



PORT OF
TILBURY
LONDON

Section 56(2) Planning Act 2008

**Application by National Highways Limited for an Order Granting Development
Consent**

for

Lower Thames Crossing

Planning Inspectorate Reference: TR010032

PORT OF TILBURY LONDON LIMITED – DCO DRAFTING PROPOSALS

Deadline 4: 19 September 2023

1. INTRODUCTION

- 1.1 During the September hearings, the Applicant made a series of submissions that amounted to reasons why, in its view, it does not need to mitigate the impacts of its LTC Scheme on the wider road network. Chief amongst these arguments was that, as a strategic highway authority, the wider road network is beyond the Applicant's licensed remit and it would be disproportionate to require it to mitigate impacts on the local roads that fall within the remit of local highway authorities.
- 1.2 There are many reasons why this position is unsustainable, in both law and policy terms. Submissions during ISH7 focused on this and therefore Port of Tilbury London Limited (PoTLL) has provided drafting for new DCO Requirements linked to mitigation. These are intended to ensure that all necessary mitigation is secured by the Order, whilst retaining flexibility in the form the mitigation takes that mirrors the degree of flexibility in the terms of the development consent sought by the Applicant.

2. THE APPLICANT'S APPROACH

- 2.1 The Applicant has stated that, in its view, "because the benefits significantly outweigh the impacts, providing additional interventions across the regional highways network would be disproportionate and unreasonable" (see lines 9 to 12 of page 67 of the transcript for Issue Specific Hearing 4 on Traffic and Transportation [EV-041f]). However, as set out by PoTLL in response to Q4.1.10 and Q4.3.9 in its Response to ExQ1 and Actions from Hearings, due to the outstanding concerns about the function of the Orsett Cock junction, it cannot be confidently stated that the LTC Scheme does provide the stated benefits, in particular to the Port of Tilbury. Similarly, concerns set out in PoTLL's Response to Deadline 3 Submissions – ASDA Roundabout Modelling, suggest that there will be significant disbenefits to the Port from the construction of the LTC Scheme.
- 2.2 The Applicant's approach fails to recognise the key role that the Port of Tilbury plays in serving the UK economy. Adverse impacts on the local highway network on which the Port of Tilbury relies will carry serious economic and social consequences. It is not clear that the Applicant has factored these consequences into its cost/benefit analysis when considering the importance of it mitigating the adverse effects of the LTC scheme. Unless it can be demonstrated that there are mechanisms in place to enable the decision-maker to have confidence that such effects will be appropriately monitored, managed and mitigated, where they cannot be avoided, those adverse effects ought to weigh heavily against the proposal.
- 2.3 The draft Requirements proposed by PoTLL are intended to accommodate the uncertainty that exists around the LTC Scheme impacts. The drafting is such that, if the Applicant's assessments are correct and there are no adverse impacts, there is no additional burden on the Applicant. However, if there are significant impacts, they ensure that the adverse effects will be properly mitigated.

3. EXPLANATION OF PROPOSED DRAFT DCO REQUIREMENTS

- 3.1 PoTLL has provided initial, early drafting of four proposed DCO Requirements. PoTLL is seeking input from relevant stakeholders including Thurrock Council, and DP World London Gateway in respect of the Orsett Cock requirement, with a view to being able to present agreed wording to the ExA at a later Deadline. PoTLL recognises that progress may be made during the workshop on the Orsett Cock roundabout, and that the draft Requirements will be subject to further refinement. This early drafting is provided in order to inform and assist the Examination, recognising that the drafting will develop over time.
- 3.2 For each proposed Requirement, the drafting is presented as a stand-alone Requirement. This is so that the way in which each Requirement operates can be easily seen and understood, without needing to cross-refer to other provisions of the draft Order. As part of the refinement of each Requirement, it is expected that the drafting would be refined to properly integrate with existing drafting, so as to ensure that obligations, powers and common provisions are not duplicated. PoTLL also recognises that there is potential for some elements of these proposed Requirements to be managed through amendments made to the certified documents. However, as this would require the

Applicant to provide updated documents, PoTLL has sought to provide a freestanding solution for discussion, that could be implemented if deemed necessary by the Secretary of State on the grant of development consent.

3.3 Additional Requirement 1 – ASDA Roundabout – construction traffic mitigation

- 3.3.1 This proposed Requirement seeks to ensure that, prior to the commencement of work at the North Portal compound (Work No. CA5), a scheme of construction traffic mitigation is submitted to the Secretary of State. This scheme will set out the routes on the highway network that will be used by construction workers, and include a full assessment of the impacts on the highway network of both the construction traffic and construction worker traffic. The scheme will identify the locations on the highway network where the assessment demonstrates that there is likely to be a material worsening of traffic conditions as a result of construction impacts.
- 3.3.2 The proposed Requirement ensures that a consultation report is provided to the Secretary of State, setting out consultation responses received and, where relevant, the reasons why the responses have not been reflected in the scheme for construction traffic mitigation.
- 3.3.3 The scheme must then set out the proposed measures to mitigate the impacts of the worsening traffic conditions, and provide a programme for the implementation of the measures. It will then be a matter for the Secretary of State as to whether the proposed mitigation measures and programme for implementation are satisfactory.
- 3.3.4 The proposed Requirement expressly anticipates an 'LTCIG' – Lower Thames Crossing Implementation Group – being consulted in respect of the draft scheme of construction traffic mitigation. Such a group is a key part of the Silvertown Tunnel approach to monitoring and mitigation, dealing with operational impacts. In PoTLL's view, there are clear benefits to having a single Implementation Group dealing with traffic impacts and required mitigation throughout the lifetime of the LTC Scheme, from pre-construction through to operational impacts. The arrangements for a LTCIG require further discussion with the prospective members and the Applicant and so, for the time being, PoTLL has not provided drafting for the establishment and function of the LTCIG pending those discussions taking place but again, this could be provided at a later Deadline.
- 3.3.5 This proposed requirement is also not predicated on or reliant upon the ASDA roundabout being brought within the Order limits. PoTLL is mindful that the implementation of mitigation at this junction, were it not brought within the Order limits, may be difficult to achieve using permitted development rights. PoTLL therefore remains of the view that the roundabout ought to be added to the Order limits, to avoid delay to the implementation of required mitigation.

3.4 Additional Requirement 2 – Orsett Cock Roundabout – Operational Traffic Mitigation

- 3.4.1 This proposed Requirement seeks to ensure that, prior to the commencement of works on the A13/A1089 junction and the Orsett Cock junction, a scheme of monitoring and mitigation for the Orsett Cock junction has been submitted to the Secretary of State for approval.
- 3.4.2 The scheme operates similarly to that under proposed Requirement 1, in that an assessment including modelling is undertaken to identify the impacts on the highway networks. Where there is likely to be a material worsening of traffic conditions, the scheme must provide details of mitigation measures together with a report outlining the consultation undertaken with LTCIG in relation to the proposed mitigation measures.
- 3.4.3 In the case of Orsett Cock, as the impacts will be felt during the long-term, operational phase, the scheme must include both a programme for the implementation of the mitigation

measures prior to the LTC tunnel opening for public use, and a programme for monitoring the effectiveness of the mitigation measures, time limited to three years from the opening of the tunnel. In this way, the drafting seeks to ensure that the impacts of LTC are mitigated, whilst maintaining proportionality and recognising that the junction will be the responsibility of the local highway authority in the long term.

- 3.4.4 This proposed Requirement also seeks to make use of the LTCIG to manage consultation with relevant stakeholders, given the benefits that will flow from having continuity of consultees throughout the construction and early operation of the Scheme.

3.5 **Additional Requirement 3 – design of the North Portal Junction and compatibility with the Tilbury Link Road Project**

- 3.5.1 This proposed enabling mitigation Requirement seeks to ensure that the North Portal junction included within the outline design, for which development consent is sought, is actually brought forward through detailed design and construction of the LTC Scheme. The benefits of requiring this junction to be designed to the standard shown in the outline plans, are that it will enable National Highways' RIS3 project, the Tilbury Link Road, to come forward without impediment.
- 3.5.2 The proposed Requirement secures the relevant standard by reference to a 'wide single carriageway'. This is considered appropriate to connect with the junction of the type and scale included within the Application.
- 3.5.3 The proposed Requirement provides a general obligation to have regard to the Tilbury Link Road project in the design, construction, operation and maintenance of LTC. This is intentionally broad drafting so as not to fetter the Applicant's discretion in how it undertakes detailed design and construction, other than to ensure that, as the outline design of the Tilbury Link Road is progressed (from 2025 under RIS3), it is not inadvertently frustrated by the development of LTC.
- 3.5.4 This is entirely consistent with both the outline design of the junction for which the Applicant is seeking development consent, and its overarching duty to act in a manner best calculated to achieve efficiency and value for money. .

3.6 **Additional Requirement 4 – Monitoring and mitigation strategy**

- 3.6.1 This proposed Requirement is closely based upon Requirement 7 of the Silvertown Tunnel Order 2018. This proposed requirement is intended to deal with mitigation that may be required for impacts that are not currently identified, whether through a defect in the Environmental Statement, or through the difficulties in transport models accurately predicting real world conditions.
- 3.6.2 This Requirement ensures that, prior to opening for use, the assessment of the likely impacts of the Scheme is updated and a monitoring and mitigation strategy approved by the Secretary of State.
- 3.6.3 Proportionality as to which impacts must be mitigated is retained as the worsening of traffic conditions must be 'material'. This is ultimately a matter for the Secretary of State to determine, upon receipt of the mitigation and monitoring plan and responses to consultation.
- 3.6.4 As with additional Requirements 1 and 2, an LTCIG is envisaged, being a consortium of relevant stakeholders, to review impacts and proposals for mitigation. This group would be in continuous existence from the earliest days of construction, through to the monitoring of the operational phase, and would be able to develop improved working methods throughout the project.

4. **DRAFT ADDITIONAL DCO REQUIREMENTS**

[Please see following page for draft requirements]

Asda roundabout – construction traffic mitigation

1.—(1) No part of Work No. CA5 or CA5A is to be commenced until a scheme of construction traffic mitigation for Work No. CA5 and CA5A has been prepared in accordance with the provisions of this paragraph and has been submitted to and approved in writing by the Secretary of State.

- (2) The scheme of construction traffic mitigation for Work No. CA5 and CA5A must include—
- (a) details of the routes on the highway network that are to be used by construction workers in connection with Work No. CA5 and CA5A;
 - (b) an assessment (including junction modelling) of the impacts on the highway network of the proposed construction worker routes and construction traffic related to Work No. CA5 and CA5A;
 - (c) the locations on the highway network where the assessment demonstrates there is likely to be a material worsening of traffic conditions as a result of the construction of the authorised development;
 - (d) a report on the consultation carried out by the undertaker under sub-paragraph (3) that includes—
 - (i) the undertaker's responses to the consultation responses received by it; and
 - (ii) if any consultation responses are not reflected in the scheme for construction traffic mitigation for Work No. CA5 and CA5A submitted for the Secretary of State's approval, a statement setting out the undertaker's reasons for not including them.
 - (e) the measures which the undertaker proposes to mitigate the impacts of such a worsening of traffic conditions; and
 - (f) a programme for the implementation of those measures.

(3) Prior to submitting the scheme of construction traffic mitigation for Work No. CA5 and CA5A the undertaker must consult [LTCIG] on a draft scheme of construction traffic mitigation for Work No. CA5 and CA5A and must have regard to any consultation responses received.

(4) The undertaker must implement the scheme of construction traffic mitigation for Work No. CA5 and CA5A approved by the Secretary of State.

Orsett Cock roundabout – operational traffic mitigation

2.—(1) No part of Work No. 7 is to be commenced until a scheme of monitoring and mitigation for the Orsett Cock junction has been prepared in accordance with the provisions of this paragraph and has been submitted to and approved in writing by the Secretary of State.

- (2) The scheme of monitoring and mitigation for the Orsett Cock junction must include—
- (a) an assessment (including strategic modelling) of the impacts on the highway network of Work No. 7 during operation;
 - (b) the locations on the highway network where the assessment demonstrates there is likely to be a material worsening of traffic conditions as a result of the operation of the authorised development;
 - (c) a report on the consultation carried out by the undertaker under sub-paragraph (3) that includes—
 - (i) the undertaker's responses to the consultation responses received by it; and
 - (ii) if any consultation responses are not reflected in the scheme of monitoring and mitigation for the Orsett Cock junction submitted for the Secretary of State's approval, a statement setting out the undertaker's reasons for not including them;
 - (d) the measures which the undertaker proposes to mitigate the impacts of such a worsening of traffic conditions;

- (e) a programme for the implementation of those measures that ensures that any required mitigation has been implemented prior to the tunnel opening for public use;
- (f) a programme for the monitoring of the effectiveness of the mitigation measures proposed during the first three years following the opening for public use of the tunnel.

(3) Prior to submitting the scheme of monitoring and mitigation for the Orsett Cock junction, the undertaker must consult LTCIG on a draft scheme of monitoring and mitigation for the Orsett Cock Junction and the undertaker must have regard to any consultation responses received.

(4) The undertaker must complete the programme for the implementation of mitigation measures in the scheme of monitoring and mitigation for the Orsett Cock junction before the tunnel is opened for public use.

Tilbury link road enabling mitigation

3.—(1) When designing, constructing, operating and maintaining the authorised development the undertaker must do so in a way that facilitates and accommodates the design, construction, operation and maintenance of the proposed Tilbury link road.

(2) In particular, Work Nos. 5D, 5E and 5F must be designed in detail and constructed by the undertaker so as to comply with relevant national and local design standards to accommodate a connection with the proposed Tilbury link road.

(3) In this requirement, references to the proposed Tilbury link road are references to a highway comprising a wide single carriageway.

Monitoring and mitigation strategy

4.—(1) If the statutory powers vested in the undertaker in relation to highways and road traffic on the strategic road network are not sufficient to enable the undertaker to implement any mitigation measure which it is obliged to implement under this requirement, the undertaker must either—

- (a) seek to agree with the relevant local highway authority that the undertaker may implement that measure on behalf of that local highway authority; or
- (b) if such an agreement cannot be reached, pay to that local highway authority a sum equivalent to—
 - (i) the estimated costs of the local highway authority implementing that measure, which the local highway authority must use for that purpose; or
 - (ii) the costs reasonably incurred by the council in implementing an alternative measure in the same location which the local highway authority determines will mitigate the adverse impact attributable to the authorised development,

whichever is less.

Pre-opening traffic measures

(2) Before the tunnel opens for public use the undertaker must carry out an updated assessment of the likely impacts of the authorised development on the performance of the highway network and must consult the members of the [LTCIG] on —

- (a) the locations on the highway network where the assessment demonstrates there is likely to be a material worsening of traffic conditions as a result of the operation of the authorised development;
- (b) the measures which the undertaker proposes to mitigate the impacts of such a worsening of traffic conditions; and
- (c) the proposed programme for implementation of those measures.

(3) The undertaker must have regard to any consultation responses received from [LTCIG] members and before finalising the scheme of mitigation must liaise further with the relevant local highway authority on the detail of mitigation measures which it proposes to implement on roads in

that local highway authority's area and following such liaison the undertaker must submit the scheme of mitigation to the Secretary of State for approval.

- (4) The scheme of mitigation submitted to the Secretary of State for approval must include—
- (a) details and locations of the proposed mitigation measures;
 - (b) responses to the consultation and further liaison carried out under sub-paragraphs (3) and (4);
 - (c) the estimated costs of implementing each measure; and
 - (d) the proposed programme for the implementation of those measures.

(5) The tunnel must not open for public use until the scheme of mitigation has been approved by the Secretary of State.

(6) If the Secretary of State proposes to approve the scheme of mitigation with material modifications, the Secretary of State must consult the members of [LTCIG] on the proposed modifications and have regard to any responses received when deciding whether to approve the scheme.

(7) The undertaker must implement or secure the implementation of the measures approved by the Secretary of State in accordance with the approved programme.

Post-opening monitoring and mitigation

- (8) For the duration of the monitoring period, the undertaker must—
- (a) implement a monitoring programme in consultation with the members of the [LTCIG];
 - (b) prepare—
 - (i) quarterly monitoring reports for a period of one year from the tunnel opening for public use; and
 - (ii) annual monitoring reports thereafter,derived from that monitoring, and submit them for consideration by the members of [LTCIG];
 - (c) identify in consultation with the members of [LTCIG] appropriate thresholds for changes on the highway network which require the undertaker to investigate whether mitigation measures are necessary;
 - (d) develop in consultation with the relevant local highway authority any measures which are necessary to mitigate adverse impacts on the highway network which are attributable to the operation of the authorised development; and
 - (e) implement or secure the implementation of the necessary mitigation measures.

(9) In sub-paragraph (9) “the monitoring period” means a period commencing not less than three years before the tunnel is expected to open for public use and continuing for not less than three years after the tunnel opens for public use.