

Lower Thames Crossing

Post Event Submissions for Issue Specific Hearings (ISH8 – ISH10)

31 October 2023

Post Event Submissions for Issue Specific Hearings (ISH8 – ISH10)
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Contents

- 1 Issue Specific Hearing 8 (ISH8) - Construction & Operational Effects (Non traffic)**
Appendix A: Regina (Innovia Cellophane Ltd and another) v Infrastructure Planning Commission, 2011
- 2 Issue Specific Hearing 9 (ISH9) – Environment and Biodiversity**
- 3 Issue Specific Hearing 10 (ISH10) – Traffic and Transportation**
Appendix A: Further Commentary on Modelling
Appendix B: Applicant’s email dated 27 April 2022 (redacted)

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1 Issue Specific Hearing 8 (ISH8) - Construction & Operational Effects (Non traffic)

Issue Specific Hearing 8 (ISH8) – Construction & Operational Effects (Non traffic)

19 October 2023

Post Hearing Submission made by Thurrock Council, including written summary of Thurrock Council's Oral Case

Note: these Post Hearing Submissions include a written summary of the Oral Case presented by the Council at ISH8. They also include the Council's submissions on all relevant Agenda Items, not all of which were rehearsed orally at the ISH due to the need to keep oral presentations succinct.

The structure of the submissions follows the order of the agenda items but within each agenda item, the submissions begin by identifying the oral submission made at ISH8 by the Council and then turn to more detailed matters. Where requests for further information / clarification from the applicant were made by the Council at ISH8 these have been highlighted as 'Requests'. Where the Examining Authority (ExA) requested the Council provides further written evidence or further information has been provided in response to statements made by the applicant during ISH8, this further information is included in an Appendix and highlighted within this submission. This Appendix is, as follows:

Appendix A – Regina (Innovia Cellophane Ltd and another) v Infrastructure Planning Commission, 2011.

This submission includes a response to the relevant Action Points arising from ISH8 [\[ISH8\]](#).

ISH8 was attended by George Mackenzie on behalf of the Council. Also, in attendance either in person or virtually at ISH8 on behalf of the Council were Adrian Neve, Chris Stratford, Mubassir Malik, Prudence Wales, Mary Mescall, Chris Hudson, Ben Standing and Sharon Jefferies. Tracey Coleman, Chief Planning Officer for Thurrock Council, also attended virtually.

The ExA asked questions of the Applicant relating to:

Agenda Item		Thurrock Council's Response
3	Construction compound matters	
a)	Construction compound matters	
i.	Whether the approach to waste and material management is appropriate.	Comments by Mr Neve – ISH8 Transcript Page 14 (EV-067) The view from the Council is that the control documents, such as the oSWMP and the oMHP, are not strong enough at this stage to allow proper monitoring and management during the construction process or to give enough leadership and guidance to the incoming contractors. It is the Council's opinion that there should be much more depth and specification in the actions and initiatives that are captured within those frameworks; and, leaving the detail to post-consent stages will not give a strong enough framework from which to build. There needs to be better guidance from the applicant as to how contractors should restrict themselves to the waste hierarchy; and materials' movements and handling profiles and caps on quanta. Whilst there are references to the waste hierarchy within the oSWMP, there is not the guidance and leadership or targets that would give an acceptable Rochdale Envelope to

Agenda Item	Thurrock Council's Response
	<p>work within or measure any exceedance against. The Council wishes the adherence and waste hierarchy targets to be set out in the oSWMP to be adopted into the SWMPs. This would assist the contracts and those being consulted on the SWMPs, thereby removing ambiguity and debate.</p> <p>Projections in the assessments assume flat profiles for materials movements and handling, but that is not the reality. The Council accepts that at this stage the applicant will not have that detail, but it is necessary to derive an initial capped profile against which to measure for compliance and control within the project. Those caps and profiles should be specific to the compounds, again to assist with compliance monitoring.</p> <p>Within the oMHP and the oSWMP, the applicant has concentrated its commitment on the movement of bulk aggregates for the tunnelling operation. The project itself has a much broader requirement for materials, plant and equipment handling across the contracts. The Council expects more rigour of the assessment of other items prior to consent that can be reflected in the control documents. The applicant should be stretching itself and its contractors, reflecting the Pathfinder status of the project. The Council needs to have assurance at this stage that those aspects are going to be brought through into the latter detailed materials handling plans. Unless these are provided within the framework documents the resultant detailed plans will be weak and there will be significant challenge at the time of consulting on them.</p> <p>The Council has issued a joint response with the Port of London Authority and in that response, the two organisations included a reasonable approach to consider specific aspects of the project, as to how those materials and plants and equipment could be handled better, to look at reducing environmental impact and reducing risk, reducing harm to local communities and stretching the aspect of the project so that we can see that environmental protection and reduction in the impacts. The joint response was contained in the Local Impact Report Appendix C Annex 2 Sub-annex 2.5 Table 1 (REP1-281).</p> <p>This matter was discussed at ISH5 after which the applicant has included in its Written Statement to conclude that it does not seek to progress any further with the commitments in the oMHP, and see further commitments to using non-road transport as neither sensible or deliverable. This is viewed by the Council as extremely unfortunate.</p> <p>The current iterations of the outline control documents do not give the structure from which to build, measure and monitor during the process and to understand exactly whether there is an exceedance or compliance within the movement and</p>

Agenda Item	Thurrock Council's Response
	<p>handling of that plan. The contractors would be able to capitalise on that flexibility and the project will suffer from poor performance and stakeholder profile.</p> <p>Comments by Mr Taylor– ISH8 Transcript Page 16 (EV-067)</p> <p>Mr. Taylor, on behalf of the ExA, asked Mr. Neve if he could expand on his concerns about exceeding the Rochdale Envelope.</p> <p>Comments by Mr Neve – ISH8 Transcript Page 16 (EV-067)</p> <p>The Council's concern is that there are a number of compounds throughout the project, but the applicant has not provided any parameters for each compound. There are two main works contracts to the north and there will be a number of subcontracts. Currently, the information provided by the applicant has only an indication of the movements associated with each compound and the assessment within the modelling applies those broad movements across a reasonably broad zone within the modelled network. There is therefore no commitment as to how each compound would operate and be managed by the contractors, so it would be extremely challenging to monitor compliance with a Rochdale Envelope for those movements throughout the network. Without rigor that should come through the controlled documents, the contractors could quickly move outside of the assessed Rochdale Envelope</p> <p>The allocation of movements for each compound must include the workforce. It is noted, however, that the modelling that has been undertaken by the applicant does not apply the workforce traffic to the routes that it has stated it would commit workforce traffic to; and so the evidence does not actually comply with that undertaking.</p> <p>What this illustrates is that there are many intertwined challenges around the operation of the compounds (materials, plants, equipment and people) that make it very challenging for the contractors to know quite what compliance envelope they are working to.</p> <p>Comments by Mr Smith – ISH8 Transcript Page 17 (EV-067)</p> <p>Mr. Smith posed the conundrum on behalf of the ExA: we are at a very interesting fulcrum point between an inevitable measure of detail that needs to be understood in order to understand whether the assessment of impacts that has been undertaken and forms the Rochdale Envelope – forms that which is a) used in the ES, and b) is therefore secured – as against allowing the reasonable commercial freedom and the contractual flexibility that actually allow an undertaker to deliver a project at</p>

Agenda Item	Thurrock Council's Response
	<p>reasonable cost to the public, because they are not tied down left, right and centre.</p> <p>There is an inherent tension between those two objectives. What would substantially assist the panel would be to be very clear about circumstances where, because of particular factors such as the relationship between a proposed construction compound site and particular sensitive receptors, that there is a need to understand that the maximum adverse impact in relation to a particular indicator must be precise and needs to be more certain than it currently is. To give a couple of very particular examples, if it is noise sensitivity, then what are the particular operations that are likely to go on in the compound? What is the worst-case bundle of those? And is it that that we are seeing underlying the assessment in terms of the most adverse sensitive receptor noise impacts from that compound in the ES? Now, if the answer to that question is, 'Yes, it is', then the applicant has probably done a decent job, whereas if the answer to that question is that sometimes there has been a slightly more generic assessment of the mix of activities that might take place in a compound, because that is not spatial and maybe not specific as to particular work types and techniques and timings, you are not 100% sure whether or not a maximum adverse assessment has been achieved on the compound. Now, what we need to know is if there are any doubts about that point, that must be put in writing by Deadline 6 so that the applicant can check those against the ES, and say either, 'No, we believe we've assessed the maximum, because'; or alternatively, 'We need to additionally refer to this.'</p> <p>Comments by Mr Neve – ISH8 Transcript Page 18 (EV-067)</p> <p>Throughout the Council's evidence it has been drawing attention to where it believes there are specific impacts, such as Asda roundabout and Orsett Cock. There are also sensitive areas, communities and junctions, which are not necessarily identified as key areas within Thurrock, such as the Cross Keys junction, but are still sensitive to impacts and are shown to have impacts from movements.</p> <p>It is the Council's opinion that it is not possible to accurately monitor and manage impacts at compounds and across the local network and communities without clear and concise caps and constraints placed on those compounds and access corridors. There continue to be many variables for each compound and across the assessed construction phases that would present significant challenges to compliance checking. The Council has been provided no clarity as to the construction activities that would happen at each compound, merely a vague indication and no commitment. The Contractor may decide to undertake the construction in a different phasing, which would</p>

Agenda Item	Thurrock Council's Response
	<p>not align with the modelling used to inform the assessments. In that case the Rochdale Envelope is based on a different set of criteria. The detail within the framework documents of the oTMPfC or oMHP is not there currently and there is no assurance that the acceptable level of detail will come forward through the post-grant detailed plans. In answer to Mr. Smith's conundrum, the Council believes that there is still too little certainty over the Control Documents to provide a robust basis from which to control the effects on the transport network and local communities during construction.</p> <p>In closing, it was observed that whilst the applicant seeks flexibility in the control documents to allow innovation. The Council does not agree and considers that greater control through the frameworks of the documents, actually requires more innovation. It was noted that from other projects that the control actually requires innovate, requires the contractor to stretch itself. It is the Council's opinion that this is not the case at the moment with the Control documents for LTC.</p> <p>Further Written Statement</p> <p>The oSWMP does not clearly follow the prioritised approach to waste management, incorporate circular thinking or provide guidance to the main contractors, e.g. remove as highest priority and recover as the least preferred and dispose as the last option. This position is referenced at Section 10.10.11 of the Council's LIR (REP1-281), where Table 5.2 of the applicant's latest CoCP should provide guidance and targets to contractors. Contractors should be required to report and provide evidence to the Council and ExA that they have sought to maximise the benefits of the waste hierarchy. The Applicant has not yet adjusted its plans to reflect this point.</p> <p>With regards to the movement of excavated material and earthworks materials between compounds, the Council has sought assurances that these will be the subject of more detailed Environmental Management Plans, as the material will leave the arising site and the Order Limits to be deposited at an alternative location, albeit back within the Order Limits.</p> <p>It was noted from the oral evidence provided by the Port of Tilbury London Limited (PoTLL) and the Port of London Authority (PLA) that both IPs share the opinion of the Council that the control documents do not go far enough and do not provide the governance and framework that is required. Of note is that the PoTLL does not consider the exemptions appropriate as a mechanism to judge divergence from the Baseline Bulk Aggregates Commitment or any other subsequent commitment.</p> <p>Although the applicant maintains that further commitments are contained in the oMHP and that the document promotes a multi-</p>

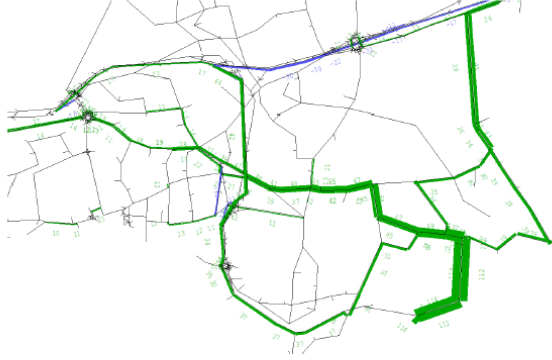

Agenda Item		Thurrock Council's Response
		<p>modal approach, the Council contests those points. The only stated commitment is the Baseline Bulk Aggregates Commitment, which in itself could be improved upon, and the oMHP dismisses most opportunities for using rail or other marine facilities. The applicant has focused only on the Port of Tilbury as a facility for multi-modal transportation. The strategy must consider the wider opportunities.</p> <p>The Council wishes to bring to the attention of the ExA that the applicant has only developed its approach to Materials Handling following pressure from the Council and other IPs and further to a direct suggestion of the Planning Inspectorate, when it considered the validity of the original (DCOV1) submission from the applicant.</p> <p>List of key locations susceptible to compound operations</p> <p>The following locations are noted as being most susceptible to the anticipated construction activities and reflect information previously shared with the applicant and construction phase modelling provided by the applicant:</p> <p>Junctions:</p> <ul style="list-style-type: none"> • Orsett Cock • Asda Roundabout and Dock Road • North Stifford interchange and North Road/Stifford Clays junction • Brentwood Road / Linford Road (Cross Keys) Junction • Daneholes Roundabout <p>Communities:</p> <ul style="list-style-type: none"> • Orsett Village • Chadwell St Mary • West Tilbury • East Tilbury • Horndon-on-the-hill <p>Receptors/Facilities:</p> <ul style="list-style-type: none"> • The Whitecroft Care Home • Orsett Hospital • William Edwards School • Treetops School • Linford Recreation Ground • Port of Tilbury • DPW London Gateway
ii.	The effect of noise, vibration and other disturbance on	Mr. Malik stated to the ExA that the Council sets out its views on noise and vibration in its representations including the LIR at Section 10.3 – Noise and Vibration. Within Chapter 12 of the ES on Noise and Vibration (APP-150), it is noted that

Agenda Item	Thurrock Council's Response
<p>the local community.</p>	<p>construction activities at the Northern tunnel compound are likely to impact receptors Gravel Pit Cottages, Station Road (CN 47), Buckland, Station Road (CN 43) and Willows, Station Road (CN 48) during the daytime with unmitigated noise levels exceeding the Significant Observed Adverse Effect levels (SOAEL).</p> <p>Whilst mitigation measures are proposed, these measures are very high level and non-specific. They include commentary, such as up to 10 dB reduction in noise due to screening, up to 20 dB reduction in noise from static plant. However, there are no specific noise reduction calculations for specific receptors or account being taken of what are the façade/heights of the receptors (another example is the high rise towers to the north of Chadwell St Mary adjacent to Godman Road). There is, accordingly, a real risk that noise reduction levels being mentioned are not achievable.</p> <p>The Council expects additional assessments to be provided for specific receptors that are predicted to exceed the Significant Observed Adverse Effect level to confirm how these mitigation measures will reduce noise levels to be below the SOAEL.</p> <p>Furthermore, the Council would query what other mitigation measures will be employed to reduce the potential exceedances if use of Best Practice Measures (BPM) as stated in Register of Environmental Actions and Commitments (REAC) NV015 is not sufficient. The Council believes that options including installation of noise insulation to noise sensitive receptors effected or a scheme to facilitate temporary re-housing are included in the Register of Environmental Actions and Commitments (REAC). The latest versions was submitted at D5 (Clean – REP5-048.and Tracked – REP5-049). The noise and vibration REAC measures do not currently include for noise insulation/temporary rehousing.</p> <p>The assessment criteria utilised does not appear to have taken into account different types of receptors and their different responses to noise. An example would be Whitcroft Care Home. It is noted that the Health and Equalities Impact Assessment states that 'The care home provides elderly and dementia care; residents are likely to have very different sensitivities to changes in noise level', but again no difference assessment criteria has been applied.</p> <p>It is noted that REAC NV017 refers to vibration impacts. However, this specifically only covers piling. The Council would want rollers/vibratory rollers, which could be a source of vibration complaint to be included within this REAC measure.</p> <p>The applicant has not agreed to include caps on the numbers of movements associated with each compound or works area and</p>

Agenda Item		Thurrock Council's Response
		<p>so the monitoring and management of noise impacts will need to be carried out based on baseline information gathered prior to and during the construction activity. This will need to reflect any changes in construction programming and phasing that the contractors might propose that differ from the 11 construction phases analysed within the current evidence.</p> <p>Further Written Statement:</p> <p>The Council notes that for all of its schemes the applicant undertakes an assessment to confirm if rehousing/noise insulation is required. The Council seeks to secure that as a commitment within the REAC for this DCO, as there has been no commitment by the applicant to date to undertake this assessment.</p> <p>The Council continues to seek caps on the number of movements at each compound. Without those caps it is not feasible so determine whether the assessment undertaken is a worst-case assessment as there are no commitments on uses. A response by the applicant on this matter is requested.</p>
iii.	Whether suitable regard has been given to the impact of the construction process and duration on traveller sites, noting the propensity for greater noise exposure on those sites.	<p>Mr. Malik continued his oral evidence by observing that the Applicant has committed within SAC-R-008 that Gammonfields Way travellers site will be moved prior to construction starting and a new location and facilities completed and provided. However, the Council does not understand what the noise and vibration impacts on the new site will be (both operational and construction).</p> <p>The Council has requested information on what the resulting noise levels/mitigation requirements for both construction and operation are to be. Given the sound insulation for such receptors is likely to be less than for typical residential dwellings, impacts could be more significant (previously raised in Section 10.3.14 of LIR (REP1-281)).</p> <p>This point has also been raised within SoCG item 2.1.190.</p> <p>The applicant has previously responded that the impacts would not be significant. However, the Council understands that there is missing information which details the assessment and as such the applicant should not be currently concluding that there are no significant impacts. The Council would therefore not agree to no significant impacts until a full review of missing information has been undertaken.</p>
iv.	The effect of the proposed onsite accommodation and related management of	<p>Ms. Wales stated that the data behind the estimates of the need for 480 single bedroom dwellings on the northern tunnel entrance has not been shared by the applicant, which has explained that its assumption relies on 'professional judgement'.</p>

Agenda Item	Thurrock Council's Response
<p>potential socio-economic impacts.</p>	<p>This, therefore, creates concern that the effect on this population on health receptors considered (including primary healthcare facilities) has been underestimated. The HEqIA suggests that the impacts of the worker population will be mitigated through the below REAC commitment. The adequacy of which is disputed below.</p> <p>Regarding impact of construction workers on local health facilities, in relation to commitment PH002 within the REAC the Council suggested updating the current wording:</p> <p><i>'The Contractor will provide an appropriate range of medical and occupational healthcare services (including on-site facilities) to meet the physical and mental health needs of the construction workforce. The range of services will be agreed with National Highways, following engagement with Integrated Care Partnerships.'</i></p> <p>To:</p> <p><i>'The necessary range of services would be determined through discussion with an agreement by the Mid and South Essex Integrated Care Board (MSE ICB) on what would be needed. Where on-site services cannot be offered, funding for greater capacity in the NHS should be provided.'</i></p> <p>This matter has been reviewed by the applicant. Updated wording was discussed at SoCG meeting on the 16 October 2023, which was unacceptable to the Council, as it did not confirm the role of the MSE ICB partnership or strengthen the commitment to providing a sufficient level of mitigation. The Applicant proposed wording was:</p> <p><i>'The Contractor will provide an appropriate range of medical and occupational healthcare services (including on-site facilities) to meet the physical and mental health needs of the construction workforce. The range of services will be agreed with the Secretary of State, following engagement with and having regard for the views of the Integrated Care Partnerships'.</i></p> <p>The Council are currently in discussion with the ICB partners to align language further as this is covered in their SoCG. After further review of the MSE ICB position, the Council suggest this wording within Deadline 6 as a combined approach:</p> <p><i>'To ensure that the Integrated Care Partnerships have a consultation and approval role in agreeing the necessary range of medical and occupational healthcare services required to meet the physical and mental health needs of the construction workforce. Where on-site services cannot be offered, funding for greater capacity in the NHS will be provided.'</i></p>

Agenda Item	Thurrock Council's Response
	<p>This matter is unresolved and a Matter Not Agreed within the latest SoCG, as it currently there is not certainty that within the DCO that the contractor would adequately be held to account to provide for the necessary mitigations regarding local facilities.</p> <p>In addition, the Council has expressed concerns to the applicant about the effect of worker accommodation within the local housing market. These concerns are set out in the Council's D6 submission in Appendix E.</p> <p>Further Written Statement</p> <p>When seeking to understand the effects of the on-site accommodation, the Council is keen to understand the effects of movements to and from that accommodation and the wider workforce travelling to that compound.</p> <p>To assist in this the Council would request that the applicant sets out clearly what if any commitments it has on the routes the construction workers will use to access the on-site accommodation and the North Portal compound, more generally.</p> <p>It was the Council's understanding that workers would adhere to the routes identified in the oTMPfC. For the North Portal compound that was A1089 to St Andrews Road (adjacent to Port of Tilbury1) and the Tilbury 2 access corridor.</p> <p>A short-term secondary access was indicated as being via A1089 to Fort Road and Station Road.</p> <p>The strategic construction period modelling undertaken by the Applicant has worker traffic assigned via the local communities of Chadwell St Mary, Linford, West Tilbury and East Tilbury using the unapproved Chadwell Road, River View, Linford Road, Brentwood Road, Muckingford Road, Turnpike Lane, Rectory Road/Church Road (West Tilbury), and Princess Margaret Road.</p> <p>This distribution of worker traffic has been observed within the applicant's evidence and has been previously questioned with no clear response. The same issue has now been presented within the applicant's ISH5 Written Statement Appendix B2 – screenshots provided below:</p>

Agenda Item		Thurrock Council's Response
		<p>Plate B.1 Change in flow as a result of 1 TBM, AM peak, phase 2</p>  <p>Plate B.2 Change in flow as a result of 1 TBM, Inter peak, phase 2</p> 
b)	Restoration	
i.	<p>The intentions in respect of the construction compound sites post construction and the plan for restoration.</p>	<p>Article 35 sets out the provisions in relation to the temporary use of land for carrying out the authorised development, including the restoration of the land temporarily occupied. This would include temporary construction compound sites. In summary Article 35(4) – (5) state that land should not remain occupied after the end of the period of one year beginning with the date of completion of that part of the authorised development (as set out in schedule 11).</p> <p>Before giving up possession of land for which temporary possession has been taken, the Applicant must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land subject to a number of provisions.</p> <p>Compensation is available for land temporarily possessed.</p> <p>Broadly speaking, this is acceptable and would include construction compound sites. It would, however, be beneficial to have more details from the Applicant regarding the hand back procedure, so that landowners understand the process. It would also be helpful for landowners to have as clear an idea as</p>

Agenda Item	Thurrock Council's Response
	<p>possible at the beginning as to what the standard of restoration will be.</p> <p>During ISH8 the Council suggested that Article 35 is amended so that the applicant submits a restoration scheme for approval of the relevant landowner within 6 months of taking temporary possession of a piece of land. This should be inserted as a new part of Article 35. The purpose of this is to allow the dialogue to commence early on what restoration is going to look like, providing greater certainty both for the landowner and also the applicant.</p> <p>The Applicant responded during ISH8 to state that this is not necessary due to the operation of the REAC and gave REAC references GS002 and GS014.</p> <p>GS002 states:</p> <p><i>'Prior to any construction compound area being prepared, a pre-condition survey would be undertaken to determine the current land quality across the compound area. A repeat survey would be done after the compounds have been removed to confirm that the area has been restored in line with article 35 of the draft DCO.'</i></p> <p>GS014 states:</p> <p><i>'Following soil reinstatement there would be a five-year aftercare period. The Contractors would prepare and present to National Highways for acceptance a schedule of aftercare monitoring, maintenance and correction. This would include soil testing, appropriate to the target specification (e.g. land grade where restoration is to agricultural use or specific characteristics where restoration is to support habitat creation or re-provision). Implementation of the aftercare monitoring, maintenance and correction will be overseen by an Environmental Clerk of Works.'</i></p> <p>Neither GS002 or GS014 address the concerns raised by the Council. It impacts how landowners can use the land once it is handed back to them and also is relevant in relation to any compensation claim. Having early negotiations on this element is beneficial to the landowner as it helps them to plan. It is also beneficial to the applicant as the expectation management is less likely to result in prolonged disputes as to what is reasonable.</p> <p>It should be noted that Article 35 does not set out the condition the land should be handed back in, except that it needs to be to the 'reasonable satisfaction' of the landowner. From the landowner's perspective what is reasonable is likely to be</p>

Agenda Item		Thurrock Council's Response
		<p>returning the land to its previous condition. This is supported by the undertaking of the precondition survey pursuant to GS0002.</p> <p>However, this is not always going to be the case considering the applicant is not required to undertake some specific actions in article 35(5)(a)-(g). This includes not being required to restore the land on which any soil reprofiling work has occurred or the removal of ground strengthening works. The sooner clarity is provided on this for the landowner, the better for all parties concerned.</p> <p>A separate but connected point is the scope of Article 35(5)(g). Article 35(5)(g) allows temporary works to stay in place with the consent of the landowner. Leaving temporary works in place permanently is contrary to the assessment in the ES, which could include hard-standing, piles, etc. The Council would like to see reference in Article 35(g) that any agreement to leave temporary works on the land must be in accordance with the ES.</p>
4	Construction impacts	
a)	Gammonfields Travellers site	
i.	What progress has been made on the relocation of the Gammonfields Travellers site?	The Council would leave this mainly to the applicant. The Council has negotiated with the applicant over the past 2 years, involving both the Travellers and the Council's Travellers Rep at key stages. The Council is now satisfied that the provisions within Requirement 13, Design Principles (S11.12) and the SAC-R (SAC-R-008) provide adequate mechanisms the final designs.
ii.	Is the Applicant intending to submit a planning application to the local planning authority or is it relying upon the DCO for the change of use approval of the land for the new site?	<p>We would leave this mainly to the Applicant, although in the Council's opinion there is no requirement for a separate planning permission if all the details are set out in the DCO.</p> <p>The Council would however like to propose amendments to Requirement 13. Requirement 131(1) states:</p> <p><i>'13.—(1) The replacement of the Gammon Field travellers site in Thurrock (Work No. 7R) must not commence until details of its layout and design have been submitted and approved in writing by the local planning authority, such approval not to be unreasonably withheld or delayed, following consultation by the undertaker with the local planning authority and the occupiers of the existing Gammon Field travellers site.'</i></p> <p>The Council considers this should be amended as set out in red text below:</p> <p><i>'13.—(1) The replacement of the Gammon Field travellers site in Thurrock (Work No. 7R) must not commence until details of its design, layout, use and operation have been submitted and</i></p>

Agenda Item	Thurrock Council's Response
	<p data-bbox="581 254 1328 390"><i>approved in writing by the local planning authority, such approval not to be unreasonably withheld or delayed, following consultation by the undertaker with the local planning authority and the occupiers of the existing Gammon Field travellers site.'</i></p> <p data-bbox="581 411 1308 474">These amendments would secure that it continued to be used as a travellers site, as is the intention of all parties.</p> <p data-bbox="581 495 1338 621">In addition, Mr. MacKenzie raised the issue of previous case law regarding the approval of the travellers relocation site within the DCO and this judgement is set out in the attached Appendix A. However, a summary of that judgement is set out below.</p> <ol data-bbox="581 642 1338 1881" style="list-style-type: none"> <li data-bbox="581 642 1338 810">1. The Council agrees with the applicant's contention that the DCO (if made) could provide development consent for the replacement Gammonfields traveller site. This is because caravans are dwellings within the meaning of s.115(4B) of the Planning Act 2008 ('PA 2008'). <li data-bbox="581 831 1338 1167">2. PA 2008 does not define 'dwellings' but in <u>Rectory Homes Ltd v SSCLG [2020] EWHC 2098 (Admin)</u> ("<u>Rectory Homes</u>") Holgate J held at [53] that: <i>'53. It has become well-established that the terms 'dwelling' or 'dwelling house' in planning legislation refer to a unit of residential accommodation which provides the facilities needed for day-to-day private domestic existence (Gravesham p. 146; Moore v Secretary of State for the Environment, Transport and the Regions (1998) 77 P & CR 114, 119; R (Innovia Cellophane Limited) v Infrastructure Planning Commission [2012] PTSR 1132 at [27]-[28])...'</i> <li data-bbox="581 1188 1338 1503">3. Notably in the paragraph cited above: <ol data-bbox="643 1230 1338 1503" style="list-style-type: none"> <li data-bbox="643 1230 1338 1356">a) Holgate J relies on locus classicus for the meaning of 'dwelling house', namely Gravesham BC v Secretary of State for the Environment (1984) 47 P&CR 142 ('Gravesham'), which is itself is a caravan case; and, <li data-bbox="643 1377 1338 1503">b) Holgate J also refers to an NSIP case, R (Innovia Cellophane Limited) v Infrastructure Planning Commission [2012] PTSR 1132 ('Innovia'), to support of the definition of 'dwelling' articulated in Rectory Homes. <li data-bbox="581 1524 1338 1881">4. Innovia was a judicial review of a decision of the Infrastructure Planning Commission ('IPC') to grant a DCO applicant rights to enter and inspect premises, which were proposed to be used as a temporary workers' campus (850 bedsits without kitchens together with separate restaurants, bars and other facilities including communal dining rooms, sport facilities and laundries: see [7] and [8] of Innovia) in connection with the delivery of the Hinckley 'C' NSIP. This was before the Housing and Planning Act 2016 amended s.115 PA 2008 to enable development consent to be granted for 'related housing development'. The claimant alleged, and the court accepted, that the temporary workers'

Agenda Item		Thurrock Council's Response
		<p>accommodation did not comprise 'dwellings' within the meaning of s.115(2)(b) PA 2008. Therefore, the IPC was entitled to have granted the s.53 access/inspection rights, so the challenge was dismissed.</p> <p>5. In dismissing the challenge, the court endorsed the application of the Gravesham test for the meaning of 'dwelling' or 'dwelling house' (and there is no difference between those two terms: see [53] of Rectory Homes) to PA 2008: see [26] – [29] of Innovia.</p> <p>6. The Gravesham test will invariably be satisfied in respect of a structure that is a caravan statutorily defined. Section 29(1) (a) of the Caravan Sites and Control of Development Act 1968 defines a 'caravan' as 'any structure designed or adapted for human habitation, which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted.'</p> <p>7. The replacement Gammonfields site will comprise caravans as statutorily defined and will accordingly also comprise dwellings within the meaning of s.115 PA 2008.</p> <p>8. If the replacement Gammonfields site is not within s.115(4B) PA 2008 because, for whatever reason, it does not 'consist of or include the construction or extension of one or more dwellings' then it falls within s.115(2) and is not excluded from that provision by virtue of s.115(2)(b). Either way, the DCO can (if made) provide development consent for the replacement site.</p>
b)	Effect on visitor attractions	
i.	Whether the scale of the potential lost revenue to visitor attractions, such as Shorne Country Park, Thames Chase Forest Centre, Cascades Leisure Centre, etc, as well as potential lost revenue to businesses has been sufficiently represented in the Applicant's submission.	N/A
5	Operational impacts	

Agenda Item		Thurrock Council's Response
a)	Noise	
i.	Whether the assessment of operational noise impacts is adequate.	<p>The Council has stated in Section 10.3.14 of its LIR (REP1-281) that noise impacts on the Gammonfields Way travellers site could be more significant given the sound insulation for such receptors is likely to be less than for typical residential dwellings. The Applicant has not provided an assessment of the suitability of the site with regards to private external amenity areas or internal noise levels. The Council would require this to be undertaken.</p>
ii.	Whether the approach on mitigation is appropriate.	<p>Within the ES Noise and Vibration Chapter and Assessment it is concluded that significant effects remain at two receptors (1 and 2 Brook Farm Cottages, Brentwood Road, Orsett).</p> <p>By exceeding the significant levels, the noise can cause a material change in behaviour, such as avoiding certain activities during periods of intrusion and where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. There is also potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Overall quality of life is diminished due to change in acoustic character of the area.</p> <p>The Council requires that further mitigation measures are taken to reduce this impact to below the Significant Observed Adverse Effect Level. The Council would also expect operational monitoring to be undertaken for this receptor, in addition to further mitigation measures being provided.</p> <p>The ES also concludes that no receptors within Thurrock or anywhere else are eligible under the noise insulation regulations. The Council would assume that this is contingent upon the mitigation incorporated into the scheme. Whilst the Council welcomes the additional commitment (NV018) in the Code of Construction Practice to undertake a final eligibility assessment within the first year of project opening; in order to avoid ambiguity the Council would also like confirmation that the eligibility assessment will include acoustic re-modelling based on up-to-date information relating to, but not limited to, traffic flows, road alignment, mitigation measures including earthworks/barriers and road surface corrections.</p> <p>Finally, it is noted that permanent increases in noise levels that are likely to be perceptible will remain with moderate and major impacts remaining across Thurrock. Given that major changes in noise levels remain, the Council would not agree that sufficient mitigation has been included. Options for further noise barriers have been reviewed in the ES, but not implemented. The Council would expect these barriers to be incorporated into the scheme where they reduce the numbers of receptors</p>

Agenda Item		Thurrock Council's Response
		<p>exposed to major or moderate adverse impacts. This includes barrier options 4, 6 and 8 as per Appendix 12.10. The applicant has responded on this specific issue and cited landscape and cultural heritage constraints. However, additional options such as transparent barriers (with appropriate density) could be used as currently the impact on the community with regards to the noise levels does not seem to have been given sufficient weight.</p> <p>The Council will review the 'so-called landscape and heritage constraints and respond further at D7.</p>
iii.	Whether there would be adequate controls in respect of future maintenance works.	<p>Ongoing maintenance is provided in the REAC and this is welcomed, however, the applicant has not provided details on the specifics of the proposed on-going maintenance relating to acoustic barriers and the low noise road surface. The Council expects that such details should include a programme of when maintenance checks will occur, and reports provided to relevant LPA's to confirm the installation with relevant certification provided.</p>
ExA Action Points (EV-068)		
ISH8.AP1	Assessment of Construction Compound Effects.	<p>The Council would reiterate that mitigation measures proposed are very high level and non-specific. There are no specific noise reduction calculations for specific receptors or account being taken of what are the façade/heights of the receptors. There is, accordingly, a real risk that noise reduction levels being mentioned are not achievable.</p> <p>There is also the issue that maximum effects for the construction compounds cannot be undertaken as there is currently no cap on the movements or commitment on uses. The Council would expect this to be addressed before an assessment can be confirmed as being worst case</p>
ISH8.AP2	Construction Compound Effects: Additional Controls.	<p>Currently, there is no assessment to high rise towers, north of Chadwell St Mary adjacent to Godman Road. The Council requests clarification on the construction effects at these receptors be provided</p>
ISH8.AP3	Outstanding items for Adjudication on Agenda Item 3a.	<p><u>Worker Access to North Portal on-site accommodation and compound:</u> to assist the Council in understanding worker travel to and from the on-site accommodation and the North Portal compound, it would request that the applicant sets out clearly what if any commitments it has on the routes the construction workers will use to access the on-site accommodation and what those routes are. More detail on this request is at the Further Written Statement of Agenda Item 3a(iv) above.</p> <p><u>Caps and Clarity on Movements Associated with Each Compound:</u> the Council continues to seek caps on the number</p>

Agenda Item		Thurrock Council's Response
		<p>of movements at each compound and clarity on the types of movements that would be associated with each compound. Without those caps it is not feasible so determine whether the assessment undertaken is a worst-case assessment as there are no commitments on uses. A response by the applicant on this matter is requested.</p>
ISH8.AP7	<p>Practical Delivery Review of Development Management of Gammonfields Travellers Site.</p>	<p>The Council has considered the operational development management and enforcement capability of the Council in relation to the proposed relocated site. Accordingly, as suggested above, the Council has proposed an amendment to Requirement 13, so that it refers to 'details of its design, layout, use and operation'. If this amendment is accepted, the Council is confident that it has the ability to enforce in relation to any future breaches of planning control.</p> <p>Whilst the Council would not have available to it the enforcement powers contained within the Town and Country Planning Act 1990, it would be able to rely upon Part 8 of the Planning Act 2008 (which concerns breaches of the DCO). This is considered to be sufficient. For development occurring outside of the approved DCO actions then the usual planning enforcement powers would apply.</p>

Appendix A – Regina (Innovia Cellophane Ltd and another) v Infrastructure Planning Commission, 2011.

Queen's Bench Division

A

Regina (Innovia Cellophane Ltd and another) v Infrastructure Planning Commission

[2011] EWHC 2883 (Admin)

2011 Nov 1; 4

Cranston J

B

Planning — Nationally significant infrastructure project — Associated development — Energy company applying for development consent for construction of nuclear power plant — Company identifying claimants' land for construction of temporary workers' accommodation — Commission having power to grant development consent covering "associated development" but not construction of "dwellings" — Commission granting company authorisation to access to claimants' land to carry out surveys — Whether authorisation lawful — Whether workers' accommodation constituting associated development or dwellings — Whether "dwellings" including temporary accommodation — Whether authorisation granted as last resort — Whether disproportionate interference with claimants' Convention property rights — Human Rights Act 1998 (c 42), Sch 1, Pt II, art 1 — Planning Act 2008 (c 29), ss 53, 115(1)(2)

C

D

An energy company, the interested party, submitted notifications to the defendant commission of their application for development consent under the Planning Act 2008¹ for a nationally significant infrastructure project, namely a nuclear power station. Section 115 of the Act provided that development consent might be granted not only for the development for which consent was sought but also for "associated development" which was not the construction of "dwellings". The notifications identified the claimants' nearby land as suitable for building short-term, temporary accommodation for the construction workers, in the form of bedsit-type single rooms with no kitchen facilities. Negotiations took place between the energy company and the claimants for access to the claimants' land for the purpose of surveys and other visits preliminary to their application but after some time the energy company applied to the commission under section 53 of the 2008 Act for authorisation to access the land to carry out the surveys. The commission's published guidance stated that rights of entry would only be granted as a last resort after all other reasonable efforts had failed. The commissioner considered that authorisation was required as a last resort since it was extremely unlikely that the parties would reach an agreement within a reasonable time scale, time being of the essence, and he issued the section 53 authorisation subject to conditions. The authorisation was backed by a report from the commission's secretariat which stated that the campus style accommodation were not "dwellings" within section 115(2)(b) and were instead "associated development". The claimants sought judicial review of that authorisation, contending, inter alia, that (i) the proposed accommodation constituted "dwellings" and therefore fell outside the scope of associated development under section 115; and (ii) that by deciding that the authorisation was required as a last resort, the commission had disproportionately or unlawfully interfered with the landowner's rights pursuant to article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms².

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¹ Planning Act 2008, s 53; see post, para 19.

S 115(1)(2); see post, para 16.

² Human Rights Act 1998, Sch 1, Pt II, art 1: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law . . ."

A On the claim for judicial review—

Held, dismissing the claim, (1) that the Planning Act 2008 drew no relevant distinction between the terms “dwelling” and “dwelling-house”; that the term “dwelling-house” had a well established meaning in the planning legislation and was distinct from hostels and other forms of non-permanent accommodation which was not self-contained; that the campus style accommodation of the kind proposed was akin to such non-permanent accommodation; that the key purpose of the 2008 Act, which was to rationalise the development consent regimes to create a single consent regime, was given effect to in section 115(1) by permitting applications for development consent to cover not merely the nationally significant infrastructure project, but also associated developments such as specifically built, temporary campus-type accommodation for the large number of workers needed for its construction; and that, accordingly, the statutory object and parliamentary intention confirmed that the correct interpretation of the term dwelling in section 115 of the 2008 Act was permanent, self-contained accommodation (post, paras 26–29, 41).

Gravesham Borough Council v Secretary of State for the Environment (1982) 47 P & CR 142 and *Moore v Secretary of State for the Environment, Transport and the Regions* (1998) 77 P & CR 114 considered.

(2) That the commission’s “last resort” policy accorded with article 1 of the First Protocol to the Convention since the context was not a taking of land but an application for an authorisation to carry out surveys on the land under a set of conditions which ensured that any damage caused was remedied, there was no permanent taking of any rights over the land, and the claimants were left in possession of it; that the grant of the authorisation was in accordance with the statutory requirements in section 53 of the 2008 Act and was considered necessary, as a last resort, to allow an application for a nationally significant infrastructure project to be progressed; and that, accordingly, there was no disproportionate or unlawful interference with the claimants’ Convention rights and no flaw in the commission’s conclusion that the authorisation was required as a last resort (post, paras 34–36, 41).

The following cases are referred to in the judgment:

Gravesham Borough Council v Secretary of State for the Environment (1982) 47 P & CR 142

F *Moore v Secretary of State for the Environment, Transport and the Regions* (1998) 77 P & CR 114, CA

Pepper v Hart [1993] AC 593; [1992] 3 WLR 1032; [1993] ICR 291; [1993] 1 All ER 42, HL(E)

Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment [1985] AC 132; [1984] 3 WLR 32; [1984] 2 All ER 358; 82 LGR 488, HL(E)

R v Barnet London Borough Council, Ex p Nilish Shah [1983] 2 AC 309; [1983] 2 WLR 16; [1983] 1 All ER 226; 81 LGR 305, HL(E)

G *R v Chelsea College of Art and Design, Ex p Nash* [2001] EWHC Admin 538; The Times, 25 July 2001

R (Unison) v Monitor [2009] EWHC 3221 (Admin); [2010] PTSR 1827

No additional cases were cited in argument.

H The following additional cases, although not cited, were referred to in the skeleton arguments:

R v City of London Corporation, Ex p Master Governors and Commonalty of the Mystery of the Barbers of London (1996) 73 P & CR 59

R v Westminster City Council, Ex p Ermakov [1996] 2 All ER 302

R (G) v Westminster City Council [2004] EWCA Civ 45; [2004] 1 WLR 1113; [2004] 4 All ER 572; [2005] LGR 64, CA A

R (MUH & H Ward Estates Ltd) v Monmouthshire County Council [2002] EWHC 229 (Admin)

Scurlock v Secretary of State for Wales (1976) 33 P & CR 202, DC

CLAIM for judicial review

By a claim form the claimants, Innovia Cellophane Ltd and Innovia Films Ltd, sought judicial review of the decision of the defendant, the Infrastructure Planning Commission (“the commission”), of 19 April 2011 granting authorisation under section 53 of the Planning Act 2008 for the interested party, NNB Generation Co Ltd (“the energy company”), to enter and access the claimants’ land at Bridgwater, Somerset in order to carry out surveys in furtherance of its plan to acquire land for the construction of workers’ temporary accommodation. The grounds of claim were that the section 53 authorisation was unlawful in that (i) the surveys for which entry onto the land was sought were in support of a development comprising dwellings which fell outside the scope of associated development in section 115(2) of the 2008 Act; (ii) the commission had failed to apply its own policy to decisions of last resort, so was not a proportionate interference with the claimants’ rights pursuant to article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms; and (iii) although the commission had stated that the attached conditions were necessary to protect the claimants’ interests, the conditions were unenforceable. B
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D

The facts are stated in the judgment. E

Rupert Warren (instructed by *Dickinson Dees, Newcastle*) for the claimants.

David Forsdick (instructed by *Treasury Solicitor*) for the commission.

Nathalie Lieven QC (instructed by *Herbert Smith LLP*) for the energy company.

The court took time for consideration. F

4 November 2011. **CRANSTON J** handed down the following judgment.

1 In this judicial review the claimants challenge the defendant’s, the Infrastructure Planning Commission’s (“the commission”), decision of 19 April 2011 to grant consent under section 53 of the Planning Act 2008 for NNB Generation Co Ltd (“NNB”), the interested party, to enter land they own at Bridgwater, Somerset (“the Bridgwater land”). The access was sought to enable NNB to carry out surveys and other visits preliminary to their application to use the land for workers’ accommodation during the construction of a new 3,260 megawatt nuclear power station, with two reactors, the so-called Hinkley Point C. The land lies approximately ten miles from the Hinkley Point site. Collins J granted permission on 9 September 2011 and expedited matters. Under the authorisation NNB has entered the land on a number of occasions. Negotiations for NNB to purchase the land are still continuing. G
H

A *Background**The parties*

2 The claimants are related companies. As their names suggest they are involved with cellophane film, which these days has a wide industrial use. The larger part of the Bridgwater land was from 1937 the site of a cellophane factory until it ceased operations in 2005. On the southern part of the land are a sports and social club and associated facilities. To the northeast of the land the claimants own adjoining property, another part of the former factory, Sydenham Manor, and a large area of undeveloped agricultural land, including pools known as the cellophane fishing pits. In July 2010 the claimants obtained planning permission in respect of the land and the adjoining property, which will allow them to construct some 1,000 houses. The claimants are currently undertaking works, including demolition and asbestos removal, to facilitate remediation of the land for this purpose.

3 The commission was established under the 2008 Act. It considers applications for development consent for what are known as nationally significant infrastructure projects, in broad terms large projects which are thought to support the economy and vital public services including power stations, highways, airports, railways, harbours, dams and reservoirs, and waste treatment works: Part II of the 2008 Act. The Government intends to change the functions of the commission and transfer its decision-making role to the Secretary of State, but that has no relevance to this judicial review.

4 NNB is an indirect subsidiary of EDF Energy (UK) Ltd, a power generation company which is part of the EDF Group. In relation to its proposal to construct the new nuclear power station at Hinkley Point, NNB submitted notifications of a proposed application to the commission under section 46 of the 2008 Act—on 11 November 2009 (stage 1 consultation), 8 July 2010 (stage 2 consultation) and 24 February 2011 (stage 2 update consultation). It submitted the final application the day before the hearing. NNB's aim is to have the nuclear power station operational around the end of the decade. If the development consent order is granted, construction is due to begin in 2013.

The context

5 The provision of new nuclear power stations is a part of the Government's energy policy. The need for new power stations was one aspect of the background to the enactment of the 2008 Act and the new statutory scheme it introduced for dealing with planning applications for nationally significant infrastructure projects. Government policy on projects such as new nuclear power stations is set out in a series of national policy statements designated under section 5 of the 2008 Act. The *Overarching National Policy Statement for Energy (EN-1)* (Department of Energy and Climate Change) was designated by the Government on 19 July 2011. It states that, in order to secure energy supplies to enable the United Kingdom to meet its obligations to cut greenhouse gas emissions by 80% by 2050, there is an urgent need for new, particularly low carbon, nationally significant energy projects: para 3.3.15.

6 As set out in *EN-1*, the Government's stated policy is that new nuclear power stations should play a significant role in the future generation of low

carbon forms of electricity. Its goal is for these new nuclear power stations to be operational as soon as possible from 2018, with deployment increasing up to 2025, when it is envisaged that all sites listed in the national policy statement as potentially suitable for development, including Hinkley Point, should be fully operational: paras 3.5.9–3.5.10. In this context, *EN-1* states that the commission should assess the relevant development consent application on the basis that the need for new nuclear development has been demonstrated and is urgent, and should give substantial weight to the contribution which the project will make towards satisfying the urgent need when considering the application: paras 3.1.3–3.1.4.

The accommodation

7 NNB first identified the claimants' Bridgwater land for accommodation for construction workers at Hinkley Point C in its stage 1 consultation documentation of November 2009. It was retained as part of its stage 2 consultation documentation of July 2010. The documentation referred to the building of short-term, temporary accommodation for those workers who could not live locally. Occupancy of what was entitled residential accommodation was to be between 2014 and 2018, then tailing off, to finish completely in 2019. The proposed campus would be phased to match the demand for accommodation and would incorporate residential accommodation for up to 1,075 workers in individual en suite bedrooms. There would be separate restaurants, bars and other facilities. After their use, the document said, the buildings would be removed but the infrastructure for them would be designed to facilitate the later building of houses. However, the accommodation itself would not be suitable for conversion into housing. In the stage 2 update consultation document "Changes to preferred proposals", the proposed residential capacity of the site was reduced from 1,075 to either 850 or 1,000 persons. It is currently envisaged that there will be 850 bed spaces, rather than 1000.

8 The rationale of the Bridgwater project for providing temporary accommodation is further explained in NNB's draft accommodation strategy and a draft workforce profile report of February 2011. In summary, it is said that to construct the nuclear power station Hinkley Point C a very large workforce will be required, many of whom will be skilled. That workforce needs to be drawn from a wide area. Two-thirds of the workforce are expected to be non-home based and to be at Hinkley Point for a period of months or up to one to two years. These workers are likely to move without their families although some would return home at weekends. If accommodation were not provided, they would either have to travel long distances or their presence could distort the local housing market. The provision of the accommodation is thus an essential part of the project to construct the nuclear power station. **The accommodation is designed for single people for whom this is not their main or permanent home. Therefore the units are laid out as bedsits with no kitchen facilities, but with communal dining rooms, sports facilities and laundries.** This type of accommodation for construction workers was successfully provided at Sizewell B, the last nuclear power station constructed in the United Kingdom. Local people found that it generated minimal disturbance and provided an effective means of managing the workforce.

A *History of negotiations*

9 From late 2009 onwards there have been a series of negotiations between the claimants and NNB regarding NNB's acquisition of the land. There were also requests to the claimants for access to the land so that NNB could carry out surveys necessary for the development consent application for accommodation. There is a letter from NNB's agents to that effect on 30 March 2010. Following a meeting on 18 November 2010 NNB sent the claimants a list of proposed surveys. On 17 December 2010 NNB wrote a second letter, asking for a response by 22 December 2010. That letter arrived during the Christmas to New Year period and was not received until 4 January 2011. The claimants e-mailed NNB explaining that the letter of 17 December 2010 had just been received, and stating that a formal response would follow as soon as possible.

C 10 On 7 January 2011 NNB submitted an application to the commission under section 53 of the 2008 Act for authorisation to access the land to carry out surveys. Just under three weeks later, on 26 January, the claimants' solicitors wrote to the commission, setting out a number of objections to the application, including the fact that the application was premature because it was not being made as a last resort. The letter indicated that the claimants remained willing to negotiate reasonable access. D Two months' deferral of the commission's decision was suggested to see if progress could be made. The claimants' solicitors sent the commission further letters in early March in which they claimed that negotiations were continuing. A letter of 7 March 2011 contained a schedule of proposed conditions for entry. On 15 March 2011 NNB sent draft heads of terms for access to the land. On 16 March 2011 the claimants sent NNB a draft site E investigations licence. NNB commented on the draft licence on 17 March 2011.

F 11 On 23 March 2011 the claimants sent NNB a revised draft licence for site investigations. That draft gave the claimants an absolute discretion whether to grant access to the land, justified by liability concerns. There was a meeting between the parties on 24 March to discuss purchase of the land. During the meeting the claimants said that there was no point in discussing F access to the land since that would only allow NNB to further its case for compulsory purchase. On 25 March 2011 NNB wrote to the commission that it had concluded that, having made reasonable efforts, it was clear that the claimants would never give it access to the land. The claimants wrote to the commission on 28 March 2011, providing details of contact between G them and NNB. It said that NNB had failed to respond in respect of the draft licence for site investigation works, which had been sent on 23 March 2011. On 15 April the claimants' solicitors wrote to the commission that they were still willing to grant access to the land on the conditions in the draft licence. The claimants offered to attend a meeting at the commission with NNB and in good faith to discuss and finalise the draft. The letter set H out the history of contacts between the claimants and NNB and the efforts made to reach agreement.

The authorisation

12 On 19 April 2011 the commission issued an authorisation under section 53 of the 2008 Act ("the section 53 authorisation"). It is the decision

to grant this authorisation which the claimants challenge in this judicial review. The decision was taken on behalf of the commission by one of its commissioners, Lorna Walker. The authorisation was for NNB to enter the land, subject to the conditions set out in the schedule. In the authorisation Lorna Walker said that the commission was satisfied that the tests set out in section 53 of the 2008 Act had been met and that it considered that the conditions were necessary to ensure the claimants' legitimate interests were protected. The conditions included that those entering the land should not cause or permit any pollution or contamination, and should immediately give the landowner notice should that occur. The right to enter would cease immediately if any of the conditions were breached.

13 The authorisation was backed by a report from the commission's secretariat. The report set out the statutory and factual background. It emphasised the need for the commission to be satisfied that the section 53 criteria had been met. It said that the commission had previously given advice, without prejudice to any subsequent decision, that accommodation campuses were not "dwellings" within section 115(2)(b) and could be considered "associated development". With reference to the guidance, the report highlighted whether the use of section 53 powers was necessary as a last resort. The report identified the disagreement between the parties about whether the section 53 request was a last resort and the discrepancies between the two sides about meetings and correspondence. The relevance of article 1 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms was mentioned.

14 In her witness statement for this hearing, Lorna Walker says that she was provided with, and read, the secretariat's report and all the correspondence. She was aware of the competing contentions of the parties about the history of the negotiations, with NNB claiming that it had made very significant efforts to seek the claimants' consent for access from early 2010. The claimants disputed this, contending that they had been willing to engage in constructive negotiations. Notwithstanding the claims of both parties, that negotiations had been entered into reasonably, she was aware that no concluded agreement had been reached. That was even though the two month deferral period, suggested by the claimants, had expired. In the light of the information available to her she considered that it was extremely unlikely that NNB and the claimants would be able to come to an agreement within a reasonable time scale. The timing of an agreement was important. Many of the environmental surveys were dependent on the seasons. If there was further delay that would effectively mean that some of those surveys could not be carried out for a further prolonged period. That would cause consequential delay to the submission and determination of an application for development consent. Therefore she concluded that this was a situation where the section 53 authorisation should be granted as a last resort.

The legal framework

15 The Planning Act 2008 partly arose from a concern about the length and complexity of the system for gaining planning permission for major infrastructure projects. The Act was foreshadowed in the White Paper *Planning for a Sustainable Future* of 21 May 2007. It explained, at para 1.37, that "the planning system should be streamlined, efficient and predictable." At para 2.13(d), in relation to nationally significant

A infrastructure projects, one of the key proposals was to achieve this by
procedures rationalising the development consent regimes to create a single
application process. This had the twin advantages of making the system
more efficient and faster. Chapter 5 of the White Paper dealt with
determining applications for nationally significant infrastructure projects.
Para 5.18 stated that in order to ensure that the commission was able to
B grant the authorisations necessary to construct these projects it was
proposed to “rationalise the different development consent regimes and
create, as far as possible, a unified, single consent regime with a harmonised
set of requirements and procedures.”

C 16 Section 115(1) of the 2008 Act permits applications for development
consent to cover not just the nationally significant infrastructure project
itself but also what the section calls associated development. Section 115, so
far as material, provides:

“(1) Development consent may be granted for development which is—
(a) development for which development consent is required, or
(b) associated development.

D “(2) ‘Associated development’ means development which— (a) is
associated with the development within subsection (1)(a) (or any part of
it), (b) is not the construction or extension of one or more dwellings, and
(c) is within subsection (3) or (4).”

E 17 There is no definition in the 2008 Act of the term “dwellings” used in
section 115(2)(b). The term “dwelling-house” is used in section 163, a
section in that part of the 2008 Act dealing with the enforcement of
development consents. It provides for the right to enter land without
warrant where the relevant local planning authority has reasonable grounds
to suspect commission of an offence. However, a building used as a
“dwelling-house” may be entered only if 24 hours’ notice of the intended
entry is given to the occupier. Section 163 is comparable to section 196A of
the Town and Country Planning Act 1990. In the part of the 2008 Act
F dealing with enforcement of the community infrastructure levy, section
218(10) provides that regulations may not authorise entry to “a private
dwelling” without a warrant issued by a justice of the peace.

G 18 In deciding whether development is “associated development”, the
commission is required to have regard to any guidance issued by the
Secretary of State: section 115(6). *Guidance on associated development:
applications to the Infrastructure Planning Commission* was issued in
September 2009. That guidance provides, in part, at para 10:

“Associated development should not be an aim in itself but should be
subordinate to and necessary for the development and effective operation
to its design capacity of the NSIP that is the subject of the application. We
would expect associated development in most cases to be of a type
normally brought forward with that sort of primary development.”

H Annex A of the guidance contains a reference to “accommodation” under
the heading “other infrastructure” which states:

“accommodation for staff who must be on site to enable the operation
or maintenance of the [nationally significant infrastructure project] (but

note that section 115 of the 2008 Act provides that this cannot include the construction or extension of dwellings).”

19 Section 53(1)(b) of the 2008 Act provides that any person duly authorised in writing by the commission may enter land for the purpose of surveying and taking levels of it in connection with a proposed application for an order granting development consent. Under section 53(4)(c), a person authorised to enter land under section 53(1) must comply with any conditions subject to which the commission’s authorisation is given. Persons commit an offence under section 53(5) if they wilfully obstruct a person in the exercise of a right of entry conferred under subsection (1). Compensation may be recovered by any person suffering damage from the person exercising the right of entry: section 53(7).

20 There is nothing about last resort in the 2008 Act. However, in *Advice Note 5: Section 53*, May 2010, the commission states that “rights of entry will only be granted as a last resort . . . after all other reasonable efforts have failed”. The advice note also reads: “Applicants are expected to make reasonable efforts to agree entry onto land before seeking authorisation for rights of entry . . . Requests for authorisation should only be made as a last resort.”

Ground 1: dwellings excluded from associated development

21 The claimants’ first ground of challenge is that the commission acted unlawfully in granting the section 53 authorisation. In summary the claimants contend that this is because the surveys for which entry onto the land was sought were in support of a development which falls outside the scope of associated development in section 115(2) of the 2008 Act. The application for the authorisation was made by NNB on the basis that the land was required for associated development in relation to the Hinkley Point C project. Under section 115(2)(b), the definition of associated development expressly excludes the construction or extension of one or more dwellings. But NNB’s proposed development is to provide residential accommodation for between 850 and 1,000 workers for a number of years. That accommodation comprises dwellings. The commission did not address the issue and, in any event, was unable to grant the authorisation as a matter of law.

22 In attractively advanced submissions for the claimants, Mr Warren gave three reasons that NNP’s proposals are for dwellings and thus fall outside section 115. First, he submitted, the proposals comprise dwellings in the normal sense of that word. Words should be given their natural and ordinary meaning to prevent the growth and multiplication of refined and subtle distinctions in the law’s use of common English words: *R v Barnet London Borough Council, Ex p Nilish Shah* [1983] 2 AC 309, 345H–346A. If those living in this accommodation were to be asked where they were living they would say that they were living there. Admittedly, there would be a spectrum of uses of the accommodation. However, it would seem that some of the workers would come from far afield, indeed abroad, and so a number would be living there full time, possibly for years. They would be accommodated in what in everyday use would be called dwellings.

23 Secondly, Mr Warren contended that this normal meaning of the term “dwellings” is supported having regard to the scheme of the legislation.

A There is no definition in the 2008 Act nor a cross-reference to any definition in other legislation. Other sections of the 2008 Act, and the definition section, section 235, cross-refer to other statutes for what other words and concepts mean. That points to the word dwellings in section 115 having its own meaning, the ordinary meaning. The expression “dwelling-house” is used in a different context elsewhere in the 2008 Act, section 163(3), but there is no justification for inferring that that expression is intended to mean the same thing as the word dwellings in section 115(2)(b). There is no indication from the separate consent procedure provided in the 2008 Act that Parliament intended that dwellings such as those proposed for the land be included within the scope of the Act. Indeed, the parliamentary intention was that all types of dwellings should be dealt with by local planning authorities, because of the local planning implications. These include the transport consequences and the issue of community jell with outsiders moving into the area.

24 In this regard Mr Warren submitted that there was support for his case in a letter the Secretary of State had written on 7 December 2009, and referred to in Hansard (HC Debates), 1 February 2010, written statements, col 74–5W given by David Kidney, Parliamentary Under-Secretary of State, Department for Energy and Climate Change. In that letter the Secretary of State had said that associated development would include accommodation for workers onsite, but not the construction or extension of dwellings for workers offsite, applications for which would need to be made to the local planning authority. Invoking *Pepper v Hart* [1993] AC 593, 640B–C, Mr Warren submitted that Hansard indicated that the parliamentary intention was that no housing was to be authorised under the 2008 Act. In Hansard (HL Debates), 20 October 2008, col 947, Baroness Andrews said:

“We want to ensure that a promoter can combine the ‘core element’ of a nationally significant infrastructure project together with associated works in a single application. Such associated works might include ensuring that new infrastructure is connected to other national networks, for example, or other development which is needed to allow infrastructure to operate as intended. *I stress that associated works do not include the construction or extension of housing.*” (Emphasis added.)

25 Thirdly, Mr Warren submitted that the concept of dwelling is widely-drawn when seen in a general planning context. The 2008 Act forms part of what has been described as a comprehensive statutory code governing town and country planning: see *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132, 140H–141C. Within the planning field, dwelling is not a word applied to a specific type of residential use. By contrast with the term single dwelling-house, the term dwelling is general and wide in scope. It follows that within the statutory code, a restrictive interpretation of the word cannot be justified. The definition of the different concept of dwelling-house elsewhere in other statutory contexts—as discussed in cases such as *Gravesham Borough Council v Secretary of State for the Environment* (1982) 47 P & CR 142 and *Moore v Secretary of State for the Environment, Transport and the Regions* (1998) 77 P & CR 114—is irrelevant to the correct understanding of the word dwellings in the 2008 Act, except to illustrate that within the planning field such words are understood to have specific meanings which should not

be conflated. Although the 1990 Act uses both the term dwelling and dwelling-house, the word dwelling does not appear in the 1990 Act save in relation to the compulsory purchase and blight provisions, demonstrating a clear distinction between the two terms. A

26 In my view Mr Warren is correct that the meaning of dwellings in section 115(1)(b) demands an examination of the term dwellings in its statutory context. As with any issue of statutory interpretation, words must be read in their ordinary sense in the context of the scheme of the legislation, its object and the parliamentary intention. However, I have reached a different conclusion from that advanced by Mr Warren. Starting with ordinary meaning of the term dwelling, I do not see that this takes the matter very far forward. Dwelling is not in regular use these days. Inasmuch as it has an ordinary meaning it connotes a place where one lives and makes one's home. The dictionaries seem to suggest that there is some degree of permanence, but that may be reading too much into the various explanations they give. As for the 2008 Act itself, it seems clear to me that it draws no relevant distinction between the terms dwelling and dwelling-house. Both sections 163(3) and 218(10) are concerned with the right of entry to premises for enforcement purposes, but the former uses the term dwelling-house, the latter, private dwelling. In other words, the 2008 Act uses the terms interchangeably, and without any clear indication of what they mean. B
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27 Thus one turns to the scheme of the legislation. One aspect of that is that the 2008 Act is part of the package of planning legislation on the statute book. It draws on the pre-existing planning legislation with various cross-references to the 1990 Act and the incorporation of concepts from it. Where definitions are different from those in the 1990 Act this is made clear in the 2008 Act: for example, section 32(2)(3). Construing statutes in *pari materia* is probably no more than a recognition of the reality that the drafter of a later statute, obviously related to an earlier one, will have employed a word or concept in the sense that has become accepted in the interpretation of the earlier. "Dwelling-house" is well understood in the context of the 1990 Act and secondary legislation made under it. In the *Gravesham* case 47 P & CR 142 the issue was whether a weekend and holiday chalet was a dwelling-house for the purposes of the Town and Country Planning General Development Order 1977 (SI 1977/289), which conferred various permitted development rights. McCullough J said that a dwelling-house was a building of a particular kind. He then examined various circumstances where a building was a dwelling-house and said, at p 146: E
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"What have these examples in common? All are buildings that ordinarily afford the facilities required for day-to-day private domestic existence. This characteristic is lacking in hotels, holiday camps, hostels, residential schools, naval and military barracks and similar places where people may eat, sleep and perhaps spend 24 hours a day. Quite clearly, none of these is a dwelling-house." G

28 That analysis was endorsed by the Court of Appeal in *Moore's* case 77 P & CR 114. Particularly striking is that the statutory context there was quite different than in the *Gravesham* case 47 P & CR 142 but the same meaning was given to the term. So dwelling-house has a well established meaning in the planning legislation and is distinct from hostels and other H

A forms of non-permanent accommodation which is not self-contained. The obvious application here is that the proposed campus type accommodation on the Bridgwater land is akin to the hostel mentioned by McCullough J, with its single rooms, supported by catering and other facilities elsewhere on the site.

B 29 In my opinion, the statutory object and parliamentary intention confirm that this is the correct interpretation of the term dwelling in section 115 of the 2008 Act. As already explained the 2008 Act aimed to create a streamlined, efficient and predictable planning system for nationally significant infrastructure projects. One way it did this was by rationalising the development consent regimes to create, as far as possible, a single consent regime with a harmonised set of requirements and procedures. That key purpose is given effect to in section 115(1) by permitting applications for development consent to cover not just the nationally significant infrastructure project itself but also associated development such as, as in this case, the specially built, temporary campus type accommodation for the large number of workers needed for its construction. To allow the local planning authority to determine the issue of this accommodation would lead to the piecemeal consent system which the 2008 Act was intended to overcome.

D 30 As far as the parliamentary material is concerned, it seems to me, for reasons I have given elsewhere, that it is of no assistance, especially when it involves a minister in committee seeking to thwart opposition amendments to a Bill: see *R (Unison) v Monitor* [2010] PTSR 1827, para 91. In any event the passage quoted above from Baroness Andrews is as supportive of the conclusion I have reached as of the contention advanced by the claimants.

E The reference to “housing” in the passage from Baroness Andrews is a gloss on the statutory term “dwelling” and seems intended to refer to permanent residential accommodation. Differentiating between workers’ accommodation, which is necessary for a nationally significant infrastructure project, and permanent residential dwellings, has an obvious planning purpose. The permanent accommodation has long term planning impacts for housing land supply, traffic, and educational provision, which are properly matters for the local planning authority, a point recognised in the Secretary of State’s letter mentioned earlier. Quite distinct is the campus type accommodation proposed here, with its limited life and which cannot be converted into housing.

Ground 2: last resort

G 31 The second ground advanced on the claimants’ behalf is that the commission acted unlawfully in granting the authorisation because it failed to apply its own policy to the decision. While section 53(2) of the 2008 Act provides for three necessary conditions to be met for an authorisation, the commission has published guidance which makes clear that an authorisation to enter a party’s land without their consent will only be given as a last resort. The policy requirement that a section 53 authorisation should only be a last resort is consonant with the proper protection of the landowner’s rights pursuant to article 1 of the First Protocol to the Convention. Unless the power is used as a last resort, the issuance of a section 53 authorisation would not be a proportional interference with a landowner’s Convention rights. In this case the licensed trespass to which the claimants are obliged to

consent as a result of the authorisation comprises a restriction on the use of the land, such interference not being in accordance with the law because of the grounds raised in this judicial review application. A

32 In this case, says Mr Warren, the commission failed to grapple with the last resort issue. It was told in the 28 March 2011 and 15 April letters from the claimants' solicitors that they were prepared to grant access and that negotiations were continuing about voluntary access, but that NNB would not engage. The commission's secretariat report of 19 April 2011 acknowledged that the claimants and NNB had differing positions as to whether all reasonable efforts had been made to agree a method of entry onto the land. The commission failed to make a determination on this point. Mr Warren says that there is nothing in the report, or on the face of the authorisation, which enables the claimants to understand how this point has been dealt with and whether the commission has properly taken into account the factual position. The witness statement of Lorna Walker purports to set out the reasoning behind the decision to make the authorisation but they are classic ex post facto justifications. They fail the tests set by Stanley Burnton J in *R v Chelsea College of Art and Design, Ex p Nash* The Times, 25 July 2001, in that they are different from the original reasons given and give rise to a real risk that they may have been composed as a retrospective justification of the authorisation. Moreover, they were composed in the context of a pre-action protocol letter and the application for permission for judicial review. B
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33 It was therefore unlawful, submits Mr Warren, for the commission to grant the authorisation. If the landowner is still prepared to negotiate, in good faith, for the developer to have access to its land for survey purposes, the presumption should be that all reasonable efforts to agree entry have not yet been exhausted. In this case, it was clear that reasonable efforts were continuing to be made by the claimants at the point when the commission issued the authorisation. It is now clear that the NNB had unilaterally decided not to continue with negotiations. If it had regard to its policy at all the commission erred in law by reaching the conclusion that the last resort had been reached. The effect of the decision was to interfere with the claimants' rights without a proportionate and legitimate reason and to hamper proper negotiations by affording the NNB compulsory access over the land. E
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34 In my judgment, it cannot be said that the commission's decision to issue the section 53 authorisation as a last resort was in any way disproportionate or flawed. In making that judgment all the circumstances were relevant, including the fact that after a prolonged period the parties had not been able to reach agreement. It is plain from the secretariat report that the commission did have regard to the guidance on last resort. There is no possible basis for inferring that the commissioner, Lorna Walker, ignored this or failed to apply it when she was expressly told that was the approach required. She was provided with the report and the full correspondence. She was aware of the competing contentions of the parties about the history of the negotiations. It is clear from her witness statement that she read the whole file, applied the guidance and concluded that it was necessary to grant the section 53 authorisation as a last resort. There is no discrepancy between what was said at the time and what she has now told the court. It simply will G
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A not do for Mr Warren to question what a senior public official has said in a witness statement and not be prepared to apply to cross-examine her.

35 There was no need for the commission, in reaching its conclusion, to determine whose fault it was that agreement between the parties had not been reached. I reject the claimants' contention that so long as they as the landowners were prepared to negotiate in good faith the presumption should be that reasonable efforts have not been exhausted. In practice that would
B give a landowner a ransom over a project, because negotiations in good faith could continue almost indefinitely. Such an approach would not accord with the commission's statutory remit. Ultimately, at what point negotiations can be judged to have failed, and the last resort reached, is a matter of judgment for the commission, in the light of all the circumstances. From the history of the negotiations I have outlined above, the fact is that over a prolonged
C period, and for whatever reason, the claimants and NNB had not reached any sensible agreement to give NNB access to the land. Given that history, and the commission's statutory remit to decide applications for nationally significant infrastructure projects expeditiously, there was nothing flawed about the commission's conclusion that the section 53 authorisation was required as a last resort.

36 The last resort policy accords with article 1 of the First Protocol to
D the Convention. The context here is not a taking of land but an application for an authorisation to carry out surveys on the land under a set of conditions which ensures that any damage caused is remedied. There is no permanent taking of any rights over the land and the claimants are left in possession of it. The grant of the authorisation was in accord with the statutory requirements in section 53 and was considered necessary, as a last
E resort, to allow an application for a nationally significant infrastructure project to be progressed. There was no disproportionate or unlawful interference with Convention rights.

Ground 3: conditions

37 The claimants' third ground is that the commission acted unlawfully
F in granting the authorisation because although it stated that the attached conditions were necessary to protect the claimants' interests, the conditions are unenforceable. Section 53(4)(c) of the 2008 Act states that an authorised party must comply with any conditions subject to which the authorisation is granted but is silent as to the means of enforcement for any breach of the duty. Mr Warren submits that the contamination of the land, as a result of the manufacturing processes in the factory over many years, provides a high
G level of potential risk from any person carrying out surveys. The commission apparently concluded that it was sufficient to attach a condition providing that in the event of a breach of the section 53 authorisation it would cease to have effect.

38 In Mr Warren's submission the commission fundamentally
H misunderstood that the conditions imposed would not assist the claimants in the event that there was a serious breach of condition giving rise to civil or criminal liability. The commission's expressed view that in the event of a breach the authorisation will cease provides no protection for the claimants against claims and damage which may have occurred. There is no privity of contract between the claimants and NNB allowing them to enforce this provision or otherwise to protect their position. That affects in particular

the claimants' position as regards section 3 of the Health and Safety at Work etc Act 1974 and their liability as occupiers. These concerns must be adequately protected by enforceable provisions. The commission therefore reached its decision without regard to a material fact and breached the claimants' rights under article 1 of the First Protocol to the Convention.

39 In my view this ground can be dealt with shortly. The commission was entitled to conclude that the conditions of access in the section 53 authorisation appropriately responded to the claimants' concerns. It was not required to impose conditions which dealt with every possible situation. In the event of the conditions not being complied with, the right of entry ceases. There is nothing of substance in the concerns about potential occupier's liability or under the health and safety at work legislation. Such liability is limited if persons take reasonable precautions. The claimants can hardly argue that they will not do that.

40 There is also the context of the parties involved. NNB is part of a large organisation where public scrutiny means safety has a very high priority. It is also at the early stages of seeking approval for a major undertaking. I accept the submission of its counsel, Ms Lieven, that it has highly experienced staff with extensive knowledge of health and safety law, working with highly reputable consultants. The conditions require compliance with the claimants' rules and regulations, which no doubt will be designed to discharge their statutory obligations. In any event, as a result of what Collins J said in granting permission, there is just recently a contractual indemnity, which has been agreed and executed by both parties. That stands outside the terms of the section 53 authorisation. It protects the claimants' position as regards any realistic liabilities they are likely to incur.

41 I dismiss the claim.

Claim dismissed.

Ms AVNEET K BARYAN, Barrister

2 Issue Specific Hearing 9 (ISH9) – Environment and Biodiversity

Issue Specific Hearing 9 (ISH9) – Environment and Biodiversity

23 October 2023

Post Hearing Submission made by Thurrock Council including written summary of the Council's Oral Case

Note: these Post Hearing Submissions include a written summary of the Oral Case presented by the Council at ISH9. They also include the Council's submissions on all relevant Agenda Items, not all of which were rehearsed orally at the ISH due to the need to keep oral presentations succinct.

The structure of the submissions follows the order of the agenda items but within each agenda item, the submissions begin by identifying the oral submission made at ISH9 by the Council and then turn to more detailed matters. Where requests for further information / clarification from the applicant were made by the Council at ISH9 these have been highlighted as 'Requests'.

This submission also includes a response to the relevant Action Points arising from the Agenda for ISH9 ([ISH9](#)).

ISH9 was attended by Douglas Edwards KC on behalf of the Council. Also, in attendance either in person or virtually at ISH9 on behalf of the Council were Steve Plumb, Chris Stratford, David Burgess, Navtej Tung and Sharon Jefferies. Tracey Coleman, Chief Planning Officer for Thurrock Council, also attended virtually.

- 1 Welcome, introductions, arrangements for the Hearing
- 2 Purpose of the Issue Specific Hearing
- 3 Ancient Woodland Impact

The ExA will ask questions of the Applicant and (where indicated) of Natural England and the relevant local authorities on the following matters:

Agenda Item		Thurrock Council's Response
a)	Guidance and Methodology	
i.	What guidance was/should be followed by the Applicant in relation to the location, form, quantity and extent of ancient woodland replacement? <ul style="list-style-type: none">• Is this methodology agreed by Natural England and other relevant IPs?	Chapter 8 – Terrestrial Ecology (APP-146) does not provide any detail on how the amount of compensation was determined. At ISH9 the applicant confirmed that they had adopted a bespoke approach in discussion with Natural England rather than applying a particular ratio of compensation planting to area lost. However, the quantum and siting is considered appropriate. The Council has not raised an issue with this approach north of the Thames.
ii.	Are the criteria used to determine whether a tree or woodland is classed as veteran or ancient employed for the project sufficiently clear and robust?	N/A
iii.	Have physical surveys of woodland have been completed	The Council has not raised this as an issue. In the Local Wildlife Site citation for Rainbow Shaw the woodland is

Agenda Item		Thurrock Council's Response
	<p>to show the full extent of affected habitat and has the level of importance assigned to trees been based on an agreed methodology with Natural England and other stakeholders?</p> <ul style="list-style-type: none"> Natural England has suggested using CIEEM good practice guidance. Is this approach justified and what additional work might be required? 	<p>identified as being 'thought to be ancient'. The applicant's surveys, however, have confirmed its status.</p> <p>The applicant confirmed that REAC commitments LV30, LV31 and LV32 offer further protection to this area of ancient woodland.</p>
iv.	<p>Possible means to improve the clarity of mapping and documentation on the location and size/ extent of ancient woodland will be discussed.</p>	<p>There is a single confirmed ancient woodland site within Thurrock. The Council is satisfied that this is accurately shown on mapping that has been provided by the applicant.</p>
v.	<p>How will lost ancient woodland be replaced, taking the following issues into account:</p> <ul style="list-style-type: none"> The location(s) of source soil supplies; The benefits of translocating soils; How success will be monitored; How any deficiencies in outcomes will be addressed? 	<p>Ancient woodland is an irreplaceable habitat as defined in the NPPF; therefore, the question should relate to what compensation measures are most appropriate.</p> <p>The ES Chapter 8 Terrestrial Biodiversity (APP-146) states that there would be 1.57ha of ancient woodland lost north of the Thames. There would be 32ha of new woodland planting aimed at compensation for the loss of ancient woodland. A large proportion would be at Hole Farm, where it would provide connectivity between Codham Hall Wood on the M25/A127 junction and ancient woods to the north.</p> <p>Rainbow Shaw is the only ancient wood in Thurrock to be affected with approximately half (1.2ha) being lost. 2ha of new woodland would be planted adjacent. There is limited space in this location for new planting, so the Council has not objected.</p> <p>The oLEMP (APP-490) page 67 confirms that soils from Rainbow Shaw would be translocated to a suitable receptor. The monitoring of establishment will form part of the oLEMP.</p>
vi.	<p>How effectively can equivalently biodiverse replacement habitat be provided and in what timescale?</p> <ul style="list-style-type: none"> Do relevant IPs agree that the measures proposed by the Applicant 	<p>New planting can only be compensatory – ancient woodland is irreplaceable. The arrangement of compensation planting north of the Thames is considered appropriate.</p> <p>Rainbow Shaw is a small, isolated area of ancient woodland unlike the sites in Kent or junction 29 of the M25. The compensation planting links to other planting proposed as part of the NDep compensation and so would help create a larger block of woodland in the future. Therefore,</p>

Agenda Item		Thurrock Council's Response
	<ul style="list-style-type: none"> Are appropriate and have a reasonable prospect of success? 	the proposed measures within Thurrock are considered appropriate.
b)	Removal of Ancient Woodland and Veteran Trees	
i.	<p>NPSNN para 5.32 requires the Secretary of State to carefully consider loss and damage to ancient woodland and veteran trees.</p> <ul style="list-style-type: none"> Can the Applicant provide clarification about loss/harm minimisation at: <ul style="list-style-type: none"> The A2 /M2 /LTC intersection; The M25 /LTC intersection; and Other parts of the proposed alignment, work areas and compounds with woodland loss. The Applicant will be asked to explain why it was decided to undertake work affecting wooded areas/veteran trees and not to realign, re-design, or substitute land use or construction techniques to protect the woodland/veteran trees? 	<p>The LTC Preferred Option alignment was published in April 2017. This route avoided direct impacts on Rainbow Shaw. However, the alignment of the road was altered to avoid having to realign the adjacent overhead power lines. It was decided that this was preferable on cost grounds.</p> <p>The applicant has stated that the option was selected to benefit residents on the east side of Chadwell St Mary by moving the LTC further from them. However, the LTC passes significantly closer to residential properties in north Chadwell St Mary and the applicant considers this to be acceptable, despite the high level of protection given to ancient woodland in the NPSNN (December 2014) in Paragraph 5.32 and the NPPF (September 2023) in Paragraph 180.</p> <p>The applicant did not provide any alternative options that could be considered that could have avoided or reduced the impacts on the ancient woodland.</p> <p>This matter is commented further in Action Point 10 below.</p>
4	'The Wilderness'	
a)	'The Wilderness'	
i.	<p>There is disagreement over whether 'The Wilderness' (woodland located near The Grove, North Road, North Ockenden) should be regarded as ancient woodland subject to the policy set out in NNNPS paragraph 5.32.</p> <ul style="list-style-type: none"> What is Natural England's current position? The Applicant and relevant IPs will be asked to confirm their position and highlight 	<p>The Wilderness was not included on the Ancient Woodland Inventory prepared by Nature Conservancy Council in the 1980s (despite being over 2ha in size).</p> <p>It has not been identified as a Local Wildlife Site during any of the Local Wildlife Site Reviews undertaken since 1992. Areas of ancient woodland would be automatically designated as Local Wildlife Sites irrespective of their size.</p> <p>The site is not shown on the 1777 Chapman and Andre map but is shown on the 1st Edition OS map. The Council has recently seen a copy of an estate map from 1767, which shows an established woodland belt listed as Wilderness in the southern part of the existing wood. A site visit recorded some coppiced trees present, but not at a</p>

Agenda Item	Thurrock Council's Response
<p>evidence to support their assessment.</p>	<p>scale typical of an ancient managed wood. There are small numbers of ancient woodland indicators including Bluebell, spindle and small-leaved lime. However, the site visit was made at a sub-optimal time for woodland flora. The southern section contains a lot of elm suckers and therefore it is likely that most of old tree would have died from Dutch Elm Disease, possibly up to 50 years ago, which makes it difficult to establish its past management.</p> <p>The historic maps and site survey confirm that the northern part of the wood is definitely not ancient. The oldest maps show most of the northern area comprising formal garden and an avenue and parkland trees. The wood does not contain a species typical of other ancient woodlands within the locality. However, it is possible that the southern section, which would be directly impacted by LTC could be a remnant ancient woodland shelter belt, although no conclusive evidence was recorded on site. The area of the oldest wood would be completely lost if LTC was constructed on the current proposed alignment.</p> <p>The whole wood is shown on the 19th Century OS mapping and therefore it would meet the designation of Long Established Woodland, as defined in Defra's Keepers of Time: ancient and native woodland and trees policy in England.</p> <p><i>'Long established woodland has been present since at least 1893. While not ancient, these woodlands are still very important. They have had many decades to develop rich biodiversity and they often contain important old-growth features and deliver a range of ecosystem services'.</i></p> <p>Draft NPSNN 5.58 now includes reference to the Keepers of Time policy document. While it has chosen to focus on the ancient woodland section it is considered wrong to cherry-pick from the wider policy. The site has a high amenity value and supports a range of habitats in addition to lowland deciduous woodland. It supports breeding populations of a range of protected species. The Bat Survey Report (ES Appendix 8.8 (APP-397)) and ES Figure 8.23 – Woodland Assessment Locations and Bat Tree Survey Results – (APP-284) identified 31 trees in the Order Limits with moderate to high bat roosting suitability with a mean number of pass per night of 250. This is despite the lack of connectivity to other suitable habitats. The Breeding Bird Surveys (ES Appendix 8.8 (APP-396)) recorded Red list species Song Thrush and Starling breeding within the Order Limits area. There are local reports of Barn Owl, Tawny Owl, Red Kite, Adders being observed using the site. Until recently the site has been used for environmental education.</p> <p>It is proposed to retain the northern part of the woodland, however, there are likely to be indirect effects on the</p>

Agenda Item	Thurrock Council's Response
	ecological value of this remnant given the proximity of the new road and impacts on the underlying hydrology.
<p>ii. A retaining wall is proposed to the south of this area, apparently to limit the extent of woodland loss.</p> <ul style="list-style-type: none"> Will this meaningfully limit effects on the woodland during construction and operation? 	<p>The alternative to a retaining wall would be to have a graded slope. This would require a larger amount of woodland to be removed as it slopes back from the new road. A retaining wall would therefore be preferred if the scheme were permitted.</p> <p>There could be longer term effects depending on the hydrological effects that would result (4a) iii below) depending how the watercourses are changed. The remaining wood could become wetter or drier depending on whether water is allowed to accumulate more within the woodland area or if it becomes more free-draining.</p> <p>The Council welcomes the refinements outlined orally at the hearing by the applicant, which would reduce the area of woodland that would be permanently lost. The Council, however, considers that it is possible to avoid the woodland altogether.</p> <p>The applicant has confirmed in the 2020 Supplementary Consultation (APP-085) that the reason for the route realignment to extend into the wood was solely to avoid the former landfill site to the south. This was due to the concerns regarding its potential for contamination or suitability for construction. No detailed technical evidence has been presented to demonstrate that there was any actual issues with the original alignment over the landfill. It is assumed therefore this was undertaken as an easy way to reduce potential risks.</p> <p>Given the landscape and ecological value of The Wilderness the Council requests the applicant provides the details of the technical site assessments that it undertook on the landfill site to confirm that it is unsuitable for taking the road. Otherwise, the Council believes the rationale for destroying an area of established woodland to avoid a landfill site cannot be justified. If there is not adequate justification for the alignment through the wood (beyond expediency) that the Council wishes to see this long-established wood retained.</p>
<p>iii. At Accompanied Site Inspection 2 (ASI2) on 13 September 2023, the ExA was shown two watercourses within the area that also serviced ponds.</p> <ul style="list-style-type: none"> What measures are expected to be required to prevent the loss of the waterside and water-based 	<p>The area in consideration is shown on Sheet 5 of the (REP2-027) Deadline 2 Submission - 6.2 Environmental Statement Figures Figure 2.4 - Environmental Masterplan Section 12 (8 of 10) (Tracked changes version).</p> <p>The pond within the woodland as well as two watercourses are indicated on Sheet 39 of the Drainage Plans Volume C (sheets 21 to 49) v3.0 (Tracked changes) (REP4-081). REP4-086, sheet 39 Temporary Works Plans Volume C.</p>

Agenda Item	Thurrock Council's Response
<p>habitat during works in 'The Wilderness'?</p> <ul style="list-style-type: none"> • Are those measures in place and are they adequate? 	<p>The proposed development encroaches on the woodland. An existing small pond is indicated to be present in the proposed road alignment. This will be removed and therefore result in a loss of water based habitat and the Council notes the applicant's assertion that this will be replaced by a new pond.</p> <p>There is a watercourse or drainage ditch indicated to run along the western boundary of the woodland site and may potentially pick up road drainage from the access to Grove Barns. The other watercourse seems to discharge/overflow from the Pond located within the woodland site. Both watercourses currently fall to the south of the woodland site and are expected to then flow east in an existing watercourse following the natural topography.</p> <p>The Drainage Plans show the watercourses to be intercepted and diverted to run along the northern embankment edge of the proposed development. It eventually then rejoins the existing water course further downstream.</p> <ul style="list-style-type: none"> • There is a proposed new ditch serving the proposed northern embankment edge, which discharges into the proposed watercourse diversion route. It is not known whether this will impact the water levels, effecting the ability of the woodland watercourses to drain freely. • Or potentially lead to over draining and resulting drying up of woodland soil and wetland habitats. • There is a nearby helipad (which will presumably be discontinued in the current Project alignment), Redcroft Forge, a Formworks, a Sealant Contractor as well as The Grove offices. Is there a potential pathway for pollutants to be collected by the new ditch and subsequently back up into the woodland watercourses? <p>The Council has considered the Design Principle S9.10 relating to 'watercourses' and REAC commitment LV001 and does not consider these sufficient in protecting the water based habitat within the Wilderness and requires its amendment to achieve this greater level of protection. In addition, the Council consider that there is a good opportunity to provide a new REAC commitment to offer further protection to the loss of this woodland, which the Council will consider further a respond at D7.</p>

Agenda Item		Thurrock Council's Response
		<p>Construction Phase</p> <p>REP4-086, sheet 39: works numbers MUT26 and MUT27, Work No. 8M (highways work)</p> <p>Problems are exacerbated, but specifically:</p> <ul style="list-style-type: none"> • The Temporary Utility Plans show multi utility alignment shown along Grove Barns Road: as well as along proposed road alignment south of the woodland. This temporary utility provision may impact or prevent the ability of the woodland to drain and compaction may also have longer term impact. • The temporary works plans do not show drainage provision from the woodland north of Grove Barns access road to the south and also do not show drainage connection provision for the two watercourses running from the woodland to the proposed diversion. <p><u>The Council strongly favors the realignment of the project to avoid these risks.</u></p> <ul style="list-style-type: none"> • However, the Council request the applicant to confirm any potential risk for significant change of boundary conditions for the woodland watercourse outfalls, in particular water levels. • And to assess risk of new pollution pathways created that would impact woodland. • Also address question on long term impacts on compaction and loss of water retention capacity that would adversely affect the natural watercourse conditions and retained water within the soil. Both for operational but also construction phase.
5	Shorne Woods SSSI Impact	
a)	Shorne Woods SSSI Impact	
i.	<p>Concerns have been raised that recreational facilities proposed at the Shorne Woods Country Park could have a negative effect on the SSSI.</p> <ul style="list-style-type: none"> • Have the effects of the proposed facilities been assessed within the submitted documentation? • Are the effects considered appropriate and to have 	N/A

Agenda Item		Thurrock Council's Response
	been appropriately mitigated?	
ii.	Can Natural England and the Applicant confirm that the disputed boundary of the SSSI has been resolved and that all data relevant to an assessment in this location have also been provided in documents available to the Examination?	N/A
iii.	Does the Applicant or any other relevant stakeholder/ land manager anticipate any further refinement of the use of SSSI during the detailed design stage?	N/A
6	Coalhouse Fort	
a)	Habitat Provision	
i.	<p>As part of the mitigation for the loss of land used by species associated with the Thames Estuary and Marshes Special Protection Area (SPA) and Ramsar site, it is proposed to provide alternative land at Coalhouse Fort.</p> <ul style="list-style-type: none"> • What measures are proposed to reduce the potential effect to the existing species that utilise the existing non-designated habitat in the area? • Wetland habitat creation is proposed in an area that currently appears to be rough grassland. Is it possible that one 'important' habitat is being replaced by another? 	<p>The main part of the site is currently in arable production and there is no rough grassland present. The proposal would recreate a wetland habitat in one of the only areas of former marsh that has not been land raised.</p> <p>There are ditches around perimeter which have value for water voles and invertebrates. These would be retained, and the proposed habitat creation would complement them</p> <p>The Council is supportive of the proposed works.</p>
ii.	Are there locations where the loss of one valued habitat to facilitate the creation or replacement of another are suggested to arise? (Note in this context, the loss of	The Council is satisfied that this would not occur in mitigation or compensation sites identified within the Borough.

Agenda Item		Thurrock Council's Response
	cultivated agricultural land is not under consideration.)	
7	Hole Farm Community Woodland	
a)	Habitat Creation	
i.	<p>Extensive open space and habitat creation is proposed at Hole Farm ¹.</p> <ul style="list-style-type: none"> Which elements are required as mitigation or compensation for the Lower Thames Crossing and which elements are to meet the needs of the National Highways more general Environment Strategy? What is the current status of the planning application for the Hole Farm project ²? How will the expected programme of works at Hole Farm tie into the Lower Thames Crossing proposals? Is the Hole Farm project contingent on the granting of development consent for the Lower Thames Crossing 2. Are community woodland creation (including recreational public access) and habitat creation objectives at Hole Farm compatible? How can compatibility be maximised? 	<p>The applicant has provided a specific note in response to ISH6 Actions 6 and 7 (REP4-213) to address the issues raised regarding the current planning application being considered by Brentwood Borough Council, the use of land original purchased as a legacy project and the potential for double counting of mitigation and compensation.</p> <p>The Council has reviewed the planning application under consideration by Brentwood BC and is satisfied that the proposal seeks permission for to create new vehicle parking, replacement buildings and six new ponds and does not include any elements relating to other habitat creation.</p> <p><i>Repurposing of Hole Farm from legacy benefit' into the DCO</i></p> <p>The applicant sets out within ISH6 Actions 6 and 7 (REP4-213) in paragraph 1.2.4</p> <p><i>'The Applicant's repurposing of Hole Farm in this way was in line with compulsory acquisition law and good practice – the Applicant looked to land that that it owned first, to minimise to the extent reasonably possible acquisition of land from private landowners'.</i></p> <p>The applicant has confirmed that there have been material changes in the proposed planting scheme within the site to achieve the necessary ancient woodland and Nitrogen Deposition compensation requirements. The advance tree planting undertaken in winter 2022/23 has been undertaken as part of the Nitrogen Deposition compensation measures and agreed with Natural England and Forestry England.</p> <p>If LTC were not to progress Forestry England, which currently manages the site, would be able to change the proposed planting on site.</p> <p>The Council is satisfied that the additional information set out in REP4-213 has addressed the concerns raised previously regarding the potential for double counting.</p>
8	Water Framework Directive	

¹ The following documents will be referred to: [\[REP4-241\]](#) Document 9.103 Hole Farm Appendix I.1 Planning Application Boundary; [\[REP4-251\]](#), Document 9.103 Hole Farm Appendix I.11 Proposed Overall Site Plan; and [REP5-016], Document 2.5 General Arrangement Plans Volume C (sheets 21 to 49) v4.0, sheet numbers 46 and 47.

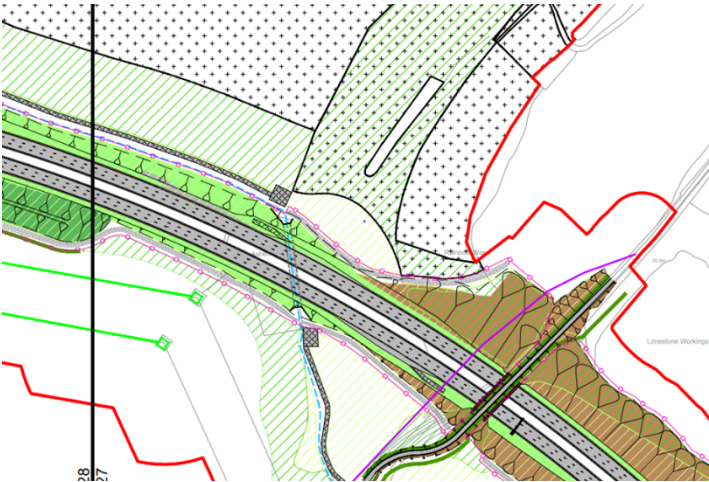
² [\[REP4-216\]](#) Document 9.103 Hole Farm Appendix C Hole Farm Planning Statement includes a statement that *'[t]he initial capital costs for developing the Hole Farm Community Woodland scheme are expected to be funded by National Highways, through discretionary funding, regardless of whether the LTC Project proceeds.'*



Agenda Item	Thurrock Council's Response
<p>a)</p>	<p>Culverting and Water Framework Directive (WFD)</p>
<p>i.</p> <p>Culverts are proposed. The ExA wishes to explore the degree to which the length and design of these will adequately respond to the maintained watercourses³.</p> <ul style="list-style-type: none"> The Environment Agency (EA) has stated that it has “a formal policy against culverting of any watercourse because of the adverse ecological, flood risk, geomorphological, human safety and aesthetic impacts”. [REP1-255] EA has suggested that the proposed culverting could damage the prospect of some water bodies obtaining the appropriate status under the WFD and be contrary to Thames River Basin Management Plan (RBMP) objectives. <p>The ExA seeks confirmation from the EA that this continues to be their position and seeks input to inform a recommendation on this point to the Secretary of State, should it remain in dispute between the Applicant and the EA.</p> <ul style="list-style-type: none"> What specific WFD and RBMP objectives and progress would be impeded by the culvert designs that are currently proposed? Whether any design amendments to culverting can be developed to address these concerns and; if not What justification does that Applicant advance for the retention of its current 	<p>The applicant has demonstrated that efforts have been made to follow the WFD and Thames RBMP objectives and they have minimised the use of culverts whilst providing compensation in the form of de-culverting of existing culverts.</p> <p>However, further information is required to enable the Council to understand the proposals for mammal ledges or other forms of passage. This is addressed further in the Council's response to the ExQ2 questions.</p> <p>Environment Agency (EA) Position</p> <p>The EA have discussed the issue of culverts at length with the applicant, summarised in the following documents:</p> <p>(REP5-035) Deadline 5 Submission - 5.4.1.1 Statement of Common Ground between (1) National Highways and (2) the Environment Agency v3.0 (Tracked Changes): the EA maintain their position that formal EA policy is to not allow culverts. However, the applicant has responded to say that culverting is avoided where possible and length of culverts has been reduced, i.e. for example the Tilbury Main culvert, which has been reduced from 83m to 46m. The matter is still marked as not agreed with the EA. The EA are pleased that three culverts on the Tilbury Main will be removed, and where it is needed, the EA recognise that a culvert is the least damaging option when compared to alternatives. Although the EA does not agree with the loss of WFD habitat, the EA agrees that the freshwater enhancements will provide an overall increase in freshwater habitat.</p> <p>Thames River Basin Management Plan (RBMP)</p> <p>(APP-461) 6.3 Environmental Statement - Appendix 14.6 - Flood Risk Assessment Part 2: the applicant describes reference to the Thames RBMP, to align with the objectives of the Thames RBMP, the use of culverts would be minimised and the use of SuDS would be adopted where possible.</p> <p>Water Framework Directive</p> <p>(APP-478) 6.3 Environmental Statement – Appendix 14.7 – Water Framework Directive: to meet the aim of the WFD the applicant has stated that where watercourse culverting is necessary, the Project design includes compensatory measures. These include wetland and watercourse creation and removal of existing culverts.</p>

³ The following document will be referred to: ([APP-477](#)) Document 6.3 Environmental Statement - Appendix 14.6 - Flood Risk Assessment - Part 10 in Table 4.10 Structural form of water crossings, proposed culverts are listed.

Agenda Item	Thurrock Council's Response
	<p data-bbox="354 264 581 321">design approach to culverting?</p> <p data-bbox="711 264 930 291">Planned Culverts</p> <p data-bbox="711 317 1414 495">(APP-477) 6.3 Environmental Statement - Appendix 14.6 - Flood Risk Assessment - Part 10: there would be a net increase in length of watercourse channel of approximately 4.9km across the Project. There would be a net increase length of watercourse in culvert of approximately 475m across the Project.</p> <p data-bbox="711 520 1333 548">Mammal Ledges and Dedicated Mammal Culverts</p> <p data-bbox="711 573 1414 873">EA Position on Mammal ledges: (REP4-285) Environment Agency Deadline 4 Submission - Responses to ExQ1 Q10.6.5 Mammal Ledges: the EA state they not aware of research on the maximum length of culvert used by mammals, specifically water voles and otters. The EA note that if otters in particular do not use the culvert due to its length then fencing should be installed to prevent them crossing the carriageways. The EA were satisfied with the applicant's response in the FRA Part 10, which describe the proposed culvert and mammal passage design criteria.</p> <p data-bbox="711 898 1414 1016">CIRA Design Guidance: Culvert, screen and outfall manual (C786), does not have any guidance on maximum length of culverts with Mammal Ledges. Taken From ExQ1 response Q10.6.5:</p> <p data-bbox="711 1041 1414 1129">Section 5.8 of the document 6.3 Environmental Statement Appendix 14.6 - Flood Risk Assessment - Part 10 (APP-477) states that:</p> <ul data-bbox="711 1155 1414 1419" style="list-style-type: none"> <li data-bbox="711 1155 1414 1272">• Section 5.8: All Culverts would include a mammal ledge (or a dry culvert-overpass). Ledges will be a minimum of 500mm wide and with 600mm headroom (to soffit of culvert); <li data-bbox="711 1297 1414 1419">• The document 6.1 Environmental Statement Chapter 8 - Terrestrial Biodiversity (APP-146) Paragraph 8.5.10 states that 12 culverts on 8 watercourses will contain mammal ledges; and, <p data-bbox="711 1444 1414 1501">Drainage Plans Volume B and C ((REP4-081) and REP4-078)</p> <ul data-bbox="711 1526 1414 1822" style="list-style-type: none"> <li data-bbox="711 1526 1414 1554">• 22 culverts have been counted in the Drainage Plans. <li data-bbox="711 1579 1414 1822">• The number of culverts on the Drainage Plans is more than the stated number of Culverts with Mammal Ledges, within the ES (as set out above); which states that '<i>All Culverts would include a mammal ledge or dry overpass</i>' and that this includes 12 Culverts. This is an apparent contradiction and the Council seeks clarification on the number and location of Mammal Passages proposed.

Agenda Item		Thurrock Council's Response
		<ul style="list-style-type: none"> Table 4.10 within the FRA Part 10 lists the different structures related to proposed water crossings (including box culverts, pipe culverts and viaducts). The Circular pipe culverts include 1 No. 900mm diameter and also a culvert consisting of 2 No. 300mm dia. Pipes. The applicant should confirm if the proposed 900mm dia. pipes as well as the 300mm diameter pipes are too small to accommodate a mammal ledge with the required parameters and would need the applicant to clarify if an alternative mammal crossing has been allowed for. It is not clear which culverts will include a mammal ledge and which ones will include a dry culvert - overpass. Where a dry overpass is required, the applicant will need to clarify this and confirm if the cover level will be sufficient if the dry overpass is to be raised above the flood levels. The structure lengths are shown with the longest being 178m, the applicant should confirm if additional measures are required for longer length culverts. Also, includes a culvert of 178m. <p>The Council requests the applicant to clarify the above points and update Table 4.10 in document 6.3 Environmental Statement Appendix 14.6 - Flood Risk Assessment - Part 10 (APP-477). The Table 4.10 should include specific identification of all culverts with Mammal ledges and a cross reference to the relevant drawing/figure within 6.2 Environmental Statement Figure 2.4 Environmental Masterplan Section 9 (APP-163).</p> <p>Summary</p> <p>The applicant has demonstrated that efforts have been made to follow the WFD and Thames RBMP objectives and they have minimised the use of culverts whilst providing compensation in the form of de-culverting of existing culverts. However, further information is required from the applicant to enable the Council to understand the proposals for mammal ledge.</p>
ExA Action Points (EV-075)		
ISH9.AP10	<p>Overhead power line – Chadwell St Mary A sketch plan (Annex A) shows the location of existing transmission alignments and towers between Chadwell St Mary and the ancient woodland at Rainbow Shaw. The</p>	<p>The Council will submit a detailed response at D7 once the applicant has provided the information requested regarding the potential to move the overhead power lines east of Chadwell St Mary.</p> <p>However, the Council wishes to take this opportunity to highlight its key concern that the applicant never provided an options assessment to justify re-routing the LTC</p>

Agenda Item	Thurrock Council's Response
<p>ExA seeks to understand the implications for the transmission alignments of measures to safeguard the ancient woodland by facilitating a movement of the LTC alignment to the south. With reference to the sketch plan, the Applicant is requested to confirm:</p> <ul style="list-style-type: none"> • How far southwards would transmission towers at location A need to be moved? • What would be the implications of the movement for the alignments 'upstream' in direction B? How many pairs of towers would need to be replaced or substantially re-engineered to give effect to the movement? • What would be the implications of the movement for the alignments 'downstream' in direction C? How many pairs of towers would need to be replaced or substantially re-engineered to give effect to the movement? <p>Once the nature of the necessary changes to the alignments has been explained, please then clarify how the costs and effects of those changes were deemed to justify the loss of ancient woodland.</p>	<p>alignment through an area of irreplaceable habitat rather than moving the pylons.</p> <p>Plan 1 below from the General Arrangements Plans Volume C (APP-011) shows the pinch-point between Rainbow Shaw and the two pylons closest to the wood.</p> <p>At the Hearing the applicant stated that a driver for the realignment was the benefit to residents of Chadwell St Mary was stated. Plan 2 shows that the section of LTC near Rainbow Shaw has a significantly greater degree of separation from existing residents than to those to the north of the community (it has also moved the alignment closer to the residents of Linford). The Council believes therefore that the only reason for realigning the LTC was to avoid the pylons.</p> <p>Plan 3 shows the five pairs of pylons closest to Rainbow Shaw. This shows that there could be potential to make small changes to the pylons, however, these have not been properly explored by the applicant.</p> <p>Plan 1</p> 

Agenda Item		Thurrock Council's Response
		<p>Plan2</p>  <p>Plan 3</p> 
ISH9.AP14	<p>The Wilderness – Status (Ancient Woodland) Without prejudice to the current considerations by Natural England, in the event that 'The Wilderness' is designated as ancient woodland, provide the Council's position on the proposed works within/adjacent to 'The Wilderness'. In responding, please make reference to the relevant parts of the NPSNN.</p>	<p>If the southern part of The Wilderness was identified as Ancient Woodland the Council would expect the applicant to reconsider its decision made in advance of the 2020 Supplementary Consultation to realign the route to avoid the landfill site to the south in preference for damaging the wood. The Council is not aware of any specific issues having been given to require the landfill site to avoided. It is assumed that it is avoid the applicant needing to undertake the detailed surveys to confirm ground conditions.</p> <p>The historic mapping shows the southern part of the wood to be the oldest section. This is set out in more detail in 4 a) I above. Without realigning the route, it would be impossible to avoid the loss of this woodland. The Council's position is that the applicant should amend the alignment, so that it runs through the landfill site unless it can provide evidence to justify why it cannot be avoided.</p>
ISH9.AP21	<p>Coalhouse Fort</p>	<p>The current mitigation proposals for the land adjacent to Coalhouse Fort was initially developed between the</p>

Agenda Item		Thurrock Council's Response
	Natural England (in the circumstances where the relevant witness was unavailable) and Thurrock Council to provide their final position in respect of the Applicant's proposed environmental mitigation at Coalhouse Fort.	<p>applicant and Natural England to provide appropriate mitigation for the HRA. The previous option was to use the site for water vole mitigation.</p> <p>The Council is supportive of the proposals, which will help recreate significant wetland in one of last fields that has not been subject to land-raising in the area.</p>

9 Next Steps

10 Closing

3 Issue Specific Hearing 10 (ISH10) – Traffic and Transportation

Issue Specific Hearing 10 (ISH10) – Traffic and Transportation

24 October 2023

Post Hearing Submission made by Thurrock Council, including written summary of Thurrock Council's Oral Case

Note: these Post Hearing Submissions include a written summary of the Oral Case presented by the Council at ISH10. They also include the Council's submissions on all relevant Agenda Items, not all of which were rehearsed orally at the ISH due to the need to keep oral presentations succinct.

The structure of the submissions follows the order of the agenda items but within each agenda item, the submissions begin by identifying the oral submission made at ISH10 by the Council and then turn to more detailed matters. Where requests for further information / clarification from the applicant were made by the Council at ISH10 these have been highlighted as 'Requests'. Where the Examining Authority (ExA) requested the Council provides further written evidence or further information has been provided in response to statements made by the applicant during ISH10, this further information is included in Appendices and highlighted within this submission. This Appendix is, as follows:

- Appendix A – Further Commentary on Modelling
- Appendix B – Applicant's email dated 27 April 2022 (suitably redacted)

This submission also includes a response to the relevant Action Points arising from the Agenda for ISH10 [\[ISH10\]](#) [\[EV-082\]](#).

ISH10 was attended by Douglas Edwards KC on behalf of the Council. Also, in attendance either in person or virtually at ISH10 on behalf of the Council were David Bowers, Chris Stratford, Kirsty McMullen, Adrian Neve, Dr Colin Black, Steve Plumb and Sharon Jefferies. Tracey Coleman, Chief Planning Officer for Thurrock Council, also attended virtually.

The ExA will ask questions of the Applicant relating to:

Agenda Item	Thurrock Council's Response
3	Update on matters arising from ISH4
a)	Wider Network Impacts Update
i.	<p>Applicant to provide an update statement on Wider Network Impacts.</p> <p>Comments by Mr David Bowers – ISH10 Transcript (EV-081) Page 15</p> <p>Mr. Bowers commented that as discussed at Issue Specific Hearing 4 (ISH4) and in document submissions through the Examination, the applicant has submitted two models that provide significantly different assessments of the traffic impact of LTC at the Orsett Cock junction.</p> <p>Following ISH4, a meeting was held on 25 September 2023 between the applicant, the Council and representatives of the two National Ports to discuss the performance of the local road network and the approach to transport modelling. As a result of this meeting, the applicant agreed to provide an updated VISSIM model of the junction (Version 3) and this was provided</p>

Agenda Item	Thurrock Council's Response
	<p>on 6 October 2023, with further traffic signal timings provided on 17 October 2023.</p> <p>This VISSIM model provided by the applicant has changed significantly between the previous Version 2.4 to 3 and the Council was reviewing the outputs of this version of the model and was expecting to provide detailed comments at Deadline 6.</p> <p>However, late on Friday, 20 October 2023 the applicant unexpectedly provided the Council with a further version of the VISSIM model (v3.6). This provides a new set of information for the Council to analyse.</p> <p>Following the meeting on 25 September 2023, the applicant also agreed to provide updated LTAM model results, which incorporated traffic parameters, e.g. signal timings, from the VISISM model. This information was expected on 20 October 2023, but it was only provided at 17.50 on 23 October 2023.</p> <p>The Council is now looking at these new models and initial analysis shows a continued lack of convergence (or alignment) of the LTAM and VISSIM models. There also seems to have been changes to the assumptions for the 'Do Minimum', i.e. situation with no LTC, and 'Do Something', i.e. scenarios.</p> <p>The Council will provide initial comments on these models at Deadline 6 and detailed comments at Deadline 6A or 7, as required by the ExA.</p> <p>Comments by Mr. Douglas Edwards KC – ISH10 Transcript (EV-081) Page 18</p> <p>Mr. Edwards KC confirmed this approach to reporting and that the Council would be able to provide responses at a new Deadline 6A, if that was required by the ExA. Mr. Edwards KC requested that the applicant provide details of whether further modelling information would be provided and if so when.</p> <p>Mr. Edwards KC expressed concern that the applicant had report a meeting between DP World, Port of Tilbury and the Applicant. Request: applicant confirms/provides details of that meeting and its meeting notes and the timetable for further modelling submissions. Furthermore, that no further meetings take place between the applicant and the two national ports without attendance of the Council, as local highway authority.</p> <p><u>Policy Compliance</u></p> <p>Comments by Mr Douglas Edwards KC – ISH10 Transcript (EV-081) Page 51</p>

Agenda Item	Thurrock Council's Response
	<p>Mr. Edwards KC provided a response to comments made by Mr. Rhodes concerning the policy requirements for the mitigation of LTC. Mr. Edwards KC stated that he understood that the applicant was saying that there no policy requirement for a scheme like LTC to mitigate impacts on the local road network and that any impacts that did occur should be addressed through future funding decisions. This has been the applicant's view through the Examination and the Council has provided comments that they do not consider this to be the correct interpretation of policy.</p> <p>Mr. Edwards KC restated the important point that Orsett Cock is part of the main LTC scheme and therefore impacts at Orsett Cock should be addressed through the design of the LTC scheme and the impacts should not be considered as part of any proposals for the management of Wider Network Impacts.</p> <p>Mr. Rhodes' approach and that of the applicant is demonstrated to be untenable by reference simply to five paragraphs in the relevant national policy statement NPSNN, and those are paragraphs 5.202, 5.211, and 5.215 – 5.217.</p> <p>These show that a scheme of this nature is required to identify the impacts on the local network and to mitigate those impacts where reasonable and proportionate to do so.</p> <p>To seek to interpret those elements of national policy as allowing a scheme of this nature to essentially address impacts and mitigate them through a RIS or future investment process is frankly inconsistent with what the national policy says. If it had been intended, through the NPSNN, that impact on local transport networks would be addressed through future funding decisions, such as RIS, this could straightforwardly have been set out in the NPSNN. It has not been.</p> <p>In terms of obtaining funding from RIS, this funding would be based on future decisions that are to be taken by other bodies relating to investments in the network, i.e. the strategic network as far as DfT is concerned and the local network as far as the local authority is concerned.</p> <p>There is no commitment to deliver anything through those processes at this stage, and therefore no commitment to deliver the kind of mitigation that may be necessary in the context of impacts of an individual scheme.</p> <p>So, to rely upon RIS is not mitigation. It is at best aspiration, and certainly does not meet the requirements in policy terms arising from paragraph 5.216 of the NPSNN, which requires that where development would worsen accessibility, such impacts should be mitigated so far as reasonably possible.</p>

Agenda Item	Thurrock Council's Response	
		<p>As far as the balancing exercise is concerned, paragraphs 4.3 of the NPSNN is non-controversial, as is paragraph 4.4. It requires a balancing exercise, but as is made clear from the second bullet point of that paragraph of the policy statement, as part of that balance, the impacts need to be properly identified and the mitigation taken into account as part of the balance.</p> <p>The requirement for that straightforward balance to be carried out does not in any way support the position advanced by the applicant, which is effectively you just 'kick this can down the road'.</p> <p>The position put forward by the applicant, is no better and no more credible than the position put by the applicant at ISH 4 and subsequently and simply does not accord with what the national policy plainly and expressly says and what it requires in terms of this application for a scheme of this nature.</p> <p><u>Silvertown Approach to Mitigation</u></p> <p>Comments by Mr Douglas Edwards KC – ISH10 Transcript (EV-081) Page 54</p> <p>Mr. Edwards KC commented that the Council would review the proposals to be provided by the applicant at Deadline 6. In addition, Mr. Edwards KC commented that a fund-based approach like Silvertown can address 'known unknowns' and the Council supports this approach.</p> <p>In terms of the use of the phrase 'unacceptable impacts', Mr. Edwards KC noted that this phrase was used in the consented DCO for the Silvertown Tunnel and that there was nothing inherently inappropriate about 'unacceptable impact' being the trigger for any kind of mitigation; and, appropriate steps can be included within any requirement to ensure that the definition of such an impact could be determined in the future.</p> <p><u>Consideration of NPS for Ports</u></p> <p>The Council notes and agrees with the comments made by Mr. Shadarevian KC (for DP World London Gateway at page 66 of ISH10 Transcript (EV-081)), concerning the need to consider the policy requirements of NPSNN and the NPS for Ports, when assessing the impact of LTC on the access to and from the two national ports. In particular, it is important to consider the mutuality of the objectives of both policy documents and seek to achieve the objectives of both without compromising the other.</p>
ii.	A review of the respective positions in relation to A229 Blue	N/A - but note that the current Government position set out in its 'Network North' document (Network North - GOV.UK (www.gov.uk)), includes 100% funding allocation for those

Agenda Item	Thurrock Council's Response	
	Bell Hill (if not covered under item 3 a,i).	schemes listed and that includes the Council's East Facing Slips project on the A13.
4	Public Rights of Way (PRoWs) & Non-Motorised User (NMU) Routes	
a)	Legal Status of proposed NMU routes and PRoWs	
i.	Whether there is clarity and agreement between parties of the legal status of new and affected routes.	<p>Yes, there is general clarity in terms of which routes will be Definitive and which Permissive and which would be highway.</p> <p>The Council's position regarding PRoW and WCH is set out in its LIR Section 10.12. The principal issue to be resolved is the impacts to the network during construction, when key routes will be closed for up to 5 years.</p>
ii.	Whether there is a need to confirm the legal status of other existing routes within the application boundary.	The legal status of existing routes has been agreed.
b)	Design standards	
i.	Whether proposed design standards are suitable and applied appropriately.	<p>The Council notes the highly unfortunate conundrum about the mis-use of Walking Cycling and Horse-riding (WCH) facilities, expressed by Mr. Holland and his clients. There is clearly some work to be progressed by the applicant and perhaps the industry more generally to resolve these inappropriate uses, but the Council would wish to take all appropriate opportunities to extend the WCH network within Thurrock, both using corridors within the public highway and also through extensions and additions to the PRoW network. These opportunities are referred to in the Council's LIR (REP1-281) in Section 9.7.</p> <p>Recognising the concerns with the PRoW network, it is clearly very important to get the active travel provision right in the public realm, i.e. within the highway corridors, so as to bring about the greatest change in means of travel.</p> <p>In the Council's SoCG item 2.1.103, it is confirmed that it considers the design standards set out in the Design Principles are sufficient to guide detailed design, albeit the detail on the provision and segregation between uses is not clearly described. The applicant signposts to the text within the Project Description document (APP-140) and has provided indicative sections of the route crossings within the Engineering Drawings and Sections (e.g. REP4-063); and, within the Design Principles (DP) (REP4-147), which sets out in DP PEO.01 – PEO.12 principles to be followed at a high level. In addition, DP STR.07 and STR.08 provide limited commitments. These and the more detailed DP's for area-specific parts of the route, although broad widths are set out, they do not provide any of the detailed</p>

Agenda Item	Thurrock Council's Response
	<p>widths for WCH needs required by the Council and as set out in the documentation of these widths required below.</p> <p>Unfortunately, the detail for the widths of the respective corridors for walking, cycling and horse-riding appear to have been left for the detailed design stage. This approach gives limited assurance to the Council that appropriate local road network design standards (LTN 1/20) will be met.</p> <p>In SoCG item 2.1.258 the issue of the width of WCH provision on six bridges crossing LTC remains a Matter Not Agreed. The Council has requested the widths of the routes on these bridges to be widened, so that they deliver sufficient legacy provision to encourage active sustainable travel and support future growth and to include for corridor widths for improved bus connectivity.</p> <p>LIR submission on LTC crossing widths:</p> <p>The Council has commented on how the applicant has taken a perfunctory approach to reconnecting walking, cycling and horse-riding corridors severed by LTC. This is captured at Section 9.7 of its LIR (REP1-281) on Legacy provision and includes, at Appendix C Annex 2 Sub-annex 2.5 of its LIR (REP1-284), a table of the locations where the Council has sought adjustments to the crossings of LTC to ensure strong provision is made to reflect the development of the WCH and public transport network across Thurrock.</p> <p>Whilst the applicant claims to have created a number of kilometres of 'new' WCH corridor, much of this is the redefining of existing corridors and the increased length of routes generated due to diversions. There are some sections of truly new corridor along the adjusted highways which allow for better connections, such as on Rectory Road and Stifford Clays Road, as well as reprovision of existing facilities, such as on the A1013 Stanford Road.</p> <p>Of particular challenge to the Council is that the applicant does not propose a sufficiently wide corridor across LTC at Brentwood Road. This would represent a pinch-point at the crossing, which has no clear allocation for future bus provision and WCH connections that should complement emerging local development provision, weakening that future strategy. This is contrary to NPSNN (such as Paragraph 3.20, bullet two) and the Council's Core Strategy Policy CSTP14 and other sustainable transport policies, where both documents seek that projects do not preclude the delivery of future active travel corridors.</p> <p>Further to the crossing details, there are points of detail that would need to be addressed during the design process. The applicant seeks to delay agreement on those aspects until any</p>

Agenda Item	Thurrock Council's Response	
		<p>post DCO grant, which leaves risk in the prospects for the delivery of those proposals. As an example, the applicant has indicated a Pegasus Crossing immediately to the west of the junction of A1013 with Rectory Road, which is referenced in the Transport Assessment (REP4-148 to REP4-153), but not explicitly covered within the Authorised Works in the dDCO (REP3-078). The Council has noted that the juxtaposition of that crossing to the junction and the adjacent bus lay-by would be unacceptable at detailed design and that the Council, as Local Highway Authority for those roads, would not be able to sign off on the Road Safety Auditing of that arrangement. The applicant's designs would be required to provide a revised arrangement. The decision to delay resolution of these problems until after any DCO grant could lead to delays and challenge during the detailed design process.</p>
ii.	<p>Whether opportunities to maximise the potential benefit for NMU users and routes has been suitably considered.</p>	<p>Comments by Mr. Douglas Edwards KC – ISH10 Transcript (EV-081) Page 94</p> <p>Mr. Edwards KC introduced that the Council would provide a hybrid response of part Written Statement and oral submission and that Mr. Neve and Mr. Plumb will speak to items 4b and 4d.</p> <p>Comments by Mr. Adrian Neve – ISH10 Transcript (EV-081) Page 94</p> <p>Mr. Neve noted the points raised by Mr. Holland and his clients and noted that there are significant challenges as to how to handle the widening of active travel networks balanced with inadvertently introducing nefarious activities into the countryside and private lands. He reported that the Council recognises those challenges and will also support improvements to the active travel network.</p> <p>Turning to the question of whether the applicant has employed the correct design standards and maximised opportunities for walking, cycling and horse-riding, Mr. Neve noted that there has been general positive movement towards the format of the active travel network and that the proposals are general in accordance with design standards and design principles</p> <p>Mr. Neve did note that the Council has expressed in its LIR and SoCG that there still needs to be some progress to be made on the legacy provision and the format of some of the crossing points and the finer Design Principles and the pinch-points within the network. He noted that the LIR Appendix C, Annex 2, Sub-Annex 2.5 (REP1-284) sets out a table that considers the differences between the Council's requirements for crossing widths and the proposals made by the applicant. He noted that Brentwood Road was a particular pinch point with insufficient cycle and walking provision proposed or specific provision for</p>

Agenda Item	Thurrock Council's Response
	<p>future bus routes and that the applicant does not propose to resolve that position. The requirement from the Council reflects the future development growth connections along that corridor that would require additional width within the corridor across LTC on Brentwood Road. It is not adequate to replicate the current provision of Brentwood Road, which has a currently different function within the network.</p> <p>Mr. Neve noted the applicant's a proposal for a Pegasus crossing from the end of Rectory Road that crosses Stanford Road, A1013, which would not be acceptable to the Council in its current location due to its proximity to the bus stop on A1013 and the junction of Rectory Road. The applicant has not sought to relocate the crossing and so the design would need to be defined in the detail design phase. The works to construct the Pegasus crossing are not explicitly listed within the Authorised Works but are understood to be covered by Authorised Works 7D, but this requires confirmation. For clarity, Authorised Works 7D are on Stanford Road to the west of the Orsett Cock junction.</p> <p>Mr. Neve referred to the junctions of Orsett Cock and Asda Roundabout. He noted that there are no designs for any works at Orsett Cock or the Asda roundabout as part of the Examination. Currently, the General Arrangements (e.g. REP5-017 Sheet 32) and Works Plans (e.g. REP5-021 Sheet 32) included with the submission documents and other evidence stop short of the Orsett Cock junction and do not include any designs, layout changes or measures within the description of the Authorised Works. Measures have been included within localised modelled work submitted by the applicant, but these have not been translated into proposed additional Authorised Works within the designs.</p> <p>There has been extensive coverage relating to those locations within the Examination, but currently there has not been enough done to maximise potential for non-motorised users at those points, as there is nothing that is before the Examination for those locations. It is noted that the applicant relies on an existing pedestrian underpass to the south of Asda Roundabout and the at-grade pedestrian facilities to the north of Asda Roundabout would be impacted by the increase in movements and delays at the junction during the construction period. The Council will continue to press for WCH proposals at Orsett Cock and Asda Roundabout. Mr. Neve noted that as part of the modelling work for Orsett Cock, that there is an intention from the applicant to include signal controlled junctions within the Orsett Cock junction and that those proposals would need to take into account walking and cycling provision.</p>

Agenda Item	Thurrock Council's Response
	<p>Mr. Neve raised that the applicant relies on active travel to access its compounds within the framework construction travel plan (REP5-055), but does not provide any proposals to enhance that ability to access its compounds, and states that it would not support access to those compounds along routes which the applicant would regard as safe provision.</p> <p><u>Further Written Statement:</u></p> <p><u>Asda Roundabout:</u> the applicant continues to express that there are no significant operational effects on that junction and so does not propose any measures at the junction. The same is true during construction at the Asda Roundabout. Both the Council and the Port of Tilbury London Limited (PoTLL) are of the opinion that there are impacts that should be mitigated that are yet to be agreed based on the indicative scheme that is being prepared by the PoTLL. Any proposals at the Asda roundabout must include the better provision on accessibility by walking and cycling to limit the severance effects on that junction, which is an important node within the local network and for access to the Port of Tilbury. The applicant also relies of access to its compounds by walking and cycling through the Asda Roundabout to access the North Portal compound. Asda Roundabout is not included in the Order Limits.</p> <p>Access to Construction Compounds</p> <p>As set out in its FCTP (REP5-055) the applicant relies on being able to achieve a healthy proportion of its workforce travelling to the compounds by walking and cycling. Table 5.3 of the applicant's FCTP indicates the percentage of workers to travel by car and as such the percentage of non-car travel. This ranges from no access by walking and cycling to 30% by non-car modes. The applicant states in paragraphs 3.1.4 and 7.2.6 that access by walking and cycling will only be acceptable where safe lit provision is available.</p> <p>At Section 6.3 of the FCTP the applicant states that <i>'There is an extensive walking, cycling and horse-riding network (situated in proximity to the Project's construction sites) that would be used for workforce travel'</i>. Whilst the Council wholly supports the use of active modes to access the worksites, it does not concur that the compounds have been selected to maximise these uses and that the applicant should provide facilities to allow the journeys on which it relies in its assessment and hence reduction of impacts.</p> <p>The compound selection means that many of the locations are not therefore appropriate for walking and cycling without relying on investment in the access corridors for those modes.</p>

Agenda Item	Thurrock Council's Response
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This situation is illustrated by the information at Plate 1, below, which uses the applicant's compound locations and defined access corridors as per the oTMPfC Plates 4.7 and 4.8 ([REP5-057](#)) and worker details from the FCTP Table 5.3 ([REP5-055](#)).

The information indicates that only the Stifford Clays Road West compound is directly accessible by an acceptable walking and/or cycle route. The remaining works compounds, but excluding Utilities compounds, currently do not have safe walking and/or cycling facilities on the approach to the compounds that would meet the criterion set by the applicant (i.e. FCTP paragraph 3.1.4 *'in a safe, lit highway environment, with footways for pedestrians'* and paragraph 7.2.6 *'Any walking and cycling trips to sites will only be encouraged where these modes can be used safely'*).

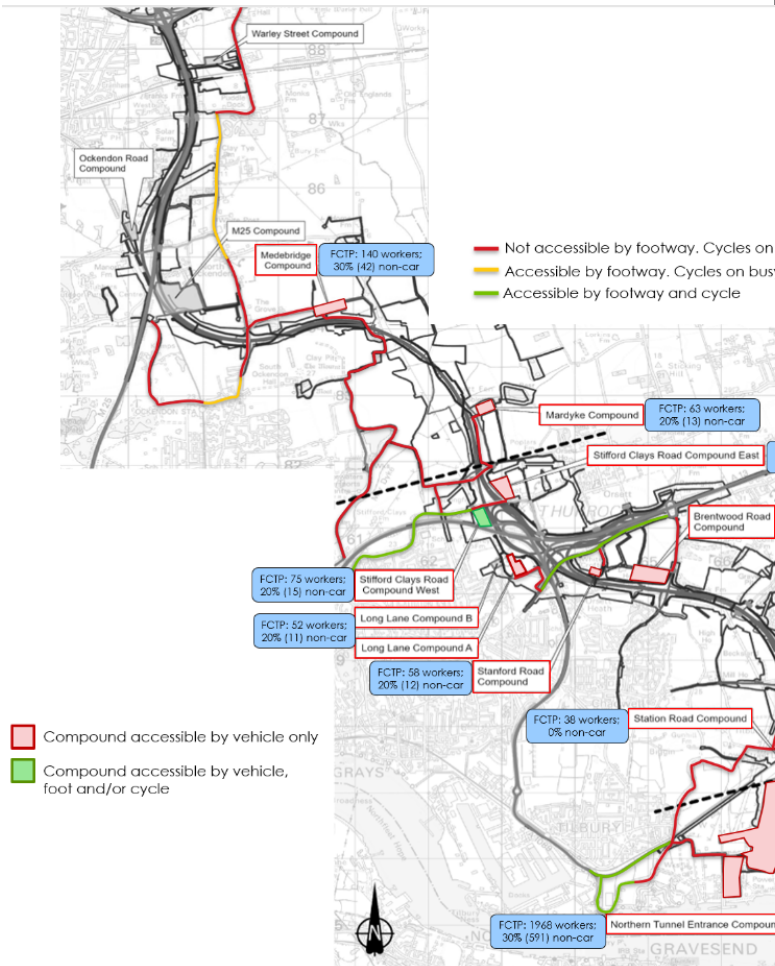


Plate 1: Accessibility to Main Works Compounds by Walking and Cycling.

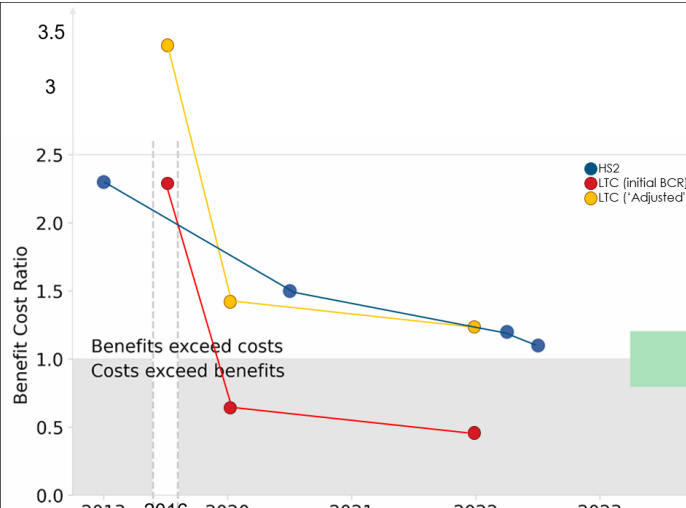
This effectively rules out access to many of the identified compounds by anything other than motorised modes and

Agenda Item	Thurrock Council's Response	
		<p>entirely undermines the applicant's claimed mitigation of worker travel during the construction period.</p> <p>The Council's position has been made in LIR Section 15.6 and the above further emphasises that point with specific reference to the absence of accessibility to the applicant's compounds.</p> <p>The applicant has therefore <u>not taken opportunities</u> to maximise the potential benefit for NMU users and access routes <u>have not been suitably considered</u>.</p>
iii.	How usage surveys and assessments have been undertaken and their relevant application.	<p>Prior to DCOv1 the applicant commissioned the production of a 'Walking, Cycling and Horse Riding Assessment Report (WCHAR). This document does not form part of this DCO. It is mentioned in Sections 2.1.2 of 7.4 Project Design Report – Part E – Design for Walkers, Cyclists, and Horse Riders (APP-512) but it is not fully referenced. From memory, the Council is aware that it included surveys undertaken by two people during a single week in February in 2018/2019. The Council is not aware of any further surveys or assessments having been undertaken since. As a result, it is considered that the survey effort to date is not adequate to fully determine the number of users that would be impacted by the prolonged closures. There are automatic people counters designed for use on rights of way that could have been installed and used to provide an accurate picture of usage over different seasons.</p>
c)	Future Maintenance	
i.	Whether future maintenance responsibility and cost has been sufficiently considered.	<p>In the case of PRoWs, these would be the responsibility of the LHA.</p> <p>The applicant confirmed at ISH10 that permissive routes are considered to be 'Streets' under the DCO. Article 10(5) within REP5-025 confirms that maintenance for these outside the defects period rests with the 'Street' owner. The applicant would retain the freehold to Tilbury Fields and the associated ecological mitigation land around Coalhouse Fort. This means that the applicant will be responsible for their future maintenance. The Council is satisfied with this clarification regarding the permissive routes within Thurrock.</p> <p>Responsibility for the maintenance of green bridges was considered as ISH6. The applicant confirmed in 9.86 Post-event submissions ISH6 (REP4-182) in paragraph 4.2.4 and Annex B4 that it would be responsible for the structure, the Local Highways Authority responsible for the highway surfaces and the applicant's landscape contractor, appointed through the oLEMP, would be responsible for management of the vegetation areas.</p>

Agenda Item	Thurrock Council's Response	
d)	Construction Impact	
i.	<p>Whether alternative routes during construction have been fully considered and appraised.</p>	<p>There is a low number of rights of way within Thurrock, which results in poor connectivity of routes within the network. This makes the PRow network sensitive to the prolonged closure of routes. This would have a significant impact for users, as there are often no alternatives.</p> <p>The Council believes that the prolonged temporary closure of routes, such as Bridleway 219 through the Mardyke Valley for which no alternative diversions are available, will have a significant adverse impact on users, particularly horse-riders for which no alternatives are available. The Council considers that the applicant is unwilling to provide such mapping as it will confirm the significance of these long-term 'temporary' closures.</p> <p>The Council has continued to request, e.g. within the Council's LIR (REP1-281) Section 10.12.6 and within the Thurrock SoCG (REP3-093) item 2.1.130, that the applicant produce either a single plan or, if it is easier, a set of plans showing the existing PRow with the short, medium and long-term closures (and during all 11 phases of construction) clearly shown and any temporary diversions that have been identified overlain to clearly show which parts of the network that would be closed for prolonged periods for which no alternative routes are available.</p> <p>The applicant has prepared Supplementary Walking, Cycling and Horse-riding plans, which show the existing network and proposed routes at an appropriate scale for this purpose. However, the plans do not include the closures or temporary diversions. The applicant have repeatedly directed the Council to various documents that cover specific aspects, such as the Streets Subject to Temporary Restrictions of Use Plans (APP-028 and APP-029), which highlights the routes to be altered; DCO Schedule 5 Part 6 listed all affected routes; on the Outline Traffic Management Plan for Construction (APP-547), which summarises the affected routes. As this list demonstrates there is not a single clear plan that enables a proper assessment of the overall effects on the overall network to be made.</p> <p>Until these plans are produced the Council believes that it is not possible for the ExA to fully assess the impacts on the overall WCH network. The Council will set out in its D7 submission further detailed requirements and an example of the preferred plan to assist the applicant, whilst noting the specific Action Point 12 (EV-082), which is dealt with below.</p>
ii.	<p>General approach to how diversions during construction will be agreed, approved and managed.</p>	<p>The applicant has not had a single team overseeing all aspects of WCH/PRow and therefore it has been difficult to try to achieve a coordinated package of measures.</p>

Thurrock Council's Response to Action Points from ISH10 ([EV-082](#))

No	Party	Action	Thurrock Council's Representation
6	TfL All Interested Parties	<p>Silvertown Tunnel approach: drafting / ambiguity removal</p> <p>Provide an explanation of the use of the wording "Unacceptable impact", its definition or the triggers where this wording is appropriate as opposed to a situation which could be considered as a 'severe inconvenience'. What could be specified to make a trigger point to enable further work investigation and how is this secured?</p>	<p>The question of what is an 'unacceptable impact' is an important question for the assessment and delivery of new developments schemes, particularly in the assessment of environmental (including traffic) impacts. For these assessments levels of impact are typically defined in terms of minor, moderate and severe adverse (or beneficial) impacts with criteria for these assessment levels set at the environmental scoping stage.</p> <p>The Institute of Environmental Management and Assessment provides guidelines called 'Environmental Assessment of Traffic and Movement' and within this document they provide two rules for determining the scope of an environmental assessment:</p> <p>Rule 1: Include highway links where traffic flows will increase by more than 30% (or the number of heavy goods vehicles will increase by more than 30%).</p> <p>Rule 2: Include highway links of high sensitivity where traffic flows have increased by 10% or more.</p> <p>The Council considers that these rules are a robust starting point for the definition to assist the assessment of 'unacceptable impacts'.</p> <p>Application of these rules would highlight locations of changes in traffic flows compared to an agreed baseline. There would need to be a further consideration of the impact of these changes in terms of impact on people (e.g. increase noise, reduced air quality) as well as impacts on traffic flows and delays.</p> <p>The consideration of changes at the locations identified by the two rules could be undertaken by a Working Group specified by the DCO and comprising the applicant, local highway authorities and other stakeholders. A governance process could be put in place to allocate funding to implement mitigation at locations of concern.</p>
7	All Interested Parties	<p>Network North implementation</p> <p>The UK Government has published Command Paper 946: "Network North: Transforming"</p>	<p>The Council notes that as part of the recent cancellation of High Speed 2 north of Birmingham the Prime Minister stated in his speech to the Conservative Party Conference:</p> <p><i>'HS2 is the ultimate example of the old consensus. The result is a project whose costs have more than doubled, which has been repeatedly delayed... and for which the</i></p>

No	Party	Action	Thurrock Council's Representation																												
		<p>British Transport" (October 2023). Please provide comments on policy changes and new commitments arising from this policy which give rise to potential effects on the LTC project.</p>	<p><i>economic case has massively weakened with the changes to business travel post Covid.'</i></p> <p>LTC has many similarities with HS2, as both are large projects which have been in development since the late 2000s. As part of the cancellation of HS2 the government produced a 'Network North' report, which presented a diagram that showed how the BCR for HS2 has reduced over the past 15 years.</p> <p>The Council has taken this diagram and added similar information for LTC based on the BCRs provided by the applicant and summarised in Table 7.2 of the Council's Local Impact Report (REP1-281). In the diagram 'Initial' refers to the BCR for well-established Level 1 benefits and 'Adjusted' refers to the BCR when less well-established Level 2 benefits (such as agglomeration benefits) are included. These are the same definitions as used by the applicant.</p>  <table border="1"> <caption>Benefit Cost Ratio Data</caption> <thead> <tr> <th>Year</th> <th>HS2</th> <th>LTC (Initial BCR)</th> <th>LTC ('Adjusted' BCR)</th> </tr> </thead> <tbody> <tr> <td>2013</td> <td>2.3</td> <td>-</td> <td>-</td> </tr> <tr> <td>2016</td> <td>-</td> <td>2.3</td> <td>3.44</td> </tr> <tr> <td>2020</td> <td>-</td> <td>0.65</td> <td>1.45</td> </tr> <tr> <td>2021</td> <td>-</td> <td>-</td> <td>-</td> </tr> <tr> <td>2022</td> <td>-</td> <td>0.48</td> <td>1.22</td> </tr> <tr> <td>2023</td> <td>-</td> <td>-</td> <td>-</td> </tr> </tbody> </table> <p><i>Source: Department for Transport</i></p> <p>This analysis shows that, like HS2, the case for LTC has massively weakened. The BCR has fallen consistently as the scheme has developed, with the BCR for well-established Level 1 benefits is only 0.48:1 and with all benefits is only 1.22:1. This is much lower than the BCR of 3.44:1 identified in the initial assessments of the LTC.</p> <p>As described by the Council's further analysis presented in Section 10.3 of Thurrock's Deadline 6 submission, in fact the estimate of the BCR for LTC needs to be reduced further to c1.0:1 to reflect changes in recent DfT guidance on modelling.</p> <p>It is also interesting to compare, the Council also notes that in terms of cost per kilometre, the cost of LTC is c.</p>	Year	HS2	LTC (Initial BCR)	LTC ('Adjusted' BCR)	2013	2.3	-	-	2016	-	2.3	3.44	2020	-	0.65	1.45	2021	-	-	-	2022	-	0.48	1.22	2023	-	-	-
Year	HS2	LTC (Initial BCR)	LTC ('Adjusted' BCR)																												
2013	2.3	-	-																												
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2023	-	-	-																												

No	Party	Action	Thurrock Council's Representation
			<p>£500m per km slightly higher than HS2's cost of £350m – £400m per km.</p> <p>The Prime Minister's cancellation of HS2 Phase 2b and associated comments together with the increasingly weak economic case shown that LTC is a scheme, which does not provide value for money.</p>
11	All landowners, Landowner Agents, Highway Authorities and others who are responsible for PROWs	<p>Bridleway best practice</p> <p>Provide documentation / photographic examples of best practice management of bridleways in relation to reducing use by inappropriate persons and vehicles accessing such routes.</p>	<p>The Council acknowledges the challenges over protecting access to bridleway for only permitted users, due to the range of accessibility requirements of those users, e.g. those with mobility impairments, the range of cycle requirements and the needs of horse-riders. These differing requirements make it very difficult to exclude nefarious activities, using smaller motorised vehicles. Options have been used that employ substantive barriers and gating but then can inadvertently exclude sections of the permitted uses. It is noted that it is an industry-wide problem with no clear solution. The Council has used mass concrete blocks and steel barriers, other places have engineered shaped barriers, such as the pinched gates referred to by Mr. Young, but these exclude some permitted users and are often vandalised.</p> <p>The Council has employed a range of bespoke measures working with affected landowners to try to address this issue as standard structures used in other areas are not sufficiently robust. It is an issue that requires a coordinated response from the Council, landowners, police and user groups. The applicant through this scheme is invited to help to consider options to tackle unauthorised uses and possibly add a further Design Principle that might assist in resolving this issue for those WCH routes provided by the applicant. All parties should continue to explore options to address the issues rather scale back the proposed network enhancements that are required within Thurrock.</p>
15	Applicant and Local Highway Authorities	<p>Active Travel England: capital programme</p> <p>To the extent that Active Travel England (ATE) has been established as a Government Agency with a remit and strategy to promote and improve active travel (cycling, walking and equivalent active</p>	<p>It is the Council's opinion that funding allocations made by the Government to the Council for active travel funds should be focused on improving active travel measures across Thurrock and not be focused on mitigating the known impacts of LTC.</p> <p>The Council received £120,000 from the Government's Capability Fund in 2022 and £690,000 from the Government's Active Travel Fund in 2023. It can be expected that this funding will no longer be available by the time of the potential opening of LTC in 2032.</p> <p>Further the Council notes that the entire Active Travel Fund of £200m announced by the Government on 6</p>

No	Party	Action	Thurrock Council's Representation
		<p>modes), is there any contribution available that might fund NMU network value-adding measures (for example, such as but not limited to the provision of a new walking route adjacent to Folkes Lane, Upminster as identified by LB Havering).</p>	<p>February 2023 covers all of England and is only 2.5% of the cost of the single LTC highway scheme.</p>

Appendix A – Further Commentary on Modelling

A.1. Background to the Assessment of Wider Network Impacts

- A.1.1. The significance of the impact of LTC on the wider network remains a very important, but as yet unresolved issue.
- A.1.2. The applicant continues to defend its position that adverse impacts are not sufficiently severe at any location, anywhere on the wider network across Thurrock, Essex CC, Kent CC and LB Havering, for it to be necessary to consider the mitigation of impacts as part of this DCO. This in itself is remarkable given the large increase in traffic flows at many junctions caused by LTC.
- A.1.3. The applicant continues to claim that its largest ever road scheme, which increases traffic across the River Thames by 50%, has been designed so well that every junction functions without the need for additional work to mitigate the wider impact of the forecast additional traffic. This position is not supported by the evidence provided in the strategic modelling that is before the Examination or by the majority of other LHAs and IPs.
- A.1.4. Furthermore, the applicant contends that even if the ExA were minded to disagree with the applicant's evidence supporting its claim, then because the scheme is being delivered by National Highways, it should still be considered exempt from funding any mitigation measures required to address the wider network impacts and that it would be the role of the local authorities to subsequently seek mechanisms to resolve the induced harm to the local communities.
- A.1.5. It is within this framework that the Council has continued its attempts to engage productively with the applicant to resolve network impacts that remain of serious concern to the Council and other Interested Parties, including the two national ports of DPW London Gateway and the Port of Tilbury.
- A.1.6. The suitability and efficacy of the traffic modelling remains central to the position of the applicant. The LTC scheme can only be claimed to provide limited network impacts, if the LTAM outputs are robust and fairly represent the likely reality of the future operation of the road network.
- A.1.7. This has not been established by the applicant to date.
- A.1.8. The applicant has provided to the Examination two sets of modelling that do not align. One set is LTAM and is strategic Saturn based traffic variable demand modelling on a scheme design fixed in 2018, prior to Statutory Consultation. The other set is emerging using VISSIM and other junction modelling software based on a more localised understanding of a discrete highway junctions, which are absolutely critical to the operation of the Local Road Network (LRN) and should be an integral function of the LTC scheme.
- A.1.9. As the Council has previously expressed in Section 15.6 of its LIR ([REP-281](#)) and other subsequent submissions, the applicant's Wider Network Impacts Management and Monitoring Plan (WNIMMP) ([APP-545](#)) sets out how the applicant proposes to undertake basic data collection on the first and fifth year following the opening of LTC. It is proposed to provide this data to the Council to assist it in establishing cases to put to the Department for Transport to apply for funding to resolve the impacts inflicted by the operation of LTC.
- A.1.10. The Applicant seeks to rely on its LTAM forecasting as the foundation for the case for LTC but is not relying on those forecasts to provide the necessary mitigation of the harm to local communities and the operation of the Local Road Network. It is unacceptable that forecast harm within Thurrock is not resolved by the project.
- A.1.11. The Council has provided a fuller response on the position set out by the applicant in its Wider Networks Impacts Update ([REP5-085](#)) and the proposed Requirements therein within its D6

submission in Sections 4.3 and 10.3.52 and 10.3.57. Needless to say, the Council is not in agreement with the proposals as put forward by the applicant.

Note: an agreed VISSIM model is needed to test potential design changes that have been identified as necessary for the scheme to be acceptable. The serious issue of model convergence remains and must be resolved. The applicant is still changing and developing the VISSIM model that is still showing a very different picture of traffic to the LTAM model. The applicant continues to insist the LTAM model remains valid as the basis for the scheme. Surely, this position is now untenable as shown by the applicant's own VISSIM modelling for Orsett Cock. LTAM is clearly misrepresenting the predicted traffic conditions at Orsett Cock and the VISSIM model continues to demonstrate serious issues.

A.1.12. Another updated version of the VISSIM model was provided on Friday, 20 October 2023 and further LTAM results were finally provided late on 23 October 2023, which was only in the form of a 21pp Technical Note entitled 'Incorporating VISSIM Model Findings into the LTAM', but no modelling data was provided to support this Technical Note – this will be reviewed and detailed comments made at Deadline 6A or 7 (appending the document at that time). Each time the applicant changes the model it is necessary for the LHA to review and validate the model. This is standard practice for a LHA, but it is unprecedented to be doing this level of analysis for this size of scheme, with so little time available. It is absolutely crucial that this work is done properly. The applicant is rushing this work and trying to avoid it conflicting with their LTC scheme narrative. The Council is deeply concerned that this is compromising due process. It is not the fault of the Council that the applicant has consistently failed to heed the advice of the Local Highway Authorities that serious concerns regarding the operation of critical junctions should have been addressed before submitting the scheme for Examination. The position in which the applicant now finds itself is entirely of its own making.

A.2. Orsett Cock junction and wider interchange

- A.2.1. The Council wishes to reconfirm that it does not accept that the junction of Orsett Cock should be included within the discussions on Wider Network Impacts. That junction and the interfaces with LTC are a core part of the design of LTC. This has been accepted by the applicant in their email dated 27 April 2022 (and attached to this Hearing Post Event Submission, as Appendix B), which was also submitted by the Council in Appendix D of Deadline 4 Submission - Post-event submissions, including written submission of oral comments made at the hearings held w/c 4 and 11 Sept 2023 ([REP4-352](#)). The Council is and will be the Local Highway Authority for that junction and must be satisfied that the junction continues to operate satisfactorily and safely. That the applicant refers to the Council at paragraph 3.1.7 of its Wider Networks Impacts Update ([REP5-085](#)) as being an 'Interested Party' to the situation at Orsett Cock demonstrates that the applicant continues not to appreciate the role of the Council in this matter or the importance of a workable solution to the problems that are to be derived by LTC.
- A.2.2. The Council does, however, provide an update on its view on the current position regarding the Orsett Cock junction and wider interchange.
- A.2.3. Model convergence and alignment between strategic and localised models for A13/A1089/Orsett Cock interchange and local connections has not yet been achieved.
- A.2.4. The applicant could elect to rebase the LTAM model to ensure it accurately reflects the likely operational situation at key junctions, such as Orsett Cock. The applicant has, however, discounted this option due to insufficient time, although the Council has been discussing this junction with the applicant for several years.
- A.2.5. An alternative is for the applicant to demonstrate that there is a scheme that can be designed for Orsett Cock within the Order Limits and the Limits of Deviation, which would be within the

Rochdale Envelope for that junction following any DCO grant, which would enable VISSIM to replicate LTAM for this location.

- A.2.6. Due to serious concerns about the time needed to satisfactorily complete the modelling work, the applicant now prefers to discuss (without any implication of any commitment) options to 'monitor and manage' (as the applicant currently avoids the term 'mitigate' thus avoiding any mitigation commitments). This approach remains unacceptable to the Council pending clarification of whether such mitigation required might be deliverable within this DCO.
- A.2.7. The implications for the alterations that the applicant identifies within the Wider Networks Impacts Update ([REP5-085](#)) include link roads that are fundamental parts of the connections to and from LTC and the existing A1089/A13 and are therefore not mitigating impacts; or, the indicated adjustments with the circulation at Orsett Cock Roundabout are changes to the Local Road Network that are not included in any of the proposed Authorised Works within the DCO or indicated on any of the General Arrangement drawings or other DCO drawings. The applicant, however, suggests that it will be able to deliver these circulatory changes within the Order Limits and Limits of Deviation of the DCO and that those layout changes would only be agreed following any DCO grant. The Council considers this approach to be entirely unacceptable.

A.3. Recent Developments in Assessment of A13/A1089/Orsett Cock Junction

- A.3.1 In terms of recent developments, as a reminder the A13/A1089/Orsett Cock junction has been the subject of extensive discussions between the Council and the applicant over many years, because of its pivotal importance to the LTC scheme and to the operation of the road network in Thurrock. This junction is not considered by either the applicant or the Council to be a 'Wider Network Impact' of the LTC scheme, but in fact is a fundamental part of the design proposals for LTC.
- A.3.2 Orsett Cock junction is, however, and will remain, a key junction for the Council as it provides an intersection between the main north-south and east-west movements across the Borough. Responsibility for the junction and this section of the A13 will remain with the Council as the local highway authority. As part of this DCO the applicant must demonstrate that the junction can operate effectively, both as part of the scheme and as part of the SRN. This has still yet to be established.
- A.3.3 As discussed at Issue Specific Hearing 4 (ISH4), and in document submissions through the Examination, the applicant has submitted two models that provide significantly different assessments of the traffic impact of LTC.
- A.3.4 Given the maxim that 'models are tools to aid decision makers', this has provided the ExA with a significant problem in understanding the traffic impacts of LTC.
- A.3.5 The LTAM model prepared by the applicant provides a strategic assessment of traffic movements. LTAM shows levels of queuing and delays at the A13/A1089/Orsett Cock that are shown, by the applicant, to be accommodated within the design provided. A similar picture is shown for other junctions in Thurrock.
- A.3.6 This is an important conclusion as the outputs of LTAM are used to assess the economic impact of the scheme and an increase in the assessed level of traffic delay at these junctions would further reduce the economic case for LTC, which in terms of traffic benefits is already low with a Benefit Cost Ratio of 0.48:1, i.e. poor value for money.
- A.3.7 The VISSIM model of the A13/A1089/Orsett Cock junction was prepared by the applicant following requests from the Council and in response to concerns raised by the Council about the operational performance of the junction. This type of model provides a more detailed assessment

of vehicle movements, queues and delays. This model has evolved slowly over time from the initial version 1.5 issued in 2022 and then Version 2.4 was the subject of discussions at the previous Issue Specific Hearing 4, submitted to the Examination only after requests from the ExA.

- A.3.8 Version 2.4 of the VISSIM model showed significantly higher levels of queuing and delay at the A13/A1089/Orsett Cock junction compared to the LTAM model. The levels of queuing and delays were considered by the Council to require mitigation measures, which could include the need to provide physical changes to the junction which extend beyond the Order Limits. This is a significant concern for the Council.
- A.3.9 Following ISH4, a meeting was held on 25 September 2023 between the applicant, the Council and representatives of the two National Ports to discuss the performance of the local road network and the approach to transport modelling. As a result of this meeting, the applicant agreed to provide an updated VISSIM model of the junction (Version 3) and this was provided on 6 October 2023 with further traffic signal timing provided on 17 October. 2023
- A.3.10 The model provided by the applicant has changed significantly between Version 2.4 to 3 and the Council is currently reviewing the outputs of this version of the model and the Council was expecting to provide detailed comments at Deadline 6. However, late on Friday, 20 October 2023 the applicant unexpectedly provided us with a further version of the VISSIM model (v3.6). This provides a number of corrections and a new set of information for us to analyse and this is likely to mean that the some aspects of our analysis will be presented at either Deadline 6A or 7, as required by the ExA.
- A.3.11 To assist the ExA the Council is able to provide the following initial comments:
1. A series of changes has been made to the VISSIM model. The version issued on 6 October 2023 showed that the 'Do Minimum', i.e. situation with no LTC, has higher levels of congestion than the previous version of the model. This means that since the Version 2 of the VISSIM model, the applicant has decided that the traffic conditions without LTC will now be much worse (in fact the applicant states in Section 3.1.2 of the Wider Network Impacts Update that the impacts are unacceptable). This conveniently means that the 'Do Something', i.e. situation with LTC, now shows lower levels of congestion than the 'Do Minimum'. Given the increase in traffic flows of c10% at the junction following the introduction of LTC, this does not seem plausible.
 2. In VISSIM v3 for both the 'Do Minimum' and the 'Do Something' scenarios the junction is highly congested with significant delays of several minutes per vehicle on many arms, but states at paragraph 3.1.2 of its Wider Networks Impacts Update ([REP5-085](#)) that *'the applicant does not consider these effects to be unacceptable'*.
 3. Fortuitously for the applicant, the introduction of a walking, cycling and horse-riding crossing point to the immediate west of Rectory Road is shown to assist egress from that apparently congested village road, apparently reducing the effects of LTC on that road. It is noted, however, that the modelling of that crossing is not reliable and exaggerates the effect it could have on the network.
 4. The Council considers that the new 'Do Minimum' situation as created by the applicant is very unlikely to happen in reality and the Council is undertaking technical work to examine this further.
 5. A key issue that remains is the 'convergence' or 'alignment' of the LTAM and VISSIM models, i.e. do both LTAM and VISSIM models show the same broad picture of traffic conditions in a way that will help the ExA understand the impact of LTC on the junction. At present each model continues to show a very different picture of traffic conditions with VISSIM showing

levels of delay many times more delay than LTAM (even 10 times more delay on some arms, such as the A1013 Stamford Road).

- A.3.12 Following the meeting on 25 September 2023, the applicant also agreed to provide updated LTAM model results, which incorporated traffic parameters, e.g. signal timings, from the VISSIM model. This information was expected on 20 October 2023, but it was only provided late on Monday, 23 October 2023. The Council is currently reviewing this information, but they delay means that the Council will provide initial comments at D6 and further analysis at D7.
- A.3.13 Once the modelling is agreed the Council will have an agreed basis upon which to discuss and evaluate appropriate mitigation for the junction. A meeting is scheduled with the applicant for 2 November 2023.
- A.3.14 In summary, since ISH4 no progress has been made with the applicant in reaching an agreement over the mechanisms to mitigate the Wider Network Impacts. However, some progress has been made with the applicant in assessing the impact of LTC on the operation of the A13/A1089/Orsett Cock interchange, which must be considered as an integral part of the LTC design proposals. At Deadline 6, the Council will provide further comments on the modelling of the Orsett Cock interchange and will provide further initial comments in terms of:
1. The appropriateness of Version 3.6 of the VISSIM model, in particular the modelling of the Do Minimum and the Do Something and the approach to modelling traffic travelling on the circulatory carriageway.
 2. The 'convergence' of the VISSIM and LTAM models, i.e. do they both present broadly the same picture of traffic conditions.
 3. If there is insufficient 'convergence', the Council will evaluate the junction design modifications that would be required for the scheme to be capable of delivering the very low levels of delay forecast by LTAM, whilst maintaining an acceptable level of delay on the local road network for motorists and public transport services and ensuring the safety of non-motorised road users.
 4. If the junction design required to deliver the levels of delay forecast by LTAM cannot be delivered (because for example the layout would extend beyond the Order Limits), an assessment will be required of the impact of incorporating the delays forecast by VISSIM into the economic appraisal of the scheme.
 5. More detailed analysis will follow at D7 given the unexpected revision to the VISSIM model and the late delivery of the LTAM results.
- A.3.15 In terms of the 'Wider Network Impacts' the Council continues to fundamentally disagree with the approach adopted by the applicant and the Council is working with the applicant to understand the traffic impacts at the Manorway, Asda Roundabout, Five Bells Interchange, Marshfoot Road Junction, A1012/Devonshire Road and Daneholes junctions and on impacts on the wider communities.
- A.3.16 The ongoing 'convergence' issues at the Orsett Cock junction clearly demonstrate that LTAM is misrepresenting what is likely to happen in terms of local traffic movements. The applicant's standard of junction modelling is also inadequate for other junctions. The Council is not satisfied that the applicant has demonstrated the likely traffic impacts on a wide range of junctions across the borough. The Council is seriously concerned that it has been necessary to undertake additional work in very challenging timescales to provide evidence of these concerns. Despite the increasing evidence that LTAM is not fit for purpose the applicant remains intransigent in its position. The applicant refuses to accept that LTAM is not a valid basis for many crucial elements

of the scheme design and its continued refusal to accept this basic fact is inhibiting its ability to enter into sensible and pragmatic discussions about whether the wider impacts of the scheme can be adequately mitigated.

- A.3.17 To try and identify a way forward, the Council and the two national ports have been working to develop new draft Requirements, specifically covering five new Requirements:
- a. Orsett Cock;
 - b. a wider more generic Requirement relating to mitigation of the wider network impacts along the lines of the Silvertown model
 - c. Asda Roundabout;
 - d. a Requirement to ensure the future effectiveness of the Tilbury Junction; and,
 - e. a Requirement to cover concerns on air quality.
- A.3.18 The Council has reported on progress with all this work at Deadline 6 covering four of the above five new Requirements. However, the Council wishes to consider further its Requirement for Orsett Cock junction and will submit that at D6A or D7. It is understood that the two national ports will be submitting a new Requirement for Orsett Cock junction at D6, which the Council has been discussing with them and will provide a more detailed view at D6A or D7. An agreed statement about this matter will be included in Section 3 of the Council's D6 Submission.

A.4. Summary

- A.4.1. The fact remains that inadequate traffic modelling has been completed to date by the applicant to understand the impacts of LTC on the local transport network. Whilst the applicant continues to assert that its scheme places no unacceptable impacts on the wider network and that it has no liability to take responsibility for mitigating impacts of LTC, it is difficult to see how such crucial matters can be resolved as required.
- A.4.2. The modelling evidence shows that there is a forecast impact requiring mitigation at a number of locations across the Borough and fundamentally at the point at which LTC connects to the Local Road Network at the Orsett Cock junction, which is a fundamental part of the LTC scheme. For other junctions in Thurrock, the Council currently can entertain that a solution might be achievable based on a mitigation strategy similar to the Silvertown Tunnel model. This is, however, on the assumption that the mitigation work is achievable with the public highway boundary or any Order Limits. Without the completion of the necessary traffic modelling work there remains no basis on which to assume that any necessary wider network mitigation can be delivered within the Order Limits or public highway boundary.
- A.4.3. The Council will continue to review the modelling information provided by the applicant, but the provision on new model runs without warning and the late delivery of the LTAM analysis has put already challenging timescales under further strain.
- A.4.4. The Council will read and consider the draft Requirements to be provided by the applicant at Deadline 6.

Appendix B – Applicant’s email dated 27 April 2022 (suitably redacted)

From: Tim Wright <[REDACTED]>
Sent: 27 April 2022 10:06
To: [REDACTED] Simon Weaver <[REDACTED]>;
Poulomee Basu <[REDACTED]>; Callum Brown
<[REDACTED]>
Cc: Jefferies, Sharon <[REDACTED]>; 'Black, Colin' <[REDACTED]>;
[REDACTED]; 'LTC-Stantec' <[REDACTED]>; 'Blades, Nick'
<[REDACTED]>; LocalGov <[REDACTED]>
Subject: RE: Orsett Cock Roundabout

Chris, Colin,

We agree that due to the direct changes we are making to slips on and off the Orsett Cock roundabout, the Orsett Cock roundabout interface is part of the core scheme set out in the DCO. Recognition of this is also provided by the inclusion of the junction within the scheme Order Limits. This logically aligns with the specific workstream to provide micro-simulation models, and that this should be the addressed as such within the Statement of Common Ground.

LTC is not the only change being planned that will impact upon the Orsett Cock Roundabout. Local development such as Dunton Hills Garden Village will impact upon this junction, and, as such, there may continue to be a need to discuss this junction in multiple forums with different parties in the context of other impacts on the roundabout. The inclusion of the Orsett Cock junction is limited to the extent that we will seek to agree that the roundabout continues to function for traffic following opening of the Lower Thames Crossing. As such, we are not proposing to take permanent acquisition rights, nor to provide any additional provision beyond changes required to manage traffic flows as a result of the modified connections we are making.

Reflecting the above, we are happy to remove the junction from the regular WNI discussions and will amend the meetings accordingly going forward.

Kind regards,
Tim

Tim Wright Head of Consents
Development – Lower Thames Crossing

[REDACTED]
Highways England Customer Contact Centre
0300 123 5000
www.highwaysengland.co.uk

Post Event Submissions for Issue Specific Hearings (ISH8 – ISH10)
Lower Thames Crossing
