

Gravesham Borough Council (GBC)

Lower Thames Crossing DCO

Deadline 5

Appendix I: Comments on National Highways Deadline 4 Documents relating to the DCO

October 2023

This document contains the following:

- A: GBC's comments on Draft Development Consent Order Version 6 (submitted by the Applicant at D4) [[REP4-095](#)]
- B: GBC's comments on Applicant's responses to IP's comments on the dDCO at Deadline 3 [[REP4-212](#)]

In addition, GBC wish to replace document [[REP4-305](#)] with a new version of track changed Schedule 2 to the draft DCO showing the changes that would be required if the discharging authority were the local authorities, rather than the Secretary of State. There were some provisions missing from the first version and other drafting changes were required. This has been submitted as a separate document (Appendix II).

A: Draft DCO v6 [[REP4-095](#)]

General Note: The comments made in this document are without prejudice to comments about the DCO made by GBC in earlier documents.

1. Article 10: Green Bridges

This paragraph has been added to article 10 (Construction and maintenance of new, altered or diverted streets and other structures) to address the issue of who is responsible for the maintenance of non-highway elements of green bridges

that the competent person had carried out those instructions.

(8) Unless otherwise agreed with the relevant local highway authority, where the highway (including the surface of the highway) comprised in Works Nos. 1D, 1H, 3B., 6B, 6C, 7M, and 8D are to be maintained by and at the expense of the relevant local highway authority under this article, the planting and vegetation on either side of that highway must be maintained by the undertaker in accordance with paragraph 5 of Schedule 2 to this Order.

This seems acceptable to GBC in principle, **though further clarity could be achieved if there were a reference to plans which could be prepared after detailed design is completed, showing accurately the line between the areas for which KCC and NH are responsible.** GBC will check separately whether the LEMP (which is the subject of requirement 5) is satisfactory in terms of responsibility for the planting. Also, as a matter of drafting, the text would be clearer if either the second use of the word 'highway' in line 1 was 'highways' or the word 'are' in line 3 was 'is'. GBC's preference would be for the latter.

2. Article 62 (certification of plans)

New paragraph (5) introduces a new safeguard for local authorities, in response to points made by LB Havering, which is welcomed. **GBC considers that it would also be appropriate to include a requirement on the undertaker to give notice to the relevant local planning authority of the date on which the justices are to consider the application.** Also, as a point of detailed drafting, GBC considers that the reference in line 1 of Article 62(5) to Article 62(2) should be a reference to Article 62(4).

Certification of documents, etc.

62.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 16 (documents to be certified) to the Secretary of State for certification that they are true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 16 requires to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

jurisdiction in the place where any land affected is situated for the correction of that document.

(5) The application under paragraph (2) must include copies of any representations from the relevant local planning authority and any other persons notified.

(6) If on an application under paragraph (4) it appears to the justices that the instrument ...

3. Article 65 (Appeals to the Secretary of State)

Article 65 has been amended so that there is a new right of appeal for the undertaker against certain local authority decisions.

Appeals to the Secretary of State

65.—(1) The undertaker may appeal to the Secretary of State in the event that a local authority—

- (a) refuses an application for any approval under this Order required by—
 - (i) article 12(5) (temporary closure, alteration, diversion and restriction of use of streets);
 - (ii) article 17(2) (traffic regulation – local roads);
 - (iii) article 21(4) (authority to survey and investigate the land);
 - (iv) paragraph 9(6) of Schedule 2 (requirements);
 - (v) paragraph 13(1) of Schedule 2 (requirements); or
- (b) grants an approval for any approval required by an article or paragraph mentioned in sub-paragraph (a) subject to conditions;
- (c) refuses any approval, consent or agreement which the undertaker is required to obtain from a local authority under a document, scheme or plan pursuant to article 61 (stakeholder and actions commitments register) or Schedule 2 (requirements) to this Order, or grants such an approval, consent or agreement subject to conditions;**

Comment 1: GBC does not think the drafting is clear, or meets the objective as set out in the revised explanatory memorandum [REP4-097] GBC suggests the following drafting:

“(c) refuses any approval, consent or agreement which the undertaker is required to obtain from a local authority under a document, scheme or plan (or grants such an approval, consent or agreement subject to conditions) and the document, scheme or plan—

- (i) is or is part of a measure contained in the stakeholder actions and commitments register referred to in article 61 (stakeholder actions and commitments register); or
- (ii) is referred to in paragraphs 3 to 17 of Schedule 2 (requirements).”

Comment 2: The full impact of this provision is impossible to know without a comprehensive list of all the measures, documents, schemes and plans to which it applies, and all the instances in those documents where an approval, consent or agreement is required of a local authority. **GBC considers that the Applicant should be required to provide such a list so that it can consider the implications fully.**

Comment 3: A similar right of appeal should be available to local authorities if any of the measures, documents, schemes and plans referred to contain provisions which require the approval, consent or agreement of the undertaker. **GBC considers that the list referred to in Comment 2 should set out any such provisions, and if there are any, then article 65 should be amended so as to provide a right of appeal to a local authority in the same terms as the undertaker's right.**

Comment 4: It is not clear why local authorities have been singled out in new paragraph (c), particular as regards appeals relating to article 61. So far as GBC understand it, article 61 applies to measures contained in stakeholder actions and commitments which may have been given to persons other than local authorities. **The Applicant should explain why the right of appeal only applies to local authority measures.**

4. Requirement 5 (Landscaping and ecology)

A D4 amendment introduces a requirement on the undertaker to carry out and maintain, each relevant part of the authorised development in accordance with the LEMP approved for that part under paragraph (1) of the requirement. GBC welcomes the amendment.

5. Requirement 7 (Protected species)

A D4 amendment requires local authorities to be consulted as well as Natural England in respect of deviations from the approved scheme required in the requirement. GBC welcomes the amendment.

6. Requirement 12 (Fencing)

GBC welcomes the amendment made to paragraph 12(1)(b) in accordance with GBC's D3 request. It ensures that GBC is a consultee in respect of all departures from the Manual of Contract Documents for Highway Works.

B: Applicant’s response to IPC’s comments made on the DCO at Deadline 3 [REP4-212]

REP4-212 contains a table which now contains five columns including two successive sets of comments from GBC and two sets of comments from the Applicant on the issues raised by the ExA in the agenda for ISH2 on the draft DCO [EV-015] and on further issues raised by GBC in its written representations following ISH2 [REP3-167].

The positions of the GBC and the Applicant appear now to be clear on most issues and require adjudication by the ExA.

At D4, following ISH7 on the draft DCO, GBC provided a list of amendments to the draft DCO that it requested be recommended by the ExA [REP4-302], a tracked version of Schedule 2 to the dDCO showing amendments that would be required if the discharging authority were the local authorities [REP4-305] and its post-hearing submission for ISH7 [REP4-301].

There is nothing in any of the responses provided in [REP4-212] which alters GBC’s position on those documents, and the addition of a sixth column to the table mentioned above is likely to make it unwieldy. Instead, GBC points the ExA’s attention to its **D4 submissions**, particularly the proposed amendments, as mentioned above.

GBC also makes a small number of additional points below on [REP4-212]. Note: an absence of a comment in the table below on a specific point previously made by GBC does not indicate that GBC is satisfied on that point.

Provision of dDCO	GBC Comment on REP4-212
<p>Schedule 1 (Works): Preamble to the Ancillary Works provisions in Schedule 1, which (after the Applicant changed it) enables ancillary works to be constructed outside the Order limits</p>	<p>The Applicant wrongly says that GBC did not respond to the Applicant’s position that there would be no scope for a new materially different environmental effect to arise. At D3, GBC said “A prohibition on materially new or materially different environmental effects does not mean there will be no effects. People who may be affected may have understandably assumed that the works authorised by the DCO are limited to the order limits.”</p>
<p>Schedule 2 (Requirements): The discharging role of the Secretary of State and other local and public authorities</p>	<p>The Applicant suggests that GBC is asking that the functions of the Applicant in relation to the SRN are placed in the hands of local authorities. That is, of course, incorrect. It is asking that the discharging functions of the Secretary of State under this particular DCO be placed in the hands of the local authorities. The Applicant’s comment is, however, (unintentionally) revealing in that it suggests that the Applicant does not see any real distinction between its own position and that of the Secretary of State. That tends to reinforce the concerns of GBC that there needs to be arm’s length and independent scrutiny at the discharge of requirements stage, and in GBC’s view this is best and</p>

Provision of dDCO	GBC Comment on REP4-212
	<p>most appropriately undertaken by the local authorities.</p> <p>The Applicant's suggestion that adopting the approach of the Great Yarmouth and Lake Lothing DCOs would make the Applicant the discharging body is not understood. In the Lake Lothing and Great Yarmouth cases, the discharging authority was the county planning authority and not the (promoting) local highway authority. These bodies (albeit housed within a single local authority) had separate and independent functions. Local authorities are familiar with such separation of functions and with the need for independent and arm's length decision making (as occurs for example when a local education authority makes a planning application to the local planning authority for a new school, where both bodies will be comprised within the same local authority). There is no equivalent separation of functions and responsibilities within the Applicant.</p> <p>The ExA's attention is drawn to the revised version (version 2) of Schedule 2 to the DCO showing the amendments which GBC consider would need to be made for the local authorities to be the discharging authority.</p>
<p>Article 56 (Planning permission)</p>	<p>The Applicant's latest response presupposes that GBC oppose this article. All GBC have done (and this is the third time) is ask for a list of planning permissions to which the article applies, so it can give careful consideration to it. The Applicant should be able to demonstrate the effect of legislation that it is asking the ExA to recommend.</p>
<p>Article 65 and Schedule 2 Part 2: appeals to Secretary of State</p>	<p>GBC notes that the Applicant has confirmed that the statistics for delays in the magistrates' courts which it used to support its justification for appeals to the Secretary of State instead are national statistics and not local. The statement that an NSIP should not be subject to "such delays" was therefore misleading and should be disregarded. GBC notes that the applicant is content for the magistrates' court to be the forum for authorising corrections to plans under article 62(4) (certification of documents, etc)).</p>

