

Host Authorities' Response at Deadline 9 to DCO Matters

1. INTRODUCTION

- 1.1. This document has been prepared on behalf of the Central Bedfordshire Council, Dacorum Borough Council, Hertfordshire County Council, Luton Borough Council and North Hertfordshire Council (the '**Host Authorities**'). It responds to the submissions of the Applicant at Deadline 8 on matters pertaining to the Applicant's draft DCO [REP8-004] and incorporates comments on the Applicant's other DCO related submissions made at Deadline 8, including the following:
 - a) The Explanatory Memorandum ([REP8-005]);
 - b) The Applicant's Response to the Examining Authority's Commentary on the Draft DCO [REP8-036]); and
 - c) The Applicant's Summary of Changes to the Draft Development Consent Order ([REP8-042]).
- 1.2. The Host Authorities note that many of the amendments made to this revision of the draft DCO have been made by the Applicant in response to the Examining Authority's Commentary on the draft DCO, in relation to which the Host Authorities have submitted their comments. The Host Authorities' position on the matters related to that commentary remains as set out in their respective responses and this document does not attempt to restate those submissions.
- 1.3. Where matters contained in the above referenced documents are not expressly addressed in this document, their omission should not be taken to reflect agreement with, or acquiescence to, the Applicant's position or the Applicant's preferred drafting where it departs from that proposed by the Examining Authority.

2. ARTICLE 2 (INTERPRETATION)

- 2.1. The Host Authorities are content with the Applicant's amendments to this article in relation to the definitions for "local highway", "relevant highway authority", "strategic road" and "relevant planning authority".

3. ARTICLE 12 (CONSTRUCTION AND MAINTENANCE OF NEW, ALTERED OR DIVERTED STREETS)

- 3.1. While the Applicant has made no amendments to this provision, the Host Authorities wish to continue to draw attention to article 12(1) and (2) which provide for highways altered or constructed under the provisions of the draft DCO to be maintained by the relevant highway authority from the date of completion.
- 3.2. This provision remains inconsistent with the protective provisions for the benefit of local highway authorities contained in Schedule 8, which provide for the adoption of highway works on the issue of the final certificate following the completion of the maintenance period. The conflict could be readily resolved by ensuring that article 12(1) and (2) are made subject to the protective provisions in Parts 5 and 6 of Schedule 8, as the case may be.

4. ARTICLE 22 (FELLING OR LOPPING OF TREES AND REMOVAL HEDGEROWS)

- 4.1. The Host Authorities are content with the Applicant's amendments.

5. ARTICLE 34 (TEMPORARY USE OF LAND FOR MAINTAINING THE AUTHORISED DEVELOPMENT)

- 5.1. The Host Authorities note the Applicant's explanation that the "maintenance period" defined in paragraph (13) is to be commensurate with the duration of the required landscaping and that this could extend to a very long duration (such as thirty years). The Host Authorities note that this is

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a significant departure from typical practice and query whether it is justified to impose the threat of the exercise of temporary possession powers for such a long duration after the construction of the authorised development is completed.

6. ARTICLE 43 (DISAPPLICATION OF LEGISLATIVE PROVISIONS)

- 6.1. The Host Authorities re-iterate that the disapplication of the provisions of the Land Drainage Act 1991 are not justified and ought to be deleted. They further re-iterate that consent under section 150 of the Planning Act 2008 will not be granted as the disapplication cannot be justified.

7. SCHEDULE 2 (REQUIREMENTS) – PARAGRAPH 5 (PHASING OF AUTHORISED DEVELOPMENT)

- 7.1. The Host Authorities note, but do not necessarily accept at this stage, the Applicant's position in relation to phasing being "informative".
- 7.2. Nonetheless, the Host Authorities remain of the firm view that, given the Applicant's choice to distinguish between the terms "begun" and "commence" in this Order (the former being easier to satisfy than the latter, which would require the prior discharge of "pre-commencement" requirements), the reporting and review obligation contained in the Applicant's sub-paragraph (3) ought to run from when the authorised development is "begun" and not when it is "commenced".
- 7.3. This ensures that if minor acts of development are used to ensure the development has "begun" for the purposes of the time limit in requirement 2 the undertaker will be obliged, at the very least, to keep the phasing scheme under review and the authorities updated as to its intentions.

8. SCHEDULE 2 (REQUIREMENTS) – PARAGRAPH 6 (DETAILED DESIGN) & PART 6 OF SCHEDULE 8 (FOR THE PROTECTION OF LOCAL HIGHWAY AUTHORITIES)

- 8.1. With the exception of sub-paragraph (3), the Host Authorities are generally content with the Applicant's revisions to this requirement.
- 8.2. Sub-paragraph (3), which must be read alongside the revised protective provisions for both National Highways and the local highway authorities contained in Parts 5 and 6 respectively of Schedule 8, essentially requires the "detailed design information" as defined in Parts 5 and 6 to be submitted to the relevant planning authority or local highway authority for approval.
- 8.3. This gives rise to a number of issues.
- 8.4. First, from the perspective of a relevant planning authority that is obliged to determine an application for works to National Highways' strategic road network, the relevant planning authority is being asked to approve the "detailed design information" which contains information beyond what is required for the purposes of planning. Given the detailed and technical nature of the detailed design information the Host Authorities are further concerned that the 8 week determination period, coupled with the Applicant's deemed approval provisions, would mean that there is a real risk that National Highways may not be in a position to confirm its satisfaction with the detailed design before the relevant planning authority is required to either approve or refuse an application under this requirement. This is not an hypothetical concern and it will arise in relation to the works to junction 10 of the M1.
- 8.5. Second, from the perspective of the relevant highway authority being required to approve works on its own network the Host Authorities have concerns that the 8 week determination period coupled with the deemed consent provisions does not contain sufficient time to ensure that the stage 1 and 2 road safety audit process can be completed and its recommendations incorporated into the design for which approval is sought (in relation to which see below).

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- 8.6. While the Host Authorities understand the Applicant wishes the approval under requirement 6 to “stand-in” as approval under the local highway authority protective provisions, this approach fails to acknowledge that the two approval processes carry out different functions. If considered in a conventional Town and Country Planning Act 1990 context a developer seeking to carry out works to the public highway would require (i) planning permission from the local planning authority under the Town and Country Planning Act 1990 and (ii) the necessary technical approvals under Highways Act 1980 agreement of works that the highway authority will be required to adopt and maintain in perpetuity.
- 8.7. The Host Authorities would seek to restore this conventional approach such that the approval under requirement 6 remains a “planning approval” that is separate from the technical approval required under the protective provisions.
- 8.8. The Host Authorities further note that while the Applicant considers it to be desirable for there to be a single approval of the detailed design, this principle has not been insisted upon by the Applicant elsewhere in the protective provisions contained in Schedule 8. For example, National Highways and other utility undertakers are afforded the ability to provide technical approvals of works to their assets, notwithstanding that such works would nonetheless also require a “planning” approval under Requirement 6.
9. **SCHEDULE 8 (PROTECTIVE PROVISIONS) – PART 6 (FOR THE PROTECTION OF LOCAL HIGHWAY AUTHORITIES)**
- 9.1. The Host Authorities note that the revised protective provisions address many of the concerns raised previously in their Host Authorities Post Hearing Submission (including written summary of oral case) for ISH 10 [REP6-095].
- 9.2. However, there remains some significant outstanding issue that are still to be resolved. These include:
- Ensuring that the protective provisions apply to all local “highways” and not just “roads”. While the Host Authorities have used local roads to illustrate its concerns those concerns apply equally to public rights of way and other highways that are not “roads”.
 - Provisions that would ensure that the stage 1 and stage 2 road safety audits are included within the detailed design information submitted for approval and which secure the adoption of the safety recommendations or the approval of any exceptions before works are carried out.
 - Securing at the appropriate juncture, the carrying out stage 3 and 4 road safety audits and the carrying out of their recommendations prior to the issue of the final certificate;
 - In all cases ensuring that the relevant highway authority can approve the CVs of the persons carrying out the road safety audit so as to be satisfied at their competence and independence.
 - Ensuring that compliance with the relevant local design specifications and guidance are secured, noting that the National Highways documents referred to in the protective provisions will not be appropriate for all local roads.
 - Provisions securing compliance with the road space booking procedures.
 - Provision of a bond or security (such as that provided in paragraph 47 of the National Highways protective provisions).
- 9.3. The Host Authorities intend to supply the Applicant with a mark-up of the protective provisions in a form that would be satisfactory (noting also the comments above in relation to requirement 6)

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with a view to reaching agreement prior to the next deadline. If that is not achievable, the Host Authorities will submit their preferred form of protective provisions at the next deadline.