



PLANNING INSPECTORATE ISSUE-SPECIFIC HEARING

on

11 SEPTEMBER 2023

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PRESENT

PLANNING INSPECTORATE

RYND SMITH
KEN TAYLOR
DOMINIC YOUNG

CASE TEAM

BART BARTKOWIAK
TED BLACKMORE
RYAN SEDGMAN

LOWER THAMES CROSSING

MUSTAFA LATIF-ARAMESH

LOCAL AUTHORITIES

DOUGLAS EDWARDS KC (Thurrock Council)
CHRIS STRATFORD (Thurrock Council)
BEN STANDING (Thurrock Council)
[HENRY CHURCH?] (Thurrock Council)
KIRSTY MCMULLEN (Thurrock Council)
MARK WOODGER (Essex County Council)
GARY MACDONNELL (Essex County Council)
MICHAEL BEDFORD KC (Gravesham Borough Council)
ALASTAIR LEWIS (Gravesham Borough Council)
MICHAEL HUMPHRIES KC (Kent County Council)
NOLA COOPER (Kent County Council)
JOSEPH RATCLIFFE (Kent County Council)
DANIEL DOUGLAS (London Borough of Havering)
LYNN BASFORD (London Borough of Havering)
[MORAG THOMSON?] (London Borough of Havering)
SUSAN LINDLEY (Shorne Parish Council)

STATUTORY PARTIES

PAUL SHADAREVIAN KC (DP World London Gateway)
NICK GRANT KC (Natural England)
KATHLEEN COVILL (Natural England)
SEAN HANNA (Natural England)
CAROL BOLT (Environment Agency)
MATTHEW RHEINBERG (Transport for London)
SHAMAL RATNAYAKA (Transport for London)
ALEX DILLISTONE (Port of London Authority)
EMMA RODICAN-JONES (Port of London Authority)
LUCY OWEN (Port of London Authority)
GREGG SMITH (Marine Management Organisation)
HAZEL ANDERSON (Northumbrian Water)
ALISON DABLIN (Port of Tilbury London Ltd)
ROBBIE OWEN (Port of Tilbury London Ltd)

INTERESTED PARTIES

BEN HUNT (Emergency Services and Safety Partners Steering Group)

LAURA BLAKE (Thames Crossing Action Group)
AARTI O'LEARY (Franks Farm)
JOHN LAWSON (Franks Farm)

1 MR SMITH: Hello. Good morning, everybody, and welcome to today's issue-specific
2 hearing for the Lower Thames Crossing. Before we introduce ourselves, can I
3 just check with the case team and audio-visual staff that we can be heard online
4 and that the recordings and the livestreams have started?

5 PARTICIPANT: That's correct, yes.

6 MR SMITH: Thank you very much, so to introductions. My name is Rynd Smith. I am
7 the lead member of a panel, which is the Examining Authority for the Lower
8 Thames Crossing application, and I'm in the chair for this hearing. We're sitting
9 as a bench of three today to provide an issue-specific hearing into the draft
10 development consent order, or DCO as we will refer to it. My fellow panel
11 members will introduce themselves, but before I do – before they do, I'll flag
12 two things. Our colleagues Ms Janine Laver and Mr Kenneth Pratt are spending
13 today working on matters arising from hearings last week and on preparation for
14 events later this week, so I'm going to start by introducing my colleague Mr
15 Dominic Young.

16 MR YOUNG: Good morning, everybody. My name's Dominic Young. I will ask
17 questions today as and when the need arises. In the event Mr Smith has any
18 technical problems, I will take over the chair. Let me hand over to Mr Ken
19 Taylor.

20 MR SMITH: Thank you very much, Mr Young.

21 MR TAYLOR: Yes, good morning, everybody. My name's Ken Taylor; I'm a panel
22 member. I might ask questions as they arise this morning, and I'll also be taking
23 a note of any actions that arise from this morning's business. Back to you, Mr
24 Smith.

25 MR SMITH: Thank you very much, Mr Taylor. This is Rynd Smith, panel lead speaking
26 again, and if I could also just briefly introduce our panel – our planning
27 inspectorate colleagues supporting us today. Bart Bartkowiak and Ted
28 Blackmore are jointly the case managers, and Ryan Sedgman is in support on
29 the preparation for the digital event. Shortly, I will be asking you to introduce
30 yourselves to this hearing, but before I do, there are just a few other introductory
31 matters that I need to cover. Firstly, I will apologise for the possibility that you
32 can hear strange noises off from my channel into this event; there is a major
33 infrastructure project being implemented outside my study this morning. Well,
34 it's the introduction of rural broadband, but it does seem to involve quite a lot of

1 drilling and grinding, so if you do hear noises, hopefully it doesn't become too
2 distracting.

3 Secondly, though, I will flag that in the normal way, we are being
4 livestreamed and recorded, and if anybody has any questions about the terms on
5 which our digital recordings are made, please raise your hands now. And I don't
6 believe I'm seeing any hands, so on that basis, we will now move to hearing
7 introductions, and we need to know for all participants your name, the persons
8 or organisations that you're representing and your role, and briefly confirm the
9 items on the agenda that you intend to speak on, but I'm very conscious of the
10 fact that this is a relatively fluid agenda and so I will be making sure that
11 anybody who wishes to become introduced on any item has an opportunity to
12 speak. I'm going to start, first, with the local authorities, and on that basis let
13 me just check with the case team's record. Can I just see who we have for
14 Thurrock Council? Is it Mr Edwards? Do we have Mr Edwards for Thurrock
15 Council?

16 MR EDWARDS: Yes, you do, sir. Good morning. Douglas Edwards KC for Thurrock
17 Council, sir, and if it's convenient, I'll introduce my two other colleagues who
18 will be participating today who are in the room with me.

19 MR SMITH: It certainly is, Mr Edwards, so do proceed.

20 MR STRATFORD: Yes, Chris Stratford, town planner, and my role is to coordinate and
21 lead the Thurrock team. Good morning, thank you.

22 MR SMITH: Thank you very much, Mr Stratford.

23 MR STANDING: And Ben Standing from Browne Jacobson solicitors, advising
24 Thurrock Council in relation to the drafting of the development consent order.

25 MR EDWARDS: Sir, additionally, so far as the Thurrock team present today is
26 concerned, Mr [Henry Church?] is also likely to be participating and he is
27 elsewhere, but is in the virtual room.

28 MR SMITH: Okay, thank you very much. In which case, then, can I move on to
29 Gravesham Borough Council? No, apologies. No, I missed out Essex County
30 Council.

31 MR WOODGER: Good morning, sir, and thank you for inviting us to this meeting today.
32 My name is Mark Woodger; I'm a principal planner and I work in the growth
33 and development team at Essex County Council. As for what agenda items
34 we're going to speak on, I note that your agenda is rather fluid, so our responses

1 will be tending to match that. We are obviously conscious that this is, primarily,
2 a written process, so therefore we will be making any representations on matters
3 in relation to the DCO in writing to you also.

4 MR SMITH: And indeed, that's a very useful point, Mr Woodger, and I mean, this is
5 intended to be quite a brief – almost a checkpoint hearing, and the most useful
6 output from it will be post-hearing written submissions that detail all of the
7 matters that remain of concern to the relevant interested parties, so thank you
8 very much.

9 MR WOODGER: Thank you, sir. I'd just like to introduce my colleague Gary
10 MacDonnell. Thank you.

11 MR SMITH: Thank you very much.

12 MR MACDONNELL: Good morning, sir. Gary MacDonnell, I'm a programme
13 manager at Essex County Council and I work in the highways and transportation
14 team.

15 MR SMITH: Thank you very much, so that's everybody for Essex County Council. On
16 that basis, apologies for putting you off earlier but I am now going to move to
17 Gravesham Borough Council, and Mr Bedford QC, I believe.

18 MR BEDFORD: Thank you, sir. Michael Bedford, King's Counsel, given the
19 anniversary that we've just celebrated, as it were.

20 MR SMITH: Apologies.

21 MR BEDFORD: Or marked this weekend, but Michael Bedford KC, Gravesham
22 Borough Council, and also participating today – and I think on the screen – is
23 Mr Alastair Lewis, partner and parliamentary agent with Sharpe Pritchard, also
24 acting for Gravesham Borough Council.

25 MR SMITH: Okay, thank you very much. Now, do we have anyone for Kent County
26 Council?

27 MR HUMPHRIES: Yes, good morning, sir. It's Michael Humphries, King's Counsel,
28 and I'm accompanied also – I think they're now on screen as well – by Nola
29 Cooper and Joseph Ratcliffe, both from Kent County Council's highways
30 department, and we will probably be needing to speak on all of the items, but –
31 so take account of the point made before that, obviously, we will put things in
32 writing.

33 MR SMITH: Thank you very much, Mr Humphries, much appreciated. Now, is there
34 anybody else representing a principal local authority before I move on to the

1 main statutory parties? I believe not, so on that basis, can I then check who will
2 be speaking for the Port of Tilbury London Ltd?

3 MR DOUGLAS: Excuse me, sir, sorry to interrupt. It's the London Borough of Havering
4 here.

5 MR SMITH: London Borough of – apologies. Yes, I'm just reviewing my attendance
6 list and I'm not finding you, so something seems to have slipped off in the works,
7 but you are here so introduce yourself, Mr Douglas.

8 MR DOUGLAS: Thank you, sir. Good morning, sir. Good morning, everyone. My
9 name's Daniel Douglas; I'm the transport planning team leader representing the
10 London Borough of Havering, and I'll invite my colleagues, Lynn and Morag to
11 introduce themselves.

12 MS BASFORD: Good morning, sir. Good morning, everyone. I'm Lynn Basford; I'm
13 a chartered town planner and transport planner working and supporting with
14 Havering on all matters DCO.

15 MS THOMSON: Good morning, my name is [Morag Thomson?]. I'm a solicitor and
16 I'm advising the London Borough of Havering on the DCO, in particular the
17 drafting of the DCO.

18 MR SMITH: Okay, thank you very much. In which case, I am then going to move on to
19 the statutory parties, and just checking the few we have, so if we can go to –
20 actually, no, I'm going to change the order. I'll keep this in spreadsheet order,
21 so if I can go to DP World London Gateway, please.

22 MR SHADAREVIAN: Sir, a very good morning to you. My name is Paul Shadarevian
23 KC, and I am acting for DP World. I have no other attendees from DP World
24 today.

25 MR SMITH: Okay, thank you very much. Now, I believe we do have Natural England
26 represented here today.

27 MR GRANT: Good morning, sir. Yes, I'm Nick Grant, Counsel, here for Natural
28 England. Alongside me, as you can see on your screen are Ms Covill and Mr
29 Hanna, who you met at the last ISH. I anticipate I'll be doing most of the
30 speaking, but they are here to help.

31 MR SMITH: Thank you very much, and then do we have the Environment Agency here?

32 MS BOLT: Good morning, sir. My name's Carol Bolt and I'm the only Environment
33 Agency representative this morning. I'm a solicitor. I don't have any particular

1 items that I want to speak about. Really here just to assist on any points of
2 clarification. We will make our comments in writing also. Thank you.

3 MR SMITH: Thank you very much. In which case, can I then move on to Transport for
4 London?

5 MR RHEINBERG: Good morning, sir. My name's Matthew Rheinberg for Transport
6 for London, major projects and urban design manager, and I suspect the main
7 things we will need to comment on today, assuming they arise, are mitigation of
8 impacts and protective provisions, and –

9 MR SMITH: I assure you, Mr Rheinberg, that they'll probably be the main items; there
10 seems to be a lot of interest in them. Okay.

11 MR ALIKA: And I'm Shamal Ratnayaka, strategic analysis manager, also Transport for
12 London.

13 MR SMITH: Thank you very much. Okay, can we then move on to Port of London
14 Authority? Do we have Port of London Authority? I believe we should have
15 Alex Dillistone of Winckworth Sherwood.

16 MS DILLISTONE: You do, sir. Good morning, I'm Alex Dillistone from Winckworth
17 Sherwood, representing the Port of London Authority, and we also have today
18 with me Emma Rodican-Jones and Lucy Owen. I'll let them introduce
19 themselves.

20 MS RODICAN-JONES: Good morning, sir, I'm a solicitor from Winckworth Sherwood,
21 and here with me is Lucy Owen of the PLA.

22 MS OWEN: Good morning, sir.

23 MR SMITH: Good morning. Right, now moving down the list I gather that Veolia ES
24 Landfill are no longer attending, so on that basis can I move to the Marine
25 Management Organisation?

26 MR GREGG SMITH: Good morning, Gregg Smith, the marine licensing case officer for
27 Lower Thames Crossing. We're not planning on speaking today, but we'll be
28 here for clarification, obviously make any representations during the next
29 deadline.

30 MR SMITH: Thank you very much, and then moving down the list to Northumbrian
31 Water, operating as Essex and Suffolk Water in this particular area.

32 MS ANDERSON: Good morning, sir. My name is Hazel Anderson and I'm at
33 Winckworth Sherwood, solicitor and parliamentary agent. It's just me this
34 morning, sir, and I don't have anything in particular to say, other than should

1 you require it, a general overview or update on where matters stand. Thank you
2 very much.

3 MR SMITH: Okay. Thank you very much. We then move on to Parish Councils, and I
4 believe we have Councillor Susan Lindley, who is of Shorne Parish Council.

5 MS LINDLEY: Good morning, sir. Thank you very much. Yes, Susan Lindley, Shorne
6 Parish Council. Thank you.

7 MR SMITH: Thank you very much. Moving, then, onto other interested parties, do we
8 have a representative of the Emergency Services and Safety Partners Steering
9 Group? Is Mr Ben Hunt with us?

10 MR HUNT: Good morning. Yes, my name's Ben Hunt. I'm from Browne Jacobson
11 solicitors, representing the Emergency Services and Safety Partners Steering
12 Group. I am attending today as an observer to hear what's said, and anything –
13 matters arising for the group, we'll be making written submissions.

14 MR SMITH: Okay, thank you very much. Now, for the Thames Crossing Action Group,
15 Ms Laura Blake.

16 MS BLAKE: Thank you very much, sir. Good morning, everybody. Laura Blake,
17 Thames Crossing Action Group. I don't anticipate on speaking on any particular
18 item on the agenda, but you never know when my hand might pop up. Thank
19 you.

20 MR SMITH: Indeed, and then finally I believe we have, from the Lawson Planning
21 Partnership, John Lawson and Aarti O'Leary for Mrs Carver.

22 MS O'LEARY: Good morning, sir. Yes, we're both here representing Mrs Carver. We
23 will raise our hands if anything pertinent arises. Thank you.

24 MR SMITH: If you need to, yeah, okay. Right, now I believe that that should be
25 everybody who has requested to participate in this particular issue-specific
26 hearing. If there is anybody else –

27 MS DABLIN: Sorry to interject –

28 MR SMITH: Yes.

29 MS DABLIN: Apologies. You mentioned the Port of Tilbury and then decided to go to
30 the Excel list and –

31 MR SMITH: I did, and then moved on and failed to come back to you. I am so sorry,
32 Ms Dablin. Introduce yourself.

33 MS DABLIN: Yes, so I'm Alison Dablin, associate with Pinsent Masons, here for the
34 Port of Tilbury.

1 MR SMITH: Thank you very much.

2 MR OWEN: And sir, good morning. I'm Robbie Owen, also from Pinsent Masons,
3 alongside Alison Dablin for the Port of Tilbury.

4 MR SMITH: Thank you very much. In which case –

5 MR OWEN: And I think, sir – sorry, I think we'll be largely commenting on item 3(c),
6 DCO matters arising from last week's hearings, but as everyone has said, it's
7 quite fluid, but that is where I expect to be saying the most.

8 MR SMITH: Frankly, Mr Owen – again, conditioning everybody's expectations – I think
9 that is where by far the bulk of the usefulness of this hearing rests. It's the
10 consequential conversations flowing around submissions on particular
11 approaches to the order, emerging from the earlier issue-specific hearings held
12 last week.

13 MR OWEN: Indeed, yeah.

14 MR SMITH: Hopefully everything else can be wrapped up reasonably quickly.

15 MR OWEN: Thank you.

16 MR SMITH: Okay, in which case, can I just make one final check of the virtual room
17 and see that I haven't inadvertently bypassed anybody or left somebody out?
18 That is very good news; the absence of yellow hands and silence on the channel
19 suggests that finally everybody who needs to be included has been included. So
20 a reminder, then, when you begin to speak to an item or a question, please do
21 reintroduce yourself by name and say which organisation you represent. This,
22 whilst boring, does assist people who are watching the livestream or the
23 recording after the event to understand what's going on, so introductions are
24 now complete. Before I move on to agenda item 2, does anybody have anything
25 of a burning introductory or preliminary nature that we really do need to deal
26 with now, because it won't potentially arise under the remainder of the agenda?
27 I'll just check to see if we have yellow hands, and I believe we do, so Mr
28 Lawson.

29 MR LAWSON: Yeah, morning, sir. Just a very brief one – and apologies if I've missed
30 this already – but on Friday there were some items that we didn't get to, and
31 item 9, delivery, was of particular interest to us. Here's the question: is that
32 going to be picked up today or subsequently?

33 MR SMITH: No, it won't. Just to flag, we will stick to agenda today, so we will be
34 dealing with development consent order matters today. What we did flag about

1 items that were not reached in the agenda on Friday – and indeed, this holds
2 good for all of the other issues that we didn't perhaps fully finish in the first
3 week of issue-specific hearings last week – was that we will roll them forward
4 into an event in either October or November. We've got two further rounds of
5 hearings. There will be issue-specific hearings in those and the agendas will
6 pick up any residual matters that need to be discussed, so that's how we propose
7 to deal with those.

8 MR LAWSON: Thank you, sir.

9 MR SMITH: Okay.

10 MR YOUNG: Mr Smith, you've probably seen that the applicant turned their camera on,
11 but just on the introductions, you may want to just – to go to them.

12 MR SMITH: I certainly will go to them now, so the applicant for introductions.
13 Apologies, I'm not doing very well this morning, am I? I think it's the
14 distraction of having a large amount of drilling outside the window; it really is
15 a little bit distracting, but anyway, apologies. Mr Latif-Aramesh, if you can
16 introduce the applicant team.

17 MR LATIF-ARAMESH: Good morning, sir. Mustafa Latif-Aramesh for the applicant.
18 I am a partner and parliamentary agent instructed by National Highways for the
19 Lower Thames Crossing. I have others in the room with me, but I don't expect
20 that they will speak, and if they do, I will introduce them at that moment.

21 MR SMITH: Okay, excellent. Thank you very much, and apologies for leaving you out.
22 So, ladies and gentlemen, let's move directly to agenda item 2, the purpose of
23 this hearing, and we initially discussed the draft development consent order at
24 issue-specific hearing 2, which was essentially an unpacking process where we
25 asked the applicant to walk us through their proposal for the draft order as it
26 stood at that time, and its main provisions were discussed and the Examining
27 Authority tabled a list of drafting considerations in annex A to the agenda for
28 that hearing that raised matters that we, as – on a preliminary basis had
29 identified.

30 There's been a considerable amount of water under the bridge since that point.
31 Other issue-specific hearings have been held, and so the purpose of this
32 issue-specific hearing is to serve as a monitoring point, where the Examining
33 Authority and the applicant will review the current condition of the draft DCO
34 in the light of matters bearing on it that arose from issue-specific hearing 2, and

1 from, to a degree, responses to written questions that might be in preparation
2 flowing from ExQ1, and from last week's hearings.

3 Now, what I would flag there is that the applicant might raise matters that
4 they wish to explore, because there are possibly multiple routes down which
5 they will travel and they want to ventilate something before, for example,
6 finalising the submission of a response to a written question. Obviously, part of
7 the exercise here is ensuring that any requested or necessary work to the draft
8 development consent order is on track, and it's also to provide an opportunity
9 for the applicant to ventilate any further changes to the draft development
10 consent order that they may be considering, but as yet there hasn't been a point
11 at which those can be surfaced and discussed.

12 Our intention is to structure the discussion into four main parts: (a) changes
13 to the proposed draft development consent order since ISH2, and the applicant I
14 would ask to be the primary contributor there, and we'll be turning to the
15 applicant shortly for them to introduce those. Then (b) changes not yet
16 submitted but under consideration, and again, the applicant, there, is intended to
17 be the primary contributor. And I think it's fair to say if necessary, if this part
18 of the agenda surfaces issues that interested parties and the Examining Authority
19 have not previously considered, then these may be matters that we might return
20 to in due course in a later issue-specific hearing in any case. Nobody is going
21 to be in any way ambushed.

22 Then (c) – and this is, as I've already flagged, probably the single most
23 important and substantial part of the hearing – matters arising from the
24 issue-specific hearings held last week, issue-specific hearings 3 through to 6.
25 And these will be matters flying through from those hearings where either we
26 specifically deferred a discussion of drafting implications for the DCO from
27 those hearings to this one, or there are matters that, on reflection from ourselves
28 and indeed from any of the parties here, bear on the DCO and need to be
29 discussed. And then a catch-all (d) any other matters relating to the draft
30 development consent order, which is an open opportunity for interested parties
31 to make observations that might assist the examination of the draft development
32 consent order moving forward.

33 Now, because the Examining Authority will make a recommendation to the
34 Secretary of State rather than a final decision on the application, we are under a

1 duty to the Secretary of State to provide the best possible draft order, with
2 reasons for our conclusions, irrespective of the recommendation that we made
3 to him, because even if he did not accept a principal recommendation from us,
4 he may wish to implement an order, so we are working essentially without
5 prejudice on our examination of the order, and similarly we say the same to you.
6 This means that you can use this opportunity to propose improving amendments
7 to the order, even if your main position in the examination is that the order
8 should not be made, and the Examining Authority will consider all positions that
9 arise without prejudice to each position.

10 Hopefully, this hearing will be over by some point close to lunchtime today,
11 because we do intend to hold further DCO issue-specific hearings in October
12 and November, so this is by no means the place for final or closing submissions
13 on the order. We should all be viewing it as a work in progress at this stage in
14 the examination, and then finally, it's useful for reference purposes if we all have
15 the same version of the draft development consent order before us. Now, Mr
16 Latif-Aramesh, I am working on the tracked changes version 4 submitted at
17 deadline 2, which is REP2-005. Would that accord with your view as to the
18 most recent version that we should be using?

19 MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh for the applicant.

20 There was a version of the DCO submitted at deadline 3, so that may be the
21 better version to be using for the purposes of our proceedings today.

22 MR SMITH: Okay, and apologies, there. I guess here this agenda was finalised before
23 deadline 3, so just let me go back into the library to deadline 3.

24 MR LATIF-ARAMESH: If it's helpful, sir, it's REP3-078

25 MR SMITH: 078. Right, thank you very much, Mr Latif-Aramesh. Let's all work on
26 that one. Just for the purposes of making sure – yes, so that's the version 5 with
27 tracked changes, so we will all be using the same references. Okay, that's on
28 the screen before me now. Okay, with no further ado, then, let's move onto
29 agenda item 3, and can I ask Mr Latif-Aramesh to introduce item (a), changes
30 that have been proposed to the draft development consent order since ISH2, and
31 if you can speak to the principal changes, Mr Latif-Aramesh, and then we will
32 seek any observations or comments from the assembled interested parties.

33 MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh for the applicant. Just
34 two preliminary comments before going through this agenda item. The first is

1 you'll be aware that at each deadline we have been submitting a schedule of
2 DCO changes document. The most recent iteration of that is REP3-137, and that
3 goes through all of the changes that have been made, with an explanation. The
4 second preliminary matter is just to note that, in general terms, the changes to
5 the draft DCO since the second issue-specific hearing fall into four categories.
6 The first is changes which give effect to the change applications before you. The
7 second is changes to land plot references, which merely reflect updated
8 information at the Land Registry. The third is my corrections, or
9 non-substantive changes to wording, which I don't propose to go through in
10 great detail, and then the last is the substantive changes.

11 Hearing what you've said about the structure of today and agenda item 3(c)
12 being the focus of the discussions, I would propose to just move onto the
13 substantive changes and not comment on any of the others.

14 MR SMITH: That's absolutely correct, and what I would say to anybody else is if there
15 are other matters of concern that are essentially non-substantive, if they relate to
16 the mechanics, put them in writing and it will come out in the wash, we trust.
17 So Mr Latif-Aramesh, just the substantive changes.

18 MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh for the applicant.
19 What we've sought to do – again in the interest of brevity – is bunch together
20 changes which are related, so that you can see why these changes have been
21 made in the round. The first relates to further consultation requirements. The
22 applicant has listened and considered carefully requests from parties who wish
23 to be consulted on relevant matters under the DCO, and this has led to an
24 addition of local highway authorities in the scope of requirements 3, 6, 7, 8 and
25 12. These were requested by Transport for London as well as the London
26 Borough of Havering. Relatedly, the London Borough of Havering requested a
27 definition of the relevant highway authority, which we have incorporated, and
28 that has had a knock-on impact on articles 10, 15, 17, 1 and 65. Requirement 8
29 has also been amended to include a requirement to consult the Environment
30 Agency, as well as the lead local flood authority.

31 Following the Examining Authority's steer, we've also amended
32 requirement 13, which relates to the replacement of Gammon Field travellers'
33 site to include a consultation requirement with existing occupiers of the
34 travellers' site that's currently in place. More generally, the applicant has

1 inserted on matters relevant to the relevant consultees' functions throughout, to
2 make clear the scope of any consultation.

3 The second substantive change that we've made is that all provisions which
4 apply a deemed consent have been amended so that the notification of the
5 operation of that deemed consent requires the application to include its effect,
6 noted in the relevant application. This was a request from London Borough of
7 Havering, and we note the London Borough of Havering, in their deadline 3
8 submissions, have suggested we go further in requiring that the deemed consent
9 to be conditional on that notification be included. We're considering that point
10 and we will provide an update at deadline 4.

11 Relevant to the discussions around commencement, we've also inserted a
12 definition of 'begin' in article 2 of the order. I think we've made quite a few
13 comments on this in our written submissions, and a number of interested parties
14 have also commented on that. Suffice to say that what we've said in writing is
15 that 'begin' covers those activities which we think are appropriate to discharge
16 the time limits requirement. We've also amended requirement 7 in the context
17 of the definition of 'begin', so that it makes clear that surveys can be carried out
18 without causing an issue, given the definition of 'begin' includes those surveys.

19 One further amendment – which might seem minor, but we think it's
20 important to draw to your attention – is the amendment of the definition of
21 'environmental statement'. Now, you'll know that we've submitted
22 environmental statement addendum, including at deadline 3. The definition of
23 'environmental statement' has been amended so that it refers to both the
24 environmental statement but the addendum as well. That's important because
25 where the environments statement is then referenced throughout the order, it's
26 taken as –

27 MR SMITH: As a whole.

28 MR LATIF-ARAMESH: That's right.

29 MR SMITH: Yes.

30 MR LATIF-ARAMESH: The next substantive change is article 3. Following comments
31 from the Port of Tilbury, a new provision has been inserted in article 3.4 which
32 excludes the Port of Tilbury's enactments from the operation of article 3.3. The
33 PLA in their deadline 3 submission – which we're still digesting – have
34 requested a consequential amendment to article 3.3. We will be making that

1 change at deadline 4. Article 6 has been amended since the second
2 issue-specific hearing to give effect to the depths of the tunnels which have been
3 agreed with the PLA, taking precedence over the limits of deviation. We
4 discussed that in detail at the fifth issue-specific hearing, so I won't spend too
5 much time on that. Article 8 has been amended to include a consultation with
6 the Marine Management Organisation, where the powers relating to deemed
7 marine licence are transferred over any other party pursuant to those provisions.

8 Article 12 and 13 have been amended, and just to be clear, article 12 and 13
9 relate to the use of streets and temporary closures of streets. These provisions
10 have been amended following comments from the Port of Tilbury about their
11 scope. The applicant has also amended the power to use private roads so that it
12 is confined to the construction period and it does not extend to the maintenance
13 period. The applicant is continuing to engage with the ports on construction
14 traffic management protocols, and there is a meeting which is scheduled and
15 we're confident that a resolution can be found on the port's outstanding issues,
16 so to that extent, we won't be providing detailed comments in relation to the Port
17 of Tilbury's other comments in their deadline 2 and deadline 1 submissions.

18 Article 18, which relates to the interference with the River Thames as well as
19 the – as well as water courses has been narrowed. In effect, what we have sought
20 to do is remove the reference to utilising those powers where reasonably
21 convenient, and they've been substituted so that there – it is a requirement that
22 they're only exercised where it is reasonably necessary in connection with the
23 authorised development. Article 32, which relates to amendments to the
24 2017 GDG regulations, has been amended following comments from National
25 Grid. The applicant considers it is fundamentally important that it is able to
26 expedite land acquisition for third parties, for example in relation to utilities
27 works as well as local roads and replacement open space. That amendment
28 that's been made gives effect to the ability to carry that out. An amendment was
29 made to this provision, as I mentioned, following a request from National Grid.
30 The applicant understands this provision is now agreed with them, and Thurrock
31 Council have recently clarified that they agree with these provisions as well.

32 Article 33 has been amended following a request from the Port of London
33 Authority about the scope of the power to acquire easements in restricted
34 covenants. In short, because article 48 – which relates to the protection of the

1 tunnel area – provides the relevant protections, the carve outs prevent the
2 acquisition of rights and imposition of restricted covenants over the riverbed.
3 Article 37, which relates to rights easements in connection with statutory
4 undertakers assets – just a preliminary comment on this. I’m mindful that we
5 have a compulsory acquisition hearing where we may want to return to this
6 particular provision, but in short, this is a new set of provisions that we’ve
7 inserted into article 37 in response to concerns raised by landowners. What these
8 provisions do is require the applicant to remove certain multi-utility and
9 overhead line works following the completion of distinct specified works. The
10 authorised development comprises a number of what are known as
11 ABC diversions, i.e. where the apparatus is diverted from A to B, and then later
12 to C. In such cases, these provisions confirm that the B apparatus and the rights
13 acquired in connection with them would be removed, and that the rights on –
14 when the rights are acquired in connection with the C works.

15 Article 43 has been amended. That relates to Crown rights. Following a
16 question from the Examining Authority, we’ve removed the reference to ‘take’.
17 Article 44, which is the power to operate and close the tunnel area has been
18 amended following comments from the Port of London Authority to make clear
19 that that power is exercised in connection with the applicant’s functions and its
20 capacity as a highway authority. We understand that that provision is now
21 agreed with the PLA. Relatedly, the PLA requested that the disapplication of
22 the Port of London Act 1968 in article 53 be limited to the functions of the
23 applicant in its capacity as a highway. That amendment has also been made.
24 The applicant is awaiting some wording from the PLA to incorporate into the
25 protected provisions which relate to this issue, but we’re confident that that
26 matter can be agreed swiftly.

27 Article 48, which I mentioned earlier relates to the protection of the tunnel
28 area, has been amended so that the disapplication of the explosive licence which
29 applies above the tunnel area only starts when particular works have begun.
30 Now, we note that the PLA in their deadline 3 submissions have requested that
31 that is amended, and I’m just flagging that we will be making that amendment.

32 MR SMITH: Right.

33 MR LATIF-ARAMESH: Article 55, which deals with the disapplication of local
34 legislation, has been amended following comments from the Port of Tilbury.

1 We note that the Port of Tilbury has signalled that they might want to suggest
2 some further amendments, but we're waiting to hear on precisely what those are,
3 but I think we're both agreed on the intention of the provision, which is a useful
4 position to be in. Article 61, which gives legal security to the stakeholder actions
5 and commitments register, has been amended so that where an application is
6 made to the Secretary of State to request a variation of a measure which is
7 secured under that document, it is not suspended. That was a request that was
8 made by the London Borough of Havering, as well as Gravesham Brough
9 Council.

10 Article 62, which relates to the certification of documents – the London
11 Borough of Havering requested that we amend the provision to require
12 notification to the local planning authority. We have done so. I note that the
13 London Borough of Havering in their deadline 3 submissions have requested
14 some further amendments to that provision, which we are considering, and we
15 will put forward our position at deadline 4. Article 64, which relates to
16 arbitration, has been amended following the Examining Authority's questions
17 as part of annex A of issue-specific hearing 2, in effect to make clear that a
18 decision of the Secretary of State is not subject to arbitration.

19 Turning to the requirements, requirement 9, which relates to archaeology –
20 following comments from the London Borough of Havering, we've removed the
21 tailpiece, i.e. the part that says 'unless otherwise agreed with the Secretary of
22 State'. On that basis, article 65, which relates to the appeals process, has been
23 amended to make reference to the local authority's determination under
24 requirement 9, sub-paragraph 4 and 5. An amendment has also been made to
25 requirement 16, which relates to the carbon management plan. That document
26 has always required a third iteration be submitted to the Secretary of State for
27 approval, so the amendment here just reflects what is already in that document.

28 Paragraph 20 of schedule 2 – which sets out the process of a consultation
29 carried out pursuant to schedule 2 – has been amended so that it refers to
30 'persons or bodies' rather than 'statutory bodies'. This follows a request that
31 was made by the emergency services, who were concerned that the reference to
32 statutory authority would exclude them. In light of the fact that the emergency
33 services – as well as, for example, the occupiers of the existing travellers' site –
34 are proposed to be consulted, that amendment has been made. And then very

1 finally, we've made a series of changes to the protected provisions, primarily in
2 relation to the ongoing dialogue and progress made with the Port of London
3 Authority and the Port of Tilbury. As I mentioned, we're still digesting
4 comments and we're actively engaging with the Port of Tilbury with a view to
5 agreeing their provisions.

6 I'm going to conclude my submissions now, but I wanted to make clear that
7 the applicant will be responding to any comments made at deadline 3 that we
8 have not addressed today in our deadline 4 submissions. You will appreciate
9 that we've been working on these in parallel –

10 MR SMITH: Parallel, yes.

11 MR LATIF-ARAMESH: – with the festivities of this week and last week, and I'm happy
12 to give an indication of what our view is on those, but you'll appreciate that the
13 full response will be given at deadline 4.

14 MR SMITH: Yeah. No, and that is, again, fully appreciated, and as I indicated before,
15 Mr Latif-Aramesh, this is a monitoring point. The idea that we have, principally,
16 about this particular event is that we gain a sense of the activity that is going on
17 and the progress that is being made, and in fact, I think it's fair to observe that a
18 very considerable amount of activity is going on, and what appears to be a
19 substantial amount of progress and indeed movement in relation to a broad range
20 of the issues that have been raised by both the Examining Authority and other
21 interested parties is entrained. So I'm very grateful to you for that set of
22 submissions under item (a).

23 Now, before we move on to item (b) under agenda item 3, what I would like
24 to do is to ask if there are any – particularly the named interested parties to whom
25 Mr Latif-Aramesh has specifically referred, indicating that the applicant's
26 position has changed in relation to a matter that they themselves had previously
27 raised. If there are any parties who wish to speak to the changes that have
28 occurred, or to assist us by giving a sense of their position being in some way
29 different from the position that Mr Latif-Aramesh has outlined – so the focus,
30 really, here, if you agree, there's probably nothing a great deal that needs to be
31 said, but if you disagree with that you've heard from Mr Latif-Aramesh, it'd be
32 really helpful to hear that now. So can I just see if we have hands arising? And
33 I do see Mr Bedford, and I do see Ms Dillistone, so I'm going to go to Mr

1 Bedford for Gravesham Council first, and I've also got Morag Thomson as well,
2 and I'll come to you after I've come to Ms Dillistone, so Mr Bedford KC.

3 MR BEDFORD: Thank you, sir. Michael Bedford for Gravesham Borough Council.

4 There are just two points, and I think the first of them does fall within the scope
5 of your invitation. The second is a very brief point, but I'll mention it, simply
6 to give the applicant the opportunity to hear it and, if necessary, respond to it.
7 So far as the first point is concerned, you will note – and this is a slight
8 complication of the documents – that if you're looking at REP3-078, because
9 obviously each track change version only shows the changes from the previous
10 version, there are things there which, as it were, don't appear to be a change, but
11 they are a change from either the original DCO as draft, DCO as submitted, or
12 as discussed at issue-specific hearing 2, and so you do have to slightly trawl back
13 through the track versions at IS – sorry, at REP1-043 and REP2-005, as well as
14 the document that we are now looking at.

15 The point that we just want to touch on – this is the first point – is that the
16 definition of 'begin', which appears on page 8 in article 2.1 – and that was a new
17 definition when it was introduced in REP1-043, and then there was an
18 adjustment to it, which was really a textual clarification which came in at
19 REP2-005, and it hasn't changed since REP2-005, which as I say, is why it
20 appears not as a track change in the REP3-078.

21 But sir, what you will see – what the applicant has decided to do in relation
22 to the various discussions that we did have at issue-specific hearing 2 about the
23 issues of beginning the development, commencing the development, and the
24 concerns that some of the authorities, including Gravesham had raised, what the
25 applicant has chosen to do is to link the beginning of the development for the
26 purposes of requirement 2 – so that is the legal requirement to begin the
27 development within a specified five-year period – they have chosen to link that
28 to the carrying out of preliminary works, which are material operations, and not
29 to link it to anything that might be more substantive by way of development.
30 And when you look at the definition of 'preliminary works', which is set out in
31 schedule 2, in the interpretation, paragraph 1 of schedule 2, the preliminary
32 works can include the erection of any temporary means of enclosure, and can
33 include vegetation clearance in connection with accesses which are being
34 provided for advanced compound areas.

1 And the issue of concern to Gravesham Borough Council is that this particular
2 development consent order creates a great deal of uncertainty within the
3 borough, particularly for future planning. And obviously if it's consented, we
4 have a level of certainty that there is a consent, but what we want to do is to
5 reduce, as it were, the period of uncertainty as to, 'Will it really happen?' to the
6 minimum. And we take the view that if all the applicant has to do to, as it were,
7 bank the development consent order for the purposes of the time limit – if all
8 that the applicant had to do was to put up, for example, a temporary means of an
9 enclosure associated with one of the preliminary works, or advance compound
10 clearance of vegetation to provide a site access, that may very well be sufficient
11 to be a material operation for the purposes of then the trigger, but it doesn't really
12 commit the applicant to having to have done very much, and therefore the real
13 uncertainty as to, 'Will it happen or won't it happen?' in reality, still stands. So
14 our concern, really, is to tie the obligation to begin the development in more
15 substantive terms to actually carrying out a real part of the development beyond
16 the preliminary works. So that's the –

17 MR SMITH: Yeah, in that respect, Mr Bedford, I mean you will recall the fairly detailed
18 conversation we had at issue-specific hearing 2, where, amongst other things,
19 the Examining Authority did challenge Mr Latif-Aramesh on this point, and he
20 gave quite an impassioned response to us around the degree to which the...
21 There may well be the need for some measure of clarification of the margins,
22 but the overall approach to the combination of the definitions of 'begin' and
23 'commence' was entirely purposive on their part, and that in a sense, they were
24 for clarifying but not for moving.

25 Now, we've heard from Gravesham, then, that you still have substantial
26 concerns, and this may end up being one of those matters that goes into the
27 adjudication box where the Examining Authority has to hear your position, hear
28 the applicant's position, and indeed hear positions from others. And in respect
29 of others, if there is any other particularly principal local authority who still
30 wishes to litigate this point, then it would be worth responding on it in writing,
31 even if you haven't come briefed today to deal with it. But to flag that this is
32 feeling to me as though it's a matter where yourselves and the applicant may not
33 agree, and I have seen that Michael Humphries' hand has risen briefly, I believe,

1 in relation, probably, to that item. So I will come to him before we end it, so Mr
2 Bedford.

3 MR BEDFORD: Sir, I understand that and I note that, and obviously it may well be that
4 the parties, i.e. Gravesham and the applicant, are not going to be on the same
5 page as this, but there we are. So, can I then just very briefly move on to the
6 second point, which may be a matter that is more capable of resolution, and it is
7 one of the changes that has been introduced, but it's a relatively minor issue.

8 It's in schedule 2 and in what is requirement 12 in relation to fencing, and
9 there is a change in the REP3-078 which simply, again, seeks to introduce a
10 clarification as to who is being consulted, but the point – if I can just draw to
11 your attention – is that this wording involves consultation by the undertaker with
12 a relevant planning authority, and then next word is 'or' in respect of the
13 authorised development, comprising highways other than a special road or a
14 trunk road, the relevant local highway authority on matters related to their
15 respective functions. And if I could then just ask you to contrast that with the
16 position in requirement 3 on detailed design, you have a consultation by the
17 undertaker with the relevant planning authority and – and I emphasise that word
18 – in respect of the authorised development comprising highways other than
19 special road or trunk road, the relevant local highway authority on matters
20 related to their functions. And similarly in relation to requirement 8, which is
21 dealing with foul and surface water drainage, and 8.2, and there, the
22 conservation, it's the Environment Agency, the lead local flood authority, the
23 relevant planning authority, the relevant local highway authority on their
24 respective functions. It seems to be all of them.

25 And so the simple point is, we're not quite sure why that requirement 12 –
26 it's an 'or' which opens up an ambiguity as to do only have to do one of them,
27 when in the others it's an 'and'. And as I say, that's a – it's a minor point, but
28 given that Mr Latif-Aramesh is here, he may say, 'Well yes, there's a reason for
29 that and here it is', or he may say, 'No, it's just a drafting point and it can be
30 picked up, obviously, outside of the hearing session.' Thank you, sir.

31 MR SMITH: Thank you very much, Mr Bedford. Now, I'm very conscious then, that
32 Mr Humphries did want to come in on that point, and I believe Mr Edwards for
33 Thurrock also wanted to come in on that point. I think we will take the two of

1 you on the point that was raised by Mr Bedford before I go to Morag Thomson
2 and then Alexandra Dillistone, so Mr Humphries, please.

3 MR HUMPHRIES: Yes, sir, and you correctly recall this does arise from a point that I
4 raised at issue-specific hearing 2, and although it may seem rather an arcane and
5 obscure point, it's actually rather important. And it arises out of the Swansea
6 Bay case in the Court of Appeal, which as I said, was a case that I did,
7 unsuccessfully, argue in for exactly the type of position that National Highways
8 are now arguing for, so until very recently, all DCOs – so over 100 of them –
9 haven't given a time limit on 'begin'. They've given a time limit on
10 'commence'. It's always requirement 2, and it was 'commence'. There was one
11 exception for that, one of the very first, the able marine one.

12 The point in Swansea Bay – and why this has come to the fore – is that on
13 behalf of Swansea Bay, I said, 'Well, we have begun the development, i.e., very
14 minor works in accordance with the sections in the act, and therefore because
15 we've begun it, the order is extant and therefore we should be allowed to apply
16 to extend the period for commencement.' The Court of Appeal just wasn't
17 having it. They said, 'We – yeah, it's a matter of policy. We don't want large
18 DCOs cluttering up the system, creating generalised blight, just because
19 someone has' – as you said to me in the issue-specific hearing 2 – 'dug a trench'.

20 And so on this DCO, National Highways dig a trench, and then that order
21 could not be – might not be implemented for 15 years, and they then come back
22 and decide to do it. All the environmental information would be wrong, because
23 the construction works would be in the wrong year, and so it was in that context
24 that the Court of Appeal said by defining that the works have to commence
25 within five years, that must have meant that they also have to begin, and the
26 works necessary to commence take over. You have to do substantial works.
27 You have to have discharged the requirements.

28 Now here, the effect of this order – as I asked Mr Latif-Aramesh to confirm
29 in issue-specific hearing 2, which he very kindly did – the effect of this order is
30 that those minor preliminary works could be undertaken. The order would then
31 be, as a matter of law, preserved. They would not have to discharge any
32 pre-commencement requirements. All the requirements that say, 'Before the
33 development is commenced, you must provide this plan' – wouldn't have to
34 discharge any of those maybe for 10 years, and you could then do it. And

1 ultimately, that's a matter for you and the Secretary of State, whether or not that
2 is acceptable, but I think that outcome – if I may put it like this – would be a real
3 surprise to the Court of Appeal, because that's not what they had in mind.

4 MR SMITH: Yeah. No, you're articulating strongly the proposition that if this does not
5 become a matter agreed between the parties – and it is increasingly looking as
6 though it isn't and won't be – that this does go into the adjudication box, and
7 you are therefore drawing out in front of us the issues that you believe we need
8 to give careful consideration to in a report of the Secretary of State.

9 MR HUMPHRIES: Yes, and it may go – I don't think it will be done in time, but I raised
10 the same point on the national Highways A12 scheme, where there I was acting
11 for Essex and the same issue has gone into the same box. I don't think they are
12 sufficiently far ahead that there will be a Secretary of State decision by the time
13 you report, unfortunately, but the issue – it is a live issue, if I may put it like that.
14 That's all I will say at this point, sir, thank you.

15 MR SMITH: Okay, thank you very much. I'm going to go to Mr Edwards, because Mr
16 Edwards – can check for Thurrock this is directly also on this point? Mr
17 Edwards?

18 MR EDWARDS: Yes, sir. Sorry about the delay. Yes, sir. As far as Thurrock's position
19 is concerned, it's entirely aligned with the position of Gravesham and of Kent
20 County Council, so you have Thurrock Council's representation submitted at
21 deadline 3. It's document REP3- 210, which includes submissions on this very
22 point. I'm not going to repeat the ones you've heard, but Thurrock Council is
23 very much aligned with the observations made by others for the reasons they've
24 given. All I would add, sir, to what Mr Humphries in particular has said about
25 the decision of this Court of Appeal in the Swansea Bay case – I too was
26 involved in that case on the other side to Mr Humphries, and what Mr Humphries
27 indicates about the position of the Court of Appeal, in terms of the acceptability
28 and appropriateness of the approach that is sought to be introduced to this DCO,
29 is entirely correct. We'll make some further representations on that in due
30 course. The observation I would make –

31 MR SMITH: On that point, Mr Edwards, and I make this point as much for
32 Mr Humphries' benefit as well. If you're going to refer specifically to the
33 judgment of the Court of Appeal in that case, then cite it, which, of course, then

1 gives the applicant a fair opportunity to pick it up and respond in their own
2 submissions in due course.

3 MR EDWARDS: Yes, indeed, sir, but the judgment is well reported. The applicant will
4 no doubt be aware of it. The only point that I would observe at this stage is that,
5 in that case, alongside Swansea Council, who I acted for in terms of opposing
6 the approach that Mr Humphries was promoting on behalf of the appellant in
7 that case and has now, essentially, used in this DCO, were the Welsh and
8 Westminster governments, so they too were making submissions to the Court of
9 Appeal, which, ultimately, the Court of Appeal accepted on the acceptability of
10 the approach that's now being used in this DCO.

11 And that may be a matter that might be considered to be of some relevance in
12 the adjudication of this point for you and your colleagues after undertaking due
13 course. I simply make that observation at this stage so as to flag it up, as it were,
14 both to you and to the applicants, and as with the other local authorities, we'll
15 make representations in writing about this. I think that's all.

16 MR SMITH: Thank you very much. Does that bring you to the end of the submission
17 on that particular point?

18 MR EDWARDS: It does, sir. Yes, thank you.

19 MR SMITH: Yes. Now, can I just check before you disappear on this agenda item? Do
20 I need to reintroduce you later? Are there other matters arising on this agenda
21 item that I need to come to you on? But I did see your hand go up specifically
22 for this, and I just wanted to check whether or not there were other matters
23 because if there are, I will return to you later, but if not, I will not.

24 MR EDWARDS: Yes, sir, there are likely to be matters under agenda 3(c).

25 MR SMITH: No, no, we're not – we're only in (a). We're only in (a).

26 MR EDWARDS: I know that. Insofar as (a) is concerned, we have no further points.

27 MR SMITH: You're done. Okay, brilliant. Now, looking at who else we then have with
28 raised hands, we have Ms Dillistone. We have Morag Thompson. We have
29 Nicholas Grant. Given that we have moved into this very particular, contested
30 discussion on points around begin and commence, can I just check with the three
31 of you – and I will go to Ms Thompson first, then Mr Grant and then
32 Ms Dillistone – is there anything further that you want to say on this particular
33 point? If, however, you have general submissions, we will then move on. So
34 I'll go to Ms Thompson first.

1 MS THOMPSON: Morag Thompson, London Borough of Havering. So, on the
2 particular point just being in discussion, we did make a submission in our
3 response on the begin issue in our reps, REP-3183, and have nothing further to
4 say on that.

5 MR SMITH: Okay, fine. Well, just before I allow you to move on into general
6 submissions on this, I'm just going to ask the same question of Mr Grant, and
7 I'm also going to ask the same question of Ms Dillistone, so, Mr Grant, are there
8 any observations that you need to make on the begin/commence controversy?

9 MR GRANT: Nick Grant from Natural England. Sir, no. It's an entirely separate point.

10 MR SMITH: Okay. Well, I will come to you very shortly then. And, Ms Dillistone,
11 before we close out begin and commence, can I just check, do you want to put
12 anything following Mr Bedford and Mr Humphries and Mr Edwards?

13 MS DILLISTONE: Thank you, sir. Alex Dillistone for the Port of London Authority. I
14 was going to say something about the definition of 'begin' on this point, but I
15 think the other people on the line have put that very clearly. And I don't think I
16 need to add anything further on that.

17 MR SMITH: So that is just a note of agreement.

18 Ms DILLISTONE: That is a note of agreement with the councils on that point. I do have
19 other points to make in relation to other parts of the DCO, but can deal with
20 those separately.

21 MR SMITH: Good. Well, we'll then move back through the three of you, who all have,
22 essentially, additional points to make. So could I then go to – where was I going
23 first? I think probably the best place to go is London Borough of Havering first,
24 then Natural England and then the Port of Tilbury, so could I go to London
25 Borough of Havering first, please?

26 MS THOMPSON: Thank you. Morag Thompson, London Borough of Havering. In
27 view of your explanation as to the nature of the hearing, I wasn't going to delve
28 into any detailed drafting points. And it'll be apparent from what
29 Mr Latif-Aramesh said, that there has been ongoing dialogue, mostly in writing,
30 through the deadlines, which has, to a degree, proved successful as far as we're
31 concerned. But there are still points that are not resolved –

32 MR SMITH: And it's those I'm particularly interested in.

1 MS THOMPSON: Well, sir, they mainly have been responded to today by saying that
2 they're the subject of further consideration, which we're hoping is a euphemism
3 for saying that there's going to be –

4 MR SMITH: Some movement in your direction.

5 MS THOMPSON: So I don't want to trouble you with those, so I was suggesting that
6 we would continue our dialogue through the deadline, next deadline. And then,
7 at that point, I think we will arrive at the position where there is no more
8 movement on either side. I can take you to all the outstanding points, but there
9 are several.

10 MR SMITH: Okay, well, I'm content to leave it as it is, subject only to the observation
11 that, of course, if we're still here in November hearings, and there are still
12 outstanding matters – and this is a general point that is not just for your benefit
13 but for the benefit of any interested party.

14 If there are still substantial numbers of outstanding matters that – or, indeed,
15 any outstanding matters at that point, what we will need to hear is what amounts
16 to final submissions on both sides, from yourselves and the applicant, on the
17 matter, so that we can then – as I've already indicated is likely in relation to the
18 begin versus commence point, which feels as though it's not moving towards
19 agreement – that we can then place some form of adjudicated resolution in a
20 recommendation before the Secretary of State, without the direction of travel in
21 relation to that being a surprise to any of you, and with all of you having had a
22 reasonable opportunity to, essentially, respond to the case against you. So that's
23 my intention.

24 If you're content to rest in the written process until November, I'm content to
25 leave you there, but this is obviously your opportunity to flag any matters that
26 feel as though they're not moving in the direction of a potential resolution.

27 MS THOMPSON: Well, sir, in which case, my problem is that will take some time. And
28 I'm anxious about your point that you say that this hearing's mostly to do with
29 the third agenda item, so it may be that your preference would be – let alone my
30 preference, your preference would be for us to continue it through dialogue and
31 writing.

32 MR SMITH: I think it probably would at this particular point, but I obviously did leave
33 it in your hands if there were highlights, major items, as, for example, that
34 begin/commence item clearly was for a range of good reasons. If there's

1 anything that is of that scale, then feel at liberty to surface the strategic
2 highlights. But let's not go laboriously through a very, very long list of matters
3 that could potentially resolve themselves before November.

4 MS THOMPSON: Yes, I think that, in which case, sir, there may just be one – apart
5 from the - let's take the Silvertown Tunnel issue separately because I think that's
6 going to be in the third item, isn't it.

7 MR SMITH: It is. We're going there again.

8 MS THOMPSON: Yeah. I think, therefore, there is the one point worth mentioning at
9 this stage, which is the use of the word 'substantially' in paragraph 10, which is
10 a requirement 10 of the DCO, where there is a requirement that the – and this is
11 a point that arises across the DCO requirement that the traffic plan should be
12 substantially in accordance with the outline traffic plan. A similar approach is
13 taken throughout. And there's been a dialogue in which we have said that the
14 word 'substantially' should not be used. And the response from the National
15 Highways is that they would wish to continue to use it.

16 And I just wanted to point out one relevant adjudication on this, which has
17 been undertaken by the Secretary of State and also by the Examining Authority
18 in relation to the M25 junction 28. And we'll put this in our written reps in more
19 detail, but there's a paragraph in the Secretary of State's decision letter in that
20 case where they consider – well, he considers whether or not the use of the word
21 'substantially' is appropriate when you have outline management plans which
22 are dealing with a very flexible scheme where the design detail hasn't been
23 agreed.

24 And if I may just read out part of a paragraph in the decision notice, and we'll
25 provide this for you. And this is – it's a London Borough of Havering concern
26 was that the words 'substantially in accordance' and 'must reflect,' which were
27 the words that we used there in requirement 4 and in other requirements. And
28 that's there principle concern.

29 The applicants state that 'These words should be retained to allow for
30 flexibility. The Secretary of State notes the Examining Authority's position that
31 it does not agree with the applicant that such wording is appropriate.

32 'While the detailed design stage may well result in some refinement of the
33 mitigation, the ExA's of the firm view that the CEMP secured by requirement
34 form must not be allowed to depart from the outline CEMP, other than in terms

1 of minor changes. The ExA considers that allowing the CEMP to be only
2 substantially in accordance potentially allows for a significant departure from it,
3 and “substantially in accordance” is not defined in the final draft DCO. The
4 Secretary of State notes that’ – I’m nearly finished – ‘The Secretary of State
5 notes that, in this examination, the ExA consider a greater degree of certainty
6 was needed and that it was therefore appropriate to use “in accordance”.

7 ‘In light of this, the Secretary of State agreed with the Examining Authority
8 that these terms should be removed from the order, so the Secretary of State
9 agrees with the removal of the “substantially” and must reflect from the other
10 requirements to ensure the documents that come forward are not capable of
11 departing from what has been examined in the application.’

12 Equally, I would suggest that applies to it, and the only point I would make –
13 further point I’d make is that it’s because the scheme is so fluid and is so flexible,
14 and these framework plans are so broad, that it’s even more important that these
15 are in accordance with those plans and not substantially in accordance because,
16 if you’re saying ‘substantially’, that allows more than minor changes which goes
17 beyond even the framework, and so that is one point to make but shouldn’t
18 diminish the other points. There’s still an issue between us on the DCO.

19 MR SMITH: No, and it doesn’t. And obviously, as you’re fully aware, everything that
20 is emerging in writing is of equal weight in our deliberations at this stage in the
21 process, so we look forward to receiving that other material. But it’s useful to
22 have that big ticket item surface, and it flags it into our thinking. Okay, I’m
23 going then to move to Nicholas Grant for Natural England next.

24 MR GRANT: Thank you, sir. Nick Grant for Natural England. This is quite a minor
25 point, and I flag it now largely because National Highways is obviously having
26 to respond to everything in writing, so this is just – Mr Latif-Aramesh mentioned
27 the insertion of clause 64(2) on arbitration. And you may have picked up in
28 writing, sir, that was something Natural England initially objected to.

29 MR SMITH: Yes, I did.

30 MR GRANT: On review, we think the concerns that were underlying our objection will
31 be better addressed by particular consultation requirements with us and the
32 Secretary of State when decisions are before him. We can pick that up outside
33 of this process or later, but, so, just for your note, we weren’t planning to

1 continue the objection to article 64(2) of itself. There are other ways to skin that
2 particular cat.

3 MR SMITH: Okay, noted. Right, in which case, Ms Dillistone, with apologies for
4 leaving you to the end.

5 MS DILLISTONE: Thank you, sir. Alex Dillistone for the Port of London Authority.
6 I'm very happy to be left to the end.

7 MR SMITH: Well, it does give you thinking time, doesn't it.

8 MS DILLISTONE: It does indeed – always a bonus. We've got several comments to
9 make which are on articles that are quite of a technical nature, and so I don't
10 plan on going through those in detail today. And we'll raise those in our written
11 submissions. And I'm also not planning on talking about things that we've
12 already spoken about which haven't changed, and those are in our written reps
13 and deadline 3 submissions.

14 MR SMITH: Absolutely.

15 MS DILLISTONE: And again, I should mention, as I have mentioned in a previous
16 hearing, but we do appreciate too, the applicant – sorry, we appreciate that the
17 effort the applicant has made to move things forward, and we hope that things
18 will continue in that vein. So, what I'll focus on today is just the items where
19 we either have additional things to add to what the applicant has already said
20 this morning or where we don't agree that position.

21 On article 2, in relation to the interpretation, we've heard about the points
22 about begin and commence. The only other thing to add from our point of view
23 is, in relation to the point you made earlier, sir, about the Examining Authority
24 being under an obligation to provide the best possible version of the order to the
25 Secretary of State. Now, just the background to this is that the PLA has made
26 an application for a Harbour Revision Order to substantially modernise the
27 powers and duties of the port under the PLA Act, the Port of London Act 1968
28 and other relevant local legislation.

29 That application was made in April 2020, and it remains with the MMO for
30 consideration. And it has been under consideration by the MMO for perhaps
31 more time than we would have expected. And whilst we hope that the HRO
32 would be made soon, we have no guarantee of that, and it is entirely possible
33 that the HRO will not be made before the DCO is made. We have to accept that
34 position, and so we've agreed wording with the applicant that deals with that.

1 But if the HRO is not made before the DCO, the wording in square brackets
2 will need to be removed. And I think we need – it would be helpful – and the
3 point which I wanted to draw to the Examining Authority’s attention was that,
4 when it comes to providing a version of the order to the Secretary of State, the
5 applicant should make very clear to the Secretary of State which wording is to
6 be removed because the drafting at the moment, if those words are not removed,
7 they will refer to a permitting regime which does not yet exist. So there is
8 wording in the order that is not applicable today.

9 MR SMITH: Okay. Just delving into that, I’m just trying to recall whether we actually
10 have a form of the draft HRO in front of us yet. I don’t believe we do.

11 MS DILLISTONE: I don’t believe you do either, sir. I can’t say that with 100%
12 confidence, but we have not submitted it, so I don’t think you would have – you
13 won’t have seen it. It is long, and I’m not sure how much help it will be to the
14 Examining Authority at this date.

15 MR SMITH: It may be very, very little help other than that, if it is before us, we can
16 expressly consider it. And even if all that consideration amounts to is awareness
17 of the fact that it’s there – put it this way. It may be an excess of caution on my
18 part, but I’d rather have it in the examination library and be able to expressly
19 refer to it if we need to, then not have it there, close, and then find, as we’re
20 deliberating on our final report, that, for some reason, we actually need to be
21 able to specifically refer to it, and it’s never been put in before us. And at that
22 particular point in time, there is no formal way in which we can go find it.

23 We have to deal with the recommendation on the basis of everything that’s
24 before us up to the point that we close. So, yeah, my sneaking suspicion is it’s
25 better put in.

26 MS DILLISTONE: That sounds very sensible, sir. Alex Dillistone for the Port of
27 London Authority. I think that sounds very sensible. It is on the PLA website,
28 and it is accessible, so anybody that wants to have seen it will have seen it. But
29 I appreciate that there’s a difference between that being part of the examination
30 library.

31 MR SMITH: There and in – yes.

32 MS DILLISTONE: Yes, so we can put that in at deadline 4. I’m very happy to do that.

33 MR SMITH: I will leave that for you. A note for my colleagues, that’s an action against
34 Port of Tilbury to submit that draft – and indeed, with a very brief covering

1 submission, just giving us the current position, as you're aware of it, in terms of
2 timing.

3 MS DILLISTONE: Thank you, sir. And without wanting to assign actions to Ms Dablin
4 and Mr Owen, that will be an action for the Port of London Authority rather than
5 the Port of Tilbury.

6 MR SMITH: Sorry. One of these days, I will not mis-name you. Apologies.

7 MS DILLISTONE: No, that's absolutely fine, sir. Thank you. The other point that I just
8 wanted to – other points that I wanted to cover, article 18, which grants the
9 applicant's powers in relation to relevant navigations and watercourses. The
10 applicant has made an amendment to article 18(1)(e) at deadline 2, which limits
11 the applicant's ability to interfere with rights over the river. Those are now
12 limited to those that may appear to be reasonably necessary, and we appreciate
13 that it is helpful. Thank you.

14 However, such interference can still occur anywhere within the river, and
15 from what we understand about the activity that will be going on in the river,
16 there's no real need for that interference to be quite so extensive. The applicant
17 has stated that their reason for including that article was to prevent mooring from
18 occurring within the order limits between now and when any order is made. And
19 we can see the need for that, but what the applicant has said it needs and the
20 drafting that we see in front of us don't quite seem to be at the same extent. And
21 so, in our view, this power should be limited to being within the order limits.

22 I've got two further – well, one further point, I think. On article 37, on
23 statutory undertakers, which relates to the compulsory acquisition of land and
24 acquisition of rights, that is something that we will want to raise on at the
25 compulsive acquisition hearings on Friday. Just to say that the applicant has
26 made some amendments to those, but we would like it to be made subject to
27 article 33, which provides limitations on the acquisition of subsoil for the tunnel.

28 MR SMITH: Okay, but we'll deal with that on Friday.

29 MS DILLISTONE: We will. Thank you, sir.

30 MR SMITH: Right. In which case, anything further to add, Ms Dillistone? And I do see
31 Robbie Owen, and this is Port of Tilbury London Ltd, I believe. Mr Owen.

32 MR OWEN: Yes, this is the real Port of Tilbury. Yeah, thank you, sir. Can I just raise
33 one point in relation to the discussion we've been having about the
34 disapplication of legislation? Mr Latif-Aramesh referred to the addition to

1 article 3, namely, the new paragraph 4, in relation to the Port of Tilbury's
2 enactments, and that indeed was an issue that you'll recall from our own
3 representation and written representation. And we were keen to see the DCO as
4 a whole not override, for obvious reasons, ports enactments.

5 We didn't, I don't believe, specifically advise on quite where we thought
6 the drafting should go because that's obviously a matter for the applicant. But
7 just in terms of clarity of understanding for everybody, I think the issue that the
8 applicant might wish to give a bit further thought to is this, that you have the
9 provision in article 3.4 that I've just mentioned, but it's expressed to be subject
10 to further articles, article 53, disapplication of legislative provisions and
11 article 55, which is headed 'Application of Local Legislation', but actually, I
12 think it is also 'Disapplication of Local Legislation'.

13 And it may be clearer, in fact, if what is currently article 3.4 might be
14 better housed, better located, in one of those later articles. It avoids the rather
15 tortuous logistics that I mentioned.

16 And a further point is that I think the logic is that article 53 is
17 disapplication of public general legislation. So, for example, the Wildlife and
18 Countryside Act 1981, the Water Resources Act, etc, whereas article 55 is all
19 about the disapplication of, as it says, local legislation. And it's not entirely
20 clear to us why the Port of London Act is dealt with in article 53 because the
21 Port of London Act 1968 is a local act – looking at the citation – and therefore,
22 it would be more logical for the reference, the provisions of the 1968 act in
23 article 53 to go to 55, I think. And it may be that the point in article 3 is also
24 better placed in article 55. Maybe that's a matter which we haven't raised with
25 the applicant to date that Mr Latif-Aramesh could take away and consider.

26 MR SMITH: Yes. No, those are clear points. Okay, now, I believe that we have come
27 then to the end of our oral submissions on agenda item 3(a), so I'm going to
28 provide the applicant with a –

29 [Technical disruption]

30
31 **(Meeting adjourned)**
32

33 MR SMITH: Good morning, everybody, and welcome back to this issue-specific hearing
34 number 7 into the draft development consent order in relation to the Lower

1 Thames Crossing. My name is Rynd Smith, panel lead, and I'll just hand over
2 briefly to my colleague, Mr Young.

3 MR YOUNG: Good morning, everybody. Dominic Young speaking.

4 MR SMITH: And to my colleague Ken Taylor.

5 MR TAYLOR: Yes, good morning, everybody. Ken Taylor, panel member.

6 MR SMITH: Thank you very much, colleagues. Now, just to check that we can be seen
7 and heard externally and that the recording and livestream have commenced. If
8 I can just check with the case team that that's correct.

9 PARTICIPANT: That is correct, yes.

10 PARTICIPANT: That is correct.

11 MR SMITH: Excellent. Two confirmations at once. Better than one. Thank you very
12 much. Now, if we then return, given the slight technical issues that we had at
13 the end of the last session, back to Mr Latif-Aramesh, and if I can just check, we
14 we're just closing out agenda item 3(a), and I was providing an opportunity for
15 the applicant to respond orally on any of the highlights of the issues raised.
16 Obviously, matters of detail can proceed in writing. Mr Latif-Aramesh.

17 MR LATIF-ARAMESH: Thank you, sir. Mr Latif-Aramesh for the applicant. I'm going
18 to keep it brief. I think there are only three or four things I'd like to say in
19 overarching terms. On the issue of begin, I think you've alluded to this, but our
20 position is set out in AS-089, REP2-077. Just very briefly, I think it's worth
21 addressing that we don't think that the Swansea Bay Tidal Lagoon judgment
22 precludes the approach that we're taking.

23 And indeed, following the High Court judgment, which was affirmed by
24 the Court of Appeal, the A428 Black Cat development consent order adopted
25 exactly the same approach that we have adopted, so we don't think there is an
26 in-principle issue with taking the approach that we have.

27 And I would just note that most DCOs refer to parts of the development
28 commencing in various requirements. And in that respect, because of the
29 disaggregation of parts, it allows you to do exactly what is intended by our
30 drafting of requirement 2. I won't say any more on that because I think you refer
31 to it as 'an impassioned plea', but I'll leave it at what I've said before.

32 MR SMITH: The critically important point, Mr Latif-Aramesh, we all know where we
33 stand on this, is you are fully alive to the case being put against you by others
34 and have had your full and fair opportunity to rebut it by whatever process, be

1 that orally here today or later in writing, knowing that if it's still unresolved, we
2 will have to take it away and give it very careful consideration on it's very
3 particular merits, as argued in front of us, which we will of course do. There's
4 probably little more to be said. So, moving on.

5 MR LATIF-ARAMESH: Sorry, Mr Smith, I had some other responses.

6 MR SMITH: No, I'm moving on to your other responses.

7 MR LATIF-ARAMESH: Thank you. Mr Latif-Aramesh for the applicant. The London
8 Borough of Havering have raised the issue around 'substantially in accordance'.
9 Again, this is dealt with in our written submissions. Two points just to make
10 briefly. The first is, following the M25, junction 28 DCO, I think six or seven
11 DCOs have been made, all of which use the phrase 'substantially in accordance
12 with'. There is a clear statement in the A47 Wansford to Sutton decision letter
13 stating that 'removing that phrase would fetter the discretion of the Secretary of
14 State.'

15 That whole process of discharging the requirements requires consultation
16 and approval by the Secretary of State, so we think there are appropriate
17 safeguards in place, and the reliance on the sole precedent in this context
18 shouldn't prevent the approach, and much more precedented approach, adopted
19 for the project here.

20 We're grateful to the comments from the London Borough of Havering,
21 Natural England and the PLA on the progress that we've been making on the
22 provisions of the order.

23 I think, just on the PLA's comments, we agree entirely on the position
24 relating to the prospective Harbour Revision Order, which is why we've put
25 them in square brackets. But we've also put a note in the explanatory
26 memorandum so that, at the point a decision is made on whether to make the
27 order, the explanatory memorandum will be signposting to the fact that this issue
28 would need to be determined. And just for Ms Dillistone's benefit, it's
29 paragraph 5.215 of the explanatory memorandums, so that's APP-057.

30 On article 18, the comment that was raised by Ms Dillistone is in their
31 deadline 3 submissions, and we're going to respond in writing, but, just in brief,
32 we think that the provisions are appropriately controlled and proportionate. The
33 first thing to note is that it does not permit the use of any part of the River

1 Thames for any reason. It has to be in connection with the authorised
2 development.

3 So, to that extent, it is spatially controlled, and in any event, the use of
4 article 18 is controlled by the PLA's protective provisions as it is a specified
5 function. So, if we were to exercise it, we would go to the PLA and, obviously,
6 seek their approval pursuant to paragraph 98 of those protective provisions. On
7 the issue of article 37, we'll leave that for Friday.

8 And then, just two final comments. Gravesham Borough Council raised
9 the concern around the use of the word 'or' in requirement 12, relating to
10 fencing. We'll take that away and have a look at what further assurance can be
11 provided in that context.

12 And then, very finally, the Port of Tilbury London Ltd, Mr Owen referred
13 to the fact that the intention of article 53 appeared to be that it was related to
14 public legislation, whereas 55 was about local legislation. That's not quite right,
15 because article 53 is intended to deal with legislation generally. It's a minor
16 point, but that's why the words – or that's why 'etc' is in the title of that
17 provision.

18 And the reason for why it's not in 55 and it's in 53 is simply because, in
19 negotiations with the PLA, we have carefully crafted the preamble to the
20 disapplication, but also the ongoing disapplication, whereas article 55 deals with
21 inconsistent pieces of local legislation in a different, more general manner. That
22 concludes my submissions. Thank you, sir.

23 MR SMITH: Thank you very much. In which case, then, can we move on to agenda
24 item 3(b)? Now this, Mr Latif-Aramesh, is very much yours. I have a possibly
25 vain hope that the answer is that there are no further changes in prospect that
26 we're not otherwise aware of. However, are there any?

27 MR LATIF-ARAMESH: Thank you, sir. Mr Latif-Aramesh for the applicant. We
28 wanted to highlight three particular changes to the draft order which we are
29 going to be making.

30 The first, Mr Henderson, at last week's hearings, referred to the fact that we
31 will be inserting protective provisions for the benefits of local highway
32 authorities. Just in terms of what they're going to cover, it will include a
33 mechanism for design input, the provision of detailed information, a requirement

1 to remedy defects in a 12-month period, and other requirements relating to
2 testing and road safety, as well as the transfer of land.

3 Just in terms of managing expectations – and I think we will return to this in
4 the next agenda item – and highlighting differences of opinion, I just want to be
5 clear that the applicant’s position is that these protective provisions will not
6 include an approval right, and commuted sums will not be included in the scope
7 of those provisions. We continue to engage on-site agreements, where local
8 authorities would prefer, but we wanted the Examining Authority to have sight
9 of our position so that, in making their recommendation, they could see very
10 clearly the applicant’s position.

11 The next change that we’re making, and I won’t go into this in detail, relates
12 to the tunnel depths, so, as we explain in the tunnel depth report, we are
13 proposing to change the reference point for the acquisition of subsoil to
14 Ordnance Datum Newlyn so that it’s static and gives further certainty that the
15 PLA are seeking in the future use of the River Thames. We understand the PLA
16 are generally supportive, but we’re waiting for their very final confirmation on
17 that point.

18 The third change to highlight is a new provision relating to the interface with
19 waste operations permits. As we noted at issue-specific hearing 2, the protective
20 provisions for the benefits of the Environment Agency are all agreed, with the
21 exception of one paragraph. In order to move matters forward with the
22 Environment Agency, we are proposing to remove that sole, unagreed provision
23 from the protective provisions and insert a new article which provides further
24 information on this issue.

25 By way of background, there are a limited number of instances where the
26 authorised development would overlap with sites which are subject to existing
27 waste operations permits. These are existing operations, but where the project
28 proposes to use part of the land.

29 Just to be clear, the applicant is not proposing to disapply the requirement to
30 obtain an environmental permit in respect of its own works. Instead, it’s seeking
31 to manage the interface between the proposed works under the order and existing
32 operations. The paragraph – as it’s currently in the draft order before you, in the
33 Environment Agency’s protective provisions, it’s paragraph 116,

1 sub-paragraph 5 – seeks to disapply those permits insofar as it’s inconsistent
2 with the powers under the DCO.

3 Now, we’re not simply proposing to copy and paste that provision out of the
4 Environment Agency’s protective provisions and put it into the order. Instead,
5 we’ve listened carefully to the concerns of the Environment Agency as well as
6 existing permit holders. And the new article would set out further specificity
7 about the permits which are proposed to be disapplied and provide further
8 protection by requiring the applicant to produce a written scheme setting out
9 equivalent protections on monitoring, access, as well as measures for the
10 avoidance of pollution risk specific to the sites in question.

11 We’re actively engaging with the Environment Agency and a number of
12 interested parties with permits, but we wanted to provide sight to the Examining
13 Authority on these provisions as soon as possible.

14 In short, this new article aids certainty in three key areas. The first is ensuring
15 that the Environment Agency has clarity on its enforcement powers under the
16 Environmental Permitting Regulations. The second is ensuring there is clarity
17 about the controls which apply to land inside the order limits, notwithstanding
18 overlaps with an area subject to any existing permits, and finally, ensuring that
19 operators whose sites and operations are carried out outside of the order limits
20 can continue those operations without the risk of enforcement action in respect
21 of the applicant’s works.

22 I don’t propose to go through that in any further detail, but we will be
23 providing a fuller legal justification of those provisions, and we’re hopeful that
24 they can be agreed.

25 And then, very finally, under this agenda item, I’ve already mentioned that
26 we are likely to be updating the protective provisions in response to the ongoing
27 dialogue, which we found very productive and were grateful for, with the Port
28 of London Authority and the Port of Tilbury.

29 MR SMITH: And indeed, in respect of protective provisions, I’m sure there will be, if
30 necessary, further discussion of those under agenda item (c), as they are clearly
31 a matter of arising, so I certainly intended to raise them, so I don’t need to cover
32 detail here. Anything else Mr Latif-Aramesh, or is that the least?

33 MR LATIF-ARAMESH: No, thank you, sir. That was it.

1 MR SMITH: Okay, so what I'm proposing now is, very briefly, if there are any interested
2 parties directly affected by those prospective changes, for whom they are
3 somehow a surprise or they have a different take, a different dimension around
4 the issues that Mr Latif-Aramesh spoke on that they want to draw to our
5 attention, then do please come in. But otherwise, hopefully, everything else
6 reserves then through to agenda item 3(c). Now, I'm seeing that we do have
7 two requests, and we have the Environment Agency, which is unsurprising, so
8 I'm going to ask the Environment Agency to come in first on this item. So,
9 Ms Bolt.

10 MS BOLT: Thank you, sir. Carol Bolt for the Environment Agency. I'll be brief, sir.
11 Unlike you, I am surprised, although that may be partly because I've been on
12 holiday for two weeks, but I –

13 MR SMITH: A lot's happened in the last two weeks.

14 MS BOLT: Yes, I can see that, sir, from my emails. And I should say, regarding the
15 paragraph that Mr Latif-Aramesh has mentioned, that's really – it is surprising,
16 but welcome news that it's being taken out of the protective provisions because
17 I can now confirm those are agree. And I'm sure that we're going to be – that
18 there'll be more discussions.

19 What I should say is that a colleague of mine, who's a waste [inaudible]
20 specialist, has been in discussions with one of Mr Latif-Aramesh's colleagues,
21 and those discussions have been going on for a little while, and we're very
22 hopeful that we'll continue having constructive discussions. I should say that I
23 am doubtful that we will come to agreements on this. But I haven't seen the
24 detail of what Mr Latif-Aramesh is proposing, and obviously, I'll need to talk to
25 my colleague about that, so that's very welcome news.

26 And we will obviously have a look at what's being put forward and go back
27 to the applicants on that, so thank you to Ms Latif-Aramesh for that. And we
28 look forward to receiving that information. I think I'm right in saying that we
29 haven't received it as yet, because I did make a point of speaking to my colleague
30 who's been dealing with that side of things before this hearing yesterday, and
31 she wasn't aware of it, so I'm sure we will be.

32 MR SMITH: And in all fairness to Mr Latif-Aramesh, I mean, this was an agenda item
33 with distinct scope for surprise because it specifically asked the applicant to
34 shine the torch forward into the darkness and to show us things that they had on

1 their desk that they maybe haven't even yet shared with any interested parties.
2 So, hopefully, no harm done, and it's useful forward intelligence. And we look
3 forward to receiving your response in due course, and hopefully, it remains as
4 positive as it appears that it currently is. Anything further, then, for the
5 Environment Agency?

6 MS BOLT: No, thank you, sir.

7 MR SMITH: Thank you very much. In which case, I'm then going to go to the London
8 Borough of Havering and Ms Morag Thompson.

9 MS THOMPSON: Thank you, sir. Morag Thompson, London Borough of Havering.
10 Just a short point, sir. We circulated some protective provisions for local
11 highway authorities in late July. We've had no response to those from National
12 Highways. I just wondered whether, through you, we could seek some assurance
13 that we'll get some protective provisions issued quickly so that some drafting
14 can be discussed quickly because there's some way to go on that, I suspect.

15 MR SMITH: And further to that, that was going to be a specific item from me in agenda
16 item 3(c) because it was a matter that did arise in the issue-specific hearings last
17 week, so we're going there again, rest assured. Okay, is there anything else from
18 yourselves? No. In which case, I will go to Ms Dillistone for Port of London
19 Authority. Please let me have you represent the right body this time,
20 Ms Dillistone.

21 MS DILLISTONE: Thank you, sir. Alex Dillistone for the Port of London Authority.
22 We've heard from the applicant about article 33, and how we're in discussions
23 on that, so I won't say anything further on that today. And the only other point
24 that I wanted to talk about, changes that we're talking about that are under
25 consideration, are potentially an amendment to article 53, this application of
26 legislative provisions.

27 The PLA and the applicant have been discussing the issue of apparatus
28 being placed in the tunnel that is not needed for the road, so, for example,
29 telecom's equipment. Usually, the PLA would grant a river works licence for
30 that, and article 53, as it is currently drafted, would prevent the PLA's normal
31 river works licensing from being applied.

32 There's been helpful recent discussions with the applicant, which have
33 resulted in the applicant confirming that they do not dispute the right for the PLA
34 to demand a river works licence from utilities who wish to place their apparatus

1 in the tunnel. So we are discussing – we’re aligned on that principle, but we
2 haven’t yet reached agreement on the drafting, so that is still being discussed.
3 We hope we’ll reach agreement on that shortly, but just to place a marker there
4 at this stage. We’re not quite there yet.

5 MR SMITH: Okay. Right, thank you very much. Now, I’m not seeing any further
6 yellow hands, so, on that basis, I take it that we have come to the end of
7 contributions from interested parties on agenda item 3(b), and so I will just
8 return to Mr Latif-Aramesh. If there any closing out matters that he wishes to
9 put in front of us.

10 MR LATIF-ARAMESH: Thank you, sir. Mr Latif-Aramesh for the applicant. Just three
11 comments in brief. On the new article relating to the waste operation permits,
12 we had a meeting, which I appreciate Ms Bolt was not able to attend, last week,
13 going through the introductory elements, but we will, of course, share the draft
14 position, and it will be in the deadline 4 iteration of the draft order.

15 On the London Borough of Havering’s request to see the protected
16 provisions, just to confirm, our preferred set will be going in at deadline 4, and
17 we’ve taken the decision to include them, in part, as a response to the London
18 Borough of Havering submitting their preferred set; and then finally, I will only
19 agree with what Ms Dillistone said: the principle that she refers to is agreed, and
20 we are just waiting for some drafting to be inserted into the protected provisions
21 to close out the issue. I don’t anticipate that being a protracted matter.
22 Thank you, sir.

23 MR SMITH: Thank you very much. That then brings us, I believe, to the end of agenda
24 item 3(b). So we are now moving to agenda item 3(c), which I’m very conscious
25 for those of you in the room is somewhat paperless, because it does flow on from
26 matters that arose at the issue-specific hearings held last week.

27 So what I’m proposing to do, with reference to notes that myself and my
28 colleagues have formed on issues that bore on the development consent order,
29 emerging from those hearings, in hearing order, so starting at issue-specific
30 hearing 3, then going 4, 5, 6, to walk through, again, the strategic highlights, the
31 major items, because if there are minor items, we will reserve them to be dealt
32 with either in the further round of written questions, or alternatively, the
33 Examining Authority’s written commentary on the draft development consent
34 order in due course.

1 So we'll be looking at the major items in hearing order, and so if we start
2 with issue-specific hearing 3, the first item on my 'majors' list there is the
3 outstanding item of local highway authority protected provisions, and indeed,
4 the question of the prospect for payment of commuted sums to local highway
5 authorities around the issue of their maintenance of structures formed that
6 formed as part of the project.

7 So we've heard some of the story there, but we clearly haven't heard all
8 of it. So Mr Latif-Aramesh, I'm very conscious that this is an act of jugglery,
9 but is there anything else in relation to your position there that you haven't
10 already drawn out that we need to cover before I open this up to contributions
11 from other interested parties?

12 MR LATIF-ARAMESH: Thank you, sir. I think, with your permission, I'd just like to
13 summarise our position on the issue. So the applicant is a strategic highways
14 company. It's not a highways company, and it is not responsible for the local
15 highway network. That falls to local highway authorities themselves.

16 Under National Highways' licence, issued by the Secretary of State, in
17 Exeter, it has the statutory responsibility only for the strategic road network. In
18 particular, in exercising its functions and duties in relation to the strategic road
19 network, the applicant must act in a manner which it considers best calculated
20 to ensure efficiency and value for money, and must demonstrate how it has
21 achieved that value for money.

22 Accordingly, the applicant does not consider it is appropriate for a public
23 sector body delivering nationally significant infrastructure, which will have
24 significant economic benefits, to be liable for the payment of commuted sums
25 or ongoing maintenance costs. The applicant notes that the funding for the
26 operation and maintenance of the local road network is a matter which ordinarily
27 forms part of the DfT's funding decisions. The applicant considers it is
28 appropriate that maintenance of roads, which will form part of that network, is
29 a function which is discharged by the local highway authority as a part of that
30 process.

31 Local highway funding is mainly based on a formula linked to the total
32 mileage of A roads, B roads, and C roads, and unclassified roads in each area,
33 together with a number of bridges, lighting columns, etc. The funding is
34 refreshed every three years to take into account changes in the road length and

1 the number of highway structures. Accordingly, as local highway works carried
2 out under the order will be amended, those additional responsibilities will be
3 recognised as part of that process.

4 Given that this process already exists, it's not appropriate for it to require
5 the applicant to provide funding for the maintenance of part of the local road
6 network, and to provide further – sorry – which would require the applicant to
7 provide funding for part of the local road network out of the money given to
8 maintain the strategic road network.

9 The applicant notes that it is making a significant and substantial capital
10 contribution to the delivery of these assets and this project, and in light of those
11 existing arrangements, it doesn't consider it appropriate to have an ongoing and
12 indeterminate responsibility. The applicant's position has been endorsed across
13 a number of projects. Accordingly, insofar as the project involves the councils
14 incurring further expense, this is a matter between the DfT and the relevant
15 council, particularly in light of that context that I've mentioned about the
16 significant capital contribution in delivering new or altered parts of the local
17 road network.

18 MR SMITH: Okay. Can I just follow that up? I mean, I had a significant question on
19 that, which was, in a nutshell, have there been any instances at all, of which you
20 are aware, in which National Highways, or any of its predecessor bodies
21 responsible for the management and development of the national highway
22 network, have ended up paying commuted sums to support the maintenance of
23 structures formed as part of the local road network, or the right of way network,
24 as a consequence of developing a national highway?

25 I mean, you might have to take that on notice and come back, but if there
26 are any instances – and I will express now the same question to the local highway
27 authorities. If they are aware of any instances in which that has been true, can
28 they please draw those instances to all of our attention at the following deadline?
29 So that's essentially an action on both sets of parties in this.

30 I mean, if you can deal with that here and now, fine, but I suspect it'll need
31 to follow in writing.

32 MR LATIF-ARAMESH: Thank you, sir. Mr Latif-Aramesh for the applicant. There
33 are two instances I'm aware of: the A303 Sparkford to Ilchester project, and the
34 M25 junction 28 project has a limited set of provisions relating to commuted

1 sums. For the reasons I've given, we think the approach that's adopted for this
2 project is appropriate, but if you wanted an answer now, those are the two
3 examples I'm aware of.

4 MR SMITH: Okay, right. Again, if, when you're putting in your written submissions on
5 this, you could run to a little bit more detail and draw our attention to those
6 particular instances of commuted sums having been paid, be clear why they were
7 paid and what for, what is different now, what the considerations that apply in
8 the generality of cases that you've outlined very clearly would indicate your
9 view that the general funding mechanism does apply and ought continue to
10 apply, but yes, getting a sense of the distinction between this and those two
11 cases, and why, in those two cases, commuted sums were deemed to be
12 appropriate would be very, very useful indeed.

13 MR LATIF-ARAMESH: Sir, if I may, I think this might be the appropriate time, just
14 because you're raising it in the context of issue-specific hearing 3, to just provide
15 some detail, specifically about green bridges, but I'll only do that if you're –

16 MR SMITH: Yes. No, I am, and that was going to be my next question, so let's deal
17 with that.

18 MR LATIF-ARAMESH: Thank you, sir. So under article 10 of the draft order, there are
19 provisions which relate to the transfer of maintenance liability, in respect of both
20 structures and the local road network. Article 10 specifically sets out how
21 maintenance liability for roads is proposed to operate. In effect, the applicant
22 would have the maintenance liability for the strategic road network, as well as
23 structures over the strategic road network. Local authorities would have the
24 maintenance liability for local roads, as well as structures themselves which
25 project over local roads. Those latter roads, which are effectively handed back
26 to the local highway authority, must be provided to them to their reasonable
27 satisfaction.

28 As I explained earlier, we have protected provisions which we are
29 submitting, which had a further layer of process around this handover process.
30 We know there was a specific concern about the maintenance liability for green
31 bridges.

32 So applying what I have set out, National Highways would be responsible
33 for maintaining the structure of green bridges over the strategic road network.
34 The local highway authority would be responsible for maintaining the surface

1 of the highway. That obligation is augmented by the prospective protected
2 provisions, which will allow for design input into those highways, the detailed
3 design and implementation stage, the outline landscape and ecology
4 management plan, which is secured under requirement 5, will be capable of
5 being delivered through agreements which may be reached with local highway
6 authorities.

7 The applicant notes that article 10 is explicit in transferring the liability of
8 the highway, and separately, the surface of the highway. In the applicant's view,
9 this does not extend to planting and vegetation either side of the highway. In
10 other words, the liability for these elements will be secured, and the legal
11 requirement to maintain them in accordance with the landscape and ecology plan
12 will fall on the applicant in the absence of any agreement with the local
13 authorities. We are considering –

14 MR SMITH: That remains an ongoing, essentially, undertaker/National Highways
15 obligation, in your submission, and so if we do a little thought experiment, and
16 we talk about a green bridge that is, say, notionally, 40 metres wide, of which,
17 say, 10 metres formed a public right of way or highway, the remaining 30 metres
18 of landscaping would, in default, be managed by the undertaker for the enduring
19 life of the asset.

20 MR LATIF-ARAMESH: That's correct.

21 MR SMITH: Okay. Right, and that will be secured how?

22 MR LATIF-ARAMESH: So as I mentioned, we think that the transfer of maintenance
23 liability, under article 10, already signals that, because it only transfers the
24 highway, rather than the vegetation either side of the highway, and under
25 requirement 5 specifically, there is a requirement, obviously, to prepare a
26 landscape and ecology management plan in accordance with the outline
27 document, and that itself secures the ongoing monitoring and maintenance of
28 ecological and landscape matters, including the vegetation on either side of the
29 highway which forms a green bridge.

30 MR SMITH: I will ask for submissions on this point from those representing local
31 highway authorities. There is a kind of residual concern in the bottom of my
32 mind, which is the fact it may be eminently clear now, Mr Latif-Aramesh, but
33 such matters of boundary of jurisdiction, so to speak, do have a tendency to get
34 forgotten in 30 years' time, and whether there is an argument for some additional

1 words on the face of the article, which, although they might be argued to be
2 superfluous now, well, now we all know what we mean. We're all sitting in the
3 same room together.

4 I suspect, if this were ever to become an issue, it would become an issue
5 in circumstances where all of us are either retired or working on different things,
6 and nobody could remember the discussion that's been had today. So that's an
7 observation I'd make. I'd be interested in your response to it, and indeed, I'll be
8 asking the local authorities to respond on that point as well.

9 MR LATIF-ARAMESH: Sir, just to confirm, we are very mindful of that fact, and we
10 are considering whether changes to article 10 would provide the assurances
11 being sought, so point fully noted and understood.

12 MR SMITH: Okay. Thank you very much. Are there any matters that you believe we
13 need to deal with under the broad remit of local highway authority protected
14 provisions, and particularly the issue around commuted sums, and then, flowing
15 on from that, the discussion about green bridges? I think we're complete. I'll
16 just check with my panel colleagues to see if there's anything else that they
17 wanted to throw into this. No, I'm not – ah.

18 MR YOUNG: No, Mr Smith. The question I had was about precedence, which you
19 covered and parties will come back to us on that, so I haven't got anything
20 further at this stage.

21 MR SMITH: Thanks. Mr Taylor, was there anything else? No.

22 MR TAYLOR: No, I'm content at this stage.

23 MR SMITH: Excellent. Thanks very much. In which case, we're going to go through
24 this issue by issue. I've got a couple of other issues on issue-specific hearing 3,
25 but before we go to them, I will open this up to other interested parties who wish
26 to make observations on it. Principally, I would suggest these will be those
27 representing local authorities, and particularly those which are local highway
28 authorities, and I do see London Borough of Havering, and I do also see
29 Transport for London, and I see Kent County Council. So let's go to Kent – oh,
30 and I also see Douglas Edwards for Thurrock Council. Let's go to Kent, then
31 Thurrock, then London Borough of Havering, and then finally come to Transport
32 for London. So Kent first. Mr Humphries.

33 MR HUMPHRIES: Thank you, sir. Can you see me? Yes.

34 MR SMITH: I can, and thankfully, you have started to move.

1 MR HUMPHRIES: Yes. Sir, I could see that I had frozen, which was obviously just a
2 connection problem. So two or three points here that you've raised, and the first
3 one about local highway authorities, protected provisions and payment of
4 commuted sums, and National Highways' response on that.

5 I mean, it is fair to say, as Mr Latif-Aramesh has pointed out, that there
6 are few examples of commuted payments in May DCOs, but there are two very
7 obvious reasons why that would be the case. Very obvious reason one is that
8 it's only in the draft revised national networks NPS that the government has
9 introduced the text on funding where that may be an appropriate way of dealing
10 with wider network impacts, and that document only came out in March 2023,
11 and therefore, nearly all DCOs will predate it, and therefore, it's not surprising.

12 The second point, actually, in a sense, is revealed from one of Mr Latif-
13 Aramesh's earlier comments, where he said, 'Yes, we'll be drafting protected
14 provisions, but I can tell you that they won't contain any commuted payments.'
15 That is entirely standard National Highways practice, that they don't put these
16 things into protected provisions or the order. What they do is they have side
17 agreements, and of course, you don't have sight of all the side agreements that
18 may or may not have included payments. What is, therefore, in a sense, almost
19 slightly remarkable is that we have as many examples as two.

20 I don't know whether there are any beyond that, but the two where you do
21 have commuted payments on the face of the order – in a sense, with what had
22 been the NPS and National Highways' own position, you wouldn't actually
23 expect to have any at all, and this is clearly where inspectors expected this. What
24 that tells you, however, is the Secretary of State who made both of those orders
25 does not see any, in principle, objection to having commuted payments to
26 highway authorities on the face of the order. Nor, therefore, is there any in-
27 principle objection in the light of National Highways' own licence to such
28 payments being made.

29 Now, I won't rehearse all the arguments we made last week why we say
30 that such payments may be an appropriate way forward.

31 Next thing I would just briefly say that is, of course, in our written
32 representations, and it was traffic impact K, both in the LIR and the written
33 representations, we did put forward draft wording to deal with improvements to

1 the wider network – whether it be Orsett Cock north of river or Blue Bell Hill,
2 or other locations, we have put forward wording.

3 One of the problems, obviously, for us and for others, but also in a sense,
4 sir, for you, is because National Highways reject those as a matter of principle
5 that they should, in some way, remedy those issues or mitigate those impacts,
6 they do not engage with any of the drafting, and therefore, you will get towards
7 the end of this examination where you may decide there is a need for some form
8 of mitigation, but you have no wording.

9 Therefore, I do urge you, clearly on a without-prejudice basis, to ask
10 National Highways that, in the event that you do not agree with them, that no
11 mitigation is required for those things, that they provide, and if possible,
12 obviously, agree with other parties, specific wording. Now, we have tendered
13 some, and we're more than willing to negotiate that, but clearly, the burden for
14 drafting new provisions should be on National Highways.

15 Third, and very short, point arising from the things earlier, the green
16 bridges – this was, in part, an issue that I raised last week on article 10, and the
17 language about the highway surface being ‘those elements over the
18 waterproofing membrane’ and what did that mean – ‘Does the waterproofing
19 membrane extend beyond the hard surfaced highway into the highway verges?’
20 – sir, in my respectful submission, your proposed approach of, ‘Look, can we
21 have some clarification of what is and what is not to be maintained by the county
22 council?’ is welcomed, and also welcomed, National Highways’ indication that
23 they are looking at that.

24 So I think on that one, one would hope there could be some sort of move
25 to an agreed position – certainly, with us.

26 Those are the three points from the things you've raised so far that I would
27 comment on. I won't raise additional points at this stage.

28 MR SMITH: Yeah, okay. What I would just pick up briefly from that is the whole matter
29 of side agreements, because, as Mr Humphries very correctly identifies, they are,
30 to a degree, behind a curtain, and they are private legal agreements between
31 parties that we do not, and indeed, publicly, nobody apart from the contracting
32 parties, has a basis for seeing the detail of.

33 What, however, has been done in a number of previous examinations is
34 merely to observe that where side agreements are concluded that are being

1 prayed in aid by the applicant as addressing a specific effect or harm or issue
2 that is relevant to policy, and it is therefore being suggested that the Examining
3 Authority should reassure itself that a matter is solved or fixed, and recommend
4 to the Secretary of State accordingly, that it is important that we end up with,
5 essentially, a statement between the contracting parties to a side agreement that
6 comes in front of us that says, 'There is a side agreement to achieve objective X
7 or Y,' that, 'It has been formally concluded,' and that, 'There is therefore no
8 impediment to its implementation,' and that, 'Therefore, you, and critically the
9 Secretary of State, can then rely on the fact that it fixes the matter arising
10 under...' whatever the policy is, etc.

11 So that's the position that I was going to suggest we move to here, and it
12 was going to be a general point that I was going to speak to flowing out of all
13 such matters across the issue-specific hearings that might be driven into the
14 territory of side agreements. So unless anybody objects to that, that's the way
15 in which we would like to see that side of things put in front of us, so that, if
16 needs be, we can rely on material, in terms of the effect of the side agreement,
17 even in circumstances where we don't see the detailed side agreement.

18 MR HUMPHRIES: Sir, that seems eminently sensible. The problem is that because that
19 has not been the practice over the last 10, 12 years, we simply don't know
20 whether side agreements have ever had financial provisions in them, and my
21 simple point is that's, of course, why you do not see them very often on the face
22 of DCOs, because, as Mr Latif-Aramesh said earlier, in relation to the protected
23 provisions, we're not putting in commuted sums.

24 MR SMITH: Yeah, no. There is somewhat of a double-bind here, but yeah, merely the
25 observation that, in terms of making practice better if we can, if we are in a
26 position to understand that certain things are 'solved' in the views of parties,
27 better to know that than not and better therefore to have something on the face
28 of the examination library that stands for the proposition that the issue has been
29 addressed, rather than having nothing at all.

30 So that's where, I think, that goes. So anything further, Mr Humphries, or
31 are you done and can I move onto Thurrock?

32 MR HUMPHRIES: All done from me on that set of issues. Clearly, you said you were
33 going through things that arose during issue-specific hearing 3, and you've

1 mentioned some of them. I assume you will perhaps come onto some of the big
2 junctions that we discussed –

3 MR SMITH: I have junction and mitigation issues that actually bridge across issue-
4 specific hearings 3 and 4. So –

5 MR HUMPHRIES: I will re-join the conversation at that point, sir.

6 MR SMITH: I'll be coming to them. Mr Edwards.

7 MR EDWARDS: Yes, sir. Thank you, sir. Douglas Edwards for Thurrock Council. Sir,
8 as you'll be aware, one of the principle concerns relating to the protected
9 provisions of Thurrock Council was the absence of any defects period. That is
10 the period in which National Highways will remedy any defects that become
11 apparent in it, the structure, and hand it back, as it were, to the local highway
12 authority that becomes apparent subsequently. So we're grateful to hear that
13 National Highways are considering provisioning of a defects period, and Mr
14 Latif-Aramesh confirmed that in response to agenda item 3(b), and we'll await
15 to see what form that takes in a further iteration of the DCO in due course.

16 As far as funding matters are concerned, in the context of this particular
17 item on the agenda, the council have not sought any particular funding, say, in
18 respect to the matter concerning green bridges that arose at the end of last week.
19 Again, we welcome what was said on behalf of National Highways, that as far
20 as, as it were, the green elements of the green bridges, that the maintenance of
21 those elements will be the responsibility of the undertaker, not passed on to the
22 local highways authority absent of express agreement. It seems that there's
23 common ground between the local authorities and National Highways in respect
24 of that.

25 We think it is necessary for modifications to be made to article 10 to make
26 that clear for the very reasons you've indicated. We're very happy to engage
27 with National Highways on that drafting, and we'll wait to see what emerges in
28 due course.

29 But beyond that sir, that's the only observations we have to make on this
30 particular element of item 3(c).

31 MR SMITH: Thank you very much, Mr Edwards. In which case, I'm then going to go
32 to the London Borough of Havering, and Ms Thompson.

33 MS THOMPSON: Thank you, sir. Morag Thompson, London Borough of Havering.
34 Havering is in a very different position than other authorities in this respect,

1 because we have a different funding arrangement, which isn't really reflected or
2 acknowledged by National Highways, and we've got a concern in relation to a
3 rail bridge which we'll be obliged to maintain, and we simply don't have funding
4 from the formula-based approach that Latif-Aramesh mentioned to you earlier.
5 That is not how we are funded.

6 We are funded by TfL, essentially, and we're completely reliant on TfL.
7 We've set out in our representation, REF3-186, the funding position, in terms of
8 maintenance funding from TfL, which is essentially desperate, to categorize it,
9 and I won't bore you with it, but there is an extensive explanation within our
10 representation of how the funding works, and it's explained to you why there is
11 actually no funding for such maintenance, in effect.

12 So I just want to point that out to you, that we are in a different position,
13 and not addressed by what Latif-Aramesh mentioned.

14 MR SMITH: Okay. Well, look, unless there are other specific items you want to speak
15 to on this, let's go to TfL, and hear their side of this story, and I think it's very,
16 very useful to have this ventilated orally. Mr Rheinberg.

17 MR RHEINBERG: Thank you. Matthew Rheinberg for Transport for London. I think
18 just I was going to start off by saying we welcome the fact that the applicant is
19 putting forward protected provisions for local highway authorities. We'll
20 obviously need to reserve our position until we've seen them to check how
21 satisfied we are with them, and we've already heard that they won't cover
22 commuted sum and costs, which is one of TfL's main concerns.

23 I would have mentioned the precedence that was cited earlier by Mr Latif-
24 Aramesh, but I'll also note there are precedents where National Highways has
25 sought commuted sums from other DCO developers, for example, for the East
26 Midlands Gateway Rail Freight Interchange and Highway Order 2016. So it
27 kind of does go both ways, this.

28 Regarding funding for TfL, and I endorse the points that Ms Thompson
29 made for Havering, that highway authorities within London are funded
30 differently for highway maintenance. So TfL itself doesn't receive any funding
31 from the government for the maintenance of its own Transport for London road
32 network. The applicant has sort of half acknowledged that position in its
33 responses to us.

1 So for example, in its statement of common ground with us, it – if I can
2 find it now – oh, ‘The applicant recognises that TfL may have different funding
3 arrangements than those highway authorities outside London. However, the
4 applicant’s position is that it doesn’t, in principle, provide commuted sums to
5 local highway authorities for any assets that it provides as part of its major
6 project programme.’ That doesn’t really feel like a valid argument to us. It sort
7 of says it recognises there’s a different position for TfL, ‘but on principle, we’re
8 not going to provide a commuted sum anyway,’ and like Havering, in the
9 absence of that funding, there is a substantial new walking, cycling and horse
10 riding bridge over the A127 that’s been provided, and in the absence of financial
11 resources to adequately maintain that bridge, it is very difficult for us.

12 TfL’s funding challenges are well-known, so we feel that for there to be
13 assurance that that bridge can be adequately maintained, we do require assurance
14 that our costs would be covered.

15 I think that’s all I needed to cover there.

16 MR SMITH: Okay. I did have a supplementary question on that bridge matter arising
17 from ISH3. So I will be going back to the bridge briefly, once we’ve closed out
18 this main discussion, but Mr Bedford for Gravesham Borough, please, now.

19 MR BEDFORD: Thank you, sir. Michael Bedford, Gravesham Borough Council. Sir,
20 obviously, we don’t have an interested in the debate on commuted sums, because
21 we’re not a local highway authority, but sir, I would, if I might, respectfully,
22 endorse absolutely the point that you raised, which, I think, was also raised by
23 Mr Humphries, about clarity on the interface, where you’ve got one of these
24 structures, particularly the green bridges, which may be split, in terms of
25 maintenance responsibilities, between the undertaker, National Highways, on
26 the one hand, and a local highway authority on the other hand.

27 Gravesham’s interest in this is that as we would be the enforcing authority
28 for any breach of the DCO requirements, we need to have absolute clarity on
29 that interface, because, again, your example – 30 years down the line, what we
30 don’t want to be doing is, if there were a problem about particularly features not
31 being adequately maintained, that we’re being pushed from pillar to post. ‘Oh,
32 well, it’s not our responsibility,’ etc, so we just endorse that point about clarity.
33 Thank you, sir.

1 MR SMITH: Thank you very much. Now, I take it that that brings us to the end of that
2 high-level overview of all the matters relating to protected provisions and
3 commuted sums that emerged in ISH3, and I'm seeing no further hands, so I will
4 just – ah, no, I am. I'm seeing Mr Lawson of Lawson Planning Partnership. Mr
5 Lawson.

6 MR LAWSON: Thank you, sir. It's just a brief question, really, that comes on the back
7 of this discussion, and it's really to do with how will mitigation and
8 compensation measures be delivered, funded and maintained on private land?
9 Obviously, we've heard a lot about local authority and highway land, and so on,
10 but we've got a situation where our client's, obviously, an affected party, and
11 hopefully will be receiving some form of physical mitigation improvement
12 measures to offset what's happening, through the loss of trees and so on, and it's
13 really how that gets picked up. We'd welcome any comment on that, please.

14 MR SMITH: That, in fact, was another emerging issue that I had on my list, but you've
15 now bid it into the discussion, so I'll throw that over to Mr Latif-Aramesh when
16 he responds, so we'll definitely deal with that. As I say, I did have a specific
17 individual question about Transport for London and London Borough of
18 Havering, in relation to the WCH footbridge matter, and we'll go there
19 separately. So before we go there, can I just offer all of the discussion that's just
20 taken place back to Mr Latif-Aramesh for such oral responses he's able to give
21 now, noting that there will be, again, more detail in writing. So Mr Latif-
22 Aramesh.

23 MR LATIF-ARAMESH: Thank you, sir. Mr Latif-Aramesh for the applicant. I think
24 my response will be brief, just touching on what's been raised by the local
25 authorities.

26 The first, just on Kent County Council's comments around the draft NPS,
27 I think Mr Tait gave the applicant's position last week, that we don't think there
28 is a substantial change in the draft NPS, but there is a written question on that,
29 so I won't go into that in –

30 MR SMITH: Let's allow that to fall out through the written process, and we will review
31 it at the end of that in the light of this conversation.

32 MR LATIF-ARAMESH: Thank you, sir. Just on the question of precedence, I
33 mentioned the two which we are aware of, which include some commuted sums.
34 I think what we might, if you'd find it helpful, in our written submissions, just

1 make clear the vast majority of the other precedence which supports our
2 position, and just for clarity on this, we don't think rail freight projects promoted
3 by private sector development are relevant in this context at all, and then, just
4 before moving onto the comments on article 10, the specific issue on the
5 footbridge, and the maintenance.

6 Just by way of context, that bridge did not always form part of the scheme,
7 and it was included at the request of TfL and the London Borough of Havering
8 as, effectively, an NMU connectivity provision, and again, I would just reiterate
9 my remarks here that the reason the approach has been taken forward with this
10 scheme is the significant capital contribution costs, as well as the existing
11 funding arrangements that are in place.

12 I think we've heard everyone's comments on the clarity that would be
13 desired for article 10, and, as I mentioned, we've already got that in our minds,
14 and it's on the to-do list.

15 MR SMITH: Okay. Thank you. Now, I do see Mr Young.

16 MR YOUNG: Just on that point, Mr Smith, to come in, I must admit, I had a look at that
17 WCH bridge earlier on, and did wonder to myself quite what the justification
18 was for that, and maybe the applicant will be able to draw my attention to it, or
19 TfL, but that is a substantial piece of infrastructure, and normally, one would
20 expect to see quite a strong justification, in terms of movements that are going
21 to be going over that bridge, and actually, more pertinent than that, actually how
22 this scheme is going to generate so much more additional movement across that
23 road that that bridge would be justified.

24 So yeah, it's quite an interesting position that TfL is in, and I just wonder
25 whether the parties would like to offer any comments on that, as to the
26 justification and ultimately, what would their position be if that bridge were to
27 be taken out.

28 MR SMITH: If I can just throw onto the table, before we start speaking on that item, my
29 understanding of the justification of it, which was that the redesign of the on and
30 off ramps on the southern side of the junction onto the M25, as I understand it,
31 means that there are now a pair of parallel ramps that swing directly across, and
32 cut off, what would have been walking, cycling and horse rider access, across
33 through that junction on its south side, and that therefore, the bridge is being
34 provided, essentially, to pick up any movement that's desired from the south

1 side of the junction, cross it over to the north side of the junction, enabling it
2 then to continue through, and then recross to the south on the west side.

3 Now, if I've got that wrong, please –

4 MR YOUNG: Yeah, I think that is probably right, although the bridge is a long way off
5 the desire line of the former crossings, and of course, a crossing could be
6 provided at grade, and doesn't have to be an overbridge.

7 MR SMITH: Well, indeed.

8 MR YOUNG: Mm-hmm. Just throwing that one out there, really. If there's going to be
9 a disagreement about the maintenance of it, then it may warrant going back and
10 looking at whether there was sufficient justification for it in the first place.

11 MR SMITH: The principle of the need for it. Indeed. No, that's a very clear and useful
12 observation. We're now clearly into the remaining conversation there, which is
13 the TfL and Havering footbridge matter. So I do see a hand from Mr Rheinberg.
14 I think we absolutely do have to give Havering another go at this, so to speak.
15 Probably the best order would be to hear from Havering first and then TfL. So
16 Mr Douglas, can I go to you? And then we'll come to Mr Rheinberg.

17 MR DOUGLAS: Good afternoon, sir. Daniel Douglas, London Borough of Havering.
18 In terms of the points that Mr Young raised about the justification for that
19 footbridge at that location, as you've correctly pointed out, sir, the main
20 justification for it was the changes that the applicant's looking to make at
21 junction 29 of the A127, with the changes to the slip roads on the southern side
22 of that junction requiring new connectivity for non-motorised users on the
23 northern side, so there needed to be a connection across the A127 to provide
24 access to that site.

25 But I would also point out that the additional connectivity that that
26 footbridge brings for non-motorised users is also the new community woodland
27 that the applicant's delivering at Hole Farm in the Borough of Brentwood, and
28 as you'll be aware from the representations that Havering made last week at
29 issue-specific hearing 3 and 4, Havering has a longstanding issue about getting
30 a delegated non-motorised route from the northern side of that bridge on the
31 A127, up to Folkes Lane Woodland and across to Hole Farm, because we don't
32 feel that the existing road at Folkes Lane is safe or suitable for the additional
33 non-motorised users that would be required.

1 In terms of other points around the justification for why that footbridge is
2 needed, Havering's previous comments have been in relation to needing a non-
3 motorised user connection from a policy compliance perspective around – I
4 think it's paragraph 3.25 of the NPS – around sustainable travel, where we
5 wanted to see a new structure in place to support non-motorised users, and we've
6 documented in a number of our submissions now that we support the structure
7 being put in place at that location.

8 It ties in with Havering's own local implementation plan, which is our
9 transport strategy for the borough, so it supports our existing transport strategy,
10 and that bridge also supports policy 23 of Havering's adopted local plan on
11 transport connections. So we feel that structure means that the scheme is
12 compliant with Havering's existing policies and goes towards policies related to
13 sustainable travel within the NPS.

14 The other point that I would just make around maintenance liabilities –
15 Havering supports TfL's position on the need for a commuted sum for that
16 bridge. I won't rehearse the comments that have previously been made around
17 maintenance, but as my colleague, Ms Thompson, said, our position is made
18 quite clear in REF3-186 around commuted sums and highway maintenance
19 funding. Thank you.

20 MR SMITH: Okay. Yeah, Mr Young.

21 MR YOUNG: Yeah, if I could just add a few questions on that. It sounded from what
22 you said then that what's being delivered here is, effectively, an aspiration for
23 Havering. It's already an aspiration in your local plan to improve crossing
24 facilities there, so it's addressing an existing aspiration, isn't it?

25 So surely then it follows that there's a degree of betterment to you, from
26 the provision of this. Also, just whilst I'm on, and you can come back on all of
27 these points: you talked about additional users of the woodland – where would
28 I find in your submissions analysis of the quantum of additional movements in
29 connection with that? And also, finally, I go back to my point: why could those
30 additional movements not be provided for in an at-grade crossing – zebra, toucan
31 crossing, that sort of thing? Thank you.

32 MR DOUGLAS: Okay. Daniel Douglas, London Borough of Havering. In terms of
33 your point around betterment for the borough, we certainly feel that the structure
34 will improve connectivity for Havering, and it will support our long-term

1 aspirations for getting – we’ve got a target for getting 65% of our residents to be
2 walking, cycling or using public transport by 2041. That’s something that’s in
3 our local implementation plan, so the structure will support our aspirations for
4 getting more people travelling sustainably. In terms of that specific structure,
5 that’s not a structure that’s highlighted or identified within our local plan.

6 MR YOUNG: Not specifically, no.

7 MR DOUGLAS: No, but we do have a general aspiration around modal shift, and getting
8 more people –

9 MR YOUNG: You accept my point, though.

10 MR SMITH: Oops. I think Mr Douglas has frozen. Can I just check, Mr Douglas, do
11 you hear us? No. I think we have lost him for the moment. Can I just check
12 whether Mr Rheinberg is able to hear us? Ah, we have Lynn Basford. Apologies,
13 Mr Rheinberg. What I was going to do was go to TfL on this, and then come back
14 to Havering, but we do have Ms Basford, so Ms Basford can probably pick up for
15 Mr Douglas. Ah, he’s back.

16 MS BASFORD: Ah, he’s back, so there’s no need. Lynn Basford on behalf of Havering.
17 I won’t intercede then, sir. I’ll let Mr Douglas carry on.

18 MR SMITH: Mr Douglas, we lost you for about 20 seconds, but you’re clearly back.

19 MR DOUGLAS: Daniel Douglas, London Borough –

20 MR SMITH: Or maybe not so clearly back.

21 MR DOUGLAS: Can you hear me, sir? Hello?

22 MR SMITH: ‘Intermittently’ I think is probably the best way of describing it.

23 MR DOUGLAS: Can you hear me now, sir?

24 MR SMITH: Yes.

25 MR DOUGLAS: Okay. I’ll do my best. If I freeze again, I’ll invite my colleague, Lynn,
26 to come in to pick up from where I am. In terms of your point, Mr Young, around
27 whether the new structure will improve connections in Havering, we do accept that
28 particular point. In terms of your other points, in terms of the number of additional
29 users that the crossing would produce, we’ve not submitted our own specific
30 analysis of that within our submissions, and we would suggest that that would be
31 for the applicant to set that out.

32 MR YOUNG: Have you personally seen that, though, Mr Douglas? Because I haven’t.
33 I mean, the applicant will comment, I’m sure, but have you personally seen that?

1 And you're satisfied that there is a justification, in terms of additional pedestrian
2 movements.

3 MR DOUGLAS: Sorry, Lynn, do you want to come in at this point?

4 MR YOUNG: I mean, if you haven't, just say so.

5 MS BASFORD: We haven't.

6 MR DOUGLAS: In terms of that connection, we've not seen additional numbers, in
7 terms of what it would mean in terms of the additional number of non-motorised
8 users. However, where the structure is and where non-motorised users would go to
9 – up to Folkes Lane and also down to National Cycle Network 136 – we are
10 comfortable and confident that there would be additional number of non-motorised
11 users using that structure.

12 MR YOUNG: There might be, but five over a year, for example, wouldn't justify a
13 multimillion-pound bridge, would it?

14 MR DOUGLAS: Five over the course of a year wouldn't, but we're not anticipating
15 there to be an additional five users.

16 MR YOUNG: But you don't know the numbers, do you?

17 MR DOUGLAS: No.

18 MR YOUNG: No. Right. Okay, Ms Basford, do you know the numbers?

19 MS BASFORD: Lynn Basford on behalf of London Borough of Havering. No, I'm
20 afraid not, sir. Those numbers have never been made available to Havering. Our
21 concern was that DMRB – the design of the junction 29 forces walkers into the
22 centre of the roundabout, and DMRB requires that to be mitigated. The applicant,
23 therefore, put forward this proposal for the bridge, and they also cited as betterment,
24 on behalf of the scheme, enabling new users to access the new community facilities,
25 etc, and like Mr Douglas says, we were looking for a policy to support the principle
26 of cycling, walking, horse riders in Havering.

27 The actual proposal that's put forward is still on the table for discussion,
28 and I wouldn't say that we would classify it as betterment for Havering. We need
29 a crossing, but I wouldn't say that that should be classed as betterment. It should
30 be classed as a scheme being policy-compliant, basically.

31 MR YOUNG: Yeah. Yeah, I think the general point was, in light that you both accept
32 that there's betterment there, then the request for commuted sums for something
33 that is going to benefit Havering has to be seen in that context, doesn't it?

1 MS BASFORD: I think it's very difficult, sir. Like Mr Douglas said, directs you to the
2 last ref, with regards to the actual monies available in Havering, basically, arising
3 from council tax deductions to actually pay for such maintenance, or for any
4 maintenance with any scheme, remembering that this is a scheme that is being put
5 forward nationally. It's not being put forwarded locally.

6 MR YOUNG: Yeah, because if they can't get an agreement on the commuted sum, it
7 could be that the applicant comes in with a changed request and puts in an at-grade
8 crossing, and until we see the figures, and you two don't know the figures, that
9 might well be justified, mightn't it?

10 MS BASFORD: It could well be, sir, and I would urge the applicant to come forward
11 with those figures.

12 MR YOUNG: Thank you.

13 MR SMITH: Yes, it strikes me that there's possibly a little bit of additional final
14 optioneering required on this, which is that we are looking at a fairly large, fairly
15 'expensive' solution, which London Borough of Havering, for clear reasons, is
16 concerned about the enduring maintenance costs of, where there is still a possible
17 lack of clarity about whether or not at-grade crossings of the junction as proposed
18 to be reconfigured may or may not be, in safety and indeed user environment terms,
19 an acceptable solution, and certainly, I think, my sense at the moment is that we're
20 completely clear there.

21 Now, I am very conscious that there's a lot of detail in this, some of which
22 we can get to in writing. So Mr Douglas, is there any final, high-level position on
23 this that you want to put to us on this? But I do have Mr Rheinberg waiting to come
24 in, and then we have also now got Essex County Council wishing to speak on this,
25 and indeed, TCAG, Laura Blake.

26 MR DOUGLAS: Daniel Douglas, the London Borough of Havering. I think the only
27 two comments that I will make: the structures going over the A127 – the commuted
28 sum costs – that's a TfL request, as opposed to Havering, because TfL will be taking
29 over the structure, and in terms of the at-grade crossing option, that's probably one
30 better for Mr Rheinberg to comment on, given it's a Transport for London road.
31 Thank you.

32 MR SMITH: Okay, fine. In which case, with no further ado, Mr Rheinberg, the floor is
33 yours.

1 MR RHEINBERG: Thank you, sir. Matthew Rheinberg for Transport for London. I
2 was actually going to just start off at that point of clarity, that this bridge would be
3 TfL's responsibility, so thank you to Mr Douglas for covering that. With regard to
4 the point Mr Young made about whether an at-grade crossing would be acceptable
5 here, so the key issue here – TfL is responsible for this section of road, and needs
6 to ensure that it is safe for users, so as a direct result of what the project is doing,
7 the Lower Thames Crossing, that is forcing additional pedestrians, cyclists, and
8 potentially, horse riders to cross the A127, because they can no longer get around
9 the southern side of M25 junction 29 – so the requirement for a crossing here is a
10 direct result of that.

11 If it was to be an at-grade crossing, we don't see that that could possibly
12 be a zebra or toucan crossing, or similar. This is a section of road which is national
13 speed limit, 70 miles per hour, two lanes in each direction, and furthermore, as a
14 direct result of the project, there is an additional 700 PCUs per hour in each
15 direction using this section of road, so the A127 becomes much busier at this
16 location. It's a significant percentage uplift. So overall, that form of crossing
17 would not be a safe option.

18 In theory, a signalised crossing could be introduced, but that is – we
19 obviously haven't done any analysis on that, but that would likely have a very
20 significant impact on delays and benefits, or disbenefits, for the highway network
21 as a whole, so that's not something that is likely to emerge as being value for money
22 or a sensible option to do.

23 So our position is, essentially, that as a result of a severance created by the
24 project, a bridge is required here, and that we would need funding to cover the long-
25 term maintenance of that bridge. I would, I guess, just add we haven't put any
26 requirements on the design of that bridge needed, other than we need to be able to
27 maintain it to an acceptable degree. So it may be that alternative designs could be
28 developed that have a reduced capital cost, but that's the applicant's responsibility
29 to develop in liaison with us. Thank you.

30 MR YOUNG: Mr Rheinberg, there is an existing crossing there, isn't there?

31 MR RHEINBERG: There is, yes.

32 MR YOUNG: So it comes down to the intensification of use, doesn't it, in terms of what
33 is justified?

34 MR RHEINBERG: I would say so, yeah. Correct.

1 MR YOUNG: Yeah. Everything you've said is right, and I agree with you, but when
2 you make the decision as to what level of infrastructure's required, we need to know
3 what the increase is, as I go back to the point – it might be five extra trips a year.
4 You don't know, do you?

5 MR RHEINBERG: We don't know that.

6 MR YOUNG: No.

7 MR RHEINBERG: We have not, I would say... Sorry. Go ahead.

8 MR YOUNG: And it's quite an important piece of information, isn't it? If we're going
9 to have a discussion about this, we need to know that, don't we?

10 MR RHEINBERG: I think we would contend that it would still be a lot safer with the
11 increased traffic levels, and the potential increased usage, of which we don't know
12 what that will be.

13 MR YOUNG: I agree with you, but that comes back to the betterment point, doesn't it?
14 It would be clearly preferable to have a footbridge there now than the existing
15 crossing, but that's where the betterment argument comes in, doesn't it?

16 MR RHEINBERG: Yeah. Understood, yeah.

17 MR YOUNG: I don't think anything further from me on this, Mr Smith.

18 MR SMITH: Okay. We're going to have to put this one in the pot and mull it over, and
19 if there is further detail that either side on this wants to put forward at deadline 4,
20 then please do. Now, I noted that we did have a hand from TCAG, but that seems
21 to have now gone, but we still do have a hand from Mr MacDonnell from Essex
22 County Council. So can I ask Mr MacDonnell in on this one?

23 MR MACDONNELL: Thank you, sir. Gary MacDonnell, representing Essex County
24 Council, just really to say that the crossing that we're talking about is very close to
25 Essex and our network. We do support the bridge. In common with both TfL and
26 Havering, we do not see this as betterment. We do see this as making the scheme
27 policy-compliant.

28 Absolutely take the points made about usage and the unknown nature of
29 that at the moment. That is always the way, unfortunately, with these NMU
30 schemes that are put in. What I would say is that it is close to an area of high growth
31 – Brentwood Enterprise Park, for example – so we do really see that this is a
32 necessary step that is not betterment, but policy-compliance. So I would just add
33 our support and support the arguments that have been made by others when talking
34 about this matter.

1 MR SMITH: Okay. Thank you very much. Well, unless there is anybody else wishing
2 to speak on this, I am going to push this back to Mr Latif-Aramesh for a final,
3 closing observation, again noting that it may just be that you want to pick this up in
4 writing, Mr Latif-Aramesh.

5 MR LATIF-ARAMESH: Thank you, sir. I think what we'll do is provide signposting to
6 where this issue is discussed in writing. However, I would just like to ask Dr Tim
7 Wright to comment on the flows, which Mr Young has questioned both London
8 Borough of Havering and TfL on.

9 DR WRIGHT: Tim Wright for the applicant. So I just wanted to avoid people trying to
10 find information that they will not find within the application. We have not done
11 an assessment of any additional people using that crossing as a result of Hole Farm
12 or other proposals in the area. We've included it in the application as a result of
13 the nature of connectivity at the M25 junction, and then following the discussions
14 with London Borough of Havering and TfL, as my colleague has set out. So we
15 have not done a specific assessment of new, additional persons who might use that
16 crossing to take advantage of Hole Farm and other works in the area. Thank you.

17 MR SMITH: Thank you very much. So back to you, Mr Latif-Aramesh.

18 MR LATIF-ARAMESH: Thank you, sir. We didn't want to comment any further. I
19 think the point around betterment is understood, and that's exactly where our
20 submissions were coming from.

21 MR SMITH: Okay. Right, in which case then, onto other matters arising from issue-
22 specific hearing 3, and there are two main ones on my list. Now, there was a broad
23 point that was raised for Thurrock Council about the design approach to the
24 A13/A1089 intersection, and the emerging position that elements of design work
25 and/or mitigation work around the operation of the Orsett Cock roundabout would
26 require, in their view, additional land, and/or would not be capable of being
27 developed within the existing order limits.

28 I'm very conscious here that we're hovering on the boundary between
29 something that is a matter arising for the DCO, and a matter that we should much
30 more properly deal with in an compulsory acquisition hearing, if we are talking
31 about a proposition that there is additional land required, but I did want to surface
32 this, and particularly just to check back with Mr Edwards whether there were
33 particular additional drafting approaches sought in relation to the order on this

1 point, or are we literally just looking at the red line boundary? Mr Edwards, can I
2 go to you?

3 MR EDWARDS: Yes. Thank you, sir. Douglas Edwards for Thurrock Council. Sir,
4 I'm conscious that I wasn't at the hearing last week because I was engaged
5 elsewhere, but I'm aware as to the discussion that took place, and in order to answer
6 your point, sir, can I invite my colleague, Kirsty Page, who I think you may have
7 met last –

8 MR SMITH: Yes.

9 MR EDWARDS: Sorry. Kirsty McMullen. Excuse me.

10 [Crosstalk]

11 MR EDWARDS: – I think will be able to help you on that point.

12 MR SMITH: Yes, Ms McMullen.

13 MR MCMULLEN: Hi. Sorry. Very confusing because I've got two names – work name
14 and legal name, so Kirsty McMullen for work. Afternoon, sir. Kirsty McMullen
15 on behalf of Thurrock Council. Hopefully, we were clear last week that the council
16 contends there are systematic issues with the applicant's approach to the scheme
17 and the assessment, or rather, lack of assessment of it, which we don't consider can
18 be addressed with incorporating mitigation design updates within the DCO as it's
19 set at the moment.

20 So with regard to Orsett Cock and the junction design, in terms of LTC
21 A13 and A1089, LTC requires the use of Orsett Cock for the scheme to function.
22 So we therefore contend that it's not wider mitigation, and it cannot be included in
23 a Silvertown Tunnel-type requirement, which, I understand, we'll come on to
24 speaking about later, so won't touch on that now, but we contend, and our case is
25 that there are alternative designs of the LTC A13-A1089 junction that have not been
26 considered by the applicant, and that includes the inclusion of Tilbury link road,
27 which we consider would meet scheme objectives, were it to be included, and it
28 would allow the junction for the LTC A13 – I wish it were a shorter name – A1089
29 junction with Orsett Cock – it would allow that design to be rationalised, reduce the
30 land take and harm that is proposed by that 112-hectare junction.

31 This wouldn't be able to be incorporated into a Silvertown Tunnel-type
32 requirement. It would require significant changes to the DCO currently being
33 examined. These would include, but may not be limited to, the incorporation of
34 Tilbury link road into the scheme design. It would include a redesign of LTC A13-

1 A1089 and Orsett Cock junction, and the redesign of that to be assessed. It would
2 include changes to DCO order limits. It would also require the scheme to be
3 reassessed and consulted upon, including a revised ES, a revised transport
4 assessment, and an updated BCR.

5 MR SMITH: Yeah. No, I do get that we are clearly here in a world where, essentially,
6 what you are advocating to us amount to, in terms of what is before us, if we were
7 to accept those submissions, essentially, reasons for refusal.

8 MS MCMULLEN: Precisely, sir.

9 MR SMITH: Because they are matters the scale and scope of which would mean that we
10 are not talking about amendables within the framework of the order as it's
11 currently put in front of us. We're talking about substantial additional land.
12 We're talking about the implication of the compulsory acquisition regulations,
13 etc, etc. At this particular point in the examination, that feels like a very, very
14 substantial amount of work that one would not start from here. I think on that
15 basis, there's probably little more to be explored on that item. I mean, I did want
16 to go back to you on it in case you felt that it was something that was broadly
17 capable of being drawn into something that could be characterised as a
18 monitoring mitigation strategy approach, secured by an equivalent requirement
19 to the Silvertown one, Silvertown requirement 7, but you're very clear it can't.
20 Are there any other observations that need to be made for Thurrock on that
21 point?

22 MR EDWARDS: Douglas Edwards for Thurrock. In short, sir, no, but just simply by
23 way of summary, the way that you've identified the consequences of this point
24 Thurrock has raised, in our submission, is correct. This really goes to the
25 principle of the acceptability of the conceptability of the scheme that is before
26 you. And so as far as these particular impacts are concerned, they don't seem to
27 us, for the reasons that you very clearly indicated, to be capable of being
28 remedied by modifications to the DCO or to the control documents associated
29 with it.

30 MR SMITH: Okay. Well, you will have ample opportunity within the framework of the
31 examination, including the making of closing submissions in writing in due
32 course to direct us to what you think we ought to be doing as key considerations
33 before we report to the Secretary of State. I suspect there's not much point
34 talking about this a great deal further within the framework of a draft DCO

1 hearing, but I do see I have a hand for Mr Owen for DP World London Gateway,
2 so I will go to Mr Owen and then I'll provide Mr Latif-Aramesh with an
3 opportunity to respond. So Mr Owen?

4 MR OWEN: Thank you, sir. Robbie Owen for Port of Tilbury London Limited, not DP
5 World.

6 MR SMITH: One of these days I'm going to get you right. Apologies. Apologies.

7 MR OWEN: So we'll come on to discuss our views or raise our views in relation to the
8 Tilbury Link Road and indeed the – what's been dubbed the Silvertown Tunnel
9 star requirement. But may I just raise one point specifically in relation to the
10 Orsett Cock junction?

11 MR SMITH: Yeah.

12 MR OWEN: Thank you. I mean we heard at ISH3 and 4 last week how crucial this is to
13 the scheme in terms of impacts on the ports, and it seems quite clear to us at the
14 moment, but the present design of the junction will certainly have adverse
15 impacts on the Port of Tilbury and, for that matter, DP World London Gateway,
16 with the consequential economic harm. And as we explained last week, that we
17 see as a national impact, given the importance and role of ports and what the
18 national policy statements say in that respect. Therefore, we do feel that, for that
19 reason, there should be a specific requirement added to the developed consent
20 order in relation to Orsett Cock junction. We can obviously, in our post-hearing
21 note, give you the detail of that and the wording that we are formulating, but in
22 essence it would require this additional requirement, further modelling of the
23 junction to be done, including, where relevant, wider strategic modelling in
24 consultation with the local highway authorities and ourselves and other key
25 stakeholders before the commencement of any work at the junction.

26 And where that modelling identifies impacts, the applicant, we say, should
27 be required to produce a specific mitigation monitoring strategy for approval to
28 the Secretary of State, and that would include the details and locations of
29 proposed mitigation response, the consultation with relevant stakeholders,
30 including how those responses have been taken into consideration by the
31 applicant and, crucially, a proposed programme for the implementation of the
32 measures, ensuring that the mitigation is in place and operational prior to the
33 impact arising, and in all cases, prior to the opening of the scheme.

1 So this is specific operational traffic mitigation for the Orsett Cock
2 junction. We think that is justified and needed in addition to a broader, more
3 general Silvertown Tunnel style requirement, which we can come on to address
4 later, but we think that will result in a proportionate approach to mitigation and
5 should ensure that the detailed design is one that does not cause negative impacts
6 when the scheme opens. So that is the port's position on Orsett Cock, given the
7 predictions at the moment that the design would have in operational terms.

8 MR SMITH: Now, that's an interesting point of general application because shortly, as
9 we move down into matters rising from ISH4, we will move into consideration
10 of the monitoring and mitigation strategy, and there is, in my mind at the
11 moment, a distinction between a general monitoring and mitigation strategy that
12 is addressing the fact that the LTC is a vast piece of new infrastructure,
13 interconnecting pieces of geography that haven't been easily interconnected
14 before and that there is therefore an overarching position around monitoring
15 mitigation. And then there are specific individual observations about particular
16 designs of particular intersections.

17 And we've had very substantial conversations about the A813, A1089,
18 and Orsett Cock, and the effect on the operation of Orsett Cock that might mean
19 one needs something specific for that, but we have also had some measure of
20 conversation as well about A2/M2 LTC. So there's a potential world here in
21 which we're moving towards a general monitoring and mitigation strategy
22 requirement of a Silvertown model, Silvertown requirement 7 type model, but
23 also in your submission at least one additional specific one, which is Orsett
24 Cock/A1089/A13-specific. And then I'm going to throw to the floor the
25 question about whether there are then others that are required for any other
26 specific cases, such as the A2/M2 LTC intersection, for reasons.

27 MR OWEN: Yeah, I mean, if I can just quickly come back on that, that is an approach
28 and a logic that we would entirely support in that where a specific impact is
29 anticipated, that should be dealt with specifically. I mean, the Silvertown Tunnel
30 approach and requirement 7 of the Silvertown Tunnel DCO is one I can actually
31 speak to some knowledge. I was responsible for drafting the DCO for the applicant,
32 Transport for London, and the approach there was that where there was specific
33 mitigation known and required, that was dealt with in particular, but requirement 7
34 was really for the case of the – yeah, the known unknowns, if you like, and that was

1 therefore dealt with on that different basis, and we would advocate the same
2 approach is appropriate here. Thank you.

3 MR SMITH: Okay. Right, so let's move on then to Mr Shadarevian KC, for DP World.
4 Mr Shadarevian, and then I will return this back to the – oh no, we see Michael
5 Humphries wishing to speak as well, so Mr Shadarevian, then Mr Humphries,
6 then we'll return to the applicant.

7 MR SHADAREVIAN: Paul Shadarevian for DP World. Sir, Mr Owen's points are well
8 made. Sorry, you're frozen. Can you hear me?

9 MR SMITH: Yes, I can. Can you hear me?

10 MR SHADAREVIAN: I can hear you but you're not moving.

11 MR SMITH: Okay, I will just switch my camera off very briefly. And I will then switch
12 it back on and hopefully you've found that I am now back with you.

13 MR SHADAREVIAN: You're back and moving now.

14 MR SMITH: Excellent, good.

15 MR SHADAREVIAN: Okay. Mr Owen's points are well made and very sensible. I'm
16 not going to repeat submissions made in the last hearing sessions with respect to
17 the modelling, but in terms of justifying this particular approach to the Orsett
18 Cock roundabout, you will want to know what the result of the remodelling
19 exercise is in order to gauge its significance and to make a recommendation that
20 such a provision should be included in the order. So I make that point first of
21 all.

22 If the solution for Orsett Cock is sufficient, it may obviate the need for
23 any further mitigation at Manor Way so far as the port is concerned, but it may
24 not be sufficient to deal with Thurrock Council's own issues in relation to the
25 wider local network around there, but I can't make submissions on their behalf.
26 So what I'm going to suggest is that once we are in a position to know what the
27 likely impacts are, once the detailed modelling is resolved, then it would be very
28 sensible for the ports to get together to see how best such a provision in the order
29 can address the issues which affect both of us.

30 MR SMITH: Thank you. Mr Young.

31 MR YOUNG: Just quickly, just in response to Port of Tilbury and DP World, the
32 Silvertown Tunnel approach does open up all sorts of questions, doesn't it, about
33 – I think the wording used there was about unacceptable impacts or something
34 similar to that. Now, we're really getting into a world where we have to –

1 somebody has to try and figure out what is an unacceptable impact on either of
2 the ports or both. I guess one, as the panel is going to have to do, is have regard
3 to the bigger picture here.

4 Now, you'll be aware that the applicant put in quite a detailed submission,
5 I think it was at deadline 2, comparing journey times to and from both ports from
6 a whole range of destinations in and around the area. And I think, with the
7 exception of Orsett Cock and journeys going through there, there was an overall
8 improvement. So if we were to get into that situation about what is an
9 unacceptable impact on the port, I guess my question is, I guess one would need
10 to have regard to the overall picture, wouldn't we? We wouldn't just take Orsett
11 Cock in isolation because if there'd been vast improvements to journey times
12 from the north and from other directions, that needs to be weighed in the balance.

13 MR SMITH: Indeed. What I think we need to do is just see if there's anybody who has
14 spoken on these matters who just needs to come back on that. I'm not seeing
15 any other hands. I do, however, see Mr Owen. Okay, Mr Owen.

16 MR OWEN: Thank you. Robbie Owen for Port of Tilbury London Ltd. I mean, I know
17 what's just been said. I think this is something that the ports and the applicant
18 ought to get around a table and discuss. I mean, it makes sense for there to be
19 some sort of weighing of the balance, if you like, in terms of an overall approach.
20 But if there is a severe impact at Orsett Cock junction, as we anticipate there
21 may well be, that needs mitigating even though access from other directions
22 might be the same if not better than the current position. Thank you.

23 MR YOUNG: Yes. You would need to aggregate the pluses and minuses, wouldn't you?

24 MR OWEN: Well, I think you would, but, as I say, if there was a particular severe impact
25 at Orsett Cock, then irrespective of improvements elsewhere, we don't think,
26 given the consequence of disrupting access to the ports, being national
27 infrastructure, would be acceptable. Therefore, that impact on its own would
28 need to be mitigated.

29 MR SMITH: There clearly is a considerable merit in a further offline conversation
30 occurring before the next round of hearings. I would suggest drawing the ports
31 and Thurrock Council into conversation with the applicant, particularly around
32 the Orsett Cock issue. Because if we can move towards as close as can be
33 achieved to an agreed position between those parties on that intersection, then

1 what remains to be provided for in a requirement may look somewhat different
2 from the broad Silvertown model we're looking at present.

3 So, yeah, I would strongly encourage that offline conversation to occur,
4 and it feels to me as though deadline 4 would probably be too early for it to have
5 usefully occurred so let's think about a possible point at which it might – I mean,
6 would deadline 5 make sense? Let's just look at the – just looking at the
7 timetables, we speak – thinking about the relationship with forthcoming
8 hearings. So deadline 5 is still before the reserve dates. It's tight; we'd have to
9 absorb some stuff on the move, but it's still before the dates reserved for the
10 October hearings.

11 So look, in principle it would seem that some sort of conversation to be
12 documented and submitted in at deadline 5 would be quite useful. Now, I'm
13 very conscious that I've got other parties now wishing to intervene on this point.
14 So we do have Thurrock, and I will come to you Ms McMullen, and we do have
15 Paul Shadarevian KC, and we do also have Michael Humphries. So let's go in
16 that order, but I'm conscious that I'm still partially in conversation with Mr
17 Owen on this point as well and so I will come back to you, Mr Owen, before we
18 go back to the applicant. So, Ms McMullen.

19 MS MCMULLEN: Kirsty McMullen on behalf of Thurrock Council. We would concur
20 with Mr Owen's comments just now with regard to Orsett Cock and mitigation,
21 but just with regard to the applicant's position that journey time benefits
22 outweigh disbenefits and therefore there's no need for any mitigation at Orsett
23 Cock, we discussed this at the hearings last week in terms of the discrepancies
24 between the modelling and LTAM and VISSIM modelling. There is an
25 examination question on this in terms of your first round of questions.

26 So as well as our submissions to the hearings, we've also set out a full
27 response to that in terms of the iterative modelling process that is required. And
28 I would just point you to the – and I'm not sure if it's before the examination,
29 but it probably is helpful for us to put it before the examination, the Silvertown
30 Tunnel monitoring and mitigation strategy, which clearly sets out, as part of the
31 refresh of modelling, so effectively, prior to opening, there will be a set of
32 refresh modelling. As part of that, there would be an updated strategic model,
33 updated [inaudible] modelling, but it also makes reference to this iterative
34 process to optimise results between VISSIM and strategic modelling, and that is

1 why we do not consider that to be appropriate; in addition to Mr Owen's
2 comments about mitigation at Orsett Cock, that we do not contend that should
3 that happen, that there would – or should we have this iterative process, that it
4 may not result in benefits outweighing disbenefits. Thank you, sir.

5 MR SMITH: Okay. Well, with your high-level position on these amounting to reasons
6 for refusal is still noted. Can I then just go back to you briefly, Ms McMullen,
7 on the question of some form of monitoring and mitigation strategy workshop
8 that would take place with the submission of such agreed notice could be
9 produced by deadline 5, and would Thurrock want to be involved in that
10 discussion?

11 MS MCMULLEN: We obviously reserve our position on Orsett Cock, but with regards
12 to a Silvertown type monitoring mitigation strategy for other parts or other local
13 impacts, we would welcome being part of a workshop. We note that there's still
14 a long way to go in terms of understanding the impacts and any – we would need
15 to have, by the end of the examination, a clear understanding and agreement of
16 local impacts on the other junctions that were in discussion with the applicant,
17 so that we could then discuss monitoring and mitigation requirement but we're
18 happy to enter into those early discussions now.

19 MR SMITH: Okay, thank you. Right, so I'm going to go to Paul Shadarevian and then
20 Michael Humphries. So Paul Shadarevian KC, please.

21 MR SHADAREVIAN: Paul Shadarevian KC. So of course, we would gladly take part
22 in those discussions. Those discussions would be assisted by having a better
23 understanding of the modelled impacts, and we would endeavour to engage with
24 the applicant in trying to reconcile the outcomes of the strategic and local
25 models, which we are working on now with the new information that's been
26 provided to us. That's the first point.

27 The second point is in terms of, as it were, adjudicating on the issue of
28 overall benefits and savings and journey times, and looking at localised impacts
29 on these port operations, which have both a highly important local role but also,
30 of course, a highly significant national role, it's important to understand how
31 they operate and why it is junction efficiency is so important to their proper
32 functioning.

33 And I will just remind you that in our first round of submissions, we did
34 set out in some detail in the evidence to the examination why junction efficiency

1 is so important to the way in which port operations depend upon lorries being
2 able to get in within their booked times because of the complexity in moving
3 containers in their stacks onto the lorries in an appropriate order. Once that goes
4 out of order, that makes life very, very difficult and slows things down. So that's
5 just one example. But that information is before the examination, and I would
6 urge you to consider it again once we've managed to further this particular issue
7 with our discussions with National Highways.

8 MR SMITH: Okay. Thank you very much, Mr Shadarevian. Now, I note I also have a
9 hand from Mr Bedford, KC, for Gravesham. So I'm going to go to Michael
10 Humphries first for Kent, and then Mr Bedford. So Michael Humphries please.

11 MR HUMPHRIES: Thank you. Thank you, sir. I have a few points on this. Firstly, we
12 absolutely agree with you that you have correctly identified two different aspects
13 of this. There are known impacts on links and junctions and there are unknown
14 impacts that may arise, as we discussed at the issue-specific hearing on
15 Wednesday last week, from things like modelling uncertainty, so the model's
16 just not telling us that there's going to be an impact, but we know that there's
17 modelling uncertainty and we're looking at long into the future and there could
18 be.

19 The second point I would make is this. We have always recognised this,
20 and in our written representations at the back in section 12, where we put
21 forward proposed drafting, we actually drafted three requirements to cover these
22 various things. One on wider network impacts on strategic road network for
23 specific identified junctions that are to be filled in. Second was wider network
24 impact on local road networks and the particular junctions are to be filled in.
25 And the third was the unknowns, just there has to be some monitoring and if
26 things are rather different from what you thought, then you have to mitigate for
27 that.

28 Third point: for Silvertown – and obviously, as I said last week, I was
29 involved, as was Mr Owen, in this. The Silvertown DCO already specifically
30 mitigated by improvements for known impacts, which is why requirement 7 is
31 the unknown impacts bit. So here National Highways haven't identified –
32 haven't mitigated for the known impacts, whether it's Orsett Cock or Blue Bell
33 Hill or things like that. That's a missing piece compared with Silvertown and
34 why additional requirements would be needed.

1 Next point I would say is of course I entirely endorse what Ms McMullen
2 was saying. You need, in a sense, not just to have requirement 7 or Silvertown,
3 but you need to have the strategy that went with it. The strategy was a certified
4 document. It was defined in the other parts of the order and it's a document in
5 itself. And one of the things that that did in relation to highway impacts –
6 because it didn't just look at highway impacts, it looked at air quality and other
7 things – was to look at trigger points which would demonstrate that a particular
8 impact was not acceptable. This comes back to Mr Young's perfectly proper
9 point: well, look, how do we know what's acceptable and unacceptable in this
10 sort of thing? Well, the Silvertown approach actually explicitly dealt with that
11 type of thing by trying to look at ways of objectively gauging that.

12 Final point to make is – and it goes back to the point I made earlier. The
13 problem we are having with National Highways, because they, as a matter of
14 principle, reject this, that they shouldn't have to mitigate for anything that is not
15 part of their own network. We're just not getting engagement on draft wording.
16 And again, I repeat the point that we need some indication from you, sir, that
17 that would be helpful; you want them to put forward wording and engage with
18 parties on wording in the event that this is necessary.

19 Final point: you will also notice that in our three draft requirements, and
20 they are only draft, we also said at the end, as well as, 'Look, you should
21 implement the mitigation', we've recognised the draft revised NPS and said, 'Or
22 you should provide sufficient funding for us to do it' if they simply don't want
23 to engage in that sort of thing. We think that's an appropriate basis for a future
24 negotiation on working even if part is – I don't think it's appropriate final
25 wording. Thank you.

26 MR SMITH: I'm going to temporarily indicate that a conversation on that agenda would
27 be useful to us. I've already indicated in timing terms that it would help us very
28 substantially if we saw such a statement of agreed position as could reasonably
29 be achieved between the parties who are [inaudible]. And I take it therefore that
30 you, for Kent, would be content to participate in that discussion with – and let
31 us say, it would be very helpfully focused around the drafting currently in the
32 order, combined with the other drafting suggestions that have been brought to
33 the table by the interested parties, including yourselves, together with the broad
34 envelope of the Silvertown approach.

1 And let's be clear here that the broader and the more inclusive this is in
2 drafting terms, the better solution is likely to emerge in the public interest, and
3 the better solution in terms of harmonising with the different objectives of the
4 relevant interested parties. So that would seem to me to be a useful way forward.
5 I mean, does that commend itself to Kent?

6 MR HUMPHRIES: Yes, sir, it does. Thank you.

7 MR SMITH: Okay. Now, can I just check that I can be seen properly because I did just
8 receive a little error message suggesting that I couldn't be seen. I'll just check
9 with the case team. There seems to be a little bit of a technical issue at this end.

10 MR HUMPHRIES: Sorry, I was just saying sir, I could see everything that – I could see
11 you, but you were frozen, but I could hear everything that you said.

12 MR SMITH: Good. So we haven't lost any – critically, we haven't lost any hearing.
13 That's useful. Okay. Mr Humphries, are you content that you're complete and
14 I can then move on to Mr Bedford before I go to Mr Latif-Aramesh?

15 MR HUMPHRIES: Yes. Thank you.

16 MR SMITH: Okay, Mr Bedford, you've heard everything that's been discussed as we've
17 run through this. So again, if you could indicate your view on the usefulness of
18 some sort of conference or workshop between the parties and the submission of
19 an agreed position statement at deadline 5 as part of your submissions, that
20 would be very useful.

21 MR BEDFORD: Thank you, sir. Michael Bedford for Gravesham Borough Council, So
22 can you hear me? I know you probably can't –

23 MR SMITH: I can certainly hear you.

24 MR BEDFORD: You probably can't see me.

25 MR SMITH: I can certainly hear you.

26 MR BEDFORD: Well, good. Well that's all you really need. If I could just start by
27 saying first of all, your helpful opening remark that yes, I've heard everything
28 that's been said is unfortunately not quite correct because I had a connection
29 problem which meant that I lost some of what Mr Owen was saying to you,
30 although other members of our team were able to hear that. And because of my
31 connection issues, I say, I lost some of the debate. But can I just clarify, first of
32 all, are you now – given the discussion there's been about Silvertown, the
33 discussion there's been about some of the transport issues, have you now moved

1 from the matters that arose at issue-specific hearing three, to also embrace some
2 of the DCO matters that arose at issue-specific hearing four?

3 MR SMITH: Absolutely. We are sitting on a knife edge between those two hearings and
4 one of the questions I was just briefly going to ask my colleague, Mr Young, is
5 that we clearly have moved into ISH4 territory, and I was going to then give him
6 the opportunity to bring forward any further ISH4 matters. But we also need to
7 think about when we're going to break for lunch, because plainly we're not
8 going to finish this conversation before lunch now. So that's where we are.

9 MR BEDFORD: Yeah, I was going to say I was grateful for that because that's
10 effectively what I'd assumed was the case. And so two points then that I can
11 just mention. The first is, yes, we absolutely would endorse the point about a
12 modelling workshop to see if one can narrow some of these areas of
13 disagreement, and to the extent that we can contribute to that, we would wish to
14 do so. But then the second point – and again, I think this slightly was touched
15 on by Mr Owen in relation to Orsett Cock, but since I didn't hear it myself, I'm
16 tentative about what I'm saying. The question of whether some form of
17 Grampian condition should be brought onto the face of the order in relation to
18 known impacts that the applicant is not proposing to mitigate at present for the
19 reasons the applicant has set out.

20 Obviously, Mr Owen's concern related to Tilbury and therefore Orsett
21 Cock, but we for Gravesham clearly also have a concern about the A29 Blue
22 Bell Hill, and you'll be aware that we had originally broke should it be
23 associated development and part of the order. We know the applicant hasn't
24 included it, but the question then arises is if the impacts are, as we believe them
25 to be, of a nature that they would not be acceptable for the LTC to proceed
26 without addressing them, is the way forward – given we know also that Kent has
27 a scheme, but they've spoken about the details of that scheme and their funding
28 issues – is the way forward a Grampian condition in relation to that? That is
29 something that we will be putting forward as part of our written submissions at
30 ISH4 – sorry, at deadline 4, and that is in a sense part of this wider conversation
31 about how one deals with the impacts.

32 We don't think that the specific issue at Blue Bell Hill is really something
33 to just be parked to a Silvertown approach of, 'We'll monitor it and check it in
34 future'. We think it's a known problem so it should be addressed now, but we

1 also favour the Silvertown approach for those wider impacts where we're not
2 yet clear what the position will be and the position may well change by the
3 scheme – by the time the scheme is implemented. Thank you, sir.

4 MR SMITH: Okay, thank you very much. Now I see we still have a hand from Mr
5 Humphries and my guess will be that it will be on that final crossover into Blue
6 Bell Hill.

7 MR HUMPHRIES: No, it's a legacy. For some reason my computer is just not showing
8 me when my hand is up, which is why you sometimes see me flashing on and
9 off. I apologise. I'll try and fix it during the lunch adjournment.

10 MR SMITH: Okay, which then takes me to the point that we do need a lunch
11 adjournment. So what I'm going to propose we do is that we hear from the
12 applicant on the balance of these submissions, which cap off – with some
13 considerable overlap, I have to say, into issue-specific hearing 4, but they do cap
14 off, as I see it, the matters that arose from issue-specific hearing 3. Over the
15 lunch, Mr Young and I can then regroup and look at the remaining matters that
16 arise from issue-specific hearing 4 and we will deal with those.

17 There are then a relatively confined number of issues arising from
18 issue-specific hearings 5 and 6. There's probably another hour's worth,
19 allowing for full discussion and contributions remaining in it, but quite plainly,
20 it would be remiss of us not to stop and provide a lunch break in those
21 circumstances. So let me go to the applicant and let me then also be clear that
22 once we've heard from the applicant on these issue-specific hearing 3 elements,
23 that we will then be going to a lunch break and we will resume then on matters
24 arising the balance from issue-specific hearing 4, to the extent that we need to
25 cover them, and then 5 and 6. So Mr Latif-Aramesh for the applicant.

26 MR LATIF-ARAMESH: Thank you, sir. Mr Latif-Aramesh for the applicant. I just
27 wanted to make two preliminary comments. The first was just to flag for your
28 attention we have not yet made our detailed submissions on the Silvertown
29 Tunnel equation, as you alluded to, and we will be doing so, with your
30 permission, after the break.

31 So that leads me onto the second preliminary comment before I hand over
32 to Dr Wright just to address some of the comments made by Thurrock Council
33 around the Orsett Cock junction. We see the issue of Orsett Cock as separate
34 from the general wider network impacts approach, and in that vein, your

1 suggestions of meetings and discussions and workshops, we see there is a clear
2 benefit in having a specific meeting and discussion around Orsett Cock and not
3 conflating it with the wider general point, which we will turn to after the lunch
4 break.

5 I'd also, just before handing over to Dr Wright, just like to say at
6 issue-specific hearing 4 we addressed many of the comments that have been
7 raised again today relating to the strategic model, relating to VISSIM. We will
8 obviously be supplementing that with our written submissions, but there is one
9 very specific point that I'll ask Dr Wright to comment on now.

10 DR WRIGHT: Thank you very much. Tim Wright for the applicants. So I just want to
11 return to the submission from Thurrock Council, who put forward the position
12 that if the Tilbury Link Road were to be part of our project, that that would have
13 a consequence of reducing land take and impacts at Orsett Cock, and I just
14 wanted to put forward that we do not agree with that position. We consider that
15 the junction at Orsett Cock, and indeed all of the connections between the Lower
16 Thames Crossing, the A13, and the A1089 are fundamental to the project, and
17 that is regardless of the delivery now or in the future of the Tilbury Link Road,
18 and I won't reiterate the position on Tilbury Link Road.

19 What I would do is just note back to the discussion – and I'm now trying
20 to recall whether it was issue-specific hearing 3 or 4 where the position was put
21 to Thurrock Council to explain which links could be potentially removed. We,
22 like I say, are comfortable with the position we put forward. All those[?] links
23 are required for the delivery of our scheme, and therefore there is no superfluous
24 land take. Thank you.

25 MR LATIF-ARAMESH: Sir, if I may, just on your specific question or suggestion
26 relating to the workshop on Orsett Cock, you suggested deadline 5 would be an
27 appropriate point for a joint note of some kind. We're happy to do that on the
28 specific issue of Orsett Cock because we do understand the concerns and we're
29 focused on trying to reach some resolution.

30 MR SMITH: Yes. Now, I do note that that does then raise the broader question of remit
31 and that is the question of whether or not it would be appropriate or sensible to
32 – whether it be at that workshop or at another one – to deal with the broader
33 question of a Silvertown type approach and the broader security for a monitoring
34 and mitigation strategy.

1 Now, I take it it's your submission that a) you would prefer not to
2 participate in such things; you prefer to deal with that through an iterative written
3 process where you advance possible changes to the draft order. But you don't
4 see there being utility in a workshop and therefore it would flow on, but that you
5 would suggest that there is one workshop and that it deals, essentially, with the
6 Orsett Cock position and nothing else. Is that correct?

7 MR LATIF-ARAMESH: Sir, Mr Latif-Aramesh for the applicant. I'm slightly
8 pre-empting the submissions on the Silvertown Tunnel approach, but we do have
9 a firm view that we'd like to put to you, and in light of that, we think the
10 workshop in the first instance should be limited to Orsett Cock because of the
11 particular concerns that are being raised.

12 MR SMITH: In which case, I'm going to park that there because what I'm going to
13 suggest we do is that we do now break for the lunch. That gives everybody an
14 opportunity to deliberate, seek instructions, etc. The Examining Authority can
15 also consider its own position. We will then hear you on the ISH4 matters
16 arising, which really does focus back onto that Silvertown Tunnel position, as
17 we see it. Once we've done that, we can then essentially consider the action
18 point that arises and we can clarify what's within scope, what's not, and by when
19 its outcomes need to be prepared. Now, I do see that I have raised hands from
20 Mr Owen and Mr Humphries. I'm going to go to Mr Owen first. Is this on a
21 point to assist us before we break for lunch, Mr Owen?

22 MR OWEN: Sir, thank you. Robbie Owen for Port of Tilbury London Ltd. It was just
23 because you indicated earlier you would give me an opportunity to come back,
24 and I think what I'd like to say is that we would be very happy to participate in
25 a workshop specifically on Orsett Cock by deadline 5. We make no comment
26 on the need for other specific operational traffic mitigation measures. I've heard
27 what other interests and bodies have said about that.

28 I will, however, be wanting to make submissions after the adjournment in
29 relation to the Asda roundabout and the north portal junction, which are different
30 issues. But certainly in relation to not conflating Orsett Cock with other
31 operational traffic mitigation points, then we're very happy to participate in that
32 workshop and we wait to hear what Mr Latif-Aramesh says about the so-called
33 Silvertown Tunnel approach for other wider – whether they're known unknowns
34 or unknown unknowns, I'm not entirely sure, but –

1 MR SMITH: We're getting thoroughly Rumsfeldian at this point.

2 MR OWEN: I've been debating with myself whether – which they are, but anyway, I
3 think we know what we're referring to, but that's all I wanted to say right now.
4 Thank you, sir.

5 MR SMITH: Okay, that's clear And again, we will hold over the question of precisely
6 what we ask for until after the conclusion of the discussion more broadly on
7 ISH4 and after the lunch break. So finally then, Mr Humphries.

8 MR HUMPHRIES: Yes, I was just going to say, sir, that obviously if there is to be
9 workshop on specific locations, we would want it to include Blue Bell Hill.

10 MR SMITH: Yeah. I thought you would say that.

11 MR HUMPHRIES: Not to lose that – I won't say any more but that was the other big
12 item that was discussed last week. And I apologise for this ongoing problem
13 that I have no idea whether my hand is up or down. Is it down at the moment?

14 MR SMITH: It's down at the moment. Look, Teams is behaving very badly today. I
15 mean, managing this hearing from the get-go, as you've probably seen from my
16 rather tentative delivery, has been somewhat odd, not being clear about whether
17 one's even being seen or heard at various times. But such is life; we move on
18 and we manage. Thank you for your contribution. And what I'm then just
19 finally going to do is check whether Mr Latif-Aramesh has anything just arising
20 from those very limited, very confined points which he wishes to put to us before
21 we break the lunch. And if he does not, then I am going to suggest that we do
22 now break for lunch.

23 It is approximately 1.45 – late, but I am going to give us the full hour
24 because I'm very conscious that there are discussions to be held. So can we
25 please resume at 14.45? That is 2.45, ladies and gentlemen. That's when we
26 will resume. Thank you very much. We're now adjourned.

27

28 **(Meeting adjourned)**

29

30 MR SMITH: Good afternoon, everybody, and welcome back to today's issue-specific
31 hearing number 7 in relation to the draft development consent order for the
32 Lower Thames Crossing. My name is Rynd Smith, lead member of the
33 Examining Authority, and I'll just hand over to my colleague, Mr Young.

34 MR YOUNG: Good afternoon, everybody.

1 MR SMITH: And my colleague Mr Ken Taylor.

2 MR TAYLOR: Good afternoon, everybody. Ken Taylor, panel member. I'm often in
3 the background today, but I'm taking notes of any actions that arise from today.

4 MR SMITH: Thank you very much, Mr Taylor. Now, if I can just check with the case
5 team and the audiovisual team that the recording has started and that we can be
6 heard and seen online. We have a live stream.

7 PARTICIPANT: That's correct, yes.

8 MR SMITH: Excellent. Thank you very much. So then, ladies and gentlemen, we broke
9 in partway through the hearing of agenda item 3(c), and the remaining matters
10 that we have to deal with under that agenda item are that we need to discuss at
11 large the question of the applicability of what is being broadly referred to as the
12 Silvertown Tunnel requirement 7 model. That is a matter where we are still
13 looking for in-principle submissions from the applicant, plus responses from the
14 various parties who have highlighted it and requested it, and indeed any others
15 who may have views upon it.

16 Once we have heard that matter, what I will then flag is that, having
17 discussed matters arising from the issue-specific hearings again with panel
18 colleagues over lunch, we've had a broad range of issues emerging from
19 issue-specific hearing 3 that we've dealt with, four that we will have dealt with
20 by the time we get to the end of the Silvertown Tunnel matter.

21 Speaking to Mr Taylor about issue-specific hearing 5, he is content with
22 the matters that he wished to see have all been dealt with in specific actions, i.e.,
23 through the written process arising from that hearing. I, in turn, was looking
24 over my emerging issues for issue-specific hearing number 6 and the only large
25 one that I had remaining related to security in the order for the operation and
26 maintenance of the green bridge structures.

27 Now, we have already covered that in some detail as part of the matters
28 arising from issue-specific hearing number 3 so I was proposing not to rediscuss
29 that and to leave it that we would – anything else emerging in relation to security
30 for green bridge maintenance can be put in, in writing, at deadline 4.

31 So that will mean that once we're through the Silvertown discussion,
32 certainly from the Examining Authority, there will be no further issues arising
33 under agenda item 3(c). We will then move on to 3(d), which will be the
34 opportunity for anybody else in the room who has any other matters that they

1 consider are arising that we haven't touched on in the debate and discussion so
2 far, the opportunity to do so. So that's the shape of the remaining part of this
3 hearing as we see it. So, let me see. I can see we have a hand up from Emma
4 Rodican-Jones, who I believe is now appearing for the Port of London Authority.
5 Is that correct?

6 MS RODICAN-JONES: That's correct sir, thank you. Emma Rodican-Jones for the
7 PLA. We do have a few minor points arising from ISH5, which we would be
8 minded to put – they won't take very long when we get to it. We can put them
9 in written submissions, but we would draw your attention to them.

10 MR SMITH: No, I'm very happy to introduce you on those points. So once we've dealt
11 with the Silvertown Tunnel matter, I will come to you Ms Rodican-Jones.

12 MS RODICAN-JONES: Thank you, sir.

13 MR SMITH: Is there anybody else who wants to just alert me to matters that they wish
14 to raise, either in this item or 3(d)? No, I'm not seeing any further hands. So on
15 that basis then, I think the best way to start our conversation on the Silvertown
16 Tunnel requirements –

17 [Crosstalk]

18 MR SMITH: Excuse me; was that a submission?

19 MS RODICAN-JONES: Apologies, sir. Emma Rodican-Jones. No it wasn't. That was
20 an inadvertent mic.

21 MR SMITH: Okay, a mic mishap. Okay then. Right, in which case then we'll move
22 directly on and let's introduce Mr Latif-Aramesh for the applicant's position on
23 the Silvertown requirement 7 position.

24 MR LATIF-ARAMESH: Thank you, sir. Mr Latif-Aramesh for the applicant. For the
25 reasons that Dr Wright has explained, or explained at issue-specific hearing 4,
26 the applicant considers its approach to wider network impacts accords with
27 policy having regard to the existing government framework and funding
28 mechanisms. As this segment of the DCO hearing is specifically about the
29 Silvertown matters, I won't repeat those comments, but suffice to say that
30 appendix F of the Transport Assessment contains a full assessment of the wider
31 network impacts approach against the relevant policies.

32 I would also just flag that in the context of issue-specific hearing 4, the
33 agenda item – 'Precedence for and against' is how I think it was described – was

1 deferred until now, and we think that there is actually merit in just describing
2 the other precedents so that Silvertown can be seen in its rightful context.

3 The applicant's view is that there is a consistent line of decisions from the
4 Secretary of State, so it's less about precedents for and against and more about
5 rationalising the overall approach that the Secretary of State has taken. The
6 particular circumstances of the project give rise to the need for particular
7 management strategies in light of both the scale of the project, the particular
8 nature of the impacts, but also the availability of wider strategies for both the
9 strategic road network and the local road network in the context of the status of
10 the applicant.

11 Now, what I'd like to do is just briefly go over a few precedents so you
12 can be assured that the policy compliance tests that we provided accord with
13 those consistent line of decisions from the Secretary of State. The first precedent
14 to note is the A428 Black Cat DCO that was granted in 2022. A number of
15 interested parties raised concerns about the impacts on the wider road network,
16 including the local road network during the course of the examination. The end
17 result of what happened on that scheme can be found in requirement 23 of that
18 DCO, operation phase local traffic monitoring, which functions in a similar
19 manner to requirement 14 of the draft order for the LTC. On that scheme, the
20 applicant proposed a monitor and manage approach where it would monitor the
21 conditions at a selected number of junctions to inform future decisions about
22 funding.

23 The local highway authorities stated that they required from the applicant
24 a method for monitoring operational traffic flows and the security of unlimited
25 funding for any corresponding interventions on the local road network that they
26 considered necessary. The Examining Authority found – accepts that the
27 applicant, as a strategic highway authority for the strategic road network, is
28 required under its operating license to monitor its own network in order to
29 appropriately manage it. Therefore, the Examining Authority does not consider
30 it necessary to propose a requirement in relation to the applicant's intended
31 monitor and manage approach on the SRN.

32 On the question of local higher authority roads, the Examining Authority
33 went on to say, 'The Examining Authority agrees that local highway authorities
34 – with local higher authorities, that in the absence of monitoring the traffic

1 effects during operation would lead to a void in their understanding of the
2 proposed development's effect on the LRN and how they should then manage
3 it'. The Examining Authority did not think it was appropriate that the burden of
4 the monitoring fell on local highway authorities. Accordingly, the requirement
5 I referred to earlier was included in the May order.

6 No mitigation or further intervention was required or secured under the
7 terms of the order. Indeed, the Examining Authority's recommendation report,
8 with which the Secretary of State agreed, stated explicitly, 'The Examining
9 Authority does not consider it appropriate to require the applicant to provide
10 surety for funding for any subsequent interventions considered necessary as a
11 result of the proposed traffic monitoring'. It's also worth bearing in mind that
12 during the course of that examination, the Examining Authority explicitly put
13 forward a monitor and mitigation approach to the applicant and this is the
14 position that they landed on.

15 This is a relevant precedent because, like the LTC, the A428 was a
16 complex infrastructure project which entails a significant intervention in the
17 strategic road network, with potential impacts on the surrounding network.
18 Nonetheless, there was a reliance on the existing mechanisms on the SRN and
19 LRN for bringing forward and managing such impacts. I use the phrase,
20 'complex infrastructure project' very specifically here, because there is a family
21 of projects within National Highway's portfolio, which are designated as
22 complex infrastructure projects. For reasons which we will come onto, the fact
23 that this is a recently made DCO is relevant. The next precedent we'd like to
24 refer to is the A47 Blofield to North Burlingham scheme.

25 MR SMITH: Mr Latif-Aramesh, just before you move onto the A47, just one quick
26 question from me and that relates to, I guess, the comparability between Black
27 Cat and LTC in circumstances where, although Black Cat clearly is a very
28 substantial project and very complex one, in terms of meeting the criteria that
29 the applicant uses for description and such, it was nevertheless a project
30 connecting points that were, in broad terms, through a combination of the
31 existing SRN and/or LRN, already connected. And so therefore, in terms of the
32 scope of its potential unforeseen effects, you could probably put a boundary
33 around those and say, 'Well, yeah, this piece of infrastructure is operating within
34 a broadly reasonably well understood and defined context'.

1 I guess I did, before we leave this, want to explore with you the possibility
2 that with LTC creating, as it does, connectivity between places via a route that
3 has not been possible before, essentially a new major river crossing, possibly
4 justifies some additional both understanding of, and if necessary, intervention in
5 terms of mitigation of effects that might have a slightly broader impact than the
6 ones that would emerge from a scheme such as Black Cat.

7 MR LATIF-ARAMESH: Thank you, sir. Mr Latif-Aramesh for the applicant. I think
8 this goes to a general comment I was going to come onto, which is –

9 MR SMITH: You're going to wrap this up at the end, yeah. Okay.

10 MR LATIF-ARAMESH: Which is, in brief, specifically that we don't want to get into a
11 precedent, 'he said, she said' precedent of type situation because we
12 acknowledge that each scheme has its own particular features and its own
13 particular assets that it will leave the wider road network with. However, the
14 principles that are being endorsed in these decisions, both the A428 and the ones
15 that I will come onto, support the approach that the applicant's taken. So that is
16 a general point I will come on to, but I think it should address the specific point
17 you're raising at this juncture.

18 MR SMITH: Okay, please continue.

19 MR LATIF-ARAMESH: Thank you, sir. The A47 Blofield scheme, again a DCO
20 granted in 2022. Norfolk County Council were concerned about the impacts on
21 the wider trunk and local road network. The Examining Authority on this project
22 concluded the congestion issue at the A47 Brundall – I hope I'm pronouncing
23 that correctly – Brundall roundabout featured in some of my written questions
24 and discussions were held at hearings, and they are satisfied that the cause of
25 congestion would not solely be a result of the proposed development.

26 Additionally, any improvement works to this roundabout are outside the
27 scope of the application and would be a matter for the applicant and Norfolk
28 County Council to address separately. The applicant indicated it would discuss
29 the potential for future monitoring of the roundabout with the council. The
30 council welcomed this. Again, this is an example of an impact which arose
31 partially as a result of the scheme and the applicant was not required to secure
32 interventions in respect of.

33 The A47 Wansford to Sutton scheme, again another DCO granted in 2022,
34 the decision letter plainly records, 'The Secretary of State agrees it is for the

1 applicant to put forward the application it considers best meets the relevant legal
2 policy and guidance tests. While the Secretary of State has considered the
3 proposed development will not address the existing problems on a particular part
4 of the road network, and there could be further impact which may occur as a
5 result of the proposed development on that segment of the road network, he is
6 of the view that additional substantial works, such as those suggested by some
7 interested parties during the examination, fall outside the scope of the
8 application.’

9 Importantly, the Secretary of State goes on to say, ‘The proposed
10 development would not prevent works to parts of the road network being taken
11 forward as part of a separate scheme in the future and existing issues at this
12 roundabout will be raised with the National Highways operations team for
13 consideration as a future improvement project during the identification and
14 prioritisation process for future road periods.’ Again, there is an impact and no
15 specific intervention in response to it or secured under the terms of the order.

16 And then, if I might just turn to the A14 Cambridge to Huntington
17 improvement scheme – again, a project of a significant scale – in this scheme
18 there is importantly not a requirement to deliver mitigation on scheme opening.
19 The specific requirement is to include a scheme which includes a mechanism for
20 the future agreement of particular measures. Nonetheless, the LTC project nor
21 the LTC DCO are proposing to provide a similar requirement. This is because
22 the A14 project was prepared and submitted in late December 2014 by the
23 Highways Agency prior to the creation of Highways England, now National
24 Highways. The framework for managing the strategic road network was
25 changed in early 2015 by the passing of the Infrastructure Act 2015, which
26 created the new strategic highways company.

27 The licence was also created after the development of the A14. The
28 licence that was issued was issued in April 2015. This act – the Infrastructure
29 Act – also introduced funding frameworks that are now in place. Consequently,
30 the position of the applicant is that the A14 reflected the early position of a
31 nascent framework and the nature of the proposals addressed a different and
32 more localised set of network impacts. Since then, the funding framework and
33 the understanding of the National Highways licence and how it dovetails with
34 the DCO process has matured.

1 As I said, we consider all of these precedents are relevant and are
2 consistent with the approach that's been adopted by the project in ensuring that
3 impacts are monitored, but also that severance effects are mitigated. These
4 precedents show that for strategic road network DCOs, their approach aligns
5 with that taken on the LTC. The availability of different investment frameworks
6 leads to different requirements. These precedents support the position that the
7 DCO cannot and should not be the mechanism to circumvent existing national
8 frameworks for bringing forward upgrades and investment in either the strategic
9 road network or the local road network, and nor should a DCO seek to bind
10 future governments or existing governments on what are sensitive decisions on
11 spending priorities for the wider road network.

12 Before moving on to Silvertown, we also want to be clear about which
13 projects are not comparable to the circumstances of this project – the LTC – or
14 the position of the applicant as a strategic highways company. Last week,
15 references were made to private sector development projects which are not
16 comparable because the developers in those cases are not statutory highway
17 authorities with the responsibility to manage the wider road network. Nor are
18 they able to rely on overarching frameworks like the road investment strategy or
19 other MRN investments which are open for these kinds of projects, but not those.
20 So I've spent some time there going through a number of different precedents
21 for strategic road network DCOs, and we think – and I'll conclude on this point
22 – after I've dealt with Silvertown –

23 MR SMITH: Just before you go on to Silvertown, Mr Latif-Aramesh, you may be just
24 about to pick this up, but following the thread of your argument, is it then the
25 case that you would suggest that we shouldn't be looking at the Silvertown-made
26 order precisely because the undertaker there was delivering to Transport for
27 London, which, again, is not a strategic highways company, is not a body
28 authorised and licenced under the Infrastructure Act to provide national highway
29 services, is not within the RIS framework, for example. So is doing essentially
30 a different job, and within that framework, that it was appropriate to include
31 some broader monitoring and mitigation measure and commitment in that order
32 in order to tie down TfL, but that tying down is not appropriate to you for the
33 reasons that you have stated.

1 MR LATIF-ARAMESH: Thank you, sir. Mr Latif Aramesh for the applicant. That's
2 exactly what I was going to come on to, and your summary there is a reflection,
3 but there are other reasons which, if I may, I'd like to go onto as to why there
4 are differences. So clearly the applicant acknowledges the approach taken in the
5 Silvertown Tunnel, both in terms of the management of the impacts, but also the
6 establishment of the Silvertown Tunnel Implementation Group, or the STIG, as
7 it's affectionately known. We heard last week about the specific nature of
8 funding for Transport for London. Mr Rheinberg has mentioned it once again
9 today.

10 We think that goes to the fact that they are a different organisation
11 operating under a form of devolved powers pursuant to the Greater London Act
12 1998, compared to National Highways who work under the DfT pursuant to the
13 Infrastructure Act 2015, and so that means that there are different funding
14 arrangements that can properly be required. The difference is that the
15 management framework for Silvertown is set out in the DCO, but the
16 management framework for National Highways is set out in these wider licence
17 requirements, road investment strategies, as well as the processes secured
18 pursuant to the Infrastructure Act.

19 As these are already in existence, i.e. those that relate to National
20 Highways and designed to meet the government's priorities and intentions, the
21 applicant does not consider it appropriate to provide an alternative framework.
22 Any alternative framework would – through the requirement for specific funding
23 from the DfT – circumvent national processes and reduce the DfT's ability to
24 deliver the wider investment framework that it already has in place to prioritise
25 funding. On the question of the STIG, the applicant does not consider this
26 suggestion to be appropriate for the project. Control documents legally secured
27 under requirements secure and require relevant forums, groups, working
28 arrangements.

29 Unlike the Silvertown Tunnel project, the interests of various parties differ
30 depending on the subject matter of the relevant control. For example, the code
31 of construction practice secures the community liaison group; the outline traffic
32 management plan secures the traffic management forum. That also goes to why
33 we don't think there's an overarching group or something akin to the STIG, but
34 there is another reason why this is inappropriate in the context of the operational,

1 monitoring and management. National Highways, in its capacity as the strategic
2 highways authority, already does this under the applicant's licence – secured,
3 again, under the Infrastructure Act 2015 – the applicant is required to
4 'periodically prepare and publish route strategies covering the whole of the
5 network to develop and maintain an appropriate evidence base on the state and
6 performance of the network and issues affecting these to inform the setting of
7 the road investment strategies and the licence holders ongoing management and
8 development of the network when planning and carrying out its activities.'

9 So even before the process for road investment strategies kicks in, there
10 are already processes effectively considering the traffic network in particular
11 regions. These documents are the subject of significant engagement with local
12 stakeholders on a regional basis, and I think this is quite important, so I'd just
13 like to give two examples. One of the route strategies that is developed and
14 produced by National Highways is the London Orbital route strategy. In the last
15 iteration of that, more than 300 different stakeholder organisations provided
16 feedback on their network during the evidence collection period. There were
17 370 members of the public and in total there were around 2,700 individual points
18 that were raised by external stakeholders.

19 In the most recent one, workshops were held. Attendees included local
20 authorities, airports, port authorities, transport operators and other key route-
21 based interested parties, such as major businesses. Views were specifically
22 sought on how the routes interacted with the major road network, local roads,
23 public transport and links into the strategic road network, and just one further
24 example, because I think it's again very important that this idea that the STIG is
25 required under this framework and why we disagree with that so strongly. One
26 of the other route strategies that is prepared by National Highways is the route
27 strategy for the Kent Corridors to the M25.

28 The most recent iteration of that was published in May 2023 to assist with
29 the evidence base for the next road investment strategies and to develop wider
30 government decisions.

31 One of the route objectives for that next period established following the
32 engagement is to 'improve resilience from Dover, Sheerness, Tilbury and the
33 Thames Gateway ports to the M25, and, in addition, provision of safe, suitable
34 and efficient routes to further improve resilience between the M20, A20, M2

1 corridors and the A13 and A189, improving journey time reliability and
2 reducing impact on the local road network'. These route strategies not only
3 show why the establishment of a specific group is merely duplicating the work
4 that the applicant already carries out as a responsible custodian of the strategic
5 road network, but again supports the point that there are wider frameworks in
6 place for managing wider road network impacts. For these reasons, the
7 applicant's view is that the Silvertown Tunnel should not be considered at the
8 expense of all of the other precedents that we've highlighted.

9 Just to conclude, before I hand over to Dr Tim Wright to address you on
10 the specific issue of modelling uncertainty, this again goes to the point that you
11 asked me about, sir, around what exactly are we saying is the comparability and
12 the usefulness of these precedents? We think these precedents support the
13 principles that we are clearly using to show how we are compliant with policy.
14 The full case and the full reasons for that are set out in appendix F, but we don't
15 think that this focus on the Silvertown Tunnel at the expense of all of these other
16 precedents reflects the Secretary of State's well-trodden practice in this domain.
17 So I'll now hand over to Dr Tim Wright who will address you on the questions
18 of uncertainty and how that has been taken into account.

19 MR SMITH: Thank you very much.

20 DR WRIGHT: Tim Wright for the applicant. So just returning to some of the discussion
21 that we had earlier, we felt it was important to set out our position on uncertainty,
22 and there are two key issues that I want to flag here. Firstly, the transport
23 analysis guidance – and that's obviously set out as a requirement to follow under
24 paragraph 4.7 of the national policy statement – provides clear guidance on how
25 you need to consider uncertainty, and that happens both through the setting out
26 of an uncertainty process, clearly talking around uncertainty in relation to
27 developments in proximity in the region, and through the provision of
28 standardised elements by the government, such as the traffic growth forecast or
29 national trip end model. So through that framework, the transport analysis
30 guidance considers this factor of uncertainty and sets out very clearly for the
31 applicant and all parties to understand how that needs to be considered.

32 And then as a second factor, just thinking about the difference again
33 between National Highways – and this is perhaps repeating my colleague's point
34 – unlike other developers, National Highways doesn't cease to have obligations

1 after the consent is granted and the project constructed. Under licence, National
2 Highways has an ongoing duty with respect to its planning function – both
3 regarding specific local proposals and the development of local plans – and that
4 dovetails into the route strategy work that my colleague set out. So National
5 Highways has a longevity in the way it deals with the road network that sets it
6 apart from many other developers. Thank you.

7 MR SMITH: Thank you very much. Well, there's a very clear set of submissions there.
8 Just checking before we move on whether my –

9 MR LATIF-ARAMESH: Sir, sorry for interrupting you. I just had one concluding
10 comment, just by way of preliminary comments. So we've already made clear
11 that we are more than happy to have these discussions and workshops around
12 the Orsett Cock roundabout, and the suggestion of deadline 5 is – we don't take
13 any issue with that at all. What we did want to underline, following the
14 conclusion of what both Dr Wright and myself have said, is that it is for that
15 reason that we don't think a workshop on this would necessarily be fruitful.

16 We are obviously going to continue as part of our ongoing dialogue and
17 engagement with local highway authorities on their specific concerns around the
18 wider network impacts, but the applicant's approach here – I think the resolution
19 that we could find in the Orsett Cock roundabout workshops is of a different
20 nature. So I just wanted to underline that point as to why we were resistant
21 before the break to going beyond the ongoing engagement and dialogue that
22 we're having on these issues.

23 MR SMITH: Thank you. That also is clear. Well, on that basis, I will just check with
24 my colleagues on the panel whether there are any remaining probes or questions
25 to the applicant on those points before I throw that open to other interested
26 parties. Can I see raised hands from other interested parties as well to get a view
27 for who wishes to speak on those items? Okay, just let me check. Okay, my
28 colleagues are content, so we'll move this directly onwards.

29 What I'm going to suggest we do is we go to Michael Humphries for Kent,
30 then Douglas Edwards for Thurrock and then we move to Michael Bedford for
31 Gravesham. Then we move essentially north of the river and we – sorry, where
32 am I going? Apologies, Michael Humphries for Kent, then Michael Bedford for
33 Gravesham. Then we move north of the river and have Douglas Edwards for
34 Thurrock, Morag Thomson for London Borough of Havering. We then go to

1 Transport for London and then finally to Robbie Owen. Okay, so Mr
2 Humphries, can you make a start?

3 MR HUMPHRIES: Thank you, sir. A number of points. First point is you will have
4 noticed that National Highways have advanced no legal or policy impediment
5 to requirements being advanced of the sort imposed at Silvertown or others
6 which are junction specific. No legal or policy reason whatsoever was given.
7 What they have simply done, having said that they don't want to go through lots
8 of DCOs, is simply go through lots of other DCOs, saying, 'Oh, look, this is
9 what the Secretary of State did here, but we can look at those precedents but we
10 can't look at any precedents that go the other way.' That clearly is not very
11 compelling as an argument.

12 Take Black Cat as an example. You do need to remember, of course, that
13 National Highways argued strongly against the requirement that was imposed at
14 Black Cat. This was ultimately imposed on them by inspectors. It wasn't in the
15 original DCO or drafting, and one could produce, if one wanted, all their
16 submissions. Very similar, I must say, to the submissions made to you just now
17 as to why it was inappropriate even to impose that. It said, of course, as an
18 argument, that this would circumvent existing mechanisms for funding. That
19 cannot be right. One only has to look at paragraph 5.2.80 of the revised draft
20 national networks NPS. It's absolutely obvious what it says.

21 'Where a development negatively impacts on surrounding transport
22 infrastructure, including connecting transport networks' – 'connecting transport
23 networks' – it therefore is contemplating that this is transport networks that are
24 having this effect – 'the Secretary of State should ensure that the applicant has
25 taken reasonable steps to mitigate these impacts. This should include the
26 applicant increasing the project's scope' – well, they didn't do that – 'to avoid
27 impacts on the surrounding transport infrastructure and providing resilience on
28 the wider network.' I then leave a few sentences.

29 It then says, 'Where the proposed mitigation measures are insufficient to
30 reduce the impacts on the transport infrastructure to acceptable levels, the
31 Secretary of State should expect applicants to accept requirements and/or
32 obligations to fund infrastructure or mitigate adverse impacts on transport
33 networks.' There is no carve out for National Highways in relation to this, and
34 so the suggestion that in some way this is circumventing a mechanism is entirely

1 wrong, and in any event, who is going to determine the DCO application? It's
2 going to be the Secretary of State, who surely will know whether or not he feels
3 that this is circumventing some other mechanism. Therefore, it is perfectly open
4 for you to recommend to the Secretary of State that there should be requirements
5 or other measures in order to mitigate wider effects.

6 And of course, the Lower Thames Crossing DCO, in a sense, does already
7 mitigate some effects on the local transport network. That's why you have all
8 sorts of bridges over the scheme to link up things. They don't say, 'Well, we
9 don't need to link up these two local roads that are severed by the Lower Thames
10 Crossing because you can apply to DfT for a bridge. Do that.' Of course they
11 include it. So what we're dealing with here is not a principle of 'You cannot
12 mitigate effects on the local highway network,' it's just a question of fact and
13 degree. How far do you go? And on that, there is nothing that says you should
14 not go as far as Blue Bell Hill or Orsett Cock or indeed other locations.

15 Now, the result of this and the pushback from National Highways on this
16 is that, of course, they are still not engaging on a draft mechanism. They're
17 simply saying that they shouldn't have to mitigate. So here we are in the DCO
18 drafting session and they're refusing to actually engage on DCO drafting.
19 They're just saying, 'No, we don't need to do that,' and you do need, as I said
20 before, to be put in a position where, if you feel appropriate, you can properly
21 report on mechanisms in order to mitigate. Now, what Silvertown demonstrates
22 is that such mechanisms can be devised and that the Secretary of State will
23 impose them. Of course, Transport for London has certain different legal
24 obligations, but that doesn't change the principle that such mechanisms can be
25 devised.

26 Now, we haven't proposed exactly a Silvertown mechanism, but our view
27 on this is that we should be looking at some drafting from National Highways,
28 commenting on it and trying to assist you should you want to go in that direction.
29 Now, yes, once again, National Highways saying they'll have a workshop to
30 discuss Orsett Cock. Once again, they very obviously miss Blue Bell Hill – I've
31 already made my point on that, but what, sir, I'm very keen to avoid, are these
32 issues being just kicked down the road a bit until we get to the last month of the
33 examination where you're suddenly told, 'Well, it's all a bit late now, sir, and
34 we haven't got any drafting and sorry, we can't do this.'

1 This is why it is so important that we grasp this particular nettle early, that
2 you do have wording put in front of you so that you can then properly consider
3 things on the merits and we're not left in a mad scramble in the last few weeks.
4 So those are my thoughts at this stage on these points, and I'll stop now, and if
5 my hand is up, I will try and put it down.

6 MR SMITH: Okay, Mr Humphries, before you disappear, there's obviously quite a
7 critical timing point that, amongst others, you've raised there, which is this
8 question about the transition between what is currently national networks
9 national policy statement, and what prospectively might be if the parliamentary
10 process is completed on the basis of the current draft, which, of course, is the
11 unknown.

12 What I wanted to do was to put that specific point back to Mr
13 Latif-Aramesh before we go any further in this conversation, and see if he has
14 any particular observations on it, because I think it'd be useful both in terms of
15 closing off your immediate contribution to this discussion – I think it would also
16 assist those who are due to speak after you to hear on that particular point and
17 we can then move on.

18 So if I could just ask Mr Latif-Aramesh to come back and essentially the
19 question is we've heard a set of arguments from National Highways as the
20 applicant, which essentially rest in the land of [inaudible]. They're framed
21 within the framework of an existing and now quite elderly national networks
22 national policy statement and you've heard – and I don't need to summarise –
23 what Mr Humphries has suggested to you, that if the current draft national
24 networks national policy statement were to become policy by the time this
25 decision is to be made by the Secretary of State, the world will be a different
26 place, and that, by implication, undermines a range of the approaches that you
27 recommended to us in your argument, so in fairness I have to give you the
28 opportunity to tell us your perspective on the effect of that change, should it
29 come to fruition before this decision actually is forced to be made.

30 MR LATIF-ARAMESH: Thank you, sir. Mr Latif-Aramesh for the applicant. I've just
31 got three short points to make. One is of a more general nature, so I'll leave it
32 to the end, but the first point is that paragraph 4.10 of the NPS makes clear that
33 requirements must be necessary to make the proposals acceptable in planning
34 terms. Now, I did not repeat, but it is worth saying, that we do not consider there

1 to be any unacceptable impacts, and so this suggestion that you must impose a
2 requirement because there is an unacceptable impact, well, we don't agree with
3 the premise of the position, and so that's the first point.

4 The second is – and Mr Humphries makes reference to, 'Well, look,
5 they've mitigated some impacts and there's a bridge here and there's a bridge
6 over there'. Well, that shows how we've been discerning about interpreting the
7 relevant policy requirements. In a large number of cases which Mr Humphries
8 refers to, it is specifically because of potential impacts on severance, and the
9 tests on severance in the national policy statement are clear. The position that's
10 now being relied on, I think, is not our interpretation of the policy, and again, I
11 will make reference to appendix F of the transport assessment, which sets out in
12 detail why the approach is compliant with the relevant policies and strategies.

13 And then finally, just of a more general nature, it is worth saying that – we
14 made this comment in the first issue-specific hearing – the draft national policy
15 statement is clearly out for consultation, and we acknowledge, depending on its
16 final form, it may be an important and relevant consideration in some context,
17 but the draft also makes clear the transitional provisions that the existing national
18 policy statement is the tool to decide projects which have been accepted for
19 examination, which clearly includes this project, and so, again, I will make
20 reference to the fact that there is a written question specifically on this paragraph
21 – you'll be able to see our full views, but in summary, I don't think anything that
22 Mr Humphries has said challenges the approach that we've taken.

23 MR SMITH: Okay, that's clear, and you've been given, then, an opportunity to respond
24 to those points. Mr Young?

25 MR YOUNG: Yeah, can I come back on one point that the applicant raised there? They
26 said they've not identified any unacceptable impacts. Well, just to pick up on
27 that, the impact of Blue Bell Hill has been deemed to be just that by the
28 applicant's own transport work. In slightly different language – I think it's,
29 'significant adverse effect', but to a layperson, I think there would be very little
30 difference between 'significant adverse' and 'unacceptable'. So I thought I'd
31 just raise that. Just leave it there, I think.

32 MR SMITH: Mr Latif-Aramesh, do you want to come back on that one?

33 MR LATIF-ARAMESH: Just very briefly, I think you're right that the transport
34 assessment identifies adverse impacts. Just for clarity, our position is not that

1 that can be conflated with unacceptable impacts and we can come back to you
2 in writing on some further detail around that, but just so you know our position
3 is that the two should not be conflated.

4 MR SMITH: Okay, I'm going to move on. I am then going to stay south of the river.
5 I'm going to go to Michael Bedford KC for Gravesham Borough Council. Mr
6 Bedford.

7 MR BEDFORD: Thank you, sir. Michael Bedford, Gravesham Borough Council, and,
8 yes, the camera is now working, so you have the misfortune of looking at me, as
9 well as hearing from me. Sir, the position that the applicant takes on this is –
10 with respect – to take, as it were, an in-principle position, which has no, as Mr
11 Humphries said, legal or policy basis. The way we would suggest of looking at
12 this, as a way of testing the applicant's position, is to consider established policy
13 in the 2014 national networks, which was obviously drafted prior to the
14 establishment of National Highways as a strategic highways company, and if
15 you look at what is current policy, and in particular paragraph 5.2.14 of current
16 national networks, it very clearly indicates that there are circumstances where a
17 development consent order should be withheld because of the transport impacts
18 that have been identified.

19 And the way it puts it in paragraph 5.2.14 is, 'Provided the applicant is
20 willing to commit to transport planning obligations and to mitigate transport
21 impacts identified in the web tag transport assessment – with attribution of costs
22 calculated in accordance with the department's guidance – then development
23 consent should not be withheld.' Obviously, the corollary of that is, if the
24 applicant's not prepared to make that commitment, it may well be proper to
25 withhold consent. Now, the applicant might say, 'Well, when that was written,
26 we didn't exist,' but if you then go to the draft national networks – Mr
27 Humphries has taken you to paragraph 5.2.80 of the draft – I want to take you
28 to 5.2.81 of the draft –

29 MR SMITH: Yeah, keep going. As you can imagine, I'm busily turning it up –

30 MR BEDFORD: – which effectively repeats the test that's in 5.2.14 of the current NPS.
31 In other words, the same recognition that if you make the commitments to
32 mitigate your impacts, then you shouldn't expect to have development consent
33 order withheld, but if you don't, obviously the corollary still applies.

1 Now, if the applicant's position was correct, that they're in a special
2 position because of their licence and because of their obligations pursuant to that
3 licence, and that if it were the case that the funding regime for highways
4 improvements, whether it's through their own RIS proposals or whether it's
5 through large local majors or whatever it is, if the answer was that that puts them
6 in a special position so that unlike everybody else they don't have to adequately
7 mitigate their impacts, you might think, sir – and we certainly would think – that
8 there would be some recognition of that in the revised guidance to reflect their
9 special position.

10 But there is not, and the reason for that – we say it's perfectly simple – is
11 because when you look at what the test is in paragraph 5.2.15 of current NPS,
12 it's that the mitigation measures should be proportionate and reasonable. That
13 test also carries forward into the draft NPS. In other words, it's always a case
14 specific judgement looking at the particular scheme and its particular impacts
15 and there is no carve out that puts national networks in a special place whereby
16 they can simply say, 'Oh well, because of our position, we don't have to address
17 the impacts that we cause.'

18 So those are our submissions on that, and obviously you know what we
19 say about the nature of the impacts, so I don't repeat all of that material, but I do
20 say on this matter of approach, the applicant's approach, as it were, an
21 in-principle position – is just simply wrong. Thank you, sir.

22 MR SMITH: Okay, so in summary terms, you're suggesting that we need to have very
23 considerable caution in accepting a line of argument from the applicant that they
24 should trust us, 'We are a national highways authority.'

25 MR BEDFORD: Absolutely, sir, yes. That puts it in a nutshell.

26 MR SMITH: Okay, we're going to have to ponder on this with quite some considerable
27 care. There are substantial arguments being put on both sides, but thank you for
28 those, and what I'm going to do is I'm going to continue to proceed
29 geographically. So I am now going to move north of the river. I'm going to
30 move to Mr Edwards for Thurrock, then to Morag Thomson for the London
31 Borough of Havering. So let's hear from Thurrock.

32 MR EDWARDS: Yes, sir. Thank you, sir. Douglas Edwards for Thurrock Council. So
33 far as the approach that you've suggested is adopted in terms of the parties
34 coordinating to accrue some progress as far as Orsett Cock is concerned, we

1 generally welcome that. I have one or two observations to make in due course
2 about the approach to be taken to that process of coordination and I'll come back
3 to that at the end of my submissions. So far as the position with regard to impact
4 on wider non-strategic network is concerned, for essentially the same reasons as
5 have been identified by Mr Humphries for Kent and Mr Bedford for Gravesham,
6 we too consider that the approach that you've heard from National Highways
7 reflects the approach they've taken throughout this process and is simply
8 untenable.

9 It is not consistent with either current or emerging national policy, and
10 you've been referred already to paragraphs 5.2.01 to 5.2.02 of the current NPS
11 and 5.2.80 of the emerging NPS which make it abundantly clear that impacts on
12 the wider non-strategic network are matters which are relevant and are matters
13 which the Secretary of State expects to be considered in the context of a DCO
14 of this nature and those statements of current and emerging national policy
15 provide no basis whatsoever to support what you've heard said this afternoon on
16 behalf of the applicant.

17 Secondly, there is a legal objection, we would say, to the approach that's
18 been taken. This scheme is required to be the subject of an environmental
19 statement. An environmental statement is required to assess the likely
20 significant effects of a development on the environment and to identify the
21 mitigation in respect of those effects, and so far as wider network effects are
22 concerned, the approach of National Highways does not meet that basic legal
23 requirement and in my submission it is unlawful.

24 Thirdly, it is actually inconsistent in the sense that National Highways now
25 seem to accept that they do have to consider Orsett Cock separately, and to
26 consider a possible response to the impact on Orsett Cock. Now, if that is good
27 for Orsett Cock, it is also good for the rest of the non-strategic network, and
28 there is no basis, we would submit, to draw a distinction between the approach
29 to be taken to the assessment impact on Orsett Cock and how that is addressed
30 compared to impacts on other elements of the wider network.

31 You heard a great deal on behalf of National Highways this afternoon in
32 terms of seeking to draw a distinction between the position of this applicant and
33 the position generally of infrastructure projects of this nature. The identity of
34 the applicant was prayed in aid, its funding structure was prayed in aid, and its

1 management structure was prayed in aid. There is nothing in national policy, at
2 any level, and there is nothing in any of the legal framework that regulates the
3 determination of applications of this nature that justified all or any of those
4 factors allowing an applicant of this nature and of this identity not to assess
5 impacts on the wider network or to address those impacts, and you would look
6 in vain, anywhere in the national policy statement, that effectively draws a
7 distinction that allows National Highways, as an applicant, to approach impacts
8 differently to any other applicants of this nature.

9 Equally, so far as the Infrastructure Act of 2015 is concerned, that sets out
10 essentially the structure of National Highways and highways authorities and
11 funding generally, again, that is setting out a structure. There's nothing in that
12 Act that allows the assessment of impacts of highway schemes to be approached
13 differently when they are brought forward by National Highways compared to
14 any other kind of applicants, and none of those factors, in our submission, justify
15 the approach that National Highways have taken.

16 With regard to precedents and those that were impressed upon you by the
17 applicants this afternoon, as with Kent County Council, and on the basis of what
18 Mr Humphries said, with which we agree, there's not a huge amount to be gained
19 by effectively exchanging or trading precedents in this way. As I think the
20 applicant ultimately accepted, each steam turns on its own right and its own
21 circumstances, albeit it may be of interest, there is certainly nothing that dictates
22 an approach derived from any of those precedents.

23 All I would say at this stage so far as the Black Cat example is concerned
24 is that within the Secretary of State's decision in respect of that DCO application,
25 at paragraph 25, there is a specific reference to the lack of there being any
26 evidence before the Examining Authority or the Secretary of State with regard
27 to wider network impacts that justifies an intervention in terms of remedying
28 those impacts through the DCO, and that is perhaps a factor that is relevant in
29 deriving or determining what support can be derived from the Black Cat's DCO
30 decision and decision making process as far as the scheme is concerned. So
31 those are all the points that I wish to make on the approach to wider network
32 impacts.

33 Can I just come back very briefly to this process of further engagement as
34 far as Orsett Cock is concerned? As I indicated, Thurrock Council are prepared

1 to be involved in that process – and indeed welcome your guidance in terms of
2 the benefits to be derived from it – but if that process is going to have any
3 positive benefit, then all parties who are involved in it need to go into it in the
4 right mindset.

5 So you're aware, that Thurrock Council's primary position is that, as
6 presented, this scheme is not capable of being given consent – it's just not
7 consentable – but we will go into that process of engagement seeking to find
8 common ground, seeking to assist you and your colleagues with identifying a
9 form of wording or amendment to the DCO that would provide some mitigation
10 so far as Orsett Cock is concerned, insofar as it's available. We do so on a
11 'without prejudice' basis.

12 We would certainly expect, sir – and we will welcome your indication –
13 that other parties should approach it in the same way, because what is not going
14 to be helpful is if National Highways engage with that process and engage with
15 it in the way that you've heard this afternoon insofar as wider network impacts
16 are concerned, by saying, 'It's nothing to do with us,' because that is not going
17 to be a helpful process either in achieving a positive outcome through that
18 ongoing engagement, or indeed, assisting you.

19 So, sir, we would welcome some indication from you that you would
20 expect the parties to embark on that process with an open mind, if necessary, on
21 a without-prejudice basis, and doing everything they can to assist you in terms
22 of providing a form of wording, even if it is not consistent with their primary
23 case. That can be introduced into the DCO if either you and your colleagues,
24 through your recommendation, or the Secretary of State, through his decision,
25 thinks it's appropriate. So, sir, unless I can be of any further assistance, that's
26 all I wish to say on behalf of Thurrock Council at the stage.

27 MR SMITH: Now, those are clear submissions, so unless either of my two colleagues
28 have matters that they need to follow up on – and I will just check, and I believe
29 they do not – we will move on. So if I can then move on to London Borough of
30 Havering, please. Ms Thomson.

31 MS THOMSON: Thank you, sir. Morag Thomson, London Borough of Havering. Just
32 three points, sir, since most of what I was going to say has been said. The first
33 point, though, is something that's not been said at all, which is anticipating an
34 argument that I think might have been heralded by Mr Latif-Aramesh, when

1 there was a discussion about the significant impacts and he was talking about
2 the distinction between ‘unacceptable impacts’ and ‘significant adverse
3 impacts’. Now, he kicked the can down the road in the sense of explaining what
4 he meant by that distinction, but if I anticipate that what he meant was that there
5 may be some significant adverse effects, but they weren’t unacceptable because
6 in overall terms there was an overall benefit, because I think I’ve seen that
7 argument in appendix F, certainly, and in other documents.

8 MR SMITH: And it was an argument that we crossed in issue-specific hearing 1 or 2, I
9 think, right at the very outset of the examination, yes.

10 MS THOMSON: If that is the argument and there’s some sort of exemption suggested
11 for the need to mitigate or in effect comply with the NPS because of some sort
12 of overall benefit, I just want you to draw attention to section 104 of the Planning
13 Act, which does provide an exemption in certain circumstances for a decision
14 being made in accordance with the NPS, and one of the exemptions – there’s
15 only one exemption that’s relevant to this discussion – is if the Secretary of State
16 is satisfied that the adverse impact of the proposed development would outweigh
17 its benefits.

18 Now, in those circumstances, one can have a decision which isn’t in
19 accordance with the NPS, but there’s no reverse provision, so that simply
20 because there’s an overall benefit does not have any exemption or give any
21 exemption from the need to comply with the NPS, and the reason that’s
22 important is because you will have noticed, I’m sure, that in Mr Latif-Aramesh’s
23 defence of his position, he made not one reference to a paragraph in the NPS,
24 not one single reference, and that was my second point.

25 And my third point is the in-principle position point, and that is the lack
26 of engagement of the National Highways in either entertaining or helping you in
27 looking at a Silvertown Tunnel type approach, and I think that’s very unhelpful.
28 It may well lead to a kerfuffle at the end of the examination, which is in nobody’s
29 interest and is unhelpful to all of us and most of all to yourselves. Those are my
30 points, sir.

31 MR SMITH: Thank you very much. Clear, succinct. I have no further questions on
32 those. I am not seeing any desire from my panel colleagues to intervene either,
33 so in which case we now have Shamal Ratnayaka from Transport for London
34 and I propose to go to them, and I do see Robbie Owen has also placed his hand

1 into this ring. Mr Owen, I will come to you, but after I've gone to Transport for
2 London.

3 MR RATNAYAKA: Thank you very much, sir. Yes, I'm conscious that Transport for
4 London has a particular role in this because obviously we share the concerns and
5 I'd like to align ourselves with Ms Thomson and Messrs Humphries, Edwards
6 and Bedford, but obviously we also have the experience from the other side's
7 promoter and some of the pitfalls, so hopefully we can sort of share perspective
8 on both sides. Not to repeat things which have been said already in ISH4, I think
9 you've seen very clearly there's a strong consensus across the local highway
10 authorities for a need for a mitigation mechanism, and I think the key question
11 which I made there, which I think is worth repeating again, is that it's not just a
12 question of the extent of mitigation, but what is the extent to which we
13 understand the impacts 10 years in advance of the scheme opening?

14 And that's why when the applicant says, 'We do not consider there to be
15 unacceptable impacts,' I don't think they know with any certainty they can say
16 that. 10 years ahead, I think, is foolhardy to make such a claim without the
17 benefit of further monitoring which can then inform the mitigation. A lot has
18 obviously been talked about the Silvertown Tunnel mechanism. It's worth just
19 stepping back and just explaining very briefly what that is trying to achieve. So
20 I think there are a number of key principles there in terms of – you need a
21 mechanism which is capable of addressing the adverse impacts, whether they're
22 congestion, air quality, noise or carbon.

23 It needs to be mechanisms which are credible, which is mitigating the
24 impacts in a way that are acceptable to both the local authorities and the highway
25 authorities, but also to the applicant itself, and indeed is not unfairly leaving the
26 applicant on the hook for impacts which are not directly related to the scheme.
27 It needs to be workable. That means this mechanism must work in practice
28 without getting mired in disagreements and ability of one party to block and yet
29 at the same time give sufficient buy in and input for the relevant local highway
30 authorities even if the overall responsibility should still lie with the applicant.

31 It needs to be timely and that's about where you put the thresholds to make
32 sure that you can deal with the impacts before they have fully hit, so that you
33 can actually mitigate them rather than, as it were, when it is too late, and of
34 course, crucially, it needs to be evidence based. The need for mitigation must

1 be based on robust modelling which is done shortly before opening. So I think
2 in the case of Silvertown it is one year before opening, so that you then have this
3 robust strategy and equally making sure that anything you then implement can
4 be directly resulting from the project and very clearly the impacts.

5 And of course it needs to be transparent, which provides trust from all
6 sides that this is doing what's expected and it provides that reassurance to the
7 applicant as well. So that is why we haven't, as you know, put forward
8 Silvertown as the mechanism, but we understand why others have, because it is
9 tried and tested for a strategic river crossing, and I'm conscious the applicant did
10 point to lots of other schemes, but actually there are some very specific elements
11 which mean that the Silvertown example is very relevant and not least the nature
12 of a river crossing.

13 The challenge you have in this part of the Thames is you have at the
14 moment one crossing in the Dartford Crossing, which is hugely capacity
15 constrained, causes huge issues and in particular on an unforeseen impact when
16 there's any sort of closure, any sort of resilience issue, and that's partly why, for
17 Silvertown Tunnel, I think was very important to have that, and why also,
18 National Highways, despite Silvertown lying well within London, National
19 Highways was brought into the Silvertown implementation group.

20 So I think there are reasons why this is actually a particularly good
21 example, because of the very similar impact, and that's, of course,
22 notwithstanding all the issues with the modelling which we discussed at the
23 ISH4, and I think I'd like to just go through just one or two of the points that the
24 applicant made that I do think need rebutting in terms of the extent to which they
25 were aching to say, 'This is way this is not applicable; why Silvertown is not
26 applicable.' They talk about the different funding mechanism and I think this
27 point has been made by others to varying degrees.

28 We cannot see why the mechanism and the different funding arrangements
29 – there's any reason why that should be any different. If anything, TfL has more
30 limited access to resources. National Highways points to RIS 3. We also have
31 our strategies, the Mayor's transport strategy. There's always this picture, the
32 potential of a scheme which is somehow undermining the ability of the applicant
33 – it somehow is its *raison d'être* to invest. There's no reason why this should in
34 any way detract from that. This is not providing a rival framework in any way.

1 There are wider frameworks in place. National Highways has them, TfL has
2 them, and this is just a framework to ensure very specific impacts are dealt with,
3 and as we said, the mechanism can be designed which avoids the sort of scope
4 creep which National Highways keep pointing to, that avoids lots of other things
5 being put in, which are not directly relevant.

6 One of the other points I just want to quickly – they talked about the
7 stakeholder map being too complicated, but actually Silvertown’s was much
8 more complicated. Because of the patchwork of London Boroughs, we have 14
9 members of the Silvertown Tunnel Implementation Group. I think just based on
10 participants here, you would need a far smaller number, but I don’t think in
11 principle, the group works whether it’s a bigger or smaller, but I think the idea
12 that somehow they couldn’t do it when you have a less complicated stakeholder
13 picture, I don’t think we really understand what they mean by that, and it’s worth
14 just saying, they do talk about all the groups they have.

15 That’s well and good. Again, the Silvertown Tunnel Implementation
16 Group was designed to serve a particular purpose. If one of the groups they
17 already have can play the oversight role in the mitigation process, I think that
18 will absolutely do the purpose. It’s not about some totemic need to create this
19 new special group; it’s about having this mechanism and then having a sufficient
20 structure to give oversight for the other parties involved.

21 And the other point I just wanted to make was that they talk – again,
22 repeatedly – about the applicant’s licence, that they already have this role to do
23 this, but actually, as it did come up previously, that licence is limited in scope
24 primarily of its own network. So it doesn’t pick up the impacts on the local
25 highway network or the Transport for London highway network, or the networks
26 where actually the risk is of significant impact notwithstanding some of the
27 deficiencies and modelling which understate the impacts on the local highway
28 networks.

29 This is, again, why it’s really important when they talk about the ongoing
30 duty, that’s exactly the same ongoing duty that TfL has on the wider road
31 network, but again, the Silvertown mechanism in no way detracts from TfL’s
32 ongoing duty to monitor that, but again, it provided that assurance and that input
33 for the local authorities that the impact will be addressed, and my colleague,
34 Matthew Rheinberg, also was going to just add a few words as well.

1 MR SMITH: Thank you very much. So, Mr Rheinberg?

2 MR RHEINBERG: Yes, very briefly. I should just correct one thing my colleague has
3 said. The monitoring for Silvertown starts three years in advance of the scheme
4 opening and part of the benefit of that is that gives us baseline data for the
5 updated modelling in advance of the scheme opening, as well as being for
6 purposes of monitoring. Otherwise, I was really just going to add just a little
7 more about the Silverton Tunnel Implementation Group or STIG. As my
8 colleague mentioned, 14 local highway authorities in London, and that is a mix
9 of authorities who were both supportive and opposed to the Silvertown Tunnel
10 scheme.

11 So in a similar way to Lower Thames Crossing, that difference of views
12 of the different members of the group has been handled, and also the level of
13 participation reflects whether there are the host authorities for the Silvertown
14 Tunnel and others. So, again, it's worked quite well, that different authorities
15 provide different levels of input suited to their input. What the group does, it
16 scrutinises monitoring[?] results and mitigation that Transport for London
17 proposes, but crucially it is still signed off by the Secretary of State – the
18 monitoring and mitigation strategy – so the local highway authorities are
19 consultative, but they can't hold Transport for London to account fully.

20 The scheme promoter remains in control. TfL isn't on the hook to deliver
21 mitigation for changes in traffic impacts that are not as a direct result of the
22 Silvertown Tunnel project. So we don't feel we've lost any control of a project
23 to the local highway authorities, and one thing that STIG's done quite
24 successfully is to develop a process of consultation on decisions that wasn't
25 defined in the DCO. That is all publicly available.

26 It's all out in the open, so it's all well understood by the general public in
27 the boroughs affected, and just in response to the point about whether it's an
28 additional burden that could duplicate other groups, I think in the case of
29 Silvertown, we've also found it actually does the opposite. It's meant that with
30 some of the local highway authorities, we don't need one to one meetings with
31 them, because the STIG is also used to provide a general update on progress of
32 the project as it constructs and then moving forward operationally, and I'll leave
33 it there, I think.

1 MR SMITH: Thank you very much, Mr Rheinberg. Okay, last but by no means least,
2 Mr Owen.

3 MR OWEN: Thank you, sir, and mercifully, I think I can be brief because I agree with
4 all of the articulate submissions you've had from the four local authorities and
5 from Transport for London. Essentially, what I wanted to say is I too find this
6 idea of the nature of the applicant being a consideration here – it's an entirely
7 novel concept, so that I'm concerned that any applicant, let alone this applicant,
8 has a special position in the policy and legal regime. All applicants – certainly
9 those that have an element of public funding – will have their own investment
10 and funding frameworks, and indeed, I should just mention in passing that, of
11 course, whilst Transport London is not a strategic highways company in the
12 sense of the Infrastructure Act 2015, it absolutely has strategic highway
13 functions throughout Greater London. So I don't think there's any difference in
14 principle on that point either, but two points, really, I wanted to make in detail.

15 First, on the policy position, something was made of the fact that the
16 revised draft national networks national policy statement is materially different
17 in relation to the obligation to identify impacts and to mitigate them. I think
18 that's entirely misplaced as a point. The current 2014 national networks NPS is
19 very clear on the obligation to identify impacts and to mitigate where necessary.
20 The revised draft NPS puts a gloss on that, and that, incidentally, would be an
21 important and relevant matter – to use the language of Section 104 – when it
22 comes to determining this application, even if the NPS is not designated by them,
23 but the key point is there is no material difference, I believe, between the
24 designated NPS and the draft NPS in terms of this core issue of network impacts
25 that we're discussing.

26 The second point I wanted to make was in relation to the legal position –
27 and again, I note, as have other speakers, that no legal basis was put forward for
28 the position that the applicant asserts, and indeed, I think if you look at the
29 scoping opinion provided by the planning inspectorate quite some time ago now,
30 it is quite clear that no special position for the intended applicant was envisaged.
31 That's not how it reads at all. It's quite clear in the scoping opinion that the
32 applicant has to look at all of the impacts that the scheme is predicted or thought
33 to result in.

1 And it's also noteworthy that there's no legal exemption from the
2 requirements of environmental impact assessment, including the requirements
3 to consider mitigation that the applicant has pointed us to, and indeed, I've
4 referred myself to regulation 33 of the 2017 EIA regulations applying to DCO
5 applications, and that provides a mechanism – regulation 33 – for the Secretary
6 of State in any particular case to direct that there should be an exemption from
7 the requirement to undertake environmental impact assessment, and again,
8 there's no suggestion that the applicant in this case has the benefit of a regulation
9 33 exemption.

10 So for that reason and all others you've heard, we too support the view
11 that the position the applicant is taking here is fundamentally misplaced and that
12 could be at odds with how the infrastructure and indeed the development
13 planning regimes expect applicants to assess and mitigate impacts. Thank you.

14 MR SMITH: Thank you very much, Mr Owen. Now, finally, before we close out this
15 item by returning to Mr Latif-Aramesh for responses, I do see, Mr Humphries, I
16 still have a yellow hand. Is that a relic yellow hand or are you seeking to
17 intervene again on this particular point?

18 MR HUMPHRIES: No, it's this continuing problem that I can't tell from my screen
19 whether the hand is up or down.

20 MR SMITH: There have been a range of issues with Teams. Don't worry, it's –

21 MR HUMPHRIES: I'm so sorry, I'll –

22 MR SMITH: No. No, no, no. It's Teams being difficult today. It has been difficult
23 today for all of us. Okay, in which case I'm going to go back to Mr
24 Latif-Aramesh and then, once he has spoken on this matter, I'm going to give
25 some guidance on behalf of the Examining Authority in relation to the actions
26 that we consider are necessary, having regard to the various submissions that
27 have been made on this point. So, Mr Latif-Aramesh.

28 MR LATIF-ARAMEESH: Thank you, sir. I will be brief. One of the points that was
29 raised by Gravesham Borough Council was a specific reference to paragraph
30 5.214 of the national networks national policy statement, which does contain
31 some wording around mitigation and the specific requirements which have come
32 up. It is telling that that section lies under the section for strategic rail freight
33 interchange projects. So I think some careful consideration should be given of
34 the fact that that position is in that particular place –

1 [Crosstalk]

2 MR SMITH: – it is not applicable to –

3 MR LATIF-ARAMESH: Yes, it's plainly not. The sections below will deal very clearly
4 with road and rail, and those paragraphs deal with proportionate and reasonable
5 mitigation. And again I take you to our position that we do not consider there
6 are any unacceptable impacts and that we have provided reasonable and
7 proportionate mitigation. So that's just the first point.

8 I think a couple of interested parties made reference to the EIA regulations.
9 We have complied with the EIA regulations in our environmental statement, so
10 we think that's an entirely misplaced point.

11 On the issues that were raised by Thurrock Council, just two brief
12 comments. So, one, Mr Edwards referred to the A428 in a specific paragraph.
13 This is precisely why when I answered your question, sir, I said that we didn't
14 want to get into a precedent-off, because we acknowledge that there are
15 individual features of each scheme. What we were trying to draw out, and what
16 I think we have drawn out, are the principles which support the approach to
17 policy compliance that are presented in appendix F – and just on that point, I
18 will deal with the only point that I wanted to address in relation to the London
19 Borough of Havering's comments that not one single paragraph is mentioned at
20 the NPS.

21 I think Ms Thompson wasn't present at issue-specific hearing 4, but
22 Dr Wright and Mr Tait went through in a great amount of detail the relevant
23 policies and how they applied, and how they had been considered – and that,
24 again, is set out in appendix F.

25 The other point, just briefly: we will of course be approaching all
26 engagement constructively, and where there are issues, we are happy to engage
27 meaningfully on those points. The suggestion this morning around Orsett Cock,
28 we felt that you felt it necessary that there was some attempt for that specific
29 issue and we're happy to oblige on that, so I just wanted to mention that.

30 And then turning very finally to TfL's submissions, so we don't think
31 they've actually drawn out reasons for disputing what we've said about
32 Silvertown. References were made in relation to uncertainty and the fact that in
33 ten years the position might be slightly different. Well, Dr Wright did address
34 specifically that question of uncertainty and it was a question, again, we spent

1 some time on in issue-specific hearing 4. We don't think the question of
2 uncertainty changes the approach to be taken. And then I would just mention
3 on route strategies and duties, the examples that I read out, which we will put in
4 our written submission, should give comfort that the specific role that's being
5 asked for here is already being undertaken.

6 The question of mitigation has to be seen in the context of what is
7 reasonable and proportionate but also existing functions that are already in place,
8 and we do think that there would be a duplication of work if we just had an
9 implementation group – and in fact it might detract from the processes that
10 National Highways is already following in relation to those route strategies. I
11 think with that I will conclude. Thank you, sir.

12 MR SMITH: Thank you very much. Well that brings the discussion in relation to all of
13 the matters arising essentially from the complex of issue-specific hearings 3 and
14 4 to an end. We do have a specific request to address us on some points arising
15 from issue-specific hearing 5. Before I go to those, what I am just then going to
16 do is to provide a sense of guidance from the Examining Authority on the action
17 that we have indicated would flow from the debates that we have just had.

18 The first observation that I'm going to make is to turn all of our minds
19 back to the proposition that this hearing, this process, is a without prejudice
20 process in which we have invited all parties to make observations on the
21 prospective form, content and drafting of the development consent order,
22 irrespective of in-principle positions about whether or not the order indeed ever
23 will be made – and that holds good throughout all processes, all actions flowing
24 out of these conversations around the draft development and consent order.

25 So when we move forward and talk about the actions that need to occur,
26 we therefore fully understand that any party participating in those actions will,
27 on an ongoing basis, be participating without prejudice, and we are very, very
28 grateful therefore for the commitment that any party shows to addressing aspects
29 of approaches that in their in-principle submission are not correct or are not
30 appropriate, because this is in the interests of arming the Examining Authority
31 with the best understanding of all positions and – to take some words from
32 Mr Humphries again – making sure that we don't kick the can down the road
33 and that we don't find ourselves in the death of this examination, very close to
34 its end, with no sense of how a particular drafting approach might possibly

1 address a particular issue, because we just haven't got as close as we can to
2 discussion and agreement on it. So that's the kind of headline position on
3 working together in partnership without prejudice, and not committing each
4 other to positions that we may still in principle disagree with, and I trust that
5 that's understood around this very large table.

6 So if we then move on to what we're asking to be specifically done, in
7 discussion behind the scenes, my colleagues and I have been talking about how
8 best to deal with the issues in front of us in actions, and we think that it's
9 important to essentially slice away the large-scale in-principle strategic
10 mitigation strategy, and the Silvertown Tunnel requirement 7 approach, from the
11 very specific need to engage around the particular effects of what is being sought
12 by the applicant at Orsett Cock, and the engagement particularly with Thurrock
13 Council and with the ports around the considerable technical disagreement that
14 there is still around that particular location and the effects of what is being
15 proposed there.

16 And so as a starting point then, we do think that it would be very
17 productive if a workshop was conducted and an output paper produced recording
18 as much agreement as can be achieved on the specifics of modelling impacts,
19 effects and mitigations at Orsett Cock, and that should be done by deadline 5.
20 And as I've indicated, our view there would be that's a collaboration between
21 the applicant, Thurrock Council, and we would suggest also Port of Tilbury
22 London Ltd and also DP World London Gateway. Is there anybody else who
23 thinks they ought directly be involved in that piece of work, with a view to
24 producing a statement of agreement – and indeed disagreement – by deadline 5?
25 I'm not seeing any other hands, apart again from Mr Humphries and Mr Owen,
26 which I read as being residual hands from the last round of the conversation.

27 MR OWEN: So can I just come in here? Robbie Owen for Port of Tilbury London Ltd
28 – it's actually a new hand.

29 MR SMITH: It was a new hand.

30 MR OWEN: I think you were about to move on to ISH5 matters – and not on this
31 particular point, but I put my hand up five minutes ago because I do want to raise
32 two other matters before we move on to ISH5.

33 MR SMITH: Yes, noted, and I will come back to you.

34 MR OWEN: Thank you.

1 MR SMITH: What I am about to move on to though is then the broader question of
2 Silvertown requirement 7, and that is to observe that we note the applicants now
3 strenuously advanced position, and that there are very particular reasons why
4 they believe such a broad-brush approach is broadly not warranted and not
5 appropriate. We also note the broad assertions of the local authorities and a
6 number of other interested parties that it is, and it is.

7 What we do not have, because the applicants say it's unnecessary, is a
8 without-prejudice set of drafting from the applicant that were such an approach
9 be considered to be appropriate might be, in its view, the best means of drafting
10 to deal with the functions that requirement 7 of the Silvertown Tunnel draft DCO
11 deals with, and it would assist us, I have to say, if we did see some
12 without-prejudice in-principle drafting from the applicant, but we note that there
13 are priorities here and there are time pressures, and so we're not asking for that
14 by deadline 5.

15 It would assist us if we could have that by deadline 6, and our rationale for
16 asking for it by deadline 6 is you may be conscious that that lies at 31 October,
17 and that then on 14 November the Examining Authority itself will have to,
18 amongst other things, if necessary produce a commentary on or schedule of
19 changes to the draft development consent order if required. And it is in that
20 context that we believe it would be useful to receive from the applicant without
21 prejudice drafting by 31 October.

22 Now, what that then flows up is that we can essentially then consult on
23 that without-prejudice drafting in the ExA's commentary which we'll issue on
24 14 November, and so thereby before we get to the bitter end of this examination
25 and without kicking cans down the road, other interested parties will have their
26 opportunities to comment – and indeed the applicant can put their own position,
27 which may well still be that 'this is unnecessary and we do not, Examining
28 Authority, suggest that you do it,' and those submissions can be put in following
29 the publication of the ExA's commentary on the DCO.

30 So that's the approach that we broadly propose to take to dealing with the
31 actions that flow out of this. Now, does anybody have any questions or
32 observations? I don't want to re-litigate any of that, but I will – if any of it is
33 not understood, I will take questions on it, and I do, Mr Owen, have you then on

1 my list to just go back to before we then move on to ISH5. I do see Mr
2 Humphries.

3 MR HUMPHRIES: Thank you, sir. I note that in terms of the workshop you didn't
4 mention Bluebell Hill. I assume that's deliberate.

5 MR SMITH: That is deliberate at present, yes.

6 MR HUMPHRIES: But my understanding is that your next point about sort of general
7 drafting on mitigating effects – what you call the sort of the broader position on
8 the Silvertown approach – Bluebell Hill can obviously be included in there –

9 MR SMITH: Yes, within that.

10 MR HUMPHRIES: And the point that I made earlier is that Bluebell Hill might, because
11 it is a known impact rather than an uncertainty impact – I assume it would be
12 perfectly acceptable for there to be what I might call a 'bespoke' Bluebell Hill
13 type requirement that is drafted, separate from any more general –

14 MR SMITH: Absolutely, yes.

15 MR HUMPHRIES: Thank you for that point, sir.

16 MR SMITH: There is no – I mean, let me be very, very clear. In trying to separate these
17 two groups of material out to kind of make the stuff that we have to chew our
18 way through at least digestible, we thought that we absolutely had to extract the
19 Orsett Cock conundrum to an early place –

20 MR HUMPHRIES: Yes.

21 MR SMITH: Because we, I think, feel a very considerable concern that there are
22 in-principle matters of analysis that are still outstanding in that place, whereas I
23 think with Bluebell Hill we are in a different place, and that is – there doesn't
24 seem to be a dispute about the scope of impact. What there does just seem to be
25 a dispute about is whether it all be secured – the response will be secured.

26 MR HUMPHRIES: Thank you.

27 MR SMITH: And so in that respect, where we're going there is we leave Bluebell Hill
28 within the broader conversation with a without prejudice position emerging from
29 the applicant for deadline 6, but we're not being in any way prescriptive and
30 saying that that should somehow be wrapped up in some super-requirement. If
31 it can be picked off individually, sensibly – and you've advanced reasons why
32 you think that's the case – then absolutely that is a possible way forward.

33 MR HUMPHRIES: Thank you, sir. Thank you for the clarification, and if my hand is
34 up, can you deem it to be down?

1 MR SMITH: Well it's deemed down. Okay. Does anybody else want to seek any more
2 clarification or guidance on the action points? I'm seeing no further hands, apart
3 from of course Mr Owen, who I've said I will introduce on some other matters
4 before we move to matters arising from ISH5. So, Mr Owen, the floor is yours.

5 MR OWEN: Sir, thank you very much. Just to come back on what you said about without
6 prejudice wording in relation to the Silvertown Tunnel approach, and the same
7 also goes for the Orsett junction matter we discussed. We were certainly
8 intending to submit at the next deadline with our post-hearing note what we think
9 would be suitable wording for including in the DCO, so I think – whilst we
10 reflect on this discussion, I think we probably will still do that, and that indeed
11 may help the applicant because they can obviously have a look at what we're
12 suggesting for the Silvertown Tunnel approach, and indeed Orsett Cock, and to
13 the extent they wish to take that into account in providing their own wording to
14 you at a later deadline.

15 Before we move on to ISH5 issues, sir, there were just two other matters
16 which I'll deal with briefly in view of the time of day and we can obviously and
17 will make detailed submissions on this in writing. But as you'll recall from what
18 Ms Dablin said at ISH4, the Port of Tilbury is most concerned about impact
19 during construction on the Asda roundabout, and we still feel, and will again be
20 making this point, that the applicant ought to bring the roundabout into the order
21 limits as a means of being able to deliver the mitigation that we think is going
22 to prove to be necessary.

23 But in any event we think, and we will be providing wording for this, that
24 a requirement should be added to the DCO that in effect – it's a bit more complex
25 than that, but in effect requires – again, a bit like Orsett Cock – the preparation
26 and approval by the Secretary of State of a mitigation and monitoring strategy
27 before works can commence, and then obviously an obligation during
28 construction to comply with the measures that strategy has approved, because
29 we are very worried about the modelled impact on the Asda roundabout. We
30 have some questions about the modelling, but we don't think the applicant has
31 really resolved those issues at all – and therefore, given that that would have a
32 catastrophic impact on access to the Port of Tilbury if the problems that we
33 anticipate may arise, we think this needs to be dealt with firmly and effectively.
34 The other matter –

1 MR SMITH: Can I just ask a very brief sort of interjecting question on that, and that is
2 that of course at the moment the Asda roundabout isn't within the order land, so
3 if it were to be brought into the order land, there are some implications about the
4 change to the application in front of us. You may not know the answer right
5 away, but in principle would that require any additional CA, and I'm just sort of
6 then thinking aloud about the kind of mechanisms and the timing of drawing that
7 in, were it to be felt necessary to do so. Do you have any insights on those,
8 or...?

9 MR OWEN: I think, briefly, sir – again, we can make submissions on this, but the reason
10 we're suggesting this is we think there is still time in an examination for this to
11 be done by the applicant, were it to choose to do so. Obviously, no one can force
12 the applicant to do this, but we think it makes sense and we think it would
13 probably require additional CA powers as well.

14 MR SMITH: Yeah, okay.

15 MR OWEN: The other matter I wanted to raise applies to the north portal junction and
16 is all about enabling mitigation, if I can put it that way. We accept the current
17 position that the Tilbury Link Road is not part of the application. As you know,
18 the port had argued for the Tilbury Link Road to be included within the scheme
19 but it's not, and we accept that position, but we do think it's very important that
20 the development consent order, if it's made, does not frustrate or prevent the
21 applicant from bringing forward the Tilbury Link Road as a subsequent project,
22 and we heard from them last week that it is in the planning to be brought forward
23 under RIS3, road investment strategy 3, for the period 2025-2030.

24 And essentially, I mean you heard from the applicant this morning that
25 they are required under their licence to act in a way that's best calculated to
26 achieve efficiency and value for money, and the enabling mitigation requirement
27 that we are going to be inviting you to recommend should be included in the
28 DCO would achieve just that, and essentially we wanted to be very clear that the
29 applicant must design the north portal junction to meet the relevant DMRB
30 standards – and we'll set those out what we think they are.

31 They must provide a stub for a Tilbury Link Road to connect into the
32 junction, and we think there should be a general obligation in designing,
33 constructing, operating and maintaining the relevant works in the DCO, and
34 indeed using the other powers of the DCO to make sure that the applicant has

1 regard to the prospect of a Tilbury Link Road and makes sure that, insofar as
2 this is reasonably practical, that nothing they do would impede, frustrate or
3 prevent a Tilbury Link Road. That is all we're asking for. We're not seeking to
4 have a Tilbury Link Road included in the DCO through the back door, as I think
5 some were talking of last week. We accept – water under the bridge in that
6 respect, but we think it's vitally important that the applicant shouldn't, in
7 implementing this DCO if it's approved, in effect frustrate or make a Tilbury
8 Link Road harder to bring forward in future.

9 So it's classically a note in mitigation, no more than that, and we think –
10 again, given the issue of impact to the port caused by the Orsett Cock roundabout
11 issue, that as soon as a Tilbury Link Road can be brought forward, the sooner
12 the better really for the Port of Tilbury, and indeed for the town of Tilbury more
13 generally.

14 So those are, in outline, our submissions on those two additional points
15 arising from issue-specific hearing 4. We'll set those out with drafting in our
16 post-hearing notes. Obviously if you have any questions now I can deal with
17 those, but I hope that suffices to indicate where we're coming from on those two
18 points.

19 MR SMITH: Yeah. No, those are both clear, but in fairness of course I will have to
20 return to Mr Latif-Aramesh and ask him to respond to those.

21 MR OWEN: Of course. Thank you, sir.

22 MR SMITH: So Mr Latif-Aramesh.

23 MR LATIF-ARAMEESH: Thank you, sir. Mr Latif-Aramesh for the applicant. On the
24 first, we'll wait to see the Port of Tilbury's submissions and respond in writing.
25 I think on the second, we've made our position on the Tilbury Link Road known.
26 In response to this very specific question which is 'We're not asking for it to be
27 included, we just don't want you to frustrate it,' I think it's worth saying that the
28 applicant has sought to do that with the information that is currently available
29 about what such a connection might look like. That project is going through its
30 own processes, and it is difficult to give firm commitments if many of those
31 processes are not yet final.

32 And again, we'll wait to see the Port of Tilbury's submissions and respond
33 at the following deadline to any specific suggestions they have, but the general
34 position is there is a large amount of uncertainty because of the stage of

1 development that the Tilbury Link Road is in, in terms of giving firm
2 commitments to the processes of this project – but to the extent that we can, we
3 feel that we have.

4 MR SMITH: Okay. Let's move on. I'm conscious that earlier on I indicated that the
5 Examining Authority itself didn't propose to raise any additional matters other
6 than will emerge in the action list arising from ISH5, and that the one matter that
7 was resting over from ISH6 – Green Bridge structure and maintenance – had
8 already been fully addressed in this hearing. I did however promise to hear from
9 Ms Rodican-Jones for the Port of London Authority on a couple of other matters
10 arising from ISH5. Is there anybody else who wants to speak to matters arising
11 from either ISH5 or ISH6? Can I see hands now, or is it just Ms Rodican-Jones?
12 I'm seeing no other hands, so Ms Rodican-Jones, it is yours. I will then go back
13 to the applicant and then we will bring this matter to an end.

14 MS RODICAN-JONES: Thank you, sir. Emma Rodican-Jones for the PLA. I'm
15 actually going to hand back to my colleague, Alexandra Dillistone, as she's been
16 dealing with this in the main. Thank you.

17 MR SMITH: Thank you very much. Ms Dillistone.

18 MS DILLISTONE: Thank you, sir. Alex Dillistone for the Port of London Authority.
19 Sorry, I had to briefly step out, but I am now back. I just wanted to cover a
20 couple of points that the applicant raised at ISH5 regarding its reading of the
21 DCO when it comes to the PLA's oversight of both tunnel design and
22 construction methods, and also remedial works. In the PLA's view, it's one of
23 the points where we do remain quite far apart in the drafting, and what the PLA
24 are seeking is a meaningful opportunity to feed back on tunnel design and
25 construction and ensure that that feedback is taken into account so far as it affects
26 the river and its users.

27 Now, the applicant explained at ISH5 that it thinks that the PPs are
28 sufficient, but I just wanted to make sure today that we cover those points in a
29 little bit more detail, because it has made several statements about the protection
30 afforded by the PLA's PPs that in our view just are not correct. So I will go
31 through these and explain why, and my intention is just to make it clear why
32 we're seeking a more robust involvement in the tunnelling process.

33 MR SMITH: Yes.

1 MS DILLISTONE: Thank you. Mr Clark-Hughes, for the applicant, mentioned
2 paragraph 99, and the applicant also at various points has stated that that
3 provides protection for the PLA. They said specifically that there is ‘an
4 escalation process that provides for approval of the tunnel design.’ Now where
5 we are agreed is the applicant needs a certain level of design flexibility, and that
6 was discussed at ISH5, but the flipside of that is the PLA will not have an
7 understanding at that time of the tunnel design and construction methods, and so
8 the PLA needs some level of approval. In the tunnel depth report, which is
9 document reference REP3-146, the applicant states that the PLA protection ‘is
10 reinforced because under the PLA’s protect provisions, approval will have to be
11 provided in connection with the tunnelling works.’

12 So there are a couple of points where the applicant has clearly stated that
13 PLA approval is needed for the tunnelling works. I think that is quite
14 misleading. The applicant has stated that the PLA has approval over the tunnel
15 design, but that’s not correct. What paragraph 98 does, which is that paragraph
16 that provides for approval of detailed design, it specifically states that PLA
17 approval is ‘not required for any tunnelling works.’ So that means the PLA has
18 no improvement with the approval of tunnel construction methods.

19 Paragraph 99, which is what deals with design of the tunnelling works, is
20 fairly limited in its application. That states that ‘the detailed design provides for
21 a dredging depth of 12.5 metres, plus 0.5 metre overdredge, and to ensure that
22 channel depth can be maintained.’ It only allows the PLA to comment so far as
23 it concerns those dredging depths. It doesn’t provide for approval of the overall
24 tunnel design.

25 It also only relates to the navigational channel, which is just the central
26 part of the river used by larger vessels, and not the full width of the river. And
27 I also spoke at ISH5 about paragraph 99 and the way that it only allows the PLA
28 to go directly to arbitration. Now, in terms of finding a solution, I note the
29 Examining Authority’s very helpful suggestion of a working group in respect of
30 tunnel design and tunnelling works. Obviously, that would need clear terms of
31 reference, and we have been busy with the hearings, so that is something that we
32 will discuss with the applicant, and we hope to reach a solution to a suitable level
33 of input from the PLA when it comes to tunnelling works. But at this point in

1 time we don't believe that there is approval over the tunnelling works for the
2 PLA.

3 MR TAYLOR: Yeah, thank you, Ms Dillistone. In your post-hearing submission could
4 you put that in writing in terms of your precise concerns, so that as an Examining
5 Authority we can deal with that, and the applicant can?

6 MS DILLISTONE: Yes, of course, sir, we will do that.

7 MR YOUNG: Thank you so much.

8 MR SMITH: Okay. In terms then of any other practical actions that flow out of that, I
9 guess I'm pondering the value of asking for a report back, again I feel by
10 deadline 5, on the outcome of joint conversations between Port of London
11 Authority and the applicant on the development of the protected provisions for
12 the port in part 8 of schedule 14. It will help us to have a sense that this is still
13 in everybody's mind and is progressing. Would that assist, Ms Dillistone?

14 MS DILLISTONE: Yes, sir. I think that would assist.

15 MR SMITH: Okay. Can I ask then that we capture that into the action list? I'm going
16 to just then return to – actually, no, before I do – Ms Dillistone, is there anything
17 else that you need to bring up in relation to the flow out from ISH5?

18 MS DILLISTONE: Alex Dillistone for the Port of London Authority. I think that was
19 the main point that we wanted to agree from ISH5, so we can raise anything else
20 in written submissions.

21 MR SMITH: Fine. Excellent. In which case, I'm going to go to Mr Latif-Aramesh for
22 a response.

23 MR LATIF-ARAMESH: Thank you, sir. Mr Latif-Aramesh for the applicant. I think
24 you heard at issue-specific hearing 5 that we've been making progress and
25 having productive discussions with the PLA. The issues that were raised at
26 issue-specific hearing 5, specifically around construction risks, we happily had
27 a discussion with Ms Dillistone in one of the breaks, and I think we'll be able to
28 continue constructively engaging and reaching a resolution very soon.

29 MR SMITH: Excellent. Well I am very reassured by that, and it certainly did seem to
30 be there was action and progress there. And it may well be that by the time
31 you've made your deadline 4 submissions these matters are resolved – and if
32 that's the case, they are, but we can keep that check point at deadline 5 just in
33 case there are outstanding disagreements or conversations that haven't

1 happened, so that we do see what the position is by that subsequent deadline.

2 Okay –

3 MR LATIF-ARAMESH: Can I just provide some assurance, sir? The applicant's
4 position on the provision specifically around construction risk, we will be
5 providing an update at deadline 4.

6 MR SMITH: Indeed, and that was our understanding too. Let's then move on. I believe
7 that we have dealt with all of the matters arising, so that's agenda item 3(c)
8 resolved. Now, agenda item 3(d) was very much a matter that was in the gift of
9 the floor, so to speak. It was for anybody to ask – any of the interested parties
10 here to ask for consideration of anything that the Examining Authority itself had
11 not raised. So can I see if there are any hands wishing to speak on any further
12 matters? They must be matters, I have to say, arising in relation to the draft
13 development consent order from the work done in this examination so far. I'm
14 seeing no – oh, no, I am. I'm seeing one further hand. I'm seeing Mr Grant for
15 Natural England.

16 MR GRANT: Thank you, sir. It was really just to check, because you'll be aware there
17 are some ongoing discussions over the DCO between us and the applicant,
18 whether it would be helpful for you to have a quick stocktake from our point of
19 view as to where we are, or whether you'd prefer that to come up in writing
20 afterwards. I'm happy either way.

21 MR SMITH: You are here and it's a good use of your time if you can give us a very brief
22 summary position of where you are. That would be helpful, but obviously do
23 put in a post-hearing written submission as well because that's our aide-
24 memoire.

25 MR GRANT: Absolutely. So the detail will be in the post-hearing submission. I just
26 didn't want where we were to get lost. As I explained this morning, we're
27 dropping the specific concern with 64.2 on the arbitration clause, but that is
28 likely to be replaced by questions or suggestions for consultation in decision-
29 making, where decision making is being made by the Secretary of State,
30 consultation with us.

31 Beyond that, sir, there's really three points. There are the issues of
32 securing mechanisms and securing mitigation. We have had some helpful
33 discussions with the applicant who've indicated they will be re-looking at this.
34 Whatever the outcome is, I don't know, but that's certainly under consideration

1 from them as we understand it, so we'll save our comments for whatever they
2 come back with. On clause 2, subclause 10, which is the meaning of materially
3 new and materially different. We have two concerns arising from this new
4 definition. One is the potential that a reduction in one environmental effect
5 might lead to a greater impact in another environmental effect, and so we suggest
6 there might need to be some tweaking either to the wording or in the explanatory
7 memorandum to make sure that there aren't any in effect 'ripple effects' to that.

8 Secondly, there's the question of who is to be making the decision on
9 whether there is a materially new or materially different effect, in what context
10 and, again, with what consultation. Sometimes it's the Secretary of State making
11 that decision. That comes back to the consultation point that I outlined. But
12 sometimes – for example, what's in ancillary working schedule 1 of the order –
13 there doesn't seem to be consultation or a third-party decision maker there if
14 there is some sort of dispute. So we're going to make some suggestions to help
15 deal with that, and hopefully work with National Highways on that, sir.

16 And the last outstanding point is this disapplication of the aspects of the
17 Wildlife and Countryside Act 1981. This one, I think, might well end up in the
18 adjudication box, I'm afraid. We both have issues of principle on it, and I don't
19 see that getting resolved, at least not by agreement – but that, sir, is where we
20 are the moment.

21 MR SMITH: And of course if it ends up in that box, we will give it our fullest and most
22 careful attention. Okay. Thank you very much for those submissions. Ladies
23 and gentlemen, I do believe then that that brings us to the end of the substantive
24 agenda items. So on that basis, next steps, agenda item 4, and we are in the
25 process of producing actions for this hearing. I'm conscious that we are also
26 outstanding actions on the previous issue-specific hearings 3 through to 6. I'm
27 trusting that we should be in a position to have those published if not today by
28 reasonably early tomorrow. Can I just check the position with the case team if
29 anybody's available? Silence came the bold reply. No, those should be
30 available very, very shortly. So unless, Mr Taylor, you wanted to add anything
31 else on the action list, we can move on and close this hearing.

32 Again, not hearing from Mr Taylor, so on that basis this has been issue-
33 specific hearing 7, held on Monday 11 September 2023, and it's dealt with
34 matters arising in relation to the development consent order arising from

1 issue-specific hearings 3 through to 6 that were held last week. For the next
2 three days – 12, 13, 14 September – we will be out on site conducting
3 accompanied site inspections in both Kent and Essex, and if anybody is
4 interested in those the itineraries for them have been published and are available
5 on the National Infrastructure Planning website. I would flag that, although
6 those are held in public, that transport is required for them, and that attendance
7 is on an essentially pre-booked basis, simply because we have to know that we
8 have enough seats on the buses to take people around from site to site.

9 So if you are already accompanying the ASIs, you know who you are, and
10 you've been given an assurance that you have a space available for you on the
11 bus. I'm afraid at this juncture, if you haven't arranged to follow the ASIs then
12 there is no room for you, so probably best if you don't turn up on spec. We will
13 be returning to Orsett Hall on 15 September for two compulsory acquisition
14 hearings that will deal initially with the strategic case from the applicant for
15 compulsory acquisition overall, and then start the very beginning of the process
16 of hearing from individual affected persons who object to the taking of land or
17 rights.

18 Now, I say we're starting that process, and only a small number of people
19 individually named on the agenda for compulsory acquisition hearing 2 will be
20 heard from, but that is by no means the end of the process because there will be
21 additional individual objector compulsory acquisition hearings to be held in both
22 October and November. And rest assured, if you are an objecting affected
23 person who has requested to be heard, we will hear you at some point before the
24 end of the November hearing window.

25 So I would like to take this opportunity to thank all of the speakers today
26 for your contributions that are much valued. Everything that has been said will
27 be, as is always the case, carefully considered, and again we may need to pursue
28 some of the matters that were raised here in written questions or in further
29 hearings, so this is not necessarily the end in relation to the matters that have
30 been raised.

31 I'd finally like to thank the case team for supporting these hearings,
32 because without their sterling efforts we wouldn't be here at all. Now then,
33 ladies and gentlemen, unless there's anything else that anybody needs to raise

1 now before I close, I will move to ask my colleagues briefly onto camera and
2 we will say our goodbyes.

3 MR YOUNG: Thank you, everybody. I shall see you all tomorrow.

4 MR SMITH: Thank you, Mr Young.

5 MR TAYLOR: And same from me, yes. Thank you everyone. I'll see you tomorrow.

6 MR SMITH: Thank you very much, Mr Taylor, and indeed – and from Rynd Smith,
7 panel lead. For those of you on site, we look forward to seeing you tomorrow
8 or in one of the later hearings, and I will now close this hearing. Thank you very
9 much, ladies and gentlemen.

10

11

(Meeting concluded)