

Lower Thames Crossing

9.69 Draft Statement of Common Ground between (1) National Highways and (2) Harlex Haulage and (3) J & B Martin (Crayford & Fawkham) Limited

Infrastructure Planning (Examination
Procedure) Rules 2010

Volume 9

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DEADLINE: 3

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Examination Document Ref: TR010032/EXAM/9.69

VERSION: 1.0

Status of the Statement of Common Ground

This is a Draft Statement of Common Ground with matters outstanding.

National Highways considers that this draft Statement of Common Ground is an accurate description of the matters raised by Harlex Haulage Limited, and J & B Martin (Crayford & Fawkham) Limited and the status of each matter, based on the engagement that has taken place to date.

From: [REDACTED]

Sent: Monday, August 14, 2023 9:37 AM

To: [REDACTED]

Subject: RE: Harlex et al - SoCG Draft

Dear [REDACTED]

[REDACTED] wants a meeting to go through it, but can't do until the end of this week. I suggest that this one is submitted as a draft/unsigned version to Pins for now

Regards

[REDACTED]

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1 Introduction

1.1 Purpose of the Statement of Common Ground

- 1.1.1 This Statement of Common Ground (SoCG) has been prepared in respect of the Development Consent Order (DCO) application for the proposed A122 Lower Thames Crossing (the Project) made by National Highways Limited (the Applicant) to the Secretary of State for Transport (Secretary of State) under section 37 of the Planning Act 2008 on 31 October 2022.
- 1.1.2 The SoCG has been produced to confirm to the Examining Authority where agreement has been reached between the Applicant and Harlex Haulage Limited, and J & B Martin (Crayford & Fawkham) Limited and where agreement has not been reached. Where matters are yet to be agreed, the parties will continue to work proactively to reach agreement and will update the SoCG to reflect areas of further agreement.
- 1.1.3 This version of the SoCG has been submitted at Examination Deadline 3.

1.2 Parties to this Statement of Common Ground

- 1.2.1 This SoCG has been prepared in respect of the Project by (1) National Highways, and (2) and Harlex Haulage Limited, and J & B Martin (Crayford & Fawkham) Limited (referred to as ‘Harlex’ in the remainder of this document) .
- 1.2.2 National Highways became the Government-owned Strategic Highways Company on 1 April 2015. It is the highway authority in England for the strategic road network and has the necessary powers and duties to operate, manage, maintain, and enhance the network. Regulatory powers remain with the Secretary of State. The legislation establishing National Highways made provision for all legal rights and obligations of the Highways Agency, including in respect of the Project, to be conferred upon or assumed by National Highways.
- 1.2.3 Harlex possess Category 1 interests in plots 03-62, 03-68 and 03-79, as outlined in the Land Plans [REP1-009] and Book of Reference [REP1-053]. .

1.3 Terminology

- 1.3.1 In the matters table in section 2.1 of this SoCG, “Matter Not Agreed” indicates agreement on the matter could not be reached following engagement, and “Matter Under Discussion” where these points will be the subject of on-going discussion wherever possible to resolve, or refine, the extent of disagreement between the parties. “Matter Agreed” indicates where the issue has now been resolved.

2 Matters

2.1 Outstanding matters

- 2.1.1 Engagement between the Applicant and Harlex Haulage Limited, and J & B Martin (Crayford & Fawkham) Limited has been ongoing since February 2020. These discussions are summarised in Annex B of the Statement of Reasons [APP-060].
- 2.1.2 Following submission of Harlex Haulage Limited, and J & B Martin (Crayford & Fawkham) Limited’s Relevant Representation, discussions on matters have taken place between the Applicant and landowners. These discussions will be summarised in subsequent updates to Annex B of the Statement of Reasons [APP-060].
- 2.1.3 The outcome of discussions to date are presented in Table 2.1 which details and presents the matters which have been agreed, not agreed, or are under discussion between (1) the Applicant and (2) Harlex Haulage Limited, and (3) J & B Martin (Crayford & Fawkham) Limited.
- 2.1.4 Subsequent versions of this SoCG will outline the changes between versions.

Table 2.1 Matters

Topic	Item No.	Harlex Haulage Limited, and J & B Martin (Crayford & Fawkham) Limited Comment	The Applicant’s Response	Application Document Reference	Status
Documentation & Recording of Agreement					
SoCG	2.1.1	Harlex has requested a Statement of Common Ground to be considered, stating the Applicant believes that a Voluntary Agreement and details to be submitted to a Commitments Register would be more appropriate. Harlex would question why a Statement of Common Ground would not be more appropriate. The Applicants response has been that they are offering private landowner commitments and a form of voluntary agreement to address various	The Applicant has acknowledged Harlex’s request and is willing to enter a Statement of Common Ground (SoCG) to record the position given the absence of prior agreement and new issues that have been raised. The Applicants position to date has been focused on attempts to reach agreement on aspects which address landowners concerns and seek to	N/A	Matter Agreed

Topic	Item No.	Harlex Haulage Limited, and J & B Martin (Crayford & Fawkham) Limited Comment	The Applicant's Response	Application Document Reference	Status
		<p>concerns. Provided the agreement and/or commitments are counter signed, they will transfer those internally and contractually to their future contractors to observe. Harlex would ask PINS to address the appropriateness of the Applicant's proposed actions.</p> <p>The interested party accepts that the additional design requirements should be included in the Commitments Register as well as an SoCG being entered into.</p> <p>The Applicant has stated that the design changes are at the landowners' request. The interested party would point out that due to the extent of the works associated with the project, the existing access would be lost/unworkable due to width restrictions and hence whilst this design change may be at the request of the landowner, it is a necessity in order for the haulage yard to continue and to prevent business extinguishment.</p> <p>Whilst heads of terms for an access easement to grant rights and design change has been provided by the Applicant, the terms offered were unacceptable with restriction on the balancing pond access restricted to agricultural use only and previously overage provisions were included in the terms and hence whilst the Applicant has stated that they have not</p>	<p>mitigate impacts. Provided agreement can be reached, the issue will then be resolved and a formal binding commitment will be transferred to contractors and an associated project manager lead to ensure compliance.</p> <p>In this case, the Applicant has accommodated design changes at the landowner's request and issued a letter to set out various commitments in relation to the delivery of replacement access. The Applicant has also sent Heads of Terms for an access easement to grant rights.</p> <p>To date, the Applicant has not received a response or agreement to these offered commitments.</p> <p>The Applicant responds specifically to the access easement under section 2.1.8 below.</p>		

Topic	Item No.	Harlex Haulage Limited, and J & B Martin (Crayford & Fawkham) Limited Comment	The Applicant's Response	Application Document Reference	Status
		received a response or agreement to the offered commitments, the terms were unacceptable and therefore it is disingenuous to imply that the interested party has not responded.			
Design					
Balancing Pond	2.1.2	Harlex were unhappy with the original balancing pond design and requested it to be moved further east.	The Applicant accommodated this design request before Supplemental Consultation (January 2020) and the balancing pond Work No 1I as shown on Sheet 3 of the Works Plans is now further east than it was originally proposed.	Works Plans [AS-024]	Matter Agreed
Replacement Access - Updated Entrance & Exit Design Request	2.1.3	Harlex propose a new updated entrance and exit design for the replacement access.	The current design (Work No 1C as shown on Sheet 3 of the Works Plans) was proposed by Harlex and accommodated by the Applicant at Community Impacts Consultation (June 2021). The Applicant has undertaken vehicle tracking and shared the same demonstrating HGV's can navigate the replacement access in its current design. This further request, as illustrated in Appendix A, on 7 February 2023, to change the design will have many impacts and the Applicant has a number of design concerns over the	Works Plans [AS-024]	Matter Not Agreed

Topic	Item No.	Harlex Haulage Limited, and J & B Martin (Crayford & Fawkham) Limited Comment	The Applicant’s Response	Application Document Reference	Status
			<p>design of the access proposed by Harlex. Splitting the carriageway until the junction will lead to vehicles entering and exiting the junction on the wrong side of the road (as Harlex switch their direction of one way operation), which would be a safety risk. The current design ensures that all vehicles are on the correct side of the carriageway at the junction. As the access will also be used by the Applicant for maintenance of ponds, it would also mean that maintenance vehicles would either have to travel against the flow of traffic or go through the Harlex site to avoid conflict. Splitting the carriageway also means pedestrians using the footpath will have to cross two carriageway’s which is avoided in the current proposal. It may also need to be consulted on and will incur additional cost (compared to current design) and introduce consultation uncertainty.</p>		
Replacement Access - Tie in works	2.1.4	Harlex suggest there would be level issues with ensuring the new access ties into the site	The Applicant’s design accommodation letter for the replacement access road specifically deals with this issue and mitigates disruption. This was issued on 1 April 2021 with subsequent reminders.	N/A	Matter Under Discussion

Topic	Item No.	Harlex Haulage Limited, and J & B Martin (Crayford & Fawkham) Limited Comment	The Applicant's Response	Application Document Reference	Status
			The Applicant has urged the landowner to sign and return this letter so it can transfer the commitments therein to Contractors and an associated Project Manager lead to ensure compliance.		
Replacement Access – fencing & gates	2.1.5	Harlex request replacement security gates at the entrance to their Yard and fencing to the northern extent of the new access road to prevent the general public and their dogs from roaming into the new Harlex haulage yard for health and safety purposes. The interested party insists that any accommodation works should provide sufficient security measures as exist at present and expect that commitment from the Applicant.	Please refer to the General Arrangement Plans (specifically sheet 3), which shows fencing is to be installed on the northern boundary. In respect of new entrance gates, the Applicant has requested further details from the landowner as to their proposed positioning. The Applicant also requests further details and specifications for the current gates that Harlex utilise at the existing entrance and exit. Following receipt of this information the Applicant will consider the landowners request further and if agreed, a private commitment can be entered. In absence of express agreements or commitments, the Applicant would like to state that the draft DCO obliges the Applicant to restore land to the reasonable satisfaction of the owner (draft DCO, Article 35)	General Arrangement Plans (Volume B) (Sheets 1 to 20) [APP-016] Draft DCO [REP1-042]	Matter Under Discussion
Park Pale curb profile	2.1.6	Harlex have requested a continuous curb profile as Park Pale road diverts to provide access to the Harlex yard and the Golf Club	The Applicant is willing to consider this request, dated 7 February 2023, to make the T junction a continuous curb	N/A	Matter Under Discussion

Topic	Item No.	Harlex Haulage Limited, and J & B Martin (Crayford & Fawkham) Limited Comment	The Applicant’s Response	Application Document Reference	Status
		to deter people parking and congregating in the T part	<p>profile as per previously circulated sketch, which can be seen in Appendix B. However, the Applicant would like to prompt Harlex to consider this request further. The current design allows vehicles to turn around on Park Pale before they get to the turn heading to the overbridge. If this is removed, and a continuous curb profile is implemented, there is a risk that more vehicles could try and turn around in the carriageway causing more disruption to Harlex and road users.</p> <p>The Applicant requests confirmation from Harlex whether they want the Applicant to proceed with considering this design request through its governance process, in light of the above comments.</p> <p>The Applicant would like to emphasise that the DCO application as submitted contains sufficient provisions in which this curb profile request can be considered and accommodated at the detailed design stage, following consultation with all of the relevant parties (including Kent County Council as highway authority).</p>		

Topic	Item No.	Harlex Haulage Limited, and J & B Martin (Crayford & Fawkham) Limited Comment	The Applicant’s Response	Application Document Reference	Status
Park Pale anti-social behaviour	2.1.7	<p>Harlex has significant concerns regarding the design of Park Pale Road and the proposed cycleway (3metres wide) as the design will exacerbate the anti-social behaviour that occurs in the locality.</p> <p>The area under the existing Park Pale overbridge will be used as a shelter and refuge point for anti-social behaviour. The Interested Party would like access restrictions from Park Pale to the new cycle path to prevent it being used as a road.</p> <p>Whilst the Applicants Design Principles may be followed and it is suggested that robust design elements will be provided to prevent and mitigate the potential for misuse, no details have been provided to the interested party as to what those robust design elements will consist of.</p>	<p>The cycle route will be designed in accordance with the Applicants Design Principles.</p> <p>Please refer to Design Principles, table 4.1, in particular PEO.01 – PEO.06. The Project must be designed in accordance with these principles, which will become legal requirements if the DCO is consented.</p> <p>Of particular emphasis to the landowners anti-social behaviour concern, PEO.06 includes express consideration of <i>“robust design elements to prevent and mitigate the potential for misuse...by unauthorised vehicles and to prevent and deter anti-social behaviour”</i>.</p> <p>The Applicant would direct the Interested Party to paragraph 2.1.7 of the Design Principles which explains how they are secured in the delivery of the Project. The Design Principles are secured in Schedule 16, via Requirement 3 and Requirement 5 in Schedule 2 of the draft Development Consent Order [REP1-042]. It would further comment that the Design Principles strive to create a collaborative working towards detail design elements with all interested</p>	<p>7.5 Design Principles [APP-516]</p> <p>3.1 Draft Development Consent Order [REP1-042]</p>	Matter Under Discussion

Topic	Item No.	Harlex Haulage Limited, and J & B Martin (Crayford & Fawkham) Limited Comment	The Applicant's Response	Application Document Reference	Status
			parties (including Kent County Council for matters of WCH routes)		
Ownership and Rights					
Access Easement within plots 03-53 and 03-84	2.1.8	<p>Harlex require rights to use the replacement access road into their Yard and retained land.</p> <p>The Applicant makes reference to the heads of terms for an access easement and the suggestion that the interested party has not responded is disingenuous. The interested party cannot agree to the current heads of terms which restrict access to agricultural use to the retained land and therefore the current heads of terms are not fit for purposes.</p>	<p>The Applicant is aware that one of Harlex co-owners has recently acquired title to the retained land.</p> <p>The Applicant has prepared Heads of Terms (HoTs) for an access easement for the new replacement road and access to retained land. These were first circulated to the previous landowner (who has the same agent as Harlex) on 24 February 2021. The latest version (version 4) of the Heads of Terms (HoT's) were sent on 27 May 2021, and resent on 22 December 2022. The HoT's in circulation is currently revision 4.</p> <p>Since May 2021, the Applicant has received no response. The Applicant would welcome agreement to the Heads of Terms in order to instruct solicitors to prepare a draft, ready for execution once the replacement road is constructed and operational.</p> <p>With respect to the Interested Party's statement on the restriction on user access, the Applicant can confirm that there would be no limitation on the extent of replacement access to the</p>		Matter Under Discussion

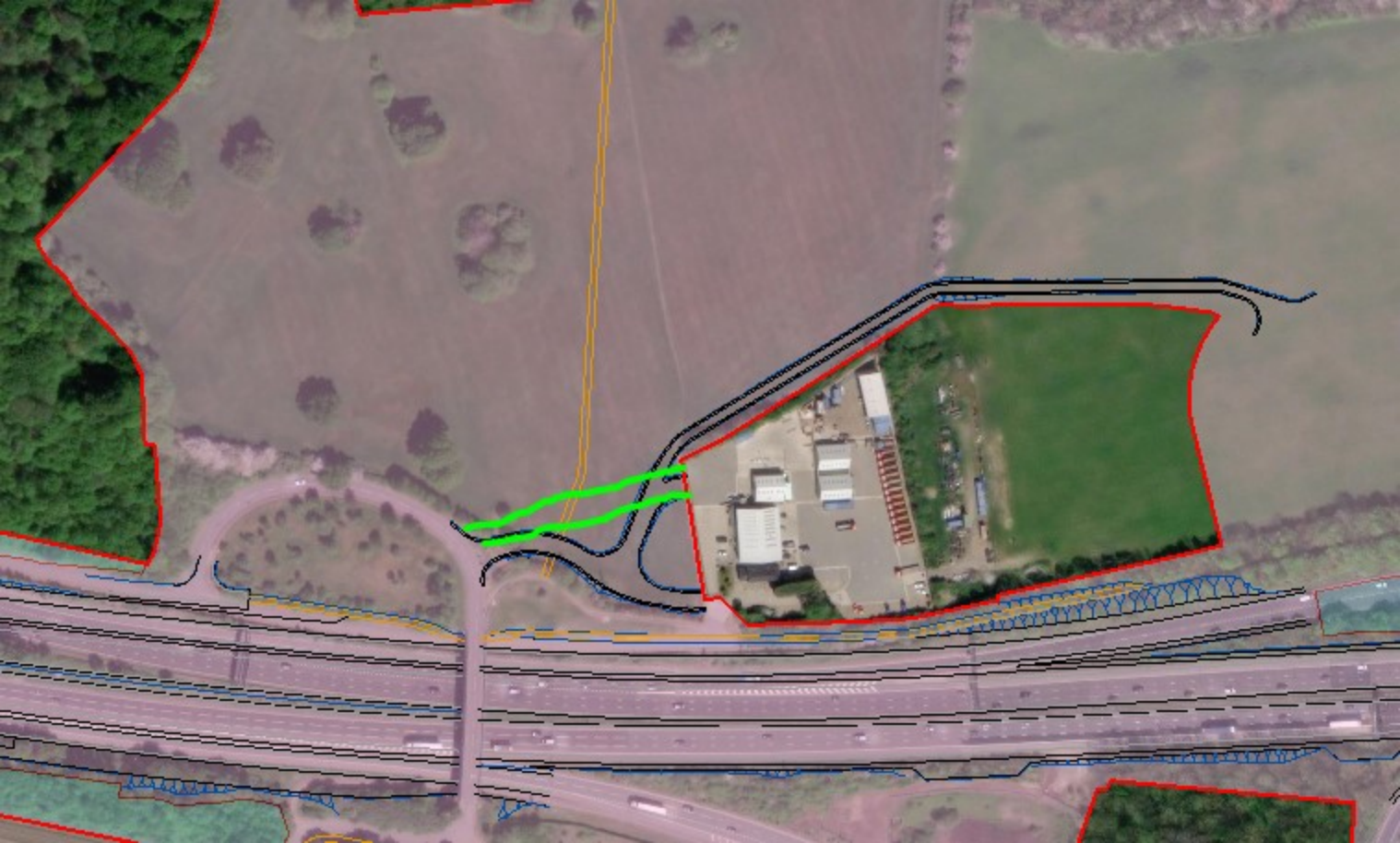
Topic	Item No.	Harlex Haulage Limited, and J & B Martin (Crayford & Fawkham) Limited Comment	The Applicant’s Response	Application Document Reference	Status
			<p>Harlex business The pavement is designed according to highway use, similar to Park Pale.</p> <p>The land neighbouring Harlex is green belt and understood to be used for agriculture.</p> <p>Harlex have not particularised why they require unrestricted access to the east of their site over the extent of the Applicants balancing pond road, the Applicant considers that the access that has been proposed is sufficient for Harlex to access their site, particularly in light of Harlex not outlining why unrestricted access to the balancing pond road is necessary. However, as outlined below at 2.1.10, the Applicant considers that the articles in the Order would provide scope to enable a private access to the retained land to be installed if required. The Applicant is willing to consider providing access to the balancing ponds access road subject to further discussions with Harlex.</p>		
Ownership	2.1.9	Harlex have enquired about the potential for owning the new road	The Applicants working case is that National Highways will own the new replacement access road and balancing pond road over plots 03-53 and 03-84, and grant rights to Harlex.	N/A	Matter Under Discussion

Topic	Item No.	Harlex Haulage Limited, and J & B Martin (Crayford & Fawkham) Limited Comment	The Applicant's Response	Application Document Reference	Status
			<p>The Applicant is willing to consider transferring ownership of the new access road to Harlex, subject to reserving rights for its own access requirements to the balancing ponds.</p> <p>The Applicant asks Harlex to outline their preferred ownership position so that it can liaise with National Highways operations to consider appropriateness and terms.</p>		
Retained Land Access	2.1.10	<p>Harlex require an access off the balancing pond road into the land to the east of the yard. Whilst this has been raised on numerous occasions, it does not appear on any drawings. This needs to be agreed and a firm commitment as to its design.</p> <p>Whilst the Applicant has made the comments that they would urge the landowner to confirm their acceptance of the bell mouth position, the lack of design detail to include width and levels makes it impossible to know whether the sketch drawing produced is sufficient for its current and future use.</p>	<p>The access provisions to the retained land were discussed during various iterations of the Heads of Terms. The Applicant sent a proposed sketch to the agent on 25 February 2021 outlining the proposed bellmouth position. A further request for confirmation was sent on 27 May 2021 and again on 22 December 2022.</p> <p>In any event, and since the DCO has been accepted for examination, the Applicant would state that the draft DCO contains sufficient rights to install private access to this land under the Work No. 11(ii) and Ancillary works provision (d) within Schedule 1, Part 1 of the draft DCO.</p> <p>In terms of design, the Applicant has previously stated that this would be for detailed design and prevailing ground</p>	Draft DCO (Deadline 1 Submission [REP1-042])	Matter Under Discussion

Topic	Item No.	Harlex Haulage Limited, and J & B Martin (Crayford & Fawkham) Limited Comment	The Applicant’s Response	Application Document Reference	Status
			<p>conditions but that we could agree an outline location and specification for the Contractor to adopt in their undertaking of detailed design.</p> <p>We would refer to our response under section 2.1.9 above as to particularising the reasons why Harlex require unrestricted access over the balancing pond road to the land to the east of their land.</p>		
<p>Utility and Services</p>	<p>2.1.11</p>	<p>The interested party has serious concerns over the interruption to existing critical utilities and services that are required in order for business continuity. There is also concern over drainage and surface water and design arising from the new access which will be constructed and will slope down towards the yard whereas the current access is from level ground and then leads up into the yard.</p> <p>As with the proposed access and security issues, all other services and necessary designs should be included within the commitments register to safeguard the future use of this important commercial business.</p>	<p>The Applicant notes this was not mentioned in the Interested Party’s relevant representation although has been a topic that was discussed between the parties at a site meeting on 28 October 2020.</p> <p>In respect of drainage, the Applicant would refer to its DCO documents, and in particular its Works Plans (sheet 3 composite), which show the proposed work number labels. Work No. 11, in the draft DCO, includes “<i>construction of a new drainage infiltration basin with associated drainage facilities</i>”. The Design Principles at LSP.28, state “<i>conveyance of runoff would be by means of drainage ditches / swales and pipes</i>”.</p> <p>As noted above, the Design Principles strive to create a collaborative working towards detail design elements with all interested parties.</p>	<p>Works Plans (Volume B) Composite) [APP-019] Draft Development Consent Order (Deadline 1 Submission [REP1-042] 7.5 Design Principles [APP-516]</p>	<p>Matter Under Discussion</p>

Topic	Item No.	Harlex Haulage Limited, and J & B Martin (Crayford & Fawkham) Limited Comment	The Applicant’s Response	Application Document Reference	Status
			<p>In respect of utilities, the utility companies will continue to operate, complete and manage their works and works to their network in accordance with their own statutory obligations. The Applicant will work with the respective company to design, programme and manage the necessary works in a manner that mitigates those potential impacts to the customers of those networks. These provisions are secured by the relevant utility companies within their Protective Provisions at Schedule 14 Part 1, Part 2, Part 5, Part 6 and Part 7 of the draft DCO.</p> <p>The Applicant expects that no interruption to the supply of services will be proposed during Harlex’s normal operating hours however any planned works that may result in interruption to services will be notified in advance of the works commencing at the detailed design and planning stage.</p>		

Appendix A Harlex Further Design Request



Appendix B Park Pale Curb Profile



Appendix C Glossary

Term	Abbreviation	Explanation
Heavy Goods Vehicle	HGV	A large, heavy motor vehicle used for transporting cargo.
Development Consent Order	DCO	Means of obtaining permission for developments categorised as Nationally Significant Infrastructure Projects (NSIP) under the Planning Act 2008.
Heads of Terms	HoTs	Heads of terms are a document setting out the main terms of an agreement reached between parties.

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