

LONDON BOROUGH OF HAVERING – RESPONSE TO WIDER NETWORK IMPACTS POSITION PAPER (REP6-092)

1. Introduction

- 1.1 The Applicant submitted a Wider Network Impacts Position Paper (REP6-092) at Deadline 6 following the Issue Specific Hearing (ISH 10) at which the issue of the Applicant's approach to wider network impacts was discussed.
- 1.2 This is the latest in an extensive series of documents in which the Applicant has sought to explain its approach and attempted to reconcile it with the policies in the National Policy Statement for National Networks (NPSNN)¹. This note assumes that the justification of the Applicant's approach is now contained in the latest Position Paper, and it therefore does not consider the previous documents.
- 1.3 In addition, the London Borough of Havering (LBH) has previously addressed the lack of conformity with the NPSNN arising from the Applicant's approach to wider network impacts in Appendix 1 of the Written Representations of LBH (REP1-253). It is not intended to repeat the detail set out in that Appendix; however, it remains LBH's position.
- 1.4 This note addresses:
- the legal and overall policy position;
 - the application of the NPSNN;
 - the specific concerns of LBH which arise; and
 - the proposed requirement put forward by the Applicant and proposed amendments to that requirement and requirement 14.

2. Legal and Overall Policy Position

- 2.1 The approach of the Applicant in its interpretation of the NPSNN leans heavily on the asserted overall benefit of the scheme.
- 2.2 Section 104 (3) Planning Act 2008 requires the Secretary of State to determine the DCO application *"in accordance with any relevant national policy statement except to the extent that one or more of subsections (4) to (8) applies"*.
- 2.3 Of note, s.104 (7) enables a decision other than in accordance with the relevant NPS *".....if the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits"*.
- 2.4 There is no contrary provision which enables a Secretary of State to take a decision not in accordance with an NPS if they are satisfied that the overall benefits outweigh the adverse impacts. Accordingly, the Applicant cannot rely simply on an overall beneficial impact of the scheme to avoid the application of any requirements with regard to mitigation which are contained within the NPSNN.

¹ These include the Planning Statement (APP-495 and 496), Appendix F of the Transport Assessment (APP-535), Post Hearing Submissions re ISH 7 (REP4-183) and ISH 10 (REP-091).

2.5 It follows therefore that the Applicant must demonstrate that the scheme is in accordance with NPSNN, as written. Given the contents of s.104(3), and the importance of the NPS in decision making, it is also reasonable to assume that the NPSNN contains the policy context considered relevant by the Government specifically for the consideration of DCO applications submitted by National Highways, especially since the vast majority of DCO applications to which the NPSNN applies are DCO submitted by the Applicant.

2.6 If, as the Applicant suggests:

- the LTC is not required to deal with mitigation on wider networks arising from the re-distribution of existing traffic because it is a scheme which would add capacity and relieve congestion²; and
- the funding of mitigation on the wider network is not appropriate since it would subvert the Government’s funding framework ³,

(together ‘the inferred policies’),

one would expect to see such fundamental policy positions to be set out in the NPSNN.

2.7 One might also expect such important policy positions to be expressly referred to or relied upon in DCO decisions where impacts on the wider network were being considered. No such decisions have been referred to – there has been reference to decisions where funding for wider network mitigation has not been included for a variety of reasons, but none of those reasons are articulated by reference to the inferred policies set out in paragraph 2.6 above.

2.8 It is of particular note that no reference is made to the Applicant’s inferred policies in section 4 of the NPSNN, “Assessment Principles”, where reference to such policies, if they existed, would naturally sit.

2.9 The Applicant’s attempt to read into the NPSNN policies which are simply not there is rejected. The Examining Authority will need to conclude as to whether or not the application is in accordance with the NPSNN as written and excluding the policies which the Applicant would wish, on this occasion, to be inferred into it.

3. **Application of NPSNN**

3.1 This section responds to the commentary of the Applicant set out in paragraphs 2.2 to 2.4 of the Wider Network Impacts Position Paper (REP6-092).

3.2 In paragraph 2.2.3 the Applicant suggests the policies on mitigation contained within the NPSNN are different for road, rail and SRFI projects. Paragraph 2.2.4 then goes on to conjecture as to why that “may be”. That conjecture (which supports the Applicant’s inferred policies) is not rooted in any part of the NPSNN. Any different approach to mitigation may simply be that, in physical terms, the schemes are very different and likely therefore to have a range of impacts requiring consideration of different types of mitigation, not all of which will apply to all of the schemes.

² For example Para 2.2.4 REP6-092

³ For example Para 1.8.3 APP F of the TA (APP-538)

- 3.3 This is borne out by the distinctions in relation to mitigation in respect of road, rail and SRFI schemes being identified only in Section 5 of the NPSNN, which is the section which deals with the assessment of all the different environmental impacts.
- 3.4 In paragraph 2.3.1 the Applicant makes reference to paragraphs 4.3 and 4.4 of the NPSNN which requires the decision maker to take into account both the benefits and the adverse impacts of the schemes. That paragraph applies to road, rail and SRFI schemes alike. Another paragraph of note is paragraph 3.4 of the NPSNN which acknowledges that there may be some adverse local impacts which may remain. That paragraph applies to road, rail and SRFI schemes and does not distinguish between them.
- 3.5 In paragraph 2.3.3 the Applicant tries to support the assertion that there are deliberately different mitigation policies in the NPSNN which in turn support the Applicant's inferred policies. The Applicant does so by reference to Section 5 which deals with the separate impacts and approach to mitigation and contrasts paragraph 5.212 (road and rail) with 5.213 (SRFI). It is not understood how this supports the Applicant's inferred policy, as the Applicant contends it does.
- 3.6 Paragraph 5.212 of the NPSNN applies to road and rail and is not therefore directed solely at road schemes and it simply requires that the schemes should be decided in accordance with the NPSNN unless s.104 (4) to (7) are engaged. The different approach to SRFI in paragraph 5.213 is simply recognition that such schemes are to be privately promoted and so that paragraph provides more guidance on what is expected of such schemes which are not covered by the normal business case requirements. The requirements regarding business cases for road and rail projects is dealt with earlier in the NPSNN at paragraph 4.5.
- 3.7 The consequence of paragraph 5.212 is that one needs to look at the policies in the remainder of the NPSNN to consider whether the approach to mitigation accords with it.
- 3.8 The policies in section 4 of the NPSNN which apply to the consideration of mitigation are therefore not affected by the exercise of contrasting paragraph 5.212 and 5.213 carried out by the Applicant in paragraphs 2.3.2 and 2.3.3.
- 3.9 So, by way of example only, the following paragraphs in section 4 of the NPSNN which are relevant to mitigation apply in full force to the LTC project⁴:

NPSNN Para 4.64

"Applicants will wish to show that they have taken all steps that are reasonably required to:

- *minimise the risk of death and injury arising from their development;*
- *contribute to an overall reduction in road casualties;*
- *contribute to an overall reduction in the number of unplanned incidents; and*
- *contribute to improvements in road safety for walkers and cyclists".*

NPSNN Para 4.66

"The Secretary of State should not grant development consent unless satisfied that all reasonable steps have been taken and will be taken to:

⁴ See Appendix 1 of the Written Representations of LBH (REP1-253) for references to all the relevant policies.

- *minimise the risk of road casualties arising from the scheme ...* (LBH underlining).

3.10 The above paragraphs are relevant to the specific concerns of LBH as set out in section 4 of this note.

3.11 In paragraphs 2.4.1 – 2.4.4 of REP6-092 the Applicant refers to difficulties in defining “unacceptable impacts” and appears to suggest that other than the environmental topics referred to in para 2.4.5, adverse impacts are not unacceptable and do not require to be mitigated if they are outweighed by overall benefits. Such an approach does not accord with paragraphs 4.64 and 4.66 set out above.

3.12 In paragraph 2.4.18 the Applicant refers to the “*specific test on mitigation for road and rail developments*” contained in paragraphs 5.215 and 5.216 of the NPSNN.⁵ Those paragraphs state:

Para 5.215

“Mitigation measures for schemes should be proportionate and reasonable, focussed on promoting sustainable development.”

Para 5.216

“Where development would worsen accessibility such impacts should be mitigated so far as reasonably possible. There is a very strong expectation that impacts on accessibility for non-motorised users should be mitigated.”

3.13 These paragraphs are written in general terms and do not cut across any requirement for mitigation arising from the application of paragraphs 4.64 and 4.66 set out above.

3.14 In paragraph 2.2.7 the Applicant refers to “*calls from local authorities and other to add further investment to this project to solve issues on the road network*”. If that is intended to apply to all local authorities, it mischaracterises the position as far as LBH is concerned. It is not simply seeking the resolution of existing issues on the road network – it is seeking mitigation for the impacts of the scheme, as explained previously and below in section 4.

4. **Specific Concerns of LBH**

4.1 LBH set out its concerns with regard to unmitigated impacts in its Local Impact Report (LIR) REP1-249 which are not repeated here. Details can be found in the LIR paras. 7.3.25 – 7.3.26 (Construction); paras. 7.4.1 – 7.4.2 and Table 10 (Operation); paras. 7.5.1 – 7.5.24 and Table 11 (Local Junction Modelling) and paras. 10.1.1 – 10.1.10.

4.2 Table 3.1 of the Position Paper (REP6-092) does not address these concerns since all the locations referred to in the table are outside the Borough of Havering.

⁵ Those paragraphs apply to road, rail and SRFI schemes and so also do not support the Applicant’s contention that there is a deliberately different policy.

- 4.3 The concerns of LBH relate to both safety and accessibility and, accordingly the policies in paragraphs 4.64, 4.64 and 5.216. of the NPSNN are engaged. As explained earlier, the consideration of mitigation arising from the application of those paragraphs is unaffected by any assertion as to the overall benefit of the scheme.
- 4.4 Consideration must therefore be given to mitigation of the impacts and, where reasonably possible, mitigation should be identified and secured.
- 4.5 It is clear that the proposed requirement put forward by the Applicant will not identify and deliver the necessary mitigation. The Applicant has not followed the guidance and instead it intends simply to help monitor impacts and then leave it to local authorities to compete for funds to try and carry out the work identified as necessary. Notwithstanding this, LBH has engaged with the proposed requirement. Such engagement should be seen simply as seeking to make the best of it (it being better than nothing) rather than endorsing it.
- 4.6 Reliance on the general funding framework for necessary mitigation is not an approach supported by the NPSNN and is inappropriate. It provides no certainty as to the delivery of the mitigation as it entirely depends on funding priorities and the competing needs elsewhere.
- 4.7 There are particular difficulties in respect of funding for schemes within Havering as previously explained in REP3-186 and REP5-106⁶. These difficulties can be explained again by reference to the Applicant's Table 4.1 on pages 34 and 35 of the Wider Networks Impacts Position Paper (REP6-092).
- 4.8 That table identifies "potential funding sources that could be utilised" to fund mitigation⁷. For the LRN four sources of funding are referred to, identified as B, E, F and G. These are considered below to demonstrate the difficulties which would be encountered by LBH in accessing any of these funds for mitigation.

B "DfT Large Local Majors/Major Road Network or successor scheme"

This scheme is aimed at the Major Roads Network (MRN) and is for schemes seeking a contribution from the Department for Transport of between £20 million and £50 million and would additionally require a local or third-party contribution of at least 15% of the scheme costs⁸. The schemes envisaged to address the impacts identified by LBH would not meet the eligibility criteria for MRN Funding because they are too small in scope and value. The Government's guidance makes it clear that schemes on roads which are not on the MRN or are wholly on the SRN would not be eligible for funding.

E "National Highways Designated Funds (Safety and congestion fund, or successor scheme)"

The designated funds are available only until 2025 and the existing funding available has already been allocated to other schemes. No schemes will realistically come forward by 2025 and in any event, any new schemes that are put forward for consideration will be put on a waiting list and their delivery wholly uncertain. Beyond

⁶ See REP3-186 page 2, section 2 and REP5-106 para 1.1 -1.4

⁷ REP6-092 Para 4.3.2

⁸ Major Road Network and Large Local Majors Programmes: programme investment planning 18 December 2018, Para 3.5

2025, it is not known what funds may be available, to whom, or the criteria to be applied to those funds. It is unlikely that the determination of those issues will be influenced by the need for LBH to mitigate the impacts it is concerned with on the LRN. LBH considers that there is too much uncertainty with Designated Funds as there is no guarantee that funding would be ultimately provided, LBH has set out in previous submissions to the Examining Authority that it does not consider Designated Funds as an appropriate mechanism to fund impacts on the wider network.⁹

F “Local Highway Authority Maintenance Funding”

Local Highway maintenance funding is for what it says – maintenance of existing highways – not new interventions to mitigate the effect of new schemes. LBH set out in its REP3-186 submission the challenges facing maintenance funding for the Council and how it is at a disadvantage when compared to other Local Highway Authorities.

Aside from LBH operating with a 2023/24 budget of £6m for maintaining its 401 miles of local roads, the Council was not allocated any additional maintenance funding from the Government’s highways maintenance, and pothole repair fund, due to it being a London Borough. This demonstrates the pressure Havering’s maintenance budget is already under, and it is simply not possible to fund mitigation measures from an already stretched maintenance budget.

The Council’s maintenance budget is specifically earmarked for delivering improvements such as road and footway resurfacing, pothole repairs, and maintaining assets on the highway network, not for mitigating the impacts of a third-party scheme.

G “Developer contributions”

There is no explanation offered within the Position Paper as to how developer contributions could properly be applied to mitigating impacts arising from another scheme. It is suggested that this cannot be properly regarded as a potential funding scheme.

5. Proposed Requirement and Proposed amendment to Requirement 14

5.1 As set out in paragraph 4.5 LBH has considered the draft requirement set out on pages 32 and 33 of the Wider Network Impacts Position Paper (REP6-6-092). As a very minimum the following changes are suggested. These are shown as tracked changes to the original.

5.2 The changes to the new requirement comprise:

- drafting improvements;
- drafting to seek to ensure that any mitigation identified as requiring intervention as a result of the process in the requirement is delivered.

5.3 The amendments are set out on the following page:

⁹ See REP3-186 page 2, section 2 and REP5-106 para 1.1 -1.4

Network Management Group

17. (1) The undertaker must establish and fund the reasonable secretarial and administrative costs of a consultative body to be known as the Lower Thames Network Management Group (in this Order referred to as “NMG”) and the first meeting of the NMG must be held not less than one year prior to the opening of the tunnel area, and thereafter at least ~~twice~~ once each calendar year on a date to be determined by the undertaker (who must ~~use~~ undertake reasonable endeavours to identify a date which ~~maximises the~~ ensures attendance of ~~the~~ representatives from the authorities and bodies ~~referred to in~~ under sub-paragraph (2)).
- (2) The NMG will comprise the authorities and bodies identified in Table 2.1 of the wider network impacts management and monitoring plan.
- (3) The undertaker will, ~~at each meeting held in a year in which monitoring under paragraph 14 is produced, consult~~ annually consult the NMG on a proposed network management plan which must ~~set out~~ provide –
- (a) the undertaker’s commentary on the outputs of the monitoring produced pursuant to the implementation of the operational monitoring scheme approved under paragraph 14;
 - (b) a description of the traffic conditions on the road network arising ~~directly~~ as a result of the operation of the authorised development which ~~would~~ require intervention;
 - (c) interventions ~~or measures~~ which the undertaker proposes to address any traffic conditions identified in accordance with sub-paragraph (b);
 - (d) steps which the undertaker is proposing to take in connection with –
 - (i) implementing and funding the interventions identified under sub-paragraph (c) where such ~~interventions~~ measures can be implemented using the permitted development rights vested in the undertaker;
 - (ii) where sub-paragraph (i) does not apply, incorporating any of the interventions identified under sub-paragraph (c) in the initial report or route strategies; and
 - (iii) where sub paragraph (i) does not apply cooperating with the relevant highway authority ~~in~~ with introducing implementing the intervention ~~measure~~ identified under sub-paragraph (c) and ~~or~~ seeking funding for that intervention ~~or measure; and~~
 - (e) a written account of how any representations made in relation to a meeting held under sub-paragraph (6) has been considered by the undertaker.
- (4) Following consultation with the NMG under sub-paragraph (3) on the proposed network management plan, the undertaker must submit the network management plan to the Secretary of State for approval who may make

amendments to the network management plan, following consultation with the undertaker where it considers further interventions or measures are required.

(5) The undertaker must implement the network management plan approved under sub-paragraph (4) and in the event that the relevant highway authority is unable to secure funding for an intervention identified under sub-paragraph 3 (b) and referred to in sub-paragraph (3)(d)(iii) the undertaker must fund such intervention.

(6) The undertaker will, at each meeting held under sub-paragraph (1), consult the NMG on the operational traffic impacts directly arising from the operation of the authorised, and where available, on the implementation of the network management plan approved under sub-paragraph (5).

(7) In this paragraph

“the 2015 Act” means the Infrastructure Act 2015;

“initial report” means the initial report for the strategic road network pursuant to paragraph 6.6 of the undertaker’s licence under the 2015 Act; and

“route strategies” means the route strategies prepared in respect of the road network work pursuant to paragraph 5.13 of the undertaker’s licence under the 2015 Act

END