

Lower Thames Crossing

9.91 Final Agreed Statement of Common Ground between (1) National Highways and (2) E and K Benton Ltd (Clean version)

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1.0	19 September 2023	Deadline 4
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Status of the Statement of Common Ground

This is the Final Agreed Statement of Common Ground between (1) National Highways (the Applicant) and (2) E and K Benton Ltd.

Both parties have reached agreement on the position of the status of all 14 matters. Of the 14 matters contained within, two matters are agreed, eight matters are agreed in principle and four are not agreed, leaving no matters outstanding.

On behalf of the Applicant

Name	[REDACTED]
Position	[REDACTED]
Organisation	National Highways
Signature	[REDACTED]

On behalf of E and K Benton Ltd

Name	[REDACTED]
Position	[REDACTED]
Organisation	Holland Land & Property Limited
Signature	[REDACTED]

Lower Thames Crossing

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1 Introduction

1.1 Purpose of the Statement of Common Ground

- 1.1.1 This Statement of Common Ground (SoCG) has been prepared in respect of the Development Consent Order (DCO) application for the proposed A122 Lower Thames Crossing (the Project) made by National Highways Limited (the Applicant) to the Secretary of State for Transport (Secretary of State) under section 37 of the Planning Act 2008 on 31 October 2022.
- 1.1.2 The SoCG has been produced to confirm to the Examining Authority where agreement has been reached between the parties named below, and where agreement has not been reached.
- 1.1.3 This is the final version of the SoCG has been submitted at Examination Deadline 9A.

1.2 Parties to this Statement of Common Ground

- 1.2.1 This SoCG has been prepared in respect of the Project by (1) National Highways, and (2) E and K Benton Ltd.
- 1.2.2 National Highways became the Government-owned Strategic Highways Company on 1 April 2015. It is the highway authority in England for the strategic road network and has the necessary powers and duties to operate, manage, maintain and enhance the network. Regulatory powers remain with the Secretary of State. The legislation establishing National Highways made provision for all legal rights and obligations of the Highways Agency, including in respect of the Project, to be conferred upon or assumed by National Highways.
- 1.2.3 E and K Benton Ltd own extensive areas of land affected by the Project (see Appendix A Plan 1). The majority of this land is currently farmed as arable land. There are further interests, rights and assets that would be impacted by the Project.

1.3 Terminology

- 1.3.1 In the matters table in Section 2 of this SoCG, “Matter Not Agreed” indicates agreement on the matter could not be reached, “Matter Agreed” indicates where the issue has been resolved. It is acknowledged there are some matters where further discussion may take place during the detailed design stage of the Project to finalise detail, or is subject to contract (between E&K Benton Ltd and the Applicant), but the matter is agreed in principle. Matters to which this applies have an asterisk (*) next to them.

1.4 Overview of previous engagement

- 1.4.1 A summary of the meetings and correspondence undertaken between the two parties in relation to the Project is outlined in Annex B of the Statement of Reasons [**Document Reference 4.1 (8)**].
- 1.4.2 It is agreed that this is an accurate record of the key meetings and correspondence undertaken between (1) the Applicant and (2) E and K Benton Ltd in relation to the matters addressed in this SoCG.

2 Matters

2.1 Final position on matters

- 2.1.1 Table 2.1 details the matters which have been agreed or not agreed between (1) the Applicant and (2) E and K Benton Ltd.
- 2.1.2 It is acknowledged there are some matters where further discussion may take place during the detailed design stage of the Project to finalise detail, or is subject to contract (between E&K Benton Ltd and the Applicant), but the matter is agreed in principle. Matters to which this applies have an asterisk (*) next to them.
- 2.1.3 At Examination Deadline 9A there are 14 matters of which two matters are agreed, eight matters are agreed in principle and four are not agreed.
- 2.1.4 This is the final statement of Common Ground between the Applicant and E and K Benton Ltd.

Table 2.1 Final position on Matters

Topic	Item No.	E and K Benton Ltd Comment	The Applicant's Response	Application Document Reference	Status
Land and compulsory acquisition					
Residential Property Blight	2.1.1	<p>The following residential properties may be impacted by the operation of the Scheme post construction:</p> <ul style="list-style-type: none"> • South Ockendon Hall • 9 Hall Lane, South Ockendon • 3 Hope Cottages, Hall Lane, South Ockendon 	<p>It is agreed that these properties may qualify as potential Part 1 Land Compensation Act 1973 claims post construction. Quantum of claim will not be known until the impacts of the road in operation are assessed in line with the Compensation Code.</p> <p>It should be noted that 3 Hope Cottages lies outside the Part 1 Claim Area as currently identified by the Applicant.</p>	N/A	Matter Agreed

Topic	Item No.	E and K Benton Ltd Comment	The Applicant's Response	Application Document Reference	Status
<p>Ecological Mitigation Land & Flood Compensation Land (Generally)</p>	2.1.2	<p>Landowner objects to the permanent compulsory acquisition of land for ecological mitigation purposes (including open mosaic / grassland planting) and for flood alleviation land purposes, owing to the loss of arable farmland and impact on the farm business.</p> <p>LTC to consider ownership arrangements post LTC along with management prescriptions and possible management agreement (e.g. s253 agreement under Highways Act 1980).</p> <p>The Applicant has been asked to provide a draft agreement and management prescriptions for each field parcel / mitigation use.</p> <p>The landowner has farmed the land for the past 20 years and in respect of the management skills required, we consider is well placed to meet these requirements. The landowner is prepared to enter into management agreements for the term required by the Project.</p> <p>Further to discussions with National Highways in November 2023, we understand that the policy position now is that s.253</p>	<p>The Applicant is currently considering matters relating to long-term management of ecological mitigation land; however, detailed management prescriptions and arrangements will not be known until the detailed design phase as undertaken by the Contractor.</p> <p>More generally, essential ecological mitigation is the Applicant's responsibility to maintain in perpetuity and therefore requires permanent acquisition. The Applicant has, by exception on other projects, agreed alternative delivery/ownership routes such as s253 agreements (Highways Act 1980). However, in practice these have often led to non-conforming implementation and/or maintenance issues which required the Applicant to exercise step-in rights. The Applicant's policy is increasingly to use such avenues only in exceptional circumstances. The Applicant's preference is to engage a 'competent authority' (for example a local authority or similar body) who has an established track record of maintaining such habitats. This is considered the most economical</p>	<p>General Arrangement Plans (Volume C) (see Sheets 35 and 38) [Document Reference 2.5 Volume C (6)]</p> <p>Environmental Statement (ES) Figure 2.4: Environmental Masterplan Section 12 (Sheets 3,4 (<i>et al.</i>)) [Document Reference 6.2 ES Figure 2.4 Section 12 (3)]</p> <p>Post-event submissions, including written submission of oral comments, for CAH3 [REP6-087]</p>	Matter Not Agreed

Topic	Item No.	E and K Benton Ltd Comment	The Applicant's Response	Application Document Reference	Status
		<p>agreements are not to be offered to landowners except in exceptional circumstances.</p> <p>If this is now the case, in order to mitigate against the loss of freehold land for these purposes which also has the effect of removing the option for landowners to use that land for their own mitigation purposes in connection with future development on their retained land, the landowner has proposed to the Applicant that they would be willing to discuss a long term lease with NH whereby they are permitted under that lease to sub-let or enter into management agreements with an appropriate authority(ies) to carry out the mitigation management work but under which the landowner would reserve the right to use the same land for mitigation purposes where this is not in conflict with National Highways mitigation works.</p>	<p>and robust approach to secure compliance with long-term management obligations in perpetuity.</p> <p>In terms of compliance risk, it is preferable for the Applicant to contract with an organisation rather than an individual in cases of non-performance or default.</p> <p>See also paragraph 3.6.2 of the Applicant's Post-event submissions, including written submission of oral comments, for CAH3.</p>		

Topic	Item No.	E and K Benton Ltd Comment	The Applicant's Response	Application Document Reference	Status
<p>Walkers, cyclists and horse riders (WCH) routes (1) North Road</p>	2.1.3	<p>North Road: Route of new WCH route alongside the B186 North Road is not agreed and is objected to by the landowner.</p> <p>The landowner has submitted reasoning for the relocation of an alternative North Road WCH route consistently as part of our responses to the Design Refinement Consultation (2020), Supplementary Consultation (2020), Community Impacts Consultation (2021) Local Refinement Consultation (2022).</p> <p>The current proposed WCH route creates a potential ransom strip as a consequence of (i) the location and (ii) the proposed permanent acquisition of the proposed route.</p>	<p>The Applicant has amended the alignment of this proposed WCH route between points 35/8 and 35/5 on the Rights of Way and Access Plans (Sheet 39) to accommodate a new farm entrance and is also investigating a tri-partite agreement or similar to prevent development land being landlocked by new WCH routes but it should be noted that such an approach is still subject to the Applicant's internal approval procedures.</p> <p>See also paragraph 3.6.5 of the Applicant's Post-event submissions, including written submission of oral comments, for CAH3 and paragraph B.2.9 of Post-event submissions, including written submission of oral comments, for ISH10.</p>	<p>Rights of Way and Access Plans (Volume C) (Sheet 39) [Document Reference 2.7 Volume C (7)]</p> <p>Post-event submissions, including written submission of oral comments, for CAH3 [REP6-087]</p> <p>Post-event submissions, including written submission of oral comments, for ISH10 [REP6-091]</p>	Matter Not Agreed
<p>WCH (2) FP136 & BR219</p>	2.1.4	<p>FP136 & BR219: Without prejudice to the landowner's objection to new WCH routes, the amended routes as detailed on Sheet 38 of DCO document REP1-026 are now acceptable to the landowner.</p>	<p>The alignment of the bridleway route has been amended at landowner's request such that bridleway BR219 remains to the north of the Project alignment between Points 34/5 (Sheet 38) and 41/7 (Sheet 41) on the Rights of Way and Access Plans.</p>	<p>Rights of Way and Access Plans (Volume C) [Document Reference 2.7 Volume C (7)]</p>	Matter Agreed

Topic	Item No.	E and K Benton Ltd Comment	The Applicant's Response	Application Document Reference	Status
WCH (3) Detailed Specification	2.1.5	The specification of gates and fencing to prevent unauthorised use and access to neighbouring land are still to be agreed.	Such specifications to be agreed at detailed design stage with the Contractor with both parties acting reasonably.	N/A	Matter Agreed*
WCH (4) Freehold Acquisition	2.1.6	Compulsory purchase of freehold title for new WCH's is deemed unnecessary by the landowner and is objected to. Without prejudice to this objection, there exists a statutory procedure for the dedication of new rights of way under the Highways Act 1980 without taking freehold ownership).	The Applicant's legal advice is that the permanent acquisition of the freehold of the land is required where <i>new</i> public rights of way (PRoWs) are being created. This advice is based upon the Secretary of State's comments in making a decision on the A303 Sparkford to Ilchester DCO project which referred to permanent acquisition for new highways (which includes PRoWs) as being 'best practice' and in line with Government guidance (Circular 02/97) and to do otherwise would be 'unprecedented'. See also paragraph 3.6.10 of Post-event submissions, including written submission of oral comments, for CAH3.	Post-event submissions, including written submission of oral comments, for CAH3 [REP6-087]	Matter Not Agreed

Topic	Item No.	E and K Benton Ltd Comment	The Applicant's Response	Application Document Reference	Status
WCH (5) Alternative Arrangements	2.1.7	Notwithstanding WCH (4) above, the landowner agrees to the Applicant investigating future ownership arrangements and dedication as a public right of way (PRoW). The landowners' solicitors have been sent preliminary instructions and a fee quote for the Applicant's approval is awaited.	Draft Heads of Terms for a tri-partite agreement have been issued and will be progressed if agreement can be reached. See also paragraph 3.6.10 of Post-event submissions, including written submission of oral comments, for CAH3.	Post-event submissions, including written submission of oral comments, for CAH3 [REP6-087]	Matter Agreed*
Special Category Land 'Fen Rights' at Orsett Fen	2.1.8	The landowner owns 10 of the 303 rights over s193 (Law of Property Act 1925) common land at Orsett Fen. Considering the implications of the replacement common land (Work Nos. OSC8 and OSC9) and other ways to implement the replacement land with the other Orsett Fen Rights Holders. The Cole Family do not agree to the compulsory acquisition of their freehold land for replacement land, which would be vested with the Orsett Fen Rights Holders, as shown on Special Category Land Plans [REP4-026] sheets 34, 35, 37 and 38.	The Applicant's position is that the replacement land (measuring approximately 619,671m ² as shown on Special Category Land Plans sheets 34, 35, 37 and 38 and is no less advantageous and no less in area, in accordance with S131 of the Planning Act 2008.	Works Plans (Volume C) Composite [Document Reference 2.6 Volume C (7)] Draft Development Consent Order [Document Reference 3.1 (11)] Special Category Land Plans (Volume C) [Document Reference 2.4 (7)]	Matter Not Agreed

Topic	Item No.	E and K Benton Ltd Comment	The Applicant's Response	Application Document Reference	Status
Project use of Medebridge Road	2.1.9	The landowner objects to temporary use where this impacts on their own existing user rights and in addition where this would impact on the use of the Medebridge Road as a primary access route for development plans.	This is subject to future detailed design by the Contractor when they develop the Transport Management Plan for Construction. See also the Applicant's comments on invitations to the Traffic Management Forum in paragraph 3.6.3 of the Post-event submissions, including written submission of oral comments, for CAH3.	Outline Traffic Management Plan for Construction [Document Reference 7.14 (9)] Post-event submissions, including written submission of oral comments, for CAH3 [REP6-087]	Matter Agreed*
Permanent land-take to north of South Ockendon Hall	2.1.10	It is agreed that there is a potential loss of development land which forms part of wider South Ockendon Development Masterplan (subject to planning consent). In addition to potential loss of development value to be agreed as compensation, suitable noise and visual impact mitigation needs to be included as part of the detailed design phase.	The Applicant provided further detail on noise mapping/passive provision of junction/utilities, etc. by email on 23 June 2023. The Applicant responded to the points raised by Bellway Homes Ltd in Comments on WRs Appendix F: Landowners and also the Post-event submissions, including written submission of oral comments, for CAH5. These comments apply equally to this land and discussions will be ongoing during the detailed design and construction stages.	Comments on WR's Appendix F: Landowners [REP2-051] Post-event submissions, including written submission of oral comments, for CAH5 [Document Reference 9.186]	Matter Agreed*

Topic	Item No.	E and K Benton Ltd Comment	The Applicant's Response	Application Document Reference	Status
Works Construction Compound (Works No. CA13)	2.1.11	The Applicant is requested to add detail on anticipated specification and length of use etc.	Outline design for the Medebridge compound (CA13) is shown on Sheet 38 of the Temporary Works Plans (Volume C). The detail, including period of use, will come as part of the detailed design phase with the Contractor.	Temporary Works Plans (Volume C)] [Document Reference 2.17 Volume C (7)]	Matter Agreed*
Utility corridors and Utility Access off Fen Lane	2.1.12	Land used for new utility easements / wayleaves [and access] will be sterilised from future non-agricultural development. The landowner objects to these new easements as the full specification and location is as yet unknown. There appears to be no opportunity to scrutinise or appeal this post DCO consent. The landowner has responded to recent consultation on the amendment of land rights associated with statutory undertaker's access rights. The landowner remains unsighted on the full detail of the non-UKPN easements and so whilst in principle this is acceptable, they are unable to fully sign off until terms are known.	The Applicant has provided the landowner with as much detail as is currently available from the Statutory Undertakers. The Applicant notified the Examining Authority of its intent to make the change (EC02 – need for access off Fen Lane) on 3 July 2023 and submitted the change request (Second Change Application) in early September 2023. Further details will be provided as and when they are available.	Second Notification of Proposed Changes to the Planning Inspectorate Cover Letter [CR2-001] Second Notification of Proposed Changes to the Planning Inspectorate [CR2-002]	Matter Agreed*

Topic	Item No.	E and K Benton Ltd Comment	The Applicant's Response	Application Document Reference	Status
Access Bridge over the Project (FP136 – BRN000072)	2.1.13	<p>Originally, the landowner requested the Applicant to provide min. 50t capacity access bridge with a min width of [5.5m] for all uses and at all times by the landowner to access their land north and south of the LTC route.</p> <p>However, this was prior to the commencement of construction of the Ockendon and Medebridge solar schemes.</p> <p>It has transpired that to accommodate the need for possible future replacement of the main transformer serving the Ockendon Solar (in construction) and Medebridge Solar (construction start Q1 2024) schemes, there is a need to increase the capacity of the bridge to approximately 120t to reflect the fact that access from the north from Fen Lane was the only possible route for delivery of the transformer in May 2023 other routes being restricted.</p> <p>The landowner and the solar farm owners are continuing discussions with the Applicant to agree a solution (as at August 2023)</p>	<p>BRN000072 bridge specification would be as per the Applicant's Design Manual for Roads and Bridges (DMRB) with a normal highway loading and a weight restriction not less than 44 tonnes. The track is indicated as being 5.0m wide (4.0m wide roadway with 2x 0.5m verges) (likely considered safety zones/clearance from parapets).</p> <p>The Applicant has investigated maximum loadings up to 80T and also continued discussions with the solar farm operator to consider alternative solutions.</p> <p>As a result of the above, a legal side agreement with E&K Benton as freeholder regarding this matter is nearing completion.</p>	Structures Plans (Volume B) – Sheet 55 [Document Reference 2.13 Volume B (3)]	Matter Agreed*

Topic	Item No.	E and K Benton Ltd Comment	The Applicant's Response	Application Document Reference	Status
Access under new Mardyke Viaduct	2.1.14	Access suitable for farm machinery under the new Mardyke viaduct to allow access to land north and south of the LTC route, such land subject to ecological mitigation proposals will be provided. Width/height clearance of access to be confirmed.	<p>At this time, the available information for Plot 38-27 is shown on (1) the Structures Plans and (2) the Engineering Drawings and Sections. The latter shows the plan and profile and gives the finished road level. Detail of build, including the remaining clearance and access routes will be finalised in the detailed design.</p> <p>There are also two Register of Environmental Actions and Commitments (REAC) commitments relevant to the viaduct structure: RDWE039 and RDWE040.</p>	<p>Engineering Drawings and Sections (Volume A) (see Sheet 10) [Document Reference 2.9 Volume A (6)]</p> <p>Structures Plans (Volume B) (see Sheet 54) [Document Reference 2.13 Volume B (3)]</p> <p>ES Appendix 2.2: Code of Construction Practice [Document Reference 6.3 ES Appendix 2.2 (9)]</p>	Matter Agreed*

2.2 Notes

- 2.2.1 The Design Manual for Roads and Bridges (DMRB) can be accessed here: <https://www.standardsforhighways.co.uk/dmrb>
- 2.2.2 E and K Benton Ltd ownership at South Ockendon is shown edged red on Plan A.1 (Appendix A) and amounts to approximately 504.63 acres (204.22ha).
- 2.2.3 The extent of land-take (permanent, temporary possession and temporary possession with permanent rights) by the Project is overlaid on Plan A.1 (Appendix A) and shown shaded yellow and amounts to approximately 171.56 acres (69.43ha).
- 2.2.4 The extent of the permitted Medebridge Solar scheme (as referenced under item 2.1.13 above) is shown as hatched black on Plan A.1 (Appendix A).
- 2.2.5 The wider South Ockendon Master Development Plan over land in E and K Benton Ltd ownership (as referenced under item 2.1.10 above) is detailed on Plan A.2 in Appendix A. The extent of E and K Benton Ltd land within the Masterplan is outlined in green.

NB: The plan also shows land within the same development agreement in the ownership of their neighbours, the Schatzmann Family outlined in purple. In respect of the development area, the Schatzmann Family are parties to a formal landowner collaboration agreement with E and K Benton Ltd and are also jointly contracted with EA Strategic Land LLP in respect of the development promotion/option agreement.

Appendix A Documents considered within this Statement of Common Ground

A.1.1 The documents which have been considered in the development of this SoCG outside of the DCO application documents are provided below, such as emails, meeting notes, etc.

Plate A.1 Plan A.1

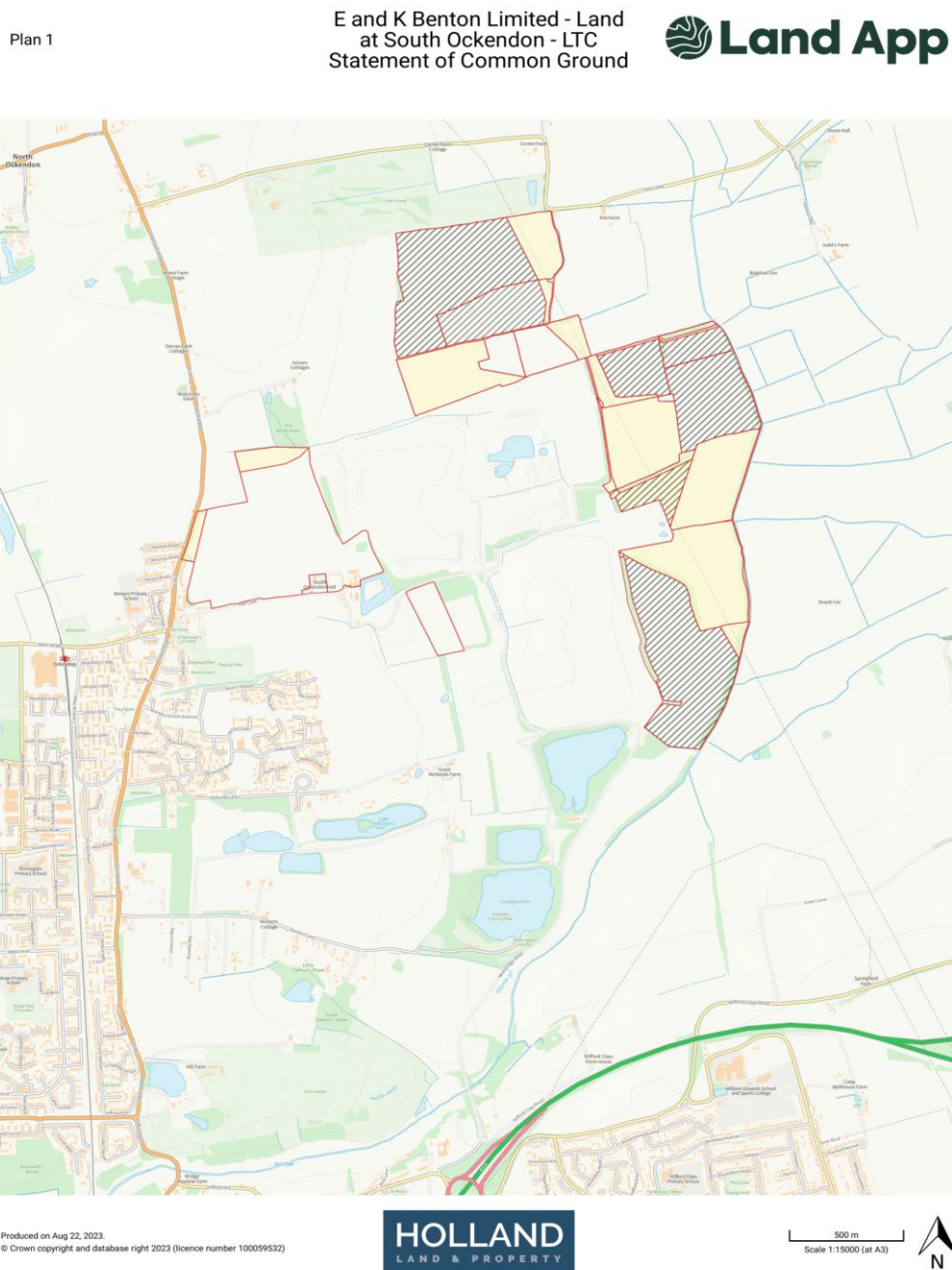
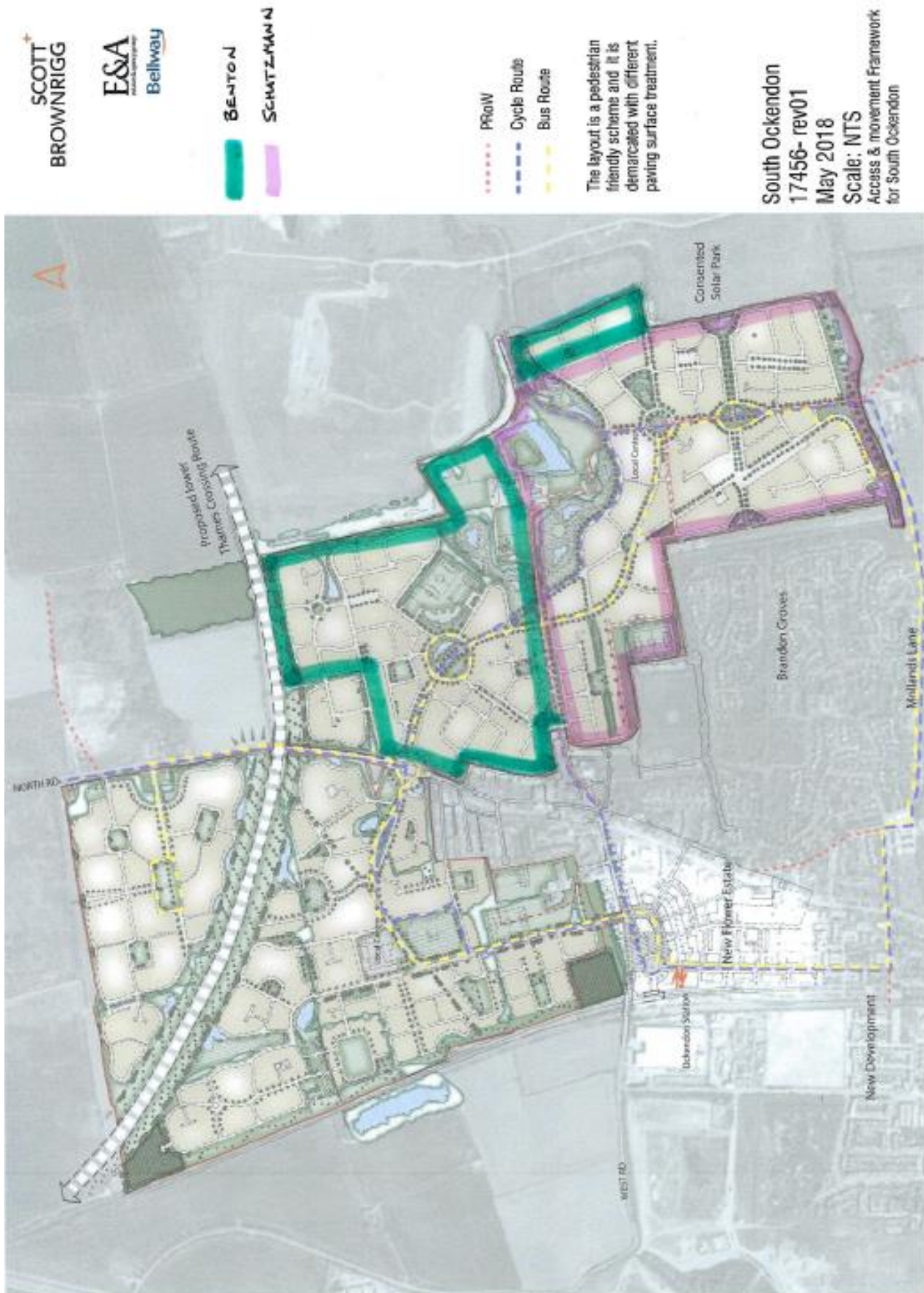


Plate A.2 Plan A.2



Appendix B Glossary

Term	Abbreviation	Explanation
Design Manual for Roads and Bridges	DMRB	A comprehensive manual which contains requirements, advice and other published documents relating to works on motorway and all-purpose trunk roads for which one of the Overseeing Organisations (National Highways, Transport Scotland, the Welsh Government or the Department for Regional Development (Northern Ireland)) is the highway authority. For the A122 Lower Thames Crossing, the Overseeing Organisation is National Highways.
Development Consent Order	DCO	Means of obtaining permission for developments categorised as Nationally Significant Infrastructure Projects (NSIP) under the Planning Act 2008.
Environmental Statement	ES	A document produced to support an application for development consent that is subject to Environmental Impact Assessment (EIA), which sets out the likely impacts on the environment arising from the proposed development.
Public Right of Way	PRoW	A right possessed by the public to pass along routes over land at all times. Although the land may be owned by a private individual, the public may still gain access across that land along a specific route. The mode of transport allowed differs according to the type of Public Right of Way, which can consist of footpaths, bridleways and open and restricted byways.
Register of Environmental Actions and Commitments	REAC	The REAC identifies the environmental commitments that would be implemented during the construction and operational phases of the Project if the Development Consent Order is granted, and forms part of the Code of Construction Practice (ES Appendix 2.2 [Document Reference 6.3 ES Appendix 2.2 (9)])
Statement of Common Ground	SoCG	A Statement of Common Ground is a written statement containing factual information about the proposal which is the subject of the appeal that the appellant reasonably considers will not be disputed by the local planning authority.
Walkers, cyclists and horse riders	WCH	Walkers, cyclists and horse riders.

Appendix C List of engagement activities

- C.1.1 A detailed record of all engagement between (1) the Applicant and (2) E and K Benton Ltd in relation to the matters addressed in this SoCG is available in Annex B of the Statement of Reasons [**Document Reference 4.1 (8)**].

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