

Cambridge Waste Water Treatment Plant Relocation Project
Anglian Water Services Limited

Applicant's comments on Deadline 4 Submissions

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Contents

1	Introduction	1
1.1	Introduction.....	1
2	Applicant's comments on National Highways Deadline 4 submission [REP4-096].....	2
2.2	Progressed SoCG	2
2.3	Compulsory Acquisition Hearing 1 – Post-hearing written legal submissions	2
2.4	Rights over non-highway land (subsoil)	4
2.5	Protected Provisions	7
2.6	Status of works in the subsoil under the highway and use of the New Roads and Street Works Act 1991 (NRSWA).....	8
2.7	Impact of compulsory acquisition on the undertaking	10
3	Applicants comments on other Deadline 4 Submissions	12
3.1	Christopher Smith - Written summaries of oral submissions made at any hearings [REP4-098].....	12
3.2	Conservators of the River Cam – Current Position Statement [REP4-099]	12
3.3	Liz Cotton – Comments on any submissions received at D3 [REP4-100].....	12
3.4	Neos Networks Limited – Deadline 4 (D4) Submission [REP4-103].....	13
3.5	Nigel Seamarks - Deadline 4 (D4) Submission [REP4-103].....	13
3.6	Save Honey Hill - SHH Response to the Applicant's Responses to Written Representations 8.13 (REP2-038) [REP4-106].....	16
3.7	Save Honey Hill - SHH 34 Response to the Applicant's Responses to Written Representations AW 8.13 (REP2-038) [REP4-107 & REP4-108].....	18
3.8	Vodafone – Deadline 4 (D4) Submission [REP4-11].....	18
3.9	Waterbeach & District Bridleways Group – Comments on any submissions received at D3 [AS-177]	18
3.10	South Cambridgeshire District Council (SCDC) – Local Impact Report Updates [REP4-092 & REP4-093]	19
4	Appendix A – Applicants Response to REP4-098	20
4.1	Introduction.....	20
4.2	Responses to Comments.....	20
4.3	Transect surveys.....	20
4.4	Static deployments.....	22
4.5	Presence of barbastelle.....	23
4.6	Assessment of effects	23



4.7	Bat species crossing the A14	24
4.8	Buildings and structures.....	25
4.9	Conclusion	26
5	Appendix B – Applicants Position on the Conservators of the River Cam.....	27
6	Appendix C - Applicant’s Response to Save Honey Hill’s ‘Comments on any submission received at Deadline 3’	28
7	Appendix D - Save Honey Hill - SHH 34 Response to the Applicant’s Responses to Written Representations AW 8.13 (REP2-038) [REP4-107 & REP4-108]	29
8	Appendix E The King vs Tewksbury Borough Council	30

1 Introduction

1.1 Introduction

- 1.1.1 This document provides Anglian Water Services Limited (the Applicant) comments on the submissions received at Deadline 4 for the Cambridge Waste Water Treatment Plant Relocation Project (CWWTPRP).
- 1.1.2 This document does not seek to respond to every submission made at Deadline 4 (22nd January 2024) or to repeat matters which are already set out in documents available to the examination – rather its purpose is to address any new concerns which may have arisen, correct any omissions or provide signposting of clarification were deemed necessary.
- 1.1.3 The Applicant has reviewed the submissions from the following parties and believes that it has already addressed the points raised in previous deadline submissions, through the Applicant responses in the most recent examination hearings and in response to ExQ2's issued on the 31st of January 2024:
- Cambridge City Council - REP4-089 & REP4-090;
 - South Cambridgeshire District Council – REP4-091 & REP4-094;
 - Forestry Commission - REP4-095;
 - National Highways – REP4-097;
 - Liz Cotton – REP4-101;
 - Quy Fen Trust – REP4-104;
 - Save Honey Hill Group – REP4-105 & REP4-109;
 - Andrew Whitaker – AS-176;
 - The British Horse Society – AS-178; and
 - Cambridgeshire County Council – AS-179.

2 Applicant's comments on National Highways Deadline 4 submission [REP4-096]

2.1.1 The Applicant is pleased to note that National Highways does not object to the principle of the Proposed Development, subject to the inclusion of 'adequate protections' and the resolution of issues relating to compulsory acquisition.

2.2 Progressed SoCG

2.2.1 The Applicant has reviewed the submissions from National Highways and can confirm that the Statement of Common Ground is a duplicate of the document submitted by the Applicant at Deadline 4 and is an accurate reflection of where the parties are agreed and still in discussion at this point.

2.2.2 The Applicant has reviewed the submission made by National Highways in relation to Compulsory Acquisition [REP4-096] and note that they maintain their position that they do not agree to a subsoil freehold transfer for the transfer tunnel and that the powers sought would cause serious detriment to their undertaking. The Applicant maintains that the compulsory acquisition position is necessary, however, negotiations are progressing regarding an alternative negotiated basis for the land rights required.

2.2.3 The Applicant has arranged two further meetings with National Highways on 8 February 2024 and 15th February 2024 in relation to the further agreement of the Protective Provisions. National Highways requested that the meeting on 8th February was combined with 15th February due to other commitments.

2.3 Compulsory Acquisition Hearing 1 – Post-hearing written legal submissions

2.3.1 National Highways first particularised its objection to CA powers in the oral hearing CAH1. The Applicant responded to those oral submissions in the Applicant's Responses to ExA Hearing Actions [REP4-088], specifically in response to hearing actions 15 and 17. The Applicant continues to rely on those submissions but addresses a number of points below which arise from National Highways' Deadline 4 written submissions.

2.3.2 National Highways state at paragraphs 2.1 and 2.2 of their D4 submissions that they are not prepared to consent to the compulsory purchase of subsoil of their Strategic Road Network (SRN) because the SRN is a critical piece of national infrastructure which National Highways needs to be able to effectively manage without being encumbered by unnecessary third party interests. Suitable protections and restrictions are needed to avoid risks to the public's ability to utilise the public highways. Concerns are also raised about unspecified 'long term legacy issues' which can have safety implications and costs to the public purse.

2.3.3 The Applicant understands from National Highways D4 submissions that National Highways objects to the proposed freehold acquisition within Plots 022a (subsoil), 022b (surface – non-highway), 027a (subsoil), 034a (subsoil). No in-principle objection appears to be made by National Highways to:

- the works themselves or the need to carry out those works as part of the Proposed Development, including the installation of the Waste Water Transfer Tunnel and the Waterbeach Pipeline (South) which affect land owned by National Highways;
- the proposed acquisition of new rights and/or restrictive covenants for that infrastructure, provided that the rights can co-exist with the interest that National Highways holds and National Highway's operational interests are not extinguished (see paragraphs 2.4 and 2.5 of the D4 submissions);
- the proposed temporary use of land adjacent to the SRN for working space;
- the acceptability in principle of infrastructure being installed below the SRN with associated land rights (paragraphs 2.7 -2.9 of the D4 submissions)
- the principle of the inclusion of protective provisions in the order to provide asset protection for the SRN, to manage safety risk and ensure the public's ability to use the SRN.

2.3.4 It is the Applicant's position that:

- National Highways has not identified the detriment (serious or otherwise) that would be caused to National Highways' undertaking were the Applicant to acquire the specific land and rights required for the Proposed Development over the specific land parcels owned by National Highways. Nor has National Highways explained the safety risk or risk to the public's continued use of the SRN which it considers could arise from the acquisition of subsoil strata of land deep below the SRN;
- The acquisition of the land and rights required for the Proposed Development proposed by the dDCO are required for the Proposed Development, are necessary and proportionate to the requirements of Proposed Development, and will not cause detriment to National Highways' undertaking or to the use of the SRN. The land and rights sought by the Applicant are not 'unnecessary third party interests';
- National Highways will retain ownership of the highway and the land that it requires to carry out its highway functions. The only 'loss of ownership of the estate' in relation to highway land is the proposed acquisition of subsoil in Plots 027a and 034a which will be at a depth of approximately 19m below ground (and greater than this when measured from the surface of the A14). National Highways will retain ownership of the surface land and the subsoil above the waste transfer tunnel. The Applicant does not accept that this limited loss of ownership of the National Highways estate at this depth causes

any detriment to National Highways' undertaking and/or affects its ability to comply with regulatory responsibilities in any way.

2.4 Rights over non-highway land (subsoil)

- 2.4.1 National Highways state that it is of the utmost importance to ensure that rights over land could co-exist such that any new rights that the Applicant is seeking to acquire do not result in the extinguishment of National Highways' existing rights. National Highways does not identify any existing rights which would be so extinguished, nor, in the Applicant's view, does National Highways have any existing rights in these land parcels which would be extinguished by the proposed acquisition.
- 2.4.2 With the exception of Plot 022b, National Highways owns the land affected by the Proposed Development upon which the SRN is located, and it will continue to do so. The Applicant's proposed infrastructure and land rights can co-exist with the existing use of the land, including land comprising adopted highway, and National Highways can continue to carry out its statutory functions in a manner which will be unfettered by the proposed acquisition of a subsoil stratum of land.
- 2.4.3 National Highways' undertaking will be sufficiently protected through its continued ownership of the land and the protective provisions proposed in the dDCO.

Plot and acquisition sought	Acquisition sought	National Highway's interest – holding description	Full wording for BoR	Title	National Highways Comments on Location	National Highways Comments	Applicant's Response
Y847- Plot 022a	Freehold Acquisition – Subsoil	Land at A14 Fen Ditton Cambridge	Acquisition of Subsoil and Restrictive Covenants over 622 sq metres or thereabouts of land at A14, Fen Ditton, Cambridge comprising adopted highway, pavement, verge and embankment	CB347465	Horningsea Road	Objection to acquisition of freehold. Should compulsory powers be granted this would cause serious detriment to National Highways undertaking. The relevant tests for compulsory acquisition have not been met.	<p>The sub-soil stratum, which will be at a depth of approximately 19m below the surface of Horningsea Road, in this location is required for the waste transfer tunnel (Work no 27). A restrictive covenant is also sought over this land and the land in parcels 022c, 022d, 022e, 027a, 027b, 027c, 027d 034a, and 034c for the protection of the waste transfer tunnel.</p> <p>National Highways will retain ownership of the surface land and the sub-soil between the surface of the land and the tunnel. National Highways does not own any rights which would be extinguished by the Applicant's proposed acquisition.</p> <p>National Highways' ability to access its SRN and its embankments, to carry out works to the same, and permit the installation of other services at a shallower depth will not be impeded by the proposed land acquisition.</p>
Y847-Plot 022b	Freehold Acquisition	Land at A14 Fen Ditton Cambridge	All interests and rights in 292 sq metres or thereabouts of land adjacent to A14, Fen Ditton, Cambridge comprising woodland with a public footpath Fen Ditton 85/8 (excluding those interests belonging to the Crown)	CB347465	Track access to rear of woodland/embankment to northside of A14, near River Cam	<p>Objection to acquisition of freehold</p> <p>Access required for maintenance of A14 woodland and embankment</p> <p>Should compulsory powers be granted this would cause serious detriment to National Highways undertaking The relevant tests for compulsory acquisition have not been met</p>	<p>This land is required for the proposed outfall structure (work no 32), the ecological mitigation area (work no 39) and the final effluent and storm pipeline (work no 31).</p> <p>This land does not comprise part of the SRN.</p> <p>The Applicant is willing to enter into an agreement with National Highways to provide for continued access over the land for National Highways to be able to maintain the A14 and its embankment.</p>
Y038-Plot 027a	Freehold Acquisition – subsoil	Land at A14 Fen Ditton Cambridge	Acquisition of Subsoil, New Rights in and/or Restrictive Covenants over 1088 sq metres or thereabouts of land forming part of A14, Fen Ditton, Cambridge comprising carriageway, verge and embankment	CB339071	Under A14 carriageway	<p>Objection to acquisition of freehold</p> <p>Should compulsory powers be granted this would cause serious detriment to National Highways undertaking. The relevant tests for compulsory acquisition have not been met.</p>	<p>The sub-soil stratum, which will be at a depth of approximately 19m below the surface of the A14 carriageway in this location, is required for the waste transfer tunnel (Work no 27), together with a restrictive covenant for its protection.</p> <p>National Highways will retain ownership of the surface land of the A14 and the sub-soil between the surface of the land and the tunnel. National Highways does not own any rights which would be extinguished by the Applicant's proposed acquisition.</p> <p>National Highways' ability to access its SRN (the A14) and its embankments, carry out works to the same, and permit the installation of other services (if required) at a shallower depth will not be impeded by the proposed acquisition.</p> <p>In addition, the Applicant seeks an easement (rights and a restrictive covenant) for Waterbeach Pipeline South (work number 36) which will be installed underground above the tunnel. The Applicant notes that National Highways objects only to the</p>

Plot and acquisition sought	Acquisition sought	National Highway's interest – holding description	Full wording for BoR	Title	National Highways Comments on Location	National Highways Comments	Applicant's Response
							proposed freehold subsoil acquisition for the tunnel and not the easement for the Waterbeach Pipeline.
B039-Plot 34a	Freehold Acquisition – Subsoil	Land at Horningsea Road and A14, Fen Ditton, Cambridge	Acquisition of Subsoil and Restrictive Covenants over 27 sq metres or thereabouts of land forming part of Horningsea Road and A14, Fen Ditton, Cambridge comprising embankment (excluding those interests belonging to Anglian Water Services Limited)	CB339044	Horningsea Road	Objection to acquisition of freehold Should compulsory powers be granted this would cause serious detriment to National Highways undertaking. The relevant tests for compulsory acquisition have not been met.	Please see the response above for Plot 022a, which is adjacent to Plot 034a, and for which the land is also required for the Waste Water Transfer Tunnel and a restrictive covenant.

2.5 Protected Provisions

- 2.5.1 Since CAH1 and ISH3, the Applicant has had a meeting with National Highways on the 23 January 2024 and again on the 15 February 2024.
- 2.5.2 The Applicant is content with the principle of including standard protective provisions on the face of the DCO. However, the Applicant has not amended the DCO to include National Highways standard provisions as there are outstanding matters for agreement between the Applicant and National Highways.
- 2.5.3 The Applicant notes National Highways list of what the protective provisions are required to secure and responds to each item as follows:

National Highways	Applicant's Comments
Bonds, cash deposits and commuted sums to ensure that National Highways is not exposed financially as a consequence of the Applicant's works;	The Applicant and National Highways are continuing discussions with regards to financial security. However, the Applicant accepts the principle of providing security to National Highways whilst works are carried out which could affect the SRN.
Road space booking procedures to ensure that network occupancy requirements are managed effectively for the safety of the public and contractors;	The Applicant has accepted National Highways' drafting in relation to road space booking. The Applicant has been informed by NH that it can make a preliminary road space booking at any time, in advance of a decision on the DCO, if required.
Detailed design information to appropriately consider and approve the specification of works in accordance with technical standards;	The Applicant has accepted National Highways' drafting in relation to the approval of the specification of works.
Appropriate maintenance obligations and defects liability periods;	The Applicant accepts the principle of maintenance and defects liability and has proposed drafting to National Highways.
Collateral warranties from contractors and designers in respect of works undertaken on behalf of the Applicant;	The Applicant accepts the principle of warranties and has proposed drafting to National Highways.
Restrictions on the commencement of works and the use of powers until detailed design specifications are agreed and safety implications have been satisfactorily addressed;	The Applicant accepts the principle of not commencing works until details are approved by National Highways and has proposed drafting to National Highways.
Handover of maintenance responsibilities;	The Applicant accepts the principle of maintenance responsibilities and has proposed drafting to National Highways.

National Highways	Applicant's Comments
Payment of all reasonable fees incurred by National Highways in respect of the Authorised Development;	The Applicant accepts the principle of the payment of fees incurred by National Highways and has proposed drafting to National Highways.
Indemnities for any loss incurred by National Highways in respect of the Authorised Development	The Applicant accepts the principle of an indemnity and has proposed drafting to National Highways.
Dispute resolution provisions.	The Applicant has accepted NH's drafting in relation to dispute resolution.

2.5.4 With regards to the tunnelling works below the SRN, the Applicant agrees that there is potential for such works to impact the SRN and therefore has proposed protective provisions for the protection of National Highways which specifically reference the tunnelling works. As to impacts to the SRN more generally, details are set out in the Construction Traffic Management Plan and the access and traffic regulation order plans (application document 4.7).

2.6 Status of works in the subsoil under the highway and use of the New Roads and Street Works Act 1991 (NRSWA)

2.6.1 In response to National Highways' submission at paragraph 4.1 regarding the depth of the highway, the conventional position, based on common law is that a street comprises the 'top two spits' in the land, whereas National Highways assert that the depth is whatever depth is necessary to serve the relevant function. Whichever view is taken, a subsoil stratum acquisition of circa 3 metres for a 2.4 metre internal diameter tunnel at a depth of approximately 19 metres below the surface of the land cannot, in the Applicant's view, be said to be located within the highway or street.

2.6.2 The Applicant notes National Highway's assertion at paragraph 4.1 that should the Applicant compulsorily acquire the subsoil strata of land, National Highways would have no powers of approval over the methodology and execution of any works therein. Part III of NRSWA 1991 establishes a regulatory regime intended to secure the efficient coordination of works proposed in streets. It is not concerned in any way with proprietary interests in apparatus or works located in streets, and as accepted by National Highways itself in paragraph 2.7 (copied below for ease of reference), such interests have no bearing on the operation of the provisions in Part III of NRSWA 1991.

"Ownership of the subsoil beneath the highway (as well as the airspace above) also enables the highway authority to grant easements and to properly authorise street works. Should a third party own that land they could potentially benefit from a ransom position should other parties need to place apparatus over or under the highway – whilst National Highways as the strategic highway authority would still

have powers under the New Roads and Street Works Act 1991 (NRSWA) to authorise such works [emphasis added] by the Applicant who is a statutory undertaker, it would no longer have the proprietary interest to permit what would otherwise be a trespass in the absence of a statutory right”.

(our emphasis)

2.6.3 Notwithstanding that the proprietary interests have no bearing on the operation of Part III of NRSWA, for the reasons set out below it is the Applicant's submission that the NRSWA does not apply to the tunnelling/boring works for the proposed waste transfer tunnel (work no 27).

2.6.4 National Highways go on to state at paragraph 4.1 that:

“Significantly, the reference to works “executed in a street” must be interpreted in accordance with the definitions provision for the purposes of NRSWA Part III, namely s.105(1), which provides as follows:

““in,” in a context referring to works, apparatus or other property in a street or other place includes a reference to works, apparatus or other property under, over, across, along or upon it” (Emphasis added).

That is consistent with the definition of “street works” including “tunnelling or boring under the street”.

2.6.5 Section 48 of NRSWA 1991 (streets, street works and undertakers) defines terms used in Part III of the act and subsection (3) defines street works as works of any of the following kinds executed in a street in pursuance of a statutory right or a street works licence –

“(a) placing apparatus, or

(b) inspecting, maintaining adjusting, repairing altering, or renewing apparatus, changing the position of apparatus or removing it,

*or works **required for or incidental to any such works [emphasis added]**(including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street).”*

2.6.6 Street works are therefore primarily envisaged to be works located ‘in’ the street but may include such works which are required for or incidental to works in the street, which may expressly include tunnelling or boring under the street.

2.6.7 The proposed Waste Water Transfer Tunnel to be constructed by the Applicant will be considerably below the highway within plots 022a, 027a and 034a, it is not a work which would be located in a street of a type specified in s.48(3)(a) or (b) of NRSWA and it is not required for, nor is it incidental to, such a work. The proposed Waste Water Transfer Tunnel is not, therefore, considered to fall within the definition of a street work for the purposes of s.48. Further, as mentioned above, Part III of the NRSWA 1991 is concerned with regulating works which would affect a street and in

connection with this, the act is drafted to extend to related tunnelling or boring under the street. However, it is considered that the intention of Parliament is that any such tunnelling or boring under the street must be contiguous with the works in the street and not tunnelling or boring completely detached and unrelated to the works in the street.

- 2.6.8 The Applicant notes National Highways duties as a highway authority, statutory undertaker and public body as set out in paragraph 4.3 but disputes the reference to the Applicant as: "a private company that does not have such stringent duties to adhere to." The Applicant is a statutory undertaker and has certain duties and obligations placed on it under the regulatory framework governing the water industry. The Applicant does not consider that its proposed ownership of a small area of deep level subsoil beneath land which forms part of the SRN (but not itself being land required for its operation) which is required for what will be an important piece of its vital infrastructure in any way affects the duties placed on National Highways.
- 2.6.9 In response to paragraph 4.4 and National Highways' submission that to grant the Applicant compulsory acquisition powers over land owned by National Highways would set a dangerous precedent, as stated elsewhere by the Applicant [REP4-088], the powers it is seeking in relation to the subsoil are not novel and are well precedented in other projects. Accordingly, the Applicant does not consider it will set a dangerous precedent and will not cause any detriment to the operation of the operation of the undertaking of National Highways.

2.7 Impact of compulsory acquisition on the undertaking

- 2.7.1 The Applicant welcomes National Highways' acceptance in paragraph 5.1 of the D4 submissions that the installation of the Waste Water Transfer Tunnel itself will not cause serious detriment to National Highways' undertaking and their acknowledgement that works of that nature are done routinely beneath the highway throughout the country. The Applicant understands, therefore, that National Highways does not object to the existence of the tunnel itself, but only to the Applicant acquiring the necessary freehold land for it. The Applicant also understands that National Highways does not object to the proposed Waterbeach Pipeline South, nor to the easement which the Applicant is seeking to acquire for that infrastructure.
- 2.7.2 For the reasons given above, and in its previous submissions [REP4-088], the Applicant does not accept that the proposed acquisition of the subterranean strata of land within which the tunnel will sit at a significant depth below the surface of the land gives rise in and of itself to serious detriment to National Highways' undertaking. National Highways has not identified any works which it may need to undertake at such a significant depth which would be prevented by the Applicant's ownership of subsoil land as opposed to being prevented the existence of the tunnel itself. National Highways will, through a combination of its retained ownership and

the protective provisions, retain sufficient control of the land to carry out its functions.

- 2.7.3 The Applicant submits that the tests in section 127 of the Planning Act 2008 is met by the proposed acquisition of land for the Waste Water Transfer Tunnel.
- 2.7.4 Whilst the Applicant notes at paragraph 2.11 of National Highways' submissions that it is said to be willing to grant the Applicant the necessary rights to place its apparatus beneath the SRN, the Applicant is unclear whether National Highways intends that the Applicant should not benefit from any land rights for the Waste Water Transfer Tunnel (as per paragraph 2.8 of the submissions) or is only willing to consider an easement (as implied by paragraph 2.9 of the submissions). Neither position is acceptable to the Applicant, who must ensure that it has appropriate and enforceable land rights to retain and protect the circa 3m diameter tunnel. The Applicant provided examples of comparable situations in its submissions in response to action point 15 in [REP4-088].
- 2.7.5 Insofar as National Highways assert that the Applicant has failed to satisfy the necessary tests for compulsory acquisition being an option of last resort because National Highways would be willing to grant street works consent under the NRSWA, the Applicant submits that the Waste Water Transfer Tunnel is a significant piece of important infrastructure and the Applicant must have a proprietary interest in the subsoil land within which it will be located. It would be illogical and unacceptable for the Applicant to have such an interest in the subsoil of land for the tunnel either side of a highway but then a 'gap' in its interest where the tunnel passes beneath a highway. For the reasons given in section 5 above, the Applicant does not accept that the tunnel comprises street works for the purposes of NRSWA. Even if that was incorrect, NRWSA does not confer any proprietary right upon the owner of the relevant, and, as National Highways acknowledge in paragraph 2.9, other promoters require land rights where their infrastructure crosses beneath the SRN.
- 2.7.6 Furthermore, National Highways has not engaged in any meaningful land negotiations to date with the Applicant to enable progress to be made on the land rights it requires, whether in relation to the tunnel or other parts of the Proposed Development such as the Waterbeach Pipeline South. In the circumstances, the authorisation of compulsory acquisition powers in respect of National Highways' land is justified and necessary to enable the Proposed Development to proceed, and the land and rights sought can be purchased and not replaced without causing serious detriment to National Highways' undertaking.

3 Applicants comments on other Deadline 4 Submissions

3.1 Christopher Smith - Written summaries of oral submissions made at any hearings [REP4-098]

3.1.1 Please see **Appendix A** of this document for Applicants Response.

3.2 Conservators of the River Cam – Current Position Statement [REP4-099]

3.2.1 The Applicant has had further positive discussions with the Conservators of the River Cam and the Protective Provisions have now been largely agreed. There remains, however, a difference of interpretation between the relationship between Article 44 and the protective provisions. The Applicant has set out the Applicant's current position in the amended Protective Provisions attached at **Appendix B** on this point and awaits agreement or further comment from the Conservators.

3.2.2 The Applicant notes the Conservators comments regarding the recovery of costs and expenses. The Applicant is giving consideration to this request. It is minded to agree to the principle of reimbursement of evidenced costs and expenses that are reasonably and properly incurred as a direct result of the exercise of the powers in the dDCO, but there needs to be some clear parameters about the scope of activities which could give rise to such expenses and how they may be calculated. The Applicant will undertake further discussions with the Conservators to seek to reach agreement on this point.

3.3 Liz Cotton – Comments on any submissions received at D3 [REP4-100]

Funding

3.3.1 The Applicant notes the comments made in relation to the proposed development. In response to the question on funding, any value that is released at the end of that process is governed by strict rules and conditions associated with the HIF funding which are very heavily weighted in the favour of our customers and the local community. As explained in the Applicant's Post Hearing Submission, Document Reference 8.21, 7.5.1 and as stated during the Compulsory Acquisition Hearing, the vast majority (90%) of any value associated with future use will be recycled through Homes England back to the Combined Authority for reinvestment in affordable housing elsewhere in the region. The remainder (10%) will be distributed between Anglian Water and Cambridge City Council. Any value received by the Applicant will be shared with our customers 50/50 in the usual way (as per Ofwat licence condition).

- 3.3.2 In response to the comments made on the Applicant's commitment to be operationally net zero by 2030, the Applicant has made a commitment that the new WWTP for Greater Cambridge will be operationally carbon net zero. The Applicant has also committed the new plant will be energy neutral – meaning the proposed WWTP will produce as much green energy or more than it consumes from the national grid. Anglian Water has an ambitious target of becoming an operationally net zero business by 2030 and clearly these project specific commitments are going to contribute positively to that goal.

3.4 Neos Networks Limited – Deadline 4 (D4) Submission [REP4-103]

- 3.4.1 Neos Networks Limited is owned, in part by SSE Group. In the Book of Reference, the Applicant has recorded SSE as having interests in a number of Parcels shown on the Land Plans. The Applicant believes Neos Networks Limited manages the assets of SSE, and is checking this status with Neos Network Limited.
- 3.4.2 Based on the information provided by Neos Networks Limited in its Representation, the Applicant believes any interference with SSE's infrastructure will be undertaken as part of the normal utilities work and will not interfere with the interest in land.

3.5 Nigel Seamarks - Deadline 4 (D4) Submission [REP4-103]

Statement of Common Ground : Waterbeach Development Company LLP ADR 7.14.19

- 3.5.1 The Applicant has engaged with the Waterbeach Parish Council throughout the consultation process as set out in the Consultation Report (App Doc Ref 6.1)[AS-115]. The Waterbeach Parish Council were invited to all, and attended two, of the Community Working Groups set up to provide active engagement with the Parish Councils associated with the project. In addition to the consultation material available online and at community access points, (Waterbeach Library, Community Centre, High Street, Waterbeach) a community event was held in Waterbeach Tillage Hall on Saturday 19 March 2022.
- 3.5.2 The Applicant notes the comments. In the Statement of Common Ground with Waterbeach Development Company LLP(WDC) (App Doc Ref 7.14.19) submitted at Deadline 3, the parties have set out the relationship between WDC and the Greater Cambridge Partnership. Namely that an application granted full planning permission for a relocated railway station to serve the new town and existing residents on 9 January 2020 (ref: S/0791/18/FL), which remains extant following lawful commencement, as confirmed by Lawful Development Certificate (LDC) application ref: 23/00541/CL2PD, issued by SCDC on 4 May 2023. The design and delivery of the relocated Railway Station is being managed by SLC Rail and is funded by the Greater Cambridge Partnership (GCP) in partnership with WDC. The relationship between SLC Rail and GCP is set out in their Statement of Common Ground (App Doc Ref 7.14.10).

- 3.5.3 The Applicant continues to engage with WDC and SLC Rail to ensure the Applicant's DCO programme and delivery of the Waterbeach pipeline and the installation of a new terminal pumping station are aligned with the New Station and any access proposals for the project can be managed effectively, along with traffic management and traffic plan proposals during the construction and operational phases of the project. To ensure clarity and confirm the relationship between SLC Rail and GCP, the Statement of Common Ground (App Doc Ref 7.14.10) was originally prepared with SLC Rail as signatory but has been changed at Deadline 5 to more accurately reflect the contractual relationship for the delivery of the Waterbeach New Station, with SLC Rail shown as the client representative of the Greater Cambridge Partnership (GCP) and GCP now as signatory.

Bannold Road Works

- 3.5.4 The Applicant has reviewed and agreed with the Highway Authority the proposed access and use of Bannold Road and any mitigation measures they have proposed. This engagement will continue with the final agreement to the Construction Traffic Management Plan (App Doc Ref 5.4.19.8) [REP4 – 068] and is reflected in the Statement of Common Ground with CCoC submitted at Deadline 5 (App Doc Ref 7.14.14)

Community Consultation

- 3.5.5 As set out in Sections 5 and 6 of the Community Liaison Plan [REP4-078 & 079] (App Doc Ref 7.8) communications will be issued to stakeholders and properties with a specified radius of the works which will provide a complete narrative of what is happening in project locations, these communications will include information on Public Rights of Way (PRoW) management measures, including diversions and alternative routes as well as progress information such as timings and duration of works and how and when reinstatement of areas will occur. There will also be a dedicated project website and e-news letter providing the information identified on page 5, paragraph 3 of REP4-103.

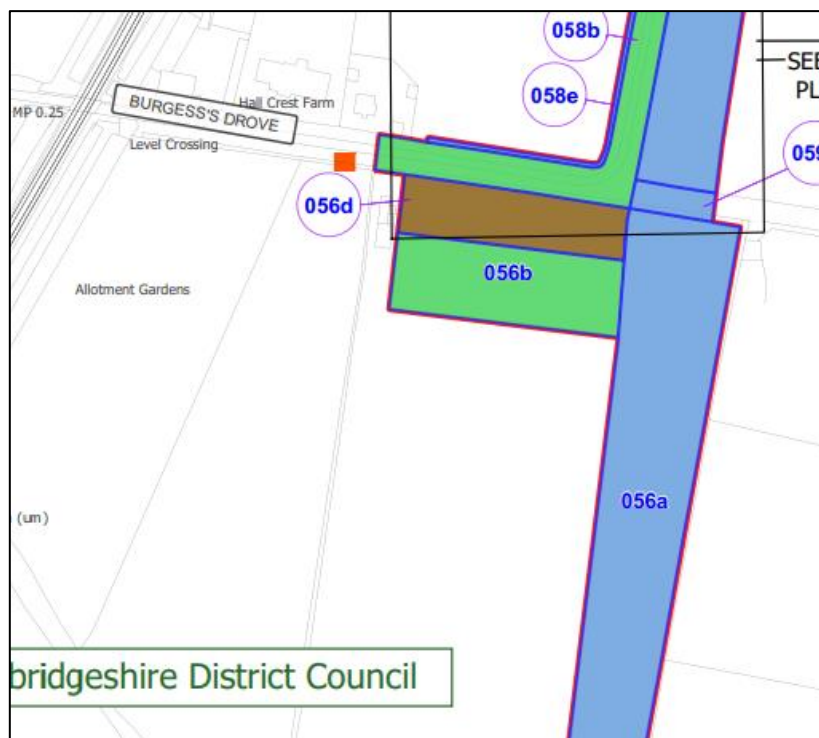
Allotment Concerns

Mental Health and Wellbeing

- 3.5.6 The Applicant has carried out a Mental Health Wellbeing Impact Assessment (MWIA) (App Doc Ref 5.4.12.3) which follows the toolkit for Mental Well-being Impact Assessment (MWIA) published by the National MWIA Collaborative (England) in 2011. The assessment included consideration of impacts on leisure opportunities and the physical environment which the allotments and access to Public Rights of Way form part of. The assessment concludes that no further appraisal is required and therefore the Applicant believes it has appropriately assessed the potential impacts as a result of the Proposed Development.

Access to the Allotments

- 3.5.7 The immediate access into the Allotment Gardens as marked in red below (taken from Sheet 10 of the Applicants Land Plans (App Doc Ref 4.4) falls outside of the Proposed Developments Scheme Order Limits, its access will not be impacted by the Proposed Development. A consultation by Network Rail was held in 2021 regarding two options to be considered for the crossing of Burgess's Drove (one closure and one upgrade), to date no planning applications have been submitted by Network Rail following the consultation and Network Rail, through consultation with the Applicant, has not indicated that a project is forthcoming that conflicts with the Applicant's proposals.



- 3.5.8 Paragraph 6.9.12 of the Construction Traffic Management Plan (App Doc Ref 5.4.19.7) which relates to the Waterbeach Pipeline and associated accesses states *'Additionally, connectivity/access to community facilities and residential properties during works will be maintained.'* Through this commitment, community wishing to access the allotment gardens via vehicle would not be prevented from doing so, this commitment is secured through Requirement 9 of the draft Development Consent Order (App Doc Ref 2.1) which requires the Applicant to accord with the measures set out in the management plans.

No consultation on what is planned

- 3.5.9 The Applicant consulted on its proposals for the Proposed Development at each of the consultation events (July to August 2020, July to August 2021, February 2022 to April 2022) which included in person sessions, community webinars, publishing of consultation material both electronically and in hard copies. An in person event was held at Tillage Hall in Waterbeach on Saturday the 19th of March 2022 where local

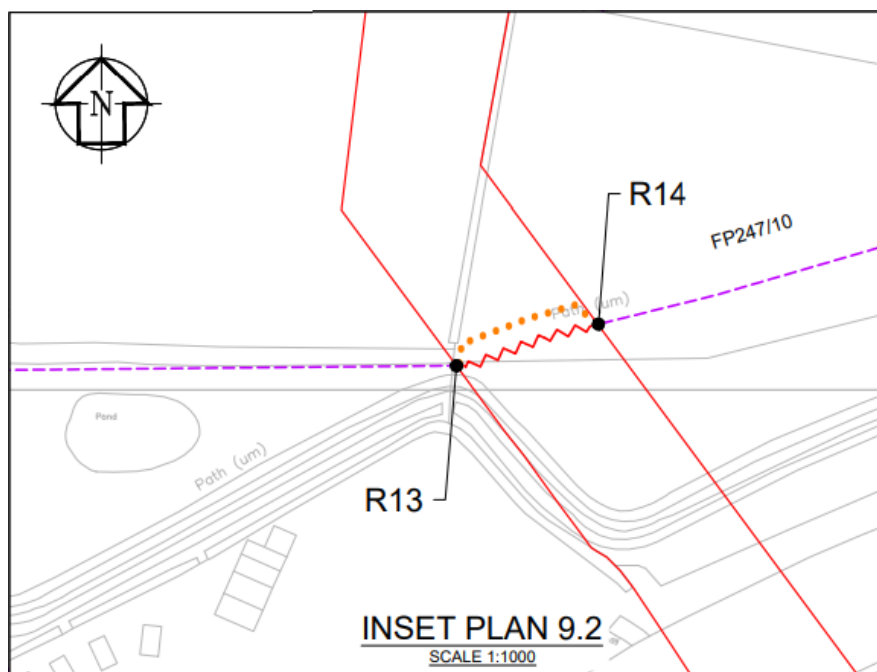
community members were invited to discuss their concerns. The Applicant also maintains a number of platforms (email, telephone, freepost) where the community can continue to provide feedback and request information.

No offer of compensation

3.5.10 The Applicant does not consider that the allotment users will be impacted by the Proposed Development, but it will consider any claims for compensation relating to the Proposed Development in accordance with the Compensation Code.

Access to River – Burgess Road – Bannold Drove – Riverbank

3.5.11 Access along PRoW 247/10 will be maintained during the construction phase, this can be seen on the Applicants Rights of Ways Plans (App Doc Ref 4.6), which shows that although a section of the Public Right of Way (247/10, R13 to R14) will require temporary closure, full access along PRoW 247/10 will be maintained by a temporary diversion in the immediate vicinity of the PRoWs legal alignment (please see below for a screen shot of Inset Plan 9.2 shown on Sheet 9 of the Right of Way Plans (App Doc Ref 4.6) which shows the PRoW that connects Burgess's Drove with the Riverbank).



3.6 Save Honey Hill - SHH Response to the Applicant's Responses to Written Representations 8.13 (REP2-038) [REP4-106]

3.6.1 As referred to above, the Applicant does not propose to repeat matters which are already set out in documents available to the examination. We have reviewed SHH's responses and respond only to address any new concerns which may have arisen, correct any omissions or provide signposting or clarification, where deemed necessary or helpful.

- 3.6.2 The Applicant has responded to the points raised by SHH in its response to the Document 8.13, REP2-038 Applicants Responses to Written Representations. The Applicant has reviewed further comments made by SHH in REP4-106, SHH 35, 39, 40, 42, 43).
- 3.6.3 In relation to the point made at para ref 11.1 (SHH35), the Applicant directs SHH to the information provided in response to ExAQ2.8.13 which states that the Applicant remains in close dialogue with the relevant partners, Homes England and the City Council. Homes England's evidence at ISH2 reinforced their commitment to project. The Applicant, and its partners, remain confident that they can meet the full quantum of any increased costs through the mechanisms explained at CA1.
- 3.6.4 Regarding the comments at 11.2 that:
- 3.6.5 *The summary committed in Action point ISH2.7 / AW 8.6 [REP1-082] has not been provided.* The information was provided and the Applicant refers to Document 8.7, REP1-083; Document 8.8 REP1-121; and Document 8.9 REP1-122.
- 3.6.6 *REP1-123 Anglian Water Services Limited 8.10 HE Assessment of Cambridge HIF Bid Redacted, is missing pages 4-8.* The Applicant understands that the missing pages were summaries of other bids and therefore not relevant to this project's examination.
- 3.6.7 *The HIF Business Case Appendices listed in SHH [REP2-067], 2.1 have not been provided (Including Appendices J, M, N, R/S, T, U, AC, AD).* The Applicant can confirm the Appendices have been provided and refers SHH to Documents REP1-084 to REP1-120.
- 3.6.8 SHH assert that enabling costs are already substantially overspent. The Applicant can confirm that Enabling Costs are not overspent.
- 3.6.9 Regarding the comments contained in SHH39, the Applicant has reviewed and addressed where appropriate. Please see latest version of the Project Description, Document 5.2.2, REP4-022.
- 3.6.10 Regarding the comments outlined in SHH40: Outstanding Concerns about Drafting of dDCO and Relevant Plans, the Applicant has reviewed and responded in an appendix to this document.
- 3.6.11 Regarding the comments outlined in SHH42, the Applicant notes the comments and observations and refers to the above references to where information and documents have been provided and published.
- 3.6.12 The Applicant notes the comments made in SHH43 regarding Quy Fen and Black Ditch: Water Pollution Control and Monitoring and SHH's intention to review the updated Drainage Strategy submitted by the Applicant at Deadline 04 and provide further comment. The Applicant will await those further comments before responding.

3.7 Save Honey Hill - SHH 34 Response to the Applicant's Responses to Written Representations AW 8.13 (REP2-038) [REP4-107 & REP4-108]

3.7.1 The Applicant has provided its response in **Appendix D** and **Appendix E** of this document.

3.8 Vodafone – Deadline 4 (D4) Submission [REP4-11]

- 3.8.1 In the Book of Reference, the Applicant has recorded Vodaphone Limited and Vodaphone UK Limited (Vodaphone) as having interests in a number of Parcels shown on the Land Plans. These include Parcels 001a, 001b, 001c and 003e.
- 3.8.2 In the information supplied by Vodaphone as part of its Representation, Vodafone is suggesting it has a leasehold interest across the existing Cambridge Waste Water Treatment Plant (mainly Parcel 005c). The Applicant has asked Vodaphone for more information in relation to this interest.
- 3.8.3 Based on the information provided by Vodaphone in its Representation, the Applicant believes any interference with Vodaphone's infrastructure in Cowley Road (Parcel ?) will be undertaken as part of the normal utilities work and will not interfere with its interest in land.

3.9 Waterbeach & District Bridleways Group – Comments on any submissions received at D3 [AS-177]

- 3.9.1 Please the Applicants responses to REP4-103 which raised the same concerns relating PRoW 247/10, access during the construction phase and consultation and engagement relating to the new train station.
- 3.9.2 As set out above the Applicant will maintain access to and along PRoW 247/10 during the construction phase, there are no temporary or permanent PRoW closures or diversions associated with the operational phase of the Proposed Development.
- 3.9.3 The Applicant would like to confirm that the area of Bannold Drove designated as Byway 247/14 is not within the Scheme Order Limits for the Proposed Development and does not form part of the Construction traffic access route. The section of Bannold Drove that does fall within the Scheme Order Limits is adopted highway. As set out in the Applicants response to ExA's Hearing Actions (Point 101, App Doc Ref 8.20 [REP4-87]) powers sought along Bannold Drove from the Waterbeach WRC entrance north to the edge of the Scheme Order Limits relates the implementation of traffic management measures and does not form part of the construction route.
- 3.9.4 The Applicant notes that Burgress's Drove is referred to in the submission as a Byway but believes this is an omission as Burgress's Drove is an adopted highway.

- 3.9.5 The Applicant is not seeking the power within the draft Development Consent Order (App Doc Ref 2.1) to close Burgess's Drove and Bannold Drove for the length of the construction period or in its entirety but is seeking the ability to close sections of these highways for limited periods in order to carry out the activities defined in Section 3.8 of the Project Description (App Doc Ref 5.2.2) and Section 6.8 of the Construction Traffic Management Plan (App Doc Ref 5.4.19.7).
- 3.9.6 Existing alternative routes are available for pedestrians and equestrians. However, through the implementation of the Community Liaison Plan (App Doc Ref 7.8 [REP4-078]), which lists the Waterbeach and District Bridleways Group as a stakeholder to be consulted/informed, the timings, durations and traffic management measures associated with the construction of the Waterbeach pipeline would be communicated through one or more of the forums listed in Table 6-1 of the Community Liaison Plan.

3.10 South Cambridgeshire District Council (SCDC) – Local Impact Report Updates [REP4-092 & REP4-093]

- 3.10.1 The Applicant has reviewed the updated Local Impact Report (LIR) from South Cambridgeshire District Council (SCDC). The Applicant notes the updates to the SCDC assessment of impact to Baits Bite Lock Conservation Area (HE095) in paragraph 9.25. This has been amended in the LIR to state that SCDC assess the Permanent Construction Phase effect on HE095 as moderate adverse, resulting from a moderate impact to a medium heritage value asset. The Applicant disagrees with this assessment and stands by the assessment in ES Chapter 13 Historic Environment (App Doc Ref 5.2.13). This states that, when considering the implementation of mitigation as well, the impact to HE095 is minor adverse, resulting in a slight adverse effect in accordance with Table 2-3. The Applicant and SCDC are in agreement regarding the cause of impact, comprising change in the character of a section of riverbank and change in long views from the east of the conservation area, but disagree on the degree of impact to the heritage value of the conservation area as a result.
- 3.10.2 The Applicant also notes the change to Paragraph 9.37. This now states that the change in settings of heritage assets experienced for the Operation Phase, from the introduction of traffic, light etc. associated with the operation of the Proposed Development, amounts to a moderate adverse effect. ES Chapter 13 Historic Environment (App Doc Ref 5.2.13) reports negligible adverse impacts, amounting to slight adverse residual effects. This has been updated in the version of ES Chapter Historic Environment (App Doc Ref 5.2.13) [REP4-030] provided at Deadline 4 to include a table of designated assets experiencing these effects. The Applicant maintains that there are no significant effects predicted as a result of the operation of the Proposed Development and disagrees with the assessment that any operational effects should be reported as moderate adverse.

4 Appendix A – Applicants Response to REP4-098

4.1 Introduction

Background

4.1.1 This note provides the Applicant's response to the written summary of the oral submission provided by Chris Smith [REP4-098] at the Issue Specific Hearing (Environmental Matters) on the 10 January 2024. The Applicant has reviewed the written summary, and notes that the concerns relate to the following:

- Bat survey guidance
- Transect surveys
 - Duration of transects undertaken
 - Timing (seasonality) of transects undertaken
 - Survey effort in relation to Waterbeach transfer pipeline
- Static deployments
 - Duration of static deployments
 - Static deployments along Waterbeach transfer pipeline
- Presence of barbastelle
- Assessment of effects
- Bats using a commuting/foraging route that crosses the A14
- Buildings within the existing Cambridge WWTP and structures (such as existing A14 bridge) in relation to potential bat roosts.

4.2 Responses to Comments

Bat survey guidelines

4.2.1 The Applicant undertook bat surveys in 2021 and 2022, therefore these were based on the then current Bat Conservation Trust (BCT) survey guidance issued in 2016 (Collins, 2016), rather than the BCT guidance dated 2023 as stated in [REP4-098]. The Applicant has reviewed the application and cannot locate any reference to the use of the 2023 which aligns with the statement made above.

4.3 Transect surveys

Duration of transects

- 4.3.1 The Applicant confirms that the transect routes undertaken at the existing Cambridge WWTP and the River Cam were reported as two separate transects in ES Appendix 8.7 Bat Technical Appendix (App Doc Ref 5.4.8.7) [APP-092], but were walked as one route due to the length of the combined route being relatively short, and the routes proximity to each other. The methodology used is in line with Section 8.2.4.1 (Transect surveys) within the BCT survey guidance (Collins, 2016), with the varied habitats across the survey area covered by the transect routes taken. Of particular reference is the following paragraph on page 55 of the BCT survey guidance (Collins, 2016):
- 4.3.2 *“Ideally, all habitats represented on site should be sampled by transects during a single survey visit to allow a comparison of bat activity across the site. However, if few ecologists are available and the site is particularly large, it may be necessary to visit the site (covering different transects each time) over several consecutive nights (collectively considered to be ‘one survey visit’) to cover all areas.”*
- 4.3.3 The reporting as separate routes was intended to allow insights into the discrete areas of Proposed Development. This is in line with the agreed approach as noted within Section 3.1 of ES Appendix 8.12 Baseline Surveys Tech Note (App Doc Ref 5.4.8.7) [APP-097].
- 4.3.4 The Applicant acknowledges that there is an error in the durations in Table 3-6 and Table 3-8 of ES Appendix 8.7 Bat Technical Appendix (App Doc Ref 5.4.8.7) [APP-092]. This is corrected below.

Table 3-6: Weather conditions during transect surveys for the existing water treatment works route (transect 1) and the PRow (85/6), G040 and R037 (transect 3).

Survey visit	Date	Temperature	Weather	Wind	Cloud cover	Rain	Duration
1	18.05.21	14°C /12°C	Dry and cloudy, light rain at 23:00.	2/3	7/8	1/0	2hr 17m (20:53 – 23:10)
2	22.07.21	23°C /21°C	Mild, dry	1	3	0	2hr 47m (21:05 – 23:52)
3	29.09.21	12°C	Cool, dry, clear sky and light wind.	2	0	0	2hr 29m (18:41 – 21:10)

Source: Mott MacDonald Surveys 2021

- 4.3.5 ES Appendix 8.7 Bat Technical Appendix (App Doc Ref 5.4.8.7) [APP-092] notes that there were six transects – three associated with the existing Cambridge WWTP, the proposed outfall area and proposed WWTP (completed in 2021); and three associated with the proposed Waterbeach transfer pipelines (completed in 2022). The Applicant confirms that the transects walked in 2021 did not fall short of the suggested duration of transects, with the minimum duration of 2hrs 17mins.

Survey effort in relation to Waterbeach transfer pipeline

- 4.3.6 The Applicant acknowledges that one survey (all in August 2022) for each of the transect routes carried out along the Waterbeach transfer pipeline were shorter in duration than the BCT survey guidance (Collins, 2016) suggests at 49mins, 1hr 10mins and 1hr 17mins respectively. These shorter transect durations were

considered within the assessment made, on a precautionary basis, as outlined within 4.3.7 below.

Timing of transects

- 4.3.7 The 2022 transects were also carried out in June, July and August, which are considered to be months within the summer period. As a precautionary approach was taken whilst interpreting the data. For example, the Applicant considered that the presence of a bat species in one month means that it is present in all active period months; and that all species recorded may utilise suitable habitat features for commuting and foraging. Therefore, the assessments made are not considered to be affected, and the conclusions remain the same.

4.4 Static deployments

- 4.4.1 The Applicant confirms that a total of four statics were deployed, as outlined within ES Appendix 8.7 Bat Technical Appendix (App Doc Ref 5.4.8.7) [APP-092] and ES Appendix 8.12 Baseline Surveys Tech Note (App Doc Ref 5.4.8.12) [APP-097], associated with the existing Cambridge WWTP, the proposed WWTP and the proposed outfall.

Duration of static deployment

- 4.4.2 The limitations provided within paragraph 2.9.6 of ES Appendix 8.7 Bat Technical Appendix (App Doc Ref 5.4.8.7) [APP-092] notes that “During May 2021 and August 2021 the River Cam static detector (location TL 48410 61610), despite being deployed for at least five nights, only collected three nights’ worth of data from each month. Likewise, during August and September at the Proposed Development static detector location (TL 49846, 61223) only four nights of data were collected from each month. This was due to high instances of bat calls or other noise, filling the memory cards or running the batteries low, leading to power failure”) highlight that there were occasions when the recording time period was 3 nights (in May and August 2021 for the detector near the proposed outfall location at TL4841061610) and 4 nights (in August and September 2021 for the detector located within the proposed WWTP at TL4984661223).
- 4.4.3 As mentioned in paragraph 4.3.7 above, the Applicant has undertaken a precautionary assessment in response to this limitation, taking into account the activity recorded or the activity that may occur in these locations by bat species.

Static survey along Waterbeach transfer pipelines

- 4.4.4 The 2022 surveys did not include static deployments, on the basis that these surveys were for the Waterbeach pipeline section, where all works proposed are temporary and all habitats will be reinstated post-works. This was considered proportionate in line with section 2.2.5 of the BCT survey guidelines (Collins, 2016). The Applicant confirms that the limitations relating to static deployment were fully considered in the assessments of impacts on bats, on a precautionary basis, and no change to the assessment made is considered appropriate.

4.5 Presence of barbastelle

- 4.5.1 The Applicant found barbastelle bat activity during the surveys undertaken. No roost sites for this species were recorded within the survey area.
- 4.5.2 The Applicant's static surveys found that there were 21 passes of barbastelle associated with the River Cam and A14 road bridge. As noted within Table 8.1 of the BCT survey guidance (Collins, 2016), the limitations to static surveys are that bats cannot be counted, and page 56 notes that "Data from automated/static systems is limited because there is no observational context. One hundred bat passes could represent one passing bat 100 times or 100 bats each passing once." The transect data help to provide context, and whilst barbastelle were recorded on the transect route near to the River Cam and A14, the passes were noted in Spring (May) and were not recorded in Autumn (October). As noted within [REP4-098], inferring status of a possible commuting route would be speculative.
- 4.5.3 The Applicant's assessment does, however, take the presence of barbastelle into account in mitigation design, in all areas where this species is recorded. There will continue to be unilluminated (above existing levels) routes over and under the A14 road bridge for bat species (including barbastelle) to use throughout the construction and operation phases.
- 4.5.4 There will continue to be suitable habitat for barbastelle and other bat species to use, to commute and forage across the Scheme Order Limits during construction and operation. The proposed planting within the landscape masterplan will provide additional foraging and commuting resources above that which are currently available, as documented within ES Appendix 8.14 Landscape, Ecological and Recreational Management Plan (LERMP) (App Doc Ref 5.4.8.14) [REP4-056].

4.6 Assessment of effects

- 4.6.1 The Applicant does not conclude that there will be no roosts or foraging and commuting routes affected within the assessment, as stated in the written response. The assessment undertaken examines the proposal's potential effects upon ecological receptors, and the significance of the effects.
- 4.6.2 In relation to the proposed WWTP, the assessment in ES Chapter 8 Biodiversity (App Doc Ref 5.2.8) [REP4-024] concludes (paragraphs 4.2.97 to 4.2.119) that during construction the long-term residual (i.e. after considering secondary mitigation or enhancement) effect as a result of disturbance to, and loss of, bat habitats is anticipated to be a moderate beneficial effect (significant), due to increased habitat and roost feature creation. The Applicant confirms that the Low Fen Drove Way Grasslands and Hedgerows CWS will be maintained as a dark (i.e. at existing illumination levels) corridor (as per paragraph 4.2.20 of Lighting Design Strategy (App Doc Ref 5.4.2.5) [REP4-048]). However, in the short-term until planting establishes, the residual effect on bats will be slight adverse, which is not significant.

- 4.6.3 Paragraphs 4.3.85 to 4.3.103 of ES Chapter 8 Biodiversity (App Doc Ref 5.2.8) [REP4-024] outline that the residual effect as a result of operational impacts to bats from lighting, noise and habitat changes, remains as slight beneficial (not significant). This positive magnitude effect derives from the proposed planting and landscaping proposals which will provide a benefit to bats, through additional foraging resource and vegetated commuting linkages.
- 4.6.4 The Applicant also provides an assessment of the construction phase on bats within the Waterbeach transfer pipeline area, within paragraphs 4.2.282 to 4.2.300 of ES Chapter 8 Biodiversity (App Doc Ref 5.2.8) [REP4-024], that there will be a residual slight adverse effect, which is not significant. During operation, the land required for the construction of the Waterbeach transfer pipelines will be reinstated to its existing landform and use (including habitats), meaning that there will be no significant effects on bats during operation.

4.7 Bat species crossing the A14

- 4.7.1 The Applicant agrees with [REP4-098] that bats, including barbastelle, were recorded in locations on either side of the A14. However, the proposals will not affect the ability of bats to cross the A14, either during construction or operation. Paragraph 4.2.103 in the ES Chapter 8 Biodiversity [REP4-024] notes “Barbastelle bats have been recorded commuting along the disused railway, a feature of the Low Fen Drove Way Grasslands and Hedges CWS and calls were recorded to the west of Biggin Abbey Cottages. There will continue to be vegetated corridors (tree lines and hedgerows) facilitating bat (including barbastelle) movements across the local landscape. This includes the tree lines and hedgerows linking Biggin Lane with the River Cam (these will not be lost), and similarly the existing vegetation (including that within Low Fen Drove Way Grasslands and Hedge CWS) will continue to provide a potential crossing point over the unlit A14.”
- 4.7.2 The Applicant does not concur with the statement that “the proposed works will have a significant impact, both temporarily during construction (by blocking commuting routes at the A14 River Cam Crossing), but also during operation (for instance from upgrading lighting at the J34 junction)” within [REP4-098]. There will not be blocked commuting routes, with the A14 River Cam Crossing (either over the road, or under the road bridge) remaining accessible for bats at night due to the use of sensitive lighting for any outfall related works to maintain a dark (at existing illumination levels) corridor, and limiting night-time works to those that are time sensitive (e.g. concrete pours). In relation to junction lighting the Applicant clarifies that there is existing lighting at the eastbound off slip / B1047 Horningsea Road signalised junction, this is to remain as existing with minor changes to the locations of the lamp columns due to the reconfigured 'off-slip' junction and the realignment of Horningsea Road. There may be a need to extend street lighting north of the junction to meet highways authority requirements.
- 4.7.3 Lighting across the Proposed Development will be designed in accordance with the Lighting Design Strategy (App Doc Ref 5.4.2.5) [REP4-048], which includes measures

as outlined in Guidance Note 01/21 The Reduction of Obtrusive Light Guidance (Institution of Lighting Professionals, 2021) and Guidance Note 08/23 Bats and Artificial Lighting in the UK (Institution of Lighting Professionals, 2023). Permanent lighting is secured by Schedule 2 Requirement 7 (Detailed design) (App Doc Ref 2.1) which requires the approval details submitted in relation to operational lighting must accord with the details set out in the Lighting Design Strategy (App Doc Ref 5.4.2.5) [REP4-048]. In relation to construction lighting this is secured by Schedule 2 Requirement 14 (Construction lighting) (App Doc Ref 2.1) which requires the approval details submitted in relation to construction lighting must accord with the details set out in the Lighting Design Strategy (App Doc Ref 5.4.2.5) [REP4-048].

4.7.4 With these measures in place, the effect on bats is not considered to be significant.

4.8 Buildings and structures

Use of the A14 River Cam Crossing bridge by roosting bats

4.8.1 The features on the A14 bridge noted in [REP4-098] were found to be in a different condition during the Preliminary Roost Assessment visit by the Applicant in April 2021. It was observed at the time that the expansion joints and crevices were damp and dripping with water. As such, the features were not considered suitable for roosting bats. It is acknowledged that structures and features can change their suitability over time.

4.8.2 The Applicant has already included a commitment in Section 7.2, Ecology and Nature Conservation, of the CoCP Part A [REP4-040] to undertake further pre-commencement surveys to identify any habitats (or structures) suitable for protected species, including bats. These pre-commencement surveys are secured through Requirements 8 and 9 of the draft DCO (App Doc Ref 2.1). Should these pre-construction surveys identify the presence of protected species, including roosting bats, then the Applicant would be legally obligated to secure the relevant protected species licence to complete works.

4.8.3 The Applicant includes reference to Daubenton's bat likely roosting nearby to water (paragraph 3.6.8 within ES Appendix 8.7 Bat Technical Appendix (App Doc Ref 5.4.8.7) [APP-092]), and not that they are "roosting nearby to the route" (as stated in the written response). The Applicant did not find evidence that this species was roosting within any structures or trees within the survey area during surveys.

Use of other buildings and structures by roosting bats

4.8.4 [REP4-098] acknowledges that the buildings within the existing Cambridge WWTP have not been directly observed by Mr Chris Smith, so oblique aeriols to highlight buildings which "appear to show at least low potential for bats" have been provided. The scope of the Proposed Development does not include demolition of structures, and the scope of work at the existing Cambridge WWTP includes decommissioning for the purpose of permit surrender only. Section 6.1 of the ES Chapter 2 (App Doc Ref 5.2.2) explains that these works 'include the draining down and cleaning of

existing tanks (including the disposal/treatment of any waste), making the plant mechanically and electrically safe, preventing heat generating equipment from being operated and prevention of rainwater storage in open top tanks'. Any future works to this area outside of decommissioning for the purpose of permit surrender are therefore outside of the scope of the assessment. Potential impacts on bats associated with future works' would be considered by those responsible for the redevelopment of the existing Cambridge WWTP site.

- 4.8.5 Paragraph 2.4.3 of ES Appendix 8.7 Bat Technical Appendix (App Doc Ref 5.4.8.7) [APP-092] notes that "During refinement of the survey effort, no buildings were selected for surveys based upon the design at the time. This does not exclude any future building surveys, based upon design revisions and/or alterations."
- 4.8.6 The Applicant has committed to undertake further survey work to inform any works and licencing that may impact upon protected species, including bats.

4.9 Conclusion

- 4.9.1 The Applicant confirms that additional surveys will be carried out, as required by the CoCP Part A (App Doc Ref 5.4.2.1) [REP4-040], and that these would be in line with current survey guidance (BCT, 2023), in terms of survey design and effort. Accordingly these will include a daytime bat walkover (DBW – incorporating a preliminary roost assessment – Section 4.3 and 5.2 of the 2023 guidelines), and any required additional survey to inform detailed avoidance, mitigation and compensation measures, and licencing, as appropriate based on the findings of the DBW, which would be in agreement with Natural England.
- 4.9.2 The Applicant disagrees that all surveys were not compliant with BCT survey guidance (Collins, 2016), has clarified the limitations that arose, and made appropriate precautionary assessments on the impacts of the proposals on bats in light of the limitations, survey findings and maximum design envelope (as outlined within the summary of 5.2.8 ES Chapter 8 Biodiversity [REP4-024]).

5 Appendix B – Applicants Position on the Conservators of the River Cam

Rights on the river Cam

44.—(1) Notwithstanding the licences which may have been granted pursuant to section 15 or 16 of the River Cam Conservancy Act 1922(a), the undertaker may for the purposes of the construction, operation, use and maintenance of the authorised development temporarily suspend any rights of navigation or any other rights over the parts of the river Cam identified with blue hatching on the rights of way plans.

(2) Notwithstanding the licences which may have been granted pursuant to section 15 or 16 of the River Cam Conservancy Act 1922(a), the undertaker may for the purposes of the construction, operation, use and maintenance of the authorised development permanently extinguish any rights of navigation or other rights over that part of the river Cam which is shown and numbered 019a on the land plans permanently acquired by the undertaker in connection with Work No. 32.

(3) Save as provided in paragraph (1) and (2), any rights of navigation over any other parts of the river Cam may be temporarily suspended with the written consent of the relevant navigation authority as provided in paragraph 4 of Part 8 of Schedule 15 (protective provisions).

(4) The undertaker must not exercise the powers in paragraph (1) or (2) unless it has:

- (a) given not less than 42 days' notice in writing of its intention to do so to the relevant navigation authority; and
- (b) published notice of the temporary suspension or extinguishment and the date from which the temporary suspension or extinguishment is to have effect once in each of 2 successive weeks in a local newspaper published or circulating in the City of Cambridge; and
- (c) displayed notice of the temporary suspension or extinguishment and the date from which the temporary suspension or extinguishment is to have effect in a conspicuous position adjacent to the river Cam from the date of the first notice published under sub-paragraph (b) above, until at least 7 days after the date on which the last notice is published under sub-paragraph (b).

(5) The date that is notified, published and displayed under paragraph (4) as the date from which the suspension or extinguishment is to have effect must not be earlier than 14 days after the last date on which a notice is published under paragraph (4)(b).

(6) The River Cam Navigation Act 1851(b), the River Cam Conservancy Act 1922(c) and the Cambridge City Council Act 1985(d) are disapplied in so far as their continuance is inconsistent with the construction, operation, use and maintenance of the authorised development.

(7) The Conservators of the River Cam Byelaws 1996 are disapplied in so far as their continuance is inconsistent with the construction, operation, use and maintenance of the authorised development.

FOR THE PROTECTION OF THE RELEVANT NAVIGATION AUTHORITY

1. For the protection of the relevant navigation authority the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and the relevant navigation authority, have effect.

2. In this Part of this Schedule—

“river work” means any works forming part of the authorised development which are in or over the river Cam or which require interference with the movement of river traffic on the river Cam;

“temporary river work” means those river works which are temporary in nature and which do not form part of the permanent works in or over the river Cam

River works

3.—(1) Save in an emergency, the undertaker will not commence any river work until—

(a) it has supplied to the relevant navigation authority plans of that river work showing the detailed design, work programme and any associated temporary or permanent interference with rights of navigation pursuant to articles 44(1) and 44(2) (rights on the river Cam); and

(b) it has provided 42 days' written notice of the intention to commence such river work.

(2) The relevant navigation authority must provide any comments on the plans submitted pursuant to paragraph 3(1)(a) within 28 days of receipt and the undertaker must have reasonable regard to those comments insofar as they relate to the maintenance of the safe movement of traffic on the river Cam.

(3) The undertaker must carry out all river work

(a) in accordance with such details as have been provided to the relevant navigation authority pursuant to this paragraph 3;

(b) so that the movement of river traffic on the river Cam is not restricted more than is reasonably practicable in order to carry out the relevant river work; and

(c) in compliance with the reasonable requirements of the relevant navigation authority.

(4) Upon completion of any river work, the undertaker must—

(a) remove as soon as is reasonably practicable any temporary river work and associated materials; and

(b) as soon as reasonably practicable following the removal of any temporary river work pursuant to sub-paragraph 3(4)(a), to make good the site of any temporary river work including any damage to walls or banks arising from undertaking the river work so as not to cause any interference with the movement of river traffic.

(5) In carrying out any river work, the undertaker must not—

(a) deposit in or allow to fall or be washed into the river Cam any gravel, soil or other material except to the extent permitted by this Order; and

(b) discharge or allow to escape either directly or indirectly into the river Cam any offensive or injurious matter.

Details for approval

4.—(1) The undertaker must, at the same time as the provision of the plans pursuant to paragraph 3(1)(a), provide for the approval of the relevant navigation authority

(a) details of the extent of any temporary suspension of rights of navigation required pursuant to article 44(3) in order to carry out the relevant river work and the undertaker must not interfere with any rights of navigation pursuant to article 44(3) except in accordance with this paragraph; and

(b) details of any temporary or permanent signage required in connection with the river work.

(2) The relevant navigation authority must respond in writing within 42 days of the request for approval under sub-paragraph (1) to either give consent to the details as submitted or suggest amendments to the details provided, but any such amendment must not materially affect or delay the efficient delivery of the relevant river work and must be suggested only where the relevant navigation authority considers such amendment necessary (acting reasonably) in accordance with its functions and duties in its capacity as the relevant navigation authority.

(3) If the relevant navigation authority provides pursuant to sub-paragraph (2) any suggested amendments to the details provided, the undertaker must within 14 days confirm whether those amendments are accepted and in the event the undertaker agrees to the amendments, the undertaker must carry out the relevant river work in accordance with those amendments. In the event the undertaker does not agree to the amendment, the dispute may be referred to and settled

by arbitration in accordance with article 52 (arbitration) and the relevant river work is to be undertaken in accordance with the terms of the final determination.

(4) If the relevant navigation authority fails to respond to the undertaker's request for approval pursuant to this paragraph 4 within 42 days, consent is deemed to have been given.

(5) The undertaker must pay the relevant navigation authority a sum equal to the whole of any costs and expenses reasonably and properly incurred by the relevant navigation authority in relation to any approvals sought under this paragraph 4 within 30 days of written evidence of such costs and expenses.

Intention to commence Work No. 31 and Work No. 32

5. The undertaker will provide to the relevant navigation authority at least 42 days' written notice of the intention to commence Work No. 31 and Work No. 32.

Indemnity

6.(1) Subject to the provisions of this paragraph, the undertaker agrees to indemnify the relevant navigation authority from and against such charges, claims, demands, damages, expenses, liabilities and losses, (together, "losses") suffered or reasonably incurred by the relevant navigation authority to the extent that any losses are directly caused by—

(a) the construction of a river work or a temporary river work; or

(b) any act or omission of the undertaker or of its officers, employees, servants, contractors or agents whilst engaged in—

(i) the construction of the river work or a temporary river work; or

(ii) seeking to remedy any failure of the river work or a temporary river work.

(2) The relevant navigation authority must mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under sub-paragraph (1) and must, if requested by the undertaker, provide an explanation of how any claim under the indemnity in sub-paragraph (1) has been mitigated .

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any losses referred to in that sub-paragraph to the extent that they are—

(a) attributable to the negligence or wilful misconduct of the relevant navigation authority or of its officers, employees, servants, contractors or agents; or

(b) not within the reasonable control of the undertaker or of its officers, employees, servants, contractors or agents.

(4) The relevant navigation authority must give to the undertaker notice in writing of any losses for which the undertaker may be liable under this paragraph as soon as reasonably possible and no settlement or compromise of them may be made without the prior written consent of the undertaker which, if it notifies the relevant navigation authority that it desires to do so, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand provided that no settlement or compromise of any such claim or demand shall be made without the consent of the relevant navigation authority (which shall not be unreasonably withheld). If consent is not given by the undertaker, the relevant navigation authority shall diligently defend such claim or demand.

Disputes

7. Any difference arising between the undertaker and the relevant navigation authority under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) must be referred to and settled by arbitration in accordance with article 52 (arbitration).

6 Appendix C - Applicant's Response to Save Honey Hill's 'Comments on any submission received at Deadline 3'

Applicant's Response to Save Honey Hill's 'Comments on any submission received at Deadline 3'

This table forms the Applicant's response to Save Honey Hill's 'Comments on any submissions received at Deadline 3' [REP4-106] and specifically the part of the submission entitled 'SHH Outstanding Concerns about Drafting of dDCO and Relevant Plans' dated 22 January 2024. The submission made by Save Honey Hill included item numbers and in some instances, was provided as one block of text per item. For ease in preparing its response, the Applicant has broken down the item numbers into lists as a), b) and c) and so on so that the Applicant's response may be linked to the relevant amendment/clarification sought by Save Honey Hill.

Item Number	Draft DCO and/or Plans Reference	Amendment or Clarification Requested and Reason	Applicant's Response
1	Article 2, Requirement 1 and Schedule 2 Part 2 in relation to 'relevant planning authority'	<p>a) This definition is incorrect. It should say 'waste planning authority...for the area'. To be clear this is the Cambridgeshire County Council. The District Councils are only 'waste collection authorities' under the Public Health Act.</p> <p>b) In our view, it should be made clear in Requirement 1 that the relevant planning authority shall consult with one or both of the district councils, as appropriate, before approving any plan or document submitted in accordance with these requirements. We accept that the RPA has the discretion to do this, but since these submissions are not planning applications there is no obligation in law to consult. The District Councils should be named and treated as 'requirement consultees' under the terms of Part 2 of Schedule 2.</p>	<p>a) The Applicant has considered this and is content to update the definition of relevant planning authority to the following:</p> <p>"relevant planning authority" means the waste <i>planning</i> authority from time to time for the area within which the relevant part of the authorised development is to be constructed, used or maintained, or power under this Order is to be exercised;</p> <p>b) As to consultation, the Applicant provided a detailed response to this at Deadline 3 in 'Applicant's Comments on Save Honey Hill's Deadline 2 Submissions' (Application Reference 8.14) [REP3-054]. The Applicant has made its view clear and considers this to be a matter for the County Council, as the relevant planning authority, to raise with the ExA should it wish to do so.</p>
2	Article 6, Schedule 14, Works Plans and Design Plans	<p>a) SHH made a number of sensible requests in items 2 to 4 of SHH11, for clarifications and corrections to be made to these, most of which were refused by the Applicant, mainly on grounds of convenience or precedent. This is not satisfactory. If we, as experienced users of DCO documents, find it difficult to understand which elements of the works are intended to be in certain locations with certain parameters, this will present great difficulty for the Applicant, the Local Planning Authority and others during implementation.</p>	<p>a) The Applicant provided detailed responses to Save Honey Hill's suggest amendments to Article 6, Schedule 14 and the plans in 'Applicant's Comments on Save Honey Hill's Deadline 2 Submissions' (Application Reference 8.14). The Applicant considers these points to be relevant here and does not propose to reiterate them.</p>

		<p>b) As the ExA noted in questions regarding one example in ISH3, this not only makes it difficult to find specific items of plant on the Design Plans and match these to the parameters, it has also led to a series of errors and inconsistencies across the documents.</p> <p>Our requests are not unduly onerous and are as follows:</p> <p>(i) Schedule 14 should be ordered in Works number order and labelling/descriptions of elements/structures in Schedule 1 and 14 kept consistent. This labelling should carry through to the Works Plans and, to the extent, necessary to the Design Plans. It is important for users to be able to identify which elements of work are permitted within each of the corresponding shaded areas on the Works Plans and the limits of deviation that apply to these.</p> <p>(ii) In Article 6, it should be stated within what limits laterally each defined work is to be located.</p> <p>This could be achieved by opening wording to the effect that 'any work shall be sited within the corresponding coloured shaded land area for that work shown on the Works Plans, subject to the provisions to deviate set out in the remainder of this Article'. This is relevant to all works whether or not the DCO sets specific parameters and powers to deviate. The Applicant asserts that the Order is clear and only allows for works not itemised in Article 6 to be deviated within the relevant shaded area on the Works Plan and that this is made clear in General Note 3 on those Plans. That note states 'The limits of deviation are the full extent of the works areas shown....' What those works areas are is entirely unclear, since the rest of the legend does not use the term works area, merely using the term 'Works Nos', to identify different coloured shaded areas. If Article 6 is amended, the wording of General Note 3 can be simply amended.</p> <p>(iii) SHH does not accept that the power in Article 6(b) to deviate the majority of works located within the boundaries of Work 15, laterally by up to 50 metres is either reasonable or necessary. It is difficult to check manually the extent of errors, but we have found examples where an element of works shown on the</p>	<p>b) The Applicant responds to the specific points raised by Save Honey Hill as follows:</p> <p>(i) The Applicant provided a full response at Deadline 3. The Applicant notes that Save Honey Hill is not content with this response and has reiterated its points. The Applicant's response has been reviewed by the ExA and no further action has been taken.</p> <p>(ii) With regards to the work areas, the Applicant notes that a similar point was raised by the ExA in ExQ2 10.2. The Applicant has copied its response here as it is relevant to the points raised by Save Honey Hill:</p> <p><i>'Work Areas' is not defined. The limits of deviation are the full extent of the coloured area of each Work No. save as permitted by Article 6 as explained at note 3 above the legend to the Works Plans (Application Reference 4.3). For clarity, the Applicant has amended the legend on the Works Plans and updated plans are submitted at Deadline 5 (Revision 4) to state the following:</i></p> <p><i>The limits of deviation are the full extent of the areas within the works numbers shown save as permitted by Article 6 of the draft Development Consent Order.</i></p> <p>(iii) The Applicant has explained and addressed the rationale for this Article in the Explanatory Memorandum. In particular, the Explanatory Memorandum states the following:</p> <p><i>This approach is in accordance with the guidance set out in the Planning Inspectorate's Advice Notes 9 and 15 and is accepted</i></p>
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		<p>Design Plans is shown already to be sited outside the corresponding shaded area on the Works Plans.</p> <p>An example of this is the Digesters. The parameters for these are in Part 11 of Schedule 14. They are to be up to 30.4m AOD in height and are substantial structures. They are listed as Work 8(g) in Schedule 1. As positioned on the Design Plans at least one of these is sited not within the corresponding blue cross hatched area for Work 8, but within the yellow cross hatched area for Work 9. This makes it difficult to assess how extensive the power to laterally resite these digesters is under the Order as drafted, but it would appear that the Order allows not only for a digester to be sited anywhere in the blue hatched area, an irregular area which is 300m east west and up to 150m north south, but also to be sited outside the boundary for Work 8 by up to 50m. This could allow it to be up to 50m westwards into the area designated for the Work 7, the Workshop, or up to 50m northwards into the area designated for Work 10, the MABR. This gives an extraordinary scope for repositioning within an area some 350 m east west and 200m north south.</p> <p>Although the Applicant asserts to the contrary, there has been no assessment or evidence reported in the ES of the 'reasonable worst case' visual impacts of repositioning such a large and visually intrusive structure anywhere within that vast limit of deviation. It also makes a mockery of the Applicant's assertion that the tallest structures have generally been sited close to the middle of the circular footprint to reduce visual impacts.</p> <p>While this is only one example, we believe there are other errors of this sort, involving the position of plant on the Design Plans, the shaded areas designated and in the potential adoption of a further 50m limit of deviation. This in our view makes it most unlikely that the 'reasonable worst case' including the powers to deviate have been properly assessed in the ES. In our view, any power to deviate taller works outside the designated shaded area for that work should be strictly limited or excluded.</p>	<p><i>as an appropriate way to provide for flexibility and address uncertainty, for example, ground conditions and to allow refinement through detailed design. It would not be practical for a development of this size to fully fix its design at this stage. The design will be refined following the grant of the Order and the limits of deviation provide the necessary flexibility alongside the maximum parameters which are fixed through requirement 4 and Schedule 14.</i></p> <p>This approach is used in other DCOs including:</p> <ul style="list-style-type: none"> - The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 - The National Grid (Hinkley Point C Connection Project) Order 2016 - The Northampton Gateway Rail Freight Interchange Order 2019 - The A57 Link Roads Development Consent Order 2022
3	[None]		
4	Article 23, Schedule 16, Hedgerow Removal and Tree Preservation Plans	a) In Item 8 of SHH11, SHH raised concerns about the protection of trees and hedgerows in Article 23, Schedule 16 and the corresponding hedgerow	a) The Applicant is satisfied that it provided a full response to Save Honey Hill's previous concerns. However, the Applicant has

		<p>plans, The Applicant has responded dismissing those concerns.</p> <p>b) Article 23(1) is widely drawn to give the Applicant discretion to fell etc trees and shrubs 'near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so ...' This is an extremely weak and unenforceable control, which would, for example, allow the Applicant's contractors to mistakenly remove trees and shrubs even beyond limits and then claim that this was their reasonable belief that this was necessary. This phrasing may appear in other DCOs, but does not make it sufficient.</p> <p>c) The ExA noted in ISH3 examples where, contrary to the Applicant's assertions, mature trees along the Waterbeach pipeline route need to be felled. The Applicant generally asserts that it is their intention as set out in the ES to only remove the trees and hedgerows noted in Schedule 16 and shown on the hedgerow plans.</p> <p>d) As it stands neither the Order in Article 23(4) nor Schedule 16 offers any meaningful protection to trees or hedgerows within the Order limits for the pipeline. This is because Article 23 (1) and 23 (4) are worded permissively, stating that 'the undertaker may...remove the hedgerows set out in Schedule 16', but without stating that any other mature trees and hedgerows within limits are not to be removed.</p> <p>e) This problem is compounded by the fact that the Hedgerow Removal and Tree Preservation Plans do not show all of the existing hedgerows and none of the trees within or on the boundaries of the Order land. The ExA should look at AW 4.8.9 (AS-155) Hedgerow Removal and Tree Preservation Plans Sheet 9 to understand this point. There are hedgerows, with some trees, on one and then both sides of Hartridge's Lane as far as Riverside Farm (all in or on the boundaries of land limits) and a double row of street trees along Hartridge's Lane north from there. There is also, for example, a large mature oak tree just to the</p>	<p>responded to the additional points raised by Save Honey Hill in this table.</p> <p>b) The Applicant has set out at d) below examples of DCOs which use this wording. Should such wording be unenforceable, it would not have been accepted in numerous DCOs as well as other statutes.</p> <p>The reference to 'believes' is predicated by 'reasonableness' and therefore this introduces an objective element into the holding of that belief and whether it was reasonable in the circumstances. This means that the subjective belief of the undertaker in exercising the power and believing a tree or shrub to be interfering with the authorised development would not be sufficient. Non-compliance with a DCO is a criminal offence and therefore the powers must be exercised with care, including that in Article 23.</p> <p>c) In response to the alleged IHS3 example, the Applicant recalls that it was questioned on the pink polygons on the plans within the Arboricultural Impact Assessment. The Applicant has responded to this at Hearing Action Point 95 in the Applicant's Responses to ExA Hearing Action (Application Reference 8.20).</p> <p>d) With regards to the 'permissive' language used, the Applicant considers this appropriate. Article 23 gives the power to do what is set out in the Article. If something is not prescribed, then the Applicant does not have the power to do it pursuant to the DCO. There are numerous examples of this wording being used, including in recent, made DCOs for example:</p>
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		<p>south of the first section of the lane, but within limits. None of these appear on the plans.</p> <p>f) The plan does bear the legend 'No hedgerows affected here. Drawing included for completeness', but this provides no protection unless either all trees and hedgerows within limits to be retained are shown on the HR and TP Plans or, more simply, Article 23 (4) is reworded to state that 'The undertaker...may only remove hedgerows within order limits that are shown to be removed in Schedule 16 and on the Hedgerow Removal and Tree Preservation Plans'. It will require a separate sub-schedule of trees to be removed or which may be removed to be added to Schedule 16.</p>	<ul style="list-style-type: none"> - The Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024 - The Longfield Solar Farm Order 2023 <p>The Applicant reiterates that it does not propose to amend this wording.</p> <p>e) With regards to the Hedgerow Regulations and Tree Preservation Plans, these do not show all trees within the Order Limits. This is because the powers in Articles 23, 24 and 25 are not sought in relation to specific trees (which can be contrasted with hedgerow removal where only those specified in Schedule 16 can be removed).</p> <p>f) Save Honey Hill's proposed amended wording in relation to the removal of hedgerows is not necessary. The power sought in Article 23 is limited to removal of the hedgerows specified in Schedule 16 which in turn are described with reference to the Hedgerow Regulations and Tree Preservation Order Plans.</p> <p>The Applicant also again points out (as it did in its last response to Save Honey Hill) that the Code of Construction Practice (Application Document 5.4.2.1) includes measures to minimise impacts on trees and hedgerows and that the Applicant must comply with, as per Requirement 8. The Applicant also points out that the DCO has been updated at Deadline 5 to retain hedgerow H23 to H24.</p>
5	Article 24 and 25	'Reasonable belief' is too weak for the same reasons as Article 23 (1)	The Applicant reiterates the points above and confirms that it does not propose to amend this drafting.
6	Schedule 1	a) Works Nos 5 and 9. Reference is made in Work 9 to 'connections to gas and/or electricity networks' without any indication of a corridor for these on	a) The Applicant notes that the ExA raised a similar point in ExQ2 10.8.

		<p>the Works Plans, nor any statement as to whether any electricity connections are to be above or below ground. This is an omission that needs to be rectified.</p> <p>b) Work 15. Retitle Circular Earthwork and Solar Panels. Should describe this more fully e.g. a circular earthwork or bank comprising sub soil and topsoil encircling Works x to y. Solar panels only to be installed on inside slope of earthwork.</p> <p>c) Work 33(a). Wording is poor and confusing. HDD is to be used at other locations not listed, see Design Plans. CoCP will apply generally so should not be stated. Can be reworded to refer only once to HDD. Same problem with drafting for Work 36(a).</p> <p>d) Work 35. Should refer to 'provided for Waterbeach, including the New Town development' or 'provided from the site of the existing Waterbeach WWTP'.</p>	<p>The Applicant has therefore copied its response below:</p> <p><i>Work No. 9 allows for the provision of the Applicant's works of the installation of gas to grid or combined heat and power. Gas and electrical connections outside of this are not dealt with in draft Development Consent Order as such connections will be made by the statutory undertakers using their permitted development rights.</i></p> <p><i>The green arrows indicated on the Design Plans are indicative routes where connections might be made. The only necessary connections between Works in the Order are between Work Nos. 8 and 9 and which are dealt with in the relevant descriptions of these Work Nos. in Schedule 1 of the draft Development Consent Order (Application Reference 2.1).</i></p> <p>b) The Applicant has responded to this point in its previous submissions (Document Reference 8.14 [REP XX]) and does not propose to change to DCO.</p> <p>c) The description is intended to specify that HDD will specifically be used for the crossings of the river, railway and Low Fen Drove Way. The description does then go on to say that elsewhere, the installation will be through either open cut trenching or HDD. The Applicant considers it helpful for the description to be clear in respect specifically of those crossings where HDD will be used.</p> <p>d) This is incorrect. The Waterbeach Pipeline Spur is not provided 'from the site of the existing Waterbeach WWTP' it is the spur between the Waterbeach Pipeline North or South connecting to the Terminal Pumping Station. The Applicant does not</p>
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			consider that the addition of ‘for Waterbeach’ is necessary or helpful.
7	Schedule 2	<p>a) Requirement 1. The definition of ‘outline carbon management plan’ should have the words ‘with the relevant planning authority’ reinstated.</p> <p>b) Requirement 3(b). The words ‘The scheme shall confirm that the undertaker will achieve a reduction in construction carbon emissions across the entire scheme of not less than 70% below that assessed for the baseline DMO scheme in Chapter 10 of the ES and the means by which that shall be achieved and monitored’ or otherwise include an exact amount of carbon emissions during construction not to be exceeded derived from that assessment’. This reflects SHH’s position in evidence to the Examination.</p> <p>c) Requirement 7(3). This should have the words ‘include an explanation of how they’ reinstated, since is equally relevant to a design code as to the previous ‘principles’.</p> <p>d) Requirement 21(2) needs to be more tightly worded, adding ‘from operations on site or conducted from the site’. This is to secure SHH’s position that offsetting of carbon emissions by for example purchasing carbon credits or offsetting by the acquisition of sequestration forestry planting is not included.</p>	<p>a) The Applicant is unclear on what is being sought as it notes that the definition of ‘outline carbon management plan’ already contains this wording:</p> <p>“outline carbon management plan” means the document of that description certified by the Secretary of State as the outline carbon management plan for the purposes of this Order under article 51 (certification of plans etc.) or any revision to it as may be agreed from time to time with the relevant planning authority;</p> <p>b) The Applicant is not clear which requirement is refers to. As confirmed at paragraph 4.10.1 in the Applicant’s Post Hearing Submissions (Document Reference 8.21) [REP4-088], the Applicant’s aspirations and commitments relating to carbon in construction are dealt with in the Design Code secured by requirement 7(3).</p> <p>c) The Applicant does not consider this change necessary. The wording provides for an absolute requirement that the details accord with the design code.</p> <p>d) This is not agreed as the detail is to be agreed via the Carbon Management Plan and not through the wording of the Requirement itself.</p>
8	Schedule 9	As noted at ISH3, the reference in Part 2, third paragraph, has to be to ‘no right turn from Horningsea Road northbound ’. There are no vehicle movements which could ever be possible by turning right into the works from Horningsea Road southbound.	The Applicant made this change in the draft Development Consent Order submitted at Deadline 4 (Application Reference 2.1) [REP4-003].
9	Schedule 14	a) As noted in item 2, we asked that each Part be titled as per Schedule 1, the relevant works number added and reordered in Works number order. Despite the Applicant’s assertions, this is a relatively simple administrative task. Where any	a) The Applicant responded to this in full in at Deadline 3 in ‘Response to Save Honey Hill Comments on Schedule 2-Requirements’. Save Honey Hill has not raised any new points in this

		<p>parameters apply to several works or to further unspecified works these can be captured as is already done for 'further works' in Schedule 1.</p> <p>b) In SHH11 and elsewhere we have asked for specific design parameters to be included for the circular earthwork. The Applicant agreed orally at ISH 3 that this will be done. Our original request, which is still valid, is included in amended form below.</p> <p>'New part to cover Work 15. Circular Earthwork and Solar Panels. This needs to specify minimum height etc parameters to ensure screening is achieved. Parameters to be (i) single circular earthwork (ii) minimum height above highest adjacent existing ground level [state what that is in AOD] to be 5.0m (iii) top surface to be level and minimum width of 6.0m (iv) external slope to be 1:5 or shallower (v) internal slope to 1:25 or shallower. Note this means that as existing ground levels fall slightly towards the west, the bund height above finished ground level will be slightly greater than 5.0m. Specify max area of and location of solar panels to be on the earthwork'.</p> <p>c) Part 11. We note that there is a maximum design parameter for the footprint of the digestion plant area. It is unnecessary repetition to include maximum height which is copied from higher up the table. We question how this parameter sits with the commentary on limits of deviation in item 2 above.</p> <p>d) Part 13. Same point about maximum height as made in relation to Part 11.</p> <p>e) Part 14. Row now revised to give 'total height' is repetitious and can be deleted.</p> <p>f) Part 21. Column 4 should say 'maximum height' and references to + or - 0.5 m above FGL should not appear. This is then entirely clear that finished ground levels shall be made up, if necessary, no lower than the top of structures.</p>	<p>regard and therefore the Applicant considers this now to be a matter for the ExA.</p> <p>b) [] The Applicant confirms that this is now addressed in the Design Code at LAN. 02 to secure a minimum 5m height.</p> <p>c) The Applicant responded to this point in its response to Save Honey Hill at Deadline 3.</p> <p>d) The Applicant responded to this point in its response to Save Honey Hill at Deadline 3.</p> <p>e) The Applicant responded to this point in its response to Save Honey Hill at Deadline 3.</p> <p>f) The outfall structure will, as far as is practicable attempt to blend in with the natural environment and therefore a fixed maximum height with no tolerance is not appropriate</p> <p>g) The parameters are not restricted to permanent infrastructure only. Impacts can arise during construction and therefore it is appropriate to set parameters which are relevant to this period of the authorised development only.</p>
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		<p>g) Part 23 It is inappropriate to include a construction height restriction in permanent parameters and as expressed is probably incorrect. It should just say 'x m above existing ground levels' or similar. The right hand column is incorrect or unhelpful since it refers to a single FGL of 10.0m AOD only relevant within the bund not for example to the access road. There is confusion in other documents as to whether the maximum height of light columns, including the access road is to be limited to no more than 5m above FGL.</p>	
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7 Appendix D - Save Honey Hill - SHH 34 Response to the Applicant's Responses to Written Representations AW 8.13 (REP2-038) [REP4-107 & REP4-108]

Draft response to SHH 's REP2-038 (amended version)

3.4.2 – 3.4.7 'Scope of the Project'

1. The caselaw establishes that:

(1) For the purposes of correctly applying the EIA Regulations and in relation to the lawful exercise of powers/duties of determination (and therefore, by extension, reporting), the decision maker must properly identify the 'Project'.

(2) To comply with the duty in (1), the decision maker must ask whether the development the subject of an application forms 'an integral part of a wider project' (*Ashchurch* [83]).

(3) The question is one of fact and answering it involves the exercise of planning judgment (*Wingfield* [63]; *Ashchurch* [80]: '... the identification of the "project" is based on a fact-specific inquiry. That means other cases, decided on different facts, are only relevant to the limited extent that they indicate the type of factors which might assist in determining whether or not the proposed development is an integral part of a wider project.')

Note the caveat in the Ashchurch extract about reliance on other cases and the need for care in applying the principles to be drawn from them.

(4) Relevant factors may include the following (*Wingfield* [64]):

i) Common ownership - where two sites are owned or promoted by the same person, this may indicate that they constitute a single project (*Larkfleet* at [60]);

ii) Simultaneous determinations - where two applications are considered and determined by the same committee on the same day and subject to reports which cross refer to one another, this may indicate that they constitute a single project (*Burridge* at [41] and [79]);

iii) Functional interdependence - where one part of a development could not function without another, this may indicate that they constitute a single project (*Burridge* at [32], [42] and [78]);

iv) Stand-alone projects - where a development is justified on its own merits and would be pursued independently of another development, this may indicate that it constitutes a single individual project that is not an integral part of a more substantial scheme (*Bowen-West* at [24 - 25]).

2. As made clear on more than one occasion in the answers given to ExA during ISH1 and ISH2, the WWTW Project is a free-standing project. The ES for the Application has assessed the environmental effects of constructing and operating the new WWTW. In terms of the planning balance, which falls to be considered under the 2008 Act and under policy, the benefits and harms are as set out in the the Planning Statement [REP1-049] and by Mr Bowles in ISH3 Reflecting the unique nature of the Project, these benefits include the decommissioning and release of the existing WWTP site to enable regeneration and the creation of a new district, to deliver 8,350 homes and 15,000 new jobs etc in a highly accessible and sustainable location (the opportunity benefit), together with delivery of a new, modern carbon-efficient integrated water recycling facility, so that AW can serve the growing population of Greater Cambridge in a more sustainable and resilient way, with greater efficiencies in monetary and carbon terms, improved storm resilience, improved quality of recycled water, increased biodiversity and other socio-economic benefits.

3. Having regard to the emboldened words above, it is clear that this case is wholly distinguishable from the Ashchurch case on its facts; bearing in mind that the central legal question, as identified

above, is one of fact – based planning judgment, it is immediately apparent how important it is not just to apply the findings in one or more other cases to this case, as though they were identical, which, most emphatically, they are not. It is also important to bear in mind that the Court of Appeal found that the LPA in *Ashchurch* had not asked themselves the relevant question; that is not going to happen here, as the ExA have plainly applied their collective mind to this matter.

4. Using Lang J's relevant factors as a starting point, the ExA will note:

i) at the point of development, the site of the new works and the site of the existing WWTP (and surrounding land, together forming the NEC Site) will not be in the same ownership. Nor are they in the same ownership at present. At no stage will AWS, the Applicant, be in a position to dictate the form of development on the NEC Site; their only role in the planning of that site will be as statutory consultee on any relevant planning applications

ii) consenting of new development at NEC will not occur simultaneously with the determination of this DCO Application

iii) the new WWTW Project (the DCO Project) will never be functionally dependent on development at the NEC Site; development at the NEC Site will only be dependent on the new WWTW in the same way that other urban developments within its catchment will be

iv) The Applicant has always been clear that there is not an operational need for the new WWTW. To that extent, the DCO Project would not be pursued in the absence of the particular set of planning needs which have called for the planning opportunity at NEC to be realised. This does not mean, however, that the new WWTW would be unable to function without development at the NEC Site or that the new WWTW is devoid of operational benefits and advantages (see, in summary, Planning Statement [REP1-049 para 6.2.13, bullets 2-7]). In this regard, it is wholly different from the 'bridge to nowhere' in *Ashchurch*, where a bridge was proposed 'in a field' whose sole function would be to link Area A to Area B, although neither Area A nor Area B had yet come into existence. The Project proposes a fully functioning WWTW to meet the existing and future needs of its catchment area, comprising existing, committed, planned, allocated and future development. (Compare *Ashchurch* [22], [97], [98]). Lastly, it should be noted that Lang J's fourth relevant factor is not expressed as a legal requirement; she said: 'where a development is justified on its own merits and would be pursued independently of another development, this **may** indicate that it constitutes a single individual project that is not an integral part of a more substantial scheme' (emphasis added).

5. Further distinctions are that, in *Ashchurch*, as the Court of Appeal noted (at [45]), the site of the bridge spanned a railway lying within two areas of the Garden Village Masterplan – ie. it lay within the land which it was intended would, in future, be served by it; in this case, the site of the new works is some distance away from the NEC Site. The Court noted (at [48]) that the officer's report described the proposed bridge as part of 'a complex, long term *project* (singular, emphasis added)' whereas the Proposed Development is a free-standing Project, as has been accepted by the Secretary of State, in making the S.35 Direction and PINS in accepting the DCO Application. Delivering the Councils' vision for NEC will be a separate project (possibly with many sub-projects) which might, in the language of the Court of Appeal, constitute 'a complex, long term *project* (singular, emphasis added)'. But the DCO Project will, of necessity, have been operational well before development at the existing WWTP starts coming out of the ground, let alone, starts to be occupied.

6. SHH's expanded submissions are misconceived. They persist in mischaracterising the Applicant's case which is that the Project is an independent development proposal which will be fully functional, irrespective of what happens after the existing works have been decommissioned. This is the point of fundamental relevance to what they term 'the scope of the project'. The fact that the Project

would bring benefits of various kinds, as set out in the Planning Statement and in the oral submissions of Counsel and oral evidence of John Bowles at ISH 2 and 3, is a different matter, which goes to the policy-related question of justification. The planning benefit accruing from decommissioning and release of the Cowley Road site is the creation of the opportunity to help fulfil the needs of Greater Cambridge in a highly accessible and sustainable location. As explained above, there are also operational benefits in terms of the modernisation of sewage treatment function for the catchment. But the presence or absence or value ascribed to particular benefits do not define the project. The Applicant's case is wholly consistent with caselaw, as demonstrated above and, unlike *Ashchurch*, where the benefits of the development comprised in the Garden Village Masterplan were taken into account, without its negative effects, the planning benefit in this case is the opportunity for others to bring forward necessary development, rather than the delivery of infrastructure with no rationale other than as part of the Masterplan. The fact that there are operational and environmental benefits is a further point of distinction. In short, the DCO Project has a life of its own; it will never be a treatment works 'for nowhere'. The fact that it would offer a unique sustainable planning opportunity does not deprive it of its status as a Project in its own right. Notwithstanding that there is much work to be done by others to make the best sustainable planning use of the NEC land after vacation of the existing WWTP site, it is entirely rational and lawful to take account of the planning opportunity. To disregard it would be irrational in itself, especially in the context of the evidence of the Joint Local Planning Unit.

Draft Response to 4.3.1 Weight to be given to the development plan

1. As a matter of law, the weight to give to emerging development plans is a matter of planning judgment for the decision maker (and reporting ExA). As a matter of national planning policy, the decision maker should have regard to matters including the stage reached by the draft documents and the level and content of objection. Weight can also be given to the evidence base supporting an emerging plan, having regard to its cogency and any democratic status that it might have achieved.
2. The Applicant relies on its Planning Statement [REP1-049] and the oral evidence of John Bowles, and agrees with the oral evidence given on behalf of the JSPU at ISH1 and 2.
3. Clearly, objections to the strategy of the draft GCLP are relevant to the question of what weight to give it as a consideration in this Examination. But just because the draft Plan and its supporting materials properly acknowledge the role of the Secretary of State in relation to the DCO, this does not mean that the ExA, in advising him, should disregard the results of the Councils' joint working as formalised in the draft Plan and its evidence base, including its SA. In particular, the resolutions of both Cambridge City and South Cambs Councils dated 6 February 2023 and the supporting report, setting out strategic options, is weighty evidence demonstrating the need for the strategic planning opportunity offered by the Project, having regard to the paucity of other suitable options.

The availability of HiF money in support of the Project and future development of the existing WWTP site as part of the wider NEC development is an important material consideration in support of the Project.

8 Appendix E The King vs Tewksbury Borough Council



Neutral Citation Number: [2023] EWCA Civ 101

Case No: CA-2022-000371

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING’S BENCH DIVISION
PLANNING COURT
MR JUSTICE LANE
[2022] EWHC 16 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/02/2023

Before :

LADY JUSTICE ANDREWS
LADY JUSTICE ELISABETH LAING
and
LORD JUSTICE WARBY

Between :

**THE KING (on the application of ASHCHURCH
RURAL PARISH COUNCIL)**

Claimant
and
Appellant

- and -

TEWKSBURY BOROUGH COUNCIL

Respondent

Paul Brown KC and Leon Glenister (instructed by **Richard Buxton Solicitors**) for the
Appellant

James Pereira KC and Horatio Waller (instructed by **One Legal**) for the **Respondent**

Hearing date: 13 December 2022

Approved Judgment

Lady Justice Andrews:

INTRODUCTION

1. This is an appeal against the decision of Lane J [2022] EWHC 16 (Admin) (“the Judge”) dismissing the claim by the Appellant (“ARPC”) for judicial review of the decision of the Respondent’s (“TBC”) Planning Committee on 22 April 2021 to grant planning permission for:

“Development of a road bridge over the Bristol to Birmingham mainline railway north of Ashchurch, Tewkesbury. The proposal includes temporary haul roads for construction vehicles, site compounds, security fencing, surface water drainage channels and attenuation points.”

The development was referred to in the application as “Ashchurch Bridge over Rail” or “ABoR” but I shall refer to it simply as “the bridge”.

2. ARPC has raised three grounds of appeal, although, as will become apparent, there is a degree of overlap between Grounds 1 and 2. These both relate to the Planning Officer’s Report to the Planning Committee which informed its decision (“the OR”). Ground 1 is that the Judge erred in his interpretation of the OR, which on ARPC’s case advised the Planning Committee to take into account the public benefits of the development facilitated by the bridge but directed them to leave out of account the concomitant harms. Ground 2 is that the Judge fell into error in his application of the principle in *R (Samuel Smith Old Brewery) v North Yorkshire CC* [2020] UKSC 3, [2020] PTSR 221 (“*Samuel Smith*”).
3. Ground 3 is that the Judge erred in his consideration of whether TBC unlawfully considered that the “project” for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“the EIA Regulations”) was the subject-matter of the planning application, i.e. the bridge, looked at in isolation. It is contended that the Judge (1) failed to address ARPC’s argument that TBC applied the incorrect legal test and (2) erred in finding that the development of the bridge and its supporting infrastructure for which permission was sought and granted was a single project for the purpose of the EIA Regulations, given that the bridge had no purpose of its own but was to be built solely to serve future development.
4. The Court was greatly assisted by the able and succinct submissions of counsel, Paul Brown KC and Leon Glenister on behalf of ARPC, and James Pereira KC and Horatio Waller on behalf of TBC.
5. For the reasons set out in this judgment, I would allow the appeal on all three grounds, quash the decision of the Planning Committee, and remit the application for reconsideration.

BACKGROUND

6. In March 2019, Tewkesbury and its surrounding area was awarded Garden Town status for a potential development of up to 10,195 new homes, around 100 ha of employment land, and related infrastructure. This was based on the Tewkesbury Area Draft Concept

Masterplan Report (“the Masterplan”), which sets out potential largescale development over an area described as the “North Ashchurch Development Area”. TBC is the “lead authority” for the Garden Town.

7. The Masterplan is not a development plan document, but it provides a foundation for the formulation of such a plan in due course. The proposals for the Garden Town are not, as yet, supported by any allocation or policies in the Joint Core Strategy (“JCS”) adopted in 2017 by TBC and two other local planning authorities, Gloucester City Council and Cheltenham Borough Council, working in partnership.
8. By the time the JCS was adopted, Tewkesbury Borough had an identified shortfall of 2,455 dwellings measured against the housing needs identified in the JCS. The challenge of meeting that shortfall was exacerbated by the decision of the Ministry of Defence (“MOD”) to retain for operational purposes the whole of a site which had been expected to be released for development and to deliver most of the requisite housing.
9. Although in 2017 TBC considered it had identified sufficient sites to deliver housing in the short to medium term, it regarded it as critical to address the shortfall over the period of the JCS (to 2031). The three JCS authorities intended to do so in a strategic and planned way. They therefore decided to undertake a review of Tewkesbury’s housing supply immediately after the adoption of the JCS. The aim of the review was to identify and allocate sites that would deliver housing and employment growth.
10. The Masterplan was drawn up in January 2018 to inform the JCS review. It provides a spatial growth strategy in order to meet the shortfall in the JCS requirements to 2031 and beyond. However, at the time that planning permission was granted for the bridge, the JCS review was not expected to be completed and submitted until the Spring of 2023, and no action would be taken on it until, at the earliest, later that year.
11. The Masterplan contemplates that the development of the Garden Town would be delivered in phases. Phase 1 concerns an area to the north of MOD Ashchurch which straddles the Bristol to Birmingham railway line, though the largest part of that area is to the east of the railway line (“the Phase 1 area”). The Phase 1 area is bounded to the north by a brook known as Carrant Brook, and to the south by existing development on the edge of the town. Phase 1 envisages that by 2031 around 3,180 new homes would be built in that area, as well as the delivery of 46 ha of new employment land, a local centre with retail services, a new primary school and a new Green Infrastructure corridor. The Masterplan states that: “Road transport upgrades would be required to deliver this growth in capacity terms.”
12. In the section of the Masterplan entitled “phasing principles” it is explained that the Masterplan concentrates on developing land to the eastern side of the railway tracks first, with the aim of creating a compact community with walkable neighbourhoods that eliminate fragmentation. However, in order to achieve any of the identified objectives it would be necessary to build a new link road across the railway line to which existing roads would be connected, thereby relieving pressure on the A46 corridor. This in turn required the construction of a new railway bridge.
13. The Masterplan expressly recognises that delivery of the northern development plots for Phase 1 development relies on “the provision of a northern link over the main rail line, overcoming severance and completing the link between existing local roads”. It

identifies the bridge as one of the “short-term enabling interventions”. The bridge is therefore an essential prerequisite to the delivery of *any* housing development in the Phase 1 area. It is common ground that the sole purpose of its construction is to facilitate such development.

14. The construction of the bridge was described in the Planning Statement submitted in support of the application for planning permission as:

“Critical to the success of the overall development plan in the area to unlock parcels of land to the east of the railway through improving east-west access”.
15. In the normal course of events, one might have expected any application for planning permission to be made only after the JCS review and the adoption of a local plan, and for TBC to seek permission for the Phase 1 development of which the bridge would form an integral part, including the link road and any other vital transport infrastructure. Instead, the application was made, and granted, for the bridge alone.
16. Mr Brown told the Court that the bridge is known locally as “the bridge to nowhere,” because after it has been constructed, the temporary haul roads will be removed and there will be no connecting roads on either side, just a bridge in the middle of a field, which will be fenced off. Without a functioning highway unlocking the land within the Phase 1 area on the eastern side of the railway, the bridge will serve no useful purpose.
17. This unusual state of affairs has arisen because TBC wished to avail itself of funding from the Government which was only available for a limited period. In July 2017, the Government launched a £2.3 billion Housing Infrastructure Fund (“HIF”) in order to support housing delivery through the funding of vital physical infrastructure, such as roads and bridges, with the opportunity to facilitate the development of some 100,000 homes in England. The fund was split into two key areas, namely, forward funding (for larger schemes up to £250 million) and marginal funding (for schemes up to £10 million). The deadline for applications was September 2017.
18. TBC made a marginal funding bid for just over £8.1 million to deliver the bridge on the basis that this, in turn, would facilitate the development strategy of the wider Ashchurch area. In February 2018, TBC was informed that its bid had been successful. TBC subsequently entered into discussions with Homes England regarding the terms of the funding agreement. The Deputy Chief Executive of TBC, in a Report to the Executive Committee recommending approval of the proposed terms, said that the funding would “unlock a number of sites and forms an early phase of the development strategy to realise the Garden Town”.
19. TBC approved the funding conditions and authorised entry into a formal agreement with Homes England on the proposed terms at its meeting on 19 June 2019. The funding agreement subsequently entered into between TBC and Homes England included a requirement that the funds be drawn down by 31 March 2022 (though that deadline has since been extended because of this litigation).
20. Given that the express purpose of the HIF was to support the delivery of housing, Homes England understandably required TBC to make a commitment to deliver the housing which the vital physical infrastructure to be built with the assistance of the

funding would facilitate. The Homes England documentation split the project into the “main project” (comprising the bridge) and a “wider project” which included the link road and the housing development unlocked by the funding, detailed as 826 residential units. Homes England accepted that delivery of the “wider project” was outside the control of the “main project”. It therefore agreed to accept a “best endeavours” obligation from TBC in respect of the development unlocked by the funding. TBC agreed with Homes England that it would use its best endeavours to build 826 residential units and commence the construction of those units in 2021, with the wider project being completed by 31 March 2030.

21. It follows, therefore, that at the time when the application for planning permission for the bridge was considered, there was a clear expectation that the bridge would serve at least 826 houses, to be built within the Phase 1 area on the eastern side of the railway track, and the road infrastructure, including the link road over the bridge, would need to cater for at least that number.
22. Prior to making the application for planning permission, TBC commissioned an Environmental Impact Assessment Screening Report, for the purpose of determining whether an Environmental Impact Assessment (“EIA”) was required. The Screening Report was produced in May 2020. The Judge quotes relevant extracts at paras 17 to 26 and para 33 of his judgment. The Screening Report noted that the bridge would not be used until future development came forward to make it operational. It recorded that the current proposals identified that the development area was anticipated to provide 826 new houses. Nevertheless it treated the bridge as a stand-alone “project”, to be considered independently from any environmental assessment of the highway and residential elements of the development that it was envisaged the bridge would facilitate. It noted that an assessment of those elements would be carried out in future, as and when it was envisaged that any development under Phase 1 of the Masterplan would be implemented.
23. The Screening Report recognised that the bridge was Schedule 2 development under the EIA Regulations, but concluded that, looked at in isolation, it was not likely to have significant effects on the environment. It was therefore unnecessary to carry out an EIA. TBC issued its Screening Opinion to that effect, adopting the conclusions of the Screening Report, on 22 June 2020.
24. A Transport Assessment was also commissioned by TBC. This was produced on 11 September 2020. It specifically confined itself to consideration of the bridge proposal, focusing primarily on the transport impacts of its construction. However, “for information”, it also considered:

“ the potential impacts of an associated link road that would connect Hardwick Bank Road with the B4079 via the ABoR and the development of 826 residential dwellings that could achieve access via the ABoR and associated link road. It is important to note that the associated link road and 826 residential dwellings will be supported by separate future planning applications that will include further assessments.”
25. The authors of the Transport Assessment indicated the approximate alignment of the link road, which closely mirrored the intended location of the haul road. They were also

able to model the likely traffic flows on that link road and surrounding road network from the link road and anticipated residential development.

26. A Heritage Assessment, which was also produced on 11 September 2020, identified “the Scheme” as “just the construction of the bridge,” and considered the potential impacts of what the authors termed the “construction phase” and the “operational phase” of the Scheme (as so defined). It identified the closest listed buildings to the site as two Grade 2 listed buildings, Northway Mill and Northway Mill House, 90m to the north of the site of the bridge. The impact on them was assessed from a purely visual perspective, and the conclusion was reached that the bridge would cause a minor adverse impact on the setting of those heritage assets. Because the assessment was confined to the impact of the bridge alone, it did not take into account the impact on those assets or their setting that the link road over the bridge might have. Looking at the geographical layout on the plan, irrespective of its precise configuration, any link road would have to run to the west of the railway line and below the brook, and, as Mr Brown pointed out, it would necessarily be closer to the heritage assets than the bridge itself.
27. On 22 September 2020 TBC, as developer, sought planning permission for the bridge. They did not seek permission for the roads which would inevitably serve as a connection to the existing highway network, nor for any development arising from Phase 1 of the Masterplan, including the 826 homes to which TBC had committed. This was made clear in the Planning Statement.
28. The OR is dated 16 March 2021. It is a detailed report which runs to 43 pages, excluding the appended plans. The Judge quotes extensively from the OR in paras 28 to 48 of his judgment. I shall consider the content in more detail when addressing Grounds 1 and 2. Suffice it to say, at this juncture, that it identifies the main issues to be considered as:

“the principle of the proposed development and phasing, design and visual impact including landscape impact and impact on AONB, highway matters, flood risk, impact on amenity, impact on ecology and trees, and impact on heritage assets.”

It then goes on to address each of those issues before reaching a conclusion and making a positive recommendation.

29. The “Overall Balance and Recommendation” was expressed in these terms:

“It is concluded that the benefits of the proposal, *including* the benefits of progressing the proposal at the current time, outweigh the identified harm. It is also concluded that the application is generally in accordance with development plan policy.

It is therefore recommended that the application is permitted.”
[Emphasis added].

30. At the meeting of the Planning Committee on 16 March 2021 there was an oral presentation by TBC’s Development Manager. This largely repeated and reinforced what was said in the OR. The Minutes record that among the things he said were that:

“whilst clearly the bridge was intended to serve a particular function in the future, at this stage it was not certain what level of development it would serve, although Phase 1 of the masterplan would deliver over 3,000 homes...”

“Impacts related to the wider Garden Town proposals would be considered in any future planning applications for that development.”

“... issues related to the wider development that the bridge was intended to serve were for another day.”

“There were significant benefits arising from this development in enabling the delivery of the Masterplan and Garden Communities programme and ensuring that the necessary infrastructure was in place to achieve well planned development and that the delivery timescale of the Masterplan was maintained. There were also benefits arising through job creation during the construction.”

(Later, in the course of the discussions following his presentation):

“Future development and the impacts of it were not relevant currently and could not be considered as part of the application before the Committee today.”

31. After extensive debate, the application was “permitted in accordance with the officer recommendation” by ten votes to seven, with one abstention.

GROUND 1 AND 2

32. A Planning Officer’s Report serves two main purposes: providing information to the decision maker (in this case, TBC’s Planning Committee), and making a recommendation as to how they should deal with the planning application. It must not be construed as if it were a statute, but approached from the perspective of how it would be understood by those for whose benefit it is prepared, and read with what Lindblom LJ described as “reasonable benevolence”: *R (Mansell) v Tonbridge & Malling Borough Council* [2017] EWCA Civ 1314, [2019] PTSR 1452 at [42](2). The Planning Officer is likely to express personal opinions, for example, as to the weight to be attributed to various factors for or against the proposal, but the decision maker is not bound to agree with those views. They are free to accept or reject the recommendation made; but if they accept it, without expressing any further reasons, they will be taken to have adopted the reasoning in the OR.

33. Subject to any matter which they are legally obliged to take into account, materiality (i.e. relevance) is something for the decision-maker alone to determine. If something is capable of being regarded as relevant to the decision on a planning application, but the planning authority does not take it into account, their decision can only be challenged on an irrationality basis, i.e. on the basis that that factor was “so obviously material”

that no reasonable decision-maker could have failed to consider it. That principle is established by a long line of authority including *Samuel Smith*, in which at [30] Lord Carnwath JSC adopted verbatim a passage from his earlier judgment in *Derbyshire Dales District Council v Secretary of State for Communities and Local Government* [2009] EWHC 1729 (Admin), [2010] 1 P& CR 19. See also the helpful exposition of the principle by Lord Hodge and Lord Sales JJSC in *R (Friends of the Earth) v Heathrow Airport Ltd* [2020] UKSC 52, [2021] PTSR 190 at [116]-[121].

34. Ground 1 is founded upon a rationality challenge to the approach adopted in the OR which, on ARPC’s case, treated certain identified benefits as material, but left out of consideration the concomitant harms.
35. It is common ground, and indeed is clear from the OR, that no account was taken of any adverse impact that any development in accordance with Phase 1 of the Masterplan would have (not even the impact of the construction of the link road across the bridge, or of the minimum development in fulfilment of TBC’s “best endeavours” commitment to Housing England to build 826 homes).
36. Indeed, the Committee was told in no uncertain terms that the assessment of harm was to be confined to the bridge structure. For example, in a section headed “Access and Highway Issues” the OR stated as follows:

“Significant concerns have been raised by the local community both in relation to traffic impacts during the construction period *and those related to potential future development in the area*, enabled by the proposed bridge. Whilst concerns in relation to the latter are understandable, as set out above, *those matters are not material to this application, the assessment of which relates solely to the construction of the bridge structure and related haul roads/compounds etc.*” [Emphasis added].

37. Later, the OR said:

“In terms of the operational phase of the development, the proposed scheme is to construct the ABoR and leave it in place but it *does not include the future highway that would utilise the bridge as part of the future development of the area, nor the associated planned housing to come forward*. Therefore at this stage of the ABoR scheme, *there are no operational effects to assess* in respect of noise, vibration and emissions. The effects of the operational phase of the development would therefore be considered when future applications come forward enabling the operational phase.” [Emphasis added].

38. When dealing with heritage issues, the OR stated that:

“It is acknowledged that the impact of the bridge is not likely to be in isolation. The bridge *is part of the garden town initiative which would result in additional* within the setting of the listed buildings *development on the land*. However, *at present, the application should be judged on its own merits.*”

[Emphasis added. The rather clumsy syntax in the penultimate sentence is in the original text and was corrected by the Judge in para 41 of his judgment to “additional development on the land within the setting of the listed buildings”].

39. Yet only two paragraphs later, the OR stated that:

“It is the case that *there would be public benefits arising from this proposal, which is the first phase of the Garden Communities programme which would deliver housing and associated infrastructure*. It is also considered that there is *a clear and convincing justification for the proposed bridge to facilitate the Garden Communities programme...* officers consider that *the substantial public benefits arising from the proposal outlined above would outweigh the identified harms [i.e. harms to the setting of heritage assets of high significance caused by the impact of the bridge alone] in this instance and that there is a clear and convincing justification for the proposal.*” [Emphasis added].

The “substantial public benefits” identified in that passage are the housing and associated infrastructure that would be delivered under Phase 1.

40. In the “Conclusion and Recommendation” section, under the heading “Benefits”, the OR states that:

“Whilst it is recognised of course that the [Masterplan] is an evidence base document which carries very little weight in the decision making process, the application proposals are a first stage Short Term Enabling Intervention within [the Masterplan] and Garden Communities programme. *There are significant benefits arising from this development in enabling the delivery [of] the [Masterplan] and Garden Communities programme* and ensuring that necessary infrastructure is in place to achieve well planned development. The application site itself spans across land parcels 14 and 15 which are identified to have an indicative capacity for 2005 homes within [the Masterplan] *which would make a significant contribution to housing land supply. The HIF Funding financial modelling obligation is for the delivery of 826 new houses.*” [Emphasis added].

41. This section of the OR then goes on to address the benefits of progressing the application proposals at the present time, which it characterises as “substantial”. It states that this would:

“ensure the delivery timescale of [the Masterplan] is maintained seeking to achieve the aspirations and timelines of [the Masterplan] in the context of achieving the JCS and JCS Review Strategic Objectives and to meet the HIF funding deadline...”

42. Before the Judge, ARPC submitted that the Committee acted irrationally by taking into account the benefits of the wider development that the bridge would facilitate, but not considering the harms, because the benefits could not be realised without the harms.

43. The Judge (rightly) did not take issue with the proposition that if that is what the Committee did, it would have acted unlawfully. He rejected APRC's submission on the basis that on an appropriately benevolent reading of the OR, the benefits that were being considered were not the benefits of any future development that the bridge was enabling, but rather, the benefits of granting permission for the construction of the bridge *at that time*, instead of waiting for proposals for the wider development to be brought forward.
44. In my judgment, in so finding, the Judge misinterpreted the OR. The question of timing was undoubtedly one matter which the OR addressed, but the public benefits to which the Planning Officer referred were not confined to the benefits of allowing the bridge to be built in advance of the rest of Phase 1.
45. The principle of the development was addressed in a section of the OR which preceded the "phasing" section, and which was devoted to the Masterplan. The level of detail in that section goes well beyond anything that would be needed to explain why it was important to keep the Masterplan on track. After correctly stating that the Masterplan is not a development plan document and that "as a planning document it carries very little weight" the OR elevated its importance by describing it as "part of the plan-led approach" and identifying a number of benefits that were integral to it. The OR explained how an area to the north of Ashchurch, which includes the application site, is highlighted as Phase 1, to be delivered by 2031 according with the timeline of the JCS requirement to deliver the shortfall of jobs and homes identified. It stated that:
- "The application site itself spans across land parcels 14 and 15 which are identified to have an indicative capacity for 2055 homes within the Masterplan".
46. There is then a description of the Transport Strategy included in the Masterplan, and it was noted that the Masterplan identifies that there is no transport solution yet for the quantum of development in Phase 1. In this context the bridge across the railway, and the road over it, were treated as part of an integrated means of delivering Phase 1:
- "However, the [Masterplan] identifies that a northern link (Northern Access Road link) is needed, crossing over mainline rail, joining up existing roads....
47. This section of the OR went on to state that to deliver the Masterplan, the Transport Strategy identifies Short-Term, Medium-Term and Long-Term Enabling Interventions. The Northern Access Road is identified as:
- "a Short Term Enabling Intervention which is required for the delivery of the northern development plots which rely on the provision of a northern link over the rail line, overcoming severance and completing the link between existing local roads."
48. As the Planning Officer clearly recognised, and as is further demonstrated by the following section of the OR dealing with phasing, the bridge was an integral component of Phase 1 of the Masterplan and had no function other than to facilitate development in the Phase 1 area. At the start of that section, the OR identifies delivery of a new garden community as "*a complex long-term project*" (singular, emphasis added). There

is then an explanation of why the planning application for the construction of the bridge was being made at that particular time, and why it was being made in advance of other associated infrastructure or land use developments notwithstanding that the bridge, on its own, served no purpose.

49. The Planning Officer identified the two reasons as being:

“due to a spending deadline associated with HIF Funding. It is necessary for the HIF Funding to be spent by the end of 2022 and the submission documents indicate that the construction period would be circa 12 months.

The applicant also advises that the ABoR is being advanced prior to the formalisation of site allocations within planning policy documents in recognition of the considerable lead in time and constraints associated with working on railway assets....

The application is therefore being progressed at the current time to deliver the Short-Term Enabling Intervention timescales of the Masterplan and to meet the HIF funding deadline.”

Thus the OR made it clear that the bridge was never intended to be a stand-alone development. It was perceived to be necessary to give an explanation for splitting it out from the rest of the project of which it formed an integral part.

50. The Planning Officer concluded that section of the OR as follows:

“Therefore the principle of progressing with the ABoR application *at the current time*, is a matter of planning balance. There are substantial benefits of seeking to achieve the aspirations and timelines of the [Masterplan] in the context of achieving the JCS and SCS Review Strategic Objectives, and ensuring that necessary infrastructure is [in] place to achieve well planned development. This weighs in favour of the principle of *progressing the application at the current time*. However, weighing against the principle of *progressing with the application at the current time* is that the [Masterplan] is an evidence base document which carries very little weight in the decision-making process.”

[Emphasis added].

51. The Judge said, at para 74, that two related benefits were identified, namely “to ensure the delivery timescale of the [Masterplan] is maintained... and to meet the HIF funding deadline.”

“In other words, constructing the bridge now would keep the aspirations of the defendant and the other local authorities for the Garden Town alive and on track”.

52. He identified that the OR also made the point that construction of a bridge over a railway would take a considerable time, because it could only take place during periods

when the railway was not in use, and that it was therefore sensible to bring forward the bridge proposal at the present time. The Judge said at para 79 that:

“this approach did not involve an assumption that any part of the Phase 1 development 826 homes will come to pass. Rather the point being made was that, if any such development were to be brought forward, the bridge would enable that development to take place in a timely manner. It went to the benefit of keeping the Masterplan on track, in that, should Phase 1 development be approved, the construction of the bridge would not be a delaying factor in seeing that development carried out.”

53. That analysis, with respect to the Judge, fails to grapple with the point that there would be no benefit in keeping the Masterplan “on track,” nor in hiving off and accelerating the delivery of part of a wider project, unless it was envisaged that the wider project was in principle desirable and that Phase 1 would be, or was at least very likely to be, carried out - in other words, that there *would* be a link road over the bridge and a housing development of at least 826 new homes in the “unlocked” area - since that was the sole justification for building the bridge in the first place. If that did not materialise, the bridge would serve no purpose, and in addition, as identified in the OR, it would cause some harm to the setting of two Grade II listed buildings.
54. It is noteworthy that when addressing the pros and cons of dealing with the application for the bridge, no account is taken in the OR of the prospect that the wider development envisaged by the Masterplan would not be permitted, leaving a useless bridge standing in the middle of a field. That point is only mentioned in the OR in the context of summarising the objections to the application. In the passages containing the advice and recommendations, there is an inherent underlying assumption that if the bridge is built, the road over it will be built in due course, and that some development will take place in the Phase 1 area. That is understandable, given that the time-limited funding from Homes England which was the impetus behind the timing of the application was linked by contractual condition to the development of at least 826 new homes. So too were the milestones agreed by TBC.
55. It is important in this context to maintain the distinction between two related, but separate concepts: whether in principle this bridge should be built, and whether it should be built *now*. The Planning Officer, and the Committee, had to deal with both (as the OR expressly identified at the start of section 8) and, contrary to the Judge’s findings, that is what they did. Read as a whole, the public benefits identified in the OR were not confined to the benefits of granting the application at the current time so as to allow potential future development to be planned and delivered in a timely way, or, as Mr Pereira put it in his oral argument, keeping the planning options open. They included the benefits to be achieved by constructing the bridge at all.
56. This is clear from the first paragraph of the conclusions and recommendations. The public benefits identified there include “enabling the delivery” of the Masterplan itself, and “ensuring the necessary infrastructure is in place” [to achieve this], as well as “seeking to achieve the aspirations and timelines of” the Masterplan. They are not confined to ensuring that the delivery timescale of the Masterplan is maintained and that the HIF funding is achieved. Meeting the HIF funding deadline was just another of the identified benefits. The short-term job creation during the construction phase, a

further identified benefit, was plainly a makeweight, which by itself would not have outweighed the identified harm to the heritage assets acknowledged in the OR, let alone the (unacknowledged) harm of building what could become a white elephant.

57. For the Planning Officer, the benefit which plainly tipped the balance in favour of granting the application was enabling the delivery of Phase 1 of the Masterplan, which could not happen unless there was a bridge over the railway line at that location. But even if the identified benefits *had* been confined to preserving the viability of the Masterplan, they cannot be artificially divorced from the public benefits of Phase 1 of the development envisaged in the Masterplan. As Mr Brown submitted, there is no inherent value in the timetable for delivery of the Garden Town on its own; the public interest lies in the substantive development for which the timetable sets the milestones.
58. The distinction drawn by the Judge between (i) the benefits of a form of development and (ii) the benefits of enabling or facilitating such development, is a fine one. There is a distinction between the two concepts, but they are inextricably linked. One can only attribute significant value to the latter if one attributes significant value to the former. Put very simply, one cannot rationally conclude that it is beneficial to facilitate or enable a development to be carried out in future (especially when the means of facilitation serves no useful purpose in itself) without forming the view that the putative development is in principle desirable. That in turn involves considering, even at a very high level, whether the benefits of the envisaged development outweigh the harms it is likely to cause.
59. This proposition can be tested by assuming that the development which the bridge unlocked was something that might be seen as objectionable – such as, for example, the development of agricultural land for industrial activity such as an abattoir or a tannery, which would lead to many heavy lorries using the access road. One could only reach the conclusion that the benefits of keeping the prospect of that development alive (and on track in accordance with an envisaged timescale) by building the bridge, outweighed the potential harms of building a bridge that would serve no purpose without the link road or envisaged development, if one considered and weighed up the benefits and detriments of building a tannery or abattoir in that location and concluded that on balance it would be beneficial.
60. Mr Pereira raised the objection that at the time of the OR and the Committee’s decision there was not, as yet, any specific housing proposal on the table for the development within Phase 1, and (because there was as yet no local plan, even in draft form) no specific sites had been identified for the delivery of the housing that was the subject of the “best endeavours” commitment. He also contended that it would not be possible to assess the impacts on traffic from any road over the bridge servicing the proposed development without knowing more details about the proposed road development.
61. However, as the Transport Assessment indicated, there would be some inescapable impact from the minimum development of 826 homes envisaged at the time, and it was possible, through modelling, to assess what that impact might be. There would be no need to know the precise layout of the link road, although it would be possible to make educated assumptions about the route it would take (bearing in mind the existing geographical constraints, which are obvious from the plans).

62. As for the location of the 826 homes within the Phase 1 area, it was unnecessary to know this with any precision to work out the likely impact on traffic flows of servicing that number of additional houses. The authors of the Transport Assessment had already done this exercise “for information”. The various potential sites for the Phase 1 development were identified in the Masterplan; all of them would need to use the envisaged link road over the bridge. The Planning Officer had drawn specific attention in the OR to Parcels 14 and 15, within which the site of the bridge falls, as being likely candidates for the location of more than twice the number of houses within Phase 1 than the 826 which TBC was committed to use its best endeavours to build within the timescales in the agreement with Homes England. Parcel 15, which is the larger of the two, falls on the eastern side of the railway, the part of the Phase 1 area which the Masterplan envisaged would be developed first.
63. It is clear from reading the OR as a whole that its author worked on the premise that the construction of a bridge facilitating Phase 1 of the Masterplan was a good thing, because achieving Phase 1 (including enabling TBC to honour its commitment to Housing England to start building 826 houses in that area by 2021) was a desirable objective. The OR rightly recognised that the public benefit to be gained by building the bridge was something different from the benefit(s) flowing from building it now. The Judge was wrong to conclude otherwise.
64. On a fair reading of the OR, the Planning Officer did place substantial weight on the contingent benefits that, in his assessment, would accrue from the development in Phase 1, and he invited the Committee to do the same. His overall approach was to invite the Committee to attribute substantial or significant weight to the prospective benefits of the wider development whilst directing them that they must leave out of account entirely any possible harms. Whilst it was open to the decision maker to treat the prospective benefits of the wider development as material factors, and it is understandable why they did, it was irrational to do so without taking account of any adverse impact that the envisaged development might have, to the extent that it was possible to do so, (which it was, albeit at a high level). The two go hand in hand; you cannot have one without the other. Ground 1 is therefore made out.
65. Ground 2 does not strictly arise in the light of my conclusion on Ground 1. I can therefore express my views on Ground 2 more succinctly.
66. There is a distinction between, on the one hand, the situation in which a Planning Officer expresses a view or gives advice with which the decision maker is free to disagree; and, on the other hand, the situation in which the Planning Officer misdirects the decision maker. The distinction between the two does not turn simply on the language or expressions used in an OR, but rather, upon the substance of the message being conveyed to the reasonable reader.
67. In this particular case, I am satisfied on an appropriately benevolent reading of the OR as a whole that the Planning Officer in substance directed the members of the Planning Committee that they could not or must not take account of the harms of the proposed development that the bridge would facilitate. That went beyond mere advice or the expression of a personal view about relevance. Those harms were at least *potentially* relevant: materiality was a matter for the Committee to determine, and they were being told that they must not consider something to be material which they might otherwise have regarded as material.

68. The fact that the members of the Committee may have regarded the harms as material is borne out by the fact that, as the Minutes of the Planning Committee meeting reveal, some Councillors raised the issues of traffic on the link road, and the 826 new homes, only to be advised by the Development Manager that “these impacts *were not relevant* currently and *could not be considered* as part of the application before committee today.” That advice must have been based upon the Development Manager’s understanding of the OR. His advice served only to confirm the impression of a legal direction which that document naturally conveyed.
69. The Judge erred in considering that the principle in *Samuel Smith* was applicable, because that principle arises when the decision-maker has itself determined whether a factor is material or not, and thereby exercised an unfettered discretion to leave something out of consideration. That was not what happened here. The effect of the instruction given in the OR that the harms had to be left out of account was the skewed approach complained of in Ground 1; the decision maker could not rationally treat the benefits of the development facilitated by the bridge as material without also treating the harms of the development as material. The direction by the Planning Officer could equally be characterised as a misdirection in law. Therefore, Ground 2 succeeds.

GROUND 3

70. This was the Ground of appeal which understandably occupied the most time in oral argument. The legal framework is uncontentious and can be summarised as follows.
71. Regulation 3 of the EIA Regulations provides that:
- “The relevant planning authority... must not grant planning permission or subsequent consent for EIA development unless an EIA has been carried out in respect of that development.”
72. “EIA Development” is defined in regulation 2 as:
- “ development which is...
- (b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location.”

The bridge was correctly identified in the OR as a Schedule 2 development.

73. These provisions implement article 1(1) of the Environmental Impact Assessment Directive 2011/92/EU (“the EIA Directive”). The Directive requires the effects of the “project” to be assessed; the reference in the EIA regulations to the assessment of the effects of the “proposed development” is intended to give effect to this: *R (Larkfleet) v South Kesteven District Council* [2015] EWCA Civ 887, [2016] Env LR 4 (“*Larkfleet*”). As a general principle, if an EIA is required it should be carried out as early as possible.
74. “Project” is defined in art 1 of the Directive as “the execution of construction works or of other installations or schemes” and “other interventions in the natural surroundings and landscapes”. The term has to be understood “broadly, and realistically.” The decision-making authority should consider “the degree of connection... between the development and its putative effects” and whether a particular consequence is “truly an

effect”: see *R(Finch) v Surrey County Council* [2022] EWCA Civ 187, [2022] PTSR 958 especially at [15](4), [33], [42] and [60].

75. “Likely” in this context means “possible”, in the sense of “something more than a bare possibility, though any serious possibility would suffice”: *R (Bateman) v South Cambridgeshire DC* [2011] EWCA Civ 157, (“*Bateman*”) at [15]-[21]; *Bowen-West v Secretary of State for Communities and Local Government* [2012] EWCA Civ 321, [2012] Env LR 22 at [28].
76. Regulation 5 contains general provisions relating to screening: the Judge quoted relevant aspects in his judgment at para 94. The requirement in Article 5(2) to provide “information on the site, design and size of the project” is a flexible one, which enables the planning authority to provide more or less information on those factors depending on the nature and characteristics of the project to be assessed. In *R v Rochdale Metropolitan Borough Council ex parte Milne* [2001] Env LR 22, (“*Rochdale*”) Sullivan J (as he then was) said at [H7] and [H8]:
- “If a particular kind of project was, by its very nature, not fixed at the outset, but was expected to evolve over a number of years ... there was no reason why a “description of the project” for the purposes of the Directive should not recognise that reality....
- The Directive sought to ensure that as much knowledge as could reasonably be obtained, given the nature of the project, about its likely significant effect on the environment was available to the decision taker. It is not intended to prevent the development of some projects because, by their very nature, “full knowledge” was not available at the outset.”
77. As Moore-Bick LJ pointed out in *Bateman* at [20], a screening opinion is designed to identify those cases in which the development (i.e. the project) is likely to have significant effects on the environment. That assessment is necessarily based on less than complete information. It is not intended to involve a detailed assessment of factors relevant to the grant of planning permission, nor a full assessment of any identifiable environmental effects.
78. The identity of the “project” for these purposes is not necessarily circumscribed by the ambit of the specific application for planning permission which is under consideration. The objectives of the Directive and the Regulations cannot be circumvented (deliberately or otherwise) by dividing what is in reality a single project into separate parts and treating each of them as a “project” – a process referred to in shorthand as “salami-slicing”: see e.g. the observations of the CJEU in *Ecologistas en Accion-CODA v Ayuntamiento de Madrid* [2008] ECR I-6097 at [48] (adopting the approach taken in para [51] of the Advocate-General’s opinion).
79. In *Larkfleet*, it was held that a proposed urban extension development and a link road were not a single project because despite the connections between them, there was a “strong planning imperative” for the construction of the link road as part of a town bypass, which had nothing to do with the proposed development of the residential site. By contrast, in *Burridge v Breckland District Council* [2013] EWCA Civ 228, (“*Burridge*”) the Court of Appeal held that a planning application for a biomass

renewable energy plant and a planning application for a combined heat and power plant linked to it by an underground gas pipe were a “single project,” on the basis that they were “functionally interdependent and [could] only be regarded as an “integral part” of the same development.”

80. It follows that the identification of the “project” is based on a fact-specific inquiry. That means other cases, decided on different facts, are only relevant to the limited extent that they indicate the type of factors which might assist in determining whether or not the proposed development is an integral part of a wider project.
81. Lang J, in her judgment in *R(Wingfield) v Canterbury City Council and another* [2019] EWHC 1975 (Admin), [2020] JPL 154, (“*Wingfield*”) stated at [63] that the question as to what constitutes the “project” is a matter of judgment for the competent planning authority, subject to challenge on grounds of *Wednesbury* rationality or other public law error. At [64] she set out a non-exhaustive list of potentially relevant criteria, which serves as a useful aide-memoire. These include whether the sites are owned or promoted by the same person, functional interdependence, and stand-alone projects. In relation to the last of these factors she said:

“where a development is justified on its own merits and would be pursued independently of another development, this may indicate that it constitutes a single individual project that is not an integral part of a more substantial scheme”.

The reverse may also be true, and that reflects the position in this case.

82. Mr Brown contended that the Judge did not address ARPC’s assertion that the wrong legal test was applied by TBC in the screening assessment, and that in any event he erred in finding that TBC lawfully considered the bridge was a single “project” for the purpose of the EIA Regulations. As to the first of these submissions, it is right that the Judge makes no mention in his judgment of ARPC’s submission that the wrong legal test was applied by TBC (or, perhaps more accurately, that the correct legal approach was not adopted). He moved straight into consideration of whether there was a public law error in the Screening Report (at paras 119 and following). There is no mention in his analysis of an alleged failure by TBC to consider whether the bridge was an integral part of a wider project.
83. Mr Pereira’s answer to this was that there is not a “legal test” as such, because, as Lang J held in *Wingfield*, the identification of the project is a matter of planning judgment for the decision maker. Whilst it is true that the identification of the project is a matter of planning judgment, an important aspect of ARPC’s substantive complaint in the lower court, reiterated by Mr Brown in this appeal, was that nowhere in the Screening Report (nor the OR, nor the Minutes of the meeting) is there any indication that the question whether the bridge formed an integral part of a wider project for the purposes of the EIA Regulations was even considered by TBC, and therefore the relevant planning judgment was never exercised.
84. There is no reference in the Screening Report to *Larkfleet* or *Burridge*, nor to the factors identified in *Wingfield*. The author did not address the question whether the bridge and the highway that was envisaged to run across it were “functionally interdependent”; nor the question whether building a non-functioning bridge in the middle of a field was

justified on its own merits, as a stand-alone project, without regard to the development it facilitated; nor the question whether the application for permission would have been pursued in the absence of the proposed development of Phase 1 of the Masterplan.

85. The author of the Screening Opinion and the Screening Report provided a witness statement, but although that says that he was satisfied that the “project” in this case comprised the bridge only, he does not explain why, or identify what considerations led him to that conclusion. The nearest one gets to an explanation is in the passages in the Screening Report that perceive difficulties in carrying out a “robust” assessment of the environmental impacts of the wider Phase 1 development which had, as yet, no formal planning status. It could be inferred that these difficulties and/or the fact that the Masterplan had, as yet, no formal planning status were treated as a justification for concentrating on the bridge alone, leaving the environmental impacts of the link road and of the minimum of 826 houses to be built in the Phase 1 area to be considered on a future occasion as and when a planning application was made in respect of them.
86. Mr Pereira accepted that the Screening Opinion made it clear that the screening which had been carried out related to the bridge alone. He submitted that the Screening Report was not defective because it did consider whether the wider impacts of the development could be assessed, and concluded for valid reasons that they could not. He referred to a passage in the Summary and Conclusions of the Screening Report which said:
- “it is noted that the ABoR is essentially advance works for anticipated future growth to the north of Ashchurch, providing a crossing point over the railway that could, in the future, be connected into the highway network to provide additional network capacity. However the planning policy context for the growth of this part of Tewkesbury is not yet fixed within adopted policy documents and no planning applications have been submitted to date in respect of sites directly to the north or east of the proposed ABoR site (specifically the North Ashchurch Development Area). Consequently, the preparation of a robust assessment of cumulative effects of the ABoR in light of a future baseline scenario incorporating growth in the North Ashchurch Development Area is not possible and any attempt to prepare such a document would arguably be premature – the developments would fall outwith the usual definition of reasonably foreseeable future projects on the basis of their lack of formal planning status.”
87. Mr Pereira also submitted that there can be no question of “salami-slicing” in a situation where there is, as yet, no defined wider project for which planning permission has been sought or even contemplated, equating to the salami. The putative development under Phase 1 of the Masterplan was far too nebulous to be regarded in that way. There was no more than a draft concept masterplan which needed to go through a lengthy legal process before any permission would be granted for any part of that development.
88. I reject the proposition that in a case in which the specific development for which permission has been sought clearly forms an integral part of an envisaged wider future development, without which the original development would never take place, there can only be a single “project” for the purposes of the Directive and the Regulations if the contemplated wider development has reached the stage where an application has been made or could be made for planning permission. That proposition appears to me

to be antithetic to the approach taken in *Rochdale* and inherently illogical. The question “is this application part of a larger project?” can still be answered even if planning permission has not yet been sought for the larger project or the details of the larger project have not been finalised.

89. Taken to its logical conclusion, Mr Pereira’s argument about what constitutes a “salami” in this context would leave it open to a developer to conceal his plans for a far larger development from the planning authority and only bring them forward in piecemeal sections, thereby defeating the purpose of the EIA Regulations. This is not such a case, but the example illustrates the flaws in Mr Pereira’s argument.
90. Insofar as the author of the Screening Opinion, and the Development Manager, decided that the “project” must be confined to the bridge because “any future contemplated development could not be [robustly] assessed at the time of the screening decision”, they fell into error by conflating two separate inquiries, namely, “what is the project?” and “what are the environmental impacts of that project?” The difficulty of carrying out any assessment of the impacts of a larger project which is lacking in detail, is a matter which is separate from and irrelevant to the question whether the application under consideration forms an integral part of that larger project.
91. In any event TBC did not conclude that it was impossible to carry out any assessment and, as the Transport Assessment demonstrated, it *was* possible to provide some high-level estimate of the likely effects on traffic on the basis of the link road and the minimum of 826 homes that TBC had promised to use its best endeavours to deliver as part of Phase 1 in order to secure the funding to build the bridge.
92. The Phase 1 project may not be easy to define in detail because it is at a relatively early stage, which explains why the Screening Report refers to a “lack of definition”. That may affect the way in which the overall assessment of whether there is a significant impact on the environment is carried out – it would necessarily be based on less concrete information than an assessment at a later stage of the planning process would be. However, in my judgment it cannot affect the answer to the initial question at the screening stage, “is this application part of a larger project”? If and to the extent that TBC treated it as if it did, they fell into error.
93. The fact that the Planning Practice Guidance addresses the potential relevance of “other existing or approved developments” and tells local planning authorities that they should always have regard to the possible cumulative effects arising from any existing or approved development, should not be taken as restricting consideration of the impact of larger projects to “existing or approved” developments.
94. I accept that there was no evidence of any deliberate attempt by TBC to “salami-slice” in the present case. There were cogent justifications provided for hiving off and accelerating the application for the bridge, which had nothing to do with a wish to avoid the impacts of a full EIA assessment. But it does not follow from the fact that the application for the bridge was hived off in that way that its relationship to Phase 1 of the Masterplan, which provided the sole underlying justification for its existence, could be lawfully ignored when deciding on the identity of the “project”.
95. The developer’s lack of nefarious intent in accelerating one aspect of a development in advance of the rest is irrelevant; the question is whether, on an objective analysis of the

facts, the “project” for the purpose of the EIA Regulations would be too narrowly confined if the screening authority looked at the subject of the application in isolation, with the upshot that the environmental impact of the wider project would be looked at piecemeal instead of as a whole.

96. I accept Mr Brown’s submission that in deciding not to carry out an EIA Assessment, TBC did not consider, as it was legally obliged to, whether the bridge application was an integral part of a larger project. The evidence that TBC ought to have taken into consideration provides strong support for ARPC’s case that it was, though ultimately that will be a matter for the planning judgment of TBC when they come to consider the matter afresh, approaching the issue in a legally correct manner.
97. The Screening Report described the bridge as “essentially enabling works for future development of sites proposed for new residential and community development within [the Masterplan]”. Consistently with the explanation given by the Planning Officer in the OR, it said that the bridge was “being advanced prior to the formalisation of site allocations within planning documents in recognition of the considerable lead in time and constraints associated with working on railway assets.” As I have already observed, the necessary implication is that it would otherwise have been advanced at the same time (as is confirmed by the OR itself, see paras 48 and 49 above).
98. The bridge serves no purpose other than to unlock the sites to the east of the railway line for development, and is of no use at all without a functioning highway running across it. As Mr Brown submitted, there would be no rational justification for building a non-functional bridge over the railway line in that location, particularly if it would harm the setting of Grade 2 listed buildings, unless it was intended to serve at least the minimum of 826 new homes within the Phase 1 development which the HIF funding was designed to facilitate. In short, there could be no Phase 1 development without the bridge, and the bridge served no purpose in the absence of the Phase 1 development, including the functioning link road which would run across it. None of this information appears to have been taken into consideration by TBC when determining the identity of the “project” for screening purposes.
99. The Judge never addressed those objections, which are well-founded, and that is enough to allow this appeal on the first aspect of ARPC’s case on Ground 3.
100. I also accept Mr Brown’s further submission that in any event the Judge erred in finding that TBC lawfully considered the bridge was a single “project” for the purpose of the EIA Regulations. This is not a rationality challenge to that conclusion, but a challenge to the way in which TBC arrived at it. However, Mr Brown did submit that if the author of the Screening Report had addressed the right question, it is hard to see how he could have reached any conclusion other than that the bridge was integral to other development, at the very least as regards the roads serving it. I have already indicated that there is powerful support for that conclusion in the evidence, but as Mr Pereira stressed in the course of his oral submissions, it is not the function of this Court to usurp the planning judgment of the relevant authority. At most, it can indicate to TBC how it should have gone about the identification of the “project” and what factors are and are not relevant to that assessment.
101. Regrettably, none of the justifications provided by the Judge for his conclusion that there was no error of law in the Screening Report withstand scrutiny. In para 119, he

appears to have regarded it as conclusive of the question whether Phase 1 was a “project” for the purposes of the 2017 Regulations that the application was simply for the bridge and not for the totality of the relevant development. Insofar as he did so, he erred in law. That would be true in any “salami-slicing” case, which necessarily concerns a situation in which the application is confined to one aspect of a larger development. Moreover, in para 120, he appeared to consider that the lack of any intention to “salami-slice” was conclusive of the question whether considering the bridge in isolation would be tantamount to “salami-slicing”. As explained above, it is not relevant, let alone conclusive.

102. The Judge also appeared to consider that because the EIA Regulations would apply in future when Phase 1 is brought forward for application, or when the Masterplan is given formal planning status, they cannot apply now. That is not a test set out in the case law and, indeed, appears to me to be contrary to the decision of the Supreme Court in *R(Champion) v North Norfolk District Council* [2015] UKSC 52, [2015] 1 WLR 3710. In that case it was held that a legally defective opinion not to require an EIA at an appropriate stage cannot be cured by carrying out an EIA at a later stage (nor even by carrying out an equivalent assessment outside the Regulations at the correct stage). As that case makes clear, it is entirely possible for there to be a series of EIA assessments over time, as the details of a project are fleshed out.
103. The Judge appeared to accept at para 121 that the bridge, if constructed, may be taken into account in determining applications resulting from Phase 1 of the Masterplan when assessing whether “significant effects are likely as a consequence of a proposed development” but gave no cogent explanation for why the reverse is not true. Insofar as he was relying on the Planning Practice Guidance, the approval of the bridge is not a matter which makes all the difference to whether that structure is or is not to be regarded as an integral part of a more substantial project.
104. In conclusion on Ground 3, I am satisfied that TBC did not take a legally correct approach to the decision whether an EIA assessment was required. They never asked themselves the right questions. If and insofar as they justified treating the bridge as a stand-alone “project” by reference to (a) the difficulty of assessing the environmental impacts of the wider project (b) the fact that the Masterplan has no formal planning status or (c) the fact that EIA assessments will be carried out in future as and when Phase 1, or other aspects of it, become the subject of planning applications, they fell into error.

CONCLUSION

105. For those reasons, I would allow the appeal on all three Grounds, quash the decisions and remit the matters to TBC for reconsideration. I should make it clear, however, that nothing in this judgment is intended to influence the outcome of the future decisions that TBC will need to take as to whether to grant permission for the bridge alone, and as to whether the environmental impacts of the “project” (once it has been lawfully identified) are likely to be substantial so as to trigger a requirement for an EIA.

Lady Justice Elisabeth Laing:

106. I agree.

Lord Justice Warby:

107. I also agree.

Get in touch

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