remove the UKPN apparatus already exist pursuant to the wayleave agreement dated 31st March 1958. There is no justification for imposing new permanent rights to serve the same purpose as those already vested with UKPN. This plot should be entirely removed from the draft DCO.
27-49	Temporary Possession of Land	Work No. OH5 Provision for temporary access for overhead lines diversion works.	<ul style="list-style-type: none"> Pursuant to existing legal agreements, both UKPN and NGET possess rights enter the Tarmac site and so imposing new temporary rights is unnecessary.

27-51	Temporary Possession of Land and Permanent Acquisition of Rights	Work No. OH5 Overhead lines diversion works, including the removal of existing overhead lines and pylons, construction of new overhead lines and pylons and works to existing overhead lines and pylons.	<ul style="list-style-type: none"> • Full rights to enter to install, maintain, repair, renewal, inspect, improve and remove the UKPN apparatus already exist pursuant to the wayleave agreement dated 31st March 1958. • There is no justification for imposing new permanent rights to serve the same purpose as those already vested with UKPN. This plot should be entirely removed from the draft DCO.
27-52	Temporary Possession of Land	Work No. OH5 Provision for temporary access for overhead lines diversion works.	<ul style="list-style-type: none"> • Pursuant to existing legal agreements, both UKPN and NGET possess rights enter the Tarmac site and so imposing new temporary rights is unnecessary.
27-53	Temporary Possession of Land and Permanent Acquisition of Rights	Work No. OH5 Overhead lines diversion works, including the removal of existing overhead lines and pylons, construction of new overhead lines and pylons and works to existing overhead lines and pylons.	<ul style="list-style-type: none"> • Full rights to enter to install, maintain, repair, renewal, inspect, improve and remove the UKPN apparatus already exist pursuant to the wayleave agreement dated 31st March 1958. • There is no justification for imposing new permanent rights to serve the same purpose as those already vested with UKPN. This plot should be entirely removed from the draft DCO.
27-54	Temporary Possession of Land and Permanent Acquisition of Rights	Work No. OH5 Overhead lines diversion works, including the removal of existing overhead lines and pylons, construction of new overhead lines and pylons and works to existing overhead lines and pylons.	<ul style="list-style-type: none"> • Full rights to enter to install, maintain, repair, renewal, inspect, improve and remove the UKPN apparatus already exist pursuant to the wayleave agreement dated 31st March 1958. • There is no justification for imposing new permanent rights to serve the same purpose as those already vested with UKPN. This plot should be entirely removed from the draft DCO.
27-55	Temporary Possession of Land	Work No. OH5 Provision for temporary access for overhead lines diversion works.	<ul style="list-style-type: none"> • Pursuant to existing legal agreements, both UKPN and NGET possess rights enter the Tarmac site and so imposing new temporary rights is unnecessary.

27-56	Temporary Possession of Land	Work No. OH5 Provision for temporary access for overhead lines diversion works.	<ul style="list-style-type: none"> Pursuant to existing legal agreements, both UKPN and NGET possess rights enter the Tarmac site and so imposing new temporary rights is unnecessary.
27-65	Temporary Possession of Land	Work No. OH5 Provision for temporary access for overhead lines diversion works.	<ul style="list-style-type: none"> Pursuant to existing legal agreements, both UKPN and NGET possess rights enter the Tarmac site and so imposing new temporary rights is unnecessary.
27-66	Temporary Possession of Land	Work No. OH4 To facilitate overhead lines diversion works, and to provide temporary storage, laydown areas and working space.	<ul style="list-style-type: none"> Pursuant to an existing legal agreement, NGET possess rights enter the Tarmac site and install, maintain, repair, renewal, inspect, improve and remove their apparatus. There is no justification for reserving this land temporarily and it should be removed from the draft DCO. Consideration via negotiated agreement should also be given to alternative identifying a less intrusive area (if indeed it is required to be specified).
27-67	Temporary Possession of Land and Permanent Acquisition of Rights	Work No. OH4 Overhead lines diversion works, including the removal of existing overhead lines and pylons, construction of new overhead lines and pylons and works to existing overhead lines and pylons.	<ul style="list-style-type: none"> Full rights to enter to install, maintain, repair, renewal, inspect, improve and remove the NGET apparatus already exist pursuant to the deed dated 25th August 1960. There is no justification for imposing new permanent rights to serve the same purpose as those already vested with NGET. This plot should be entirely removed from the draft DCO.
27-68	Temporary Possession of Land and Permanent Acquisition of Rights	Work No. OH4 Overhead lines diversion works, including the removal of existing overhead lines and pylons, construction of new overhead lines and pylons and works to existing overhead lines and pylons.	<ul style="list-style-type: none"> Full rights to enter to install, maintain, repair, renewal, inspect, improve and remove the NGET apparatus already exist pursuant to the deed dated 25th August 1960. There is no justification for imposing new permanent rights to serve the same purpose as those already vested with NGET. This plot should be entirely removed from the draft DCO.
27-70	Temporary Possession of Land and Permanent Acquisition of Rights	Work No. OH4 Overhead lines diversion works, including the removal of existing overhead lines and pylons, construction of new	<ul style="list-style-type: none"> Full rights to enter to install, maintain, repair, renewal, inspect, improve and remove the NGET apparatus already exist pursuant to the deed dated 25th August 1960.

		<p>overhead lines and pylons and works to existing overhead lines and pylons.</p> <p>Work No. OH5 Provision for temporary access for overhead lines diversion works.</p>	<ul style="list-style-type: none"> • There is no justification for imposing new permanent rights to serve the same purpose as those already vested with NGET. This plot should be entirely removed from the draft DCO.
27-71	Temporary Possession of Land and Permanent Acquisition of Rights	<p>Work No. OH54 Overhead lines diversion works, including the removal of existing overhead lines and pylons, construction of new overhead lines and pylons and works to existing overhead lines and pylons.</p>	<ul style="list-style-type: none"> • Full rights to enter to install, maintain, repair, renewal, inspect, improve and remove the NGET apparatus already exist pursuant to the deed dated 25th August 1960. • There is no justification for imposing new permanent rights to serve the same purpose as those already vested with NGET. This plot should be entirely removed from the draft DCO.
27-72	Temporary Possession of Land	<p>Work No. OH5 Provision for temporary access for overhead lines diversion works.</p>	<ul style="list-style-type: none"> • Pursuant to existing legal agreements, both UKPN and NGET possess rights enter the Tarmac site and so imposing new temporary rights is unnecessary.

CONCLUSION

- 4.2. It is our opinion that the tests the Applicant is required to meet to obtain compulsory purchase powers have not been satisfied. Section 122(2) and (3) of the Planning Act 2008 sets out the conditions that must be fulfilled to authorise compulsory purchase powers but in essence the Applicant must demonstrate that both the land and powers are either required for or to facilitate the Scheme.
- 4.3. However, as demonstrated in these written representations, we are of the opinion that there are a number of plots where the permanent or temporary acquisition of land, and / or the acquisition of new permanent rights does not appear to be justified. Accordingly, unless justification can be provided, the plots should be adjusted and / or removed from the draft DCO.
- 4.4. Tarmac generally have concerns about both the potential for operation disturbance and the associate impact on the livelihood of their employees and also the safety and wellbeing of their employees and the Applicant's contractors as a consequence of the Scheme works and the intrusive temporary access proposals. All sides should work cooperatively to minimise the potential disruption and limit both temporary and permanent impacts on land within Tarmac's ownership.
- 4.5. Tarmac and their representatives remain willing to engage with the Applicant and their representatives with a view to putting an agreement in place that will remove the need to use compulsory purchase powers which will allow the Scheme to proceed but until the Applicant demonstrates that:
- the Scheme (including the associated utility diversion works that affect Tarmac's operational site) cannot be undertaken pursuant to the existing legal agreements that govern the utility apparatus;
 - where appropriate other less business disruptive land requirement options have been fully explored and discounted with justifiable explanation; and
 - the issues surrounding both the routine surface water and ground water monitoring obligations in the EA Permit and the land restoration planning conditions in the local authority planning permission have been satisfactorily addressed,

Tarmac object and will maintain their objection to the draft DCO.

Yours faithfully,

[REDACTED]

For and on behalf of
Gateley Hamer Limited



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