



The Planning Inspectorate

Issue Specific Hearing 1 (ISH1)

Tuesday 26 September 2023

Supplementary Agenda Additional Questions

As set out in the Examination Timetable the Examining Authority (ExA) has decided to substitute the normal practice of early written questions with Hearings as the ExA believe that the Hearings and responses received to Deadlines 1, 1A, 2 and 2A will reduce the need for the ExA to ask a significant number of written questions.

Nevertheless, in preparation for this Hearing, the ExA has a number of questions which it considers require relatively straightforward responses, clarification and/ or the submission of additional information/ evidence. Rather than use the time at the Hearing to get this information the ExA has listed these questions in the table below and would ask that responses be submitted at **Deadline 3, Thursday 5 October 2023**. If anyone considers that the ExA need to explore these matters orally then, as detailed on the agenda, there will be the opportunity at the start of the Hearing to raise this with the ExA.

The questions below are based on the draft Development Consent Order (DCO) version 2.01 dated September 2023 [REP2-003]. Please note that the ExA is required to submit a draft Development Consent Order with its report to the Secretary of State regardless of its recommendation. Therefore, the questions and comments below are made on a without prejudice basis.

Number	Subject	Response by	Question/ Clarification
GENERAL			
ISH1.G.01	Drafting	Applicant	The preamble as drafted currently refers to a single appointed person. The application is being considered by a panel of Inspectors who form the Examining Authority. All references to single appointed person need to be replaced with the Examining Authority.
ISH1.G.02	Drafting	Applicant	Suggestion that the additional drafting in bold should be inserted: "The application was examined by the Examining Authority (appointed by the Secretary of State) pursuant to section 61 and section 65 of Part 6 of the 2008 Act

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			and carried out in accordance with Chapter 4 of the Act and with the Infrastructure Planning (Examination Procedure) Rules 2010.
ISH1.G.03	Clarification	Applicant	Paragraph 3 of the introductory preamble refers to section 83 of the 2008 Act which relates to the appointment of a single [appointed person] to examine and report on application should this be replaced with a reference to Section 74?
ISH1.G.04	Clarification	Applicant	Please check that the correct/ all sections of the 2008 Act are correctly listed in the following statement: “[The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120 and 122 of the 2008 Act, makes the following Order -]”
ARTICLES			
ISH1.A.01	Clarification	Applicant	Article 2 Should the following Acts be included in the interpretation and if not, why not? Communications Act (2003) Environmental Permitting (England and Wales) Regulations 2016
ISH1.A.02	Clarification	Applicant	Article 2 Article 2 includes a definition for “associated development”. However, Schedule 1 refers to Authorised Development which includes ancillary works. Does associated development and subsequent references to associated development (eg in authorised development) need to be deleted or replaced with a definition for ancillary works?
ISH1.A.03	Drafting	Applicant	Article 2 Article 2 provides interpretation for the following documents which would be certified by the Secretary of State under Article 50 and referenced in Schedule 9. These include: The Book of Reference; Crown Land Plans; The Environmental Statement; Land Plans; Special Category Land Plans; and Work Plans. Could the precision of the drafting of these interpretations be improved by the insertion of the wording in bold: “book of reference” means the document certified by the Secretary of State as the book of reference for the purposes of the Order under Article 50 and referenced in Schedule 9
ISH1.A.04	Clarification	Applicant	Article 2

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			Code of construction practice is interpreted as meaning 'Appendix 4.2 of the Environmental Statement' this is a document included in Schedule 9 (documents to be certified) but as currently drafted does not include the wording for other documents that are included in Schedule 9, is this an omission or is this because it was considered unnecessary as the Environmental Statement is certified? Please clarify and amend as necessary.
ISH1.A.05	Drafting	Applicant	Article 2 Statutory Undertaker as currently defined does not include a reference to public communications provider as defined by section 151 of the Communications Act (2003). Should it be expanded to include this reference or does public communications provider need a separate interpretation?
ISH1.A.06	Drafting	Applicant	Article 2 Article 2 as currently drafted does not include interpretations for the following: Special Category Land; and Day and whether this should be working days and how this is defined? Please clarify and amend accordingly.
ISH1.A.07	Drafting	Applicant	Article 8 (1) (b) Article 8 (1) (b) uses the term 'the grantee' in other DCOs the usual term is 'the leasee'. Please provide further detail to explain why grantee is considered more appropriate drafting or amend drafting to refer to lease.
ISH1.A.08	Clarification	Applicant	Article 8 (5) Can you clarify if this paragraph as currently drafted would accommodate the situation where a body listed in 4 is bought out or merged with another body.
ISH1.A.09	Clarification	National Highways and the Relevant Highway Authorities	Article 9 (3) Article 9(3) seeks to disapply several sections of the New Roads and Street Works Act 1991 as amended by the Traffic Management Act 2004. Can you clarify if you are satisfied that these sections can be disapplied and if not, why not?
ISH1.A.10	Clarification	Relevant Highways Authorities	Article 9 (9) (a) and (b) Please confirm if you are satisfied with this drafting and if not, why not and what alternative drafting would you propose.
ISH1.A.11	Clarification	Applicant	Article 10 (1) (a) For precision should the words in bold be inserted? (a) Break up or open the street, or any sewer, drain or tunnel within or under it;

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			Please clarify and amend accordingly
ISH1.A.12	Drafting	Applicant	Article 11 (1) (a) Please delete the reference to kerb as this is a physical object of set dimensions and so cannot be changed in the same way that a width of a verge or footpath can be changed.
ISH1.A.13	Clarification	Applicant and Relevant Highways Authorities	Article 11 (3) For clarity does the drafting need to be amended to make reference to written consent?
ISH1.A.14	Clarification	Relevant Highways Authorities	Article 11 (4), Article 13 (6), Article 15(2), Article 16(9), Article 21 (6) Is the 28 day period stipulated for determination of an application for consent under these paragraphs a sufficient period of time, if not, why not and what would be an appropriate determination period?
ISH1.A.15	Clarification	Relevant Highways Authorities	Article 12 (1) and (2) As currently drafted the cost of and responsibility for the maintenance of any new, altered or diverted street would be the responsibility of the relevant highway authority from the time of its completion. Is this appropriate, if not, why not and at what point should it become the responsibility of the relevant highways authority
ISH1.A.16	Drafting	Applicant	Article 13 and Article 14– replacing all references to stopping up with closure 1. This Article refers to stopping up, however this is a term used in relation to mineral extraction and should be replaced with closure. Please amend as necessary. 2. Should Article 13 include a reference to Public Rights of Way – as works to upgrade parts of footpath KW 043 and KW 041 and if these rights of way do need to be temporarily closed are alternatives routes proposed?
ISH1.A.17	Drafting	Applicant	Article 13 (1) For clarity should the words in bold be inserted into Article 13 (1) “The undertaker during and for the purposes of carrying out the authorised development, may temporarily close , alter, divert or restrict the use of any street within the Order limits and may for a reasonable time...” OR “The undertaker during and for the purposes of carrying out the authorised development, may temporarily close , alter, divert or restrict the use of any street set

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			<p>out in Schedule X (streets to be temporarily closed or restricted) and may for a reasonable time..."</p> <p>And</p> <p>Should 13(1) (a) for precision be expanded as follows:</p> <p>(a) Divert the traffic or a class of traffic from the street; and</p>
ISH1.A.18	Clarification	Applicant	<p>Article 14</p> <p>Does Article 14 need to include drafting to suspend the rights of access conferred by section 2 of the Countryside and Rights of Way Act 2000 (rights of the public in relation to access land)? If it does, does the Act need to be included in Article 2 (interpretation)</p>
ISH1.A.19	Clarification	Applicant	<p>Article 17 (1)</p> <p>Does this paragraph need to include a reference to Article 10 (street works)?</p>
ISH1.A.20	Clarification	Applicant	<p>Article 18 (2)</p> <p>Please check whether the correct schedule is referred to and amend as necessary.</p>
ISH1.A.21	Clarification	Applicant, Environment Agency and the relevant sewerage undertakers	<p>Article 19 (3), (7), (10) and (11)</p> <ol style="list-style-type: none"> 1. Paragraphs 3, 7 and 10 appear to overlap and potentially duplicate each other. Please provide an explanation as to why each of these paragraphs are necessary, or delete and amend as appropriate. 2. Can the Environment Agency confirm that it is satisfied with the drafting of Article 19(10) in the latest version of the draft DCO [REP2-003]? 3. Can the sewerage undertakers confirm that they are satisfied with the re-drafting of paragraph 11 [REP2-003]? If not, what alternative drafting should be used?
ISH1.A.22	Drafting	Applicant	<p>Article 19</p> <ol style="list-style-type: none"> 1. Paragraph 4 for greater precision should the words in bold be inserted? 'The undertaker must not make any opening into any public sewer or drain pursuant to paragraph (1) except –' 2. Explain why it is necessary to refer to Homes England and urban development corporations in the definition of 'public sewer or drain' in paragraph 8 (a). 3. Paragraph 8 (c) for greater precision should the words in bold be inserted? "main river" means watercourses as defined under section 113(1) of the Water Resources Act 1991 and shown as such on the statutory main river maps held by the Environment Agency and the Department for Environment, Food and Rural Affairs.

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			4. Paragraph 9 allows 28 days for a decision for an application for consent under paragraph 3 or approval under paragraph 4 is this sufficient. If not, why not and what would be the appropriate time period?
ISH1.A.23	Drafting	Applicant	Article 20 (1) and 21 (1) Both these articles use the phrase 'may be affected by the authorised development' which holds an element of ambiguity, for precision should may be, be replaced with is? If not, why not and what alternative drafting would you propose to provide precision?
ISH1.A.24	Drafting	Applicant	Article 21 (2) 1. For precision should 'at least' be replaced with 'no less than'? 2. Clarify why it would be necessary to serve a notice on the Secretary of State.
ISH1.A.25	Drafting	Applicant	Article 21 (4) Should this include a reference to land held by or in right of the Crown without consent of the Crown and are there any other organisations such as Network Rail which should also be listed?
ISH1.A.26	Drafting	Applicant and the Relevant Planning Authorities	Article 22 1. Should this have the additional wording in bold added? 'The undertaker may fell or lop any tree or shrub, other than those to be retained by Requirement 9 , within or overhanging the Order limits....' 2. Given the importance of retaining hedgerows as mitigation as currently drafted the powers to remove hedgerows given by this article would be very wide ranging. Therefore should 22(4) be reworded as follows and moved to (2) with current clauses (2) and (3) being renumbered (3) and (4) ie 'The undertaker may, for the purposes of carrying out the authorised development, but subject to paragraph (3), remove any hedgerow where it is demonstrated by the undertaker to the relevant planning authority, and the relevant planning authority certifies accordingly, that the removal of the hedgerow would not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement. (3) In carrying out any activity authorised by paragraph (1) and (2) , the undertaker, must do no unnecessary damage to any tree, shrub or hedgerow and must pay compensation to any person for any loss or damage arising from such activity.

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			(4) Any dispute as to a person's entitlement to compensation under paragraph (3), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.
ISH1.A.27	Clarification	Applicant	Article 23 Whilst this is a standard article can you confirm why it would be needed for this proposed development given the land to be developed?
For points of clarification/ drafting for Part 5 (powers of acquisition and possession) please see the supplementary agenda or the Compulsory Acquisition Hearing			
ISH1.A.28	Clarification	Applicant	Article 42 For clarity should this article include the following: (2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operate the authorised development.
ISH1.A.29	Clarification	Applicant, the Lead Local Flood Authorities and the Sewerage and Drainage undertakers	Article 43 1. Could the relevant authorities and bodies confirm that the disapplication's sought in (1) (a)-(c) are acceptable and if not, why not? 2. Should (2) include a reference to Article 33 as well as Article 34?
ISH1.A.30	Clarification	Applicant	Article 50 (1) For clarity should the wording in bold be added to paragraph 1? Schedule 9 (documents to be certified) to the Secretary of State for certification that they are true copies of those plans and documents referred to in this Order.
Schedule 1 – Authorised Development			
ISH1.S1.01	Clarification	Applicant	Explain why the works are not geographically split eg In the Administrative Area of Luton Borough Council; In the Administrative Area of Central Bedfordshire; In the district of North Hertfordshire etc?
Schedule 2 – Requirements			
ISH1.S2.01	Drafting	Applicant	Paragraph or requirement? Paragraph and requirement are used interchangeably throughout this Schedule eg Requirement 5 (2) refers to paragraph 6 (parameters of authorised development) but Requirement 35 (1) refers to approval required by a requirement. Given many of the Requirements contain a number of paragraphs for clarity and precision please delete references to paragraphs and replace with requirements where appropriate.

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ISH1.S2.02	Drafting	Applicant	<p>Requirement for written approval Several requirements would require the submission of details and approval in writing. To streamline the drafting and reduce the need for repetition could the following requirement be inserted and the reference to 'in writing' be deleted from the relevant requirements?</p> <p>Suggested drafting: 'Where the approval, agreement or confirmation of the Secretary of State, the relevant planning authority or another person or organisation is required under a requirement, that approval, agreement or confirmation must be given in writing'</p>
ISH1.S2.03	Drafting	Applicant and relevant Interested Parties	<p>Matters related to its functions Several requirements include the phrase 'on matters related to its functions' in relation to where the relevant planning authority is required to consult with another organisation or body eg the relevant highway authority, the Environment Agency etc. Is such drafting necessary and to streamline drafting should it be deleted?</p>
ISH1.S2.04	Clarification	Applicant	<p>Interpretation The definition of passengers includes a number of exclusions. Please explain:</p> <ol style="list-style-type: none"> 1. How an infant is defined? 2. Why transit passengers are excluded from the definition? 3. What is a 'general aviation passenger' and why are they excluded from the definition?
ISH1.S2.05	Drafting	Applicant	<p>Requirement 5 (1) To ensure all the relevant information is submitted should the following additions in bold be included? 'No part of the authorised development is to commence until details of the layout, siting, scale, proposed finished floor levels, dimensions and external appearance including the colour, materials and surface finishes of the buildings, structures and other works within that part...'</p>
ISH1.S2.06	Drafting	Applicant	<p>Requirement 5 (2) This Requirement includes refers to Article 6(3) – explain why only paragraph (3) is referenced rather than the whole article.</p>

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ISH1.S2.07	Clarification	Applicant and Luton Borough Council (LBC)	Requirement 6 Explain why a 4.4 meter (m) high Engine Run Up Bay noise barrier (work No 2e) is proposed to replace the existing 5m barrier in Phase 1 and why this would not give rise to an increase in noise emissions compared to the baseline situation
ISH1.S2.08	Drafting	Applicant	Requirement 7 To improve precision of drafting please replace 'at least' with 'not less than'.
ISH1.S2.09	Drafting	Applicant	Requirement 8 (2) As currently drafted 'the contractor' is required to develop the management plans needed to discharge this requirement. For other requirements this role is done by 'the undertaker'. Please confirm whether the contractor or the undertaker is the correct term and if contractor is correct does this need to be defined in the interpretations?
ISH1.S2.10	Drafting	Applicant	Requirement 9 (2) <ol style="list-style-type: none"> 1. The current drafting requires the landscaping scheme to 'reflect the principles' set out in the strategic landscape masterplan. Such drafting is not precise. Subject to the outcome of the discussions at the ISH regarding the acceptability of 'substantially in accordance with', for consistency please delete 'must reflect' and replace with 'in accordance' or 'substantially in accordance with'. 2. Landscaping can often result in significant changes to levels therefore for precision should levels changes be included within the list on 9(2)?
ISH1.S2.11	Drafting	Applicant	Requirement 9 (3) As currently drafted the paragraph would allow the undertaker to use either the British Standards (BS) or recognised codes of good practice ie work could be carried out under codes of good practice but not comply with the relevant BS. Please replace or with and.
ISH1.S2.12	Drafting	Applicant, LBC and Natural England	Requirement 11 (2) As currently drafted either a scheme of mitigation measures or a protected species licence would be required. Given the requirement relates to protected species if a scheme of mitigation measures is proposed should the relevant planning authority consult with Natural England, please amend accordingly.
ISH1.S2.13	Drafting	Applicant, Environment Agency and LBC	Requirement 12 <ol style="list-style-type: none"> 1. As currently drafted if unexpected contamination is identified during construction work could continue. Is this appropriate or should work cease for that part of the scheme until an assessment of the risks and remediation

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			<p>options has been submitted to and approved by the relevant planning authority? Please amend drafting as necessary.</p> <p>2. Paragraph 2 refers to 'detailed site investigations'. Can you confirm where these are secured in the Order and how they link to this paragraph? Is it appropriate that under current drafting construction work could continue in the absence of an approved written scheme and programme for remedial measures?</p>
ISH1.S2.14	Drafting	Applicant and relevant Interested Parties	<p>Requirement 13 (1) As currently drafted the relevant planning authority would only be required to consult with the Environment Agency should the list be expanded to include the lead local flood authority and relevant sewerage and drainage authorities? If yes who should be listed if no, why not? The Environment Agency is currently not included in the interpretations, should it be?</p>
ISH1.S2.15	Drafting	Applicant and LBC	<p>Requirement 13 (2) As currently drafted this includes the phrase 'must reflect the principles set out' such drafting is not precise. Subject to the outcome of the discussions at the ISH regarding the acceptability of 'substantially in accordance with', for consistency please delete 'must reflect' and replace with 'in accordance' or 'substantially in accordance with'.</p>
ISH1.S2.16	Drafting	Applicant	<p>Requirements 14 (3) and 15 (3) Both these requirements seek to manage activities should 'constructed in accordance with' be replaced with 'carried out in accordance with' as per drafting for Requirement 12?</p>
ISH1.S2.17	Drafting	Applicant	<p>Requirement 16 (2) The drafting currently includes 'reflecting' such drafting is not precise. Subject to the outcome of the discussions at the ISH regarding the acceptability of 'substantially in accordance with', for consistency please delete 'must reflect' and replace with 'in accordance' or 'substantially in accordance with' Historic England is currently not included in interpretations, should it be?</p>
ISH1.S2.18	Drafting	Applicant	<p>Requirement 34 Should the interpretation for 'discharging authority' be widened as per suggested wording in bold: "discharging authority" means any body responsible for giving a consent, approval or agreement for a requirement included in parts 2 or 4 of this schedule following a request by the undertaker.</p>

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			<p>Given some requirements refer to contractors seeking consent, approval or agreement does the interpretation need to be expanded to ‘a request by the undertaker or contractor’.</p> <p>Requirement 37(1) makes reference to a discharging body – please clarify if this is the same as discharging authority and whether this needs to be made clear in the interpretation, please amend as necessary</p>
ISH1.S2.19	Drafting	Applicant and relevant planning authorities	<p>Requirement 35</p> <p>As currently drafted this requirement would give deemed approval for the discharge of any details, subject to a number of caveats, if no decision is made within 8 weeks from submission of those details. Is this appropriate or should the requirement be amended to allow the undertaker to appeal for non-determination once the relevant time period has passed?</p>
ISH1.S2.20	Drafting	Applicant and LBC	<p>Requirement 35 (1)</p> <p>To improve precision should the drafting be amended as follows:</p> <ul style="list-style-type: none"> (a) the day immediately following that on which a valid application is received by the discharging authority. Such validity to be confirmed by the discharging authority within 5 days of the receipt of the application; (b) the day immediately following that on which further information has been supplied by the undertaker under requirement 36 (further information); or (c) such longer period as may be agreed between the undertaker and the discharging authority.
ISH1.S2.21	Drafting	Applicant	<p>Requirement 36</p> <p>Subject to the response to the previous question references to application within this requirement would need to be amended to valid application as appropriate.</p>
ISH1.S2.22	Drafting	Applicant	<p>Requirement 37 (15)</p> <p>This paragraph provides an interpretation for “business day” which is already provided in Requirement 34 and subject to the answer to ISH1.A.06 may need to be provided in Requirement 2. To avoid duplication please define this once in the most appropriate place.</p>
Schedule 3			
ISH1.S3.01	Drafting	Applicant	<p>Permanent stopping up of Public Rights of Way</p> <p>As for question ISH1.A.16 should ‘stopping up’ be replaced with ‘closure’</p>
Explanatory Note			

Number	Subject	Response by	Question/ Clarification
ISH1.EN.01	Drafting	Applicant and Luton Borough council	Documents for inspection As drafted the certified documents would be available to inspect at the offices of Luton Rising, would it not be more appropriate and accessible for these documents to be held by the Council? This could be in an electronic format. If so please amend accordingly.