

Lower Thames Crossing

9.143 Applicant's Response to Comments made by Kathryn Homes Limited, Runwood Homes Limited and Runwood Properties Limited at Deadline 5

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1 Introduction

1.1 Applicant's response to comments made by Kathryn Homes Limited, Runwood Homes Limited and Runwood Properties Limited at Deadline 5

1.1.1 At Deadline 5, Written Submissions [[REP5-119](#)] were collectively made on behalf of:

- a. Kathryn Homes Ltd: Unique Reference 20035583
- b. Runwood Homes Ltd: Unique Reference 20035580
- c. Runwood Properties Ltd: Unique Reference 20035582

1.1.2 The Applicant has responded to these Written Submissions in Table 2.1 below.

2 Applicant’s Response to comments made by Kathryn Homes Limited, Runwood Homes Limited and Runwood Properties Limited at Deadline 5

Table 2.1 Applicant’s response to Written Submissions made by Kathryn Homes Limited, Runwood Homes Limited and Runwood Properties Limited at Deadline 5 [REP5-119]

Section no.	Written Submission Comments	Applicant’s Response
Paragraph 5	<p>The Objectors note that the Applicant designed the LTC and its proposed mitigation measures without the benefit of any internal inspection of Whitecroft and it was only in June 2023 that the Applicant visited the property for the first time, despite some six years of ‘engagement’. The Objectors remain concerned that, notwithstanding the Applicant’s comments (at para 3.2.4) about wishing to “<i>engage further... to address the concerns raised</i>”, the Applicant has still not grasped the essential point that the juxtaposition it seeks to impose by constructing the LTC around Whitecroft is not acceptable, and cannot be made acceptable, for a community of vulnerable residents.</p> <p>Fundamentally, the Applicant needs to rethink its approach if it is seriously wishing to address the Objectors’ concerns.</p>	<p>Following Compulsory Acquisition Hearing 2 (CAH2), the Applicant has sought to arrange meetings with the agent representing Kathryn Homes Limited, Runwood Homes Limited and Runwood Properties Limited. A request for a meeting to discuss matters further was sent on 4 October 2023 and a meeting was held on 23 October 2023.</p> <p>The purpose of the meeting was to further engage around how the objectors’ concerns could be considered and to understand the requests from the owners of Whitecroft.</p> <p>At the meeting on 23 October 2023, the Applicant requested additional information to understand if there are any rooms that are highly vulnerable to vibration in terms of sensitive equipment, if there are any facades of the building that are structurally unsound, and details of any structural condition surveys previously undertaken. The Applicant will continue to liaise with the agent representing Kathryn Homes Limited, Runwood Homes Limited and Runwood Properties Limited on the additional information that could be used to inform further discussions on vibration mitigation and the REAC commitments.</p> <p>Whilst the Applicant will continue to liaise with the Care Home to mitigate the impacts as far as practicable, the Applicant has offered to enter into wider discussions with the owners around other possible solutions.</p>

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Paragraph 6	<p>The Objectors also note (from para 3.2.3) that the Applicant is apparently undertaking some further noise assessment but has not seen any results from such work and necessarily reserve their position on anything further that may be produced by the Applicant.</p>	<p>The information relating to the “further noise assessment” is provided in the Deadline 6 response to the Examining Authority’s written questions ExQ2_Q9.1.7 and ExQ2_Q9.1.8 considered within Responses to the Examining Authority’s Second Round of Written Questions (ExQ2) Appendix E [Document Reference 9.152].</p>
Paragraphs 7 and 8	<p>7. The Applicant’s reliance (at para 3.2.5) on Best Practical Means (“BPM”) measures during the construction process, as secured by NV002, NV004, and NV007 of the REAC Table 7.1 in REP4-139 (which has replaced the earlier version in REP3-104 as referred to by the Applicant), will not be sufficient to avoid unacceptable adverse construction noise impacts arising. The Objectors have already set out their concerns that such BPM measures have not been shown to achieve demonstrable noise reductions (in section 6 of REP1-367).</p> <p>Moreover, it is clear from the Applicant’s reliance (in NV007) on the definition of BPM in section 72 of the Control of Pollution Act 1972, that any measures that are put forward will be subject to, amongst other things, the “<i>financial implications</i>” of undertaking those measures. Section 72 COPA 1974 defines BPM for the purposes of the provisions of the COPA 1974 (including for the purposes of the section 61 notice regime espoused by NV002 and NV004), and section 72(1) and (2) COPA 1974 are explicit that:</p> <p><i>“(1) This section shall apply for the construction of references in this Part of this Act to best practicable means.</i></p> <p><i>(2) In that expression “practicable” means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications.”</i></p>	<p>The Applicant will implement a system of control consistent with the Control of Pollution Act (CoPA) 1974 and the long-established precedent of implementing best practicable means (BPM) as defined by the Act. The BPM measures to be used will be agreed with the relevant local authorities and subject to their control under their statutory powers under CoPA 1974. The Applicant considers this to be an established and proportionate approach on other projects, and does not agree that BPM would not be implemented or effective.</p> <p>BPM is a tried and tested measure for determining whether an undertaker is making sufficient efforts to control pollution. Its use has been adopted in multiple DCOs, including the code of construction practice under the Thurrock Flexible Generation Plant DCO and the construction environmental management plan under the Port of Tilbury (Expansion) Order 2019, as well as those promoted by National Highways. It is the subject of statutory codes of practice and is well understood by local authority environmental health officers.</p> <p>The BPM test requires consideration not just of financial implications, but of all the factors that might affect whether a particular measure would be reasonably practicable in the circumstances that apply at the time when construction activities are being carried out. These include, but are not limited to, the local conditions and circumstances -</p>

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	<p>8. Consequently, neither the Applicant nor its contractors is required to achieve any particular noise reduction outcome, if they can successfully argue that to do so would have unreasonable financial implications. This places enormous uncertainty on what measures would or would not be implemented in practice.</p>	<p>including the sensitivity of the receptors - the current state of technical knowledge and the financial implications. It covers the design, installation, maintenance and manner and periods of operation of plant and machinery, as well as the design, construction and maintenance of buildings and acoustic structures.</p> <p>It is deliberately flexible so that BPM can be tailored to each particular situation. In practice, the BPM test set out in the CoPA 1974 is very similar to the common law tests that apply when determining whether undertakers have a defence to claims of nuisance (the common law tort that covers matters such as noise and vibration), which require reasonable diligence to be used to prevent pollution, taking account of the state of scientific knowledge and practical feasibility.</p> <p>In carrying out the authorised development, the Applicant would comply with BS 5228:2009 +A1:2014 Code of practice for noise and vibration control on construction and open sites Part 1: Noise; and Part 2: Vibration (British Standards Institution, 2009), which is an approved code of practice under the Control of Noise (Code of Practice for Construction and Open Sites) (England) Order 2015. Clause 8 of both BS 5228-1:2009 +A1:2014 and BS 5228-2:2009 +A1:2014 sets out a number of detailed measures that can be used to reduce noise and vibration respectively, depending on the specific circumstances.</p> <p>Section 6.4.8 of Environmental Statement Appendix 2.2 Code of Construction Practice [REP5-048] makes it clear that the Applicant will require its Contractors to apply to the relevant local authority for prior consent to any works on a construction site, under section 61 of the CoPA 1974. The precise method to be used to control noise and vibration in</p>

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		<p>the proximity of the Whitecroft Care Home would therefore be approved by the local authority. Under section 72(6) of the 1974 Act, the local authority must have regard to BS 5228-1:2009 +A1:2014 and BS 5228-2:2009 +A1:2014 when deciding whether the Applicant’s proposals constitute BPM.</p> <p>If the local authority considers that the measures proposed by the Applicant and its Contractors do not constitute BPM in the circumstances, then it will be for the Applicant to justify them. This means that if alternative methods are proposed, it will be for the Applicant to explain why they are not practicable in the circumstances.</p>
Paragraph 9	<p>Furthermore, it is to be noted that even where measures are required, NV015 means that whatever limits are to be achieved, any exceedance does not lead to a cessation or prohibition of the offending activity, but to an investigation (by the contractor), and then a review of BPM, and then (potentially) additional measures being introduced. In other words, the noise disturbing activity can continue in the meantime, whether that is for days or weeks whilst the process in NV015 is undertaken.</p>	<p>The Applicant is committed to apply BPM and does not agree that it is proportionate to always stop work if there is a monitoring exceedance as the noise source would need to be investigated to determine if it was related to construction activities associated with the Project. As per commitment NV015 in the Register of Environmental Actions and Commitments (REAC) within the Code of Construction Practice [REP5-048], <i>“the Contractors shall, at the earliest reasonably practicable opportunity, investigate to confirm that works being undertaken as part of the Project are the source of the noise. If this is confirmed, then the Contractor shall immediately undertake a further review of the best practicable means (as defined under the Control of Pollution Act, 1974) employed for the activity to minimise noise and agree additional or modified mitigation with the relevant local authorities unless otherwise agreed with the SoS”</i>. The Contractor shall promptly investigate activities on the site to ascertain whether noise is emanating from the site or activities are occurring that are not in line with noise control procedures.</p>

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		<p>The specific time period shall be a matter which forms part of the Noise and Vibration Management Plan (NV002) which is subject to consultation with the relevant local authorities. If the noise source is Project site construction activities, the Contractor will propose mitigation actions and agree necessary amendments with the relevant local authority.</p>
<p>Paragraph 10 and 11</p>	<p>10. The Objectors have similar concerns in relation to Applicant’s reliance (in para 3.2.7) on the REAC commitments in relation to AQ/dust controls. There is no commitment in AQ006 (in REP4-139) to undertake either dust or particulate monitoring in the vicinity of Whitecroft. Even where monitoring is to be undertaken, baseline monitoring is only for 3 months (and not for up to 12 months as suggested by the Objectors on a without prejudice basis in REP4-382), and in the event of any exceedance, there is no requirement for cessation or prohibition of the offending activity, but a process of investigation and recording.</p> <p>11. Put simply, residents of Whitecroft can have no confidence that they will enjoy a stable and tranquil environment, with access to (non-dusty) fresh air, whether indoors or in outside spaces, even if all of the measures in the REAC are carried out during the extended construction period.</p>	<p>As set out in the REAC commitment AQ006 within ES Appendix 2.2: Code of Construction Practice [REP5-048], the Contractor will use a risk-based approach to determine the method and locations of any air quality monitoring required, having regard for the specific packages of works to be undertaken and their proximity to receptors around the site. It is not practical to develop this detailed monitoring strategy at present, ahead of the development of the detail of the work to be undertaken on each specific site (i.e. detail regarding the nature, location and duration of activities, as this will determine with risk of adverse dust impacts arising at specific receptors). Hence the commitment for the air quality monitoring programme to be subject to approval by the Secretary of State (SoS) in consultation with the relevant local authorities to ensure appropriate scrutiny when the requisite information is available.</p> <p>The Guidance on Monitoring in the Vicinity of Demolition and Construction Sites (Institute of Air Quality Management (IAQM), 2018) states “<i>Where baseline monitoring is deemed necessary, it will normally be necessary to undertake monitoring for a minimum period of three months...</i>”. REAC commitment AQ007 [REP5-048] has however been amended to increase the baseline dust</p>

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		<p>monitoring period from three months to six months for Deadline 6.</p> <p>The Applicant is committed to apply BPM and does not agree that it is proportionate to always stop work if site action levels are exceeded as the dust source would need to be investigated to determine if it was related to construction activities associated with the Project (e.g. it could be associated with a regional pollution event which is detected at other stations in the wider area). As per REAC commitment AQ008 [REP5-048], “<i>The Contractor, or a delegated representative, shall promptly investigate activities on the site to ascertain whether any visible dust is emanating from the site or activities are occurring that are not in line with dust control procedures. The specific time period shall be a matter which forms part of the air quality monitoring plan which is subject to consultation with the relevant local authorities under REAC item AQ006</i>”. If the dust source is from Project site construction activities, the Contractor will propose mitigation actions and agree necessary amendments with the relevant local authority.</p>
Paragraph 12	<p>In so far as the Applicant continues to rely on its HEqIA [REP3-118] to show that it has given “<i>due regard</i>” to the “<i>potential for residents to be disproportionately affected</i>” (para 3.2.3), nowhere has the Applicant explained how this “<i>regard</i>” has been translated into the Applicant’s assessment of impacts, or identification of mitigation measures to address those impacts.</p> <p>Given the actual approach that the Applicant has taken in its assessment, it is hard to see that there has been any meaningful regard given to the acknowledged fact that residents of Whitecroft will be disproportionately affected by the construction activities proposed in their immediate vicinity.</p>	<p>The HEqIA [REP3-118] relies on the outcomes of technical assessments such as that undertaken for noise and vibration, with results set out in ES Chapter 12: Noise and Vibration [APP-150]. The HEqIA takes the findings from these assessments and applies the Applicant’s understanding of the location and extent of sensitive populations to identify the nature of health outcomes and whether mitigation measures proposed are sufficient.</p> <p>Table 7.32 of the HEqIA [REP3-118] summarises the assessment of health outcomes in relation to impacts during construction. The table concludes that for both general and sensitive populations (the latter specifically</p>

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		<p>includes older people, children and people with pre-existing health conditions/disabilities), the health outcome for affected communities as a result of changes in noise levels during construction is assessed as negative and significant. A range of mitigation measures have been identified to reduce impacts associated with construction noise and these are set out elsewhere in this document.</p>
Paragraph 15	<p>With specific reference to the Applicant’s reference to Low Noise Surfacing (NV013) during the operational period, there appears to be no current commitment in the REAC to replace that Surfacing treatment after its initial installation, whereas it is noted that in the Applicant’s response to ExQ(1)9.4.8, a typical operational life of 11-12 years is expected. No information is provided on the degradation of its noise reduction qualities during that typical operational life. The Objectors note that the Applicant intends to put forward a revised version of NV013 at Deadline 5 and will reserve further comment until they have seen that revision.</p>	<p>REAC commitment NV013 was updated at Deadline 5, the wording is presented below and the Applicant will reserve further comment until Kathryn Homes Limited, Runwood Homes Limited and Runwood Properties Limited provide further comments:</p> <p><i>“a) For the locations identified on ES Figure 12.6, a surfacing system that has a reported noise Road Surface Influence (RSIH) of -7.5dB(A) or better in accordance with the Highway Authorities Product Approval Scheme certification system shall be installed.</i></p> <p><i>b) For the locations identified on ES Figure 12.6, a ‘Level 3’ (i.e. RSIH -3.5 dB(A) or better), very quiet surfacing material, as defined by Manual of Contract Documents for Highway Works Volume 1 - Specification for Highway Works, Series 0900, Table 9-17, shall be installed on all other new and altered trunk roads and associated slip roads forming part of the Project.</i></p> <p><i>c) For the locations identified on ES Figure 12.6, a ‘Level 2’ (i.e. RSIH - 2.5dB(A) or better), quieter than Hot Rolled Asphalt surfacing material, as defined by Manual of Contract Documents for Highway Works Volume 1 - Specification for Highway Works, Series 0900, Table 9-17, shall be installed on all new and altered local roads forming part of the Project.</i></p>

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		<i>d) Surface renewal will be undertaken using replacement road pavement on the strategic road network that has a no worse noise emission performance (Highway Authority Product Approval Scheme certification values) than that laid for the Project’s opening.”</i>

Glossary

Term	Abbreviation	Explanation
A122		The new A122 trunk road to be constructed as part of the Lower Thames Crossing project, including links, as defined in Part 2, Schedule 5 (Classification of Roads) in the draft DCO (Application Document 3.1)
A122 Lower Thames Crossing	Project	A proposed new crossing of the Thames Estuary linking the county of Kent with the county of Essex, at or east of the existing Dartford Crossing.
A122 Lower Thames Crossing/M25 junction		New junction with north-facing slip roads on the M25 between M25 junctions 29 and 30, near North Ockendon.
A13/A1089/A122 Lower Thames Crossing junction		Alteration of the existing junction between the A13 and the A1089, and construction of a new junction between the A122 Lower Thames Crossing and the A13 and A1089, comprising the following link roads: <ul style="list-style-type: none"> • Improved A13 westbound to A122 Lower Thames Crossing southbound • Improved A13 westbound to A122 Lower Thames Crossing northbound • Improved A13 westbound to A1089 southbound • A122 Lower Thames Crossing southbound to improved A13 eastbound and Orsett Cock roundabout • A122 Lower Thames Crossing northbound to improved A13 eastbound and Orsett Cock roundabout • Orsett Cock roundabout to the improved A13 westbound • Improved A13 eastbound to Orsett Cock roundabout • Improved A1089 northbound to A122 Lower Thames Crossing northbound • Improved A1089 northbound to A122 Lower Thames Crossing southbound
A2		A major road in south-east England, connecting London with the English Channel port of Dover in Kent.
Application Document		In the context of the Project, a document submitted to the Planning Inspectorate as part of the application for development consent.
Construction		Activity on and/or offsite required to implement the Project. The construction phase is considered to commence with the first activity on site (e.g. creation of site access), and ends with demobilisation.
Design Manual for Roads and Bridges	DMRB	A comprehensive manual containing requirements, advice and other published documents relating to works on motorway and all-purpose trunk roads for which one of the Overseeing Organisations (National Highways, Transport Scotland, the Welsh Government or the Department for Regional Development (Northern Ireland)) is highway authority. For the A122 Lower Thames Crossing the Overseeing Organisation is National Highways.
Development Consent Order	DCO	Means of obtaining permission for developments categorised as Nationally Significant Infrastructure Projects (NSIP) under the Planning Act 2008.

Term	Abbreviation	Explanation
Development Consent Order application	DCO application	The Project Application Documents, collectively known as the ‘DCO application’.
Environmental Statement	ES	A document produced to support an application for development consent that is subject to Environmental Impact Assessment (EIA), which sets out the likely impacts on the environment arising from the proposed development.
Highways England		Former name of National Highways.
M2 junction 1		The M2 will be widened from three lanes to four in both directions through M2 junction 1.
M2/A2/Lower Thames Crossing junction		New junction proposed as part of the Project to the east of Gravesend between the A2 and the new A122 Lower Thames Crossing with connections to the M2.
M25 junction 29		Improvement works to M25 junction 29 and to the M25 north of junction 29. The M25 through junction 29 will be widened from three lanes to four in both directions with hard shoulders.
National Highways		A UK government-owned company with responsibility for managing the motorways and major roads in England. Formerly known as Highways England.
National Planning Policy Framework	NPPF	A framework published in March 2012 by the UK’s Department of Communities and Local Government, consolidating previously issued documents called Planning Policy Statements (PPS) and Planning Practice Guidance Notes (PPG) for use in England. The NPPF was updated in February 2019 and again in July 2021 by the Ministry of Housing, Communities and Local Government.
National Policy Statement	NPS	Set out UK government policy on different types of national infrastructure development, including energy, transport, water and waste. There are 12 NPS, providing the framework within which Examining Authorities make their recommendations to the Secretary of State.
National Policy Statement for National Networks	NPSNN	Sets out the need for, and Government’s policies to deliver, development of Nationally Significant Infrastructure Projects (NSIPs) on the national road and rail networks in England. It provides planning guidance for promoters of NSIPs on the road and rail networks, and the basis for the examination by the Examining Authority and decisions by the Secretary of State.
Nationally Significant Infrastructure Project	NSIP	Major infrastructure developments in England and Wales, such as proposals for power plants, large renewable energy projects, new airports and airport extensions, major road projects etc that require a development consent under the Planning Act 2008.
North Portal		The North Portal (northern tunnel entrance) would be located to the west of East Tilbury. Emergency access and vehicle turn-around facilities would be provided at the tunnel portal. The tunnel portal structures would accommodate service buildings for control operations, mechanical and electrical equipment, drainage and maintenance operations.
Operation		Describes the operational phase of a completed development and is considered to commence at the end of the construction phase, after demobilisation.

Term	Abbreviation	Explanation
Order Limits		The outermost extent of the Project, indicated on the Plans by a red line. This is the Limit of Land to be Acquired or Used (LLAU) by the Project. This is the area in which the DCO would apply.
Planning Act 2008		The primary legislation that establishes the legal framework for applying for, examining and determining Development Consent Order applications for Nationally Significant Infrastructure Projects.
Project road		The new A122 trunk road, the improved A2 trunk road, and the improved M25 and M2 special roads, as defined in Parts 1 and 2, Schedule 5 (Classification of Roads) in the draft DCO (Application Document 3.1).
Project route		The horizontal and vertical alignment taken by the Project road.
South Portal		The South Portal of the Project (southern tunnel entrance) would be located to the south-east of the village of Chalk. Emergency access and vehicle turn-around facilities would be provided at the tunnel portal. The tunnel portal structures would accommodate service buildings for control operations, mechanical and electrical equipment, drainage and maintenance operations.
The tunnel		Proposed 4.25km (2.5 miles) road tunnel beneath the River Thames, comprising two bores, one for northbound traffic and one for southbound traffic. Cross-passages connecting each bore would be provided for emergency incident response and tunnel user evacuation. Tunnel portal structures would accommodate service buildings for control operations, mechanical and electrical equipment, drainage and maintenance operations. Emergency access and vehicle turn-around facilities would also be provided at the tunnel portals.

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