

M60/M62/M66 Simister Island Interchange

TR010064

7.25 APPLICANT'S RESPONSES TO ACTION POINTS FROM THE CAH1 AND ISH2 – FOR DEADLINE 5

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Procedure) Regulations 2009**

M60/M62/M66 Simister Island Interchange
Development Consent Order 202[]

**APPLICANT'S RESPONSES TO ACTION POINTS FROM THE CAH1 AND
ISH2 – FOR DEADLINE 5**

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1. Introduction

- 1.1.1. This document has been prepared to record the Applicant's written responses to the Compulsory Acquisition Hearing (CAH1) held on 26 November 2024 and the Issue Specific Hearing 2 on environmental matters (ISH2) held on 27 and 28 November 2024.
- 1.1.2. This document is in addition to the Applicant's Responses to Action Points from the CAH1 and ISH2 [REP4-028] submitted to the Examining Authority for Deadline 4 on the 10 December 2024. This document provided the written responses to the CAH1 Action Points [EV9-002] and ISH2 Action Points [EV10-002] that were required for deadline 4.
- 1.1.3. There were a number of the CAH1 Action Points [EV9-002] and ISH2 Action Points [EV10-002] that required a response to be provided for the Examining Authority for Deadline 5, or where the Applicant advised that a response will be provided for Deadline 5. This document provides the full written submissions for these remaining actions.
- 1.1.4. The Applicant notes that member of the public attended the CAH1 and ISH2 and made oral representations. Subsequent to this a number of written submissions were made at Deadline 5. The Applicant has reviewed the written submission and has provided response to these in Applicant's Responses to Deadline 4 Submissions (TR010064/APP/7.26) which is to be submitted at Deadline 5.

1.2. Compulsory Acquisition Hearing (CAH1)

- 1.2.1. The CAH1 Action Points [EV9-002] were published on the 26 November. The Applicant's Responses to Action Points from the CAH1 and ISH2 [REP4-028] submitted to the Examining Authority for Deadline 4 provided in Annex A the written responses to the CAH1 Action Points [EV9-002] that were required for deadline 4. Annex A of this document provides the written responses to the remaining CAH1 Action Points scheduled for a response for Deadline 5.

1.3. Issue Specific Hearing 2 (ISH2)

- 1.3.1. The ISH2 Action Points [EV10-002] were published on the 26 November. The Applicant's Responses to Action Points from the CAH1 and ISH2 [REP4-028] submitted to the Examining Authority for Deadline 4 provided in Annex B the written responses to the ISH2 Action Points [EV10-002] that were required for deadline 4. Annex B of this document provides the written responses to the remaining ISH2 Action Points scheduled for a response for Deadline 5.
- 1.3.2. The Applicant notes that the Hilary Family attended ISH2 and made a written submission [REP4-031]. The Applicant has reviewed the written submission and has provided response to these in Applicant's Responses to Deadline 4 Submissions (TR010064/APP/7.26) which is to be submitted at Deadline 5.

Annex A: Applicant Responses to Action Points raised at Compulsory Acquisition Hearing CAH1 held on 26 November 2024 – for Deadline 5

Action	Description	Action by	When	Response from Interested Parties	Applicant Response at Deadline 5
CAH1-6	Consider whether provision could be added to the draft Development Consent Order (dDCO) to more precisely restrict the time limit required to temporarily possess gardens located adjacent to the M60 to the minimum time necessary.	Applicant	D5	N/A	<p>The Applicant understands that the ExA is referring to Plots 1/10, 1/11, 1/12, 1/13, 1/14a, 1/14b, 1/14c and 1/15 as shown shaded green on Sheet 1 of the Land Plans [REP3-004], which are identified as forming part of the gardens to properties on Barnard Avenue.</p> <p>It should be noted that the gardens to the affected properties are large and only a very small area at the bottom of each garden is proposed to be used. The impact on residents and on their use and enjoyment of their gardens is therefore likely to be minimal.</p> <p>The Applicant confirms that the form of temporary possession powers and the duration for which temporary possession can be taken as set out in Article 30 of the draft Development Consent Order [REP3-006] are consistent with other made development consent orders. Given the minimal impact on residents, the Applicant does not therefore consider it appropriate or necessary to differentiate or restrict the temporary possession of these plots in any way. To do so would be to depart from precedent and to unnecessarily restrict the Applicant's ability to use the strip of land for construction of the Scheme.</p> <p>The Applicant will however endeavour to limit the duration of temporary possession of the gardens to the minimum time necessary to undertake the Scheme. A new commitment G10 to this effect is proposed to be inserted into the Register of Environmental Actions and Commitments in the First Iteration Environmental Management Plan [REP3-014] submitted at Deadline 5 of the Examination</p>
CAH1-7	Consider whether provision could be added to the dDCO to more precisely restrict the time limit required to temporarily possess Plots 1/5aq and 1/5as to the minimum time necessary.	Applicant	D5	N/A	<p>The Applicant confirms that Plots 1/5aq and 1/5 (as shown shaded green on the Land Plans [REP3-004]) comprise public highway, verge and footway at Warwick Close. The whole of Warwick Close is subject to temporary possession powers for utilities diversions but Plots 1/5aq and 1/5as are also required to provide a working area for widening the carriageway of the M60 and installing gantries. The form of temporary possession powers and the duration for which temporary possession can be taken as set out in Article 30 of the draft Development Consent Order [REP3-006] are consistent with other made development consent orders. The Applicant does not therefore consider it appropriate or necessary to differentiate or restrict the temporary possession of these plots in any way.</p> <p>It should further be noted however that, as Warwick Close is a public highway, the ability of the Applicant to use Plots 1/5aq and 1/5as as a working area is also subject to the provisions of Article 14 of the draft Development Consent Order [REP3-006]. Article 14 provides that the Applicant may only temporarily close a street and use that closed street as a temporary working site with the consent of the street authority, Bury Metropolitan Borough Council may attach reasonable conditions to that consent including in respect of the duration of the closure. In addition, it should be noted that Article 14(3) requires access for pedestrians going to and from premises on the closed street to be maintained throughout the closure.</p>
CAH1-13	Review the scope of the wording in Article 30(9)(a) and the plots listed in Schedule 7 of the dDCO as to whether all plots require the option of acquiring new rights that would be granted under Article 30(9)(a)	Applicant	D5	N/A	<p>The Applicant has reviewed the plots in Schedule 7 of the draft Development Consent Order [REP3-006] and confirms that permanent rights are expected to be required over all of the plots. The new rights proposed to be acquired over the temporary possession plots are however expected to be consistent with the purposes for which temporary possession of the land can be taken as set out in column (2) of the table in Schedule 7. For example:</p> <ul style="list-style-type: none"> • Plots which are stated to be required for utilities diversions or drainage in column (2) of the table in Schedule 7 – permanent new rights are required for the new utility apparatus or drainage apparatus. • Plots which are stated to be required for new gantries in column (2) of the table in Schedule 7 – permanent new rights are required for a power supply to those gantries. • Plots which are stated to be required to provide a working area or construction compound in column (2) of the table in Schedule 7 – permanent new rights are required to provide services to those working areas or construction compounds (electricity and water primarily).

Action	Description	Action by	When	Response from Interested Parties	Applicant Response at Deadline 5
					<ul style="list-style-type: none"> Plots which are stated to be required to provide environmental mitigation in column (2) of the table in Schedule 7 – permanent new rights are required for access to enable the mitigation to be retained, managed and maintained. <p>It may be that as the detailed design of the Scheme is developed, the need for other new rights might be identified. An example of this would be in respect of unknown situations such as where unknown existing drainage infrastructure is identified or the need for new drainage infrastructure is identified and needs to be provided as part of the Scheme. The Applicant needs the flexibility to respond to such situations if they arise. The ability to acquire the new rights in such situations will benefit the Applicant but also the landowner subject to the acquisition of the rights (it is better for that landowner to have the certainty of properly documented rights to protect such infrastructure) or the person who is taking the benefit of the rights (to avoid disputes with the landowner in future).</p>
CAH1-14	Provide further justification for Article 30(9)(a) in light of the Secretary of State's decisions in respect of similar provisions proposed in articles on both the made 'M3 Junction 9 Development Consent Order 2024' and 'The A1 Birtley to Coal House Development Consent Order 2021'.	Applicant	D5	N/A	<p>Further justification for article 30(9)(a) of the draft Development Consent Order [REP3-006] is provided in the Applicant's response to DCO.2.3 of the ExA's Second Written Questions [TR010064/APP/7.27] and in the Applicant's response to CAH1 Action Point 14 above.</p> <p>The Applicant notes that in its decision the Secretary of State made the following points in respect of similar provisions:</p> <ul style="list-style-type: none"> Whether the lack of detail about the new rights can allow a judgement to be made on whether there is a compelling case in the public interest for authorising the compulsory acquisition of the new rights because the burden of the right on the landowner and other persons with an interest in the land cannot be understood. (M3 Junction 9 DCO) Whether the use of the power could result in the creation of new undefined rights over land in circumstances where it is not clear that the affected landowners or occupiers have been consulted by the Applicant so that they would have been aware that something other than temporary possession could occur on their land. (A1 Birtley to Coal House DCO) <p>In respect of the first point, the nature of the rights which could be acquired over the temporary possession land will be limited in that they must be for the Scheme and will further be consistent and align with the purposes for which temporary possession of the land can be taken. The burden on affected landowners is therefore limited. The Applicant further considers that it is possible for landowners to understand the impact of article 30(9)(a) on them. For example, any landowner affected by temporary possession for utility diversion works, for example, would be aware that utilities diverted through their land for the Scheme would mean that such utility apparatus would be retained thereafter. In addition, any landowner affected by temporary possession could request further clarity about the nature and implications of the proposed power should they wish to do so in the same way that any landowner affected by the acquisition of new rights over the blue plots could. The Applicant is therefore satisfied that there is a compelling case in the public interest for authorising the compulsory acquisition of the new rights.</p> <p>In respect of the second point, article 30(9)(a) has always been in the draft Development Consent Order [REP3-006] and any landowner affected by temporary possession powers would have had sight of the provision. Any affected landowner would also be aware of the provisions relating to restoration of the temporary possession land in article 30(4) which provides that, when restoring the temporary possession land and handing it back to the landowner, the Applicant is not required to, for instance, remove any permanent works have been constructed under article 30(1)(d), remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development or remove or reposition any apparatus belonging to statutory undertakers or necessary mitigation works. This means that landowners know that permanent features could be retained on their land after the temporary possession period ends. It is in the interests of both the Applicant and the affected landowner that the retention of such permanent features on the land be properly documented. The documenting of them also gives the affected landowners a clear route to securing compensation in respect of the same. The Applicant therefore considers that affected landowners are aware of the potential impacts on them, have been consulted and have had adequate opportunity to comment on the proposal to acquire new rights over their land.</p>

Action	Description	Action by	When	Response from Interested Parties	Applicant Response at Deadline 5
					<p>The Applicant further does not consider that the power in article 30(9)(a) could be used to create undefined rights over land. As indicated above, the rights would be limited to those required to deliver the Scheme and would align with the purposes for which temporary possession of the land has been taken. If, however, the ExA considers that further drafting is necessary to record the limited nature of the rights that may be created, then the Applicant has no objection to the same.</p>

Annex B: Applicant Responses to Action Points raised at Issue Specific Hearing on Environmental Matters ISH2 held on 27 and 28 November 2024

Action	Description	Action by	When	Response from Interested Parties	Applicant Response at Deadline 5
3	Provide an update to the cumulative assessment following submission of a scoping opinion in PfE JPA.1.1 site allocation and any other known developments.	Applicant	D5	N/A	The Applicant has updated the inter-project cumulative effects assessment (CEA) to take into account the Scoping Report that was submitted for the Northern Gateway JPA 1.1 allocation in October 2024, and any other known development that have come forward since the cut-off date for the inter-project CEA (31 October 2023). Updated versions of Chapter 15 Assessment of Cumulative Effects of the Environmental Statement [APP-054], Appendix 15.1 Inter-project Cumulative Effects of the Environmental Statement Appendices [APP-125], and Figure 15.1 Shortlisted Other Developments for Inter-project CEA of the Environmental Statement Figures [APP-075] have been submitted at Deadline 5 of the Examination.
11	Explain whether a document setting out the design principles can be produced to define the design principles that are to be incorporated into the detailed design, bringing together the different design objectives and mitigation measures set out across the application documents of the Scheme	Applicant	D5 -		The Applicant can confirm that a Design Principles Report will be submitted at Deadline 6 of the Examination.
23	Include detail of how the proposed dust mitigation measures for this Scheme would be successful in mitigating impacts from construction dust relating to stockpiles (and other dust issues related to site compounds). Include details of any examples where these measures have been used successfully on other projects.	Applicant	D5		<p>The Applicant notes paragraph 5.9.5 and 5.9.6 of Chapter 5 Air Quality of the Environmental Statement [APP-044], the Institute of Air Quality Management (IAQM) Guidance on the assessment of dust from demolition and construction has been used to develop the Outline Air Quality and Dust Management Plan [APP128] at Appendix A of the First Iteration Environmental Management Plan [REP4-024] using primarily the most stringent version of the IAQM mitigation (due to dust being considered high risk). The Applicant notes that the latest version of the IAQM guidance (2023) has been used to develop the Outline Air Quality and Dust Management Plan [APP-128]. The IAQM guidance and mitigation is based on the practical experience of the IAQM Working Group who updated the guidance. The Outline Air Quality and Dust Management Plan [APP-128] will be developed into the Air Quality and Dust Management Plan as part of the Second Iteration Environmental Management Plan for implementation during construction and secured by Requirement 4 of the draft Development Consent Order [REP3-006].</p> <p>During ISH2, the Applicant summarised how the mitigation measures set out in the Outline Air Quality and Dust Management Plan [APP-128] will be implemented to mitigate dust impacts arising from stockpiles of stored materials. Specific reference was made to the north-west quadrant (main site compound area) and properties on Marston Close. The Applicant and Principal Contractor will implement the following measures:</p> <ul style="list-style-type: none"> Plan the site layout to locate material stockpiles as far as reasonably practical from receptors e.g. Marston Close. The Applicant notes that it is more efficient to store materials as close as possible to the point of use and so storage areas will, where practicable, be located close to new and existing road infrastructure. In the example of the temporary working area in the north-west quadrant, the point of use being the furthest point away from Marston Close. This measure is covered under paragraph A.4.6 of the Outline Air Quality and Dust Management Plan [APP-128] (1st bullet). Materials that are intended to be stored for longer periods e.g. topsoil stripped from temporary working areas set aside for use during reinstatement of temporary working areas and final landscaping are typically stored in locations that bound the temporary working areas. Additional measures are taken for soils stored for longer periods such as dressing and seeding. This measure is covered under paragraph A.4.6 (6th bullet), see also 'Earthworks' section of Table A.1 of the Outline Air Quality and Dust Management Plan [APP-128]. The process of storing materials involves haulage activities. To minimise impacts from movement of bulk materials, it is best practice to construct suitable haulage routes. The

Action	Description	Action by	When	Response from Interested Parties	Applicant Response at Deadline 5
					<p>Applicant is proposing to create a number of temporary haul roads within the temporary working areas. A list of measures to limit dust emissions from the use of haul roads is listed in paragraph A4.9.</p> <ul style="list-style-type: none"> The access to/from the site compounds from the local highway will be constructed with a hard bound surface to ensure minimal track out of dust/debris. Parking areas at the site compounds will be constructed with a hard surface which will be regularly damped down with fixed or mobile sprinkler systems. This measure is covered under paragraph A.4.9 (6th and 7th bullets of the Outline Air Quality and Dust Management Plan [APP-128]). <p>The Applicant further confirms that dust mitigation measures will generally, but specifically associated with stockpiles, be implemented depending on a number of factors, such as the weather, fines/dust content of the materials being stored, and duration for which the material is to be stored.</p> <p>The Applicant and incumbent Principal Contractor has successfully implemented the measures described above on a number of recent schemes which are now completed, for example the A30 Chiverton to Carland Cross, A1 Birtley to Coal House, A19 Downhill Lane and A19 Testo's schemes. The Applicant and the principal contractors who deliver large road infrastructure schemes on their behalf are regularly recognised for their considerate approach to scheme delivery by external organisations such as the Considerate Constructors Scheme. The Principal Contractor will sign up to and adhere to the National Considerate Constructor's Scheme. This commitment is secured at ref G8 of the Register of Environmental Actions and Commitments within the First Iteration Environmental Management Plan [REP4-024].</p>
31	Provide a written submission of the evidence supplied orally during the hearing detailing the reasons why it is considered the location and scale of the environmental mitigation proposed to be implemented within plots 2/16b and 2/16d is not appropriate. Applicant to respond at D5.	The Hilary Family (represented by Mr Chris Stroud) and Applicant	D4 and D5	The Applicant notes the Hillary family response submitted at Deadline 4 [REP4-031].	The Applicant has provided a response at Deadline 5 in the Applicant's Response to Deadline 4 Submissions (TR010064/APP/7.26).
32	Provide a written submission of the evidence supplied orally during the hearing detailing the concerns regarding the use of plots 2/16b and 2/16d to provide landscaping/screening which is proposed to reduce significant visual effects at visual receptors (VP3, VP4, VP5 and VP7). Applicant to respond at D5.	The Hilary Family (represented by Mr Chris Stroud) and Applicant	D4 and D5	The Applicant notes the Hillary family response submitted at Deadline 4 [REP4-031].	The Applicant has provided a response at Deadline 5 in the Applicant's Response to Deadline 4 Submissions (TR010064/APP/7.26).
35	Consider if a new requirement should be added to the dDCO requiring the details of the final design for the netting to Pike Fold Golf Course to be approved by the SoS following consultation with BMBC to ensure that impacts of any netting would be minimised.	Applicant and BMBC	D5	N/A	<p>The Applicant notes that the relevant works description (Work No. 40) in Schedule 1 of the draft Development Consent Order [REP3-006] includes a maximum height restriction of 25 metres on the boundary between the highway and golf course. In addition, commitment B30 of the Register of Environmental Actions and Commitments within the First Iteration Environmental Management Plan [REP4-024] includes a list of measures which will be considered and where practicable applied to the design. The measures are:</p> <ul style="list-style-type: none"> Increasing the gauge of the twine to make it more detectable by echolocating bats and more visible to birds.

Action	Description	Action by	When	Response from Interested Parties	Applicant Response at Deadline 5
					<ul style="list-style-type: none"> Decreasing the size of the mesh to make it more detectable by echolocating bats and more visible to birds, or else, subject to consideration of the effect of wind, adding a fine mesh layer to the net. Provision of visual deterrents for birds such as flags along the top, and/or reflective strips across the mesh (but these would not be as effective in foggy conditions etc). Provision of a gap under the net to enable mammals (including larger species such as badger, foxes, deer) to pass underneath it without becoming trapped, or the net being a barrier to movement. If feasible, designing the net to be taut so bats and birds would be more likely to 'bounce off' of the net as opposed to becoming trapped in it. <p>The above measures are to be considered to prevent erection of ball stop netting from creating a barrier to movement or leading to mortality or injury to species of fauna.</p> <p>Schedule 2 of the draft Development Consent Order [REP3-006] includes Requirement 5 Landscaping, which states that the landscaping scheme must be in accordance with the mitigation measures set out in the Register of Environment Actions and Commitments (within the First Iteration Environmental Management Plan [REP4-024]) and the environmental masterplan. (Figure 2.3 Environmental Masterplan of the Environmental Statement Figures [APP-057]) To provide additional control to the extent and form of the ball netting, the Applicant has stipulated that the ball netting details must be included as part of the landscaping scheme to be approved by the Secretary of State following consultation with the relevant planning authority to discharge Requirement 5(3). The Applicant has included this change in the draft Development Consent Order [REP3-006] submitted at Deadline 5 of the Examination.</p>
51	Consider if a more precise restriction for limits of deviation for the proposed attenuation ponds needs to be added to the dDCO.	Applicant	D5	N/A	The Applicant has considered if there should be a more precise restriction for the limits of deviation for the proposed attenuation pond but concluded that it is not possible to do so. This is because pond location, shape and size are dictated through a combination of the hydraulic modelling of the drainage design, the location of the existing outfalls (watercourses or existing culverts) the volume of water expected to be retained, the permitted discharge rate, topography and presence of other infrastructure such as earthworks. These factors when taken together mean that the ponds are already constrained by reference to the current land take and limits of deviation.
52	Provide more detail to explain why Article 45(3) is required and clarify whether any other made DCO has included a similar provision to Article 45(3).	Applicant	D5	N/A	The Applicant confirms that Article 45(3) of the draft Development Consent Order [REP3-006] has been deleted and an updated draft Development Consent Order [REP3-006] submitted at Deadline 5 of the Examination.