

# LOWER THAMES CROSSING DCO EXAMINATION

## FINAL POSITION STATEMENT

by

**GRAVESHAM BOROUGH COUNCIL**

**(IP Ref: 20035747)**

### SUMMARY

1. This is the Final Position Statement by Gravesham Borough Council (“GBC”), submitted at Deadline 9A, as the Examination draws to a close. Notwithstanding that some progress has been made to address or resolve some of the issues raised by GBC in its Relevant Representation [[RR-0368](#)] and in its Local Impact Report (“LIR”) [[REP1-228](#)], it remains GBC’s view that the Examining Authority (“ExA”) should recommend to the Secretary of State (“SoS”) that the A122 (Lower Thames Crossing) Development Consent Order 202[ ] (“the DCO”) should not be made.
2. GBC considers that such a recommendation is in accordance with the primary requirement in s.104(3) Planning Act 2008 (“PA 2008”) to determine the application for the DCO in accordance with the relevant National Policy Statements (National Networks, and Ports). In any event, even if it were concluded, in overall terms, that those NPSs support the making of the DCO, GBC considers that such a recommendation would be justified by the terms of s.104(5) and/or s.104(7) PA 2008, which set out circumstances where a departure from the primary requirement in s.104(3) PA 2008 is warranted.
3. GBC acknowledges that the breach of duty in s.104(5) PA 2008 (which relates to impacts on the Kent Downs Area of Outstanding Natural Beauty (“AONB”)) is, in principle, capable of being addressed, were the ExA to recommend changes to the DCO so as to further the purpose of conserving or enhancing the AONB, but GBC does not consider that the conflict with s.104(7) PA 2008 can be overcome in relation to the Lower Thames Crossing (“LTC”) as now before the Examination or as realistically capable of being modified by the ExA.
4. GBC is disappointed that the Applicant has not made more effort to address and resolve the issues raised by GBC. Whilst there is unlikely to be sufficient time or scope to address the outstanding issues before the close of the Examination, GBC would encourage the Applicant to continue to engage with GBC in the post-Examination period before any decision is made on the

application and would invite the SoS to seek an update from the parties on those matters before making the decision.

## MATTERS OF PRINCIPLE

5. Location and investigation of alternatives: GBC remains unconvinced that the location of the LTC east of Gravesend has been adequately justified or that there has been sufficient investigation of a new or improved crossing at or in the vicinity of the Dartford Crossings. These matters were explored at ISH1 and GBC's position was set out in [REP1-235](#). The choice of Location C (east) in preference to Location A (west) in the route selection exercise in 2017 was insufficiently informed by an understanding of the adverse impacts of Location C on the Green Belt and on the AONB. The shortcomings of that exercise have been amply borne out by the deficiencies which remain in the Applicant's assessment of Green Belt impacts and in its failure to provide effective mitigation for the impacts on the AONB.
6. Insufficient traffic relief: Notwithstanding the stated objectives for the LTC, it is clear that the relief provided to the Dartford Crossings is only short term and that by 2045 traffic in the AM peak using those Crossings in the "Do Something" (DS) (i.e. with the LTC also available) has returned to 91% of the 2045 "Do Minimum" (DM) level (14,870 compared with 16,260): Table 6.3 of [APP-518](#). The modest nature of the relief provided by the LTC is reinforced by the fact that the Applicant's sensitivity test for value of time (in [REP1-183](#), Annex H, paragraphs H.2.3 and H.2.4 and Table H.1) showed that at the lower band parameters in WebTAG Unit A1.3, even the 'adjusted' BCR falls to 0.99 (i.e. 'poor' VfM). This issue was explored at ISH1 and GBC's position was set out in [REP1-235](#) and in [REP2-080](#). Further comment on the limited nature and duration of the claimed transport benefits is provided in the Council's Green Belt submissions in [REP8-134](#).
7. Inadequate traffic modelling: GBC has repeatedly expressed its concerns about the reliability of the transport assessment outputs purporting to show the effects of the LTC on the local road network which, for the Gravesham area, have relied on the LTAM modelling results. GBC considers that the extensive disagreements between the Applicant and other parties (including Thurrock Council as the relevant local highway authority) about the modelled performance of the Orsett Cock junction in LTAM (as compared with its modelling in micro-simulations using VISSIM), which appear to be unresolved, provide an illustration of the weakness of relying exclusively on LTAM as a predictive tool. These concerns give rise to the next two issues of principle. GBC also has a particular concern about the Applicant's failure to undertake any sensitivity testing of local growth that reflects the scale of housing growth for the area promoted in DLUHC guidance. GBC's position in this regard is set out in successive representations, and in particular in [REP4-289](#) and [REP4-](#)

[296](#). GBC notes that the Applicant contends (in Table 2.1, section 3 of its Deadline 8 comments on IPs' submissions at D6A [\[REP8-118\]](#)) that the guidance in para 4.6 of NN NPS absolves it from any need to undertake such sensitivity testing. However, when that para is read in full, including the need for a local transport model to "*provide sufficiently accurate detail of the impacts of a project*" and that modelling should "*include appropriate sensitivity testing to consider the impact of uncertainty on project impacts*", and that guidance is then applied to the facts here, where no one has disputed that there is a marked divergence at a local (rather than national) level between the data that was an input to the NTEM growth forecasts and the data that local planning authorities are required to use when planning to meet housing needs, GBC maintains that the ExA and the SoS should be concerned to explore the reasons for that divergence and what it means for the robustness of the modelled impacts of the LTC.

8. Failure to address wider impacts: GBC and the Applicant disagree on the relevance of para 5.214 of NN NPS (discussed below) but this should not obscure a more fundamental disagreement. The key issue is the application of the guidance in paras 5.202 ("*The consideration and mitigation of transport impacts is an essential part of Government's wider policy objectives for sustainable development*") and 5.215 ("*Mitigation measures for schemes should be proportionate and reasonable, focused on promoting sustainable development*"). The Applicant seeks to argue that mitigation is not required unless it is to address problems of safety, accessibility, severance, or an environmental impact (see paras 2.4.6, 2.4.23, and 3.2.1 of [REP6-092](#)). If that were the case, it is remarkable that para 5.215 of NN NPS does not say so. The reality is that those examples are cases where mitigation is expected, but they are not a closed list. Any transport impact of a scheme might require mitigation and whether it should be mitigated or not requires an assessment of what is "*proportionate and reasonable*" in the context of promoting sustainable development. A scheme which causes congestion to a part of the network may well need to mitigate that impact, depending on the severity of the congestion and the feasibility of mitigation measures to address it.
9. The Applicant's attempt to draw a distinction in principle between network improvements and 'ordinary' development (most recently articulated at para 2.1.2 of the Applicant's comments on IPs submissions regarding Wider Network Impact at D7 [\[REP8-123\]](#)) is unsupported by policy and is unsound. If a junction or link is overloaded by the addition of traffic attributable to the undertaking of development, it is immaterial whether that traffic derives from a new housing development nearby or from the provision of a network improvement that has allowed existing traffic to re-route to that junction or link. Traffic is traffic, whatever the reason why it is on the network. If that traffic is attributable to the carrying out of development which falls to be considered under the PA 2008 regime, there is nothing in the advice in NN NPS to say

that it should not be included in any consideration of whether mitigation for its impacts would be “*proportionate and reasonable.*”

10. On the disagreement about para 5.214 of NN NPS, GBC has rehearsed its position many times, including in [REP6-128](#). The Applicant is wrong to claim (in para 2.1.2 of [REP8-123](#)) that the heading on Strategic Rail Freight Interchanges (‘SRFIs’) is “*directly above paragraph 5.214 of the NNNPS*”. It is not. It is directly above para 5.213. The Applicant’s suggestion (in Appendix A) that “*strategic road and rail network proposals, of course, do not require travel plans during the operational phase because they are not a place of employment*” avoids the fact that such proposals may be places of significant employment during their construction phase (as is the case for the LTC) and there is nothing in either para 5.208 or 5.218 of NN NPS to suggest that they are only addressing the operational phase in requiring travel plans (and para 5.201 would suggest the reverse).
11. Perhaps the most telling indication that para 5.214 of NN NPS is intended to apply to all national networks projects comes from the drafting of the proposed [revised NN NPS](#) (March 2023). The equivalent to para 5.214 of current NN NPS is to be found in para 5.281 of draft NN NPS. That para is clearly not limited to SRFIs. If the Applicant is correct, the simple re-positioning of this advice as between the current and the draft NPS has worked a fundamental change of policy so as to require a wholly new approach to mitigation for road (and rail) network improvements, which (in the Applicant’s view) has hitherto not been the case. This apparent major shift of policy, imposing wholly new burdens on the road and rail sectors, is nowhere explained as such. GBC suggests that the reality is that there has been no shift of policy and that the draft NN NPS simply places the relevant guidance in the ‘decision-making’ section, where it more naturally belongs.
12. To some extent, the disagreement between the Applicant and GBC (and other parties) on the approach in NN NPS to the assessment of and mitigation for wider network impacts arising from the LTC could be put to one side if the final DCO includes one or more of the versions of a ‘Silvertown Tunnel’ monitoring and management Requirement (leaving aside the separate issue of Blue Bell Hill, dealt with below). The Applicant has put forward Requirement 17 (in [REP6-092](#)) on a ‘without prejudice’ basis. LB Havering (“LBH”) has proposed some amendments to the Applicant’s proposed Requirement 17 in [REP7-207](#). The Port of Tilbury (and others) has put forward an alternative Requirement in [REP6-163](#) (Appendix 6). GBC would support either the Applicant’s version (as amended by LBH) or the PoTL version, with a slight preference for the latter, provided that GBC is a member of the LTCIG (in the same way that it is a member of the NMG in the Applicant’s version). If the final DCO does not include one or other versions of a monitoring and management Requirement, then GBC’s position is that a decision to approve the LTC would not be in accordance with NN NPS because of a failure to

include a mechanism to achieve proportionate and reasonable mitigation for the adverse transport impacts of the project. GBC agrees with the cogent submissions made by LBH in REP7-207 that there is no policy in NN NPS to say that proportionate and reasonable mitigation need not be provided where the overall benefits of a project outweigh its disbenefits. A decision to make the DCO (without the requested Requirement) would not be in accordance with s.104(3) PA 2008.

13. Failure to address Blue Bell Hill: GBC's position on the need for a mechanism to address the undisputed capacity, congestion, and delay issues caused by the LTC at Blue Bell Hill ("BBH") has been set out in multiple submissions, including in its LIR [[REP1-228](#)], in [REP1-235](#), and in [REP6-128](#). GBC has put forward a Requirement (Requirement 24 in [REP4-302](#), as repeated in the list of amendments submitted by GBC at D9) which will require these issues to be addressed. The proposed Requirement deliberately does not dictate how the issues should be addressed. Whilst GBC considers that the preferred solution should be the implementation of KCC's Large Local Majors ("LLM") Scheme for the A229 (as per Requirement 24(1)(a)), GBC recognises that such implementation requires a separate funding decision by the SoS, and that although (based on the latest update by KCC in [REP8-138](#)) KCC's Strategic Outline Business Case ("SOBC") has been approved, KCC states it currently cannot afford to develop its Outline Business Case ("OBC") and so cannot progress the LLM scheme. GBC acknowledges that funding decisions and development consent decisions are separate processes (even though both are made by the SoS). Thus, even if a DCO for the LTC is made, this does not determine the Full Business Case ("FBC") decision for the LTC in due course as to whether the SoS will in fact fund the LTC so as to allow it to proceed. The same is true for decisions in relation to KCC's LLM scheme for BBH. Hence, proposed Requirement 24 allows both for the prospect of the LLM scheme not proceeding (as per Requirement 24(1)(b)) and for either KCC or the SoS to conclude that, even if the LLM scheme is to proceed, it is not considered necessary to delay the LTC to allow for its implementation (as per Requirement 24(1)(c)). The approach in proposed Requirement 24 therefore provides flexibility (i.e. it is proportionate and reasonable) as to how the issues at BBH are addressed and does not dictate the separate funding decision.
14. However, it is quite clear that in the absence of proposed Requirement 24 the issues at BBH attributable to the LTC will not be required to be addressed. There will then be an inevitability of unacceptable impacts on the local road network as a direct result of the implementation of the LTC. GBC considers that in such a case, the making of the DCO would not be in accordance with the NN NPS and so would not comply with s.104(3) PA 2008.
15. Unacceptable impacts on the Green Belt: GBC's position on the Green Belt impacts of the LTC as inappropriate development and the Applicant's failure

to provide a coherent justification amounting to very special circumstances to clearly outweigh the Green Belt harm and all other harm has been rehearsed in the LIR [[REP1-228](#)], in [REP4-291](#), and in [REP8-134](#). It is, of course, to be noted that all other harm will include all of the deficiencies of the LTC in relation to all topics, including deficiencies in relation to the mitigation of transport impacts, and deficiencies in the provision of measures to address construction impacts, such as regarding worker accommodation. GBC considers that, despite the Applicant being requested by the ExA to provide a more robust and detailed assessment of Green Belt impacts, it has failed to do so (as explained by GBC in REP8-134). GBC considers that the only sensible conclusion is that there is a clear breach of the policy in NN NPS (in particular paras 5.170 and 5.178). GBC does not consider that the general policies in paras 4.2 and 4.3 of the NN NPS override this detailed policy for protection of the Green Belt. There is, therefore, non-compliance with the NN NPS and a decision to make the DCO would not be in accordance with s.104(3) PA 2008. However, even if it were to be concluded that, in overall terms, the NN NPS does support the LTC, the unjustified harm to the Green Belt, together with all other harms, would mean that the case would fall within s.104(7) PA 2008 and those harms would amount to adverse impacts that would outweigh the benefits of the LTC. Making a DCO in such circumstances would conflict with s.104(7) PA 2008.

16. Unacceptable impacts on the AONB: GBC has had fundamental concerns from the outset about the adequacy of the Applicant's assessment of landscape and visual impacts, its approach to the design of the LTC, and its mitigation of landscape impacts, especially as regards the effects on the AONB. These concerns have been articulated in detail in successive representations and articulated at ISHs 6 and 11, and in particular in the LIR and its supporting appendices [[REP1-228](#), [REP1-233](#)], in [REP4-293](#), in [REP4-300](#), and in [REP8-127](#), [REP8-128](#), [REP8-129](#) and [REP8-135](#). GBC does not consider that the Applicant has adequately understood, assessed, or mitigated the impacts that the LTC will have on the AONB, in particular by reason of the changes to the A2 corridor and the impact on the setting of the AONB of the A122/A2 junction. A particular concern of GBC has been the Applicant's proposed design treatment of the new green bridges at Thong Lane (south) and Brewers Road, which are at gateways to the AONB. The Applicant's current proposals remain inadequate to ensure that the increased severance of Shorne Woods from the wider AONB by reason of the LTC is adequately mitigated or appropriately compensated. GBC's concerns about the impacts on the AONB have been heightened by the new duty in s.85(A1) Countryside & Rights of Way Act 2000 (as outlined by the KDAONB Unit and GBC at ISH11 [[EV-084f](#)], and referred to further in GBC's response at Deadline 9 to Action Point 1 following ISH11). GBC does not share the Applicant's contention (in [REP8-110](#), Annex A) that the new duty is already 'baked in' to the policy guidance on AONBs in NN NPS so the Applicant's assessment in the ES and in the Planning Statement has already adequately

addressed the new duty. GBC considers that the new duty requires both the Applicant and the SoS to “seek to further the purpose of conserving and enhancing the natural beauty of” the AONB by all means that are practical in the context of the LTC. GBC disagrees with the Applicant’s contention (in REP8-110, Annex A, para A.2.5.d) that it can rely on the claimed benefits of the LTC outweighing adverse effects on the AONB, in circumstances where it is possible for the Applicant to take realistic measures to avoid or reduce those adverse effects.

17. GBC considers that the Applicant could do more to mitigate/compensate for the impacts on the AONB by improving the design and landscape treatment of the green bridges crossing the A2, in particular by widening those bridges at the bridge deck (noting the Applicant’s arguments about the difficulties of widening the bridge landings). This could be achieved by changes to the Design Principles, as put forward by GBC in REP8-129. The version of the Design Principles submitted by the Applicant at Deadline 8 [REP8-082] does not adequately address GBC’s concerns. A mechanism would be needed to ensure that the detailed design reflected such changes, notwithstanding that the Design Principles would be a certified document. This could be done by amending Requirement 3 in Schedule 2 to the DCO as set out in GBC’s submissions on amendments to the draft DCO at D9 to require a design review of the green bridges.
18. GBC would suggest that this amendment (sub-paragraph (3)) should be added to the amendments it has already suggested to Requirement 3, which would then provide an adequate framework for the design review process. In the absence of the inclusion of such an amendment (or any wording to equivalent effect), GBC considers that there would be a breach of the duty in s.85(A1) CROW Act 2000 (which takes effect on 26 December 2023) and that as a result a decision to make a DCO without that amendment would be contrary to s.104(5) PA 2008.
19. Unacceptable impacts on local communities during construction: GBC has set out its concerns about the impacts of the construction of the LTC on its communities in the LIR [REP1-228] and in its subsequent representations, including in REP8-126 and REP8-133. GBC maintains that the Applicant’s approach to addressing pressures on the local housing market by reason of there being no provision for worker accommodation south of the River Thames in the Framework Construction Travel Plan [REP8-084] is insufficient, that the provision of funding for officer support in the s.106 agreement is inadequate to allow GBC to respond effectively to the issues that are likely to arise, and that the absence of any support for the additional health impacts on the local community (in contrast to the LTC workforce) is unacceptable. GBC also considers that residents of GBC should benefit from a discount on River crossing charges, whether using the LTC or the existing Dartford Crossings (which achieves parity with residents of Thurrock). Not only does such a

discount provide reasonable redress to the local community for the disruption of hosting the LTC, including its substantial and lengthy construction impacts, a discount across both routes would avoid creating a perverse incentive for residents to make longer journeys via the LTC so as to avoid paying the Dart Charge, which would be distortion of travel patterns. This issue could be addressed by amending Requirement 47 as suggested in GBC's amendments to the DCO at D9. The issue of worker accommodation is also capable of being addressed by the inclusion of a Requirement to secure a Gravesham Accommodation Resilience Scheme (as proposed in [REP4-302](#), as repeated in the list of amendments submitted by GBC at D9 [REP8-126 p.13](#)). The other matters are not matters that can be directly addressed by means of changes to the DCO because they require the Applicant to provide (and fund) mechanisms either via a further s.106 agreement or by some other means (such as a side agreement). In the absence of such further provision, GBC considers that the adverse impacts of the development outweigh its benefits and a decision to make the DCO would be contrary to s.104(7) PA 2008.

20. GBC acknowledges that it would be open to the Applicant to address these concerns and that it could do so during the post-Examination period. GBC is entirely willing to engage with the Applicant on measures to address its concerns in this regard and would therefore invite the SoS to seek an update from the parties before making a decision on the application.

#### MATTERS OF DETAIL

21. Articles of the DCO and the terms of the Requirements: GBC put forward a list of proposed amendments to the DCO, including the Requirements, at D4 [\[REP4-302\]](#). A further version was submitted at D9 which has been modified to take account of changes made by the Applicant, and including brief reasons for the amendments. More detailed reasoning can be found in [REP4-301](#), [REP5-098](#), [REP6-132](#), [REP7-195](#) and finally in the responses to the ExA's commentary [\[REP8 -130\]](#). These outstanding points remain important for GBC.
22. Discharge of Requirements: GBC has explained on a number of occasions its reasoning for the discharge of requirements being undertaken by the local planning and highway authorities rather than the Secretary of State. See the documents referred to in the paragraph above and the proposed amendments submitted by GBC specifically on this issue [\[REP5-099\]](#).
23. Monitoring of impacts: This is a matter of particular importance to the Council. In the list of amendments referred to above, GBC put forward an additional requirement relating to the monitoring of mitigation planting. The "Silvertown"



type requirement also supported by GBC would also require monitoring of local traffic impacts.

24. Control documents: GBC submitted a list of its proposed amendments to a number of the Control Documents, with commentary, as an Appendix to the ExA's commentary on the DCO [REP8-131]. Again, while these proposals touch on points of detail, they are important for GBC.
25. Chalk Park: Amendments to article 6 were included for the first time in the list which was sent to the Applicant shortly after D8. These provide clarity as to where, within the Chalk Park area, the different vertical limits of deviations for different parts of the Chalk Park landform will apply.
26. Cascades Leisure Centre: In its post-event submissions on ISH11, [\[REP8-111\]](#), the Applicant said (Annex A, para A2.7) that it is expected that an agreement on the provision of replacement land for leisure use will be completed by the end of the examination and that (A2.8) it proposes to put in a commitment in the SACR at D9 in case not. Whilst GBC has said throughout the Examination that it expects agreement to be reached, it has not yet reached a common position with the Applicant on a number of detailed (but important) elements, so it cannot say now whether that will be the case. In the event that the position is still unclear at the end of the Examination, GBC has no choice but to ask the ExA to recommend to the Secretary of State that he ask the parties for an update during the decision period. As for contamination of the replacement land, it is not clear from the post-event submissions referred to above whether the Applicant accepts that it will be responsible for carrying out the investigation and remediation, as GBC expects, given that this will be required in any case for the rest of the Southern Valley Golf Club site that has not become a cutting.
27. GBC's position is that there should be mechanisms that are capable of resolving the issues of detail, and GBC has made suggestions as to how this should be done through the provisions of the draft DCO and the related Control Documents (save as regards Cascades where an agreement needs to be concluded). However, even if those matters are all resolved satisfactorily, the matters of principle which are of concern to the Council will remain outstanding unless the Applicant is able to address those matters.

15 December 2023