

**Gravesham Borough Council (Registration ID
Number: 20035747)**

Lower Thames Crossing (Scheme Ref: TR010032)

**Issue Specific Hearing 2 (ISH2) on the draft
Development Consent Order (22 June 2023)**

**Gravesham Borough Council's Response to Action
Points**

Deadline 1: 18 July 2023

Issue Specific Hearing 2 (22 June 2023) - (ISH2) on the Draft Development Consent Order

Gravesham Borough Council’s response to EXA’s Action Points

Examining Authority’s Action Point	Gravesham Borough Council’s Response	References
6. Discharge of Requirements		
<p>Schedule 2 of the dDCO (requirements) provides for requirements to be discharged by the SoST following consultation of relevant bodies and the provision of a report on consultation by the undertaker. Bodies who are proposed to be consultees on the discharge of requirements are asked to identify whether the consultation arrangement and timescale is appropriate and, if not, to confirm the changes in process that they seek and reasons for those changes.</p> <p>Bodies who are not proposed to be consultees or otherwise involved in the discharge of requirements and consider that they should be involved, are asked to confirm the changes in process that they seek and reasons for those changes.</p>	<p>This response is without prejudice to Gravesham Borough Council’s (“GBC”) in principle position that the relevant local planning authority should be the discharging authority for requirements. GBC’s reasons are set out in its Post-hearing Submissions on ISH 2.</p> <p>In relation to this action point, please also refer to GBC’s Post-hearing Submissions on ISH 2 and in particular the submission on ExA Agenda item 4(d) (The discharging role of the Secretary of State and other local and public authorities).</p> <p>In that paragraph, GBC make a number of points about the role of the Secretary of State in discharging requirements and also some suggestions as to how the discharging procedures in the dDCO require improvement. Those points and suggestions include:</p> <ul style="list-style-type: none"> • The weaknesses of Requirement 18(2) which provides that if the Secretary of State doesn’t make a decision within time, there is a deemed approval (with a limited exception in paragraph (3)) • The weaknesses of Requirement 20, in which the undertaker is required only to “give due consideration” to any representations from consultees: the bare legal minimum • As a consequence of that, GBC’s recommendation that if the applicant is minded to make an application for discharge of a Requirement that is not in accordance with GBC’s consultation response, that GBC is given advance notice of that intention, so giving GBC the opportunity to make either further representations to the applicant or to make direct representations to the 	

Examining Authority's Action Point	Gravesham Borough Council's Response	References
	<p>discharging authority (some suggested detailed drafting is provided by GBC).</p> <p>The following additional points are made by GBC:</p> <p><i>Clarity as to which relevant planning authority is to be consulted</i></p> <p>GBC will be a consultee in relation to a number of requirements in Schedule 2 of the dDCO as drafted. This is either because it is the “relevant planning authority” or because it is listed specifically in a control document referred to in a requirement (see requirement 5 (landscaping and ecology)).</p> <p>GBC considers that greater clarity could be given as to who is the “relevant planning authority”, which is defined in article 2(1) of the dDCO as “in any given provision of this Order, the planning authority for the area to which the provision relates”. In most requirements, the relevant planning authority must be consulted “on matters related to its functions” and in one, the requirement is simply to consult the relevant planning authority (requirement 6(1)).</p> <p>Both GBC and Kent County Council (“KCC”) are planning authorities in GBC’s area, so it is important for the dDCO to be clear which of them is to be consulted (whether it be one of them or both). GBC consider that any matter relating to development is “related to the functions” of GBC as it is the local planning authority with primary responsibility for development control.</p> <p>These are the requirements in respect of which GBC assumes it will be consulted, because it is clear that the matters in question relate to its functions:</p> <ul style="list-style-type: none"> 3: Detailed design 4: Construction and handover environmental management plans 5: Landscaping and ecology 6: Contaminated land and groundwater 8: Surface and foul water drainage 9: Historic environment 	

Examining Authority's Action Point	Gravesham Borough Council's Response	References
	<p>12: Fencing</p> <p>These are the requirements in respect of which GBC considers it will be consulted as the relevant planning authority along with KCC as highway authority:</p> <p>10: Traffic management</p> <p>11: Construction travel plans</p> <p>14: Traffic monitoring</p> <p>And these are requirements in respect of which GBC is not a consultee, but considers that there is a case that it should be:</p> <p>16(1): Approval of carbon and energy management plan</p> <p>17: Amendments to approved details</p> <p>GBC considers that the dDCO could give greater clarity, for example by naming the relevant planning authorities in each case. This is precedented, for example in the Sizewell C (Nuclear Generating Station) Order 2022, and that GBC should be given a consultee role in requirements 16(1) and 17.</p> <p><i>Time limits and further information</i></p> <p>GBC notes that there is provision in requirement 19 entitling the Secretary of State as discharging authority to request further information from the undertaker to assist in considering any application, and extending the decision-making period where that happens. There is no equivalent provision in requirement 20 for consultees. This is despite the fact that consultee local planning authorities are likely to be better placed than the Secretary of State to know what kind of information is likely to be of assistance in deliberating over the discharge of the requirement in question.</p> <p>GBC suggests that in order to meet this point, the minimum consultation period in requirement 20(1)(a) should be extended to 42 days in every case, rather than 28. This would remove the need for requirement 20(2) and (3) which enable extensions up to a 42 day period if requested. This is precedented in requirement 24 in Schedule 2 to the M25 Junction 28 Development Consent Order 2022.</p>	

Examining Authority's Action Point	Gravesham Borough Council's Response	References
	<p>GBC does not consider that this request would impose a significant additional time issue on the Applicant in the wider scheme of things. The project is already on hold for two years, and the Applicant has itself made provision in the dDCO for unusually long compulsory purchase expiry periods and effectively an open ended implementation period because of the drafting of requirement 2.</p>	
8. Annex A of ISH2 Agenda		
<p>Provide a tabular response to Annex A of ISH2 Agenda on the dDCO.</p>	<p>This is being provided as a separate document as an appendix to GBC's Post-hearing Submissions on ISH 2.</p>	