



PLANNING INSPECTORATE ISSUE-SPECIFIC HEARING

on

24 OCTOBER 2023

Ubiquis (Acolad UK Ltd)  
291-299 Borough High Street, London, SE1 1JG  
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**PRESENT**

**PLANNING INSPECTORATE**

RYND SMITH  
JANINE LAVER  
KEN PRATT  
KEN TAYLOR  
DOMINIC YOUNG

**CASE TEAM**

TED BLACKMORE  
SPENCER BARROWMAN  
ELLIOTT BOOTH  
RYAN SEDGMAN

**LOWER THAMES CROSSING**

ANDREW TAIT KC  
MUSTAFA LATIF-ARAMESH  
DR TIM WRIGHT  
JOHN RHODES  
GRAHAM STEVENSON  
STEVE ROBERTS  
TOM HENDERSON

**LOCAL AUTHORITIES**

ANDREW FRASER-URQUHART (Kent County Council)  
JOSEPH RATCLIFFE (Kent County Council)  
GARY MACDONNELL (Essex County Council)  
MARK WOODGER (Essex County Council)  
DOUGLAS EDWARDS KC (Thurrock Council)  
DAVID BOWERS (Thurrock Council)  
CHRIS STRATFORD (Thurrock Council)  
ADRIAN NEVE (Thurrock Council)  
TRACEY COLEMAN (Thurrock Council)  
SHARON JEFFERIES (Thurrock Council)  
KIRSTY MCMULLEN (Thurrock Council)  
COLIN BLACK (Thurrock Council)  
MICHAEL BEDFORD KC (Gravesham Borough Council)  
TONY CHADWICK (Gravesham Borough Council)  
DANIEL DOUGLAS (London Borough of Havering)  
LEE WHITE (London Borough of Havering)  
LYNN BASFORD (London Borough of Havering)  
[EMMA GRAYSHAM?] (London Borough of Havering)  
SUSAN LINDLEY (Shorne Parish Council)

**STATUTORY PARTIES**

MATTHEW RHEINBERG (Transport for London)  
SHAMAL RATNAYAKA (Transport for London)  
ALISON DABLIN (Port of Tilbury London Ltd)  
PAUL SHADAREVIAN KC (DP World London Gateway)  
SIMON TUCKER (DP World London Gateway)

**INTERESTED PARTIES**

MIKE HOLLAND

TOM BENTON

JOHN ELLIOTT

JEREMY FINNIS

1 MR SMITH: To today's traffic and transport issue-specific hearing. My name is Rynd  
2 Smith; I'm the lead member of this panel, which is the Examining Authority for  
3 the Lower Thames Crossing application, and I am in the chair for this hearing.  
4 Can I just check with the case team that we can be heard online, and that the  
5 recordings and livestreams have started? Excellent. Clearly, all of those systems  
6 are now working. Now, before we proceed further, I'm going to ask my panel  
7 colleagues in the room to introduce themselves, so I'm going to start on my right  
8 with Mr Taylor.

9 MR TAYLOR: Good morning, everybody. My name's Ken Taylor; I'm a member of  
10 this panel. Today, I'm going to lead on agenda items 4(c) and (d).

11 MS LAVER: Good morning, everybody. Janine Laver, I will be leading today's  
12 item 4(b).

13 MR PRATT: Good morning, everybody. I'm Ken Pratt, and I'll be generally taking  
14 actions, but I may ask questions at some stage.

15 MR SMITH: And now to the virtual inspector bench.

16 MR YOUNG: Good morning, everybody. I'm Dominic Young. Apologies for not being  
17 present there in person. I, like a lot of people, was away for half-term, got caught  
18 up with a few travel difficulties, but I shall be participating as much as I can  
19 from home. Thank you.

20 MR SMITH: Thank you very much, Mr Young, and again, I will flag – Rynd Smith,  
21 panel lead, speaking – that I will be leading agenda items 3 and 4(a), although  
22 Mr Young will be probing in a range of questions as he sees fit as we move  
23 through those items. I will also introduce our planning inspectorate colleagues  
24 here today: Ted Blackmore, Spencer Barrowman and Ryan Sedgman, and also  
25 I believe we have Elliott – apologies, lost his surname for a second – in the room  
26 who are supporting us. We do also have Guy Rigby who is an inspector in the  
27 room, sitting on the rear bench. Guy is a chartered engineer and also a  
28 non-practising barrister. He is appointed by the planning inspectorate but not as  
29 a member of the Examining Authority, but he will be advising us, has been  
30 advising us on compulsory acquisition and traffic and transportation matters,  
31 and as there is a linkage in this agenda, he is here today listening.

32 Turning to today's hearing, you will have seen the agenda that we have  
33 circulated. Before we make a start on it, again, as is the normal way, these  
34 proceedings are being recorded and livestreamed. Does anybody have any

1 concerns about that process? None whatsoever, so I'm going to move on, and  
2 I'm going to now start the introductions process. What I'm going to do is I'm  
3 going to start with, broadly now, highway authorities, as distinct from local  
4 planning authorities, although if entities are here in a local planning authority  
5 role, I will introduce them too, and the other public authorities, representative  
6 bodies, and then individual interested parties. So with no further ado, can I first  
7 check who is attending for Kent County Council, please?

8 MR FRASER-URQUHART: Sir, good morning. My name's Andrew Fraser-Urquhart,  
9 King's Counsel. I'm here for Kent. I will be assisted this morning by Mr Joseph  
10 Ratcliffe, who sits to my right. He is the transport strategy manager for Kent  
11 County Council.

12 MR SMITH: Thank you very much, and if I can go to Essex County Council.

13 MR MACDONNELL: Good morning, sir. Good morning, everyone. My name's Gary  
14 MacDonnell. I'm a programme manager working in highways and  
15 transportation at Essex County Council, and I'm here today representing Essex  
16 County Council, and I'm joined by my colleague, Mark Woodger.

17 MR SMITH: Thank you very much, and if I could then go to Thurrock Council, please,  
18 Mr Edwards.

19 MR EDWARDS: Yes, sir. Good morning, Douglas Edwards, King's Counsel for  
20 Thurrock Council. There are a number of representatives of Thurrock Council  
21 attending today. I'm going to ask that those who sit to my right introduce  
22 themselves first and then there are some other representatives who are joining  
23 online.

24 MR SMITH: Thank you very much.

25 MR BOWERS: Good morning. My name's David Bowers, representing Thurrock  
26 Council.

27 MR STRATFORD: Good morning, Chris Stratford, planner, Thurrock Council.

28 MR SMITH: Thank you very much, Mr Stratford. Now, do we go online? We have a  
29 very full representation online, so Mr Neve, would you like to kick off?

30 MR NEVE: Good morning, sir. Yes, Adrian Neve, representing Thurrock Council.

31 MS COLEMAN: Tracey –

32 MS JEFFERIES: Hi, Sharon Jefferies. Sorry, carry on, Tracey.

33 MS COLEMAN: Tracey Coleman, chief planning officer for Thurrock Council.

34 MS JEFFERIES: Sharon Jefferies, representing Thurrock Council.

1 MR SMITH: Thank you very much.

2 MS MCMULLEN: And Kirsty McMullen, representing Thurrock Council.

3 MR SMITH: Thank you.

4 MR EDWARDS: Can I also indicate that Mr Steve Plumb will be attending in respect of  
5 agenda item 4. He's not yet present, but he will be joining the examination  
6 shortly.

7 MR SMITH: Okay, that's all good. Can I, then, go to Gravesham Borough Council,  
8 please? Mr Bedford.

9 MR BEDFORD: Thank you, sir. Michael Bedford, King's Counsel, Gravesham  
10 Borough Council, and as you rightly say, we're here not as a local highway  
11 authority, but we are a planning authority and generally a host authority. Sir, I  
12 will be doing the speaking. With me also is, as you will have seen previously,  
13 Mr Tony Chadwick, the NSIP project manager, but I don't expect he will be  
14 speaking.

15 MR SMITH: Thank you very much, and then I'm going to move to the London Borough  
16 of Havering.

17 MR DOUGLAS: Good morning, sir. Good morning, everyone. I'm Daniel Douglas; I  
18 represent the transport planning team at the London Borough of Havering.

19 MR WHITE: Good morning, sir. Lee White, transport planner representing the London  
20 Borough of Havering.

21 MS BASFORD: Good morning, sir. Lynn Basford on behalf of the London Borough of  
22 Havering, chartered town planner and transport planner.

23 MR SMITH: Thank you, Ms Basford.

24 MS GRAYSHAM: Good morning, sir. [Emma Graysham?], representing London  
25 Borough of Havering.

26 MR SMITH: Thank you, and whilst we are in the realm of relevant statutory authorities  
27 – and apologies to Mr Rheinberg for Transport for London, because of course,  
28 as a highway authority, I should have come to you, I guess, before going to those  
29 local planning authorities, but I trust we do have Transport for London in the  
30 virtual room, or in the physical room.

31 MR RHEINBERG: No, the real room. Yes, so Matthew Rheinberg, major projects and  
32 design manager at Transport for London.

33 MR RATNAYAKA: And Shamal Ratnayaka, also Transport for London, strategic  
34 analysis manager for third party DCOs, aviation and GIS.

1 MR SMITH: Thank you very much. In which case, we will move on to a range of other  
2 public authorities and bodies. Can I check that we have Port of Tilbury London  
3 Ltd present, please?

4 MS DABLIN: Good morning. Yes, Alison Dablin for Pinsent Masons, appearing on  
5 behalf of Port of Tilbury London Ltd. Thank you.

6 MR SMITH: Okay. Just to check, I believe we don't have Port of London Authority  
7 represented today. No, that's correct. 'No longer attending', there marked on  
8 my list, but just checking the room in case that was in any way an error. No.  
9 Good, and then in terms of parish councils, we do have Councillor Susan  
10 Lindley, from Shorne Parish Council.

11 MS LINDLEY: Good morning sir, and everybody. Yeah, Susan Lindley, representing  
12 Shorne Parish Council. Apologies, my camera's playing up again, but I'll try  
13 and get it fixed later. Thank you.

14 MR SMITH: Thank you very much. Okay, so I believe that that has taken us through  
15 the various relevant public authorities. I'm then just going to look at some  
16 statutory undertakers. Do we have DP World London Gateway, Mr  
17 Shadarevian?

18 MR SHADAREVIAN: Sir, you do. My name is Paul Shadarevian, KC, and next to me  
19 is Mr Simon Tucker, on behalf of London Gateway DP World

20 MR SMITH: Okay. Thank you very much. Right, I'm then now going to move to  
21 persons representing individual interested parties and affected persons. Mr Mike  
22 Holland.

23 MR HOLLAND: Good morning, sir. Mike Holland, Holland Land & Property Ltd,  
24 representing specifically today E & K Benton Ltd and The Mott Family, their  
25 development partners, Mulberry Strategic Land and EA Strategic Land.

26 MR SMITH: Thank you very much, but I note that we do have separately listed Mr Tom  
27 Benton.

28 MR BENTON: Morning, sir. Yes, Tom Benton, landowner in South Ockendon affected  
29 by the LTC.

30 MR SMITH: Thank you very much. Now, we do have, I believe, a Mr John Elliott as  
31 special adviser to the Local Government Technical Advisers Group.

32 MR ELLIOTT: Yes, I am a special adviser, but my involvement with this is on behalf of  
33 myself, as somebody that's dealt with the east London river crossings at length,

1 but I use documents from the Local Government Technical Advisers Group  
2 supporting my evidence.

3 MR SMITH: Okay. Thank you very much, and then I believe we have Mr Jeremy Finnis  
4 representing the Cole family. Is Mr Finnis with us in person?

5 MR FINNIS: Morning, sir. Yes, Jeremy Finnis, married to Diana Cole, representing the  
6 whole Cole family, and as you probably know, we're the most affected party by  
7 this development – seven kilometres and nearly 1,000 acres to be lost. Thank  
8 you.

9 MR SMITH: Thank you very much. Now, can I just check, is there anybody else in the  
10 room, either virtually or physically, who believes that they need to speak to  
11 represent, or to speak on their own behalf, who I have not name checked, apart,  
12 of course, from the applicant? So who will be leading today? Right, can I just  
13 indicate that probably didn't go to the recording, so that was Colin Black from  
14 Thurrock Council. If folks sitting on the rear row – I'm very conscious that  
15 we're a little short of space today, and apologies to those of you who haven't got  
16 chairs at the customary front bench. If you need to speak, we do have mobile  
17 microphones available and what I will ask is if you can just signal very briefly,  
18 we'll take a very short break and we'll have one of the case team bring a  
19 microphone to you so that you are properly recorded. Can I then ask who's  
20 leading for the applicant today?

21 MR TAIT: Sir, I am Andrew Tait, King's Counsel, for the applicant. To my right is Mr  
22 Mustafa Latif-Aramesh, partner of BDB Pitmans, to my left, Dr Tim Wright,  
23 head of consents for the project. To his left, Mr John Rhodes, who's the strategic  
24 planning adviser to the project, and to his left, Mr Graham Stevenson, who is the  
25 transport planning lead for the LTC.

26 MR SMITH: Thank you very much for those introductions.

27 MR TAIT: Sir, should I – I could add that in respect of item 4, there will be a different  
28 team, but I'll introduce those when we get to it.

29 MR SMITH: No, let's go as we roll rather than introducing your entire back bench, and  
30 no doubt rooms full of other people. Okay, turning then to the hearing, the  
31 agenda of course sets out the topics that we will discuss. This being an  
32 issue-specific hearing, we will normally move to the applicant first and then the  
33 panel will direct relevant parts of our questions to the applicant, but then  
34 introduce the interested parties and any questions, obviously, from interested



1 parties will be put through the panel. Please, of course, remember to introduce  
2 yourselves every time you speak.

3 Reduction of oral submissions to writing, we're asking for those by  
4 deadline 6 on 31 October, and there will also be actions which largely will focus  
5 on that date as well. If you're outside the venue and not participating orally but  
6 were an invited participant – and I say this particularly in relation to the Thames  
7 Crossing Action Group, who were invited to participate today but are not present  
8 – they can make submissions in writing on the matters that are discussed today,  
9 again, by deadline 6.

10 So the introductions are now complete. In terms, then, moving our role  
11 together, agenda item 2, the purpose of this hearing, just a few very brief remarks  
12 here. We do of course note that there have been responses submitted at  
13 deadline 5 in relation to ongoing localised modelling. Certainly, the purpose of  
14 our first agenda item is that we are seeking a general network update from the  
15 applicant, but our view had been that whilst it would be useful to hear about  
16 progress, we do not want to find ourselves reinterrogating matters that were  
17 interrogated at earlier traffic and transport issue-specific hearings. Mr Tait,  
18 what, of course, would be very useful is if matters progressed in a particular way  
19 and you're able to say that something that was in contention before has settled,  
20 please do tell us that it has, or indeed just gives us a very brief overview of what  
21 the outstanding matters are and how discussions are progressing, but certainly  
22 we won't be undertaking any detailed investigations back into matters that we've  
23 already heard.

24 The principal purpose of this issue-specific hearing, then, is to inquire into  
25 matters relating to public rights of way and non-motorised user routes. These  
26 are matters that have been raised as a matter of substantial interest, largely  
27 associated with submissions from parties appearing at compulsion acquisition  
28 hearings, but we have been very clear in those hearings that those are, in a way,  
29 secondary matters because they bear on the planning merits of the proposals in  
30 front of us and that's why we're here today, so that we can provide a space where  
31 we can interrogate the merits of those matters. So again, to those representing  
32 compulsory acquisition affected persons, there's no need to go back over the  
33 compulsory acquisition stuff. It should already be in the tin, but this is your  
34 opportunity to focus on the planning merits arguments that we asked you either

1 not to make or to make in only the most abbreviated and summary of terms in a  
2 compulsory acquisition hearing.

3 Just before we move on to the substantive items at agenda item 3, I will  
4 very briefly speak to where we are in this examination, because there were  
5 various references this morning to our location and the fact that we are close to  
6 the finishing straight, or in the final curve, and possibly in sight of the chequered  
7 flag for this October round of hearings, our final day at Brands Hatch. However,  
8 we are returning in a month's time with a further round of hearings and those  
9 will touch all of the types of hearing that can be held in a Planning Act 2008  
10 examination.

11 We will have further compulsory acquisition hearings, so if there's  
12 anybody representing a party who has not yet been heard, rest assured;  
13 November is when you will be heard. Similarly, we have a small number of  
14 outstanding requests to speak at an open-floor hearing, so there will be one  
15 open-floor hearing held in November, and then the remaining issue-specific  
16 hearings that we believe we need to complete our oral examination of issues will  
17 also be held in November, so the November hearings will be the final oral  
18 processes in the primary examination process.

19 Then, I think we need briefly to refer to the fact that there will be some  
20 hearings held in December, but those prospectively offer a very different  
21 purpose, and I say 'will' and I should caveat that; they will only be held if  
22 required. Those hearings are specifically to address requests to be heard that  
23 arise from additional land requests that have been included in the applicant's  
24 change requests, so they are not, essentially, an invitation at large for all existing  
25 interested parties, affected persons, to participate. They will be a very specific  
26 invitation, only to those additional affected persons, new interested parties who  
27 have arisen as a result of the advertisement notification of the specific change  
28 requests that have been accepted, and that include an additional land or rights  
29 requirement. Very specific function, and as I've said, those hearings will not  
30 proceed if there are no requests to be heard. We will see how matters transpire.  
31 They may or may not be held.

32 So let's be very clear that in terms of oral processes, if there are things that  
33 need to be brought in front of us orally, then November really is the final process  
34 in the main body of the examination, after which all remaining processes will be

1 in writing. So does anybody have any questions about any of that preliminary  
2 material leading up to, essentially, the end of the October round of hearings, or  
3 our outlined sketch plan of the November processes? No. Excellent, in which  
4 case, let us move straight on to the agenda and agenda item 3. Now, this is  
5 highlighted on the agenda as principally the applicant's item, to draw to our  
6 attention wider network impacts and also to update us on progress in relation to  
7 matters arising from previous traffic and transportation hearings. Mr Tait.

8 MR TAIT: Thank you, sir, and in terms of the participation, I was going to ask Doctor  
9 Wright briefly to summarise the modelling exercises that have taken place, and  
10 the discussions that have occurred and what's planned. Then, I was going to ask  
11 Mr Rhodes to pick up points made about the framework by various interested  
12 parties at D4 and D5, and update the applicant's position in respect of those,  
13 including the Silvertown Tunnel approach that has been advocated by some, and  
14 also picking up Bluebell Hill, so initially I was going to ask Dr Wright to deal  
15 with the modelling position, please.

16 DR WRIGHT: Good morning, sir. Dr Wright for the applicant, and just to reassure you,  
17 I'm not proposing to talk technical. This really is a progress update to let you  
18 know what has happened since ISH 4. You'll have seen that we did hold  
19 workshops as directed in both the – two microphones – as directed in the action  
20 points, one regarding Bluebell Hill and one with various parties regarding Orsett  
21 Cock. So those were reported in the joint position statements and you'll have  
22 seen that following that meeting, we agreed a set of amendments to the VISSIM  
23 model which we would implement to address some of the concerns raised by  
24 other interested parties.

25 There are two elements of that modelling update which were not agreed,  
26 one regarding driver behaviour and one regarding the layout of the proposed  
27 road that is included in the model, particularly with regard to the length of the  
28 merge of the A13 eastbound to Orsett Cock slip with the LTC to Orsett Cock  
29 slip. We then prepared an updated VISSIM model, which we issued in draft  
30 form on 6 October in accordance with the agreed timeline. Now, unfortunately,  
31 following the submission of that model, we identified that there were some  
32 errors in that model, so we then reworked the model, fixed those errors and we  
33 resubmitted that model with a full modelling report on 20 October to all of the  
34 relevant interested parties.

1           The next action, which was due by 20 October, was to import some of the  
2 findings of the VISSIM model into the LTAM model, and produce a report on  
3 that on a without prejudice basis to help the conversation move forward.  
4 Clearly, as we identified those errors, that unfortunately put a delay into that,  
5 but –

6 MR SMITH: You're not going to achieve that in four days, so yes.

7 DR WRIGHT: Well, we actually got that report out yesterday, so we managed to not  
8 achieve it by the Friday that we committed, but we did achieve it by the Monday,  
9 so that report has literally just gone out, so I suggest we don't talk about it. I  
10 don't think it would be fair on any party to comment on that right now, so we  
11 propose to submit information on those modelling exercises at deadline 6, so  
12 that that information comes before the examination as well as in front of the  
13 interested parties who have a concern.

14 MR SMITH: And that is a very useful commitment in timing terms, because you'll be  
15 clear that to the extent that we then need to further inquire orally around a table  
16 into the matters that have emerged from that process, we will be very strongly  
17 desirous of doing that in November, because the only other alternative becomes  
18 quite difficult, which is amending the timetable and putting in an additional  
19 hearing that we haven't arranged, which we really, distinctly do not want to do.  
20 So yes, it feels as though, from the applicant's perspective, we are on track to be  
21 able to frame an agenda for a traffic and transportation hearing, at which final  
22 issues of concern can be tested in November. Does that feel okay to the  
23 application in progress terms? And don't worry, other parties; I know that there  
24 are other views on some of this stuff. I'm coming round the room once we've  
25 heard from the applicant.

26 DR WRIGHT: Tim Wright for the applicant. That's our hope, sir, that by putting this  
27 information out at the time we have, it'll allow people to digest, and for a full  
28 conversation at the next round of hearings.

29 MR SMITH: Yeah, okay. Now, we obviously had an in-principle focus there on the  
30 Orsett Cock work, but we did also indicate as item (ii) in the agenda that we  
31 were also looking for an update on Bluebell Hill. I think it's probably useful to  
32 hear from you on that before I go to the rest of the room, and then everybody  
33 can pick up everything.

1 DR WRIGHT: So if I can – I did want to talk a little bit further about monitoring  
2 mitigation as well, and I can cover the Bluebell Hill.

3 MR SMITH: Yeah. That would be good.

4 DR WRIGHT: So with regard to monitoring mitigation, we – I wanted to make it clear  
5 that we offered to discuss monitoring mitigation on a without prejudice basis  
6 with the group at the modelling workshop that we held, particularly in relation  
7 to Orsett Cock. This was declined by the meeting at the time, and you'll note  
8 that a transcript was shared at an earlier deadline, setting out the conversation  
9 that was held in that meeting. But we were clear that we wanted that on the  
10 agenda to begin with, and then we revisited that point at the end of the agenda  
11 and it was clear at the end of the meeting, following further conversation, that  
12 there was interest in having that conversation with certain parties.

13 So as such, we held a tripartite meeting with representatives of Port of  
14 Tilbury, London DP World, focusing primarily on Orsett Cock junction, but  
15 clearly with the parties there in extent on Manorway junction as well. Now, that  
16 meeting was held without prejudice. It was a useful discussion, I would say, but  
17 I don't propose to set out what we discussed internally. I think we both need to  
18 formulate how we bring that forward into the examination and what we consider,  
19 but I believe that was a useful discussion.

20 MR SMITH: Well, again, in relation to that, if you are keeping in mind the need for us  
21 to be able to achieve our best position and clarity in November, and that could  
22 potentially be an agenda item for a November hearing, and to the extent that it  
23 is still in dispute or that there are still matters in dispute at that point, then clearly  
24 they would be surfaced and discussed at that point. But, yeah, they could stay  
25 behind the curtain until then, but don't forget the pressure of that drop dead date.

26 DR WRIGHT: Certainly, sir. Tim Wright for the applicant, and as part of the round of  
27 that conversation, we talked about the proposed requirement that we set out at  
28 the last deadline in relation to operation at Orsett Cock, and recognising there  
29 were concerns about how the detailed design process was fitted with the  
30 modelling work and the outcomes that we were saying that we intended to  
31 achieve there. And so you'll have seen that we have proposed a new requirement  
32 for Orsett Cock to secure a scheme to be developed prior to the start of  
33 construction to optimise operation of that junction, and such a scheme would be  
34 informed at that point by updated traffic monitoring and modelling, and that that

1 information would be set out through consultation with Thurrock Council and  
2 the ports, prior to a decision by the Secretary of State prior to construction.

3 Now, we shared that through the examination. That is not, to be clear, put  
4 forward on a without prejudice basis. That is something we intend to amend in  
5 the DCO, and it is simply out for conversation so that we can hear views on it  
6 before making that amendment, and so that formed part of the conversation that  
7 we had with the ports, and we are proposing a discussion with Thurrock Council  
8 as well. We have that in the diary for that to happen, and then finally, we're  
9 preparing a further submission to go in at deadline 6. It will talk about our policy  
10 position in relation to the nature of the impacts, and we would like to introduce  
11 that today, which is one my colleague, Mr Rhodes, will be speaking.

12 And then just finally to turn Bluebell Hill, that will also be something  
13 covered there, but to say that we also held a conversation with Kent County  
14 Council on 25 September and set that out in the joint position statement. We  
15 maintain our position. It would be inappropriate for us to predetermine the  
16 Government funding decision process by providing any form of commitment to  
17 fund some, or all, of Bluebell Hill improvements, and I think it would be fair to  
18 say that was not an agreed position with both parties. Kent County Council have  
19 a different view, clearly.

20 We note, however, that Bluebell Hill was included as part of the Network  
21 North announcement, associated with the cancellation of HS2 north of  
22 Birmingham, where there's a statement made, and I quote: 'These schemes,  
23 subject to the successful business case approval, will benefit from an uplifting  
24 Government contribution, from 85% to 100% of their costs at the outline  
25 business case stage.' I don't really have any more to say on that matter for now.  
26 Obviously that's of note, however.

27 MR SMITH: Yes.

28 DR WRIGHT: And so that's all I have in the general update. We do propose to talk  
29 further on the policy piece. Whether you want to ask questions about that update  
30 first, I guess that's your –

31 MR SMITH: Look, I mean in timescale and process terms, that sounds, subject to hearing  
32 from others, as though it enables us to at least appreciate what has been done at  
33 the right time within this examination process to enable us to make reasonably  
34 sensible judgments on the substantive issues. I'm a little reluctant to peel back

1 into the issues, because we're in a quite delicate, part-delivered phase in terms  
2 of your work, and there doesn't seem, to me, to be an enormous amount of point  
3 in undertaking a detailed interrogation of part-complete work in this hearing  
4 when we know it will shortly be complete and it can meet our expectation that  
5 it will emerge for full discussion in November, so I wasn't going to probe  
6 substantive detail. I'll just check to see if Mr Young wants to raise any questions  
7 on that point at this time. He will appear magically on the screen if he does, but  
8 no, he has confirmed that he's content with that approach that I'm taking, too.

9 Obviously we're going to go to the room on all of those process and  
10 mechanics points. Might it make sense to do that now whilst this is all fresh in  
11 their minds? And then we can go to the policy piece, and then the risk of going  
12 around the room for a second time, we will then hear them on the policy  
13 submissions, but I think it would be very useful for us to at least understand if  
14 the machinery has linked, and we're actually heading towards a last oral hearing  
15 on these matters in November, as others see it too.

16 So can I see show of hands for those parties who wish to speak on that  
17 process update from the applicant? Now, I do see Port of Tilbury. I do see Mr  
18 Elliott, in the room, Mr Bedford. I see Mr Edwards for Thurrock. I see Mr  
19 Shadarevian for DP World, and I see Kent. I think probably the order, as I see  
20 this, will be to go to Thurrock, then to Kent, then to Gravesham, and then I will  
21 bring in the ports and then go, finally, to individual interested parties. So can I  
22 open with you, Mr Edwards?

23 MR EDWARDS: Yes. Thank you, sir. Douglas Edwards, Thurrock Council. I'm going  
24 to initially ask us Mr Bowers to address first the chronology, in terms of the  
25 information that has been provided to Thurrock Council and others, and then to  
26 give an indication as to how far Thurrock have got in terms of assessing that  
27 information, any provisional or preliminary views, and then the direction of  
28 travel in terms of being able to respond to that information. So if I can ask Mr  
29 Bowers to deal with those four points, and then I will come back in and deal  
30 with some other supplemental matters.

31 MR SMITH: Thank you. Mr Bowers.

32 MR BOWERS: Good morning. David Bowers for Thurrock Council, so over the past  
33 few weeks, since issue-specific hearing 4, we have been working and looking at  
34 the modelling information provided by National Highways, and as stated by the

1 applicant, there was a meeting on 25 September, and then after that we received  
2 the VISSIM model on 6 October. I think it's fair to say at that stage, we  
3 understood that to be the VISSIM model, and we were not expecting any further  
4 changes and so it did come as a surprise when it was reissued on Friday evening,  
5 late, because that meant all the work that we'd been doing in the previous two  
6 weeks needed to be reviewed and updated to help us inform and understand that  
7 model. And then, again, the information to do with the LTAM model was issued  
8 late, I think just before 6.00 last night, so obviously we haven't had that  
9 information and it's an ongoing need to understand the impact of these two  
10 models.

11 MR SMITH: And that, I will emphasise, is my principal rationale for having a very  
12 strong reserve around interrogating the content, because I don't think it would  
13 be fair in any measure to interrogate that content in relation, particularly, to  
14 material that's only been with you for 24 hours, so don't worry on that point, but  
15 do continue.

16 MR BOWERS: Thank you, so the interaction with these two models and understanding  
17 of them continues to be a critical importance, and so there is a real, ongoing  
18 challenges of fitting this into the exam timetable, so our view is we need to look  
19 at the information that has been provided over the past few days, and we may be  
20 able to provide some initial comments before D6 or at D6. It does sound like  
21 now the full detail of the comments from the applicant will happen at D6, which  
22 means in process terms, we'll need to look at that when we receive that and  
23 they'll be able to comment on that at D7, which I think comes before the  
24 hearings.

25 But I think it's just worth emphasising this interaction of the two models  
26 and understanding their difference and their convergence, or their alignment, is  
27 a fundamental issue for Thurrock, and our views of the VISSIM model, which  
28 was issued on 6 October, continued to show a lack of alignment and a lack of  
29 convergence of those VISSIM models with the LTAM model, and that seems to  
30 be through changes in the overall principles of how the 'do minimum' and the  
31 'do something' options have been modelled. So to think about how we actually  
32 progress this, we need to look at the information which now seems to be being  
33 delivered on the D6 and then report on that through at D7.



1 MR SMITH: Yeah, I'm actually going to raise an in-principle question at this point about  
2 timings, because obviously for the parties in the room, where there is still  
3 substantial material that requires a response from the applicant will be submitted  
4 at deadline, as you very correctly identified, deadline 7 is the next train departing  
5 on which you can load your response. The difficulty with deadline 7 actually  
6 arises for the Examining Authority itself, because deadline 7 is 17 November;  
7 the Examining Authority opens hearings on 20 November. Now, we can to a  
8 degree, manage this issue because we have reserved 20<sup>th</sup> through to the 28<sup>th</sup> for  
9 hearings. However, it feels to me as though if certain responses arrive on  
10 17 November, that leaves this Examining Authority in principle only three days  
11 to get to grips with highly complex material, which puts us in exactly the same  
12 position as interested parties feel themselves to be in now.

13 I am not indicating a decision on this yet, but what I am wondering about  
14 is the possible wisdom of a very minor timetable amendment that might  
15 interpose a deadline 6(a), maybe as little as two or three working days prior to  
16 deadline 7, just to deal with these matters, because... Yes, it's Monday the 27<sup>th</sup>  
17 is traffic and transportation in terms of the decisions we've made about hearings,  
18 so that does give us a little bit longer than three working days. Although, that  
19 being said, we will be busy. We will be holding hearings; preparation is  
20 somewhat hard, so yes, I'm still looking at the possible wisdom of sliding in  
21 maybe an additional deadline between 6 and 7.

22 Now, I can imagine that that will be received by some interested parties  
23 with horror, but I'm going to lay that on the table. Everybody address it. We'll  
24 go around the table and we'll think upon it carefully. We'll think upon the  
25 relative merits and demerits of doing that and when it might be. Apologies for  
26 taking your time, but I thought it was worth raising that.

27 MR EDWARDS: Yeah, so just in response to that, sir, in terms of Thurrock's  
28 consideration of the material that's been provided, as you've heard from Mr  
29 Bowers and as will come as no surprise, we're not going to be in a position to  
30 respond fully to that at D6. It will need some time for the Thurrock team to  
31 consider that material. Plainly, if there is to be some adjustment to D7, I'm sure  
32 we can work around that, but I'm sure you and your colleagues will appreciate  
33 the amount of work that's involved in considering this material.

1                   So more generally, in terms of the position of Thurrock Council, I've heard  
2 what was said by Mr Wright on behalf of the applicant about a meeting that took  
3 place, concerning Orsett Cock, between the applicant, DP World and the Port of  
4 Tilbury, so I've taken instructions. We were certainly not aware of that meeting,  
5 nor were we invited to it, and it is something of a surprise that a meeting is taking  
6 place concerning a particular junction in Thurrock without the local planning  
7 authority being involved in that, and so I hope that approach is not going to  
8 persist or be repeated in terms of the further stages of what is intended to be a  
9 collaborative process.

10                   So beyond that, there has been – as you requested at issue-specific  
11 hearing 4 and subsequently – some engagement with the interested parties, and  
12 on a wholly without prejudice position, in terms of Thurrock's concerns about  
13 the adequacy of the evidence that you've been provided with. There has been  
14 engagement between the interested parties with a view to providing the  
15 Examining Authority in due course with some particular requirements that may  
16 be suitable for – to be added to the order by way of modification, in order to  
17 address post-consent matters relating to the Orsett Cock junction and indeed  
18 other junctions in the wider network, so we hope to provide that to you, along  
19 with the other interested parties, either at D6 or at D7, depending on the progress  
20 that's taken place.

21                   So, sir, that is just simply by way of an update as to where things have got  
22 to and, sir, we'll provide that to you again, as I've said, on a without prejudice  
23 basis in due course. So unless there's anything else that any of my colleagues  
24 wish to raise, those are the submissions for Thurrock at this stage.

25 MR SMITH: Thank you very much. Okay, can I go to Kent, please?

26 MR FRASER-URQUHART: Yes, sir, Andrew Fraser-Urquhart for Kent. I'm going to  
27 turn over to Mr Ratcliffe to give you a detailed update in just a moment, but  
28 there are three points that I want to emphasise as the introduction for where we  
29 stand. The first is that your agenda item asks about the wider the network's  
30 impact study, which is obviously a different matter to the Orsett Cock junction  
31 issues which Thurrock have, and –

32 MR SMITH: We're getting to the remainder of the applicant's primary submissions on  
33 that agenda item after we – we are strictly in timing and programming world at  
34 the moment, Mr Fraser-Urquhart.

1 MR FRASER-URQUHART: I appreciate that, sir, but it's important to note that what  
2 we're talking about is that study, the scoping exercise, part one of which was  
3 attached to our local impact report, the second part of which was – is due by the  
4 end of this month, which is, as it were, the substantive study, and so that's the  
5 first point. That's what we're concerned with, primarily.

6 The second is that we note that the agenda has specifically taken Bluebell  
7 Hill separately from that wider network impact study, and we think that is  
8 absolutely the right thing to do. It is a separate, very important issue for us with  
9 different considerations, and the third matter – and I appreciate this is possibly  
10 foreshadowing discussions we'll have surrounding the policy matters – but we  
11 are very concerned about the absence, still, from the applicant of any  
12 commitment towards mitigating the impacts that they're going to have both on  
13 the wider network and on Bluebell Hill, and we'll come back to that, so that's  
14 where we're coming from, and I'll now pass to Mr Ratcliffe just to give you an  
15 update on the details of the process.

16 MR RATCLIFFE: Thank you. Joseph Ratcliffe for Kent County Council. Yeah, in  
17 terms of just specifically looking, then, at programme timing, etc., we will be  
18 submitting a further written statement on Bluebell Hill to follow up the  
19 workshop – if you can call it a workshop – that occurred a few weeks ago. Also  
20 on the other wider network impacts, which were appended to our local impact  
21 report, REP1-241, that was just the first stage that was included in that. There  
22 is a second stage study which – and we appreciate it's being funded by National  
23 Highways, by the applicant through the planning performance agreement. That  
24 study was due to complete at the end of this month as well, so it will be submitted  
25 at deadline 7 on 17 November, which hopefully will be in time for the next  
26 hearing on traffic and transportation at the end of November. That's all I have  
27 to say on the timings. If we're coming back onto details around the two items,  
28 then I presume we'll have the opportunity to speak again.

29 MR SMITH: Indeed you will.

30 MR RATCLIFFE: Thank you.

31 MR SMITH: But as I indicated, I want to bed down these timing points as best we  
32 possibly can. Okay, so can I then come to Gravesham before we then move onto  
33 the ports?

1 MR BEDFORD: Thank you, sir. Michael Bedford, Gravesham Borough Council. Sir,  
2 simply in terms of issues of timing, we don't have any particular comments to  
3 make other than sharing the concerns that have been expressed about the  
4 shortness of time to deal with matters. We do note that, as we understand it from  
5 the notification issued yesterday, that of your November hearings, issue-specific  
6 hearing 12 on 23 November will include discussion of the state of play with the  
7 control documents, which may be a useful opportunity to talk about mechanisms  
8 for further monitoring and management of wider impacts, as well as, obviously,  
9 issue-specific hearing 13 which is the traffic one, which is the following  
10 Monday, the 27<sup>th</sup>, and also the draft DCO which is on the Tuesday the 28<sup>th</sup>, and  
11 again, the mechanics, as it were – there certainly seems to us to be opportunities  
12 across those three hearings to put forward the issues that we want to see  
13 translated ultimately into any made order and/or its control documents, so to that  
14 extent, we're content with the timetable.

15 Sir, as I understand it, you're going to come back to substantive issues on  
16 the update as a separate item, because I did have something that we wanted to  
17 say about the applicant's update note, particularly on Bluebell Hill, but if you're  
18 coming back to substantive things –

19 MR SMITH: I'm coming back to substantive items.

20 MR BEDFORD: I'll save that.

21 MR SMITH: I really just want to bed down the levels of discomfort or otherwise in the  
22 room about where we are in progress terms, the timings, specific steps and  
23 measures, and particularly this question about whether we might place in a  
24 deadline 6(a) three or four days prior to the current deadline 7, and merits or  
25 demerits on doing that.

26 MR BEDFORD: On that particular point, sir, I suspect that's more likely to impact more  
27 on the highway authorities that will be directly submitting material to you, but I  
28 would echo the point that obviously the timetable is fairly heavily committed at  
29 the moment and so anything which requires additional work at a new deadline  
30 obviously creates its own problems.

31 MR SMITH: It does.

32 MR BEDFORD: But you're alive to that.

33 MR SMITH: We're very alive to that, and what we're trying to balance are the competing  
34 adverse factors in relation to, particularly, the highway authority engagement in

1 this, but also informing ourselves properly, bearing in mind that as soon as we  
2 are delivering a group of hearings, detailed preparation for one particular  
3 specialist hearing becomes a little more difficult, because we ought to have that  
4 in the can before we actually deploy and start delivering a group of hearings,  
5 and if we've only got three days then, yeah, that is, in principle, a struggle.

6 That is where we are, then, with Gravesham, so can I then move? In  
7 relation to those with highway authority interests, I do just want to check, do  
8 TfL want to speak on this issue? No. Okay, so in which case I am going, then,  
9 to go to the ports. I will go to Ms Dablin first and then Mr Shadarevian, I'll  
10 come to you, so Ms Dablin.

11 MS DABLIN: Thank you. Alison Dablin for the Port of Tilbury. Firstly, we would have  
12 no objection to an intervening deadline 6(a) as proposed. I think that it does  
13 provide more opportunity to have commentary that will assist the hearings,  
14 albeit I recognise that there are obviously some knock-on impacts for the wider  
15 timetable. Just by way of a very brief update in terms of actions that were with  
16 the Port of Tilbury after the previous hearings that haven't already been covered  
17 by the applicant, our transport consultants have managed to design a scheme of  
18 mitigation for the ASDA roundabout that is contained wholly within the existing  
19 highway boundary. The scheme was shared with the applicant and Thurrock  
20 Council on Friday, which was 20 October, and we have undertaken some initial  
21 traffic modelling to show that the scheme is effective. That is currently being  
22 finalised and will be sent over to both Thurrock and the applicant by close of  
23 business on Thursday, and we have done that in the hope that they would be able  
24 to provide comments by deadline 6, so that everything is presented to you at  
25 once.

26 In respect of the Orsett Cock junction, the applicant has mentioned that  
27 they are proposing a requirement. Having reviewed that, we do not think that  
28 that is as suitable and appropriate as the drafting that we have previously  
29 submitted. We have been working with Thurrock Council and DP World in that  
30 respect and we will be sending over revised drafting to both of those parties later  
31 today, in advance of a further meeting on Friday where we are hopeful that we  
32 can agree draft wording that the relevant IPs are happy with. We also intend to  
33 submit a revised requirement relating to the ASDA roundabout, as well as  
34 comments on the applicant's new requirement 17, which is passive provision for

1 the Tilbury Link Road, as well as an update to the proposed Silvertown Tunnel  
2 style wider monitoring mitigation requirement that we had submitted previously.

3 Thank you.

4 MR SMITH: Thank you very much. Okay, Mr Shadarevian.

5 MR SHADAREVIAN: Yes, sir. Thank you. Paul Shadarevian, KC, for DP World  
6 London Gateway. Sir, we are happy with a deadline 6(a), but it's important to  
7 understand what is going to be required at that deadline, and I think it's  
8 worthwhile now just having regard to where we are and what has yet still to be  
9 done so as to inform the scope of that deadline submission.

10 MR SMITH: Yes.

11 MR SHADAREVIAN: Until the further evidence that the data is interrogated  
12 appropriately, we cannot possibly know what the mitigation clause to be  
13 contained in schedule 2 ought to contain. That's the first point, and this is a  
14 fundamental matter for the panel. It's fundamental also for all of us to  
15 understand what is going to be required there. Now, at the moment – and I'm  
16 very pleased, actually, that the applicant has moved on this. We should have  
17 been in this position much earlier on in the process. We're pleased, nonetheless,  
18 that movement has been made, but the fact of the matter is we need now fully to  
19 interrogate the data in order to understand what the mitigation proposal should  
20 include, having regard to national guidance.

21 We can debate that later on, but insofar as we are looking for a solution,  
22 we can say now that the proposed solution by the applicant goes nowhere near  
23 where it needs to go in order to deal with the likely outcomes of the increased  
24 traffic queuing at Orsett Cock and any further implications it may have for the  
25 wider network, including the Manorway junction. It is restricted to the Orsett  
26 Cock. It excludes Manorway. It does not require further land beyond the order  
27 limits that may need to be acquired to facilitate necessary improvements so as  
28 to mitigate material worsening of localised traffic conditions. It doesn't propose  
29 an objective that is definable by reference to specific objectives, merely to  
30 optimise the performance of the OCR[?] and then as may be reasonably  
31 practicable to minimise harm, but by reference to what standard? What is the  
32 minimum requirement? What is it we're trying to achieve here? The  
33 consultation provisions are toothless. Moreover, to optimise, with what  
34 objective in mind?

1           We need to establish those objectives now. We need to know what it is  
2 we need to achieve through any changes to schedule 2 to provide an effective  
3 mechanism to maintain the free flow of traffic to the ports and those junctions  
4 in accordance with national policy requirements. That is a very tall order. There  
5 is a lot to achieve in a short space of time so you can go away from here properly  
6 informed. We're very happy to assist the panel in getting to that 6(a) deadline,  
7 but we are very concerned that there may be a lot more work still to be done  
8 beyond that in order for you to be properly informed, and this extends not only  
9 to the mechanisms, i.e. the drafting mechanisms, but also the substance of what's  
10 required and the means of its funding and the timing of its delivery.

11           I don't need to stress what the implications of that are in terms of decision  
12 making and the decision-making process, so I just flag that up at the stage, but  
13 we will do everything we can to assist – in conjunction with Port of Tilbury and  
14 Thurrock Council – to bring this to a satisfactory conclusion if at all possible.

15 MR SMITH: Those points in relation to timing – and I'm just going to take them in  
16 relation to timing at present, because that's what we're dealing with. We're  
17 going to hear from the applicant further, on, essentially, content and policy, and  
18 we're also going back around the room in relation to matters of substance to the  
19 extent that we can deal with that. But I will just pick you on one point there in  
20 relation to the maintenance of free flow of traffic to the ports, a critical  
21 operational objective for yourselves, to the extent that you're relying on policy  
22 positions to essentially underscore the criticality of that and exert the weight of  
23 that in our deliberations. We would very much welcome your specific picking  
24 and pointing to of the policy points that you're relying upon, in appropriate time  
25 when we get to those conversations. Okay, so we've heard from the ports. Mr  
26 Elliott, I believe, is remaining in terms of wishing to speak on this item in the  
27 virtual room.

28 MR ELLIOTT: Hello, it's John Elliott again. Sorry, it's a question – I don't know  
29 whether this is the time to ask a question – particularly of the applicant.  
30 Obviously, I haven't been able to read all the stuff on modelling, and I certainly  
31 haven't got time to really understand it, but I would like to know the extent of a  
32 model area that's got the full model and where delays are, and if there is a  
33 separate model area for a lower level of variables to be input. This is particularly  
34 in terms of the wider network effects.

1 MR SMITH: Okay, I'm going to leave that to rest on the table, Mr Elliott, until we go  
2 around the room again. It may well be something that gets picked up in writing.  
3 Okay, so we've dealt with the potential process design side of this. I'm not  
4 going to give you an extemporary decision on a deadline 6(a). However, we  
5 canvassed it with everybody. We will deliberate very carefully on the question  
6 of whether we introduce it. As I say, if we do introduce it, we are – we will be  
7 talking about the range of three or four days, nothing more than that, prior to the  
8 current deadline 7.

9 Taking Mr Shadarevian's points, and indeed responding to points by  
10 others, there will need to be clarity about what is to be touched at that deadline,  
11 because what we don't want to do is to disrupt the flow of material that would  
12 normally and naturally come to deadline 7, and still can. So we will also be  
13 giving very careful consideration to setting out the specific matters that would  
14 need to come to that deadline, and essentially what, in a nutshell, they appear to  
15 me as needing to be are the matters that ought have been capable of being dealt  
16 with by interested parties in response to the applicant's position at deadline 6,  
17 had we not been in a position where modelling was revisited and further reports  
18 were being issued dealing with errata and/or dealing with new content, literally  
19 one day prior to this event.

20 So we will be looking very carefully at what the applicant has spoken  
21 about in terms of their timing and delivery into this process, and then thinking  
22 about how we can best, essentially, replace the lost response opportunity that  
23 that has created for the parties, and that will be the sole and single purpose, as I  
24 see it, of that deadline, 6A. Everything else can stay on track. Does that seem  
25 to be reasonable and clear? But, as I say, if there are still substantial pull factors  
26 that indicate potentially against doing it, but we need to think about our own  
27 resourcing, and we will be very clear, in writing, we will make a written decision  
28 on this. If we need to introduce it, we will do so. And it will require notification  
29 to all parties, so a formal decision letter on it will come out if we decide to do it.  
30 Yes.

31 MR EDWARDS: Sir, could I just raise one other matter? In terms of being able to  
32 respond to the information provided concerning Orsett Cock, if there is a  
33 deadline 6A introduced, I'm sure we can accommodate that. But sir, in terms of  
34 looking at wider network impacts, what would be helpful, certainly to us and



1 maybe to other interested parties and to the Examining Authority as well, is to  
2 understand from the applicant whether they are proposing to submit any further  
3 modelling data at any point, up to and including the six, so we know what we  
4 have to deal with, as it were. I'm conscious that the information that's been  
5 provided to us thus far has been focused, certainly to Thurrock anyway, has been  
6 focused on the Orsett Cock junction. I'm conscious that there are some other  
7 junctions that are the subject of early-stage further monitoring, including the  
8 Asda roundabout, Manorway and various other junctions, and it would be useful,  
9 sir, to know at this stage what the applicant's intention is, in terms of any further  
10 modelling data relating to those junctions, so we know, as I indicated, sir, what  
11 we are going to be confronted with and need to respond to.

12 MR SMITH: I think that's a reasonably fair request. Before I go back to the applicant  
13 on that, is that something that's generally concurred with around the table? No  
14 need to speak to it unless there are obvious issues of different detail, but Mr  
15 Shadarevian.

16 MR SHADAREVIAN: Sir, Paul Shadarevian. The problem is, if we get to deadline 6A,  
17 and there is still lack of convergence, what then?

18 MR SMITH: I think I will indicate 'what then' is clarity around the documentation of  
19 that absence of convergence, because at that point all of the parties in the room  
20 have to draw a line under their positions, because we are starting to move  
21 towards what, in a number of the earlier hearings this week, I have referred to –  
22 the need for the Examining Authority to understand the dispute upon which we  
23 have to make an adjudication recommendation to a Secretary of State. Now,  
24 that's a very specific information need of ours, but if it appears that a matter is  
25 not settled because movement that you might otherwise have expected has not  
26 occurred, and it appears the clock is now against us and that is unlikely to occur,  
27 then yes, please write it down so that we are absolutely clear about what you  
28 reserve your position on, what is unagreed, and what, in your proposition, we  
29 then might need to adjudicate upon.

30 Okay, does anybody else want to finally add to any of that before I return  
31 it to the applicant? I'm going to ask, Mr Tait, for, essentially, a response to all  
32 of the process matters, and then we'll move into the remaining substance  
33 matters, if that's okay with you.

1 MR TAIT: Yes, sir. In relation to a D6A, we can see the sense of that and that appears  
2 to be the consensus of those who have contributed. In relation to what the Port  
3 of Tilbury are going to provide by next Thursday, and a response to that, that  
4 may not be realistic to respond to that – for us to respond to that by D6, which  
5 gives us Friday and Monday. So that might be an example of where something  
6 can be sensibly responded to at 6A, if it comes next week – we have that early  
7 next week.

8 MR SMITH: Yes. I mean, there is an immediate further concern there I have to say, Mr  
9 Tait, from the Examining Authority’s perspective, which is, if the applicant itself  
10 cannot respond to positions being articulated by others in sufficient time that  
11 there is a reasonably solid target put in at deadline 6, to which these people can  
12 then face their responses, then we are really starting to run down the clock.  
13 We’re really starting to reach a point where, given the statutory timescale for an  
14 examination under the 2008 act, this Examining Authority needs to move into  
15 the mode of, ‘Well, how do we report the differences?’, as opposed to being able  
16 to sensibly report to the Secretary of State that there’s full consideration and that  
17 the matters have been resolved.

18 MR TAIT: Sir, it depends on what that contains and whether it is Thursday or not, as to  
19 whether or not we can give you a written response on the Monday.

20 MR SMITH: I note your reservation, but I place a fairly heavy burden on the shoulders  
21 of your team, which is that unless the scale and scope of it is unreasonable and,  
22 with the expectations that might occur as a consequence of the discussions that  
23 have taken place around this table and its predecessors, that you do your utmost  
24 to try and land it in a timescale that means that we have as complete a picture as  
25 possible at deadline 6 because any incompleteness will only be reflected by  
26 statements from this side of the table that they don’t know the target that they  
27 are shooting at, that they therefore are reserving positions, and they’re putting  
28 things to us as matters for adjudication, rather than putting things to us as being  
29 matters of agreement. And that, frankly, other matters aside, would be  
30 somewhat of a tragedy.

31 It doesn’t need to be the case, and this Examining Authority will be very,  
32 very grateful for as many hours of midnight oil as need to be burned to try and  
33 make sure that it is not the case. Now, we’ll touch what we need to touch when  
34 we see the results of this process in writing, but I think the tenor of our approach

1 is reasonably clear. We're looking for a kind of special final push, for want of  
2 a better description.

3 MR TAIT: Yes, sir. No, we have ample supplies of midnight oil on this side, and we  
4 will be seeking to do our best in response to that. I was just indicating that  
5 Thursday is quite late for us, and if that can come earlier that would be much –

6 MR SMITH: Well, again –

7 MR TAIT: This is from the Port of Tilbury, rather.

8 MR SMITH: Yes, sorry, from the Port of Tilbury. So Ms Dablin has her hand up and  
9 I'm going to ask, just as we're asking the applicant to squeeze this as hard as  
10 they can, if the Port of Tilbury can as well. Even a day may make a difference.  
11 Ms Dablin.

12 MS DABLIN: No, I can completely appreciate that. I just wanted to clarify, Mr Tait  
13 said next Thursday, and I don't know if I misspoke, but the scheme of mitigation  
14 has been sent to the applicant already. That was Friday last week. And it just  
15 the transport modelling that demonstrates that the mitigation works that will be  
16 sent this Thursday, at the latest, as in the day after tomorrow. So with that in  
17 mind, I hope that the applicant will be better able to respond to it by deadline 6.

18 MR TAIT: I certainly meant this Thursday because next Thursday is after D6. So that  
19 was certainly my intention. But the point stands, but please delete 'next' and  
20 insert 'this'.

21 MR SMITH: Yes, and further, Ms Dablin, a day does matter, actually. And so, if you  
22 were in a position to bring that forward, any addition residence time of that  
23 information with the applicant folds back to better resolved positions that  
24 everybody can then see, not just yourselves.

25 MS DABLIN: Thank you. I will feed that back to our traffic consultants and see what  
26 we can do. Thank you.

27 MR SMITH: I'm very, very grateful. Thank you very much. Now, Ms Laver, I believe,  
28 wants to come in on this point.

29 MS LAVER: Yeah. I just wanted to just inquire about if there would be any additional  
30 air quality assessments done in light of new modelling because, obviously, the  
31 modelling informs the air quality outputs.

32 DR WRIGHT: Dr Wright, for the applicant. So, no, we're not proposing to put forward  
33 new air quality modelling. Our position remains that the information we've  
34 provided at LTAM is a robust basis for the decision informing the environmental

1 statement, and this VISSIM modelling, and in fact the VISSIM into LTAM  
2 modelling, is simply to demonstrate the robustness of the modelling that we've  
3 already provided.

4 MR SMITH: Noted. Right, now I'm very conscious that we need to get onto the –

5 MR TAIT: We need to get onto that, just a couple of other points. For the benefit of [Mr  
6 Elliott, in response – sir, you wanted me to pick up those points, I believe – we'll  
7 provide that, but it's REP 4-153, 7.5 [inaudible].

8 MR SMITH: I'm very grateful.

9 MR TAIT: And the third point, in relation to Mr Edwards' specific question about any  
10 further modelling coming forward at D6, again, I can ask Dr Wright to –

11 DR WRIGHT: Dr Wright, for the applicant. So we're not proposing to submit any more  
12 modelling information at D6, other than that that has already been shared with  
13 the interested parties. For completeness of answer, we are currently looking at  
14 the construction phase Asda model and we're considering some of the  
15 representations that have been made by interested parties. We haven't yet made  
16 a decision whether to resubmit a revised model, but if we were to do so, that  
17 would likely be for deadline 7. However, that is a construction phase matter,  
18 not really a wider network impacts matter.

19 MR SMITH: Now just to be completely clear, in geographic terms, that can be  
20 ringfenced. We're talking about the Asda roundabout here, that's just that.

21 DR WRIGHT: Tim Wright, for the applicant. Very much so, just that.

22 MR SMITH: Okay. Well I'm sure we're probably about to hear from Thurrock that they  
23 are asking for a defined target as soon as possible. Can I just check with  
24 Thurrock whether there are any final observations on that point.

25 MR EDWARDS: Yes, sir. Douglas Edwards, Thurrock. I thought that was a very clear  
26 response from Dr Wright. It's not quite the one we were expecting, in terms of  
27 any wider modelling of the network, but there it is. We'll make our case  
28 accordingly. As far as any revised modelling limited to the Asda roundabout is  
29 concerned in terms of constructions, we need to have that. If this timetable is  
30 going to work and you are going to have Thurrock Council, and indeed other  
31 interested parties' response to the case being put by the applicant, we need to  
32 have it properly and fairly to do so and to assist the process. And simply just an  
33 open-ended indication that National Highways may submit something at some  
34 point is simply wholly unsatisfactory.

1 MR SMITH: Now, Dr Wright, heard what was said. I will again return to this panel's  
2 very clear, broad desire to try and get as much of the target fixed in extent as we  
3 can. So if there's any way – we've talked about midnight oil burning on all sides  
4 of the table – is there any way that we can at least get a slightly clearer position  
5 in front of Thurrock in a timescale that enables them to respond at the same time  
6 on this as they are able to respond on the other matters?

7 DR WRIGHT: Dr Wright, for the applicant. I can't commit doing any modelling any  
8 time faster. However, with the Asda roundabout during construction, what we  
9 can do is we can set out, clearly, some information that will put the modelling  
10 we've provided in context, and I think provide some reassurance around that  
11 modelling, which is simply a construction scenario about how the impacts at  
12 Asda roundabout could be mitigated through operational controls. And we  
13 would look to do that. I need to check with my team, but I hope that we can do  
14 that much sooner than that deadline 7.

15 MR SMITH: Okay.

16 MR EDWARDS: Douglas Edwards, for Thurrock Council. You have our point; any  
17 information provided, the sooner the better, would obviously assist the process.  
18 Sir, I remain concerned, on behalf of Thurrock Council, that we are going to be  
19 provided with some further technical modelling at some unknown date into the  
20 future, which would not be satisfactory. And so, in the circumstances, I would  
21 invite the Examining Authority to give either a direction or a very firm indication  
22 as to a deadline by which that material has to be provided because, as I've  
23 indicated, to do otherwise and to leave this open-ended is going to jeopardise  
24 the timetable that the Examining Authority is working to.

25 MR SMITH: Okay, just a little conference on the panel bench. Drawing our deliberations  
26 together, the applicant will be very clear that we desire to see a fixed target at  
27 which interested parties with interest in modelling matters are able to present  
28 their evidence at, with as much relevant information in the public domain by  
29 deadline 6 as can be humanly achieved. So the applicant knows that position  
30 already and it knew position before we went into this round of specific  
31 submissions on the Asda roundabout. I would have to say that there are, then,  
32 two very clear positions. If the applicant can achieve that, then the applicant  
33 knows that it will get, in return, the completest, reasonably achievable position  
34 from the other interested parties on this point.

1           And we know, we all know, that if that is not achieved in relation to – the  
2 more holes there are in the crumpet, the less complete the position as stated by  
3 the relevant highway and local planning authorities will be. And that is  
4 undesirable, very undesirable. So our primary goal is to achieve as much as we  
5 can by deadline 6. We've heard a proposition from Dr Wright, that he is going  
6 to struggle with the specific issue of in construction modelling for the Asda  
7 roundabout by deadline 6. Let us work backwards. There must, for our  
8 purposes, be no more modelling submissions any later than deadline 7, for any  
9 purpose, if we're going to make a coherent report to the Secretary of State.

10           If material comes in at deadline 7, albeit that we will struggle, in oral  
11 process in November, there are written processes fairly set out – the bounce  
12 down that takes us through to deadline 10 – that enables relevant parties to fully  
13 consider it, put their position into the public domain, have the applicant respond,  
14 and for them to see the applicant's response before we close.

15           So in terms of natural justice, deadline 7 has to be the absolute cut off.  
16 What we will then say, in relation to modelling work in relation to construction  
17 effects on the Asda roundabout, is that we will ask the applicant, very strongly,  
18 to use its best endeavours to achieve the earliest disclosures it can. If it is able  
19 to put material into the examination at deadline 6, the best material that it can at  
20 that time will be greatly appreciated, knowing that if it doesn't, there are  
21 consequences, there are adverse consequences. And those consequences impact  
22 our ability to properly hear matters that we need to hear in November. I don't  
23 think there's a great deal more that I can say on that because I think the applicant,  
24 and indeed Thurrock Council, and all other parties with an interest in this matter,  
25 know where we stand. Is that reasonably clear and fair to all? Excellent.

26           Right, okay. So let's get to the substance on this agenda item because  
27 we've spent a lot of time talking about process, but, importantly, we all need to  
28 know where we're going, and why and when. But now it's the content.

29 MR TAIT: Thank you, sir. So I'm going to ask Mr John Rhodes to speak, Mr John  
30 Rhodes OBE, who's the strategic planning advisor to the project and also held  
31 those roles at Sizewell and Silvertown Tunnel. So I'm going to ask him, first of  
32 all, to bring an update on the applicant's position on policy, and then, in due  
33 course, to be dealing with the Silvertown approach. So, Mr Rhodes.

1 MR RHODES: Thank you. John Rhodes, for the applicant. I'm aware there's been a lot  
2 of discussion on these issues, and I don't want to repeat that, and we'll set out  
3 our position in full at deadline 6. But if I can draw from the note that I had  
4 prepared, really to try to focus on – again with the benefit of this debate but also  
5 what's been said at deadline 4, deadline 5, and the expectations of interested  
6 parties in relation to mitigation – the approach of the applicant and why we say  
7 the wider networks impact approach fits with that policy requirement, in terms  
8 of mitigation.

9 So if I can just, for the note, divide what I'm proposing to say into four  
10 parts. One is, briefly, just to identify the nature of the policy framework – I  
11 know that may sound obvious, but just one or two things to say about that – what  
12 that means for decision-making, what that means for mitigation, and then to look  
13 at the wider networks impact strategy by comparison, for instance, with what's  
14 called the Silvertown approach, and to see which way we [inaudible] in this case.  
15 So the first is the policy framework, and to state the obvious, this DCO is for a  
16 road proposal and there's a particular policy framework for that, different from,  
17 for instance, development.

18 So you heard, for instance, at previous hearings, about Sizewell, and as a  
19 comparison, the approach that was taken to mitigation at Sizewell. There is a  
20 difference and there's a difference in policy approach. And the difference is that  
21 a networks proposal which connects one part of the network to the other – and  
22 this one, for instance, aims to achieve significant congestion of a nationally  
23 significant node on the network at Dartford – is different from, in the way that  
24 it redistributes traffic, is different from a development which has a point impact  
25 and then brings adverse impacts to the network, which it then, for its own benefit  
26 and for the benefit of the networks, seeks to mitigate.

27 And it's not just [inaudible]; we can see that distinction in policy. That's  
28 why we have a networks NPS that sets out different policy tests from other NPS,  
29 and why it sets out different policy tests from those which apply to what you  
30 might call ordinary developments through the town and country planning  
31 process. So their test is set out, as you know, in the NPPF and in the circular 2  
32 of 2013. And it's been my observation that others have brought those policy  
33 tests to this proposal. What we should be doing is following on the policy tests

1 in the NPS itself, and the NPS is really helpful, I think, in the way that it  
2 identifies that it deals with three different things.

3 It deals with national road network projects; it deals with national rail  
4 projects; and it deals with strategic rail freight interchanges. And when it deals  
5 with strategic rail freight interchanges, it's dealing with something which is  
6 more akin to an ordinary development, a location, which generates impact. And  
7 from time to time, the examination has looked at headings within the NPS and  
8 said, 'Oh that applies to the strategic rail freight interchange,' as if that's  
9 inconvenient. But it's actually, I think, deliberate. So we can see that a different  
10 approach is taken and I want to highlight aspects of that.

11 I think there are two reasons for that difference of approach. One is the  
12 reason that I've stated, which is that a network DCO project redistributes traffic,  
13 and its function is to benefit the strategic road network, and that's different from  
14 a development in a place. But the other is that network investment is part of a  
15 funded process, and that process is an incremental process by which each  
16 investment is not going to be complete in itself. It's part of a programme, and  
17 that programme exists in order to incrementally address network issues. And  
18 that's why the NPS tells us that, sitting alongside the NPS – this is paragraph  
19 1.21 – are the rail and road investment strategies, and it's they which the  
20 articulation of the government's funding strategy and the government's  
21 investment priorities.

22 And so, that process is, I think, well understood. It's recorded, for  
23 instance, in the circular, and the license duty of the applicant in this case. And  
24 it's highly material, when you consider what obligations it's necessary to impose  
25 on this development, to recognise that it forms part of that wider programme.  
26 And we can assume, I think we're obliged and entitled to assume, that that  
27 programme is going to work. And we can also see that it is working in practice,  
28 so that, for example, RIS 2, which commits to the funding of the Lower Thames  
29 Crossing, states in terms, on page 37, 'We recognise that the plans for the Lower  
30 Thames Crossing will have an impact on the road network of Kent and Essex  
31 and we will consider what that means for the shape of the SRN in those areas.'

32 And it has a similar passage in relation to the A2 corridor in Kent, in the  
33 light of what are understood to be likely effects of the Lower Thames Crossing,  
34 and the government's stated intention to address those effects through their own



1 investment strategy and RIS 3. And we can further see that working in practice  
2 through the development of RIS 3. So as you know, that involves the  
3 development of route strategies for different corridors. In May of this year, the  
4 government published in draft the route strategy for the Kent corridor, so the  
5 M25. In that document, there are 24 references to the Lower Thames Crossing,  
6 in recognition that it will have effects, that it will have effects which will need  
7 to be picked up. And it asks the question of the authorities, particularly including  
8 the parties represented here, 'What do you think we should do in the next  
9 investment strategy?'

10 So that process is working, and it provides, I think, a very important  
11 framework for the way in which we approach the decision in this case, and the  
12 way in which we approach mitigation in this case. So the approach to the  
13 decision is, first of all, to recognise that the NPS provides a presumption in  
14 favour of this and other similar proposals and because there's a compelling need  
15 for them. And secondly, it tells us directly, in paragraphs 4.3 and 4.4, what we  
16 should do, which is, I hope, fairly obvious. But it's to balance the benefits  
17 against the negative effects. It sets out, very clearly, that there can be negative  
18 effects. They don't all have to be mitigated. It's not the expectation they have  
19 to be balanced in the decision. I'm sorry if this is very obvious, but I think it's  
20 nevertheless important.

21 And that, of course, is very similar to the approach that the Planning Act  
22 requires us to take in section 104. So when we apply that to this type of project,  
23 the NPS tells us directly, at paragraph 5.212, when it's looking at impact on the  
24 transport network, that the application must be determined in accordance with  
25 the NPS.

26 It then goes on, in the next paragraphs, to tell us what to do in relation to  
27 strategic rail freight interchanges, and it's in relation to those paragraphs, 2.13  
28 and 2.14, that it sets out an expectation that transport impacts identified in the  
29 WebTAG compliant transport assessment should be mitigated. So a very clear  
30 and deliberate distinction, but I think a distinction for the reasons I've identified.  
31 So what the applicant has done is exactly that.

32 MR SMITH: Yes, but there is a relevant paragraph, 5.211, which essentially overarches  
33 and precedes the mode-specific paragraphs, and so, therefore, applies to all  
34 national networks development, which, again, sets out that the Examining

1 Authority and the Secretary of State should give due consideration to impacts  
2 on local transport networks and policies set out in local plans, for example,  
3 policies on demand management being undertaken at the local level. So there  
4 clearly is this overarching expectation that, yes, the NPS has the statutory  
5 privilege that we're all aware of, but that that does not mean that you, essentially,  
6 disregard other local policy considerations, particularly those arising from the  
7 local plan, and that they have to be given due consideration.

8 MR RHODES: Sir, absolutely, and I'm sorry if I've given any other impression. So the  
9 negative effects, impacts of the development absolutely have to be given full  
10 consideration, weighed in that balance that the NPS identifies needs to be struck.  
11 That is different from saying that they have to be mitigated. So it's the approach  
12 to decision-making rather than the approach to mitigation which is different.  
13 And I think the fact that we then have separate headings and separate  
14 requirements for different types of network NSIPs, I think we're obliged to  
15 assume that that's a deliberate framework with a policy. And for the reasons  
16 that I've said, I think it makes sense – I was going to go on to say what I think it  
17 means for mitigation, but –

18 MR SMITH: And again, just briefly there, to move us on, looking at the mitigation  
19 position in 5.215 and 5.216, again we have a pair of paragraphs that express  
20 themselves as overarching, irrespective of mode. Then we have specific for road  
21 and rail, and then we have specific for SRFIs. And the overarching paragraphs,  
22 which we would take as being applicable to this because they overarch, again,  
23 talk about 'mitigation measures should be proportionate and reasonable, focused  
24 on promoting sustainable development, and where development would worsen  
25 accessibility, such impacts should be mitigated so far as reasonably possible.'  
26 So again, there's a test, there's a two-part test. Does it worsen accessibility?  
27 And that is a test that, at least it appears, is capable of being given effect to at  
28 the local network as well as the national network level. With then, a proposition,  
29 that they should be mitigated so far as reasonably possible.

30 Now, there's an out there, which is a proposition that a particular form of  
31 mitigation is not reasonably possible, and then one considers the broad balance,  
32 which is the national benefits as against the local disbenefits.

33 MR RHODES: Yes, and I agree. I was going to come to those words in the NPS, against  
34 the framework we've seen in the preceding paragraphs, of a difference in

1 approach between network applications and strategic rail freight interchanges.  
2 And absolutely, that the mitigation measures should be proportionate and  
3 reasonable. I want to come on to try and explain how we might approach that.  
4 But then the NPS does pick up, as you say, specific impacts which should be  
5 addressed. The next passage [inaudible] address that directly.

6 So as we know, in relation to mitigation requirements, we need to look  
7 back at the policy in relation to requirements and the policy in relation to  
8 obligations, and whether it's necessary to impose those obligations and  
9 requirements on the development. And that's, as you know, paragraph 4.9, test  
10 requirements being necessary, and 4.10, necessary to make the development  
11 acceptable in planning terms, which takes you back to that balance. Would it be  
12 unacceptable without that additional mitigation? So the balance that is required.  
13 And the NPS, in terms of what's acceptable – and we've also heard from a  
14 number of interested parties that either adverse impacts must be mitigated, or  
15 unacceptable impacts must be mitigated. But it's quite hard to define what  
16 unacceptable means for those purposes.

17 So it's interesting, I think, when you look at the NPS, that there are five  
18 references to impacts which are unacceptable. And none of them relate to  
19 transport impacts; they relate to environmental topics such as pollution, air  
20 quality, other issues. And at issue specific four and seven, the applicant set out  
21 its view that congestion, delay, was not an impact that was required to be  
22 mitigated by the NPS, and I don't think any party has yet been able to identify a  
23 requirement within the NPS to do that. So that, for instance, in Thurrock's  
24 submission, at deadline 4, it relied on two paragraphs of the NPS, 3.2 and 5.202.  
25 But neither of those – they set out generalised statements that it's important to  
26 have regard to social, environmental, and other impacts, and impacts on the  
27 quality of life. But they're not the tests that need to be applied for impacts on  
28 the transport network.

29 And one of the reasons for that is because, I think, a number of people  
30 may aspire to free flow traffic conditions, but that's not a policy requirement,  
31 even in relation to ports, but it's not a policy requirement of the NPS. And the  
32 reason for that is set out very clearly in the NPS, that we live in a world that  
33 suffers significant congestion. The NPS tells us that, I think, a quarter of travel  
34 time will be spent delayed in traffic. It's not desirable, but it's something that

1 we live with, and it isn't government policy to predict and provide, to arrive at  
2 a state where we have free flow traffic conditions. And paragraph 2.24 tells us  
3 that the government policy is not that of predicting traffic growth and then  
4 providing for growth, regardless, 'individual schemes will be brought forward  
5 to tackle specific issues, including those of safety, rather than to meet  
6 unconstrained traffic growths by predict and provide.'

7 So congestion, or increased delay, in my judgment, is not the test that  
8 applies to what requires a need for mitigation. If there is an impact in relation  
9 to congestion or delay, then something must be taken into account. It's clearly  
10 an important consideration. But of course, in doing that, one has to look at the  
11 cumulative effect of the project and, overall, the cumulative effect of the project  
12 is seriously positive in relation to travel times across every sector of the network.  
13 So the particular tests that are required are the ones that you took me to, 2.15  
14 and 2.16. And we know, I think we know, that they don't mean that we have to  
15 predict and provide and provide free flow conditions.

16 They tell us, and the NPS tells us directly where mitigation is necessary,  
17 and it has a different type of expression in relation to safety, in relation to  
18 accessibility, particularly for non-car modes and users, and in relation to  
19 environment and severance, it has specific requirements for mitigation in that  
20 context. And it's in that context that the applicant has framed its application  
21 with a very careful approach to mitigating those impacts. But insofar as there  
22 are other impacts on the network, the applicant will do what it can do within the  
23 limits of the order that it's putting forward, but the applicant recognises that it  
24 will be for future investment strategies to address additional issues.

25 And that's why we say the wider networks impact approach is appropriate  
26 in this case, because it recognises the role of this project within that process and  
27 it commits to identifying the information necessary to inform that process, and  
28 it commits to working with the relevant authorities transparently to generate that  
29 information and ensure that the future process is properly informed. And so I  
30 wanted, in that context, to compare it with what's called the Silvertown  
31 approach. And in doing that, I think it's important to look at the detail of  
32 Silvertown. I'm not sure what other parties mean by the Silvertown approach.  
33 I think there's an assumption that the applicant would work with authorities,  
34 agree mitigation, and implement it.

1           But the Silvertown approach, when you look at the detail of it, isn't quite  
2 that. It's set out in requirement 7 of the DCO, but also in schedule 18, which is  
3 the monitoring and mitigation strategy, which I don't think is any longer on the  
4 website. It's something that we could provide to this examination, and it divides  
5 up its requirements between prior to tunnel opening and post tunnel opening.  
6 But in relation to monitoring and mitigation, what it requires is that the applicant  
7 will work with a group called STIG in that case – [inaudible] the equivalent of  
8 STIG in this case – and it will identify impacts, or material worsening, it calls,  
9 of the network, and it will identify measures to mitigate that.

10           But there's no definition of material within the Silvertown DCO, what  
11 those impacts might be. And in fact, the requirement itself, requirement 7,  
12 requires the applicant to identify, in consultation with members of STIG, what  
13 appropriate thresholds might be. And then the requirement obliges all parties to  
14 observe the monitoring and mitigation strategy, which is that schedule, schedule  
15 18. And when you look at schedule 18, it says it's for TfL to decide that any  
16 adverse changes in traffic metrics are a consequence of the scheme in operation,  
17 obviously in consultation with STIG, and it's for TfL to consider the appropriate  
18 form of mitigation in consultation with the highway authority on whose roads  
19 the measures may be required.

20           It does contain triggers in its appendix, but those triggers are alerts, alerts  
21 to look more closely where impacts have been greater than they have been  
22 anticipated. Those triggers are not definitions of acceptability of impact. And  
23 the monitoring and mitigation strategy says that 'if TfL determines the  
24 mitigation is not required, following a trigger activation, it will provide the  
25 members of STIG with a clear justification for this.' So that's actually the  
26 Silvertown approach, and I think it's helpful and I think it has some lessons to  
27 do with that. But we need to recognise it as part of a solution in its London  
28 context; it's not the strategic road network outside London. The highway  
29 authority there is the Mayor of London and Transport for London.

30           And that doesn't have a comparable road investment strategy process, so  
31 one is effectively generated through the DCO, where the parties identify what  
32 may be required, in consultation, and then the highway authority, the Mayor of  
33 London, determines what investment would be made in response, in a very  
34 transparent way. That's the way it works. And the way that a road investment

1 strategy works, as you know, is there's a process whereby the same information,  
2 same type of information, is generated in consultation with, essentially, the same  
3 type of group. STIG, for these purposes, would be the parties identified in the  
4 wider networks impact strategy. And then there's a consultation through the  
5 route strategies and then through the initial report, which feed into the road  
6 investment strategy, both of which are highly consolidative. And then, the  
7 ultimate highway authority, the Secretary of State, determines what investment  
8 to make.

9 So that what the Silvertown approach doesn't do, it doesn't require all  
10 adverse impacts to be mitigated – that's for TfL to decide – and it doesn't require  
11 them all to be agreed with STIG. It involves STIG very closely in the process.  
12 And I believe that's a deliberate outcome, and I believe it's an outcome  
13 consistent with policy because the strategic highway authority – whether it's the  
14 Secretary of State, in this case, or the Mayor of London in that case – must retain  
15 control over future investment in the network, and it must balance its priorities  
16 when it does so. Well we have a process here, which is the road investment  
17 strategy process, which does that. And so, in my view, you don't need to invent  
18 another process here because there is a process to do that, and it's clearly  
19 working.

20 And it's a process which, I think, also has other advantages compared to  
21 one that you might create for the purposes of this DCO. And that is that when  
22 the road investment strategy process determines what future investment priority  
23 should be, it doesn't just take account of the impact of this project, whereas  
24 something created under this DCO, I think, would need to try to do that. And  
25 future investment decision in the road network must, in my view, be better  
26 informed if they take account of all changes in the network, and that's what the  
27 process clearly does. So it's certainly my view, the applicant's view, that an  
28 additional process isn't necessary. But my colleague, Mr Latif-Aramesh, has  
29 considered what an alternative Silvertown requirement might look like in this  
30 case, and wanted to address you on that.

31 MR TAIT: So that's all from Mr Rhodes. Mr Latif-Aramesh is able to refer to some  
32 drafting which can be anticipated for deadline 6 next week, which will be  
33 relevant to that.

1 MR SMITH: Okay. I'm actually going to indicate that that's probably a sensible break  
2 point to take a 15-minute break because we are later than we would normally  
3 take a morning break. I'm very conscious of people's comfort and convenience  
4 and ability to contact colleagues etc, in the way they would normally expect. So  
5 it's 11.45. Let us resume at 12.00, and then we'll move directly to Mr Latif-  
6 Aramesh. Thank you very much.

7  
8 **(Meeting adjourned)**  
9

10 MR SMITH: Ladies and gentlemen, it is now 12.00. My name is Rynd Smith, lead  
11 member of the Examining Authority for the Lower Thames Crossing  
12 application, and this hearing is now back in session. We were just about to hear  
13 from Mr Latif-Aramesh for the applicant. So...

14 MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh for the applicant. I  
15 will be brief as Mr Rhodes and Dr Wright have addressed some of the  
16 substantive policy questions. I'm specifically going to be speaking to how this  
17 translates into the draft DCO, drawing on what's been said. You'll appreciate  
18 the National Highways position, based on a careful consideration of the relevant  
19 policies, wider frameworks in place, as well as the precedents we cited at  
20 Issue-Specific Hearing seven, that the overall position is we do not consider  
21 Silvertown Tunnel provides a relevant comparator to the Lower Thames  
22 Crossing, nor is it necessary or proportionate in policy terms for this project.

23 Dr Wright explained that we had put forward a requirement relating to the  
24 Orsett Cock roundabout which will be inserted into the draft order at deadline 6.  
25 As he made clear, that is not on a without prejudice basis, and we have accepted  
26 that in that specific case, a requirement should be provided. We've also set out  
27 our position on the A229 and Dr Wright and Mr Rhodes made reference to the  
28 government announcement on the funding position which I won't repeat.

29 In the actions lists that were published for Issue-Specific Hearing four and  
30 seven, the Examining Authority did not ask for a general without prejudice  
31 provision replicating or applying the Silvertown Tunnel approach. Nonetheless,  
32 on a without prejudice basis, we are proposing to submit at deadline 6 the  
33 drafting of a provision which seeks to provide further assurance should the

1 Examining Authority be minded to recommend a more general provision beyond  
2 the Orsett Cock requirement that's been inserted as well as requirement 14.

3 MR SMITH: Can I just briefly interject there, Mr Latif-Aramesh, because I think it's  
4 worth running to some of the points that Mr Rhodes raised, and also winding  
5 back to the previous discussions of this issue in hearings. Clearly, we have had  
6 promoted to us the virtue of the Silvertown requirement 7, schedule 18 approach,  
7 and one of things that we have been thinking about very carefully, of course, is  
8 the distinction between this project and Silvertown, and some of the distinctions  
9 Mr Rhodes has drawn to our attention, including the context of a mayoral  
10 scheme within London, as distinct from a national scheme within England, etc,  
11 and the RIS relationship not being present in London, the RIS relationship being  
12 present here, and advocacy around the role of the RIS in addressing broader  
13 national network needs that might have emerged. Now those are the things that  
14 we have been very, very carefully considering and will continue to do so.

15 I think there is a risk of oversimplifying. There's a high level of  
16 observation that I think is well worth making before we finalise work and for  
17 discussion around the table, and that is that another key distinction between this  
18 scheme and Silvertown is that Silvertown Tunnel was a one point to one point  
19 link. This is a link integrating multiple points for different purposes and  
20 functions and within the framework of the national network. So we are very  
21 clear this is a different beast to Silvertown. It performs very different purposes.

22 There is some measure of commonality between the two that both are  
23 'very big schemes' and that one of the dimensions that emerged in Silvertown –  
24 and we're very, very grateful for the TfL explanation of the Silvertown model,  
25 if I will refer to it as that – in previous hearings was the degree to which the scale  
26 of the scheme meant that approaches to both monitoring and the identification  
27 of possible mitigation approaches needed sensibly to be in part prospective  
28 things – things that would occur in the operational phase as opposed to things  
29 that would occur only as foreshadowed in the approval process.

30 It is that extent that I think describes our interest in the Silvertown model  
31 because we are looking at the scale of this and we are looking at, essentially, the  
32 fact that there will, respectively, be operational monitoring outcomes that will  
33 give rise to approaches to mitigation, that it frankly would be quite hard for the  
34 best informed modelers to predict at this juncture.



1           So when we're talking about that Silvertown model, it's that approach to  
2 managing uncertainty in future circumstances that commended itself to us as  
3 something that we should investigate, but if we're looking at Silvertown as an  
4 analogue to this scheme – I think you'll have seen from the tenor of my remarks  
5 about it being a one point to one point scheme in a London mayoral context –  
6 we don't see it as a direct analogue to this scheme, and so whatever one draws  
7 out of Silvertown in terms of dealing with the monitoring processes and the  
8 identification of possible mitigations in operation, that is what we are interested  
9 in. That is what we are really focussed upon. That is what we are looking at as  
10 distinct from a more, I guess, generalised approach flowing out of Silvertown.

11           Now I trust that that assists. Now, again, if there are interested parties  
12 who think, 'Oh, the Examining Authority have got that wrong then', well make  
13 the points here and/or put them to us in writing at deadline 6. But I did think  
14 before either the applicant or indeed other interested parties went off down deep  
15 Silvertown tunnels of their own making, that it was really important to explain,  
16 for your purposes, where our thinking currently rests in relation to the analogies  
17 that can sensibly be drawn between Silvertown and LTC, and those that  
18 prospectively can't. I'm very willing to take probing on that, but I thought it  
19 would be useful to lay that out before Mr Latif-Aramesh went too much further.  
20 Mr Latif-Aramesh.

21 MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh for the applicant. My  
22 colleague, Mr Rhodes, will, I think, wish to make a comment after I've finished,  
23 but happily we agree with what you have said and our without prejudice position  
24 is based on that thinking. It does not seek to replicate Silvertown as it is a  
25 different beast, and it is focussed on the two elements you highlighted which  
26 was the scale of what's going on and trying to have some management around  
27 what operational impacts there might be.

28           So to move onto what the actual without prejudice provision will say, it  
29 would secure the establishment of a network management group which will be  
30 consulted on the operational impacts arising from the Lower Thames Crossing.  
31 The group will meet annually and be consulted on those impacts. In years where  
32 monitoring is provided under paragraph 14, National Highways would consult  
33 the NMG – the network management group – on the traffic conditions on the  
34 road network which may require intervention and set out steps in connection

1 with those interventions which National Highways proposes, either through  
2 permitted development rights, or including the relevant intervention in an initial  
3 report for the SRN or route strategies, or cooperating with local authorities in  
4 seeking to bring forward funding for that scheme.

5 There would, following that consultation, be a submission to the secretary  
6 of state in relation to that network management plan, and just in that context the  
7 protections on that consultation which exist in paragraph 20 to 21 in schedule  
8 two would apply to ensure that the consultation was meaningful and effective.

9 That's a high-level description, and obviously we'll be submitting it at  
10 deadline 6. We wanted to draw out why it was different from Silvertown, not  
11 on the substantive policy questions which we've discussed, but it does not use  
12 the language of Silvertown around material worsening which Mr Rhodes  
13 referenced, not least because there's a question about what a material worsening  
14 is. But instead what it seeks to do is have a description of traffic conditions  
15 which will be the subject of consultation, and following on from that, a process  
16 around trying to identify the steps that would be taken in respect of any  
17 interventions which would address those traffic conditions.

18 It is worth emphasising, so that there are no false expectations, what we  
19 are seeking to do in terms of the interventions is to either tie them to permitted  
20 development rights, or things which are directly in the control of National  
21 Highways, such as the incorporation of and intervention in an initial report or a  
22 route strategy for the SRN, or if it's not on the SRN, the steps that we would  
23 take in cooperating with the local highway authority in order to bring forward  
24 an intervention.

25 The reason we have selected items which are in the control of National  
26 Highways goes back to what Mr Rhodes has been saying – that National  
27 Highways is not the ultimate decision-maker for investment decisions or the  
28 implementer of schemes which must ultimately be approved by the DfT, and  
29 that's why it's so combined. But what it does do is address your point, sir,  
30 around having a process to manage the uncertainty given the scale and the  
31 difference between the Silvertown Tunnel.

32 Again, just to emphasise, this is going in at deadline 6. It's being provided  
33 on a without prejudice basis. Our view is that it is not necessary or proportionate  
34 in planning terms to provide, and our primary position is that the requirements

1 provided in relation to the Orsett Cock, as well as the traffic monitoring and  
2 management requirement, are sufficient. But if you are minded to go in the  
3 direction of something which draws on the lessons of Silvertown, that's what we  
4 would be suggesting. I think Mr Rhodes wanted to comment on the substantive  
5 Silvertown question you asked at the very start.

6 MR SMITH: Just before Mr Rhodes returns, bearing in mind that that position is to  
7 emerge at deadline 6, a possible – again – assistance to yourselves and other  
8 parties would be that in considering policy relationships it would be well worth  
9 passing over NPS ports, simply because that NPS is clear – very much from the  
10 perspective of the port developing in the way that has adverse impacts on both  
11 the strategic and local road networks – the critical importance of managing  
12 positively the relationship between the port and the network.

13 That's from their end of the telescope, but it doesn't take too much of a  
14 stretch to then look and that and say, 'Well, what is the relationship in the other  
15 direction? There is a reciprocity between port development and both the  
16 national and local networks that needs to be considered, and it would be well  
17 worth taking that very carefully into account in the model that you put forward  
18 at deadline 6. And similarly, if we go back to national networks NPS – I did  
19 refer Mr Rhodes to the very particular items around the overarching network  
20 considerations which are clear and apparent in the drafting of that – again, it  
21 would be well worth making sure that in relation to the relationship with local  
22 highway authorities and also the relationship with the development plan, that the  
23 relevant pieces of golden thread are tagged between your proposed solution and  
24 those elements of the existing policy framework.

25 MR LATIF-ARAMESH: Thank you, sir. Mustafa Latif-Aramesh for the applicant. Just  
26 two points briefly – we've heard what you've said, and we'll make sure that's  
27 included. We did just want to flag that at deadline 6 we'll be submitting a  
28 response to the joint position statement put forward by the ports on the national  
29 policy statement for ports, so we can draw that through.

30 MR SMITH: You can draw it through, yeah. That would be good.

31 MR LATIF-ARAMESH: Thank you. Mr Rhodes, I think, wanted to comment on your  
32 previous comments, sir.

33 MR RHODES: John Rhodes for the applicant. Just to say thank you very much for what  
34 you said. We will certainly consider it closely as we frame the deadline 6

1 submission and subsequently. Also I think worth remembering that trying to  
2 ensure the best monitoring mitigation strategy is clearly a good idea, but it's a  
3 requirement – requirement 14 of the draft DCO – so the plan becomes a strategy  
4 through further consultation, and there's a process set up within the DCO for us  
5 all to arrive at the best monitoring and mitigation strategy.

6 But recognising the scale of this project relative to Silvertown, I think we  
7 are likely to say, takes us to reliance on the road investment strategy because  
8 that's its purpose. It directly recognises the scale of importance of this project,  
9 but also that it will – it will, it tells us directly – it will frame further investment  
10 decisions as a consequence and to consolidate on the job which the Lower  
11 Thames Crossing is doing. And there will always be expectations, quite rightly,  
12 from authorities that more should be done. That ultimately has to be a decision  
13 of availability of funds which the secretary of state has to determine, balance  
14 different priorities.

15 So we will definitely reflect on what you've said. I think we're likely to  
16 continue to commend the existing process and think how the monitoring and  
17 mitigation strategy could work as well as it can to inform that process.

18 MR SMITH: And in that respect, it's probably worth looking at the potential outputs of  
19 that, and essentially almost a triage that there are certain outputs that will refer  
20 themselves naturally to the highway authority for the locality. There are other  
21 outputs that will refer themselves to, essentially, the immediate operational  
22 investment of National Highways. There are others that need to refer themselves  
23 upwards into a strategic process, and there is – looks like that.

24 I think it is worth thinking about things in that very structured and tiered  
25 way so that it's clear that unless you are very clear, in policy terms, that a set of  
26 impacts or harms are ones that you are not – in any reasonable sense – obligated  
27 to identify and manage, that you're not – you don't – using my previous analogy,  
28 you're not ending up with holes in the crumpet by accident. If you identify that  
29 you're not dealing with something, you've got clarity in policy terms about why  
30 you're not dealing with it, because I think that would really help the secretary of  
31 state resolve the question of what the framework of requirements and additional  
32 controls under this draft development consent order will sensibly be.

33 And in that respect, Ms Laver, did you have an individual point that you  
34 wanted to raise?

1 MS LAVER: Yeah, I do. I guess what I'm hearing is there is no policy requirement for  
2 you to mitigate other impacts from this national strategic scheme because the  
3 RIS is there to take care of such things. That's what I think I'm hearing. Forgive  
4 me if I'm wrong, but I've heard a lot of reference back to, 'Things need to go in  
5 the RIS. Secretary of state and DfT will resolve things through that process.'  
6 My concern around that is not every impact will become a RIS scheme. Orsett  
7 Cock might never become a RIS scheme. But if the LTC has such impact that  
8 it then falls to the local authority to invest further funds from their budgets to  
9 rely upon statements that the RIS is there to pick up subsequent impacts, I'm  
10 just very concerned about that. So maybe you can provide me with some clarity.

11 MR SMITH: And in that respect, it would assist thinking back on that triage model. If  
12 we're looking at Orsett Cock as a 'for instance', then you would also then be  
13 looking very closely at the ports NPS framework and you'd be thinking about  
14 the relationship between in principle NSIP use and development of one type  
15 interacting with in principle NSIP use and development – i.e. national networks  
16 development – of another type, and you'd be forming a judgement about what  
17 you need to do at the Orsett Cock and whether that is properly local or whether  
18 it's properly something that falls within the operational remit of National  
19 Highways having built, and is now operating, an LTC, or if it's a national  
20 investment strategy point that needs to pop to the top of the hierarchy and get  
21 dealt with in the RIS. But in principle, Ms Laver's point is very clear. It seems  
22 unlikely that the RIS will ever deal with difficulties at the Orsett Cock and so  
23 that's why you're seeing this side of the table unhappy.

24 MR RHODES: John Rhodes for the applicant. It's very helpful to have this direction  
25 and we will certainly address those issues in our submission, but I don't want to  
26 give the impression that – I don't think we're required to mitigate impacts – a  
27 whole load of impacts – which the NPS requires us to mitigate. It's very specific  
28 about them and we have, as you know, done substantial strategies to do that.  
29 What I've been addressing are impacts on the transport network and trying to  
30 distinguish between those which the NPS requires to be addressed and those  
31 which might be characterised as more concerned with congestion or delay on  
32 the network in localised areas, recognising that the LTC as a whole is massively  
33 beneficial and under that same heading across the network.

1                   But also in our response we'll identify how our wider networks impact  
2 plan is deliberately intended to generate information for exactly the purposes  
3 you've identified. So not just for the RIS but to inform local decisions as well,  
4 and I think it would be helpful if we also addressed the National Highways  
5 operational budget for the way in which we can address shorter term issues and  
6 spell that out more clearly as well.

7 MR SMITH: That absolutely would be helpful because that's sitting in the middle band  
8 of the triage between the national strategic delivery that's likely to be focussed  
9 through the RIS, and the distinctly only local delivery that the local highway  
10 authorities are concerned about. Thank you very much. Right, Mr Tait, has that  
11 brought you to the end of those submissions in principle?

12 MR TAIT: It has, sir, yes.

13 MR SMITH: Okay. Well in which case, now, I do just want to check on this agenda –  
14 we did have Bluebell Hill in parentheses, and it distinctly wasn't addressed in  
15 those submissions. My suggestion would be, I note Kent's very substantial  
16 interest in it and their desire to pursue it. We can cut this two ways, however.  
17 We can deal with everything that's been said here, go around the table and  
18 resolve it – that means we'll come to Bluebell Hill, Mr Fraser-Urquhart. I think  
19 that would probably be better than asking for a whole load of separate  
20 submissions on Bluebell Hill now.

21 MR FRASER-URQUHART: Yes, well from what I've heard and what I've taken the  
22 meaning of National Highways position to be, that would apply to Bluebell Hill  
23 just as much as any other scheme, and I was proposing to – when it comes to my  
24 turn – to talk on these matters to make mention of Bluebell Hill, both within that  
25 overall framework and also as a point of special interest to Kent.

26 MR SMITH: Noted. Let's ask for general submissions in response to that material that  
27 we've then heard through Mr Rhodes and Mr Latif-Aramesh, and then let's go  
28 to Kent's interests, if that's fair. So can I see hands? It's everybody – everybody  
29 except Kent. Well listen, let's – we've spoken a lot about Silvertown. Let's go  
30 to TfL first on this one, if we may, and then I will march through the others in  
31 time. Mr Elliott, can I ask you if you just pop off camera until we come to you?  
32 Thank you.

33 MR RATNAYAKA: Thank you very much. Shamal Ratnayaka, Transport for London.  
34 I appreciate the points that John Rhodes has made and the repackaging of the

1 previous oral statements. I understand now their point that they believe there  
2 isn't this clear policy requirement. I think I'll briefly touch on the points made  
3 and explain why I think that isn't the case, and including your comments on  
4 Silvertown.

5 I think the first thing, you made the point about how this is different – this  
6 is not a point to point. This is not a single point amendment. This is a big  
7 scheme and therefore there is this redistribution of traffic. I think that is – the  
8 point that has been made – is precisely why you need to have this monitoring of  
9 impacts, because actually – as I think the panel has also made the point – the  
10 understanding the impacts 10 years from when the modelling was done, and the  
11 challenges of getting to that precise because of the macro nature of a scheme  
12 like this.

13 There's been a lot of discussion obviously about RIS 3 and you said that  
14 you are obliged and entitled to assume that the programme is going to work. I  
15 think there are some challenges and uncertainties around the shape of that  
16 programme, but I think again the point you made about the scope of it – it is  
17 focussed on the strategic road networks which are under the control of National  
18 Highways, and a lot of the impacts are, for example, on local roads, and we've  
19 seen an increase in traffic identified in the impacts already and concerns that  
20 would be higher as well as the Transport for London road network. So apart  
21 from anything else, the scope of that would – focussing on RIS three – excludes  
22 some of the key impacts and I think that raises concern for ourselves and lots of  
23 the other parties around the table.

24 You made the point that – which surprises us – congestion is not  
25 fundamentally an impact which is addressed by the NPS. I think a scheme like  
26 this, which clearly is designed to deliver benefits to free-flowing the road  
27 network, acts on the rest of the network, and I think it's quite unfair to suggest  
28 that the other parties are looking for mitigation to address – I think your exact  
29 words – unconstrained traffic growth. This is clearly not about the growth. It's  
30 about recognising that the implementation of the scheme will have impacts, and  
31 addressing those which are separate from whatever might be going back around  
32 and recognising that's not straightforward to manage and that's why a process  
33 like Silvertown or something else could do that. That's why it's important.

1           And of course the other point to be made is that congestion isn't just about  
2 congestion. It has a number of other impacts because of the delays in junctions,  
3 whether that is around the safety, the carbon, air quality, noise; these are all  
4 proven impacts when you get backlogs at junctions which, again, a lot of the  
5 modelling is baring out, in addition to the free-flowing operational network. So  
6 I do think – and those are all things which very clearly, as you clearly pointed  
7 out, especially flagged in national policy.

8           On the – moving on to Silvertown, and I think we would not disagree with  
9 [inaudible] – Mr Rhodes is very familiar with it, and I think that's very clear – I  
10 guess one of the key points is this argument that the policy context is very  
11 different. I think we've made this point previously. The mayor's transport  
12 strategy and everything that underpins that is a similar parallel process to RIS  
13 and so we – TfL – could have said that we're doing these things on a regular  
14 basis. We'll be looking at this as part of the mayor's transport strategy which  
15 has very clear objectives around traffic, around the environmental impacts, but  
16 it was felt important, given the very particular nature of the tunnel scheme, what  
17 impacts that would have and making sure we could give that reassurance to the  
18 highway authority stakeholders, local authorities including National Highways,  
19 that we were dealing with it. That's why the Silvertown [inaudible] came up.

20           I think the principle of that parallel equally applies. One thing – I spoke  
21 to you and you did ask us if we had any comments about your characterisation.  
22 I think we would argue that the Silvertown is part of – is more than just a point-  
23 to-point scheme, and that's partly reflective of the fact that the Silvertown  
24 Tunnel implementation group has 14 different highway authorities as members.  
25 Part of the reason we are here representing TfL is because the river crossing  
26 system is very much a system. There are historic constraints. Silvertown is part  
27 of addressing that inside London, Lower Thames Crossing outside, and as you  
28 know it's been a very torturous process about location and so on because you  
29 recognised the impacts of one has on the other has on the other and  
30 understanding there's a whole. And that's again partly why for Silvertown it  
31 was entirely appropriate that after the scheme was implemented, and during the  
32 implementation, you look at understanding the impacts and you're able to revisit  
33 them and say, 'Have we got this right? Are there impacts we didn't foresee of a



1 scale we weren't expecting?' And I think again that directly applies to Lower  
2 Thames Crossing.

3 I think in your conclusion on Silvertown you said that it's the –particularly  
4 on the mechanism you said it doesn't require all the impact to be mitigated. It  
5 doesn't give the final control [inaudible] and is – the outcome is consistent with  
6 government policy, and therefore it's not appropriate. And I think for all those  
7 reasons that's exactly why it is a very useful system. We're not wedded to it,  
8 but the Silvertown works precisely because it provides that assurance to the other  
9 highway authorities without placing an onerous burden on National Highways –  
10 on the promoter – to deliver every [inaudible] mitigation. I think that balance is  
11 precisely its strength and why I think it's a good model, of course subject to  
12 tweaks as appropriate.

13 And I think then lastly, if I can just – appreciate obviously it's the first  
14 we've heard of outlining your proposals without prejudice which you plan to  
15 submit for a mechanism. I think there's a lot there which we can work with and  
16 obviously not having seen the detail we'll want to hear more. I guess the key  
17 question is going to be, does it provide sufficient assurance that impacts in the  
18 future will be dealt with? I guess from what you've said already –one key  
19 concern is the scope. If it is only focussed on things within National Highways'  
20 remit, that will automatically leave out many of the roads which are local roads,  
21 Transport for London roads, which are not part of the RIS three process and not  
22 part of this proposed mechanism, so I think that's something which we would  
23 want to see addressed in a draft mechanism.

24 I think part of that assurance is also, as you're aware Silvertown has a pot  
25 of funding behind it – not a large pot, but there is a pot of funding behind it. I  
26 think something like that would be very helpful to provide that assurance that  
27 there is a credible opportunity to mitigate some of the impacts which are  
28 identified by that process and in consultation with the other authorities through  
29 the group you described.

30 And the last point I just want to make on that is that you mentioned  
31 obviously the – it's important that – I think Mr Latif-Aramesh said – the DfT –  
32 the Department for Transport – would have the final say, and as you'll be aware,  
33 the Silvertown process does give the Department for Transport a very clear say  
34 to make sure the process has been followed. And again, I think that's an

1 important safeguard we agree, and again it's part of the Silvertown process and  
2 I think equally can work well as part of a process here.

3 So I think that's everything I wish to say. I don't know if you have  
4 anything to add. Thank you very much.

5 MR SMITH: Thank you very much for that position. I do see we have our colleague,  
6 Mr Young, on screen. Mr Young, do you have some questions on that?

7 MR YOUNG: Just a quick question for TfL. We heard from the applicant earlier about  
8 some of the wording that's in the Silvertown Tunnel DCO and about the phrase  
9 'unacceptable impacts', and I just wondered how that sits with TfL because it  
10 does strike me as a particularly troublesome phrase and how on earth one  
11 untangles that. What would be an unacceptable impact to one person would not  
12 necessarily be to another person, and I can recall a secretary of state decision  
13 where inspectors have come to a view that an impact would be unacceptable or  
14 severe in terms of the framework language, and the secretary of state disagreeing  
15 that increases in delays – and sometimes quite considerable increases in  
16 queueing and delay – are matters of inconvenience and not unacceptable impact.  
17 I do half wonder – and it's perhaps something to be addressed in writing to all  
18 the parties really – is, are there inherent problems built into that use of such  
19 vague language?

20 MR SMITH: And in that respect, I mean, turning to the fact that we're to receive further  
21 written submissions from the applicant on this point at deadline 6, the applicant's  
22 best endeavours on drafting that gives precision. Now I'm not going to go any  
23 further as to suggest what that might look like because you've heard from Mr  
24 Young what we're trying to avoid, which is ambiguity. The best clarity that can  
25 be achieved in drafting is a really interesting essay challenge to the statutory  
26 draughtsperson. Yes.

27 MR REINBERG: Matthew Reinberg, Transport for London. In response to Mr Young's  
28 question, so the Silvertown Tunnel monitoring – the MMS – I'm trying to think  
29 of the abbreviation – but that includes triggers, essentially, for levels of change  
30 in traffic demands and I believe delays, air quality, that sort of thing as well,  
31 whereby when that level of difference is forecast in the modelling or happens in  
32 reality, that's when it needs to be investigated. That's not saying that those  
33 triggers are necessarily the level when it's unacceptable. That is still discussed  
34 by the Silvertown Tunnel implementation group to come to a collective view on

1 and obviously TfL – as the promoter in that case – will have a view, as will the  
2 other local highway authorities involved. So I don't think it does define what is  
3 unacceptable and what isn't, but that is more – there is a process there to get to  
4 a point where that is considered.

5 MR YOUNG: But somebody has to make a judgement at some point, don't they? And  
6 even the triggers themselves must be an arbitrary – whatever they are must be  
7 arbitrary. Somebody has come up with that, and so when the judgement is made,  
8 again, that's arbitrary, isn't it?

9 MR REINBERG: Yeah, well we can look into how those triggers were specified. They  
10 are quite low I think, so they are designed to make sure that anything that could  
11 be significant is picked up, but we can look back at how those were specified  
12 and respond on that at deadline 6.

13 MR SMITH: That would be very helpful, and actually in doing that, thinking about the  
14 distinction between a trigger that throws something into the group for discussion  
15 and possibly the achievement of consensus if that can be achieved, which would  
16 be one route into its consideration. If there is consensus that it is a significant  
17 issue, then by definition it will be addressed. However, then there's the  
18 ring-holding side of this which is if there is not consensus – if there is  
19 outstanding disagreement, having considered a trigger – who actually defines  
20 that issue as one for specific resolution or not?

21 MR REINBERG: Matthew Reinberg for Transport for London. Again, we will check  
22 the detail of the process, but I believe in that case it is a submission is made by  
23 Transport for London to the secretary of state, which includes the positions put  
24 forward by the other local highway authorities on that matter, so that the  
25 secretary of state has a full picture of different people's views on that.

26 MR SMITH: Then the secretary of state holds the ring.

27 MR REINBERG: Yes.

28 MR SMITH: Right. Grist to your mill, Mr Latif-Aramesh. Okay. Is that Transport for  
29 London complete? In which case, let us move on. What I'm going to suggest  
30 is that we now go to Thurrock next.

31 MR EDWARDS: Thank you, sir. Douglas Edwards for Thurrock Council. So far as the  
32 submissions you heard from the applicant, I propose to respond to those under  
33 two headings – first of all, to deal with the policy matters raised principally by

1 Mr Rhodes, and then to deal more briefly with the relevance of the Silvertown  
2 or fund-based approach. I can take those in turn.

3 In terms of where Mr Rhodes' approached policy leads to, we had  
4 understood the conclusion to be precisely the same as summarised by Ms Laver  
5 earlier. The applicant is saying there is no policy requirement for a scheme of  
6 this nature to mitigate impacts on the local road network and that those impacts  
7 for to be addressed through future funding decisions. I should make clear at this  
8 stage that is essentially the point that the applicant made at previous examination  
9 hearing sessions and is certainly what we understood the applicant's position as  
10 expressed orally at Issue-Specific Hearing four and D4 and we have responded  
11 to that already, orally and in writing, explaining why we don't consider that to  
12 be a correct interpretation of policy, and that remains our position. But I will  
13 summarise briefly our position in response to the specific points raised by Mr  
14 Rhodes in a moment.

15 Before doing that, can I just enter a caveat. When referring to local  
16 network impacts, and when referring to impacts on the wider network, in the  
17 context of this scheme, I am not referring to – and shouldn't be taken as referring  
18 to – impacts on Orsett Cock. As we've made clear, we consider Orsett Cock to  
19 be part of this scheme and not a wider network impact, and certainly we  
20 understand that to be essentially the position of the applicant. So what I'm  
21 talking about in addressing these points are broader and wider networks not  
22 specific to that particular junction in the context of this scheme.

23 That point aside, with the utmost respect to Mr Rhodes, his interpretation  
24 of policy does not withstand a moment's scrutiny. Sir, the answer to Mr Rhodes'  
25 approach and that of the applicant is demonstrated to be untenable by reference  
26 simply to five paragraphs in the relevant national policy statements, and those  
27 are paragraphs 5.202, 5.211, and 5.215 to 5.217. Those set out, sir – as you  
28 indicated in the intervention that you made when Mr Rhodes was explaining his  
29 position – that a scheme of this nature is required to identify the impacts on the  
30 local network and to mitigate those impacts where reasonable and proportionate  
31 to do so.

32 Sir, I remind you in paragraph 5.216 of the relevant NPS, where  
33 developments would worsen accessibility, such impacts should be mitigated so  
34 far as reasonably practicable. That could not be clearer in terms of what the

1 obligation is on the promoter of a scheme of this nature, and essentially to seek  
2 to interpret those elements of national policy as allowing a scheme of this nature  
3 to essentially address impacts and mitigate them through a RIS or future  
4 investment process is frankly inconsistent with what the national policy says.

5 If that had been the approach in the national policy, it could quite easily  
6 have said so. It could quite easily have said that a development of this nature,  
7 insofar as it has impacts on the local network, should address those impacts – or  
8 those impacts would be addressed – through decisions taken through future  
9 investment processes. That is precisely what it doesn't say. It could have said  
10 it, and it doesn't say it. It says precisely to the contrary. Put bluntly, the  
11 approach set out in policy to the consideration of local network impacts for a  
12 scheme of this nature are the same as apply, sir, through policy to any other  
13 candidate development proposal. You identify the impact, you look at what it  
14 is, and where necessary you address that impact through mitigation. That is  
15 precisely what the national policy says, and it doesn't, in my submission, on any  
16 proper interpretation, support the position adopted by the applicant.

17 As far as that RIS process is concerned, notwithstanding what I've said in  
18 terms of the approach to the interpretation of policy, it's important to understand  
19 what that involves. Those are future decisions to be taken by other bodies  
20 relating to investments in the network – the strategic network as far as DfT is  
21 concerned, the local network as far as the local authority is concerned. There is  
22 no commitment to deliver anything through those processes at this stage, and  
23 therefore no commitment to deliver the kind of mitigation that may be necessary  
24 in the context of impacts of an individual scheme. So to rely upon RIS is not, in  
25 my submission, mitigation. It is at best aspiration, and certainly, in my  
26 submission, doesn't meet the requirements in policy terms arising from  
27 paragraph 5.216 of the NPS that I've referred to, which requires where there is  
28 a worsening of accessibility, as I've said, impacts should be mitigated so far as  
29 reasonably possible.

30 And as far as the balancing exercise is concerned, paragraph 4.3 of the  
31 statement – the National Policy Statement – is wholly non-controversial. It  
32 requires a balancing exercise, but as is made clear from the second bullet point  
33 of that paragraph of the policy statement, as part of that balance, the impacts  
34 need to be properly identified and the mitigation taken into account as part of

1 the balance. In my submission, the requirement for that straightforward balance  
2 to be carried out doesn't in any way support the position advanced by the  
3 applicant, which is effectively you just kick this can down the road.

4 So for those reasons, in my submission, the position put by the applicant  
5 through Mr Rhodes today, however clearly and elegantly put, is no better and  
6 no more credible than the position put by the applicant at Issue-Specific Hearing  
7 four and subsequently and simply does not accord with what the national policy  
8 plainly and expressly says and what it requires in terms of this application to a  
9 scheme of this nature. So unless I can be of any further assistance, that's all I  
10 was going to say on the policy approach.

11 Briefly on Silvertown, we'll look at what the applicant puts forward at D6  
12 in terms of the specific wording in due course and comment on that as  
13 appropriate. So far as your point is concerned – the potential role of a fund-based  
14 approach to mitigation is concerned – is that it can potentially address known  
15 unknowns at this stage. We would respectfully support that, and it seems to me  
16 that that is the proper role of a fund-based approach in the context of considering  
17 impacts and mitigating those impacts of a scheme of this nature. So if, for  
18 example, you were to reach a conclusion that there are likely or potential  
19 impacts, but the extent of those impacts cannot be sufficiently clearly identified  
20 at this stage, provision needs to be made for the mitigation of those impacts,  
21 which again cannot be identified at this stage. Then, a fund-based approach, in  
22 terms of mitigation, such as that in principle introduced through Silvertown,  
23 would be mitigation of those impacts.

24 So effectively, it is, as I said, addressing known unknowns as this stage,  
25 and that is a perfectly reasonable approach to take when considering whether a  
26 fund-based approach of that nature should be included as part of any required  
27 mitigation through a scheme of this nature. On that basis, it's not the case that  
28 the scale of a proposal – or indeed the nature of a proposal, let alone the location  
29 of a proposal – means that a fund-based approach, such as that that was adopted  
30 at Silvertown, is not appropriate here, because if it is a mitigation measure that  
31 can address, where appropriate and reasonable, known and unknowns, its scale,  
32 its location and its extent are irrelevant. It's a question of the principle as to  
33 whether that sort of mitigation approach is necessary to address the kind of  
34 impacts that are identified and concluded to arise through a specific development

1 proposal, and we would say, sir, that is the correct approach to adopt in  
2 considering whether the Silvertown/fund-based approach is an appropriate  
3 response to a scheme of this nature.

4 Finally, sir, could I just respond very briefly to Mr Young's point?  
5 Unacceptable impacts – well, yes. There is, I suppose, a degree, probably, of  
6 deliberate uncertainty in that kind of language. It's important not to lose sight  
7 of the fact, of course, that that approach to addressing unacceptable impacts was  
8 included in the DCO for Silvertown and therefore was considered appropriate  
9 by the decision-maker, so there's nothing inherently inappropriate in that sort of  
10 approach, and it seems to us, sir, for the reasons that were given by TfL that it  
11 should be perfectly straightforward to set out an approach, whereby what is or  
12 isn't unacceptable impact is determined by a reference to a series of triggers that  
13 either are identified at this stage, or are deferred to identification at a later stage  
14 in consultation with other stakeholders with an appropriate dispute resolution  
15 procedure, if that is required.

16 So in our submission, there is certainly nothing inherently inappropriate  
17 about unacceptable impact being the trigger for any kind of mitigation, and  
18 appropriate steps can be included within any requirement to ensure that what is  
19 such an impact can be determined further down the line. So sir, those are my  
20 submissions for Thurrock at this stage.

21 MR SMITH: Thank you very much. Any questions from my colleagues? No. In which  
22 case, I think we should continue through local authorities with the local highway  
23 authority functions, so I was going to go then to Kent. Can I just check – I  
24 haven't seen a hand for Essex. I didn't want to leave Essex out by simple  
25 omission.

26 MR WOODGER[?]: Hello, sir. I can confirm that Essex County Council are listening  
27 in to the discussions, but have nothing to add at this stage.

28 MR SMITH: Excellent. Thank you very much. Apologies, Mr Fraser-Urquhart, but I  
29 did think counties ought to be considered on an equal basis, so we now know  
30 that we're not going to hear directly from Essex, so I will move to yourself.

31 MR FRASER-URQUHART: Thank you very much, sir. Andrew Fraser-Urquhart for  
32 Kent County Council. I will just deal with three aspects of this matter: the policy  
33 aspects, the wider network impacts study, and the relationship of that to the  
34 policy matrix, and then the Bluebell position, if that's convenient.

1           With respect to the first, the policy matters, I'm not going to waste time  
2 on this other than to entirely endorse what my learned friend, Mr Edwards, has  
3 just said. We adopt – if it's formally necessary to do so – those submissions, but  
4 I would just draw your attention to one part of the national policy statement,  
5 which he referred to but didn't quote from, which is 5.202, where it says, 'The  
6 consideration and mitigation of transport impacts is an essential part of the  
7 government's wider policy objectives for sustainable development.' So not only  
8 is mitigation required and suggested as being desirable, in fact, it's regarded as  
9 essential, and we would just point to that as a necessary part of the agenda.

10           Now, with respect to the wider network impacts study, which I have a  
11 vague recollection we started with about two hours ago, we say that this  
12 illustrates exactly the difficulty with the policy position put forward by the  
13 applicant, and it also illustrates the desirability of something akin to the  
14 Silvertown approach. I think your colleague, inspector Laver, asked, directly in  
15 terms, whether National Highways were saying that they had no duty to mitigate  
16 any of the likely impacts, to use that Rumsfeldian language, the known  
17 unknown, of the impact that there's going to be on the wider network, as defined  
18 for the purposes of our study, and it's quite clear that that is what they're saying,  
19 and we would suggest that that is unacceptable.

20           We also suggest that, again, for reasons which Mr Edwards touched upon,  
21 the fact that these are impacts which are not easy to predict at this stage – we've  
22 begun a study, we've undertaken a study. It gives us some indications, but it  
23 can't be as good as a situation where one monitors what actually happens, and  
24 there is a mechanism for mitigation to follow from that. So we would endorse  
25 – and we'll develop in writing once we've seen what the applicant puts forward,  
26 but we would endorse some form of mechanism like that to enable those effects  
27 to be monitored and appropriate mitigation put in place.

28           So that's what we say about those impacts. I'm going to turn to Mr  
29 Ratcliffe in just a moment to deal with those in a little more detail, but the final  
30 issue is Bluebell. Now, this is a situation where we know there are going to be  
31 material impacts from the scheme upon that junction. We also have a worked  
32 up – reasonably worked up scheme of mitigation.

33           Now, the previous position was that there was a funding gap of 15%,  
34 which we were looking to the applicant to commit to filling, as we thought it



1 appropriate that they should. Since the recent announcement of the cancellation  
2 of HS2 and the so-called Network North, where we understand that it has been  
3 suggested that funding may be released for those Bluebell works, the current  
4 policy position is, as we understand it, that those works would be 100% funded  
5 by central government from the Network North scheme. Pushing the definition  
6 of 'north' a little bit there, but this is highly, we would suggest, uncertain.

7 It's uncertain as a matter of policy, and it's also uncertain as a matter of  
8 the reasonable contemplation that there may be a change of government, and  
9 therefore, a change of direction, and therefore what we seek and what we think  
10 is appropriate is that there be, effectively, a contingency mechanism, whereby if  
11 the scheme is not funded from central government, through whatever process  
12 the Network North initiative takes forward, that if that's not done, it ought to be  
13 funded by National Highways, and that's a requirement that we will seek. So  
14 that is really where we stand on these matters. I'm just going to turn to Mr  
15 Ratcliffe if I may. I hope that's clear, but I'll turn to him just to add some  
16 additional matters on those.

17 MR RATCLIFFE: Thank you. Joseph Ratcliffe for Kent County Council. Yeah, I mean,  
18 the issue here, of course, is that complete uncertainty. Let's just take the  
19 strategic road network impacts, the wider network impacts, for example, which,  
20 as the applicant states, 'will be addressed in future road investment strategy, or  
21 RIS, periods.' Well, as far as I'm aware, in Kent, there are two potential future  
22 RIS schemes, one of which is all the way up the other end of the A2 on the  
23 approach to Dover, to just complete the link from Lydden to Dover. It's called  
24 the A2 Dover Access, which I believe has been paused by National Highways  
25 due to the lack of an economic case, the scheme, and the other is A2 Brenley  
26 Corner, which is a little bit further west, where M2 becomes the A2, which we  
27 were told was also being paused until the Network North announcement, and it  
28 is listed as a scheme that will be delivered. Although, we have no certainty of  
29 the timescale for that, because again, business case was essentially – was poor.

30 There are no RIS schemes identified anywhere near the vicinity of the  
31 Lower Thames Crossing. The wider network impact study, which National  
32 Highways are funding, which we have conducted, which initially used the Lower  
33 Thames area model, and now uses the Kent transport model, identifies the M25  
34 junction 2, which is the junction at the A2 and the 282, the Dartford Crossing,

1 A2 Pepper Hill, the A2 junction at the A227, the A2 Gravesend east junction,  
2 which is part of the scheme, Valley Drive – and we have considerable concerns  
3 about the queueing on that part of local network, but just sticking with the  
4 strategic for now – M2 junction 1, which is a huge concern of Medway Council,  
5 and is inhibiting local plan growth on the Hoo Peninsula, and of course, M2  
6 junction 2, which is the A228, and then we go onto M2 junction 3, and M20  
7 junction 6, which relates to Bluebell, which we'll cover separately in a minute.

8 Yeah, there is no certainty of any schemes being delivered, so the question  
9 becomes, 'Lower Thames Crossing, which has its own transport assessment,  
10 shows an impact on these locations. Its strategy for mitigation of those impacts  
11 is through hope, really, that future funding schemes will come through.'

12 Similarly, if I just go on to the local road impacts, which is obviously Kent  
13 County Council's – within its gift to deliver schemes to alleviate, to mitigate –  
14 we've got the A2 Springhead at Gravesend east section, which includes  
15 Springhead Road, Wrotham[?] Road, which is the A227, and Valley Drive  
16 again, which links into the junction with the LTC, the A227 itself, the A228, the  
17 A226, and the rat running on unsuitable rural roads between those locations.

18 We are grateful for National Highways and the funding that will be in the  
19 next stage of the report which we submitted at deadline 7, which we set out  
20 costed mitigation schemes, which could form part of a section 106 to deliver  
21 those, but yeah, there is no identified funding mechanism to deliver any of those  
22 mitigation schemes, and I do call them 'mitigation schemes,' because we are not  
23 looking for improvements. We are looking at the differential between  
24 background growth versus the extra traffic growth from Lower Thames  
25 Crossing. That's all we're asking for. We've not asking for improvements.  
26 We're looking for mitigation.

27 Are we going on to Bluebell now? Yeah. So Bluebell, as correctly pointed  
28 out, and we welcome the Network North announcement that potentially 100%  
29 of the scheme cost would be funded by government, which does solve one  
30 problem of the funding gap. However, it's still a big 'if,' and I know that scheme  
31 is listed as a scheme that will be delivered by government, but it is still subject  
32 to the business case, which the strategic outline case has been with the  
33 department for transport since December 2020. We are still waiting on a  
34 decision for that to move in to what's called outline business case. Only at the

1 end of outline business case, when the actual scheme costs are established, will  
2 government then, if it makes a funding decision to deliver the said scheme –  
3 would fund 100%.

4 So I go back to what I said at the previous issue-specific hearing: we have  
5 to assume, sat here today, that when Lower Thames Crossing opens, Bluebell,  
6 as it is today, will be as it is when Lower Thames Crossing opens, and therefore  
7 it becomes a question of – we can see the traffic impacts already at that location  
8 with the current levels – with the additional traffic and the redistribution effects  
9 of this new link in the National Network, is the applicant who is responsible for  
10 the strategic road network at M2 junction 3 and M20 junction 6 – are they  
11 accepting the additional congestion and queuing on their slip roads, on their  
12 mainline, and the resulting safety, air quality and other impacts that Transport  
13 for London very succinctly described that come with increased congestion? I  
14 will stop there. Thank you very much.

15 MR SMITH: Thank you very much. Now, in respect of that Bluebell position, I am  
16 conscious that it is possible that the applicant's position in principle on Bluebell  
17 was not yet completely stated, and I just want to check, maybe with Mr Tait, on  
18 that point. Is there anything else that needs to be brought out? Because if there  
19 is, we need to get it onto the table so that we can complete Kent's submissions  
20 on this specific point, but if not, then we can close that item off from Kent too.  
21 So let me just check.

22 MR TAIT: No, sir. We touched upon the north document –

23 MR SMITH: You touched upon it. I just wanted to make sure the touch was the full  
24 position. I mean, in terms of the Network North document, obviously, anything  
25 – I think we have to observe that we're at a point in history that the policy  
26 position is somewhat dynamic, and therefore, we will be, obviously, looking as  
27 closely as we can at announcements, etc, that may emerge, but equally, it's  
28 critically important that the parties bring anything more that emerges in this  
29 space up until the point of closure of examination to us, and so we will extend a  
30 general invitation at any deadline, should the policy position around Network  
31 North implementation become any clearer at all or change, please put us in a  
32 submission drawing our attention to the implications of that change for your  
33 case, and that's a general invitation to all interested parties.

1                   Okay, so in relation to bringing us through the remaining submissions on  
2 this point, we've clearly got to hear from the ports. Now, I did go to Port of  
3 Tilbury first last time, but I am – ah, hang on. Ah, I've forgotten the London  
4 Borough of Havering. How terrible. Apologies.

5 MR DOUGLAS: Not a problem, sir. Daniel Douglas, the London Borough of Havering.  
6 Just a point of clarification for the panel, just to confirm that Havering wears  
7 two hats, so we're both the local planning authority and we share highway  
8 responsibilities in our borough with Transport for London], so a local highway  
9 authority as well.

10                  If I may, I'd like to make a couple of points in relation to the wider  
11 network impacts monitoring plan, both on the policy side of the matter and how  
12 the applicant's currently proposing wider impacts are funded, and then if I may,  
13 sir, I'll bring my colleagues in to pick up a couple of other points.

14                  Now, as has been discussed already, the applicant appears to be of the  
15 view that mitigating local network impacts isn't a requirement on national  
16 policy. Mr Edwards has already articulated some of the references within the  
17 national policy statement for national networks, as to why that's not the case,  
18 and I'd just point the panel in the direction to Havering's submission at deadline  
19 3, which is REP3-186, where we've gone into some detail as to the references  
20 within the NPS that we feel require wider network impacts to be mitigated. In  
21 particular, I'll just point out two. NPSNN paragraph 3.2, which states 'and  
22 mitigate environmental and social impacts', and also further down, in paragraph  
23 5.202, 'The consideration and mitigation of transport impacts is an essential part  
24 of the government's wider policy objectives for sustainable development.' A  
25 list of the references of the NPS can be found in section 6 of that representation  
26 that I've pointed.

27                  The other point I'd make about the wider network impact is around  
28 monitoring, and as it currently stands in the applicant's document, APP-545,  
29 which I believe is the most up-to-date wider network impacts monitoring plan  
30 that's been published by the applicant, and that was when the application was  
31 submitted last year, they've set out a number of locations where monitoring will  
32 take place. As it currently stands, within Havering, there are three monitoring  
33 sites. There's one at the M25 junction 28, one at the M25 junction 29, and one  
34 just to the west of the M25 junction 29, along the A127.

1           So for the point of clarity, there are no monitoring sites on Havering’s own  
2 network. Those are either on National Highways’ network or Transport for  
3 London’s. Clearly, the concern that we’ve got is that we want to make sure that  
4 the impacts of our own network, particularly junctions that border Transport for  
5 London’s network on the A127, are properly monitored. We accept that there’s  
6 a reference that local highway authorities will be consulted about additional  
7 monitoring sites, and we’d obviously very much expect Havering’s suggestions  
8 to be taken forward when the final management plan goes to the Secretary of  
9 State for approval.

10           The other point that I’d like to make, and Ms Laver touched upon it earlier  
11 around funding, is around how the applicant is currently proposing wider  
12 network impacts to be funded. Within the document itself, there are a number  
13 of funding opportunities – I’ll put it like that – that have been cited – government  
14 funding opportunities.

15           We have set out in our representation, REP3-186, the slightly unique  
16 challenges Havering has as a London borough compared to, maybe, other local  
17 highway authorities outside of the GLA bubble have around funding.  
18 Obviously, within London, funding for transport schemes is under the preview  
19 of the Mayor of London through his devolved powers. We rely extensively on  
20 funding from Transport for London to deliver transport schemes and transport  
21 improvements.

22           The applicant cited that funding mechanism, which is known as the local  
23 implementation plan within their application, REP4-180, as an appropriate  
24 mechanism that Havering could use to fund mitigation on any wider network  
25 impacts that the project causes. We’ve set out in our response to that, at  
26 REP5-186, why that funding mechanism is not appropriate. That funding  
27 mechanism is purely for boroughs to deliver the Mayor’s transport strategy at a  
28 local level. It’s to be used for schemes that improve walking, cycling, bus  
29 priority, those sorts of things. It’s not suitable and, indeed, we’re not able to  
30 submit bids through that mechanism for projects that are to mitigate wider  
31 network impacts that have been in TfL. They would reject it.

32           So that funding opportunity isn’t available to Havering as a London  
33 borough, and the final point I’d just like to make around this general comment  
34 around these funding opportunities that the applicant’s set out. What the

1 applicant is effectively saying is that the five local highway authorities are going  
2 to have to compete against each other to attain funding to mitigate the impact of  
3 the scheme by the third party, and we certainly don't feel that that's an  
4 appropriate way of the applicant supporting local highway authorities in being  
5 able to mitigate impacts on their own particular network, and if I may at this  
6 point, I'll just bring in my colleague, Lynn Basford.

7 MS BASFORD: Thank you, Daniel. Good afternoon, sir. Good afternoon, everyone.  
8 I'd just like to raise a point that Mr John Rhodes discussed on behalf of the  
9 applicant – was the fact that in policy terms, we are no longer in the space of  
10 'predict and provide.' I would offer up that we are in exactly in that space, with  
11 regards to how this scheme has been developed, and the alternative paradigm,  
12 which has been advocated by DfT, policy makers of design-provide or the  
13 vision-led approach, as it's known by National Highways, has not been applied.

14 If it had been applied, then we would be looking at scenario testing in  
15 greater depths, and we would be looking at dealing with uncertainty, and as  
16 we've heard this morning, there's a huge amount of uncertainty, both with the  
17 application of future RIS schemes, which we have to say are often politically  
18 led, and therefore give us great uncertainty, and for local schemes, again, the  
19 uncertainty of actually having effective monitoring within a host borough to  
20 determine what an unintended consequence or an impact is.

21 I'd like to echo the sentiments of Ms Laver in having deep concern over  
22 the applicant only considering the impacts on the SRN and not on the local roads,  
23 and as we've heard from Daniel Douglas that in Havering itself, the host  
24 borough, there is no specific local roads being monitored.

25 If it's of help, I would like to just make a comment about how the triggers  
26 would develop in Silvertown Tunnel mitigation and monitoring strategy, having  
27 been very deeply involved in that process with the other host boroughs and  
28 stakeholders, and for many months, TfL, the applicant consulted and worked  
29 with the London boroughs and other boroughs to develop that set of triggers,  
30 and I would advocate that, albeit that it's rather late in the process, that that  
31 approach could be developed for the monitoring the wider network – the wider  
32 network strategy that we're considering today.

33 I think of help, as well, bearing in mind that we've yet to see the document  
34 from the applicant, that there's some very useful points in Silvertown's

1 monitoring strategy. Drawing your attention to paragraph 3.5.2, which is the  
2 area of influence that is cited from which monitoring and management will be  
3 developed, and this has particular regards to the host boroughs, and it's cited in  
4 paragraph 3.5.3 that the geographical scope of this area of influence can be  
5 altered over time, given the monitoring strategy as it develops, and figure 3.1  
6 actually cites a monitoring area and defines not only the monitoring area but a  
7 buffer zone as well, which I think would be extremely helpful in developing the  
8 wider network monitoring strategy we have here, and so I hope that's of use.  
9 Thank you very much, sir.

10 MR SMITH: Yeah, I mean, it is worth drawing from that that it does seem to be a  
11 framework that is probably well-characterised as an adaptive management  
12 framework, and when one is dealing with known unknowns, having an adaptive  
13 framework in place that enables one to target the specifics of monitoring to needs  
14 that may emerge or add to their priority as one moves on, or indeed decline in  
15 priority and become less significant as one moves on, is a very important thing.  
16 So again, thinking about how to build that in would be a very, very useful way  
17 forward. So thank you very much for those submissions, Ms Basford. Is that  
18 all of your material? It is. I will just then –

19 MS BASFORD: It is.

20 MR DOUGLAS: Yes, it is, sir.

21 MR SMITH: Okay, right. Now, let's move forward. Gravesham.

22 MR BEDFORD: Thank you, sir. Michael Bedford, Gravesham Borough Council. Sir,  
23 can I just start by expressing a degree of slight surprise at the way that this part  
24 of the morning has evolved? Sir, in terms of, as it were, the trigger for this,  
25 obviously, in terms of the agenda, we had the applicant provide an update  
26 statement on wider network impacts, and what the applicant did provide in  
27 REP5-085 was a wider networks impact update, and there is a paragraph, 2.1.3,  
28 on that, which says that after the workshops, it was realised there ought to be  
29 some more engagement by the applicant with parties about issues, and that that  
30 might then prompt the applicant to produce some more material, and there were  
31 some bullet points set out, and one of those was going to be a discussion on the  
32 policy position, and the other was going to be a discussion on what was meant  
33 by 'severe impacts', and then there was going to be a reference to Silvertown.

1           Now, sir, what we seem to have had is not the engagement that was  
2 referred to as the prompt for this, but simply a second bite of the cherry by the  
3 applicant to deal through Mr Rhodes with matters which were rehearsed by  
4 Dr Wright when issue-specific hearing 4 took place. So we've really just gone  
5 around the houses of a matter that we had all engaged in fully on the policy  
6 issues at an earlier stage, and so, as I say, I was slightly surprised that the length  
7 of time that has been taken by the applicant to deal with matters which, as I say,  
8 were fully rehearsed at an earlier issue-specific hearing.

9           However – so that's, as it were, possibly a forensic point, but it seemed to  
10 be worth drawing to your attention, but, sir, on the policy points, I obviously  
11 echo the submissions that have been made on behalf of Thurrock and Kent by  
12 their counsel respectively. I'm not going to rehearse our own position. Again,  
13 we have set out a position in writing, but since Mr Rhodes has made some further  
14 comments, to the extent that we want to comment further on the policy position,  
15 we will do so in our written submissions.

16           Sir, then moving to a brief position on Silvertown, and you'll be aware  
17 that, again, we have rehearsed a position on this in some of our earlier  
18 submissions. The point that is just worth perhaps emphasising is that Silvertown  
19 as a model may be an appropriate way for dealing with where they're called the  
20 'known unknowns,' but they're the impacts that you can't quite identify what  
21 the solution ought to be at the time of assessment, and so there is a proposal for  
22 whether it's a monitoring mechanism, and then a management mechanism and  
23 then potentially a fund. Sir, that is something that we would support for that  
24 category of impacts, which are the, as it were, the unknown – or, sorry, the  
25 known unknown. We know that there are adverse impacts, but we can't  
26 precisely identify them.

27           Sir, we see Bluebell as being in a very different category to the Silvertown  
28 approach. We see Bluebell as being a clearly known adverse impact, which has  
29 been identified by the applicant in the applicant's transport assessment  
30 supporting this application, and we say applying national policy, in terms of  
31 what is a reasonable and proportionate approach to mitigation, that it is an impact  
32 which requires mitigation by the mechanism of this scheme, and sir, on that, I  
33 just want to make a couple of specific points, knowing, as I say, that we have  
34 rehearsed some of this in previous sessions.



1           In the applicant’s joint position statement – that’s REP5-083 – it sets out  
2 its position at paragraph 1.9, and there makes reference to the current version of  
3 the TA, which is at REP4-148, and there refers to tables 7.12 and 7.13 of the TA  
4 to contend that the impacts at Bluebell are not significant. Just on a point of  
5 detail, I suspect that the applicant didn’t intend to refer to table 7.12, because  
6 that deals with the interpeak position, but the two tables which are of relevance  
7 are 7.11, which is the a.m. peak, as at 2030, and 7.13, which is the p.m. peak at  
8 2030. If the applicant did intend only to refer to 7.11 – sorry, 7.12 and 7.13,  
9 then sir, we don’t share the applicant’s view that the a.m. peak is not also  
10 relevant, because it’s quite clear when you look at the a.m. peak that the adverse  
11 impacts are material in the a.m. peak.

12           Sir, when you take those tables, 7.11, a.m. peak, and 7.13, p.m. peak,  
13 together, what you see is that the applicant has identified a 10% change in  
14 journey time as being relevant for whether an impact scored in the tables as red,  
15 which is the worst impact that the applicant scores, and what you see across all  
16 of the scenarios that are presented in those two tables comparing the ‘do  
17 minimum’ to the ‘do something’, that when you look at Bluebell, it scores  
18 significantly above that 10% deterioration in journey times on that part of the  
19 network, and what it shows for the core growth scenario in the p.m. peak is a  
20 31.4% increase in journey time.

21           In other words, from a baseline journey time of nine minutes, you are  
22 adding 2.8 minutes to that journey, and we see that as a significant adverse  
23 impact, and we see that is shown across the board in table 7.11 and 7.13, and so,  
24 sir, what we have suggested already is that that needs to be addressed by this  
25 scheme.

26           The mechanism for doing that we have already put before the examination  
27 in our submissions on the development consent order at REP4-302. We have  
28 suggested a new requirement 24 in section 19 of that representation, and  
29 effectively, it would restrict the opening of the Lower Thames Crossing until the  
30 Bluebell link is either resolved or it’s clearly stated by the county council – that’s  
31 Kent County Council, as the local highway authority – or the Secretary of State  
32 that the currently proposed large local major scheme is not to proceed, or that  
33 Kent or the Secretary of State is satisfied that, irrespective of the problems at  
34 Bluebell, that the Lower Thames Crossing can still proceed.

1           Now, sir, we've put that forward as a way of effectively requiring a  
2 solution to be provided to Bluebell, or a clear decision to be made by the  
3 appropriate decision maker that no solution is required. Whilst our wording is  
4 obviously different to what the applicant has put forward in relation to Thurrock  
5 and Orsett Cock, we do think that, effectively, we're taking a similar approach  
6 to what the applicant has now put forward in its requirement 17. That's in REP5-  
7 085, the wider networks impact update, in paragraph 316 and you'll see that  
8 they've got, as it were, a slightly tiered arrangement to how they propose that  
9 Orsett Cock should be dealt with, and so it's a different roundabout. They are  
10 slightly different triggers, but we don't see that the principle is fundamentally  
11 different, and sir, we would therefore commend that approach to you, but sir, I  
12 think – oh, yes, there's one point I just wanted to make.

13           I think we're going to expand on it in the written submissions, but sir, we  
14 see there as being a clear distinction between different decision-making  
15 processes within government. There are funding decisions made by the  
16 department for transport, both on RIS schemes, and on large local major  
17 schemes, and those decisions are not intended to prejudice planning merit  
18 decisions, which are decisions made through, in this instance, a development  
19 consent order process, the 2008 act, and we think it is inappropriate for the  
20 applicant to suggest to you that because of those separate funding decisions, you  
21 somehow should not engage with what are the planning policy impacts of the  
22 proposals, and that you should leave it to a different process. We think that is a  
23 misapplication of relevant guidance and we don't see any support for it in the  
24 national networks national policy statement. So sir, those are our submissions.

25 MR SMITH: Thank you. Now let us, last but not least, go to Paul. So Mr Shadarevian,  
26 I'm going to come to you first, and then Alison Dablin, apologies. You will  
27 follow Mr Shadarevian. So...

28 MR SHADAREVIAN: I'm grateful. Paul Shadarevian KC for DP World. Sir, much of  
29 what I was going to say has been said, so I'm not going to repeat it. However, I  
30 do want to refer back to something that you were dealing with earlier, just to put  
31 down a marker, as it were, as to the way you and your colleagues approach  
32 national policy, and you were referring – if I may summarise it this way – to the  
33 mutuality of the objectives of both the national ports and national networks. I  
34 put it that way because we must assume that there is a mutuality of objectives

1 here to achieve the objectives for both without compromising the other, so far  
2 as possible, particularly in the absence of any provisions that derogate from that  
3 objective overall.

4 Sir, when you come to consider the impacts of the scheme, and interpret  
5 and apply policy, interpretation is a matter of law. The application of it is for  
6 you. I draw that distinction at this stage. You may want submissions on what  
7 the policy means from us in due course, but once you get to that position, it's  
8 really important that you take into account the mutuality of those objectives, and  
9 then consider the extent to which the mitigation elements of national policy in  
10 relation to networks deals with that, and in so doing, take into account this very  
11 fundamental factor touched upon by Mr Edwards earlier on, which is the Orsett  
12 Cock is a fundamental component of the scheme before you. It is not part of the  
13 broader highway network, although, Manor Way may come into that  
14 assessment.

15 What the ports are proposing, and hopefully Thurrock as well, in terms of  
16 the addition to schedule 2 of the order, is not actually mitigation. It's a means  
17 of curing a fundamental design defect of the scheme, and that must be at the  
18 forefront of your mind when you come to consider the merits of any proposal  
19 we put forward in respect of the Orsett Cock. Sir, I leave it at that. Safe to say  
20 this, but the latest information from the applicants shows a far worse situation  
21 than the p.m. peak eastbound than even we anticipated. I leave it at that for the  
22 moment.

23 MR SMITH: Thank you very much. Ms Dablin.

24 MS DABLIN: Thank you. Alison Dablin for the Port of Tilbury. I echo Mr Shadarevian:  
25 much of what I had prepared to say has indeed been said. I think the Port of  
26 Tilbury is keen to ensure that where there are wider network impacts there is a  
27 mechanism that is secured in the DCO to ensure that they are both identified  
28 and, having been identified, are subject to appropriate mitigation. In our view,  
29 the Silvertown Tunnel requirement is by far and away the best precedent that we  
30 have from which to develop a scheme that can be made to work with the nuances  
31 of the Lower Thames Crossing, because, unlike many of National Highways'  
32 DCOs, which upgrade an existing road connection, the Lower Thames Crossing,  
33 like Silvertown, creates a new road, and in doing so, it creates multiple new

1 connections that previously did not exist, causing widespread change in driver  
2 behaviour, and the chance of unforeseen impacts is very large.

3 The Silvertown Tunnel approach, in our view, does not place any undue  
4 burden on the applicant. On the contrary, it provides certainty for all parties as  
5 to what will constitute an impact that either requires mitigation or at least  
6 requires a review as to whether further mitigation is needed, and it goes further  
7 and provides a mechanism for that mitigation to be provided, which it sounds  
8 like this is the key stage that the applicant's proposals are not seeking to provide.

9 In the events there are no impacts, National Highways is not required to  
10 undertake any mitigation, and in identifying the thresholds for intervention,  
11 these thresholds can be agreed with the Secretary of State after consultation with  
12 relevant stakeholders, and in this way the applicant can take comfort that it will  
13 be held to an objective standard for determining when mitigation is required,  
14 and that that standard is acceptable to the government to which it reports, and in  
15 this regard, we do think that the Silvertown Tunnel provides comfort to both  
16 interested parties and the applicant that it will only be required to mitigate those  
17 impacts that it is reasonable and proportionate for the applicant to be held  
18 responsible to mitigate, and to a certain extent, this can be left for further  
19 consultation after consent with the relevant monitoring and mitigation strategy  
20 that was certified as part of the Silvertown order, left post-consent to then be  
21 agreed with the Secretary of State. Thank you.

22 MR SMITH: Thank you very much. Now, thinking about those who showed hands. At  
23 the beginning of this process, we did have a hand from Mr Elliott. That is no  
24 longer showing, and so on that basis, I am going to conclude the interventions,  
25 and return this to the applicant. Now, just before I do so, Ms Laver did want to  
26 just put a specific query arising from the discussion just to the applicant.

27 MS LAVER: Yeah, sorry, everybody.

28 MR SMITH: She's between you and lunch.

29 MS LAVER: I know. I realise that. I've just been pondering: if we don't provide any  
30 mitigations for the local road network because you feel you don't have to, but  
31 those unknowns become problems, do those harms not then weigh on our scales  
32 so that they reduce the benefits of the scheme? So when we're looking from a  
33 benefit/cost ratio point of view, that's something for the ExA to ponder. I'm  
34 making a statement more than I'd like a response, but I note from Kent County

1 Council's deadline for submission, it was about funding improvements for  
2 Bluebell. Within their submission – I'll find a reference and come back to you  
3 after lunch, but it does say, 'Kent County Council considers that there has been  
4 no evidence that the LTC project could not afford to contribute to improvements  
5 to the local road network. Such improvements may also bring wider benefits to  
6 the benefit/cost ratio.'

7 Now, a couple of seconds delay on some part of the local road network is  
8 really not going to tip the scales, but a 10-minute delay might very well be such  
9 a harm that really it should sit on the scales. So I'm just putting it out there. For  
10 the Examining Authority, we've really got to ponder, that if there are no  
11 mitigations on local road networks, there are harms potentially from unknowns,  
12 which really do sit in the balance for us, and it might be something, not now, but  
13 deadline 6, for the applicant to give some thought to in response, and possibly  
14 the local highway authorities if they had anything they wanted to add at that  
15 deadline on that point.

16 MR TAIT: Thank you for that. I will ask Mr Rhodes to respond in the first instance and  
17 then see if there are any additional points to sweep up.

18 MR SMITH: Actually, at risk, I'm afraid, of prolonging matters even further, I do note  
19 that Mr Elliott's hand is back up again. Mr Elliott, we do wish to close this item  
20 out before lunch. Do you have some, I trust, reasonably brief points that you  
21 would now like to make?

22 MR RHODES: Sir, the bad news is that I've written down 11 points. The good news is  
23 I think I can do them very briefly, if I may.

24 MR SMITH: We'll just draw in Mr Elliott very swiftly.

25 MR ELLIOT: Sorry to come back again. I can find myself agreeing with most of the  
26 points made by most of the people talking this morning, and some of them were  
27 made in my supplementary evidence of costs elsewhere, including the strategic  
28 road network. Interestingly, the M2 wasn't mentioned by NH and we can no  
29 longer have hard shoulder smart motorways, which – a scheme was in the  
30 programme for that, but that wasn't mentioned. So that could add a very  
31 substantial amount of money to the cost of LTC and accordingly affect the  
32 cost/benefit ratio fairly dramatically if these extra costs are included, as  
33 suggested by some of the people that have spoken so far. If I can come back

1           briefly after lunch if there's anything else, otherwise I would prefer to come back  
2           in written representation.

3 MR SMITH: Okay, thank you very much, Mr Elliott. Now, just before I return to you,  
4           Mr Tait, I'm afraid Ms Laver has clarified that point that she raised and she can  
5           assist you on a reference, so she will do that now.

6 MS LAVER: Yeah, the reference which I referred to, which was the KCCD for  
7           submission about Bluebell, was REP4-308. I'm not specifically asking for a  
8           response to that, but that was what I quoted from in terms of funding, so thanks.

9 MR SMITH: Okay, so now we can move to resolve the applicant's response.

10 MR TAIT: Thank you, sir. I'll go straight to Mr Rhodes, if I may.

11 MR RHODES: Sir, the response has obviously covered a number of points and it's better  
12           if we address them in writing, I'm sure, but just very briefly and perhaps to try  
13           and pick up some theme, so why don't we follow the sequence of the points that  
14           were made, but hopefully it won't be repetitive. So TfL response, so the fact  
15           that this redistributes traffic is one of the reasons why you have to monitor it,  
16           and that although we've got a Mayor's transport strategy, we still thought a  
17           transparent monitoring process was important, and the STIG[?] is useful. Yes,  
18           it doesn't have the powers, but nevertheless it's a useful forum. I agree with all  
19           of that. So we have a wider networks monitoring management strategy. We're  
20           going to submit that for approval and consultation. It can do all of those things.  
21           We are not suggesting that you should not be monitoring and reporting.

22           The point was made which – has come back to by others, that congestion  
23           in itself is not good. Agreed, but also the congestion has impacts and that's also  
24           agreed, but of course, those impacts have been assessed in the application. It's  
25           not that they've been ignored. The applicant, both in the journey time and  
26           economic appraisal, but also in the environmental assessments have looked at,  
27           for instance, noise and air quality and impacts of changes in journey times and  
28           delay. So those matters have been addressed. A concern which a number of  
29           people have is that the RIS doesn't deal with local impacts. So we had an  
30           exchange about that. We will certainly make as clear as we can in our deadline  
31           6 submission, how local impacts are part of the monitoring process.

32           The draft wider networks, impact monitoring and management plan  
33           already has a number of local roads that it's going to monitor, and it says  
34           explicitly that part of its purpose is to generate information that can be used for

1 investment decisions on the local road network, not just the strategic road  
2 network. It was suggested that the value of STIG was it came to a collective  
3 view about what should be done. I'm afraid that isn't true. The decision is  
4 reserved for TfL with the benefit of engagement with STIG. We shouldn't  
5 misunderstand what was achieved at Silvertown, and that point was made right  
6 at the end as well, that STIG and the Silvertown process brings us absolute  
7 certainty. It retains for the highway authority the decision about investment and  
8 improvements.

9 It does so in a highly consultative way and we would say, 'So does the  
10 process that we have suggested.' In response to what the paragraphs of the NPS  
11 say in terms of mitigation, I won't go through that again. I think there are just  
12 two things to say about that. One is, please look at the words and the  
13 construction of the NPS. That's what I tried to do in my presentation this  
14 morning and I don't think it's helpful to look at generalised terms. One needs  
15 to identify that there are specific policy requirements, and those are the policy  
16 requirements that we say we have addressed. There's one point, though, in  
17 relation to paragraph 5.216, and that's mitigating the impact on accessibility,  
18 and in that context it's really important to understand what the NPS means by  
19 'accessibility.'

20 It has a specific heading under paragraph 3.19 in relation to accessibility.  
21 It's not delay on the network. It's accessibility by non-motorised users and  
22 disabled users, and that is my interpretation. I think it's very clear what is meant  
23 by the NPS in that respect. There was a discussion about unacceptable impacts  
24 and two or three things in relation to that. One is that it was important or relevant  
25 that they were referenced at Silvertown. Of course, at Silvertown the  
26 requirement reserved the judgement about what was the threshold for mitigation  
27 to be decided subsequently. It didn't decide what an unacceptable impact was.

28 It established a process for that purpose, and it's interesting – I think I've  
29 always thought it interesting that there is no definition really in any planning  
30 policy guidance, certainly not in this NPS, as to the point at which a congestion  
31 impact becomes unacceptable, and I think that's deliberate. I think it's deliberate  
32 because that decision is ultimately going to be made by government. The  
33 government funds investment in the road infrastructure. The government will  
34 not want to commit itself to a threshold that it cannot meet and it's a question of

1 judgement, and so the requirement which we have put forward, for instance, the  
2 Silvertown alternative, is for National Highways to put forward what mitigation  
3 it thinks is appropriate and for the Secretary of State to decide in the full  
4 knowledge of what the monitored impacts are and in the full knowledge of what  
5 everybody thinks should be done, but ultimately it's a judgement, it's not a  
6 formula. I could say the same about the reliance on paragraph 5.202, but we can  
7 do that in writing.

8 Bluebell. I really don't want to get involved in issues at all at Bluebell,  
9 but there is an important principle here and that is that the decision maker, in  
10 this case the Secretary of State, is also charged with having to decide whether to  
11 not to fund Bluebell. It's clearly apparent that the Secretary of State is seized of  
12 the issues of Bluebell and engaging with them and has to make a very difficult  
13 decision based on government funding priorities, and what I think we've heard  
14 today is a concern that the Secretary of State may not make or stand by the  
15 decision. The recent announcement is helpful, but it was said to be highly  
16 uncertain. We still don't know if it's actually going to happen, and so what  
17 parties are seeking to do is to use this DCO decision to force that decision on the  
18 Secretary of State.

19 Now, people can make their submissions to the Secretary of State, but in  
20 my judgement, the Secretary of State is aware of these issues and that decision  
21 will be made on the balance of government policy, by the author of government  
22 policy and also by the party that controls funding in the road network. I don't  
23 think it's for this DCO to tell the Secretary of State how to make that decision,  
24 but what I think is really important and in response to the points made by  
25 Gravesham, it's not that we're not suggesting that these effects don't need to be  
26 taken into account or they're subject to another process, and it's nothing to do  
27 with this examination. Our application has fully assessed the impacts on the  
28 road network without an assumption that unfunded highway schemes are going  
29 to come forward.

30 So on the road network that you can rely on, our application has done that  
31 both in transport economic terms but also in environmental terms, and it's  
32 identified the mitigation which it says the NPS requires it to identify to address  
33 the impacts which the NPS is clear need to be mitigated, and it concludes an  
34 overall substantial benefit would be derived from the application. We have



1 engaged with those impacts. They are part of our application, they are part of  
2 our assessment, they are weighed in the balance, and insofar as there are impacts  
3 on local roads, those are assessed as well. The environmental consequences of  
4 those are assessed. They're taken into account. They're mitigated where they  
5 can be and where they're required to be, and then maybe you're right. There  
6 may be other impacts that arise in the future. There may be other benefits that  
7 arise in the future.

8 That's why we have a monitoring process to examine those, but our  
9 obligation is to consider the likely significant effects of this application, and we  
10 have considered the likely significant effects as best we can, and there is a  
11 process in place to manage future investment in the network in which everybody  
12 in this room can be and is involved, but that process is inevitably based on  
13 priorities and funding priorities, and we've heard the list of schemes that local  
14 authorities would like to be funded. That's not something that National  
15 Highways can achieve. That's for the Secretary of State. That's why we have  
16 a process.

17 Port of Tilbury. The suggested impacts must be mitigated, and Silvertown  
18 Tunnel is the best precedent because it's a new road. It's necessary to look  
19 closely at what Silvertown Tunnel does. I won't repeat that, but in my view,  
20 what we have is a comparable outcome of mitigation, informed by monitoring  
21 and collaboration with parties and the decision making through a proper  
22 structured process in accordance with government policy. So that's briefly the  
23 response to what's been said, but we will write it up more fully. Thank you.

24 MR SMITH: Thank you very much. So closing this out, Mr Tait.

25 MR TAIT: No additional points from me, thank you very much.

26 MR SMITH: In which case, ladies and gentlemen, it is later than we would normally  
27 break for lunch. It is 12.45 – 1.45, apologies. If only. It is 1.45. Can I suggest  
28 that we do take the full hour because people have things to do, clients to speak  
29 to, etc., instructions to seek, during the break? So we will return at 2.45, ladies  
30 and gentlemen. 2.45.

31  
32 **(Meeting adjourned)**  
33

1 MR SMITH: Welcome back to the afternoon session of issue-specific hearing 10 in  
2 relation to the Lower Thames Crossing application. My name is Rynd Smith,  
3 lead member of the Examining Authority, and we are resuming at the beginning  
4 of agenda item 4, public rights of way and non-motorised user routes. Excuse  
5 me. Now, we do have a subdivision of leads of the agenda items. So just to  
6 make clear, that agenda item (a), I will lead, Ms Laver will lead item (b) and Mr  
7 Taylor will lead (c) and (d). At least notionally that was the plan. However, I'm  
8 conscious that we've got some people who've been sitting here for quite a long  
9 period of time ready to put out their cases. So before we got stuck in, I did just  
10 want to check, particularly with both Mr Holland and Mr Finnis about the  
11 matters that you wish to speak upon because frankly, how we are chairing this  
12 is less important than bringing out the issues. So what I don't want to do is to  
13 artificially subdivide cases in a way that makes this take longer. Mr Holland.

14 MR HOLLAND: Mike Holland, Holland Land and Property. Thank you, sir. Going  
15 back to, just briefly, to the compulsory acquisition hearing last week, one of the  
16 reasons we are here is because I think your good selves wish to deal with the  
17 broader issues of NMUs and so I'm very happy to set those out as headlines.  
18 What I am particularly keen to do is ensure that Mr Finnis and Mr Benton have  
19 their opportunity to explain the broader issues they face with them, particularly  
20 bearing in mind that Mr Finnis has to disappear in an hour's time, so I'm very  
21 happy to come back to the headlines again once they've set out their views, if  
22 that's appropriate, but it may be a little bit mixed in terms of how you've  
23 structured the agenda.

24 [Pause]

25 MR SMITH: Now, with apologies for that brief discussion between the members of the  
26 Examining Authority, how we propose then to structure this is, as I indicated, it  
27 is important to get the in-principle issues onto the table as swiftly as we can. So  
28 I think we're going to vary the normal order, in part because we know what the  
29 applicant's existing position is. It's set out in the application documents when  
30 all is said and done. So what I think would be helpful is to ask parties attending  
31 with concerns about that position, to articulate those concerns and tell the story  
32 that knits together their written submissions and bring forward any additional  
33 material that they need. So I was going to suggest that we go to Mr Holland and

1           we go to Mr Finnis and – Mr Holland, can I just check – and Mr Benton, are you  
2           under Mr Holland’s umbrella or are you here separately?

3 MR HOLLAND: I think that’s the other way around, sir. He’s my client.

4 MR SMITH: But you wish to speak.

5 MR BENTON: Tom Benton. Yes, please.

6 MR SMITH: Okay, so let’s go to the three of you, then I was going to draw the councils  
7           in and other relevant interested parties with specific points to make about NMU  
8           handling, and then we’ll go to the applicant and we’ll do that across the whole  
9           of the agenda, so that means we’re cutting things a little differently. I think  
10          probably the best way to deal with that is I’ll stay in the overarching chair, but  
11          other members of the panel will need to come in on points of detail. Are we all  
12          content with that? In which case, what I’m going to suggest is if, Mr Holland,  
13          we start with you, we then go to Mr Benton and then we go to Mr Finnis, or in  
14          fact no, maybe we start with Mr Finnis and then he can go when he’s done.  
15          Would you be content with that?

16 MR HOLLAND: I’ll set some headlines out first and I won’t take too long so that  
17          Mr Finnis and I can come back to some – is everyone okay with that?

18 MR SMITH: Yeah.

19 MR HOLLAND: Obviously, the extent of the existing and the proposed WCH routes,  
20          public rights of way, are set out in the applicant’s project design documents, so  
21          largely we refer to those where the information has been supplied as part of the  
22          application. The compulsory acquisition hearing last Tuesday touched on the  
23          issues arising in relation to the permanent acquisition of those rights of way, and  
24          I think to some extent we progressed that discussion last week with the  
25          assistance of Mr Tait on behalf of the applicant, to suggest that there may be  
26          some other means by which those rights of way could be brought forward  
27          without the permanent acquisition of land, and by that I mean some form of  
28          dedicated –

29 [Crosstalk]

30 MR SMITH: As we’ve discussed, yes.

31 MR HOLLAND: One of the main concerns is centred around the extent of rights of way  
32          that are proposed beyond which exist at present, and particularly the upgrading  
33          of rights of way, both existing and new rights of way, to bridleways, and in  
34          particular, we’ll come to that under Mr Finnis’s and Mr Benton’s evidence as to

1 the issues that that creates, particularly in relation to unauthorised access, and to  
2 use a phrase which was mentioned in the hearing last week, what those ‘robust  
3 measures’ might be in order to secure those rights of way to prevent  
4 unauthorised access from happening, based on our experience to date as  
5 landowners, and I should say I do include the Mott family in the representations  
6 I’m making now.

7 In addition, there’s quite a lot of reference to permissive routes proposed  
8 as part of the WCH network and there is clarity required as to what that actually  
9 means. My understanding of permissive paths is that, generally speaking, they  
10 are permitted by the landowner either under a formal or informal arrangement.  
11 If it’s formal, it tends to be with the council, and there are arrangements for how  
12 those are then maintained and who is responsible for those costs, but in broader  
13 terms, dealing with the issue of the upgrade to bridleways, if you look at the  
14 proposals across the northern section of the LTC alignment, really from  
15 Coalhouse Fort all the way through to North Road, which obviously is a  
16 particular focus of the three of us, the way in which those proposals have been  
17 put forward means that essentially there would be an upgraded bridleway  
18 network all the way through that section, which, in truth, then opens up that  
19 entire tranche of land to the sorts of unauthorised access and problems that we  
20 have been making reps on to date.

21 And obviously, a lot of that centres around security, but I would remind  
22 everyone that landowners have a general duty of care for anyone who’s on their  
23 land, whether they are there with permission or not, and that, of course, creates  
24 a huge and significant liability on landowners where rights of way are being  
25 added to in the context of this project. Also, I would just say as a broader  
26 comment, that the project design documents do allude to the project, looking  
27 towards what might be a future development and anticipating what that may be,  
28 and also recognising the aspirations of some other stakeholders, and I know I  
29 keep repeating myself, I’ll do it one more time, hopefully, which is this issue  
30 around ‘need’ and ‘want.’

31 What the project actually needs to deliver, where it may be interrupting an  
32 existing right of way and that needs to be addressed, or where there may be –  
33 referring back to the national planning policy statements, some expectation of  
34 some improvement, but it feels to us that the existing proposals of the applicant

1 are going well beyond that and leading to the sorts of issues that landowners are  
2 deeply concerned about. I would also just address one point which arose in the  
3 last compulsory acquisition hearing in relation to our responses to the applicant's  
4 various consultations prior to application, and just looking back, certainly on  
5 behalf of E and K Benton, we did object to the proposals in the 2020  
6 supplementary consultation, and also in the design refinement consultation, and  
7 also in relation to the Mott family, there was an objection in relation to the land  
8 use change north of Station Road in October 2022, and also a meeting with the  
9 applicant on 31 March 2022 where our objections were made quite clear.

10 So I would just make that point that we haven't been passive in this  
11 process, we have made our feelings known, and given the extent of the impact  
12 that is likely, two questions arise. One, how has the applicant assessed the  
13 impact on land ownership and the long term nature of those a) maintenance, b)  
14 security, and c) the impact on their own quiet enjoyment of their land, but also  
15 whether it is proportionate, whether what is being proposed is proportionate in  
16 the context of the scheme as a whole. What I might do is, having just set those  
17 broad headlines out, if I could just hand over to Mr Benton and Mr Finnis,  
18 probably Mr Finnis first.

19 MR SMITH: And I think what would assist us, given that we're now moving from the  
20 general to the highly specific, as I take it, is if we can get the relevant plan sheets  
21 up so that we can see the specific land holdings and the rights of way proposals  
22 that are at issue. So that would help immensely.

23 MR HOLLAND: Yes, I think both Mr Finnis and Mr Benson have provided some  
24 photographic evidence – plates – of the issues that they face, real time, but if  
25 there are plates that would help everyone in the room understand the network, I  
26 would suggest probably, if the case team could find a project design WCH route  
27 plan, that would also assist.

28 MR SMITH: Yeah, can we have – well, we're up to way and access plans, and this is all  
29 north of the river, isn't it?

30 MR HOLLAND: Correct.

31 MR SMITH: So it's volume C, I think, from memory.

32 MR HOLLAND: Yes, it might be APP-512, I think, would be the relevant one, unless  
33 the applicant feels there is a better plan.

34 MR TAIT: Sir, there were the supplementary plans provided which is –

1 MR SMITH: And there were the supplementary plans as well, as we were saying.

2 MR TAIT: – REP2-72 through to 74.

3 MR SMITH: Thank you.

4 MR TAIT: And I think this may, depending on exactly where it is, but north of the river  
5 it'll be 73 or 74, probably 73.

6 MR SMITH: Okay, well, perhaps if Mr Finnis can identify where his land is and we'll  
7 try and get to the right plan.

8 MR FINNIS: Thank you, sir. Jeremy Finnis, married to Diana Cole, and representing  
9 the wider Cole family. My eyesight is not what it was, and the farms extend to  
10 about two and a half thousand hectares, so a good deal of what you have on the  
11 screen at the moment is under our management, running almost to the River  
12 Thames, then up to Bulphan, so a good number of the rights of way that you can  
13 see on there, particularly now on the screen, are under our supervision. C H  
14 Cole & Sons is our business. It's a sixth-generation family farm covering, as I  
15 say, some two and a half thousand hectares in the Thurrock area, and we are the  
16 largest farmers in that part of Essex and we're probably the most affected party  
17 in terms of land of this whole project, standing to lose something like 1000 acres,  
18 400 hectares, either temporarily or permanently to the road and its associated  
19 works.

20 The road bisects both of our main farms, Cherry Orchard and Mill House  
21 farms, about seven kilometres in length, and it will have a profound effect on  
22 our entire farming business beyond what we're talking about this afternoon. So  
23 there's a cumulative effect on us as a family. We already accommodate many  
24 public access routes, some of which you can see on the screen at the moment,  
25 and cooperate with the authorities in keeping these in good operable condition.  
26 There are 39 footpaths and four bridleways totalling over 40 kilometres of access  
27 already. We're mainly concerned about the malicious use of these, but an  
28 independent report from last year showed that 86% of normal access users broke  
29 the countryside code.

30 The upgrading of footpaths to cycle or bridleways is likely to lead to the  
31 worst effects that I'm about to go through. Just as a precedent, sir, when The  
32 Mardyke Way was created initially, which was around about 1988/'89, the  
33 family received compensatory payment of £250,000 at that time to recognise the  
34 long term damaging effects of creating an access like that on hitherto completely

1 private land. I will try not to come across as 'get off my land' type of farmer.  
2 You will forgive me if it may sound like that. It's certainly not the case. In our  
3 case, we actually welcome the public. We have school visits and so on.

4 It's something we are proud of, but in the semi-urban context such as ours,  
5 these accesses often result in many difficulties and considerable ongoing costs,  
6 as I've set out here, and we hope the panel and indeed the applicant take these  
7 fully into account when considering further additions or enhancements, and  
8 incidentally, sir, thank you for indulging my timetable this afternoon. That's  
9 kind of you to let me speak a bit earlier than might otherwise have been the case.  
10 Some examples of the disruption we experience. I will go through a list and  
11 forgive me, you have a copy of this paper, but I think it's important for people  
12 to hear what actually happens on the ground most days of the week.

13 The public and modern farm machinery are not really compatible,  
14 especially now farm machinery is much larger and faster than it used to be, so it  
15 is becoming increasingly dangerous to mix the two, especially, sir, with  
16 bridleways, where horses are easily spooked by big machines. The creation of  
17 a new right of way permanently extinguishes our production capacity on that  
18 area and can lead to ongoing problems, especially through littering, in the case  
19 of footpaths. An example from a couple of months ago was a bottle discarded  
20 from a footpath ended up going through a combine harvester unbeknownst to  
21 us, and it contaminated one 30-tonne load of grain, which was condemned.  
22 That's £6,000 from one bottle discarded on a footpath.

23 Spraying of essential crop protection products and any water for irrigation  
24 cannot take place when the public are on these rights of way, and it can lead to  
25 many hours of productive time lost because the driver has to wait till it's safe to  
26 carry on. In the next 10 years, and I would emphasise this point, sir, tractors in  
27 particular are likely to be driven autonomously and without the need for human  
28 intervention. It's already happening, but like cars, there is a good deal of  
29 development still to do, but in fields, of course, it should be a lot safer than on  
30 roads. However, when there are public access routes going through fields, this  
31 development might not be able to take place on our farm.

32 I did produce some slides which are now on the screen in a slightly  
33 different order to my paper, but the slide you're looking at now, those slides are  
34 all of fly tipping and they're all on Mill House Farm, which is the southern half

1 of our enterprise, all taken on the same day. So we did have a particular rash of  
2 fly tipping and we have to deal with anything that's not deemed to be on the  
3 highway, and on our land, we have to deal with it. The bottom right image is a  
4 fuel tank on our private land, dumped there by a friendly travelling family.

5 The next slide, please, is – okay, this is Saffron Gardens Farm, and  
6 incidentally, I took pretty much all of these pictures, so I'm speaking from direct  
7 experience. That Saffron Gardens Farm, off footpath number 81, children broke  
8 the fence down and then set fire to the building adjacent to where that fence is,  
9 and that's several thousand pounds worth of damage. They were using it as a  
10 cannabis smoking den.

11 Next one, please. Now, that's a pile of straw bales that had been sold but  
12 not moved, and children came in off the green lane bridleway and set fire to  
13 them. That's £8,500 up in flames, and okay, insurance did cover that loss, but  
14 then the premiums go up and it becomes an ongoing extra cost to us. All these  
15 pictures have been taken in the last three years.

16 Next one, please. On the left, difficult perhaps, for you to see, but if you  
17 scrutinise carefully, the whole of that track on the left is covered with nitrous  
18 oxide cylinders, hundreds and hundreds of them. It's quite a frequent thing that  
19 we get. I know they're about to be banned, but that's just an example of the sort  
20 of pollution we get, and something we have to clear up. On the right is more or  
21 less the same place. A gate has been smashed down so that hare courses could  
22 access that field, and you'll see from the green gates – I hope that we make those  
23 gates. They're made out of full sized RSJs (rolled steel joists), because we  
24 cannot use ordinary gates. They are simply either stolen or pulled down. Even  
25 those gates cost several hundred pounds to make, and I think I said in my paper,  
26 we've got electric gates in several places now which we can open remotely, and  
27 they're £10,000 each, so that's the thick end of £100,000 just in gates. This is  
28 to try and stop the malicious activity that I'm describing.

29 Next slide, please. That's just an environmental enhancement. We've  
30 done a pond, but thrown in there are various nasty things, but the obvious ones  
31 are traffic cones, but there were other things in there, including engine oil, so  
32 that the environmental enhancements we tried to do to be good, responsible  
33 custodians of the land come to naught when you get that sort of behaviour.  
34 That's off footpath 79. That's how the access was gained.



1           The next one is something which is quite a serious problem. It doesn't  
2 look very much. There are some ingoing and outcoming vehicle tracks, but the  
3 field on the left is salad onions. So we produce about three million bunches of  
4 salad onions a year, and when you get things like that, where cars drive across  
5 it, you can't use the crop. Pipes that irrigate the crop are on the right hand side.  
6 They have all been run over, so we weren't able to irrigate the field, and onions  
7 rely on water. So that was footpath 67 with damage done.

8           Next slide, please. Slightly distorted, but that's motorbikes and quad  
9 bikes. Tom Benton will tell you about these, possibly even worse than us for  
10 this, but this is pretty much every Sunday. That's on footpath 64. Not meant to  
11 be on a footpath, of course. Very, very frequently driving across fields and to  
12 such an extent that – we have a livery yard at Bulphan, and the people who  
13 occupy that livery yard are unable to use The Mardyke Way bridleway because  
14 these guys are on there at the weekends terrorising everybody, especially horses,  
15 because horses will bolt if they are frightened by those vehicles, and the thing  
16 we'd like to emphasise, that Mike Holland has described to you, is that when  
17 you upgrade a footpath to a bridleway, keeping those vehicles off it is almost  
18 impossible if you have to allow horses on. So by imposing on us some of these  
19 new accesses, you're condemning us to generations of issues. Just wish to point  
20 that out that.

21           We're coming towards the end of the slides now. That slide is from this  
22 last year gone. The one on the left was a machine stolen from the Bulphan Solar  
23 Park, driven round the field as a joyriding exercise and then burned out with all  
24 the glass, which you can see on the ground, the glass, the oil and everything else  
25 left on the field. So quite a lot of a clear up job, and the one on the right is  
26 another joyriding exercise driven around and around the fields, and that was an  
27 access from The Mardyke Way and burned out in the field.

28           I think we're getting there now. A couple more. On the left there is  
29 somebody with a shotgun, unauthorised, didn't ask for any permission to do this.  
30 So there are people riding them out with firearms without any permission.  
31 That's to go poaching, and on the right, they are metal detecting, unauthorised  
32 again, and they dig up particularly things like potatoes. We grow 3,000 tonnes  
33 of potatoes for chips and when we've moved the ground for potatoes all these  
34 metal detectorists come in, usually at night, they're called nighthawks, and take

1 away whatever they find. Nothing's ever recorded, the archaeology is lost and  
2 they access via footpaths generally. In that case, I think that's 78.

3 Final slide. On the left is the aftermath, which we've already done some  
4 clearing up on, of a rave. So we reckon probably 500 people turned up on a  
5 Saturday night, erected a little stage, which is the black structure you can see at  
6 the back, and that place was littered with all sorts of things, some of which I  
7 won't describe to you, sir, but there were hypodermic needles on that site, which  
8 are particularly hazardous things to deal with, accessed via the green lane and  
9 The Mardyke Way in that case.

10 Final slide. That's the response unit for hare courses. We're very pleased,  
11 actually, the police are taking more interest in hare coursing because it's done  
12 by some very undesirable people for money mostly, betting on dogs against  
13 hares and indiscriminately driving around the farms, particularly over the crops.

14 So, ladies and gentlemen, that's just a little selection of what we have to  
15 face when we open our farms up to access. We're not against access if done  
16 responsibly. Unfortunately, it often isn't, and where you have bridleways in  
17 particular, quite perversely, horses won't use them because the bikes do. It's  
18 very, very hard to put up structures to stop bikes which don't stop horses. I think  
19 I've probably occupied enough of your time, sir. I'm willing to answer  
20 questions, of course, and I think Tom Benton might supplement some of my  
21 comments as well.

22 MR SMITH: Well, before we go on to Mr Benton, I do see our colleague Mr Young is  
23 on screen, so he may have some questions. My immediate overarching question  
24 is in relation to the specifics of individual proposed bridleway rights of access  
25 and the degree to which we have from you a clear, probably no more than a  
26 table, but a table setting out those that are the subject matter of that broad  
27 concern that you've raised. So the ones that you would essentially be urging  
28 upon us to consider whether they ought to be made, whether the balance is in  
29 favour of them being made, or actually, the matters that you're raising should  
30 weigh in the balance against them. So if we've got a table already, and apologies  
31 if you've submitted it and I've overlooked it, but we will find it if you can point  
32 us to it. Alternatively, if it's not already in in that form, then it would be good  
33 to see it at deadline 6.

1 MR FENNIS: Thank you, sir. I haven't tabulated it. An example would be footpath 79  
2 upgraded to a bridleway, but actually all of the proposed upgrades to bridleways  
3 give us cause for concern, but I can detail that afterwards in an email or however  
4 it's –

5 MR SMITH: Yes, if it comes in in writing by deadline 6, then we will review all of those.

6 MR FENNIS: Yeah, I can certainly do that.

7 MR SMITH: Yeah, an annotated plan. Use one of the existing application rights of way  
8 plans and just circle them. That's very simple.

9 MR FENNIS: Thank you very much.

10 MR SMITH: Okay, Mr Young, did you have questions that you wanted to raise?

11 MR YOUNG: Yes, sir, a couple of questions on Mr Finnis's slides, if I can. There is no  
12 doubt quite a bit of nefarious activity taking place on the land. I don't think  
13 anybody would dispute that. What I'm less clear on from your little presentation  
14 is tying that to the use of public footpaths and bridleways. It's quite clear, I  
15 think, from nearly all of those pictures, that that was activity that was associated  
16 with inappropriate use of vehicles, whether it be the fly tipping, the canister, the  
17 quad biking and burnt out vehicles. That's not walkers, cyclists and horse riders  
18 per se, is it? That's not walkers that are disposing of that sort of fly tipping in  
19 laybys. That's the first thing to put back to you.

20 I think very little of those photos you've shown us is associated with a  
21 genuine use of footpaths, and I guess the wider point is, as an inspector that dealt  
22 with Defra casework over many years, we often hear about landowners'  
23 concerns about activity that might arise from imposition or even diversion of  
24 rights of way. I don't know if it would be helpful – I don't know if you're aware  
25 of any cases where, I'm certainly not, where the Secretary of State has failed to  
26 make an order based on those concerns, not least because most of those issues  
27 you talk about, they are illegal. So riding quad bikes on a footpath, that would  
28 be an enforcement matter.

29 It wouldn't really be a reason not to designate a right of way in the first  
30 place, because we don't really legislate for the small minority of irresponsible  
31 people, and just finally, and you can come back on all of it, you said it would be  
32 virtually impossible to prevent the use of footpaths, or you may have been  
33 talking about bridleways, by motorised vehicles. That's not my experience  
34 either. There are various measures out there, and one only needs to Google that,

1 and you'll come up with various measures. Squeeze gates are typically used,  
2 and barriers on the ground. There's one not too far from me, at the Ivanhoe  
3 Way, where they have that with an old railway line that was converted. They  
4 have those gates at either end, and they never had any issue with vehicle access  
5 on there. So it may be something to come back on in writing. Whether you  
6 want to sort of answer that now, I'll leave that with you.

7 MR FENNIS: Thank you. There are several points to answer there. First one about  
8 footpaths. An example I didn't give, and I haven't got a picture of it, and you  
9 wouldn't want to see it, is people walking dogs on footpaths allowing their dogs  
10 off, and then we get pollution of the kind you can imagine in our vegetable crops,  
11 and with a crop like salad onions – and these are legitimate walkers, they're not  
12 criminals, but they let dogs off their leads, and the dogs pollute the crops  
13 frequently, and you eat a salad onion raw, so we try to be very firm. I think the  
14 point you're missing about the other uses, of course it's criminal, but by opening  
15 up the accesses, increases the frequency of this activity to us on the ground  
16 manyfold.

17 So I don't think it's quite right of you to say that it doesn't have any effect,  
18 and the fact that it's illegal – the fact that you open it up – and when the Mardyke  
19 wasn't there, we didn't have any of these problems. Now we have The Mardyke  
20 Way there, we get a terrific amount of problems. So it's asking you to recognise  
21 that, and just on the point about barriers, it's slightly condescending to think we  
22 haven't actually looked into this. We certainly have. The only thing that works  
23 is a proper gated access, but that is incompatible with a bridleway access,  
24 because issuing keys and so on – it's almost practically impossible because you  
25 don't know who's going to come onto the bridleway. Thick metal gates will  
26 work, but we're not allowed really, to use them.

27 MR YOUNG: But why wouldn't squeeze gates work or physical barriers on the ground?

28 MR BENTON: Tom Benton. We've had bridleway gates, and for it to be low enough  
29 for a horse to be able to step over, it's low enough for anyone to be able to lift  
30 their motorbike or quad bike over, and unfortunately, maybe this is just an area-  
31 specific – well, Thurrock is an area that is prone to this activity. You talked  
32 about your experience. It's a different area. Thurrock has a lot of this activity  
33 and these bridleways are a magnet for it, and we've had van loads of motorbikes

1 coming from London and Kent to use these bridleways and they're well known  
2 in the area.

3 MR YOUNG: And what's the police's attitude or the local council? Have you had  
4 meetings and talks with Thurrock and with the police?

5 MR FENNIS: Jeremy Finnis. I'm on the Essex Rural Crime committee, meeting  
6 frequently with Police and Crime Commissioner Roger Hirst and the Chief  
7 Constable and others, so yes; we are in frequent contact with the police. They  
8 do their best, but the response times and the practical nature – or impractical  
9 nature, of trying to catch someone on a dirt bike means these are very, very  
10 difficult crimes to solve. I'm not going to criticise the police, because they do  
11 try, but it's something that's not always high up their priority list. I think Tom's  
12 probably had more experience than me.

13 MR YOUNG: Yeah, just on that quad bike – go on. Apologies, sorry.

14 MR SMITH: Mr Benton was just about to speak, Mr Young, so if Mr Benton could come  
15 in and then you can pursue the question further. Sorry, Mr Benton.

16 MR BENTON: Tom Benton. We have had the police out and they do engage. Often  
17 this activity is on a Sunday when they're very short staffed, so they can't come  
18 out, but they said, in effect, in reality, there's very little they can do, and when I  
19 said about the Lower Thames Crossing proposals for the new bridleways, they  
20 couldn't believe it because they said the bridleways that they've got down at  
21 Tilbury and across us at Ockendon, this is where all of the problems are attracted  
22 to, and they just thought more bridleways in the area is just going to create more  
23 and more problems and they're going to have the complete opposite effect to  
24 what they're designed for, because they're going to be putting people off using  
25 the areas because they're areas of antisocial behaviour now.

26 MR YOUNG: Just on that quad bike photo, are you saying that – I'm a little bit unclear.  
27 Are you saying that have they broken down the gate or lifted that? There's no  
28 physical way you could get that quad bike through a squeeze gate, for example.  
29 There's just no physical way you could do it, so I'm just unclear what type of  
30 barrier you've got in terms of that – the dirt bike, yes, there might be an argument  
31 they could get that through a squeeze gate and lift that over some barriers, but  
32 the quad bike...?

33 MR FENNIS: You'll be amazed where quad bikes will go. They'll cut a hedgerow down  
34 sometimes to get through. So we do our best with gates, but when you create

1 the attraction of a track, a bridleway to get into a place that's, as Tom said – in  
2 our case, Buckingham Hill, which some of you might be familiar with, it's not  
3 a million miles from where the new route is going to be. There's an old gravel  
4 working, and every Sunday you'll get van loads, as Tom says, of quad bikes and  
5 dirt bikes turning up just simply to use the tracks. It's an absolute nightmare and  
6 it's ongoing, and believe you me, we do our best, but the time taken to do all this  
7 and the cost is extraordinary.

8 MR SMITH: At this juncture what I'm just going to do – I'm conscious that I have Mr  
9 Pratt in the room, who did have a question to Mr Finnis. I'm also conscious that  
10 Mr Benton has provided some insight into Mr Finnis's points, but Mr Benton  
11 has still got his own points, in principle, that he wishes to make. So I would also  
12 like to move through that material first and then actually go back to Mr Holland  
13 so that we can understand the overarching picture, but Mr Pratt, can you just ask  
14 that question of Mr Finnis.

15 MR PRATT: Yes. Mr Finnis, Ken Pratt, panel member. Sorry, we can hardly see each  
16 other. Am I correct in understanding that you said the issues commenced, really,  
17 when the Mardyke access was opened up to a public footpath or to a bridleway?  
18 I can't remember whether it's a footpath or a bridleway just now, but it started  
19 really when that opened up?

20 MR FINNIS: Jeremy Finnis. Yes, 1988 was the public inquiry, I think, for The Mardyke  
21 Way, which was to create a new bridleway – it is a bridleway, and the trouble  
22 started shortly after. I would say they've got worse in the last five to 10 years,  
23 that's the motorbike use of that, because the access is so easy, from the Harrow  
24 Pub, which used to be the Harrow Pub, at Bulphan, and not so easy at the other  
25 end, at [inaudible], but they do use it, but actually they come across most  
26 frequently from Tom Benton, who's on the other side of the Mardyke, to us,  
27 from Ockendon. So they actually come from all directions, but the bridleway,  
28 because you can put a stile across a footpath, a robust stile, that will stop a  
29 motorbike, but you can't do that on a bridleway.

30 MR PRATT: My question really is – The Mardyke is maintained by the Environment  
31 Agency. It's classified as a main river. Therefore, presumably they have a right  
32 of access for a machine to trundle along the bank top, which would mean that  
33 prior to the bridleway being designated as such, the Environment Agency or  
34 their predecessors would have probably had access to the bank top to maintain

1 that water course, and I was just going to ask, did you have problems with people  
2 using their access when it wasn't actually a designated route? Because I know  
3 from my personal experience, any access point is open for anybody to use,  
4 whether you want them to use or not, and as I say, the Environment Agency or  
5 their predecessors would have had a right of access that presumably you or the  
6 landowner – would have had to give them in order to maintain their works.

7 MR FINNIS: Yes, in those days, it would have been my father-in-law, Robert Cole.  
8 Prior to the bridleway, we had gates on every junction of ditches – they're deep  
9 ditches, and Orsett Fen is very flat and requires to get a deep ditch. So the deep  
10 ditches form a confluence with The Mardyke at each field boundary. Each one  
11 of those had a robust gate which we would open for the access, rather too  
12 infrequent access, of the Environment Agency because The Mardyke is choked  
13 up again and we're awaiting the maintenance works, but yes, each field junction  
14 with The Mardyke had a robust gate which would stop people using it as a  
15 highway, if you like, for motorbikes. So in those days, that's how we controlled  
16 it.

17 MR PRATT: Thank you, Mr Finnis.

18 MR SMITH: Okay, so can we then move on to Mr Benton? Now, Mr Benton, what I'll  
19 say is, if there's material that Mr Finnis has drawn in that you agree with, then  
20 we can simply just say that you do, but this is your opportunity now to tell the  
21 story in relation to your own landholding and particularly in relation to things  
22 that may be different or particular from those points that Mr Finnis has raised.

23 MR BENTON: Thank you, sir. Tom Benton, landowner in South Ockendon. I did talk  
24 through some of this last week, so I'll repeat some of it, but skip other bits.  
25 Could I have my slides of photos up as well, please? Thank you for letting me  
26 come and speak today. Yes, I farm at South Ockendon where the Lower Thames  
27 Crossing cuts our farm in half. When the project was first discussed we were  
28 initially against it, but we were getting used to the idea of a road bisecting the  
29 farm. However, a few years later these WCH routes, or NMUs, and footpath  
30 upgrades were announced. They are something that we object to much more  
31 strongly than the actual road. We have a number of footpaths that already cross  
32 the farm. While footpath numbers 136, 132, 135 – and on the whole these are  
33 respected and are used responsibly – however, the Mardyke Way bridleway 219

1 which you have been talking about neighbours our land, and this is the one that  
2 causes no end of problems.

3 It's just a simple fact that unfortunately, by opening up land to horses,  
4 bridleways open up land to everyone, and this means we get the off-road  
5 motorbikes and quad bikes roaring up and down the bridleway on a weekly  
6 occasion. Every Sunday, they're out. As I've said, Thurrock has become a  
7 magnet for off-roading and vans come from London and Kent. It's on their –  
8 they've got a Facebook page, Essex Bike Life. They're on there promoting these  
9 Sunday Fundays that they call them, and you get 30-odd bikes roaring all over  
10 your farm, and I know the Mardyke Way is one of their popular routes to go on.  
11 The Mardyke Way is quite a remote area, so bridleway gates that have been put  
12 in place have been cut down because there's not many pedestrians use it. We've  
13 farmed there since 1995. I've seen horses use it a handful of times. So they get  
14 away with all that sort of activity because they're scaring everyone else off.

15 I don't know whether you can zoom in to that photo, but that's the day  
16 where we had 27 bikes roaring all over the farm for three hours. It was awful,  
17 absolutely awful. The financial cost is nothing compared to the psychological  
18 one that it's caused, and now weekends often you'll be out in the garden and  
19 then 12.00 comes and you can just hear the roaring of the motorbikes and you  
20 just think, 'Where are they?' You can't enjoy your weekend, and we work hard  
21 enough as it is, so this time of year you want to enjoy your weekends and you  
22 can't because you've got these people driving all over your land, and they're not  
23 nice people either. When you challenge them, you get driven at, and when  
24 you've got young children with you, it's not fun. So it's made the Mardyke Way  
25 a no-go area for horse riders. I sell a lot of hay and straw, so I speak to a lot of  
26 horse owners, and they don't use it because it's just too dangerous.

27 This is an example – you've seen the photos of all the motorbikes. This  
28 is we put some fencing up. I think that fencing cost £800. That was cut down  
29 within a week. Sorry, if you slide through – what's the next slide? Oh, that's  
30 [inaudible] tracks, and then we've had to put in things like this because you want  
31 to try and block access. You could easily spend, as we have done, thousands.  
32 It's so expensive, and then they come and cut gates that you've just spent  
33 thousands on. So we try and put things – we try and use things we've got at our  
34 disposal like these IBC containers. We fill them up with dirt. But even then,



1 they come along with quad bikes and tow them out of the way – and off-road  
2 vehicles. So it's an ongoing battle and you've just got to try and make sure you  
3 don't spend thousands which is then wasted.

4 Can we go through any more photos? I think there's a picture there of an  
5 electric gate that, like Jeremy's one, cost about £10,000, and the bikes came off  
6 the bridleway, over the farm, then the only other access out is through our  
7 electric gate which they then ripped the keypad off. Oh, it's not on there, but  
8 that's fine. I'd also specifically like to talk about the proposed new NMU route  
9 that comes off North Road. I don't know if there's a slide of it. So just north of  
10 that. Yeah, so it's where the red line goes over the LTC, it's that little blue line  
11 there. There we go. This is particularly concerning to me as it is very near to  
12 my house, and yet I don't understand why it's needed, and there seems a  
13 practical and easy solution that doesn't need a new WCH route.

14 There is already a pavement alongside North Road, which runs parallel to  
15 the proposed WCH route, that pedestrians can use. It got referred to as a kerb  
16 last week, but it's not a kerb. It's a proper pavement, overgrown in places, but  
17 I measured it this week and it's over 1.2 metres wide. It just needs the vegetation  
18 cutting back. When speaking to National Highways about this route, they argue  
19 that cyclists need a path as the speed limit changes from 30mph to 40mph along  
20 that stretch of North Road, but I can't understand why they say it is outside their  
21 remit to simply extend the 30mph zone by only 90 metres further north, which  
22 would bring it out to the foot of the North Road bridge, where it will meet the  
23 planned WCH route joining footpath 135.

24 It also seems more logical to have any WCH route on the west side of  
25 North Road and not on the east, as the majority of users will be using it to access  
26 Thames Chase, which is also on the west, and mean that they will not have to  
27 cross North Road. In conclusion, I would strongly argue that we should not be  
28 having any more rights of way forced onto our land, and the only changes should  
29 be reconnecting any that are severed by the new road. Even in these  
30 circumstances, the existing public rights of way should stay as footpaths so that  
31 the power remains with the landowner to control their land and implement  
32 restrictions if problems persist. As the landowners, the ownership must stay in  
33 our possession and not transfer to a third party, as we must be able to put access

1 restrictions in place such as stiles and gates to protect our land, which we can do  
2 with current footpaths.

3 Unfortunately, there is nothing on the market, or that can be made, that  
4 can allow access for a horse that does not also allow access for these motorised  
5 off-road vehicles. We have tried them all, but with no success. I cannot stress  
6 how much trouble bridleways bring, and they would have a far greater negative  
7 impact on the countryside and rights of way than any positives. Thank you.

8 MR SMITH: Thank you very much. Now, any clarifying – or any questions sought  
9 there? I think the principles, Mr Benton, there are very much in the same bracket  
10 as the principles raised by Mr Finnis’s submissions, so I’m going to suggest we  
11 move on now to Mr Holland for an overarch. Now, Mr Holland, if you can bear  
12 in mind all four agenda items, because we’d like to hear the piece in relation to  
13 all of those. At that point, then I will look at where we go with the other parties  
14 and the order of the agenda in relation to them.

15 MR HOLLAND: Thank you, sir. Well, I set out the headlines earlier, and obviously in  
16 procedural deadline C, myself and Mr Finnis’s agent set out what our general  
17 concerns are, so I won’t repeat those. Mr Finnis and Mr Benton have set out  
18 very well the sort of practical issues they face. I think what I would say is  
19 seemingly there’s been no impact assessment on the landowners of the rights  
20 that have been proposed, and if there is I’d like the applicant to point us to it.  
21 And I ask that question because there has been a specific lack of consultation  
22 with landowners on this issue, despite WCH routes being put out to formal  
23 consultation. Any responses, in our experience, have not been responded to  
24 specifically, or there has not been a high level of engagement on this matter.

25 And of course, lastly, as Mr Finnis and Mr Benton said, this is not about  
26 ‘Keep them off the land’; this is about how you manage a situation when  
27 something is in place, whether it’s existing or whether it’s proposed, and I think  
28 when you talk about impact assessment, the long-term hardship – money can’t  
29 solve all ills. And this is one of those areas particularly where the applicant’s  
30 proposals may not be easily compensated if they were to form part of the  
31 consented scheme, and I think that’s probably where, in the interests of time, I  
32 think we’ve probably got to.

33 MR SMITH: Thank you very much.

1 MS LAVER: So I just wanted to clarify – the issue is bridleways, primarily. I mean, I  
2 know there was reference to dogs being off leads, but we really are at the nub of  
3 the bridleway being the issue because you struggle to secure the access. As you  
4 said, you probably can't have a gate which prevents bikes, quad bikes, and so  
5 on without preventing horses. So is that really where we're at the nub of the  
6 issue?

7 MR HOLLAND: Mike Holland. Yes, Ms Laver, I think it is. It becomes unpoliceable.

8 MR SMITH: And in that respect, it's bridleways and it's physical measures that control  
9 access, so are there gates that feasibly operate to manage – or controls that  
10 feasibly operate to manage these issues, and then there's the final dimension  
11 around enforcement and enforceability.

12 MR HOLLAND: Well, to some extent, dealing with the gate issue, I think the gentlemen  
13 on either side of me have probably answered that. I mean, without reference to  
14 a large charitable organisation who's interested in bird preservation, they also  
15 have a very large habitat down near Pitsea, near the landfill, and I do have direct  
16 experience of that as I used to act for the farmer, who sadly passed away a couple  
17 of years ago. They did put these – what is supposed to prevent bikes from  
18 entering, and they still had problems. These were galvanised structures that  
19 lifted the heights of – a horse could walk through them. So that's the nub of the  
20 issue.

21 There of course is a concern over the web of network of proposed routes.  
22 It would be wrong of us to say there isn't, but it's about how – it's the  
23 classification of those routes and who can use them that is the real problem, and  
24 what you end up creating – which happy to identify it on a plan in written  
25 submissions by D6 if necessary – but it's the fact that you open up a huge tranche  
26 of land where there are existing break points. You know, it stops this network.

27 I mean, if you talk to the police I would think they have a real job tracking  
28 motorbike use across this part of South Essex and, just to remind everyone, we  
29 are against a very large urban conurbation, and one that is proposed to increase  
30 substantially in the context of not only Thurrock's local plan but also  
31 neighbouring authorities, whether it is Havering, Brentwood, Basildon, the list  
32 goes on. We are in a high-growth area, so it isn't just about today's issues, it's  
33 about what is coming forward in the next 20, 30, 40 years.

1 MS LAVER: I think where the panel – where we’ve really got some deliberation to do  
2 on this is two items on the agenda in the design standards, which was my section  
3 b, one talks about whether the design standards are suitable and applied  
4 appropriately, and we’re hearing one side of the coin. The second part of that is  
5 whether opportunities have been maximised for non-motorised users,  
6 particularly walkers, cyclists, horse riders. The applicant’s case will be, ‘Yes,  
7 we are maximising, and look at what we’re doing with our network, and our  
8 web, and our bridleways,’ but the counter side to that is the antisocial effects on  
9 landowners, so it’s a real difficulty for us and we’re certainly not dismissing the  
10 concerns, but we’ve got to achieve sort of both aims.

11 It’d be interesting to hear how issues for landowners have been considered  
12 by the applicant. You’ve asked for that clarification, and I think it would be  
13 something that we’d like to hear from the applicant as well.

14 MR SMITH: And indeed we do have this issue of the way that similar issues have been  
15 handled in previous consents, so if we’ve got any useful insight that any relevant  
16 party around the table – by which I would flag interested parties, and come at  
17 this from a perspective of representing non-motorised users, interested parties  
18 who are landowners or who represent landowners, the applicant who has  
19 designed and managed highways, and indeed the local highway authorities who  
20 design and manage highways including the public right of way network – if there  
21 are any insights on emerging best practice around managing these issues as well,  
22 it would be useful to see those at deadline 6. Okay, well in which case – Mr  
23 Benton.

24 MR BENTON: Sorry, can I just say that wasn’t just specific to landowners. It’s the fact  
25 that it has affected the local community as well, because horse riders aren’t using  
26 the bridleways, and people aren’t using that bridleway to walk on or to cycle on  
27 because of these. It’s not just me as a landowner, it’s me as a –

28 MR SMITH: No, I’m conscious of that, and that was why when I made that broad  
29 invitation for potential submissions at deadline 6, to bring in within remit people  
30 who are representing the local community who use those accesses, including the  
31 horse riders and including the walkers. It would be interesting to see what, if  
32 anything, they have to say as well. Now, I did see briefly Mr Young. Mr Young,  
33 were there any final matters before –

1 MR YOUNG: Well, not really. I was just going to ask Mr Holland whether there was  
2 any sort of evidence to back up that claim that there'd been a decrease in the  
3 public's use of bridleways and footpaths in the area. Obviously, the applicant  
4 has done surveys as part of their submission documents on them, but yeah,  
5 without that sort of evidence, perhaps would be getting into assertion territory  
6 really, but nothing further than that.

7 MR SMITH: Okay. I do see a hand up from Ms Lindley in relation to Shorne Parish  
8 Council. Ms Lindley, we are part way through an item where we've already  
9 heard Mr Holland, because there were particular issues about the availability of  
10 certain of his representation, but I haven't forgotten you. Having got past this  
11 particular set of submissions, I was then going to make arrangements for the  
12 hearing of the rest of the agenda by the other parties, including parish councils.  
13 So that was how I was proposing to take that forward. What I'm going to suggest  
14 is if, Mr Holland, you are finished, that we break now and that we return at shall  
15 we say 4.00 p.m. and we will then move on on the remainder of the items on the  
16 agenda for all other interested parties who wish to speak on those. Thank you  
17 very much.

18  
19 **(Meeting adjourned)**  
20

21 MR SMITH: Good afternoon again, ladies and gentlemen, and welcome back to the final  
22 session of issue-specific hearing 10. My name is Rynd Smith, lead member of  
23 the Examining Authority in relation to the Lower Thames Crossing application.  
24 Now, in terms of handling this agenda item, we are part-heard in agenda item 4,  
25 and we are being somewhat fluid about the way this agenda item is proceeding.  
26 So what I'm going to do now is I'm going to ask for shows of hands from those  
27 in the virtual room, and those here physically remaining, who want to speak on  
28 items (a), (b), (c) and/or (d), and I'm going to ask you to wrap all four of those  
29 items, and then we'll come to the applicant for a global position, a global  
30 response, at the end.

31 And in that respect, we've had a very strong focus on the physical, on the  
32 design standards on (b), and to a degree on future maintenance, (c). Relatively  
33 little said so far on (d), or indeed on (a), but I'm just making clear that we're not  
34 aiming to forget those matters, and that it is open for you to bring those up. So

1 can I see show of hands in the room? Right. So we've got Thurrock. We've  
2 got Havering. We've got TfL. We've got Kent. Okay. Well, I'll tell you what,  
3 I think I will be going to Thurrock first. And then online, can I just check that  
4 we do have Ms Lindley from Shorne Parish Council, is that correct? And is  
5 there anybody else online? I'm afraid I can only see one hand. I do believe we  
6 just have Councillor Lindley online. So I'm going to start this, I think, with  
7 Thurrock.

8 MR EDWARDS: Thank you, sir. Douglas Edwards for Thurrock. So we have a number  
9 of relatively contained points in respect of some of these agenda items. In light  
10 of the time, sir, what we propose to do is to deal with a number of those in  
11 writing. There are, however, some points of wider relevance that I will ask  
12 various members of the team to deal with. Sir, in particular items 4(b)(i) and  
13 (ii), Mr Neve, who is online, is going to address, and then item 4(d) on the  
14 agenda, which Mr Plumb, who sits on my right, is going to deal with. The others  
15 we'll deal with in writing.

16 MR SMITH: I'm grateful. Thank you.

17 MR EDWARDS: So I invite Mr Neve to join the examination virtually. Mr Neve, if you  
18 could set out Thurrock's position in respect of agenda items 4(b)(i) and (ii),  
19 please. Mr Neve.

20 MR NEVE: Thank you, Mr Edwards, and Mr Smith, good afternoon. Adrian Neve on  
21 behalf of Thurrock Council. Can I just check you can hear me okay?

22 MR SMITH: We certainly can.

23 MR NEVE: Thank you. So firstly, just to reflect on what's been said previously by Mr  
24 Holland and his clients, and there's obviously a significant challenge that's  
25 before us as an industry, I suspect, on how to handle the widening of active travel  
26 networks, so I certainly don't dismiss that and we will, where we can, work with  
27 the applicant to try and improve that network but on the basis of hoping to  
28 actually improve that general active travel network, such that it is fit for its right  
29 purpose. So I think there's a background to that, because the question is whether  
30 the design standards have been applied and whether the opportunities to  
31 maximise facilities for walking, cycling, horse riding has been taken. So I will  
32 answer on that basis, if that's okay, rather than looking at tackling that other  
33 issue – a slightly more difficult conundrum.

1           So in working with the applicant, then I guess it's fair to say that there's  
2           been general positive movement towards the format of the active travel network  
3           that is emerging in the way that those routes are handled, and so the general  
4           design standards and design principles, there's reasonable work gone on on that  
5           basis. But what we as a council have said through both our local impact review  
6           and also through our statements of common ground issues is that there are yet  
7           some progress to be made on the format of some of the points and the principles,  
8           and the pinch-points within the network.

9           So if I could just refer you to our section 9.7 of the local impact report,  
10          which is REP1-281, where we discuss the legacy provision and the absence of  
11          significant legacy. And then within that same document, the LIR, we've got  
12          appendix C, annex 2, sub-annex 2.5, which is REP1-284, in which we set out a  
13          table that looks at the crossing points of LTC and whether we feel that suitable  
14          provision has been made within the width of those crossing points, and there are  
15          some instances, particularly Brentwood Road, where we don't feel that we've  
16          met together yet on the point and the detail that's coming out through those  
17          proposals.

18          So we're at this sort of impasse where our view is that some of those  
19          crossings should be future-proof, for future development and to allow us to then  
20          put in active travel provision, and to also allow for enhancements to public  
21          transport. So there's a table within our impact report which sets out the  
22          information of where we're at difference to the applicant on that.

23          Turning perhaps just to some minor points, points of detail, really, not  
24          wishing to dwell too long on them, but there's one particular aspect on Stanford  
25          Road, which is a proposal for a pegasus crossing from the end of Rectory Road  
26          that crosses the Stanford Road, A1013. And so again there's aspects that we  
27          will need to work through with the applicant on the detail. I believe that's  
28          covered by authorised works 7D. We'll confirm that in our written statement.

29          That's one aspect where there is a proposal for an enhanced crossing, but  
30          the view is that the local authority will take that on, and that there needs to be  
31          some further work in the detailed design to actually confirm how that will be  
32          brought forward, and I think that runs true for perhaps other aspects of the active  
33          travel network within the public realm. Also, that tends to highlight – from the  
34          conversations that we've just had around the challenges over active travel within

1 public rights of way – the importance of getting the active travel network right  
2 within the public highway so that we can optimise that use within that area, so  
3 that adds to that conundrum.

4 It would be wrong of me not to mention Orsett Cock and Asda roundabout  
5 at this stage. As it stands, there are no designs for any works at Orsett Cock or  
6 the Asda roundabout as part of the examination. We've obviously had extensive  
7 conversations about what would and may come forward at those two locations,  
8 but as it stands, if the question is 'Has enough been done to maximise potential  
9 for non-motorised users at those points?' then the answer has to be no, because  
10 there is nothing that is before the examination. And so we will need to make  
11 sure that as we develop through the conversations over the management and  
12 monitoring and the proposals at Orsett Cock, and also at Asda roundabout, that  
13 we take those opportunities to bring forward better provision for walkers and  
14 cyclists, particularly in those locations.

15 As I said, at the moment there's nothing before the examination that we  
16 can technically comment on. We're aware that as part of the modelling work  
17 for Orsett Cock, that there is an intention from the applicant to look at some  
18 signalisation of those junctions, so that would need to take into account that  
19 walking and cycling aspect. Lastly on this point – I'm trying to wrap 4(b)(i) and  
20 (ii) together – so it's lastly on this point is the aspect that National Highways do  
21 rely on active travel, walking and cycling, to access their compounds and within  
22 the framework construction travel plan, which is REP5-055, the applicant relies  
23 heavily on access by walking and cycling, and yet doesn't provide any proposals  
24 to enhance that ability to access its compounds, and in fact even states itself that  
25 it wouldn't actually support access to those compounds along routes where there  
26 isn't what they would regard as safe provision to those compounds.

27 So I think the applicant's got a conundrum there where it's reliant on its  
28 initiatives to gain access to the compounds, but not actually providing for it.  
29 Again, that's picked up in our local impact report at section 15.6. So hopefully  
30 that has wrapped up your section four, and probably hand back to Mr Edwards.

31 MR SMITH: Okay. Thank you very much, Mr Neve. Just let me check, any questions  
32 from my colleagues? No, not at this stage. Thank you very much.

33 MR EDWARDS: Can I then, sir, as indicated, ask Mr Plumb to address you briefly on  
34 agenda item 4(d), construction impact?



1 MR SMITH: Thank you very much.

2 MR PLUMB: Thank you, sir. This is sort of concerning whether alternative routes  
3 during construction have been fully considered and appraised, and the concerns  
4 we have with regard to the rights of way network in Thurrock. The routes are  
5 very localised. There's quite poor connectivity across the borough, and  
6 therefore it's very sensitive to routes being closed for, as has been discussed, for  
7 up to five years, so we're keen to fully understand what effects are going to  
8 occur.

9 The council's continually requested – for example within its LIR, which  
10 is REP1-281, section 10.12.6, and within statement of common ground, which  
11 is REP3-093, paragraph 2.1.30 – that the applicant produce a single plan  
12 showing the existing public rights of way with the closures colour coded for  
13 short, medium, long-term closures, and temporary diversions overlain to clearly  
14 show which parts of the network would be closed for prolonged periods, for  
15 which no alternative routes are available. The applicant has prepared its  
16 supplementary walking, cycling, and horse riding plans, which show the existing  
17 network and the proposed routes that are appropriate scale for this purpose. The  
18 applicant has repeatedly directed the council to various documents that cover  
19 our specific aspects, such as the streets subject to temporary restrictions of use  
20 plans, which is APP-028 and APP-029, which highlight the routes to be altered.

21 The DCO schedule 5, part 6, which lists the effective routes on the outline  
22 traffic management plan for construction, which is APP-547, which summarises  
23 the affected routes. As this list demonstrates, there is not a single clear plan  
24 which enables a proper assessment of the overall effects of the network to be  
25 made. One of the concerns, which again has been touched on this afternoon, is  
26 regard with the network and the sort of use of routes. If you close routes and  
27 there isn't a suitable alternative, whether people will start to deviate and find  
28 their own routes. So until these plans are produced, the council believes that it's  
29 not possible for the Examining Authority to fully assess the impacts of the  
30 overall walking, cycling and horse riding network.

31 The council again requested the overall plan in an email on 19 October,  
32 describing what was required, and set out again why the council needs it, and is  
33 waiting for the applicant's response, and we invite the inspectors to request this  
34 document so we can finally see and assess the impacts. Thank you.

1 MR SMITH: Thank you very much. Now, Mr Taylor, I believe you have a question.

2 MR TAYLOR: Yes. Ken Taylor, panel member here speaking. Yeah, I just really want  
3 to direct that to the applicant, that when you come back on this we can have a  
4 very specific response to that question from Thurrock Council about a clear plan  
5 showing the various diversions and so on during construction, because it could  
6 well be that that's an action that we as a panel feel is appropriate. So just want  
7 to park that there for now. If you could come back in due course.

8 MR TAIT: Yes, sir. I will comment on that in my response which will be, I hope, as  
9 compendious as possible to all the representations.

10 MR TAYLOR: Thank you.

11 MR SMITH: Thank you very much. So moving on from Thurrock, can I then go to Kent  
12 County Council, please?

13 MR FRASER-URQUHART: Thank you, sir. Andrew Fraser-Urquhart for Kent County  
14 Council. We've been struck by the curse of half-term here, so our footpath  
15 officer is not with us today, unfortunately. So Mr Ratcliffe is going to take over  
16 the burden of going through the agenda items in detail, but there are a couple of  
17 overarching points to make. The first is that, in response to a number of the  
18 agenda items, we consider ourselves to be handicapped by the lack of detail  
19 that's been provided as to the precise nature of the provision that's going to be  
20 made for both diversionary routes during the course of the project, and then  
21 subsequent improvements to the network. So for example, on matters of the  
22 nature of the diversion of the national cycle route, the design issues, and  
23 therefore going on into the cost issues, we're a little bit hampered in responding  
24 to those in detail because of that lack of detail.

25 So that's our first overarching point, which Mr Ratcliffe will elaborate  
26 some of the detail on. The second is that we do consider that where the agenda  
27 item asks about opportunities and whether all the opportunities have been seized,  
28 again we think there are some deficiencies and things which have not been taken  
29 up which perhaps ought easily to have been taken up. In particular, we look at  
30 Hares Bridge and the failure to take the opportunity to upgrade that from a  
31 simple pedestrian bridge to one which is suitable for equestrian users. And the  
32 other is the failure we see to properly provide for an enhanced national cycle  
33 route as well, so those are our sort of overarching concerns, that there is a lack  
34 of detail thus far and some opportunities not taken.

1                   So with that as our sort of introduction, and bearing in mind that we will  
2                   probably respond in more detail in writing when we have the assistance of our  
3                   footpath officer, with those things said, I'll turn to Mr Ratcliffe.

4 MR SMITH: Thank you very much. Mr Ratcliffe.

5 MR RATCLIFFE: Thank you. Joseph Ratcliffe for Kent County Council. So am I right  
6                   in assuming you want me to go through every section on item four of the agenda  
7                   all in one go, very briefly, yeah?

8 MR SMITH: Straight through, but only to the extent that you need to, so please let this  
9                   be led by a sensible response to your needs rather than labouring a point merely  
10                  for the sake of labouring it.

11 MR RATCLIFFE: Of course, yeah. And as Mr Fraser-Urquhart said, we'll be following  
12                  this up with a written submission as always. So just very briefly then on each  
13                  section. So on the legal status, we note that there's no clarification on the nature  
14                  of the permissive agreement for the temporary national cycle route, NCR-177,  
15                  and what the terms of the agreement are, and the parties to that agreement. The  
16                  reason we're concerned for that, that's a key east-west corridor which is going  
17                  to be diverted south of the A2, and we believe that really the permissive route  
18                  needs to have a public bridleway designation, and that is what we would request  
19                  for this.

20                  There's also the opportunity for an improved permanent route, should it  
21                  be properly designated post-construction, as well as its intended temporary use,  
22                  given cycling along the A2 probably isn't the most pleasant experience, as we  
23                  all encountered when we walked along that section on the accompanied site visit  
24                  last month.

25                  Moving on to design standards, part (b), we are concerned there remains  
26                  an absence of construction detail for the public rights of way routes and  
27                  structures. So we request that this is a condition that that detail is agreed with  
28                  Kent County Council as the public rights of way authority in this area.  
29                  Mr Fraser-Urquhart has already mentioned the omission of the opportunity there  
30                  could be to bring Hares Bridge up to a cycling and equestrian standard, so I  
31                  won't repeat that.

32                  And there are various structures which we are concerned about as well, in  
33                  terms of we need to see their detailed design. That includes Brewers Road  
34                  bridge, Thong Lane green bridge over the A2, and the Thong Lane green bridge

1 over the A122 Lower Thames Crossing, and Marling Cross overbridge. In terms  
2 of moving on to – so that was design standards. In terms of future maintenance,  
3 we almost go back to what we said about roads maintenance as well, in terms of  
4 commuted sums and whether there'll be any provision for the local authority to  
5 maintain these new assets once they're handed over post-construction, given the  
6 lack of funding that we have for public rights of way as it currently stands.

7 And the final section on construction impacts, yes, we're slightly  
8 concerned of some of the – or lack of diversion routes across areas of compound  
9 etc – it's putting people onto the roads – and the need to engage with our public  
10 rights of way service on signage, online advertising, and so forth to make people  
11 aware of the diversions and where they need to go. As I said, we'll follow that  
12 up in writing in more detail, but that was just an overview of some of the issues  
13 that are of concern to us. Thank you.

14 MR SMITH: Thank you very much. Anything further, Mr Fraser-Urquhart?

15 MR FRASER-URQUHART: Sir, no, thank you very much.

16 MR SMITH: Thank you very much. In which case now I'm going to go to the London  
17 Borough of Havering.

18 MR DOUGLAS: Good afternoon, sir. Daniel Douglas, the London Borough of  
19 Havering. If I may, I just want to touch on three main areas within that agenda  
20 item 4, please. The first item is – and I touched upon this briefly yesterday at  
21 issue-specific hearing 9 – is concerning the access arrangements up to Hole Farm  
22 from the footbridge that's proposed across the A127.

23 MR SMITH: Yeah. Would it be possible to just get the relevant plan sheet shown, so  
24 that we can just focus on this as clearly as possible? Seems to be coming.

25 MR DOUGLAS: Okay, so as you can see the proposed footbridge is just to the left of  
26 the M25 junction 29, as it's showing on the map, with Hole Farm to the north of  
27 that junction and just to the west. Currently, under the existing proposals, users  
28 of that new footbridge – so that's a footbridge that's going to be used by  
29 pedestrians, cyclists and horse riders – would have to use Folkes Lane to access  
30 Folkes Lane woodland just to the west of the M25. They would go over an  
31 existing footbridge to access Hole Farm –

32 MS LAVER: Sorry, Mr Douglas. Can the applicants use the cursor, maybe, and show  
33 us? It's difficult because you're not in the driving seat, but it's hard for us to  
34 follow something that's not there.

1 MR SMITH: And just to be clear here, we are talking about the existing overbridge at  
2 the top of Folkes Lane. It was actually in-image until about five seconds ago,  
3 so if you just move a little further to the north. Keep going. Folkes Lane  
4 woodland and BR-175, I believe, is the bridge at issue. Is that correct?

5 MR DOUGLAS: That is correct, sir. So that's the existing footbridge going over the  
6 M25. If you just move the map to the south, if that's okay. I'll just point out  
7 the – that's great. You can see the proposed non-motorised user bridge across  
8 the A127 there, and Folkes Lane – if the cursor can kind of go from just to the  
9 north of the proposed footbridge heading upwards, yeah – Folkes Lane takes you  
10 up to eventually Folkes Lane woodland. There's a car park there, and you can  
11 access across onto the Hole Farm site. The council's view is that Folkes Lane  
12 in itself, as it's currently set out, isn't suitable for an increased number of non-  
13 motorised users, if you're talking about additional pedestrians, cyclists and horse  
14 riders.

15 We have been working with the applicant on looking at alternative  
16 options, and one of those alternative options is whether a dedicated NMU route  
17 could be delivered. That would essentially take users from the base of the  
18 footbridge on the north side of the A127 – if the cursor can just go back down  
19 to the base of the footbridge, please. Thank you. Effectively, the path would go  
20 around the back of the businesses on that side, on that eastern side of Folkes  
21 Lane running parallel to the M25 northbound, and it would join up with the  
22 existing path that's already in place at Folkes Lane. That eventually takes you  
23 over that overbridge that I was referring to across the M25.

24 So we've been working with the applicant and the applicant's  
25 commissioned some external work to look at the feasibility of that, which we're  
26 very grateful for. Where we've got to now, sir, is that that feasibility work is  
27 complete, and an option has been looked at. The applicant isn't prepared to  
28 incorporate that as part of the project, and instead if Havering wants to pursue  
29 that, we would have to do so through the designated funds process that the  
30 applicant has available. The challenge with that is that there's no guarantee that  
31 those funds would be forthcoming.

32 The other point I would just add on this particular issue is, in terms of  
33 Folkes Lane as a road itself, the applicant's done its own traffic accounts along  
34 that road. The 85<sup>th</sup> percentile for that road is 41mph. It's a 30mph road, so there

1 are concerns about speeding if there's going to be an increase in non-motorised  
2 users, and 21% of vehicles are goods vehicles because of the nature of the  
3 businesses along that road. So it remains the council's position that we would  
4 like to see an alternative NMU route from the base of that footbridge up to  
5 Folkes Lane, so users can avoid using that particular road.

6 The other two points I just wanted were on the footbridge itself over the  
7 A127. That was discussed in some detail at the earlier traffic and transportation  
8 issue-specific hearing. I guess the main points I'd like to make are the council's  
9 still supportive of a separated crossing being put in at that point of the network.  
10 We're of the view that an at-grade crossing of whatever form wouldn't be  
11 suitable for that stretch of road. It's a 70mph stretch of road and it carries a sig\*  
12 volume of traffic.

13 The applicant itself has looked at some options about a year ago for a  
14 suitable crossing along that stretch. They looked at a signalised junction at the  
15 junction of Front Lane and the A127, which is slightly to the west of the existing  
16 footbridge, an at-grade crossing, at the point where the footbridge is proposed,  
17 and the grade-separated crossing that's being proposed, and the outcome of that  
18 optioneering exercise was the proposed NMU structure. That's been submitted  
19 as part of the application, and it would be probably useful for the panel if that  
20 optioneering exercise gets submitted at deadline 6, just so you can see the  
21 different options that have been considered, if you would find that helpful.

22 The final point that I'll mention – and it's been touched upon by  
23 Mr Ratcliffe at Kent County Council around commuted sums. We have a similar  
24 ask, if you like, from the applicant, specifically in relation to footpath 252, which  
25 is proposed, and that's an existing footpath. That's proposed to be upgraded to  
26 a bridleway, and it will be diverted over the existing railway line and then  
27 ultimately, over the Lower Thames Crossing road. The applicant's proposing  
28 that the section of that footpath, as it goes over the railway, will become a  
29 Havering asset. We have concerns about that from a funding point of view in  
30 terms of maintenance.

31 It's challenging at the best of times to deal with Network Rail with  
32 structures that go over the railway in terms of getting track possessions. That's  
33 another concern for us, so it remains our position that we would be seeking  
34 commuted sums for that structure. Where we've got to the applicant is the

1 applicant's made it clear that they're not prepared to offer us that, so we're at a  
2 stalemate on that particular point – and one more point, if I may, just briefly, sir.  
3 In our local impact report – that's REP1-249, table 3 of that report – we set out  
4 a number of more specific issues around crossing points over some of our  
5 elements of our road network.

6 I won't go in to detail about all those individual items. I just wanted to  
7 update you and say that, as Mr Tait indicated last Thursday, we are looking to  
8 have a meeting with the applicant to discuss those items. The applicant has  
9 responded to us on each of those items, which we are grateful for. We'll be  
10 reviewing that information and then discussing any more outstanding points that  
11 remain at a further meeting. Thank you.

12 MR SMITH: Thank you very much, and I've got just one broad supplementary on those,  
13 and that is going back to the Folkes Lane/Folkes Farm area. Noting what you  
14 say about the lane, having been there at an accompanied site inspection, but  
15 equally, taking then the view about delivering an alternative parallel route – just  
16 checking – I mean, that feels to me as though it is at least as a bare minimum an  
17 additional rights requirement, if not an additional land requirement. Would  
18 either of those two things or both of those two things be true?

19 MR DOUGLAS: Daniel Douglas, London Borough of Havering. Yes, it would be an  
20 additional rights requirement. The proposed NMU route itself, as it currently  
21 stands, is not within the redline boundary in its entirety. There may be scope,  
22 we think, towards the M25 area, that it may be able to be incorporated in some of  
23 the red-line boundary, but as currently stands, it is outside the order limits, at  
24 least in parts, sir. Yes.

25 MR SMITH: Well, we'll wait and hear what the applicant says about that point, but I  
26 mean, I will flag at this juncture that we are, I think, already beyond a point in  
27 the examination where a change with an additional land or rights requirement  
28 could be feasibly promoted by the applicant, if it invoked the compulsory  
29 acquisition regulations, because we do not have enough time now to carry out  
30 the essential statutory steps to discharge the obligations arising under those  
31 regulations. So I just thought, in fairness, that point had to be laid on the table.

32 If there are alternative ways – I mean, if, for example, it could be pursued  
33 as a permissive route, there's no reason at all why that couldn't be taken forward  
34 further, or alternatively, promoted by yourselves, but that's outwith the DCO

1 process. It is one of the sad inevitabilities of a DCO process with an examination  
2 period strictly statutorily time scaled to six months. There does come a point at  
3 which variability ceases to be easily deliverable. Any observations on that?

4 MR DOUGLAS: Daniel Douglas, London Borough of Havering. We'll take that point  
5 away, sir, and respond at deadline 6.

6 MR SMITH: Thank you very much. Right, any other questions for Havering? No. In  
7 which case, I'm now going to ask if TfL would like to speak across all these  
8 agenda items.

9 MR RHEINBERG: Thank you, sir. Matthew Rheinberg, Transport for London. So I'm  
10 going to focus on agenda items 4(b)(ii), (iii) and 4(c), and it is focused, again,  
11 our response on that bridge – the walking, cycling and horse-riding bridge over  
12 the A127 to the west of junction 29 of the M25. There's been a lot of previous  
13 discussion on that, as mentioned by Mr Douglas at issue-specific hearings 4 and  
14 7, but the submissions have moved on from that point, so we wanted to raise a  
15 concern that we have.

16 Specifically – and the most recent submissions from National Highways  
17 on this, which came in REP5-089, National Highways is responding to matters  
18 that TfL raised, and is now setting out that in their opinion, that bridge is not  
19 required to mitigate issues arising because of a project. So they specifically say,  
20 'It's proposed to address historic severance and concerns raised by the Lonon  
21 Borough of Havering over connectivity of this area. The applicant recognises  
22 the potential benefits. It's not required to mitigate issues arising because of the  
23 project, and therefore paragraph 5.216 of the NPS – the national networks – is  
24 not directly relevant,' and that paragraph of the NPS specifically referencing the  
25 need to mitigate impacts on accessibility for NMUs.

26 That completely contradicts previous statements made in several items of  
27 the application material, which highlights that that bridge was included, partly –  
28 yes – to address existing severance issues, but also to mitigate the impacts of the  
29 project. There are several quotes I could provide, and we'll put all of them in  
30 our deadline 6 submission, but just as an example – project design report, part  
31 D, on the general design north of the river – that's APP-510 for reference.  
32 Paragraph 3.2.5 says, 'Severance caused by the project is also being addressed  
33 at junction 29 of the M25, and new free-flowing slips between the A127 and  
34 M25 sever the A127 footway.' So that's quite clear. 'A new walking, cycling



1 and horse-riding bridge to both the east and west of the junction, as well as  
2 crossing improvements for the northern side of the junction, will allow users of  
3 the southern footway to cross the north of the M25, [inaudible] junction in  
4 return.’

5 Sir. it seems quite clear to us – and I’d also cite the local refinement  
6 consultation and the project design report party design for walkers, cyclists and  
7 horse-riders. That’s APP-512, which as five paragraphs on this – that the bridge  
8 is very much needed to address the severance caused by the project. So, in our  
9 view, in regards to agenda item (b)(ii), whether opportunities to maximise the  
10 potential benefit for NMU users has been suitably considered, it feels to us that  
11 there’s a risk that the potential for NMU users might be reduced, rather than  
12 enhanced, by the line of argument being used by the applicant, and also builds –  
13 I won’t into detail again on what Mr Douglas said.

14 We’ve looked extensively at the design manual for roads and bridges and  
15 the suitability of different types of crossings. There was also the optioneering  
16 note National Highways provided Havering and TfL in July 2022. It all makes  
17 very clear that a grade separated crossing at this location is the only suitable way  
18 of providing a crossing of a dual carriageway, particularly when you consider  
19 requirements for horses, which really wouldn’t be possible for any at grade  
20 crossing at this location.

21 This does link to item 4(c) – future maintenance. We have made the case  
22 previously in detail about the need for a commuted sum to cover the costs of  
23 maintaining this bridge. Again, I’m not going to repeat that here, but I would  
24 just like to note again, in National Highways’ submission following  
25 issue-specific hearing 7 – that’s REP4-183, paragraph 5.3 – they cited a range  
26 of precedents, 11 different schemes – DCOs – where commuted sums were not  
27 provided for local highway authorities. None of those schemes were in London.  
28 We would say, therefore, that the M25 junction 28 scheme, which was partly in  
29 London, is the only relevant precedent in this context because of the unique  
30 funding situation for the highway network in London, which Mr Douglas  
31 alluded to this morning.

32 So in conclusion, we consider that this bridge is absolutely needed to  
33 address severance caused by the project. It absolutely has to be a grade separated

1 crossing, and future maintenance of that bridge has to be funded appropriately  
2 as part of the project as well. Thank you.

3 MR SMITH: Thank you very much. Now, looking to just the points, obviously, raised  
4 by Mr Douglass for London Borough of Havering, and the concern about then  
5 onward utilisation of the existing Folkes Lane, do you share his concerns, or in  
6 your view is Folkes Lane adequate to take the NMU load that would be delivered  
7 to it as a consequence of the bridge?

8 MR RHEINBERG: Matthew Rheinberg, Transport for London. I think it's fair to say  
9 that, it not being a TfL road, it's not something that we have looked at in detail.  
10 But I can appreciate that it is a narrow-ish lane with no footways. It's not ideal  
11 from that respect, admittedly from the point of view of usage. At a previous  
12 hearing it was questioned how many users of this bridge there would be, and  
13 that's something that we don't details of, but I can certainly appreciate the  
14 concerns raised. I don't think it's something that we're able to give a definitive  
15 position on.

16 MR SMITH: Okay, fine. I just thought I'd ask you. Right. Does that bring you to the  
17 end of your submissions? Okay. Mr Bedford, I'm going to come to you, and I  
18 know Councillor Susan Lindley has been waiting for a very long time with her  
19 hand up, and rest assured, Councillor, as soon as we've heard from Gravesham,  
20 we will come to you.

21 MR BEDFORD: Thank you, sir. Michael Bedford, Gravesham Borough Council. Sir,  
22 our issues relate only to item 4(c), which is future maintenance, and we note an  
23 echo the concerns that have been raised by Kent County Council in relation to  
24 funding for maintenance provision of public rights of way, which are to be  
25 created as a consequence of this scheme, and we want to ensure that there are  
26 satisfactory arrangements for those.

27 But then, secondly, there are a number of permissive rights, which are to  
28 be created as a result of the scheme, and as we see it, article 10 of the draft  
29 development consent order would not apply to the permissive rights – but article  
30 10 – merely the one that deals with highways which are to be created, become  
31 the responsibility. Once they've been provided in a satisfactory fashion, they  
32 become the responsibility of the local highway authority, and that will include  
33 footpaths obviously, and bridleways, as well as it does vehicular ways, but that

1 doesn't apply obviously to the permissive paths which don't have highway  
2 status.

3 So we need there to be clarity about what the long-term funding  
4 arrangements are to ensure that those paths, once provided, are adequately  
5 maintained, and the reasons why that's relevant and, as it were, important to the  
6 borough council is twofold. One, obviously these routes – both the highway  
7 rights of way and the permissive paths – provide a recreational resource within  
8 the borough, and therefore it's relevant to council as the host authority to know  
9 that what is being provided will actually endure long term. But secondly, as an  
10 enforcing authority in the event that there are breaches of the requirements of  
11 the development consent order, what we don't really want to be doing is having  
12 an enforcement headache, simply because there wasn't clarity at the outset about  
13 who was responsible for providing that future maintenance.

14 So that's really our issue. I said it's quite a narrow issue, but we would  
15 welcome some clarification on that, and, as I say, we echo Kent's point about  
16 wanting adequate funding for things which are actually rights of way, which  
17 then become their responsibility. Thank you, sir.

18 MR SMITH: Okay. Mr Taylor. Mr Taylor wants to come in on that point.

19 MR TAYLOR: Yes. Ken Taylor, panel member. Again, just flagging to the applicant,  
20 can you pick this up when you respond later on? Funding's been raised as an  
21 issue now a number of times, including how that would be secured and whether  
22 it could be, or should be through commuted sums as part of section 106[?]  
23 agreements, so in the response I really want to understand the applicant's  
24 thinking on that, and if there is to be any funding secured through section 106  
25 agreements, then really where we are at in progress.

26 Again, the theme after last week and this week has been we're getting to  
27 a point where we need to be nailing some of this stuff down now. So just flag  
28 that I'd like a direct response on that, please.

29 MR SMITH: Okay. So that brings us to the end of Gravesham Borough Council.  
30 Councillor Lindley, Shorne Parish Council, please.

31 MS LINDLEY: Thank you very much, sir. I'm not sure if you can see me again now.  
32 The reason I raised my hand earlier is because I wanted to support what was  
33 being said by the landowners in Essex, because albeit on a smaller land area  
34 scale, we do have all the same problems south of the river, particularly with

1 motorbikes and quadbikes etc, people coming in vans – hordes of them coming  
2 together in groups, invading various bits of land. The applicant's aware of this  
3 because they have problems with Southern Valley Golf Course since they took  
4 it over.

5 I say though that it's not just about bridlepaths. We also have problems  
6 with access from roads directly into fields, and also use of footpaths, with the  
7 same anti-social and aggressive behaviours. The reason I'm making this point  
8 is because south of the Thames, much of the land that is suffering these problems  
9 is going to be taken over by National Highways for mitigation and  
10 compensation. So the problem arises of how such anti-social use is going to be  
11 kept off the land and how it's going to be dealt with because there is a conflict  
12 between allowing access for the public and having paths and having meadows  
13 and open grassland etc, while at the same we've the motorbikes etc trying to  
14 come in.

15 So that was that point, and the other point I just wanted to make was that  
16 there's still an issue, as far as we're concerned, of there being severance of  
17 footpaths between Shorne West and Shorne and the country park etc, because  
18 what's being severed is not being replaced in the same way. The footpath  
19 requires a diversion north and over Thong Lane north green bridge and back  
20 down, or else south, which means going across the A2 and all the way along the  
21 convoluted, southern connector road and back, neither of which are necessarily  
22 good alternatives, particularly for people who are less able, or less abled, to go  
23 greater distances.

24 Having seen the Thames Chase bridge proposals, which I haven't looked  
25 at before, until it popped up in the design hearing, I do rather feel that we've  
26 been a bit shortchanged in design and structure terms. There could be a much  
27 better offering south of the Thames, and a much better solution to the national  
28 cycle route 177 provision, so I just wanted to say that. Thank you very much.

29 MR SMITH: Thank you. Gosh. One's own disembodied voice coming back over the  
30 channel does sound rather strange. Okay. Now, I believe that brings us to the  
31 end of all of the in-principle submissions that interested parties wish to make, so  
32 what we're now going to do is to turn to the applicant for responses on all those  
33 items. Now, I know that's a very tall order, Mr Tait, and I know that time presses  
34 against us, but I'm also going to remind you of the fact that some of this can be

1 reduced to writing, and as long as it comes in by deadline 6, that will, in broad  
2 terms, be sufficient. So, Mr Tait, over to you for a very comprehensive and  
3 rather tricky job.

4 MR TAIT: Thank you, sir. I wonder if I could just mention at the outset that, having  
5 heard the highway authorities' views, none of them are suggesting that there's  
6 any provision. Nor are any suggesting that only the bridleways should be  
7 downgraded to footpaths, but that's just important context. I'm not sure it was  
8 said in terms, but it certainly hasn't been said and I draw inference from that.

9 In relation Mr Holland, Mr Finnis and Mr Benton's points, I was going to  
10 group those as a series of essentially six points, and the first relates to a query  
11 about permissive paths, and that was also picked up briefly by Kent, and also by  
12 Gravesham, in relation to article 10 and whether that affects those. So I was just  
13 going to ask Mr Henderson briefly to explain the nature of that beast because it  
14 has slightly different forms in different contexts. So Mr Henderson is going to  
15 just deal with that by way setting the legal scene.

16 MR HENDERSON: Thank you. Tom Henderson for the applicant. There is quite a lot  
17 of legal detail lurking below here, but I'll try and keep it as brief as I can, and  
18 then obviously, we can see out chapter and verse in writing.

19 MR SMITH: In writing.

20 MR HENDERSON: Now clearly, as we've heard, the applicant's general position, where  
21 providing rights of way away from the highways, is to establish these as formal  
22 rights of way, as in highways under the Highways Act 1980, be those footpaths,  
23 bridleways or cycle tracks, but there are a small number of instances where the  
24 applicant is proposing to use existing or create new permissive paths. Just for  
25 clarity, a permissive path is a way over land for a category of users which is  
26 available by permission of the landowner, not as a right. So it's therefore not a  
27 highway, as defined by the Highways Act 1980, but importantly, it qualifies as  
28 a street under section 48 of the New Roads and Street Works Act, and that's an  
29 important point, which I'll come back to at the end when we talk about  
30 maintenance.

31 In terms of the specific areas where you'll find permissive paths, there are  
32 essentially three. The first is the temporary diversion of the cycleway on the A2  
33 through Ashenbank Woods and Jeskyns Woods. The second is the area around

1 Tilbury Fields and Coalhouse Fort. The third is at the Thames Chase Forest  
2 area. So I'll just cover all of those as briefly as I can.

3 So through Ashenbank Wood, the applicant is proposing to temporarily  
4 resurface the Darnley Way, which is an existing permissive route, importantly,  
5 to cater for pedestrians and cyclists while national cycle route NCR 177 needs  
6 to be temporarily diverted – is not available. That route then carries on through  
7 Jeskyns Community Wood. The important point here is that Ashenbank Woods  
8 is, as I understand it, owned and controlled by the Woodland Trust. Jeskyns  
9 Wood is the property of Forestry England, and importantly, is Crown land.

10 So when we talk about permissive paths through Jeskyns, the important  
11 context there is that we require the Crown's permission for any exercise of a  
12 DCO power in that land, and it's Forestry England's permission in that case that  
13 they don't support the creation of a permanent bridleway. They already operate  
14 a number of permissive ways through Jeskyns and they support the provision of  
15 the temporary diversion, but they don't want this to be created as a permanent  
16 bridleway. Now, that's their settled position. We have no power to impose a  
17 bridleway in those circumstances. So that sets the context for that particular plot  
18 of land.

19 Turning to Ashenbank Woods, that is not Crown land, however the  
20 Woodland Trust, for environmental reasons, do not support permanent rights of  
21 way being created through that woodland. As I said, it relies upon an existing  
22 permissive path, but I think there's perhaps some element of misleading drafting  
23 in the order because it might imply that we require Woodland Trust's permission  
24 to create that diversion. We do not. The order takes temporary possession of  
25 that land, or would permit temporary possession being taken of that land, and  
26 then the creation of a right of way across that land.

27 MR SMITH: Can I just interrogate that very particular point because in relation to  
28 obviously a permissive path, the generical, standard means of creating that is  
29 with the consent of the landowner? Now I take it then, if something is to be  
30 created as a temporary permissive right, what you are seeking to do is to obtain  
31 temporary possession, and then to exercise your right in temporary possession  
32 to grant a permissive right that does not extend in duration any longer than your  
33 temporary possession, and so therefore you say you can do it.

1 MR HENDERSON: Tom Henderson for the applicant. That's right, sir. So the nuance  
2 is that it's an existing permissive path. We're seeking power temporarily to  
3 divert the cycle way along. Now clearly, we want do that by agreement with the  
4 Woodland Trust, but I think the important point is that it doesn't require their  
5 permission in the same way that it does at Jeskyns. But when you knit these two  
6 things together, consideration was given to the creation of a permanent  
7 bridleway, but it's not something that can be practically implemented here, and  
8 that's why, given that the works are ultimately temporary, that they are not being  
9 created as a permanent bridleway, which I think was one of the challenges that  
10 was put to us.

11 So I hope that provides some clarity in relation to that particular  
12 component. As I say, we'll set this out in detail so that you've got chapter and  
13 verse. Shall I move on to Tilbury Fields?

14 MR SMITH: Yes.

15 MR HENDERSON: I'll be relatively brief here. Again, there are numerous plans that  
16 we could put up on screen, and we'll reference in our submissions them in our  
17 submissions, but here the land is being acquired freehold by National Highways  
18 for the likes of Tilbury Fields' environmental mitigation areas. In certain  
19 locations in this area, the applicant, as landowner, is proposing to create  
20 permissive ways, rather than formal public rights of way for reasons of  
21 environmental mitigation. There may be a need to move paths or restrict the use  
22 of paths, for example, when nesting birds are using land which has  
23 multi-functional purposes. But that's land that will be in National Highways'  
24 control, and therefore it's capable of creating those permissive rights because  
25 it's within its gift.

26 So that's the situation in that general location, and then finally, we move  
27 up the way to Thames Chase. Again, the important context there – that this is  
28 also Crown land. I believe, in this instance, managed by the Forestry  
29 Commission, but ultimately owned by Defra; it's Crown land. Again, the result  
30 of that is that we do not have the ability through the DCO to unilaterally create  
31 rights of way, and so in discussion with that particular party, there are proposals  
32 to create certain permissive ways for cyclists and horse-riders that coexist with  
33 an existing footpath. So there's some complexity in there, but I hope that clears  
34 that up a bit, and then I can cover the maintenance point briefly.

1 MR SMITH: It does, although it leaves a subtle irony resting around the fact that a range  
2 of substantial public entities and/or Crown entities are left with greater  
3 management capacity over access to their land via permissive routes, which they  
4 can, at the end of the day, switch off, if they deem that the adverse effects of the  
5 rights created outweigh the public benefits. But the same facility isn't there  
6 where land is acquired through CA on an enduring basis, to create routes on  
7 what is currently private land. So a little bit of a balance point there that maybe  
8 requires some consideration.

9 MR HENDERSON: Thank you, sir. Tom Henderson for the applicant. We can comment  
10 on that in writing. I think it's worth just pointing out that the issues with reliance  
11 on permissive paths was recently considered in the A47 Blofield DCO scheme,  
12 and there it was concluded by the Secretary of State that it was acceptable to rely  
13 upon those where the prospect of them being closed was remote. Here, we're  
14 talking about paths that would be owned and maintained by National Highways,  
15 as I've said, around Tilbury Fields and then Forestry England Forestry  
16 Commission through Defra, so we say it's reasonable to assume that those paths  
17 will endure and those parties, through negotiation, will be content to maintain  
18 them. But it might be helpful just to come on to the maintenance point finally.

19 MR SMITH: Yep.

20 MR HENDERSON: So there we need to look at article 10 of the DCO – 10.5. Just bear  
21 with me while I call that up. That provision provides that where a street which  
22 is not intended to be a public highway is constructed, altered or diverted, there's  
23 a defect period of 12 months where maintenance liability sits with the undertaker.  
24 But after that, it sits with the street authority, and again, there's some legal  
25 complexity here. Ultimately, the street authority is the 'street manager', which  
26 in this case would be the landowner. So the land owner would ultimately be  
27 responsible for maintaining those permissive ways. So that's hopefully an  
28 overview of the legal position. We can confirm that in writing for others to  
29 comment on, and we can give you references to the various rights of way in the  
30 application.

31 MR SMITH: Thank you. Any questions? No. In which case, Mr Tait.

32 MR TAIT: That was the first of six points in relation to the landowners. The second  
33 points relate to Mr Holland's concerns about the extent of the rights of way and  
34 in particular the upgrading to bridleway status, which he confirmed was the nub,



1 and I'm going to ask Mr Steven Roberts, who is the design and engineering  
2 director for the project, to set out the overall approach, how that's been adopted  
3 and to focus on the particular points Mr Holland's made on that.

4 MR ROBERTS: Thank you, Mr Tait. Steve Roberts for the applicant. So starting with  
5 our general approach, I will try and be brief. There's further information in our  
6 project design report, part E, which has already been referenced today. So, as  
7 you're aware, NMU proposals generally fall into three broad categories: those  
8 that are addressing route severance that's caused by the project, routes that  
9 address historic severance and then new opportunities to support active travel.

10 With regards to the latter point, the applicant is promoting new routes,  
11 generally in response and compliance with parts of national policy statements  
12 for national networks, in particular paragraph 3.17, which states that,  
13 'Government expects applicants to use reasonable endeavours to address the  
14 needs of cyclists and pedestrians and the design of new schemes. Government  
15 also expects applicants to identify opportunities to invest in infrastructure in  
16 locations where national road network severs communities and acts as a barrier  
17 to cycling and walking by correcting historic problems.'

18 So that talks to a number of the categories I've just mentioned. Also,  
19 within NPS, there's paragraph 5.205, which says, 'Applicants should consider  
20 reasonable opportunities to support other transport modes in developing  
21 infrastructure. As part of this, consistent with paragraphs 3.19 to 3.22, the  
22 applicant should provide evidence that, as part of the project, they have used  
23 reasonable endeavours to address any existing severance issues that act as a  
24 barrier to non-motorised users.' So that forms the basis of our starting point, if  
25 you like, for our waling, cycling and horse-riding strategy.

26 Our overall approach to identifying and promoting new and improved  
27 walking, cycling and horse-riding routes is, as I said, described in the project  
28 design report, part E, and as noted in this document, the key aspect of this work  
29 was the preparation of a walking, cycling and horse-riding assessment and  
30 review, which is a requirement under the design manual for roads and bridges,  
31 part GG142. This assessment and review considered a range of things, including  
32 existing national and local policy. It reviewed local demographics. It looked at  
33 the existing public right of way network, and importantly, with stakeholders to  
34 explore opportunities for new walk, cycling and horse-riding routes. That was

1 a key plank of that strategy, this development of new opportunities through  
2 engagement with local authorities, local interest groups, stakeholders and  
3 through the feedback received at various consultations.

4 If I just pick up on a point, Mr Holland mentioned the lack of consultation  
5 or engagement with landowners. There has been an ongoing dialogue  
6 throughout – land and property team, who've engaged with Mr Holland and  
7 colleagues like him across both Essex and Kent, where we're affecting or  
8 impacting landowners, and indeed landowners have had the opportunity to  
9 comment at the five consultations that we've had, and they have done so, and  
10 we've received those representations. It's fair to say though that through all this  
11 engagement that the range of views of stakeholders is very broad, and it's not  
12 always possible to please everyone and accommodate all needs.

13 Just on the matter of bridleways, through our walking, cycling and  
14 horse-riding assessment and review process and the engagement, there was a  
15 very strong desire from local authorities in particular, but also user groups such  
16 as British Horse Society, unsurprisingly, to promote bridleways because they  
17 gave the highest degree of accessibility. I think that's commensurate with the  
18 national policy statement requirements for compelling that new accessibility and  
19 encouraging active travel. So I hope that addresses the two points that Mr Tait  
20 wants me to speak to.

21 MS LINDLEY: I think we may need a little bit more on that. I appreciate there's a lot  
22 of landowners and there's probably been a lot of feedback from landowners to  
23 yourselves, but I'm not really content with, 'There's a range of views, so we've  
24 just come down to accepting bridleways provide the best for the users.' I think  
25 we need a little bit more dedicated response on the views of those landowners,  
26 and possibly because some of those landowners might have been able to offer  
27 suggestions for alternative routes. I think the information is probably there, and  
28 I'm not expecting you to comment now, but as a follow-up.

29 MR ROBERTS: Steve Roberts for the applicant. Just very briefly, we had prepared  
30 some examples where the engagement that we had had with landowners had  
31 been taken into account and it had informed our proposals. We're obviously  
32 short of time, so I cut that section out – but happy to respond in writing to provide  
33 those examples.

1 MR SMITH: Look. We have to seriously recognise that time is pressing against us, but  
2 if you could put that material in writing, it will help to illustrate your point. I  
3 think it may address the question that Ms Laver raised, and we can then form  
4 judgements about else we need to bring out, either in the November hearing  
5 round, or alternatively in EXQ3, which I know is taking us very close to the end  
6 of the examination. But nevertheless, we are where we are. Right.

7 MR TAIT: Thank you, sir. So that's the second point. The third point relates to the  
8 access controls, bearing in mind this is a national issue and clearly, there are  
9 countervailing considerations in balancing enhancements to NMUs on the one  
10 hand and minimalising impacts on landowners. We are responding to action 17  
11 from your action list from CAH 3, particularly in relation to design principles  
12 PE00.06 of the design principles REP4-146, and unless you want to hear from  
13 us in advance of that, we were intending to respond at that particular point –

14 MR SMITH: Okay. Yep. No, that's fine.

15 MR TAIT: – as it's impending.

16 The fourth point relates to the specific point about assumptions in relation  
17 to the impacts on farmers and landowners, and chapter 13 deals with impacts on  
18 landowners. I think it is fair to say it isn't explicit about unlawful use and the  
19 impacts of unlawful use in terms, but we can explain that further in our response.

20 The fifth point relates to a specific point from Mr Benton about the  
21 potential of North Road, for there to be essentially an on-street provision, and  
22 he indicated that the current provision is some 1.2 metres wide, and one we need  
23 to be cutting back perhaps, and I'd just like, if possible, Mr Roberts to comment  
24 on whether that is adequate of width.

25 MR ROBERTS: Steve Roberts for the applicant. With regards to our proposals on the  
26 North Road, the existing footway – because it's not a footpath. It's a footway –  
27 adjacent to road carriageway, 1.2 metres is actually sub-standard for footways,  
28 and so by modern standards, that would need to be widened. We are promoting  
29 however a shared walking, cycling and equestrian route, so that needs additional  
30 space, and therefore we propose to place it on the east side of North Road  
31 because there's more space. There's frontage access to a number of properties  
32 on the west side, so widening on the west side is more difficult, hence we've  
33 created a link on the east side, which links to footpath 151, which we're  
34 proposing to redesignated as a bridleway on the west side, and it links to footpath

1 135 to the east of North Road, which we're also intending to redesignate as a  
2 bridleway, and hence the walking, cycling and horse-riding provision.

3 Just to be clear, the section of new bridleway that's proposed at the  
4 southern end of North Road – the reason it is routed behind the tress, as it is, is  
5 to avoid having to impact those trees, which I believe provide some screening  
6 benefit to the properties to the west. So our intention is to maintain a  
7 high-quality route, but put it behind the trees, and therefore not having to impact  
8 that vegetation.

9 MR TAIT: We touched on that, I believe, last week.

10 MR SMITH: Yes.

11 MR TAIT: I said there were six points in relation to Mr Holland, Mr Benton and Mr  
12 Finnis, but one of them has already been covered by Mr Roberts under the  
13 second head, which is consultation.

14 MR SMITH: Yep.

15 MR TAIT: So those are the five points in response to the landowners who've made  
16 representations.

17 MR SMITH: Right. But you have, no doubt, broader points that you wish to make in  
18 response to –

19 MR TAIT: I'm then going to turn to –

20 MR SMITH: – the local and highway authorities.

21 MR TAIT: – everybody else.

22 MR SMITH: Okay.

23 MR TAIT: I'm conscious of the time, so I'm going to try and do it in as summary form  
24 as possible. There were five points made on behalf of Thurrock. The first, from  
25 Mr Neve, queried there might be an absence of significant legacy, but there are  
26 33.2 kilometres of new NMU routes and there are 12.5 kilometres of NMU  
27 routes with increased accessibility, and there are 12.6 kilometres of NMU routes  
28 widened or surfaced. So we would suggest that is a significant legacy, but we'll  
29 set out those figures. You'll see them elsewhere in due course.

30 The second point from Mr Neve was, I think, in particular relation to  
31 Brentford Road. Possibly more generally, there should be some future-proofing,  
32 I think was his expression, in relation to future potential developments, and I'd  
33 like Mr Roberts to respond to that, please.

1 MR ROBERTS: Steve Roberts for the applicant. We've been working with Thurrock  
2 Council for quite some time to look at provision over bridges that cross Lower  
3 Thames Crossing that carry local authority roads. We've considered the request  
4 from Thurrock Council in terms of walking, cycling and equestrian provision to  
5 be contained within those structures, and we've reached reasonable broad  
6 agreement on most structures. There are some that we don't, and we note that  
7 Thurrock Council, as Mr Neve set out their position on this in the local impact  
8 report – appendix C, I think, from memory. I may be wrong.

9 Our position is that what we are providing is set out quite clearly within  
10 the design principles. There are area-specific design principles relating to each  
11 structure that crosses Lower Thames Crossing and we set out there what  
12 walking, cycling and equestrian provision we are providing.

13 MR TAIT: Thank you. The third point relates to provision at Orsett Cock and Asda  
14 roundabout, and very briefly, in relation to Orsett Cock, there is new provision  
15 – Rectory Road. I could ask Mr Roberts to deal with that, but we will respond  
16 to that in writing. That's short just of west of Orsett Cock. Asda roundabout –  
17 there's an underpass to the south of the Asda roundabout, so there are  
18 connections either proposed already in those two locations.

19 The fourth point from Mr Neve referred to the framework construction  
20 travel plan, and queried access by walking and cycling to the compounds. That  
21 document at paragraph 3.1.4 and 7.2.6 requires the applicant promote  
22 sustainable forms of transport to sites where travel can be completed in a safe-lit  
23 highway environment with footway for pedestrians. So essentially, where  
24 practicable, it imposes that obligation.

25 The fifth point in relation to Thurrock from Mr Plumb, and picked up by  
26 Mr Taylor, relates to the potential for a single plan showing diversion routes  
27 during the construction period. I'll ask Mr Roberts to pick that up, but in  
28 overview, that is a more complex process than it sounds because over the long  
29 period of construction, there are a number of different phases happening at  
30 different times, and we aren't able to be explicit, as we've explained to Thurrock  
31 before, about the exact sequencing and timings. We've made various  
32 assumptions but I'll pass on to Mr Roberts about the practicability on that and  
33 the limitations.

1 MR ROBERTS: Steve Roberts for the applicant. Mr Tait, I'm going to say the same  
2 words that you just have. So it's essentially a matter of timing. There are various  
3 of construction that are not fully known at this stage, and so it's very to set out  
4 in a series of plans where those diversions would be. It's dynamic with time, so  
5 that's our position.

6 MR SMITH: There's been a discussion between members of the panel of this point and  
7 I think Ms Laver has a separate point that she wishes to add to this, but certainly  
8 Mr Taylor and I were reflecting on the fact that the applicant could attempt to  
9 be completist and show everything which would suffer from the very substantial  
10 issues of complexities and matters unknown that you have just raised in that  
11 response. However, there is a potentially useful, shall we say, snapshot-in-time  
12 approach to this, whereby you take a view that you show an existing condition  
13 and you overlay it with at least an intended end state, with the permanent  
14 stoppages mapped and the permanent diversions mapped, accepting that a whole  
15 range of intervening positions aren't capable of easily being shown, other than  
16 taking account of various steps in detailed design that are not yet fully clear. Is  
17 that something that could be achieved?

18 MR ROBERTS: Steve Roberts for the applicant. I was just going to respond that the  
19 permanent diversions are set out within the walking, cycling and horse-riding  
20 plans, which were submitted at deadline 2. I think the matter that Mr Plumb  
21 was raising relates specifically to the changing picture during construction,  
22 which is a matter, perhaps, we'll get consider, get in writing and come back to  
23 you.

24 MR SMITH: Okay. Ms Laver, was that on your matter, or there was something else you  
25 wanted to – yeah. No, Ms Laver will come in as well separately.

26 MS LAVER: I was trying to think where it's in the documentation, but you have set out  
27 your particular construction phases. I think it's in nine segments. I don't know  
28 if that was just illustrative of certain things that were happening at certain times,  
29 but I seem to recall a Gantt chart, which says, 'We're doing certain things at  
30 certain times,' and I'm just wondering if we just can't have a plan that aligns  
31 with that chart. Do you recall, because we spoke about this at a previous hearing  
32 and I asked whether the delay the two-year funding has an implication upon the  
33 construction timeframe that related to that Gantt chart?

1 MR ROBERTS: Steve Roberts for the applicant. I think you're referring to the outline  
2 traffic management plan for construction, which does set out some measures and  
3 how temporary diversion routes would be dealt with. We'll talk the point away  
4 about whether more could be said or drawn to illustrate better what those  
5 diversions might be.

6 MR SMITH: I think it's distinctly a case of drawn, rather than said, if at all possible.  
7 Okay.

8 MR TAIT: So that might be a snapshot, as you indicated, sir, rather than a sequence,  
9 which then may become quite complex to create. But it would need to come  
10 with the health warning we've mentioned that it would be a snapshot. But we'll  
11 take that away and reflect on that. So I think that's Thurrock.

12 In relation to Kent County Council –

13 MR SMITH: Just before you move on, Mr Tait, we have Ms Coleman on screen, and,  
14 Ms Coleman, can I just check; is that intentional? I believe it's not. She did  
15 have the look of a person who wasn't quite aware that she was being broadcast  
16 to the world. I thought I'd better warn her. Apologies, Mr Tait.

17 MR TAIT: Sir, in relation to Kent County Council, there were, I think, four points, but  
18 one has been already dealt with by Mr Henderson. That's about permissive  
19 paths. The first one was about an opportunity missed, and I'm going to ask Mr  
20 Roberts.

21 MR ROBERTS: Steve Roberts for the applicant. I think the opportunity Mr Tait is  
22 referring to is Hares Bridge, which is an existing bridge over High Speed 1  
23 railway and the A2. This bridge is unfortunately too narrow to accommodate  
24 shared use – walking, cycling and equestrian – if that was desired. The parapet  
25 height of the bridge is also too low to accommodate cyclists and equestrian users,  
26 so the bridge would need to be substantially upgraded widening, or the structure  
27 replaced altogether, and the applicant's position is that there are alternative  
28 routes available to users further east and further west to make those journeys,  
29 and therefore it's not necessary.

30 MR TAIT: So the next point relates to a query about design standards, and I was going  
31 to refer to the design principles, in particular in REP4-146, PE02, 3, 4 and 6. 3  
32 covers surfacing, signing, boundary treatments, access control. 4 covers design  
33 standards and guidance, and 4 in particular provides all WCH routes to be  
34 designed in accordance with MRB-143 – designing for walking, cycling and

1 horse-riding – DMRB-195 – designing for cycle traffic – and MTM-120, which  
2 is cycle infrastructure design. There is quite a bit more to say about the process  
3 because it led into think thus far, including a space-proofing exercise at each  
4 bridge to ensure sufficient width allowed for user groups, and then there are  
5 separate design principles in relation to all the green bridges. So it may be best  
6 if we respond more fully in writing, but that’s the broad picture there.

7 Then the final point in relation to Kent relates to the question of  
8 maintenance of new assets, which is also picked up by Havering in particular.  
9 We have responded in part, I think, at ISH-3, and the framework is that which is  
10 set out in article 10 of the draft development consent order, which requires the  
11 highway to be completed to the reasonable satisfaction of the local highway  
12 authority and then maintained by and at the expense of the local highway  
13 authority. But in addition, there is now the protected provision schedule 14, part  
14 11, which provides provisions for the remedying of defects and the appropriate  
15 handover process. There’s an initial certification provision, the maintenance  
16 period on the undertaker, then the final certification.

17 Coming to the nub of the point, which is the same position as National  
18 Highways expressed at ISH-3, it is that the maintenance of local highways is  
19 funded by the Department of Transport, based on a formula linked to the total  
20 mileage of roads and unclassified roads, together with the numbers of various  
21 items of infrastructure. That’s refreshed every few years to take account of  
22 changes in road length and number of highway structures, and thus, as local  
23 highway works carried out under the DCO, and the amount of funding that each  
24 local highway authority receives, will be amended to recognise these additional  
25 responsibilities. Therefore, it's National Highways’ position that it should it not  
26 from its funding in relation to the strategic network, be responsible for those  
27 additional responsibilities which have their own mechanisms, which I’ve just  
28 indicated. So that’s the position we’ve set out and that remains our position.

29 In relation to Havering, I won’t repeat the commuted sums point. There  
30 are two points. First of all, Folkes Lane not being suitable for those proceeding  
31 from the overbridge to the west of the M25 over the A127, and I’ll ask Mr  
32 Roberts to respond to that, please.

33 MR ROBERTS: This is Steve Roberts for the applicant. We welcome the support from  
34 London Borough of Havering for our proposed crossing at the A127 to the west



1 of the M25. This is a structure that was introduced some time in 2020 in  
2 response stakeholder requests following one of our consultations.  
3 Notwithstanding the work that's ongoing, via colleagues at National Highways,  
4 through the designated funds process, where they're looking at working with  
5 London Borough of Havering to look at firstly, the possible upgrade of the bridge  
6 parapets for the structure over the M25, which would support ongoing use by a  
7 range of users, including equestrian users, but also, looking at feasibility of an  
8 alternative route away from Folkes Lane for walkers, cyclists and equestrian  
9 users, our official position of the DCO is that that work is not part of our project  
10 proposals, and we have no intention to bring forward any change to our  
11 proposals in that location.

12 MR TAIT: In terms of the suitability of Folkes Lane, or otherwise, it was mentioned,  
13 that 30mph speed limit – 41mph – speeding, I believe, on average.

14 PARTICIPANT: Yes, that's correct. Yeah.

15 MR ROBERTS: Steve Roberts for the applicant. With regards to the concerns from  
16 London Borough of Havering about speeding traffic, Folkes Lane is a dead end.  
17 It serves a number of residential properties at the southern end and a number of  
18 business premises further up the eastern side. It is a rural country lane,  
19 essentially. We consider that, should London Brough of Havering consider that  
20 there are issues with speeding along that lane, then that is a matter for London  
21 Brough of Havering, as highway authority, to consider suitable measures to  
22 address that point, and that's the position with regards to Folkes Lane.

23 MR TAIT: So far as designated funds are concerned, that's, as you know, not part of the  
24 project. It's in the background, but that provides an opportunity for Havering to  
25 add some additional legacy, if that's how they wish to proceed. But I's not relied  
26 on as part of these proposals. We rely on the legacy that we are providing as  
27 part of the project, and that's acceptable and satisfactory.

28 MR SMITH: Understood.

29 MR TAIT: Then in relation to TfL, in relation to the bridge, I think I'd just ask Mr  
30 Roberts to clarify the purpose. It was explained that was for historic severance,  
31 but there was a query expressed about whether that is the case or not.

32 MR ROBERTS: Steve Roberts for the applicant. Yes, it's our firm position that the new  
33 crossing at the A127 to the west of junction 29 of the M25 is to deal with historic  
34 severance, and it's not part of mitigation for the project. I believe the reference

1 Mr Rheinberg made to part D of our project design report is focussed on the  
2 crossing on the eastern side of the A127, east of the M25 junction 29, and we  
3 shall check those references. But our position is that this is a proposal to deal  
4 with historic severance and we are pleased that TfL agrees that a grade separated  
5 crossing is the right solution at this location.

6 MR TAIT: If there's any uncertainty in the documentation, we'll clarify that to make  
7 sure that is clear. So those are all my responses to the points that have come up.  
8 I don't think anyone raised anything under B3 about usage surveys and  
9 assessments. We have got a response. We can put that in writing, if that's –

10 MR SMITH: I would indeed be grateful if you would because had this proceeded in a  
11 more 'normal' manner, then we would have asked those questions of you and  
12 your response would have emerged. So that would be much appreciated, and in  
13 that respect, there is another matter than I'm very briefly going to lay on the  
14 table, and I do not expect an oral response, but again, one in writing might assist  
15 –

16 MR FRASER: Sir.

17 MR SMITH: Apologies, yes.

18 MR FRASER: No, apologies to you for interrupting, but when there's a convenient  
19 moment, I've just a short point to make on this agenda item.

20 MR SMITH: Ah, right. Well, look. I think the most convenient moment is probably  
21 now because the point that I was going to make was going to relate to it, but I  
22 was essentially going to just drop in a couple of questions that I would have  
23 asked in the flow, had we done it in the normal manner. But I'll come to you  
24 first, Mr Fraser.

25 MR FRASER: Thank you very much. Andrew Fraser for Kent County Council. Sir,  
26 one of the points that we've skipped and that we're saving writing in the interest  
27 of brevity related to this issue of surveys, and it's simply querying whether or  
28 not, or why there hadn't been a more extensive use of automatic counters. The  
29 counting appeared to be done entirely manually and we thought that was a bit  
30 odd in this day and age, but we can amplify that in our written submission, as  
31 we'd intended to.

32 MR SMITH: Thank you very much, and clearly, that's been noted. Mr Latif-Aramesh,  
33 amongst others, are busily writing away, so it may well be that that can also be  
34 responded to as a general point at deadline 6 by the applicant. Okay. Now, Mr

1 Tait, there were just two other questions that I was going to ask of you. The first  
2 being in relation generally to the prospective role of Active Travel England as a  
3 government agency in relation to the WCH/NMU position in this application,  
4 because I'm conscious of the fact that they, to a degree, became a new part of  
5 the landscape, emerging substantially after a lot the work around the formulation  
6 of the WCH strategy for this application had emerged, and whether the dilemmas  
7 that an examining authority always has is how to deal with essentially, the new  
8 in the face of transitional shifts in the machinery of government funding etc.

9 I thought the fairest way forward, given that they are now established and  
10 they have published strategies, was simply just to put a question, that can be  
11 responded to in writing, to raise their existence and ask for observations on the  
12 degree to which a) it is considered, the approach that the application puts in front  
13 of us broadly aligns with the strategic approach set out in what is now the  
14 cycling/walking investment strategy too. But also, to the degree that there – it  
15 appears that ATE are, amongst other things, a source of capital funding, and they  
16 aren't an interested party.

17 I think you came across the threshold too early for them to be formally  
18 engaged as a consultee and we have to be very delicate about drumming them in  
19 to being an interested party in circumstances where they haven't become one, or  
20 don't apparently wish to be one. But equally, there is a potentially interesting  
21 question about the degree to which some of your proposals might align with their  
22 strategic objectives, and there may even some funding. So I just wanted to put  
23 those two on the table for a response in writing – a general view on compliance  
24 on the cycling/walking investment strategy and also, the possibility of relevant  
25 capital funds which might, crossing the table, both in terms of the interests of  
26 private landowners and indeed the interest of the local authorities here, help  
27 resolves some matters that, at the moment, might feel as though they're  
28 struggling to be resolved in terms of funds. A large amount of stuff in a very  
29 small oral question for response in writing, please. Is that achievable by deadline  
30 6?

31 MR TAIT: That midnight oil is going to come in good use again.

32 MR SMITH: I'm afraid it will.

33 MR TAIT: We will do our best, sir, yes.

1 MR SMITH: Well, again, we're grateful. Rest assured; there's midnight oil being burnt  
2 all around these tables.

3 MR TAIT: We're not claiming any unilateral [inaudible].

4 MR SMITH: Okay. On that basis, I believe that we have come to, in a rather  
5 unconventional manner, the end of today's agenda items 4 and 5. So, unless my  
6 colleagues have any further matters that they want to raise – 'Many, but not  
7 now,' says Ms Laver. Yeah. Well, I think we're probably all in that space.  
8 What I was then going to do was to move on then to our next steps, to flag that  
9 this has been issue-specific hearing 10, broadly focussed on traffic and  
10 transportation and non-motorised user considerations. It is also the last hearing  
11 in this sequence that have been held at Brands Hatch, so, as I trust seems normal  
12 now, but nevertheless I would very much like to thank everybody for the  
13 commitment that has been made to participation in these events, all the interested  
14 parties who've spoken and their representatives, and indeed the applicant and  
15 the applicant's team.

16 I would also again clearly like to thank our case team and the audiovisual  
17 team for keeping us on the road. Now, we do have the hearings that I introduced  
18 at the beginning of this session, commencing in November, that will be, we  
19 anticipate, the final oral processes in this examination. I won't repeat any of my  
20 advertisement of those. Anybody who's looking at this on the livestream, or  
21 looking at this on the recording later, you'll find at the beginning of this hearing  
22 an outline of what those hearings will be, and the opportunity that they present  
23 for essentially the final involvement in the oral processes in this examination.

24 So, unless there's anything else that anybody needs to raise now, before  
25 we close this hearing and bring down – I have to say it – the chequered flag –  
26 Ms Laver challenged me to bring a boring, old gag to the table. Before we close  
27 this hearing at Brands Hatch, is there anything that anybody needs to raise. I see  
28 nothing in the virtual room, and nothing in the physical room. Ladies and  
29 gentlemen, that brings an end to this hearing and I will just ask my colleagues  
30 to say their final goodbyes.

31 MR TAYLOR: Ken Taylor speaking. Thank you, everybody. Good evening from me.

32 MS LAVER: Thank you, everybody.

33 MR PRATT: Thank you, everybody.

34 MR SMITH: Mr Young, virtually.

1 MR YOUNG: Thank you, everybody. I shall see you all in November.

2 MR SMITH: Finally, from myself, Rynd Smith, panel lead, thank you very much.

3 Goodbye, and safe journeys home. This hearing is now closed.

4

5

**(Meeting concluded)**