

A12 Chelmsford to A120 widening scheme

TR010060

9.71 Written submission of oral case for Compulsory Acquisition Hearing 3

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A12 Chelmsford to A120 widening scheme
Development Consent Order 202[]

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1 Applicant's responses to Representations made at the Compulsory Acquisition Hearing 3 (CAH3) held on Tuesday 27 June 2023 at 14:00.

1.1 Introduction

- 1.1.1 CAH3 for the A12 Chelmsford to A120 Widening Scheme (DCO) application was held virtually on Microsoft Teams on Tuesday 27 April 2023, commencing at 14:00.
- 1.1.2 The Examining Authority (ExA) invited the Applicant to respond to matters raised at the Hearing but also in writing following CAH3.
- 1.1.3 This document summarises the responses made at CAH3 by the Applicant and also seeks to fully address the representations made by Affected Parties, Interested Parties and other parties attending.
- 1.1.4 The Applicant has responded to the topics raised by each of the attending parties in the sequence that the ExA invited them to speak and provides cross-references to the relevant application or examination documents in the text below.
- 1.1.5 Where it assists the Applicant's responses, the Applicant has appended additional documentation to this response document

1.2 Post-hearing submissions in response to matters raised at CAH3

Ref:	Comment/Representation by:	Questions/Issues Raised at the CAH3	Applicant's Response at the CAH3
1.		Welcome, introductions, arrangements for Hearing	
2.		Purpose of this CA Hearing	
3.		Applicant's update on the CA schedule	
3.1	<i>ExA</i>	<p>Applicant's update on the CA schedule</p> <p>The ExA requested an update as to the status of the Compulsory Acquisition schedule. The updated version was submitted at Deadline 6. The Examination will close on 12 July 2023. At the April hearing, there were 54 Objections outstanding where Representations had been submitted and this number has now been reduced to 49.</p>	<p>Simon Peart for the Valuation Office Agency on behalf of the Applicant confirmed that there are currently 22 properties where blight and discretionary purchase applications have been made. 19 have been acquired and a further 3 are yet to be agreed but are being negotiated.</p> <p>With respect to the Compulsory Acquisition schedule, offers have been made where landowners are engaging in discussions. Good progress is also being made on mitigation discussions subject to evolving detailed design and evolving proposals.</p> <p>The remaining 49 detailed negotiations are being substantially progressed. Most have been substantially progressed and there</p>

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			<p>are 10 separate objections relating to two land interests. Those discussions are related to complex matters such as borrow pits.</p> <p>Some landowners who objected have not responded to the Applicant's attempts to engage. The Applicant continues taking significant steps to progress discussions with affected parties.</p> <p>There has also been significant progress with The Crown Estate.</p> <p>A blight notice has also been submitted by the owners of Rowanbank, which has been accepted. The Applicant is now awaiting a claim.</p>
3.2	<i>ExA</i>	The ExA queried the status of negotiations over Wishing Well farm and whether that covers both the residential and business sides of the farm.	Simon Peart for the Valuation Office Agency on behalf of the Applicant explained that the value for Wishing Well Farm is provisionally agreed subject to receipt by the Applicant of a building surveyor's report which is anticipated to be received by 4 July. Simon Peart confirmed the valuation relates to both the residential and commercial elements of that property.
3.3	<i>ExA</i>	The ExA specifically requested an update on Borrow Pit F, particularly as this affected person has never made a representation, despite being contacted on 25 January 2023 to commence negotiations, an offer	Simon Peart for the Valuation Office Agency explained that attempts had been made to negotiate the acquisition of land by agreement. A plan and schedule outlining the land requirements were provided to the agent and a meeting was offered to discuss in more detail. An offer was set out to provide the landowner with details of the overall compensation package and to expedite

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		<p>being made on 20 February 2023 and the property being a significant piece of land of over 240,000 square metres.</p>	<p>matters. A meeting was then held to offer the option of retaining the borrow pit land. Attempts have been made to acquire by agreement and an alternative offered to retain the borrow pit land. The current offer has been neither accepted nor rejected and there has been no confirmation that the landowner wishes to retain the borrow pit land. The Applicant has contacted the agent to confirm the position and invited a meeting.</p> <p>Attempts have been made to acquire by agreement and an alternative offered to retain the borrow pit land.</p> <p>The Applicant can confirm the following recent correspondence and meetings took place with the Owner's agents (engagement has been ongoing since 2020 regarding the scheme):</p> <p>25 January 2023 – Email to agent providing a plan and schedule outlining the land requirements were provided to the agent and a meeting was offered to discuss in more detail.</p> <p>20 February 2023 – An offer was set out to the agent to provide the landowner with details of the overall compensation package and to expedite matters.</p> <p>24 February 2023 – A meeting was held with the landowner's agent to offer the option of retaining the borrow pit land. Matters discussed during the above meeting:</p> <ul style="list-style-type: none"> • Whether existing access track through the borrow pit land was still required. Agent to confirm.

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			<ul style="list-style-type: none"> • Whether the landowner would like to retain ownership of the borrow pit land. The Applicant discussed the form the land would come back in and explained that the majority of the land could be retained if that was the landowner's preference as there was no essential environmental mitigation proposed in those areas. • Agent to confirm with their client if they want to retain the borrow pit land • Discussed the basis of the current offer based on permanent acquisition <p>28 June 2023 - E-mail to landowner's agent - confirmation requested as to the landowner's position in respect of the borrow pit land.</p> <p>29 June 2023 - Offered meeting with agent to discuss and provided dates week commencing 03 July 2023.</p> <p>The current offer has been neither accepted nor rejected and there has been no confirmation that the landowner wishes to retain the borrow pit land. The Applicant has contacted the agent to seek to confirm the position and invited a meeting.</p>

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3.4	ExA	The ExA requested an explanation as to why Countryside Zest's objection was not withdrawn at Deadline 6, particularly after the ExA was advised at CAH2 that agreement had been reached between the Applicant and Countryside Zest.	Simon Peart of the VOA explained that the Applicant is focused on reaching agreement, however there are complexities regarding the property given that it is a development site. Heads of Terms have been produced and land values have been agreed. The remaining issues relate to settling the details of licences, accesses and easements which are being progressed. Subsequent to CAH3 the Applicant has provided to Countryside Zest a draft letter of assurance dealing with some issues of clarification regarding how the Applicant's proposals will integrate with those of the Interested Party. The formal letter will be issued once approval is received from Countryside Zest. Work on the detailed documentation, reflecting the agreed Heads of Terms will continue.
3.5	ExA	The ExA requested an indication of what matters will be covered in the suggested private position statement covered by REP 3-023 relating to Borrow Pit E.	Nick Dexter on behalf of the Applicant explained that the Applicant no longer expects a private position statement to be developed or submitted as Heads of Terms had have been substantially agreed with the landowner.

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3.6	ExA	The ExA further requested clarification as to whether the Applicant was aware of the Essex County Council's position regarding REP 3-023 and Coleman's Quarry.	Reuben Taylor KC on behalf of the Applicant explained that the Applicant is not a party to the discussions regarding the S106 agreement required for planning permission for the revised restoration regime at Colemans Quarry to be issued and that the discussions on that document are between Brice Aggregates Ltd and Essex County Council. The Applicant believes the document is still under negotiation and the Applicant's understanding of the position remains as previously set out to the ExA.
4.		Representations from Statutory Undertakers	
4.1	ExA	Representations from Statutory Undertakers The ExA asked the Applicant to summarise the latest position on matters with Statutory Undertakers.	Stephen Dagg on behalf of the Applicant gave the following updates regarding Statutory Undertakers: Network Rail Infrastructure Limited At the last compulsory acquisition hearing, the Applicant made submissions as to why Network Rail would not suffer any serious detriment should the DCO be made. This is as a result of the protective provisions in favour of Network Rail in paragraph 69 in Part 6 of Schedule 11 of the DCO [REP6-036], which contains a wide prohibition on the Applicant from exercising its powers of

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			<p>compulsory acquisition over Network Rail's land without the latter's agreement.</p> <p>It follows that the Applicant will need to negotiate the voluntary acquisition of land and rights over Network Rail's land (including temporary access to their land). Network Rail is therefore placed in a position where it can ensure that sufficient protections are in place to prevent any detriment from arising to the railway.</p> <p>The protective provisions submitted by Network Rail at Deadline 6 [REP6-108] do not depart from those in National Highway's Deadline 6 draft Development Consent Order [REP6-036] in respect of paragraph 69 in Part 6 of Schedule 11 of the DCO.</p> <p>The Examining Authority can therefore be assured that issues of serious detriment do not arise under the dDCO in relation to Network Rail under Section 127 of the Planning Act 2008.</p> <p>With regard to the differences between the two sets of protective provisions, National Highways has accepted some of the suggested changes in its Deadline 7 draft DCO.</p> <p>At Deadline 7 the Applicant has also provided a written response to Network Rail's Deadline 6 submission [REP6-108] setting out which amendments are not agreed and the Applicant's reasons for not accepting these amendments [9.72 Applicant's Comments on Information received at Deadline 6 Applicant Reference TR010060/EXAM/9.72].</p>

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			<p>Broadly speaking the areas of difference between the parties relate to the steps which the Applicant must take if the use or operation of the authorised development causes electromagnetic interference, safeguards for the Applicant where it becomes liable to pay costs and the type of losses which should be covered.</p> <p>In the event that agreement is not reached by the end of the examination the Secretary of State will need to adjudicate on whether to accept the Applicant's or Network Rail's drafting.</p> <p>The Applicant has also submitted an updated Statement of Common Ground with Network Rail at Deadline 7 {Applicant Reference TR010060/EXAM/8.5}.</p> <p><u>Anglian Water Services Limited</u></p> <p>Protective provisions in favour of Anglian Water are largely agreed between the parties.</p> <p>The only outstanding issue is the "stand-off distances" to be set out in paragraph 27(7) of Part 3 of Schedule 11.</p> <p>In essence the distance in paragraph 27(7) determine how close works under the DCO must be before the undertaker must submit a plan of the works to Anglian Water to allow Anglian Water to consider what, if any, requirements should be placed on</p>

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			<p>the Applicant's works to protect Anglian Water's apparatus and access to it, or allowing them to remove the apparatus.</p> <p>The stand-off distances included in the Applicant's draft DCO reflect previous precedent in the A47 Blofield, Tuddenham, Thickthorn and Wansford orders.</p> <p>They also reflect the "easement distances" in Anglian Water's "Cross Sector Infrastructure Access Statement" (March 2019). The table at page 6 of that document sets out distances for land where no development is proposed and enhanced distances for "land marked for development or land use changes within the next 20 years in the local plan".</p> <p>It then states "Any work undertaken outside our standard easement widths along pipelines may proceed without reference" to Anglian Water.</p> <p>The distances contained in the protective provisions align with the enhanced distances (although the protective provisions give a distance from the median line (on one side of the pipe), whereas the Cross Sector Infrastructure Access Statement give the total distance (on both sides of the pipe).</p> <p>Anglian Water has stated (REP5-023) that the distances in the draft DCO are not sufficient because of (they state):</p> <p style="text-align: center;"><i>"a number of shortcomings that have arisen through experiences in addressing our own maintenance and</i></p>

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			<p><i>repairs to our assets and from previous nationally significant infrastructure projects that interfaced with our assets".</i></p> <p>Anglian Water has not set out what those shortcomings are or specific details of scenarios where this has caused them problems. National Highways does not therefore consider that sufficient justification has yet been provided for it to accept this departure from the A47 protective provisions.</p> <p>Anglian Water's proposed stand-off distances present a significant increase in distances from those proposed by the Applicant and would therefore be likely to pose a significant increase in the administrative burden on the Applicant in terms of the extent of consultation and the works which may be caught by requirements which may be imposed by Anglian Water under the terms of the protective provisions. It therefore has the potential to have significant effects on Scheme.</p> <p>If further justification and examples can be provided then the Applicant will consider this further, and whether the amendments may be justified, or if other solutions may be more appropriate.</p> <p>In the event that agreement is not reached by the end of the examination the Secretary of State will need to adjudicate on whether to accept the Applicant's or Anglian Water's distances.</p> <p><u>Cadent Gas Limited</u></p>

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			<p>The Applicant understands that protective provisions with Cadent in Part 5 of Schedule 11 of the dDCO are in an agreed form. These reflect the protective provisions included in the A47 Blofield and Thickthorn orders.</p> <p>It is understood that Cadent has one outstanding issue relating to the scheme, which relates to the fact that one of the diversion routes runs through Benton Golf Club and that that location may make future maintenance more expensive.</p> <p>This issue has only been raised by Cadent very recently as potentially requiring the provision of further agreement.</p> <p>To the extent that this diversion may engage Section 127 or 138 of the Planning Act 2008, Cadent would not suffer serious detriment as a result of the diversion. Paragraph 56(1) of the protective provisions provide that Cadent's existing rights cannot be extinguished until "facilities and rights" have been provided to the reasonable satisfaction of Cadent. Paragraph 57 of the protective provisions provides that the "facilities and rights" must be no less favourable than the ones in relation to the apparatus which is to be decommissioned. Importantly, if they are less favourable the matter may be referred by Cadent to arbitration and the arbitrator may provide for the payment of compensation to Cadent.</p>

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			<p>In light of paragraphs 56 and 57 of the protective provisions contained in Schedule 11 of the dDCO, Cadent would not suffer serious detriment as a result of the making of the DCO in its current form.</p> <p><u>Other Statutory Undertakers</u></p> <p>There other Statutory Undertakers whose apparatus is affected by the scheme; however, they have not made relevant representations. In such circumstances the ExA is entitled to conclude that they do not consider that the scheme will cause them serious detriment, and to have regard to the standard protections for statutory undertakers and the operators of communications code networks in Parts 1 and 2 of Schedule 11 of the dDCO and to conclude that they are adequately protected in respect of serious detriment under Section 127 of the Planning Act 2008.</p>
5.		Crown Land	
5.1	<i>ExA</i>	<p>Crown Land</p> <p>The ExA asked the Applicant to provide an update concerning progress with obtaining consent</p>	<p><u>The Crown Estate</u></p> <p>Richard Guyatt on behalf of the Applicant explained that a number of meetings have taken place with The Crown Estate in recent weeks. These have resulted in excellent progress being made. Burges Salmon, acting for The Crown Estate, indicated by</p>

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		under s.135 of the Planning Act 2008.	<p>way of email sent on 26 June 2023 that s.135 consent is anticipated to be provided soon.</p> <p>Another meeting with The Crown Estate took place on 26 June 2023 and another programmed for 28 June 2023.</p> <p>Heads of Terms and a draft agreement to secure s.135 consent are both in circulation and close to being settled. It is hoped the documents will both be signed around the time of Deadline 7 and it is expected that section 135 consent will be provided to the ExA by the Crown Estate before the close of the examination.</p> <p><u>Department for Transport</u></p> <p>A meeting with the Department's legal representatives took place subsequent to CAH3, on 29 June 2023. The Applicant is awaiting a full response from the Department for Transport's legal team and is chasing very regularly. The Applicant believes all of the actions required of the Applicant have been dealt with in full. The Applicant will continue to seek progress from the Department for Transport's legal team.</p>
6.		Borrow Pits	
6.1	<i>ExA</i>	The ExA asked the Applicant to provide an update on its current	Simon Peart for the Valuation Office Agency (VOA) on behalf of the Applicant explained that discussions are progressing

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		<p>position on borrow pits as, at the time of this hearing, no agreement has been reached for any of the 4 borrow pit locations.</p>	<p>positively in respect of the four borrow pits to overcome objections to the permanent land acquisition. Offers have been made on a permanent acquisition basis and an option to retain the borrow pit land has been proposed to all four affected landowners. The compensation methodology and lease mechanism has been outlined and provisionally agreed with three landowners subject to the details of the final restoration of the returned land. One landowner (Vellacott) has not objected to the permanent land acquisition and an offer for that land was made on 20 February 2023, for which the VOA is still awaiting a response.</p> <p><u>Bunting Family Partnership</u></p> <p>With respect to the Bunting Family Partnership, draft Heads of Terms were issued on 12 April 2023. These have been discussed and are substantially agreed with the main concern being the condition of the land returned. The current action is for solicitors to draw up an agreement for lease. Negotiations for Land Access will progress alongside the acquisition agreement.</p> <p><u>Coleman's Quarry</u></p> <p>The Applicant has provided an update on its understanding of position regarding the relevant planning application that is approved subject to a s.106 agreement – see 3.6 above.</p>

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			<p>For a detailed response to the relevant representation raised by Stanfords on behalf of J A Bunting and Sons please see the Deadline 7 responses to ExQ3.5.10 and ExQ3.5.13. in 9.73 Applicant's Comments on Others' Responses to ExQ3 [Applicant Reference TR010060/EXAM/9.73]</p>
6.2	ExA	<p>The ExA asked the Applicant to explain why the Applicant prefers to take borrow pit land on a freehold basis rather than via leasehold with obligations regarding environmental mitigation.</p>	<p>Richard Guyatt for the Applicant explained the distinction between the National Farmers Union (NFU)'s proposal for a lease of mitigation land and agreeing to a lease for extracting material from a borrow pit.</p> <p>The Applicant agreed to provide a further representation at Deadline 7 explaining again the reasons why a leasehold arrangement for environmental mitigation is not an appropriate mechanism.</p> <p>The Applicant's position on borrow pits is that there is permanent alteration of the condition of the land. Any lease would need to be on appropriate terms with that permanent alteration being given accepted by the freehold owner. The lease would only be acceptable to the Applicant if there was no obligation requiring the Applicant to restore the levels of the land in which the borrow pit is located to the level prior to the commencement of extraction. The Applicant could not make such an alteration to the condition of the land under temporary powers contained in Article 40 of the draft DCO because of the provision in that Article</p>

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			<p>for land to be restored to its previous condition prior to hand back to the owner. The Applicant is therefore seeking permanent freehold powers in the Order to ensure it is able to extract materials and to then not have to restore the land to its previous condition. The Applicant will take on the permanent ownership and management of the land by the freehold acquisition power and will pay compensation for the freehold acquisition.</p> <p>The Applicant could agree to a lease for the borrow pits if the landowner was willing to (a) accept back the land in its altered condition and (b) accept responsibility for the condition of the land. This is in part possible because the Applicant has put forward its Environmental Management Plan and REAC [REP6-052] without proposals to create permanent arrangements for essential mitigation in the borrow pit areas. The Applicant will not have an ongoing need to provide, maintain and monitor essential mitigation in the borrow pit areas therefore. If the current freehold owner is willing to accept, by way of agreement a permanent alteration of the land, it is possible for the Applicant to take such a lease, extract materials and then return the altered land to the freehold owner, without giving rise to the concern that the Applicant will not be able to comply with ongoing obligations created by the requirements in Schedule 2 of the Order including those ongoing obligations in the Applicant's Environmental Management Plan or REAC.</p>

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			<p>In contrast, for essential mitigation land, permanent freehold acquisition is the required method of acquisition for the Applicant as it knows it will be able to provide the essential mitigation and then continue to comply with the obligations imposed by the Order for that essential mitigation. The Applicant then can ensure the obligations (including potential criminal sanctions for a breach) can be complied with.</p> <p>Whilst the ExA suggested that appropriate legal covenants could be secured from the relevant owner, the Applicant submits that this is not something the Applicant can be certain of, and the risk to the Applicant of seeking such an arrangement are too high, as is the burden on the Applicant.</p> <p>These risks and burdens include:</p> <ol style="list-style-type: none"> a. The risk of non-compliance, which may be exacerbated by enforcement not proving possible (for instance due to incapacity of the defaulting party). b. The defaulting party may not have the expertise or wherewithal to comply with the requirements imposed on the land. c. Reputational risk to the Applicant of a breach, particularly if followed up by a prosecution. d. Delay due to arguments as to whether a breach has occurred and the relative liabilities of the parties. This

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			<p>could also lead to increased environmental harm due to the delay in resolving harm caused by the breach.</p> <p>e. Increased and ongoing compensation burden for the Applicant – a freehold acquisition will give a clear and finite position on compensation or consideration due, whereas the resolution of an agreed position for ongoing costs of compliance with the relevant requirements is likely to be contentious and time consuming. The burden could be expensive and unquantifiable. The Applicant would not want to be subject to an unquantified and uncapped financial commitment and it is unlikely landowners would be willing to accept the liabilities that could come with compliance without some form of underwriting the Applicant.</p> <p>f. It is likely the Applicant would have to pay the legal, surveying and environmental experts' costs of each of the parties involved which could add significantly to the scheme budget. The agreements that would be required are likely to be complex and require lengthy negotiations.</p> <p>Ultimately, the Applicant must demonstrate to the Secretary of State that it can deliver the required essential mitigation and where that mitigation is to be maintained and monitored the Applicant should show to the Secretary of State that it will be able to meet those ongoing obligations.</p>

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			<p>The clearest way the Applicant can show it is able to do so is by it taking the freehold of the essential mitigation land, whether by agreement or compulsion, and then retaining that land so that it can provide and maintain the obligation unfettered by the requirements of a landlord or having to hand the land back in a condition specified by a contract. If a breach occurs, it is the Applicant that can be enforced against which also makes it more certain that the mitigation will be provided and maintained.</p> <p>The Applicant does not propose for anyone else to be required take on any of its liabilities for mitigation obligations which could be both long term and substantial. From the Applicant's perspective, enforceability of any contractual obligations will take time, or even might not be possible if the defaulting party is absent or suffering from incapacity. This presents a significant potential risk for the Applicant, particularly if an environmental issue requires a timely resolution.</p> <p>There is a significant gulf between the concept that mitigation land need not be subject to freehold acquisition and the likely practical results of such a policy. There will not be a "one size fits all" approach to agreements. Each landowner will require different financial arrangements and have a different appetite for risk, as well as a different ability level of expertise and wherewithal to provide for the relevant mitigation. The nature of the essential mitigation will vary from location to location. The</p>

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			number of bespoke arrangements would be significant. Such variation would impose a significant resource burden on enforcing authorities and on the Applicant's own resources for policing compliance, compared by the clarity provided by the Applicant being the burdened party under the Order and the freehold owner.
7.		Affected Person's Site Specific Representations	
7.1		Affected Person's Site Specific Representations A number of Affected Persons as listed below made oral representations at CAH2. They and other APs may wish to make a further representation in addition to any submissions that are already in the Examination. Whether or not an oral representation is made at this CAH3, an Affected Person can	

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		continue to provide written submissions at relevant Deadlines.	
7.1.1	<i>Henry Robert Siggers (and Parker Strategic Land)</i>	<p>Will Thomas on behalf of Henry Robert Siggers (and Parker Strategic Land) raised that its objection remains consistent with those made at ISH3 and CAH2.</p> <p>There has been some progress in negotiation with the Applicant, however agreement on the Heads of Terms has still not been achieved and that the objections will remain until such time as those terms are finalised and that any delays should be considered at the fault of the Applicant.</p> <p>Although this land was not included on the Braintree local plan, Henry Robert Siggers (and Parker Strategic Land) will continue its efforts to develop the site.</p>	<p>Simon Peart for the VOA explained that Heads of Terms were issued to Henry Robert Siggers (and Parker Strategic Land) on 26 April 2023. These terms have been discussed and reviewed and the Applicant is expecting to receive comments imminently.</p> <p>The Heads of Terms were sent to the agent acting on behalf of the landowner (Freddie Botfield, Whirlledge and Nott) on 26 April 2023, email confirmation can be provided. Further meetings have taken place with the Freddie Botfield on 7 June 2023 and 22 June 2023 where this landowner was discussed and it was confirmed a response to the Heads of Terms will be provided. The Applicant, therefore, cannot accept any blame with regards to delay.</p> <p>The Applicant has actively held meetings specifically with Parker Strategic Land since we became aware of their interest through the relevant representation submitted and confirmation of their promotion agreement provided on 24.01.23. Meetings have been held on 24.02.23, 24.03.23, 28.03.23, 20.04.23, 19.05.23 and 30.06.23 to further discuss the borrow pit and reinstatement.</p>

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7.1.2	<i>Bolton Family and Hammond Estates (and Gearston Limited)</i>	<p>Andrew Piatt on behalf of Bolton Family and Hammond Estates (and Gearston Limited) summarised that its objection remains on the basis that:</p> <ol style="list-style-type: none"> 1. The level of engagement from the Applicant does not meet that required by the test in paragraph 25 of the Compulsory Acquisition Guidelines. 2. The amount of land being acquired and the title of that land is excessive and not required, therefore making it excessive and not proportionate. 3. As per its previous representations, the Applicant has not made the compelling case required by the test in paragraph 25 of the Compulsory Acquisition Guidelines. <p>Andrew Piatt on behalf of Bolton Family and Hammond Estates (and</p>	<p>Nick Dexter on behalf of the Applicant explained that the negotiations have focused on reducing permanent land take to permanent rights by agreement. A new rights plan has been updated further showing areas where it would be possible, by agreement, to only take permanent rights. It is not possible to do this relying on powers in the Order as there would be permanent works giving rise to material permanent changes to the condition of the land. The grant of access rights to additional parties is also required. Freehold acquisition is therefore necessary to ensure these works and grants of rights can take place, unless and until the current owner has agreed to permit the required works and new rights in the relevant land.</p> <p>The new rights plan has been substantially agreed. The Applicant's recent change application also removed areas of permanent land acquisition from the draft DCO powers.</p> <p>To date, the landowner has not been prepared to negotiate and agree terms for the permanent acquisition of the land as it still objects to the principle of acquisition of that land. Despite this objection, the Applicant remains confident that progress will be made on agreeing terms and this will continue post examination.</p> <p>Reuben Taylor KC on behalf of the Applicant reminded Mr Piatt that on the final point, regarding permanent powers being demonstrated as not being justified was incorrect. As the scheme required a permanent alteration of the condition of the land there</p>

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		<p>Gearston Limited) added further, that the Applicant's acceptance of a change in position from needing freehold powers to accepting rights can be secured by agreement shows that the need to justify the extent of powers has not been met.</p>	<p>was need for agreement, or powers of freehold acquisition, as taking temporary powers and new rights would not allow the Applicant to secure the permanent alteration to the condition of the land or the grant of rights by the Applicant to other parties.</p>
7.1.3	<p><i>ExA and Royal London and Edmundson Electrical Limited</i></p>	<p>The ExA asked for an update as to the status of the meeting requested between the Applicant, Cadent Gas and Royal London and Edmundson Electrical Limited</p> <p>Nicole Kingsley, on behalf of Royal London and Edmundson Electrical Limited reiterated the need for a meeting with Cadent Gas as it will be carrying out the works on the land. The level of information of those works is still insufficient and makes it difficult to ascertain whether or not it is capable of being used for the purposes for which land</p>	<p>Andrew Goodwin on behalf of the Applicant explained that it has sent information, as part of its Deadline 6 submission, secured directly from Cadent Gas Limited regarding options for alternative access to the Above Ground Installation (AGI). Access through Cadent's AGI is not possible due to concerns around operational and health and safety risks. Access through the bund to the north has not been possible as it would only be possible via voluntary agreement with a third-party landowner.</p> <p>Heads of Terms are progressing that take into account parking and other access constraints, for an access licence on a non-exclusive basis through the Edmundson operational site.</p> <p>The Applicant is in the process of setting up a meeting between Cadent and Edmundson direct to work through any issues regarding the practical operation of the access over Edmundson's car park. The Applicant is also instructing the</p>

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		<p>sought. For these reasons, a meeting is requested before the end of the examination period.</p> <p>Nicole Kingsley, on behalf of Royal London and Edmundson Electrical Limited also raised that they have been provided with a draft Heads of Terms and that their response has been sent to the Applicant on the date of CAH3 (27 June 2023). Despite the progress on those terms, there remains a concern that there is not much time left in the examination period to resolve these issues and that there are no protective provisions in the draft DCO Royal London and Edmundson Electrical Limited. This remains so, despite proposing additional measures such as additional management works, including traffic management, which only relates to the A12 works and does not relate to the A12 and not the diversions. Until these matters</p>	<p>Valuation Office Agency to work through any disturbance / compensation matters.</p> <p>Reuben Taylor KC on behalf of the Applicant explained that the discussions to resolve the practical issues of how the licence would operate will continue.</p>

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		are addressed, Royal London and Edmundson Electrical Limited will maintain all objections, which will be followed with written updated at Deadlines 7 & 8.	
7.1.4	<i>Mary Lindsay and John Chilcott Lindsay</i>	<p>John Chilcott Lindsay on behalf of himself and Mary Lindsay reiterated their existing concerns as to whether the hedge at the front of their property, along the B1023, would be retained; whether further detail would be provided with regard to the haul road, mitigations for dust, light pollution and other environmental matters. Mr and Mrs Lindsay would also like to retain any discretion to sell their property, should they be unable to remain, particularly as they believe they are also suffering injurious affection.</p> <p>Mr Lindsay asserts that the Applicant has not explained the above mitigations, responded to the</p>	<p>Reuben Taylor KC explained that the Applicant has previously set out its position on these matters while any new matters raised will be provided by response in writing.</p> <p>Andrew Goodwin on behalf of the Applicant explained that is currently difficult to make any further commitment to retaining the hedgerow as the HM Land Registry plans indicate that part is highway while the remainder belongs to the Lindsays. Whilst that part within the highway land doesn't appear to be affected by works, until the detailed design is completed it is not possible to guarantee that works, or maintenance, will not be required within the highway land. The Applicant will however make all reasonable endeavours to avoid the hedge. This cannot be resolved until the Scheme's detailed design stage.</p> <p>Andrew Goodwin also explained that detail regarding the haul road was provided and explained that at previous deadlines, including updates of management plans specifically relating to</p>

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		<p>Lindsays' concerns regarding the hedge or provided an explanation regarding the alignment of the scheme blighting a domestic property to save a commercial property.</p>	<p>works in the vicinity of the Interested Party's property have been provided including:</p> <ul style="list-style-type: none"> • Outline Construction Traffic Management Plan [REP6-054], • Construction Phase Plans [REP6-035], • Construction Compound Management Plan [REP4-025] and • Haul Road Management Plan [REP4-061] <p>As well as further commitments relating to a Construction Phase Communications Plan (GN4) Haul Road management Plan (GN5) in the REAC [REP6-052].</p> <p>Reuben Taylor KC, on behalf of the Applicant, agreed that in the Applicants Deadline 7 response will include references to the updated documents and that the Applicant will also review and assess whether any additional measures can be applied, although there is no guarantee of further changes, as that is a review the Applicant has previously considered this previously.</p> <p>While the proposed Scheme has been designed to limit impacts on communities as far as practicable, the Applicant does acknowledge there will unfortunately be some disruption and impacts during the construction of the proposed scheme. This is due to the proximity of the works to the Interested Party, and in particular the widening of Park Bridge (Work No. 45f on Sheet 14</p>

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			<p>of the Permanent Works Plans [REP6-004]), the nearby location of the Park Bridge Laydown Area shown on the Construction Phase Plans [REP6-035] and the haul road (Work No. T45 shown on Sheet 14 of the Works Plans Temporary Works [REP6-006].</p> <p>However, the Applicant will seek to reduce these impacts as far as reasonably practicable by, for instance, carrying out the majority of the works during the day, or, where traffic management is required, at weekends and during evenings, and by minimising noise, dust and light pollution and screening haul roads. In addition, good communication with the Interested Party will be a priority for the Applicant. A summary of mitigation measures is detailed below.</p> <p>This will include giving advanced notice of works and regular contact with a dedicated Community Liaison Manager who will be available to take any concerns that may arise during construction to the site team to find satisfactory solutions, as reasonably practicable. The detailed measures proposed will be developed in the Second Iteration of the Environment Management Plan and the Construction Traffic Management Plan. These documents will be based upon the First Iteration Environmental Management Plan [REP4-022] and the Outline Construction Traffic Management Plan (OCTMP) [REP6-055] respectively.</p>

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			<p><u>Hedgerow</u> Previously the Applicant responded to Relevant Representations RR-103-008 [REP1-002] stating the Applicant will endeavour to avoid any interference with the hedgerow as it offers visual screening to the property. From an engineering perspective, it appears unlikely that the hedge would need to be disturbed as there are no drainage or utility works proposed on this side of the carriageway at this location. The detailed design has now developed sufficiently enough to confirm the hedgerow would be retained, subject to any routine maintenance that may need to be carried out to trim the hedge for visibility or other maintenance reasons on the highway side.</p> <p><u>Haul Roads</u> The haul road to the south of the Interested Party's property would be used by road going vehicles (not site going Articulated Dumper Trucks) and construction traffic would access this from the B1023 from either direction. Access would either be managed by a traffic light system, with priority to road traffic, or with traffic marshals. The Applicant believes that the haul road would have minimal impact on the congestion on the B1023 as the majority of traffic in both directions off the public highway would be left turn in only.</p>

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			<p>While these haul roads shown as Works No. T39 and T45 on sheet 14 of the Temporary Works Plans [REP6-006] are in close proximity to the Interested Party's property, measures would be implemented to mitigate the effect of this as far as practicable these measures are set out in section 1.4 -1.8 of the Haul Road Management Plan [REP4-061].</p> <p>The below extract is taken from section 5.3 of the Outline Construction Traffic Management Plan (OCTMP) [REP6-055], which details how the road access from the haul road to the B1023 will be managed to mitigate dust, dirt, and debris issues.</p> <p>5.3.1 Where construction traffic will join the Strategic Road Network or Local Road Network, the Principal Contractor will ensure that the road surface has regular cleaning maintenance. Procedures will be developed to ensure that roads are inspected and that measures are in place to allow a rapid response to any reported mud/debris on the carriageway. Measures may include the following:</p> <ul style="list-style-type: none"> • Wheel washes at key egress points; • High pressure jet-vac sweepers; • Jet washes at appropriate egress points; • Manned attendance at appropriate egress points or plant crossings of public carriageways; and

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			<ul style="list-style-type: none"> • Surfacing of approaches to egress points/plant crossings to allow vehicles to shed mud ahead of the public highway and to enable sweepers to keep the approach clean. <p><u>Laydown</u> The laydown area is for the structural components for the widening of Park Bridge which is in close proximity to the laydown area. The location of the laydown area is adjacent to the proposed position of the crane that would lift the structural components into place. It is therefore not possible to move the laydown area from its current proposed position. When the detailed design of the laydown is developed, several considerations will be made including the positioning of topsoil bunds, cabins and low-level lighting to maximise the screening of the compound and minimise noise and light pollution.</p> <p>The laydown area would generally be used during normal day time working hours. Occasionally, limited night-time work is anticipated for activities associated with installing the bridge beams and parapets to Park Bridge, and installation of traffic management on the B1023. At certain times 24/7 security may be present at the laydown area.</p>

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			<p>The Applicant has added more information in the First Iteration Environmental Management Plan Appendix C: Construction Compound Management Plan [REP4-025] at Deadline 4 which includes a standard layout of a laydown area as they would typically be planned on the proposed scheme, this is to give the interested party a visual aid of the mitigation measures that would be implemented at the Park Bridge Laydown. This typical layout can be found in section C.4.1.</p> <p><u>Noise</u> Prior to construction, a framework will be drawn up to determine if residents of any properties meet the criteria for noise insulation or temporary re-housing. This is commitment NV1 within the Register of Environmental Actions and Commitments that is contained within Appendix A of the First Iteration Environmental Management Plan [REP4-023]. However, the use of noise insulation or temporary re-housing would be a last resort, with measures first considered to reduce the noise at source. Possible measures to reduce the noise are the use of alternative methods of piling to vibratory and hammer piling and undertaking the noisiest works at the start of the night shift. The existing concrete road surface on the A12 Kelvedon bypass is proposed to be resurfaced with a low noise surface. It should be noted that this is planned to be a conventional low noise surface and not the surface with enhanced noise reducing</p>

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			<p>properties. The predicted reduction in noise between traffic travelling over a concrete surface to a low noise surface is 7 dB(A). A conventional low noise surface is deemed 'embedded mitigation' (paragraph 12.10.10 in Chapter 12: Noise and vibration, of the Environmental Statement [APP-079]) and not 'additional mitigation' (paragraph 12.10.16). This is why the area around Kelvedon is not indicated with a red line on Figure 12.4 of the Environmental Statement [APP-231], as this figure only shows the additional mitigation.</p> <p><u>Discretionary Purchase</u></p> <p>The Applicant met with the Interested Party on 15 March 2023 including with the National Highways lands team to explain the discretionary purchase process and to exchange contact details should the Interested Party have any questions or issues with the process in the future.</p> <p>When selling to National Highways under discretionary purchase the owner / occupier normally pays their own surveyor's costs, legal fees and moving expenses. However, where the application is accepted under: Section 246 (offline property) on the grounds that the owner, or a dependant living with the owner has a pre-existing medical condition that will be severely aggravated by the physical effects of the scheme, National Highways would reimburse reasonable surveyor's costs, legal fees and a</p>

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			<p>disturbance payment in line with entitlements under the Compensation Code.</p> <p>Parliament has given National Highways the ability to purchase properties that are outside of the Order Limits (offline) under Section 246 of the Highways Act 1980 where the owners have a pressing need to sell their property and are unable to do so except at a significantly reduced price as a result of a proposed road scheme. When selling to National Highways under discretionary purchase the owner / occupier normally pays their own surveyor's costs, legal fees and moving expenses.</p> <p>The legislation set out in Section 246 of the Highway Act 1980 is applied to all National Highways road schemes in England. It is imperative that there is a consistent approach to the policy being applied across the country. The completion of a discretionary purchase application form is relatively straightforward and can be completed by the Interested Party without the need for specialist advice. It's only if / when the application is accepted by National Highways that specialist advice would be required to value the property and submit a claim.</p> <p>It is the view of the Applicant that further detail has been provided and a number of further commitments made. National Highways has confirmed that it will be able to retain the hedge,</p>

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			subject to any maintenance activities. At this stage of the process there are no further reasonable commitments that could be made.
7.1.5	<i>Church Manor Estates and Gershwin Park Developments</i>	<p>Matt Cloak on behalf of Church Manor Estates raised that Church Manor Estates has a legal interest in Gershwin Part Witham as it enjoys the benefit of a development agreement and has committed to providing a written representation confirming that it has standing as an affected person.</p> <p>Church Manor Estates interest relates to two parcels of land affected by the scheme, Plot 1, North of A12, a parcel of land allocated in the local development plan for development and has granted planning permission. Concerns were raised in June 2021 regarding the impact of the</p>	<p>Simon Peart for the VOA explained that discussions are ongoing for a permanent land acquisition, however the landowner is yet to agree a value.</p> <p>As Gershwin Park Developments' will be impacted by temporary occupation, it is for Mr Lukies, as their agent, to quantify what that loss will be. The VOA understands this land to be undeveloped, rough land and requires the objector to provide evidence of loss. Without such evidence it is difficult to assess the anticipated loss incurred as a result of the possession of the land for the period that required by the Applicant.</p> <p>The area of permanent acquisition of parcel 7/14a shown on the Land Plans was reviewed by the Applicant following a request to do so by Church Manor Estates. The indicative plans provided by Church Manor Estates were analysed and overlaid onto the A12 works plans. To reduce the proposed permanent acquisition in this area would require a substantial extension of the proposed retaining wall and would have had other consequential impacts</p>

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		<p>development, particularly as the scheme takes up nearly 0.4 of a hectare of development land. There has been no justification from the Applicant as to why land is required. The Applicant had promised to look at realignment during the pre-examination stage, however no information was forthcoming. Church Manor Estates sees no technical reason why designs cannot be adjusted to mitigate these effects while it does not believe any estimate has been made to assess whether the current layout is best value to the taxpayer.</p> <p>For these reasons, Church Manor Estates maintains its objection but remains confident that resolution could be achieved by proper engagement from the Applicant, particularly in assessing whether it would be better value to mitigate by adjusting the designs.</p>	<p>on highway geometry and other proposed highway assets. Following careful consideration, it was determined the scheme as currently proposed is the appropriate design and it is not practicable to reduce the land take in this area.</p>

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		<p>Oliver Lukies on behalf of Gershwin Park Developments raised that the representation was made at RR-080 and there was an understanding that it would be carried forward into the examination stage. Oliver Lukies has agreed to review and provide a written representation detailing previous representations submitted to date as the ExA could only identify RR0808 and REP-6080.</p> <p>Matt Cloak on behalf of Church Manor Estates agreed that Church Manor Estates will make a submission at Deadline 7 providing land reference numbers, reference to the relevant provision in the Braintree local plan and likely costs for replanning that parcel taking in to account the injurious affection.</p>	
7.1.6	<i>Buchanan Family</i>	Oliver Lukies on behalf of Gershwin Park Developments requested plans regarding the Cadent Gas main	Andrew Goodwin on behalf of Applicant explained that technical discussions with Cadent are progressing well and are now at an advanced stage. Cadent have been informed of the constraints

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		pipeline and whether any information will be forthcoming.	<p>on plots 8/43b and 8/43c shown on the Land Plans and are considering these with the detailed design to minimise the impact on the land to be retained by the Buchannan Family.</p> <p>The Applicant agreed to share any further information as soon as it is available and ready for sharing.</p>
7.1.7	<i>Ian Mahoney</i>	<p>Ian Mahoney asked whether there is any way the Applicant can expedite the utilities team's actions which will impact on the location of storage of items by Mr Mahoney. This is raised as a point of frustration as it has held up progress despite other positive meetings with the VOA.</p>	<p>Andy Goodwin on behalf of the Applicant has agreed that the Applicant provide a written response regarding the storage of items and delays regarding utility issues by Deadline 7.</p> <p>The Applicant is pursuing two issues relating to utilities and the interested party's land and aim to be able to respond shortly to the first, however the second will require further time to resolve.</p> <ol style="list-style-type: none"> 1. Greater detail relating to the duration of the temporary utilities diversion over the temporary footbridge. <p>The Applicant's construction team are due to meet with Mr Mahoney again on 5 July 2023 and will provide further updates on the construction programme.</p> <ol style="list-style-type: none"> 2. Opportunity to remove the existing UKPN and National Highways electricity apparatus from in front of the property, and to consider whether there may be an option for disposal of this National Highways land.

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			The Applicant's construction team have engaged UKPN on the second point and are looking to design the scheme to enable this.
7.1.8	<i>ExA</i>	The ExA noted that there are only two weeks left in the examination period and that the ExA will only consider submissions made by 12 July 2023. Any submissions made after that date will not be considered within the ExA's report to the Secretary of State so any further information provided would be greatly appreciated. The Secretary of State will still have sight of any agreements made thereafter.	Reuben Taylor KC on behalf of the Applicant agreed this point was noted by the Applicant.