

Gravesham Borough Council (GBC)

(IP ref:20035747)

Lower Thames Crossing DCO

Deadline 7

Comments on (a) DCO Draft version 8 and (b) National Highways Deadline 6 Documents relating to the DCO

November 2023

Introduction

This document is GBC's response to two documents submitted by the Applicant at deadline 6:

- Draft DcO v8 [\[REP6-011\]](#)
- Applicant's response to IPs comments made on the DCO at Deadline 5 [\[REP6-085\]](#)

As GBC mentioned in its D5 submissions [\[REP5-098\]](#), the Applicant's response to IP's comments made on the dDCO at Deadline 3 [\[REP4-212\]](#) includes a table which contains five columns including two successive sets of comments from GBC and two sets of comments from the Applicant on the issues raised by the ExA in the agenda for ISH2 on the draft DCO [\[EV-015\]](#) and on further issues raised by GBC in its written representations following ISH2 [\[REP3-167\]](#).

At D4, following ISH7 on the draft DCO, GBC provided a list of amendments to the draft DCO that it requested be recommended by the ExA [\[REP4-302\]](#) and its post-hearing submission for ISH7 [\[REP4-301\]](#).

At D5, GBC provided comments on draft DCO v6 and comments on the Applicant's responses to IP's comments on the dDCO at Deadline 3 [\[REP5-098\]](#) and a revised version of the relevant parts of Schedule 2 to the draft DCO showing amendments that would be required were the discharging authority for requirements to be the local planning authorities and local highway authorities [\[REP5-099\]](#).

At D6, GBC provided comments on the Applicant's D5 submissions on IPs' D4 comments and included a new suggested requirement to deal with housing in Gravesham [\[REP6-132\]](#).

Save as mentioned below, there is nothing in any of the responses provided in [\[REP6-085\]](#) which alters GBC's position on those documents, so as before, GBC points the ExA's attention to its comments in the above documents, particularly the proposed amendments listed at D4 [\[REP4-](#)

[302](#), D5 [\[REP5-099\]](#) and D6 [\[REP6-132\]](#). The positions of the GBC and the Applicant appear now to be clear on most issues and require adjudication by the ExA.

Draft DCO v8

GBC notes the additional wording in **article 62(5)** which requires the undertaker to give notice to local planning authorities of the date on which the magistrates would consider any application made by the undertaker for a correction to be made to a certified document. GBC is content with the drafting of that safeguard and confirms that it considers the matter closed.

There were no other changes contained in version 8 of the dDCO [\[REP6-011\]](#) which have any implications for GBC. GBC's previous comments on previous versions of the DCO remain outstanding save to the extent where GBC have indicated otherwise previously or in this document.

Applicant's response to IPs comments made on the DCO at Deadline 5 [\[REP6-085\]](#)

Note: an absence of a comment in the table below on a specific point previously made by GBC does not indicate that GBC is satisfied on that point.

Subject	GBC Comment on REP6-085
<p>Article 10 (construction and maintenance of new, altered or diverted streets and other structures): Green Bridge Design</p> <p>The Applicant does not consider that the boundary between highway and planting and vegetation on the green bridges is necessary and refers to the requirement for as built drawings to be provided to local highway authorities pursuant to the Protective Provisions for Local Highway Authorities.</p>	<p>GBC has considered the protective provisions for highway authorities that were introduced at D5 and is content with the Applicant's explanation.</p>
<p>Article 62 (certified plans, etc.): notice of magistrates' consideration of applications for corrections</p>	<p>See comments on the DCO v.8 above: GBC is satisfied with the amendments to the DCO and considers this matter closed.</p>
<p>Article 65(1)(c) (appeals to the Secretary of State): appeals in relation to stakeholder actions and commitments register</p>	<p>GBC is grateful for the explanation provided which provides clarity on what paragraph (1)(c) is intended to achieve. But GBC still considers that the terminology could be improved. Paragraph (1)(c) refers to refusals of any approval, consent or agreement which the undertaker is required to</p>

Subject	GBC Comment on REP6-085
<p>Also article 61 (stakeholder actions and commitments register)</p>	<p>obtain from a local authority “..under a document, scheme or plan pursuant to article 61 or Schedule 2 ..”</p> <p>There is no reference in article 61 to a “document, scheme or plan”. Article 61 refers to “measures” contained in the register.</p> <p>As a further attempt to clarify the interrelationship between the two articles, GBC suggests the following for 65(1)(c)</p> <p>“(c) refuses any approval, consent or agreement which the undertaker is required to obtain from a local authority or any other person—</p> <p>(i) under a measure contained in the stakeholder actions and commitments register referred to in article 61 (stakeholder actions and commitments register); or</p> <p>(ii) under a document, scheme or plan under Schedule 2 (requirements) to this Order,</p> <p>or grants such an approval, consent or agreement subject to conditions;”</p> <p>Articles 61 and 65(1)(c) have become of greater importance to GBC because the Stakeholder Actions and Commitments Register (“SACR”) has now been amended by the inclusion, for the first time, of a commitment which directly benefits GBC. This is the inclusion of a new Part 2 of the SACR which deals with skills, education and employment and community funds and Part 3 which deals with community funds. A pre-submission draft of the SACR was only shared with GBC on the afternoon of 17 November (deadline 7 day) so GBC has been unable to consider this as part of its deadline 7 response.</p>

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	<p>It brings into focus the drafting points which GBC has previously made on article 61 (see [REP4-302] paragraph 9). In particular, article 61 says that the undertaker must “take all reasonable steps to deliver the measures contained in the stakeholder actions and commitments register”. It is immediately evident from new Part 2 of the D7 SACR that there are obligations on the undertaker that are absolute or expressed in terms of using best endeavours. The drafting of article 61 is illogical in this regard, and as the proposed amendments in REP4-302 ask, the commitment in article 61 to deliver the measures in the SACR must be absolute, not limited to “taking all reasonable steps”.</p>
<p>Schedule 1 (Ancillary works outside the limits)</p>	<p>GBC maintains its opposition to the proposed extension (added after the application for the DCO was made) of the scope of the Ancillary Works provision to land outside the Order limits.</p> <p>GBC is of course fully aware that any works carried outside the Order limits would require the consent of the landowner concerned and agrees that it could be assumed that the landowner is content to accept any additional detrimental effects caused by the works. But GBC is as concerned (if not more so) about the effect on the neighbours of that land, and others who may be affected, and who may quite understandably have assumed that all the authorised development would be carried out within the Order limits. The fact that the works must not give rise to a materially new or materially different environmental effect in comparison with those reported in the environmental statement is not a sufficient justification for this extension of scope, in GBC’s view.</p> <p>GBC thinks that the Applicant is downplaying this fundamental change to the Order. Not even the HS2 legislation allows ancillary works outside Act</p>

Subject	GBC Comment on REP6-085
	<p>limits (see section 2 of the Phase One Act, for example). In fact, if an amendment of the type the Applicant has put forward to the DCO were put forward during the promotion of one of the HS2 Bills, it would most likely have required an additional provision to have been promoted (the equivalent of a change request) because it is such a clear extension of scope of the powers.</p>
<p>Schedule 2: Discharging authority</p>	<p>GBC notes the further points made by the Applicant and retains its view that it is appropriate for the local planning authority to be the discharging authority for the reasons mentioned in previous submissions. The ExA is no doubt seized of the fact that adjudication is required on this issue, and GBC does not consider that it needs to say anything further.</p>
<p>Article 56 (planning permission, etc.)</p>	<p>GBC notes that the Applicant has asked the ExA whether any further information would be helpful. All GBC has asked for is information about the planning permissions to which this article applies, in order that it is possible to understand its scope. It has never objected to the article, and the fact that other local authorities support it is irrelevant to GBC's request for basic information. GBC invites the ExA to take up the Applicant's offer and to ask it for the information which GBC has asked for, namely what existing planning permissions would this article apply to.</p>
<p>Article 65 (appeals to the Secretary of State)</p>	<p>GBC notes the Applicant's reliance on a report of one case (a criminal fly-tipping prosecution, not a civil appeal) in support of its concerns about delays in the local magistrates' courts.</p> <p>The Applicant cites two highways DCOs as precedents in support of the provision. GBC is also aware of one other recent DCO which contained it (A47 North Tuddenham to Easton 2022).</p> <p>But here is a list of recent DCOs where the Secretary of State has removed the equivalent of article 65 at decision stage:</p>

Subject	GBC Comment on REP6-085
	<ul style="list-style-type: none"> • A47 Wansford to Sutton 2023 (on the recommendation of the ExA) • A38 Derby Junctions 2023 • A47/A11 Thickthorn Junction 2022 • A428 Black Cat to Caxton Gibbet 2022 (a significant scheme, where in the decision letter, the Secretary of State said “the Secretary of State’s position is that the provision is unnecessary as the 1974 Act provides the appropriate mechanism to be followed”) • A30 Sparkford to Ilchester 2020 • A30 Chiverton to Carland Cross 2020 <p>And none of the other eleven DCOs made since 2020 and applied for by the Applicant contained the equivalent provision.</p>