Application by National Highways for an Order granting Development Consent for The Lower Thames Crossing

(Planning Inspectorate Reference: **20035885**)

DEADLINE 10

SUBMITTED ON BEHALF OF STUART MEE, RICHARD JAMES MEE AND A P MEE

FOLLOW-UP WRITTEN REPRESENTATIONS

20 December 2023

Gateley LEGAL

TABLE OF CONTENTS

Contents

A. Second Witness Statement of Stuart Mee – 20 December 2023

B. Proposed Requirement for Irrigation

SECOND WITNESS STATEMENT OF

STUART MEE

In respect of

Manor Farm, Ockendon Road, South Ockendon,

Upminster RM14 2TZ

Objection Reference Number:

(Planning Inspectorate Reference: 20035885)

I, **STUART MEE** of Manor Farm, Ockendon Road, South Ockendon, Upminster, RM14 2TZ make this witness statement to update the Examination and in further support of my representations to the proposed Development Consent Order for Lower Thames Crossing (DCO).

I believe these facts to be true to the best of my knowledge and belief.

1. I have read the Applicant's response to my evidence and witness statement submitted at Deadline 8 of the Examination Hearing whose six-month statutory period expires on the 20th December 2023.

2. The Applicant has asserted that it does not agree with the accuracy of many statements in my first witness statement but has provided no witness statement in evidence before the Examining Authority to enable it (or subsequently the Secretary of State) to actually disagree with my signed witness statement evidence. Nor has the ExA determined to cross-examine any witness from National Highways ("NH"). I have seen, and there appears to be no evidence of fact before the ExA or the Minister to disagree with my witness statement. Nor has any explanation of any contrary facts been evidenced by NH as to the matters with which it asserts its disagreement.

3. The incontrovertible empiric fact remains that to date the Applicant National Highways has not at any time engaged directly with me or to my knowledge my agent Peter Cole on the possible acquisition of my land at open market value nor has it produced any evidence or correspondence of the same because there is none.

4. Instead, NH has described what it calls "engagement" in its (so-called) "Final Statement of Common Ground" to present an apparition or picture or 'impression' of engagement with me where, in fact, there has been none. The so-called "engagement" has consisted simply of a series of meetings at which NH representatives told me what they were going to do. The chronology also shows this so-called engagement only began after the event of the DCO CPO being first published.

5. I am advised and understand that, at least in English Law, the use of compulsory purchase powers can only be a remedy of last resort and so can only be used after there has been some engagement with me about acquiring my land at market value before the event of the CPO being made and published. It is clear to me that National Highways, a company that has a lot of advisors including lawyers, has jumped the gun and moved directly to compulsory acquisition of my land without first having engaged with me and without first having offered to buy my land or a part or parts of

my land at open market value. It remains the case that NH has not yet asked to purchase my land at open market value and without my being under the threat of compulsory acquisition. I am further advised and understand that the compensation process operates to limit compensation to an artificial scheme world that ignores the change resulting from the scheme (the “no scheme principle”)– but that this assumes that there was first engagement and a market offer before the second step to make and advance a CPO of parts of my land. The approach of NH appears to seek to side-step the increased value of my land by having first ignored engaging with me and making an offer for my land or parts of my land before NH made its CPO. To reiterate, NH made no offers to buy my land and did not engage with me before it made its CPO.

6. I refer the Secretary of State to his Guidance on CPO under the Planning Act 2008: Procedures for the Compulsory Acquisition of Land (September 2013), paragraph 16, where there may be cases: “where the Secretary of State could reasonably justify granting development consent for a project but decide against including in an order the provisions authorising the compulsory acquisition of the land.” That must be so here because CPO is being used to take my land as a first resort. To do otherwise would set a dangerous precedent nationwide for CPOs and for NSIPS. The approach of “CPO first” has also resulted in a different CPO (under a different Act) being refused also for lack of engagement (and there was some engagement before the CPO was made in that case whereas in my situation there has been none). I refer the ExA and Secretary of State to my Written Representations and to the Decision Letter in the Nicholson Quarter CPO.

7. Part of my land has been asserted by NH to be taken by it for (so-called) “replacement land”. I am advised and understand that NH cannot in law under the Planning Act 2004 <u>take</u> land under section 131(4) of that Act because the Act does not authorise a taking of land within that description but only a giving of land (for a premium) may qualify within that description. Indeed, NH has in fact purchased already other land as replacement land (also for the Thames Chase Forest) and so it remains inexplicable to me why NH has never offered (before or after the CPO was made) to purchase part of my land as replacement land that it could then give to Forest England. The replacement land is now the subject of an option agreed between me, my brother and a major housebuilder which I have signed (19th December 2023). That option agreement is scheduled for exchange/completion in January 2024. Clearly, this means that the value of my land (that the NH describes as “replacement land”) is now more valuable. It remains the case that NH has never made me an open market offer

for that land. There is no *evidence* of need to use CPO powers because NH has never asked me to sell my land to them for their scheme.

8. The Examiners are asked to note that whilst discussions between National Highways and me have taken place over the last 3-4 years, these have comprised merely NH telling me what they intended to do with their scheme and my land. It was not until after the CPO was long since made that, on the 31 August 2023 that a side agreement was suggested by the Applicant *despite* Gately Legal stating that various matters should be secured by and the subject of an agreement as early as 2022 (also after the event of the CPO being first advanced by NH). The fact that NH are now further engaging with me is helpful in that progress is now being made but there remain several issues of major concern to be resolved and until an agreement is signed and completed, I will maintain my objections to the LTC proposal. But it remains a "CPO-First" approach. I am advised that such an approach remains unlawful and am surprised that NH is acting unlawfully in advancing a CPO the wrong way around.

9. We welcome the *recent* – after the event - efforts made by NH but are obviously concerned about the full extent of commitments in particular to resolving the issues concerning access and irrigation matters upon which the farm and my livelihood and life's work depends.

10. NH states that it does not agree with my very real and practical concerns about SACR-005 but does not appreciate that this and other SACR commitments remain open to interpretation by the contractor (who would be appointed if the DCO and CPO were to be confirmed) and the decision as to whether something is to be done rests with a contractor (and not with NH). National Highways admits it does not yet know the extent of the details of this project, nor could it because the DCO remains an outline DCO and no contractor can yet be appointed because the Project Handbook prevents that from yet occurring.

11. I referred in my first witness statement to the kinds of problems that might be encountered with such generalised and unspecific commitments and problems that might arise. To demonstrate this point further I have already encountered a problem with Perfect Circle (appointed contractor doing Surveys on behalf of NH) who had put boreholes on my land with the agreement that these would be removed at the end of the Term of the agreement. The Term has expired but the borehole apparatus has not been removed. This evidences the kind of 'on the ground' issue that can foreseeably be expected to arise going forward and that has very practical

ramifications for my farming of the land – because it is difficult to farm *through* apparatus equipment.

12. I also referred in my first witness statement to being treated differently to other landowners and referred to another landowner for example having regard to the content of SACR-006 for Mr Mott and any successor in title. Just prior to Deadline 9 I was advised that NH had produced five additional SACR (so-called) commitments for my benefit. We were not given an opportunity to refine those commitments but were merely told about them and not shown them until formal publication.

13. We have reviewed these commitments and whilst the intent on drafting these is to be welcomed, they are not fit for purpose because they remain generalised, remain open to interpretation (and so to abuse by a contractor motivated by profit and timetable), especially when one considers that it will be the contractor who will decide what can or cannot be done in the various circumstances' a contractor who will not necessarily even understand the overall impact of their works on my day to day farming operation. Most importantly, the proposed terms of the SACR do not provide the key requirement that, because in practical terms, the weather determines the timetable for access I need, I need to have the whip hand for access because I cannot (and I don't imagine NH can either) dictate the particular weather conditions day to day or hour by hour in relation to my land, particularly during the important farming seasons of the year. I don't think it can be said that a contractor, (if able by agreement, or in some way by CPO) using my land to build a tunnel under and cutting across, could not manage the relatively limited vehicle movements on notice of combine harvesters, tractors and related vehicles concurrent with their own building operations.

14. By way of example SACR-00028 of the wide room for interpretation of the SCAR that results to make the SCAR commitment no commitment at all but instead a recipe for no access, SCAR-00028 states that "the contractor will use all reasonable endeavours to ensure that the undertaker's operations do not <u>unduly compromise</u> [my underlining] the agricultural operation of Manor Farm" i.e., more than is necessary, acceptable or reasonable. One can already foresee a contractor regarding the progress to be made on the scheme project to be more justified than my operations in most circumstances. Or that my operations are not "unduly" compromised – from the contractor's perspective. Similarly, the scope of "reasonable" endeavours is hugely wide, particularly where one is concerned with tunnel and irrigation engineering works. A contractor would be able to point to a host of situations to avoid allowing access to me during (for example) harvest. I do not regard the decision as to whether to use reasonable endeavours should – as proposed - rest with the

contractor. The ultimate decision should remain with me, and, in turn, on account of the weather conditions permitting me to farm. That is, SACR-00028 in substance and wording is no commitment at all. Moreover, I have noted that the so-called by NH 'final statement of common ground' between the Applicant and Thames Chase at 2.1.12 confirms in response to Thames Chase construction traffic impact concerns that "construction works are now to be accessed from a combination of Ockendon Road, St Mary's Lane" etc and not Pike Lane or the Thames Chase Forest Centre. We do not know the context in which this has been agreed and what further impact this may have on my farming access and operations. I have never had nor been presented with an opportunity to comment on this access nor consider its ramifications for my farming operation.

15. For all the above reasons I consider that the proposed Requirement that requires NH to give me *access* to my farm as and when *the weather* dictates remains absolutely necessary to continue my farming operations and do not regard 48 hours' notice for access to be unreasonable. It is not superfluous. I have submitted a Requirement to ensure this is given effect as one provision of the DCO. If the CPO is not confirmed for my land (see above), then the requirement can include a Grampian-style provision for my agreement to allow use of my land for construction purposes and the presence of a tunnel and cutting on it.

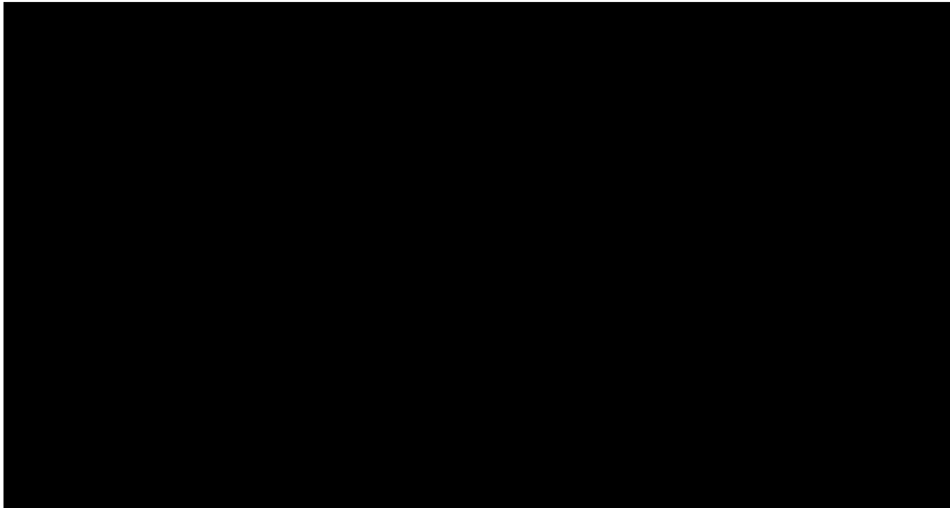
16. Regarding other matters of major concern, I now update the Secretary of State on irrigation matters. In short, I am authorised by the Environment Agency to abstract water by which to irrigate my farmland of a specified volume each year. The NH scheme proposes to interrupt the irrigation system and change the volume of water moving through my land. This would have the effect of reducing the current wide flexibility for a wide range of crops grown on the farmland.

17. I have been most recently told of recent email exchanges that NH is not in a position to yet know about water volumes passing through my land because it has no scheme yet and the water data it has collected is unreliable. I have therefore proposed now a Requirement for an Irrigation Scheme to have been approved by the Environment Agency in advance of NH commencing any works relating to my land, and because such works would interfere physically with the round irrigation system and hydrology. Given recent discussions and the matter is not resolved I would say that this reinforces the justification for such a Requirement. Again, this is also an example of NH not practically engaging with me before they made the CPO because NH has had a lot of time in which it could have produced a (correct) data driven irrigation scheme and avoided these kinds of issues now confronting NH.

18. I have been told by NH that there would be a need for Environment Agency approvals to chalk borehole proposals to supplement the loss in water flows and moving the locations for irrigation licences which are necessary as a result of the LTC proposals which means there is a significant degree of uncertainty about the potential outcome of their views. However, NH seems to put the approval cart before the irrigation scheme horse. If a DCO is granted, then NH will be able to appoint a contractor to draw up an irrigation scheme that ensures I can abstract the same volume of water that I am currently authorised to abstract. Once that scheme is available, NH can then make an application with me to the Agency to seek to vary my abstraction licence to account for the presence of the NH scheme.

19. As explained in my recent evidence to the Examination the water flow data remains an issue at large because the data gathered by NH remains totally unreliable because NH has refused to clear the monitoring pad of leaves and so the readings taken by that pad remain necessarily distorted by the presence of leaves on the surface of the pad and so the pad has a partly or wholly covered recording area. (Again, this is an example of weather (the Seasons) driving the situation. In Autumn, leaves will fall). The data being used by NH is not accurate in our opinion and whilst we are working with National Highway's consultants, we do not yet have a resolution on this matter as NH experts refuse to accept their data remains flawed.

20. We also require the Environment Agency's input on the potential risk to the Essex Manor fish by the implementation of a chalk borehole proposal to ensure that the quality of the water remains fit for fish. So, this too remains an ongoing and unresolved concern until that advice is both sought and obtained. Until such time we do not know whether there are likely to be any ongoing issues with the water quality for the fish. I cannot comment on the interaction of the scheme with the Water Quality Framework Directive (2000/60/EC) requirements but direct NH to the DEFRA Guidance (May 2014) about the same and paragraph 4.1.1, 4.2.1. and 5.4.2 of the same that refers to fish.



Signed:………………………………….

Name:…Stuart Mee

Date: 20th December 2023

Planning Inspectorate Reference: 20035885 – Stuart Mee, Richard James Mee and AP Mee

Proposed requirement for water irrigation and quality scheme
[ ]—

(1) The undertaker shall not carry out any works in connection with the project in relation to the land known as Manor Farm which are likely to affect the subsisting water irrigation system servicing the agricultural land at Manor farm until the Undertaker has:

a) produced a scheme for irrigation of that land that ensures that water volumes equivalent to those most recently authorised by the Environment Agency can be abstracted and be conveyed hydraulically through that farmland and that its quality replicates the water for the fish on the Farm;

b) provided the verification and confirmation in writing by the Environment Agency to the holder of said authorisation for Manor Farm that the scheme for irrigation in (a) is acceptable to that Agency as a means by which to secure and ensure equivalent abstraction and said water conveyance through the farmland and is of the required said quality;

c) ensured that the same scheme will be executed as part of its project and has received from the said holder of the authorisation the confirmation from the said Agency of any variation to his current abstraction licences;

d) and not otherwise carry out the project on the Manor Farm land;

And those proposed irrigation scheme works have been carried out and completed to the reasonable satisfaction of the Landowner and verified in writing by and to the satisfaction of the Environment Agency.