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London Luton Airport Expansion

Planning Inspectorate Scheme Ref: TR020001

Volume 8 Additional Submissions (Examination)

**8.58 Applicant's Response to Supplementary Agenda
Additional Questions - Issue Specific Hearing 1 (ISH1)**

Infrastructure Planning (Examination Procedure) Rules 2010

Application Document Ref: TR020001/APP/8.58

The Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

**London Luton Airport Expansion Development Consent
Order 202x**

**8.58 APPLICANT'S RESPONSE TO SUPPLEMENTARY AGENDA
QUESTIONS – ISSUE SPECIFIC HEARING 1 (ISH1)**

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Author:	Luton Rising

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1 INTRODUCTION

1.1 Purpose of this document

1.1.1 This document sets out Luton Rising's (a trading name of London Luton Airport Limited) ('the Applicant') response to the additional questions issued by the Examining Authority (ExA) by way of the supplementary agenda for Issue Specific Hearing 1 (ISH1), published on 19 September 2023.

2 APPLICANT'S RESPONSE TO ADDITIONAL QUESTIONS RELATING TO ISH1

Table 2.1: Responses to additional questions issued by the ExA in relation to ISH1.

Reference Number	Subject	Question	Applicant's Response
GENERAL			
ISH1.G.01	Drafting	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.	The Applicant agrees and has made these changes to the Draft Development Consent Order (DCO) submitted at Deadline 3.
ISH1.G.02	Drafting	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 and carried out in accordance with Chapter 4 of the Act and with the Infrastructure Planning (Examination Procedure) Rules 2010.	The Applicant has made these changes to the Draft DCO submitted at Deadline 3.
ISH1.G.03	Clarification	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?	The Applicant agrees and has made these changes to the Draft DCO submitted at Deadline 3.
ISH1.G.04	Clarification	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,	The Applicant has checked to ascertain whether the correct sections of the Planning Act 2008 (the 2008 Act) are correctly listed and is satisfied that this is the case.

Reference Number	Subject	Question	Applicant's Response
		117, 120 and 122 of the 2008 Act, makes the following Order -]"	However, should the ExA have any specific concerns then the Applicant is happy to consider this point further.
ARTICLES			
ISH1.A.01	Clarification	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	The Applicant is content to include definitions of these enactments in article 2, with consequential amendments where they are referenced variously in the Order.
ISH1.A.02	Clarification	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?	The definition of “associated development” has been deleted from article 2, because it forms part of the “authorised development” as defined by article 2 and set out in Schedule 1. “Ancillary works” are the “lettered” miscellaneous works in Schedule 1 which may be undertaken in connection with the “numbered” works. It is not considered that the term requires definition in the context in which it is used in Schedule 1. The expression does not appear elsewhere in the Draft DCO.
ISH1.A.03	Drafting	Article 2 Article 2 provides interpretation for the following documents which would be certified by the Secretary of State under Article 50 and	The Applicant is content to accept the proposed drafting and has made these changes to the Draft DCO submitted at Deadline 3.

Reference Number	Subject	Question	Applicant's Response
		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 referenced in Schedule 9	
ISH1.A.04	Clarification	<p>Article 2 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.</p>	<p>The Code of Construction Practice (CoCP) is an appendix to the Environmental Statement and so is referenced as a certified document in Schedule 9 of the Draft DCO under the relevant heading 'Environmental Statement – Appendices'</p> <p>Following discussions with the Examining Authority during ISH1-ISH6, the Applicant will consider alternative options for presenting certified documents and anticipates presenting a revised approach at Deadline 4.</p>
ISH1.A.05	Drafting	<p>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?</p>	<p>The Applicant does not believe that the definition of "statutory undertaker" should include a reference to "public communications provider" as suggested, as they carry different meanings.</p> <p>Where an article specifically relates to a "public communications provider" as defined in section 151(1) of the Communications Act 2003, as opposed to just a "statutory undertaker", this is</p>

Reference Number	Subject	Question	Applicant's Response
			made clear in the article. See for example, article 37(8).
ISH1.A.06	Drafting	<p>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</p>	<p>Special category land is defined in article 35(4) of the Draft DCO.</p> <p>The Applicant is satisfied that it is not necessary to define “day”, which carries its ordinary meaning and includes all days of the week. It should be noted that where it is necessary to refer to “business days”, this is defined – see paragraph 34 of Part 5 of Schedule 2 to the Draft DCO.</p>
ISH1.A.07	Drafting	<p>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.</p>	<p>The Applicant is content to make this change, which is not considered to result in a substantive difference. This update is included in the Deadline 3 version of the Draft DCO.</p>
ISH1.A.08	Clarification	<p>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.</p>	<p>Article 8(5) provides that references to companies in paragraph (4) include any associated holding companies or subsidiaries carrying out the same undertaking as the company listed in paragraph (4). Paragraph (5) is required as statutory undertakers often transfer responsibilities within group companies and ensures that the Proposed Development can be delivered expeditiously and without administrative burden in such circumstances.</p>

Reference Number	Subject	Question	Applicant's Response
			A merger or buy-out may not engage paragraph (5) if the identity of the company and its registration listed in paragraph (4) did not change. Paragraph (5) may provide some flexibility in the context of mergers or buy-outs, but to the extent it did not (and the relevant company was not caught by paragraphs (4) and (5)) then the Secretary of State's approval would be needed for any grant or transfer.
ISH1.A.09	Clarification	n/a – response not requested from the Applicant	n/a – response not requested from the Applicant
ISH1.A.10	Clarification	n/a – response not requested from the Applicant	n/a – response not requested from the Applicant
ISH1.A.11	Clarification	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; Please clarify and amend accordingly	The Applicant is content to accept the proposed drafting and has made these changes to the Draft DCO submitted at Deadline 3.
ISH1.A.12	Drafting	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.	The Applicant has adopted precedented drafting here and considers that there may indeed be scope to alter the width of a kerb to achieve the ends sought by this provision.
ISH1.A.13	Clarification	Article 11(3) For clarity does the drafting need to be amended to make reference to written consent?	The Applicant is content to accept the proposed drafting and has made these changes to the Draft DCO submitted at Deadline 3.

Reference Number	Subject	Question	Applicant's Response
ISH1.A.14	Clarification	n/a – response not requested from the Applicant	n/a – response not requested from the Applicant
ISH1.A.15	Clarification	n/a – response not requested from the Applicant	n/a – response not requested from the Applicant
ISH1.A.16	Drafting	<p>Article 13 and Article 14 – replacing all references to stopping up with closure</p> <p>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.</p> <p>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</p>	<p>1. In relation to article 13, the Applicant notes that “temporary stopping up” is a recognised and precedented form of DCO drafting in relation to powers to close streets. However, the Applicant is content to change this to “closure” and has made this change to article 13 of the Draft DCO submitted at Deadline 3.</p> <p>In relation to article 14, the Applicant considers that reference “stopping up’ is appropriate and well precedented where a public right of way is closed permanently and no changes to the drafting of article 14 have been made.</p> <p>2. Article 13 applies to “streets”, which is defined by article 2 of the Draft DCO. Article 2 employs the same definition as used in section 48 of the New Roads and Street Works Act 1991. That definition includes all forms of highways, and so there is no requirement for article 13 to refer specifically to public rights of way, as they are already covered. Article 13 contains the standard</p>

Reference Number	Subject	Question	Applicant's Response
			<p>procedures which apply where a street is temporarily closed.</p>
<p>ISH1.A.17</p>	<p>Drafting</p>	<p>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 out in Schedule X (streets to be temporarily closed or restricted) and may for a reasonable time...”</p> <p>Should 13(1) (a) for precision be expanded as follows: (a) Divert the traffic or a class of traffic from the street; and</p>	<p>As explained by the Applicant in the Issue Specific Hearing on the Draft DCO held on 26 September 2023, the equivalent of outline planning permission is being sought for the Proposed Development. As such, the detail of any temporary road closures is not yet known at this stage and so cannot be defined in a DCO schedule. However, as set out in article 13 and in common with DCO precedent, the general power to implement temporary road closures under this article will be subject to the consent of the relevant street authority. This also provides the justification for why the general power extends beyond the Order Limits, which is precedented and not novel.</p> <p>The Applicant does not therefore agree that the wording in bold needs to be included (save for the change of wording from “stopping up” to “close” as set out in response to question ISH1.A.16 above).</p> <p>The Applicant agrees with the suggested amendment to Article 13(1)(a) and has made this change to the draft DCO submitted for Deadline 3.</p>

Reference Number	Subject	Question	Applicant's Response
ISH1.A.18	Clarification	<p>Article 14 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>	<p>Article 14 of the Draft DCO relates to the permanent stopping up of public rights of way (the footpaths and bridleways listed in Schedule 3) and does not interfere with any rights under the Countryside and Rights of Way Act 2000. As such the Applicant does not consider it is necessary to include the drafting suggested by the ExA.</p>
ISH1.A.19	Clarification	<p>Article 17(1) Does this paragraph need to include a reference to Article 10 (street works)?</p>	<p>The Applicant has made this change to the Draft DCO submitted at Deadline 3.</p>
ISH1.A.20	Clarification	<p>Article 18(2) Please check whether the correct schedule is referred to and amend as necessary.</p>	<p>The Applicant agrees that the reference should be to Schedule 4 and has made the necessary change to the Draft DCO submitted at Deadline 3.</p>
ISH1.A.21	Clarification	<p>Article 19(3), (7), (10) and (11) 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 redrafting of paragraph 11 [REP2-003]? If not, what alternative drafting should be used?</p>	<p>The Applicant is of the opinion that paragraphs 3, 7 and 10 do not overlap or duplicate each other.</p> <p>An explanation for the inclusion of these paragraphs, which are precedented, is set out in the Explanatory Memorandum [AS-069], but to supplement that:</p> <ul style="list-style-type: none"> - paragraph (3) relates to landowner consent; - paragraph (7) relates to permitting, which applies independently of landowner consent;

Reference Number	Subject	Question	Applicant's Response
			<ul style="list-style-type: none"> - paragraph (10) provides deemed landowner consent where a permit has been issued; and - paragraph (11) provides deemed landowner consent where consent under section 118 of the Water Industry Act 1991 has been granted (this consent applies independently of landowner consent). <p>Hence these provisions do not duplicate each other but rather provide for a streamlined process.</p>
ISH1.A.22	Drafting	<p>Article 19</p> <p>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 –‘</p> <p>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).</p> <p>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</p>	<p>1. The Applicant is content to accept the proposed drafting and has made these changes to the Draft DCO submitted at Deadline 3.</p> <p>2. The reference to ‘Homes England’ is standard and precedented and is understood to be necessary to capture all bodies to whom this provision is potentially applicable. Accordingly, the Applicant is not proposing to delete this reference at this stage though is happy to consider this further with the ExA.</p> <p>3. This matter is already addressed by paragraph 8(b) but the Applicant is content to accept the proposed drafting and has made these changes to the Draft DCO submitted at Deadline 3.</p>

Reference Number	Subject	Question	Applicant's Response
		<p>Department for Environment, Food and Rural Affairs.</p> <p>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?</p>	<p>4. The Applicant considers that this is an appropriate timescale within which to make a decision, and one which is preceded in other made DCOs.</p>
ISH1.A.23	Drafting	<p>Article 20(1) and 21(1)</p> <p>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?</p>	<p>The Applicant considers that the original drafting is appropriate as the Applicant does not know, at this time, which buildings may be affected and to seek to make the drafting more precise may be counterproductive and exclude buildings intended to benefit from the article. The current drafting permits a pre-emptive approach rather than limiting the provision to circumstances where a building is already affected.</p> <p>The drafting of this article is well preceded as set out in the Explanatory Memorandum [AS-069].</p>
ISH1.A.24	Drafting	<p>Article 21(2)</p> <p>1. For precision should 'at least' be replaced with 'no less than'?</p> <p>2. Clarify why it would be necessary to serve a notice on the Secretary of State.</p>	<p>The Applicant does not agree that including this wording would be more precise. It is also well preceded in other made DCOs and so no change has been made to the Draft DCO at this time.</p> <p>The reference to the 'Secretary of State' is an error and has been deleted from the draft Development Consent Order submitted at</p>

Reference Number	Subject	Question	Applicant's Response
			Deadline 3. The Applicant thanks the ExA for bringing this to its attention.
ISH1.A.25	Drafting	<p>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?</p>	<p>The Applicant considers that the drafting of article 21(4) is appropriate and precedented in other made DCOs. Crown interests are protected by article 39. The Applicant is in discussion with other parties such as Network Rail and protective provisions, if necessary and agreed, are capable of addressing third party interests.</p> <p>Therefore, no amendments have been made.</p>
ISH1.A.26	Drafting	<p>Article 22(1) 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....'</p> <p>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</p>	<p>The Applicant notes, as a point of generality, that the current drafting is well precedented and is important as it provides the undertaker with the necessary flexibility to fell or lop trees which will obstruct or interfere with the authorised development, or which may constitute a danger to persons using the authorised development.</p> <p>That said, the Applicant notes the points made during ISH6 around the interface between this provision and vegetation that is intended to be protected or preserved. The Applicant is considering this matter further and will provide updated drafting at Deadline 4 to address this.</p>

Reference Number	Subject	Question	Applicant's Response
		<p>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)</p> <p>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. (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.</p>	
ISH1.A.27	Clarification	<p>Article 23</p> <p>Whilst this is a standard article can you confirm why it would be needed for this proposed development given the land to be developed?</p>	<p>This article is required to ensure that should buried remains be found, they are recovered appropriately without causing unacceptable delay to the implementation of the Proposed Development. There are no known remains, however the application does seek permission for significant earthworks.</p>
ISH1.A.28	Clarification	<p>Article 42</p> <p>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</p>	<p>Whilst the Draft DCO is not required to re-state other legal provisions which apply in any event, the Applicant is content to include this clarificatory provision. This has been included in the Deadline 3 version of the Draft DCO.</p>

Reference Number	Subject	Question	Applicant's Response
		may be required from time to time to authorise the operate the authorised development.	
ISH1.A.29	Clarification	<p>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?</p>	The Applicant notes this question and that it is to be responded to by the local authorities and bodies affected.
ISH1.A.30	Clarification	<p>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</p>	The Applicant considers that the reference to "those plans and documents" makes it clear that the provision is referring to "the plans and documents set out in Schedule 9" referred to earlier in the sentence. To add "referred to in this Order" would make the sentence less grammatically precise.
SCHEDULE 1 – AUTHORISED DEVELOPMENT			
ISH1.S1.01	Clarification	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?	As was explained at the Issue Specific Hearing on the Draft DCO held on 26 September 2023, most of the works are situated within the administrative area of Luton Borough Council. The main exceptions being the off-site highway works (Central Bedfordshire Council) and some works involving the proposed fuel pipeline, infiltration basin and replacement open space (North Hertfordshire Council).

Reference Number	Subject	Question	Applicant's Response
			<p>Local authority boundaries are shown on the Works Plans [AS-012 to AS-017].</p> <p>For the reasons stated above the Applicant does not consider it necessary for the works to be geographically split in Schedule 1 of the Draft DCO.</p>
SCHEDULE 2 – REQUIREMENTS			
ISH1.S2.01	Drafting	<p>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.</p>	<p>The Applicant agrees that there is a discrepancy and thanks the ExA for bringing this to its attention. Appropriate changes to address this have been made to the Draft DCO submitted for Deadline 3. The Applicant is cognisant that the DCO, if approved, will become legislation, and should therefore follow drafting convention. For that reason, the Applicant considers that the terms “paragraph” and “sub-paragraphs” represent the appropriate terms of art. These terms have been applied consistently throughout Schedule 2.</p>
ISH1.S2.02	Drafting	<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? Suggested drafting: 'Where the approval,</p>	<p>The Applicant considers that the current approach is not unduly onerous (involving merely the words “in writing” where applicable) and generally aligns with drafting precedents approved by the Secretary of State. It also provides greater clarity and certainty to those implementing the DCO, who may look to specific requirements for the terms of discharge, rather</p>

Reference Number	Subject	Question	Applicant's Response
		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'	than clarificatory details contained elsewhere in the DCO.
ISH1.S2.03	Drafting	<p>Matters related to its functions</p> <p>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>	The Applicant considers that such drafting is necessary, as well as being precededented. It makes it clear that there is an obligation to consult with other organisations or bodies only when the matter is of relevance to their functions.
ISH1.S2.04	Clarification	<p>Interpretation</p> <p>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? 	<p>1. The definition of "infant" is taken from the CAA's definition and means a person under the age of two years. This has been added as a definition to paragraph 1 of Schedule 2 in the Deadline 3 version of the Draft DCO.</p> <p>2. and 3. To avoid any ambiguity, the Applicant has omitted references to "transit passengers" and "general aviation passengers" from the definition of "passengers" in the Deadline 3 version of the Draft DCO.</p>
ISH1.S2.05	Drafting	Requirement 5(1)	The Applicant notes the suggested drafting by the ExA to requirement 5 (detailed design).

Reference Number	Subject	Question	Applicant's Response
		<p>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>	<p>The Applicant notes that the consent of the relevant planning authority is required in agreeing the final detailed design, such deliberations to include consideration of the Design Principles document [APP-225] and the parameters set out in requirement 6. The relevant planning authority is competent to discharge such requirements as part of its statutory functions.</p> <p>Nevertheless, the Applicant agreed, at ISH6, to consider whether further detail around the approvals process could be added to requirement 6. The Applicant envisages providing updated drafted at Deadline 4.</p>
ISH1.S2.06	Drafting	<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>	<p>The specific reference to article 6(3) and reference to the two numbered works relates to these two linear works and appropriate reference to the vertical limits of deviation applicable to those works.</p>
ISH1.S2.07	Clarification	<p>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</p>	<p>The bund was described as 5m high in paragraph 16.8.15 of Chapter 16 Noise and Vibration of the Environmental Statement [REP1-003], but as noted in the paragraph this was approximate and an estimate for the purpose of describing the height within the chapter. The actual bund height is 3.8m. The 4.4m temporary Engine Run Up Bay will therefore provide increased screening. The actual height of the bund and barrier have been used in the noise assessment and all changes to</p>

Reference Number	Subject	Question	Applicant's Response
			noise emissions as a result have been assessed and reported in Chapter 16 Noise and Vibration of the Environmental Statement [REP1-003] .
ISH1.S2.08	Drafting	<p>Requirement 7 To improve precision of drafting please replace 'at least' with 'not less than'.</p>	Please see the Applicant's response to ISH1.A.24 above – the Applicant considers that "at least" is equally precise.
ISH1.S2.09	Drafting	<p>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?</p>	The Applicant has considered the ExA's question and has made drafting amendments to requirement 8(2) to address this matter. The amendment is shown in the Draft DCO submitted for Deadline 3.
ISH1.S2.10	Drafting	<p>Requirement 9(2) 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</p>	<p>1. The Applicant is content to adopt the phrase "in accordance with" in this context and has made this change in the Deadline 3 version of the Draft DCO.</p> <p>2. The Applicant is considering the feasibility of including, in paragraph 9(2), a requirement to provide information about changes in levels as part of the landscaping scheme submitted for approval. The Applicant will provide further commentary on this at Deadline 4.</p>

Reference Number	Subject	Question	Applicant's Response
		levels changes be included within the list on 9(2)?	
ISH1.S2.11	Drafting	<p>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 i.e., work could be carried out under codes of good practice but not comply with the relevant BS. Please replace or with and.</p>	The Applicant is content to make this change which has been incorporated into the version of the Draft DCO submitted at Deadline 3.
ISH1.S2.12	Drafting	<p>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.</p>	This amendment has not been made. The Applicant's view is that Natural England would not expect to be consulted on matters that do not relate specifically to their statutory duties / functions. Natural England would refer local planning authorities to standing advice on protected species such as reptiles that have no licensing route; for those needing licences, such as badgers, these are issued directly by Natural England. This is accommodated by the existing drafting of requirement 11.
ISH1.S2.13	Drafting	<p>Requirement 12 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 options has been submitted to and approved by the relevant planning authority? Please amend drafting as necessary.</p>	1. Requirement 12 follows a precedented approach endorsed by the Secretary of State in previous DCO decisions – see, for instance, the A428 Black Cat to Caxton Gibbet Development Consent Order 2022 and the M25 Junction 28 Development Consent Order 2022. These indicate that the Secretary of State is satisfied that such an approach manages the contamination risk adequately. There are no

Reference Number	Subject	Question	Applicant's Response
		<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>	<p>project specific reasons to depart from that approach here.</p> <p>2. The drafting in the Deadline 3 version of the Draft DCO has been adjusted to align with the precedents referred to above, which represent the Secretary of State's accepted form of drafting. The reference to "detailed site investigations" in (2) has been omitted as the commitment is to a risk assessment referred to in (1). The risk assessment must be undertaken in consultation with the relevant planning authority and the Environment Agency, and so that process would determine the nature of site investigations required.</p> <p>The Applicant continues to engage with the Environment Agency on matters of contamination and will keep the drafting of this Requirement under review as part of those discussions.</p>
<p>ISH1.S2.14</p>	<p>Drafting</p>	<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>	<p>The Applicant has included the lead local flood authority and the relevant sewerage undertaker in the list of consultees in the version of the Draft DCO submitted at Deadline 3.</p> <p>The Applicant considers that the Environment Agency is a well-known organisation and as such does not need to be listed in the interpretations.</p>

Reference Number	Subject	Question	Applicant's Response
			This is conventionally the approach taken in consented DCOs.
ISH1.S2.15	Drafting	<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>	The Applicant is content to adopt the phrase "in accordance with" in this context and has made this change in the Deadline 3 version of the Draft DCO.
ISH1.S2.16	Drafting	<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>	The Applicant is content to adopt "carried out" and has made this change in the Deadline 3 version of the Draft DCO.
ISH1.S2.17	Drafting	<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>	<p>The term "reflect" has a particular context in Requirement 16 – the Cultural Heritage Management Plan [APP-077] is "secured" as final in the form submitted with the application. In other words, it is not an "outline" plan which would require a final plan in the post-consent phase to be "substantially in accordance" with it.</p> <p>Instead, the Plan will determine when there is a need to prepare a written scheme of investigation (WSI), but the WSI would not replicate the Plan. Hence it would not be appropriate for the WSI to</p>

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			<p>be “(substantially) in accordance with the Plan”. Rather, it is appropriate for the WSI to “reflect” the Plan. The Cultural Heritage Management Plan [APP-077] contains clear detail and direction around what the WSI should cover.</p> <p>Given the context and detail in the Plan, the drafting is therefore considered sufficiently precise and certain.</p> <p>“Reflect” is a term utilised in requirements in made DCOs, so has been accepted by the Secretary of State as sufficiently precise in the context of Schedule 2 – see, for a recent example, see the A428 Black Cat to Caxton Gibbet Development Consent Order 2022; Manston Airport Development Consent Order 2022.</p> <p>The Applicant considers that Historic England is a well-known organisation and as such does not need to be listed in the interpretations. This is conventionally the approach taken in consented DCOs.</p>
ISH1.S2.18	Drafting	<p>Requirement 34 Should the interpretation for ‘discharging authority’ be widened as per suggested wording in bold: “discharging authority” means anybody responsible for giving a consent, approval or</p>	<p>The Applicant does not consider that such a change is required to the definition. The term “authority” is suitable as all approvals in Parts 1, 2 and 4 fall upon the relevant planning authority.</p>

Reference Number	Subject	Question	Applicant's Response
		<p>agreement for a requirement included in parts 2 or 4 of this schedule following a request by the undertaker.</p> <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>	<p>The only reference to “contractor” in the requirements related to Requirement 8 (Code of construction practice) has been removed.</p> <p>The definitions of “discharging authority” (paragraph 34) and “discharging body” (paragraph 37) are distinctive, and different. The Applicant is considering whether revised drafting / nomenclature could further clarify the position and anticipates providing an update at Deadline 4.</p>
ISH1.S2.19	Drafting	<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>	<p>The Applicant considers that the relevant planning authority will have had sufficient time during the consultation and examination of the application to understand better (compared to any usual approval unrelated to a DCO) the particular impacts and proposals forming part of the DCO. The Applicant therefore considers that 8 weeks is an appropriate length of time. If a decision-making body requires more time to decide an application for approval, it is entitled to refuse the application on those grounds whilst avoiding the “deemed consent” mechanism.</p> <p>More generally, the concept of “deemed approval” has been endorsed by the Secretary of the State in previous DCO decisions as balancing the interests of interested parties with the public</p>

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			interest in expeditious delivery of nationally significant infrastructure.
ISH1.S2.20	Drafting	<p>Requirement 35(1) To improve precision should the drafting be amended as follows: (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.</p>	The drafting to Requirement 35(1) is standard and precedented. The reference to a “validation process” is not considered by the Applicant to be proportionate or necessary, give that it would add additional administration and burden to the process. This requirement relates to the start of time periods. If any application the application is considered to be ‘invalid’ or lacking in required information then it is open to the discharging authority to request additional clarification, agree a longer time, or indeed refuse the application.
ISH1.S2.21	Drafting	<p>Requirement 36 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>	See the response to question ISH1.S2.20 above with reference to inclusion of “valid” in the drafting of this requirement.
ISH1.S2.22	Drafting	<p>Requirement 37(15) 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>	The Applicant has added a definition of “business day” to paragraph 1 of Schedule 2 to the Draft DCO, and removed the duplicate definitions that were previously in paragraphs 34 and 37 of Schedule 2.

Reference Number	Subject	Question	Applicant's Response
SCHEDULE 3			
ISH1.S3.01	Drafting	<p>Permanent stopping up of Public Rights of Way As for question ISH1.A.16 should 'stopping up' be replaced with 'closure'</p>	See the response to ISH1.A.16 above.
EXPLANATORY NOTE			
ISH1.EN.01	Drafting	<p>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.</p>	It is usual for the certified documents to be made available for inspection at a property of the Applicant. Consideration is being given to making the certified documents available in electronic format.