Proposed Development at Hollingworth Road and Rakewood Road, Littleborough

Planning Statement (including Affordable Housing Statement and Draft S106 Heads of Terms)

On behalf of **Bloor Homes (North West) Ltd**

Project Ref: 332010570 | Date: June 2024

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Revision	Date	Description	Prepared	Reviewed	Approved

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1 Introduction

1.1 Purpose of this Planning Statement

1.1.1 Stantec UK Ltd[1] has produced this Planning Statement on behalf of Bloor Homes North West Limited[2], to support a hybrid planning application for a residential development and new primary school at land to the west of Hollingworth Road in Littleborough as well as alterations and an extension to the existing Hollingworth Lake Country Park car park off Rakewood Road, also in Littleborough, a short distance to the south east.

1.1.2 Full planning permission is sought for the residential development (including the construction of vehicular/pedestrian accesses, landscape measures, open space and associated works) at Hollingworth Road and the proposed extension to the car park off Rakewood Road. The outline component of the planning application relates to the erection of a primary school at Hollingworth Road (with all matters reserved except for access).

1.1.3 The description of the proposed development is as follows:

> *'Planning application seeking full permission for residential development including the construction of vehicular/pedestrian accesses, landscaping, open space and associated works at land off Hollingworth Road, alongside reconfiguration of and extension to the existing car park and associated works off Rakewood Road; and outline permission for the development of a primary school (access into the school site to be considered – all other matters reserved for future approval).'*

1.1.4 In this Planning Statement, we describe the background and context to the proposed development and explain how the scheme accords with relevant local and national planning policies and guidance.

1.2 Background

1.2.1 Stantec has been acting for Bloor Homes since 2018[3] in respect of its proposed residential-led development scheme at Hollingworth Road. The land at Hollingworth Road has been identified as a proposed residential allocation within various iterations of Places for Everyone ('PfE'), which became part of the statutory development plan for the nine PfE authorities (including Rochdale) on 21 March 2024. The part of the application site to the west of Hollingworth Road is allocated for around 300 new homes and a new primary school by 'Policy JP Allocation 20: Land North of Smithy Bridge' within the adopted PfE Plan.

1.2.2 The Reasoned Justification beneath the main policy wording for Policy JP Allocation 20, on page 378 of the PfE Plan, reads as follows:

> '11.262 This site provides an excellent opportunity to deliver a high-quality housing scheme and associated facilities which maximises the potential of this sustainable location. Any proposal should take advantage of its setting close to Hollingworth Lake and build on the existing and proposed residential offer within the area.
>
> *11.263 Rochdale currently has a relatively small proportion of properties in Council Tax bands E and above. This development offers an opportunity to deliver a type of housing which is in short supply across the borough. The delivery of such housing will contribute to widening housing choice which will help to achieve the spatial objective of boosting*

[1] Hereafter referred to as 'Stantec'

[2] Hereafter referred to as 'Bloor' or 'Bloor Homes'

[3] Then trading as 'Peter Brett Associates' or 'PBA'

northern competitiveness. This will also include the delivery of affordable housing, in line with the requirements of the Local Plan.

11.264 The site is within walking distance of both Littleborough and Smithy Bridge ail stations and adjacent to Smithy Bridge which is an attractive and popular residential area which also includes Hollingworth Lake Country Park. The site is also relatively close to Littleborough town centre which contains a range of local services and facilities. Access between these destinations can be significantly improved through the creation of new routes within this development and the adjoining housing site to the north. Given these important linkages, the masterplanning of the site should have regard to the proposed residential development to the north.'

1.2.3 The Reasoned Justification continues as follows on page 379 of the PfE Plan:

*'*11.269 There is a local issue in terms of primary school places and this can only be resolved through the provision of a new school. This area provides an excellent location for a new facility given that it lies between Littleborough and Smithy Bridge and therefore can serve both areas sustainably. It also provides an attractive location for a school which can provide access to open areas and activities, thus promoting healthy lifestyles.

11.270 The southern end of the site is currently occupied by a car park which accommodates visitors to the lake. Any spaces lost as a result of the development will need to be replaced by an equivalent facility in order that the parking needs of visitors to the lake are met and to avoid displacing car parking on to nearby roads and streets. The delivery of appropriate parking will need to be linked to the overall delivery of the wider proposal.'

1.2.4 Thus, if the proposed development at the Policy JP Allocation 20 site results in the loss of any of the existing visitor parking spaces in the southern part of the allocation, there is a policy requirement to replace those spaces nearby. It has been determined that the optimal solution is to provide alterations and an extension to the existing Hollingworth Lake Country Park car park off Rakewood Road. The proposal for this car park extension fulfils Rochdale Council's long-standing ambition to improve visitor parking associated with Hollingworth Lake Country Park whilst enabling the requirements of Policy JP Allocation 20 to be met (insofar as the provision of replacement visitor car parking spaces is concerned).

1.2.5 The applicant proposes to deliver 140 new parking spaces at Rakewood Road, including parking for disabled people and families. The size of the new parking facility at Rakewood Road is based on the assumption that all of the existing spaces at the Hollingworth Road car park will be lost and so an equivalent facility will be provided nearby to ensure that there is no reduction in parking availability. Improvements to the existing car park at the Country Park will continue to enable people to visit and enjoy the Hollingworth Lake area, thereby helping to support a prosperous rural economy.

1.2.6 Whilst the land at Rakewood Road is within the Green Belt, the extract from the Green Belt layer of the PfE Policies Map[4] (Figure 1-1 below) shows that the same applies to all of the land which surrounds Hollingworth Lake to the east, south and west, aside from the land which is allocated by Policy JP Allocation 20, the existing residential properties to the west of the allocation and the land to the north of the allocation which benefits from planning permission for residential development (the Vistry site).

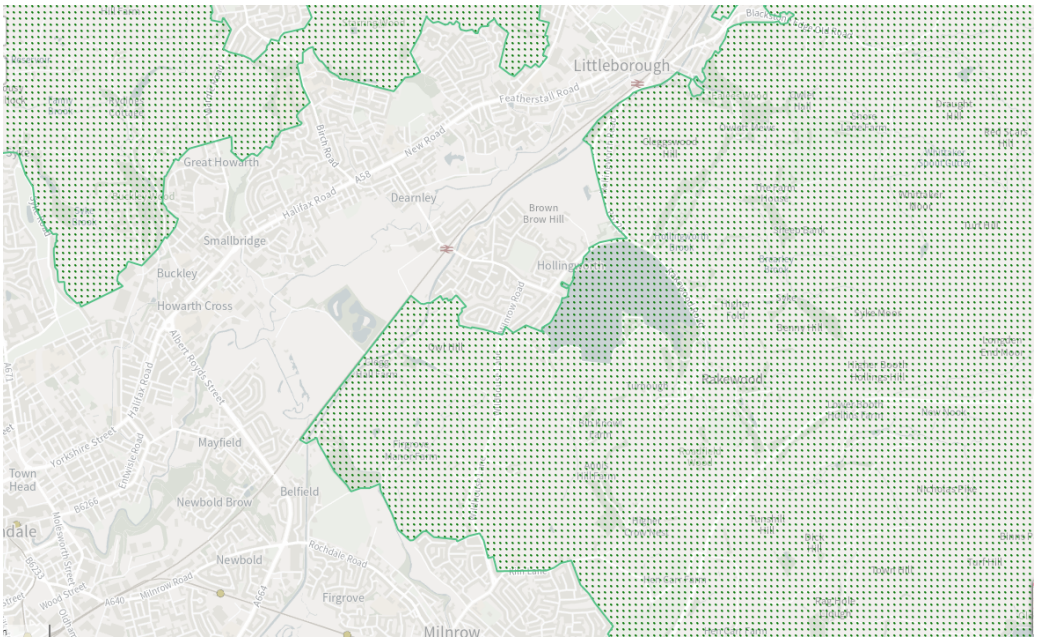
[4] Available to view online via this link: https://mappinggm.org.uk/pfe-2023/#os_maps_light/10/53.5069/-2.3201

1.2.7 Land in Littleborough to the north of the Rochdale Canal and the railway line is not within the Green Belt, but if visitors were to park in that general location – assuming that a suitable site could be found for a 140-space car park – then the walk to Hollingworth Lake would be much longer than the walk from Rakewood Road. If the replacement car parking spaces were situated to the north of the Canal and the railway line, the likely effect would be to discourage a significant proportion of people who otherwise would visit Hollingworth Lake and the Visitor Centre.

1.2.8 As well as providing new vehicular parking spaces via the extension to the car park at Hollingworth Lake Country Park, the applicant's proposed scheme involves the re-configuration of parking spaces at the existing car park itself. A new car park in another location would not deliver the same benefit. Additionally, the proposed car park reconfiguration and extension will minimise the need for visitors to search for an available parking space elsewhere if they were to find that the existing Hollingworth Lake Country Park car park is full, thereby reducing carbon emissions.

1.2.9 Furthermore, paragraph 155 of the National Planning Policy Framework ('NPPF') makes clear, under criterion c), that local transport infrastructure is exempted from the definition of 'inappropriate development', provided that a requirement for a Green Belt location can be demonstrated, the openness of the Green Belt is preserved, and it does not conflict with the Green Belt purposes. For the reasons set out in subsequent sections of the Planning Statement, the applicant considers that the proposals at Rakewood Road fall within the scope of paragraph 155 c). The consequence is that it is not necessary to demonstrate 'very special circumstances' for the proposed car park at Rakewood Road.

Figure 1-1 Extract from the Green Belt Layer of the Places for Everyone Policies Map



1.2.10 The applicant has liaised with key stakeholders including officers from Rochdale Council and Your Trust – the operator of Hollingworth Lake Country Park – which expressed its support in principle for the proposals to extend the existing Visitor Centre car park during a meeting on 10 August 2023.

1.2.11 The entire development is being delivered by one of the country's leading, multi award-winning housebuilders, Bloor Homes. As we explain in this document, Bloor's design team has taken meticulous care to ensure that the development is sensitively designed.

1.3 Application Documents

1.3.1 The planning application is supported by a range of reports and drawings which reflect the requirements of Rochdale Council's local validation checklist and PfE Policy JP Allocation 20: Land North of Smithy Bridge.

1.3.2 An Environmental Impact Assessment ('EIA') Screening Opinion Request was submitted to Rochdale Council in July 2019 (ref. 19/00910/SO) in relation to the proposals for a residential development and new primary school at Hollingworth Road. The Council issued its EIA Screening Opinion in January 2020. An EIA Scoping Opinion Request was submitted in relation to those proposals in February 2023 (ref. 23/00169/SCO) and the Council provided its EIA Scoping Opinion in July 2023. At that time, the proposal was to submit a standalone application for the proposed development at Hollingworth Road.

1.3.3 Up until recently, a standalone planning application was also being prepared for alterations and extension to the car park at Rakewood Road. Whilst a pre-application meeting was held with officers in relation to the car park extension in August 2023, that proposal has not previously been subject to EIA Screening or Scoping.

1.3.4 The submitted planning application now covers the applicant's proposals at both Hollingworth Road and Rakewood Road. We use the term 'land parcels' rather than 'site' throughout the Planning Statement to make clear which particular area of land we are referring to (namely 'Land to the West of Hollingworth Road', or 'Land off Rakewood Road').

1.3.5 We submitted an EIA Scoping Opinion Request to the Council in May 2024 outlining our updated approach of incorporating the proposed car park extension as part of the planning application. Prior to the submission, we discussed our updated approach with Council officers during a meeting on 2 May 2024.

1.3.6 The schedule of documents in support of the planning application is as follows:

- Application Form and Certificates
- Planning Statement (including Affordable Housing Statement and Draft S106 Heads of Terms)
- Design & Access Statement
- Transport Assessment
- Framework Travel Plan
- Habitats Regulations Assessment ('HRA')
- Biodiversity Net Gain ('BNG') Assessment
- Health Impact Assessment
- Lighting Assessment
- Statement of Community Involvement
- Construction Environmental Management Plan
- Environmental Statement
  - *Volume 1: Overview*

- *Volume 2: Hollingworth Road, which includes the following chapters:*
  - Ecology and Biodiversity
  - Landscape and Visual
  - Hydrology and Drainage
  - Ground Conditions
  - Historic Environment
  - Traffic and Transport
  - Air Quality
  - Noise and Vibration
  - Socio-Economics
  - Climate Change
- *Volume 3: Appendices (Hollingworth Road*)
  - Ecology and Biodiversity
    - Bat Survey Results
    - Bird Survey Results
    - Extended Phase 1 Habitat Survey
    - Great Crested Newt Survey Results
    - Otter and Water Vole Survey Results
    - Ecology Figures
    - Arboricultural Impact Assessment
  - Landscape and Visual
    - Landscape Figures
    - Landscape and Visual Impact Assessment Methodology
    - Landscape Effects Table
    - Site Appraisal Photographs (Winter)
    - Site Context Photographs (Winter)
    - Site Appraisal Photographs (Summer)
    - Site Context Photographs (Summer)
    - Visual Effects Table

- Hydrology and Drainage
    - Flood Risk Assessment and Drainage Management Strategy
    - SuDS-Proforma
    - Hydrological Assessment
- Ground Conditions
    - Ground Conditions Site Features Plan
    - Phase 1 Ground Conditions Assessment
    - Coal Mining Risk Assessment
    - Geo Ground Investigation Report
- Historic Environment
    - Historic Environment Desk-Based Assessment
    - Geophysical Survey
- Air Quality
    - Legislation, Policy Context, Guidance and Standards
    - IAQM Dust Guidance (2024) Approach
    - EPUK/IAQM Guidance (2017) Screening Criteria
    - Road Traffic Emissions Air Quality Model Inputs and Results Processing
    - Road Traffic Emissions Air Quality Model Verification
    - Human Receptor Road Traffic Emissions Air Quality Modelling Results
    - Air Quality Figures
- Noise and Vibration
    - Policy Context, Legislation, Guidance and Standards
    - Measurement Locations and Noise Sensitive Receptors Figures
    - Construction Data Tables
    - Time History Graphs
    - Calibration and Measurement Equipment

        - Socio-Economics
            - Open Space Plan (1km Buffer around Site Boundary)
            - Open Space Plan (2.5km Buffer around Site Boundary)
        - Climate Change
            - Climate Change National Legislation, Policy and Guidance
            - Summary of Evolving Baseline Climate Projections
    - *Volume 4: Appendices (Rakewood Road)*
        - Flood Risk Assessment and Drainage Management Strategy
        - Ecological Impact Assessment
        - Arboricultural Impact Assessment
        - Geo-Environmental Desk Study and Coal Mining Risk Assessment Report
        - Historic Environment Desk-Based Assessment
        - Landscape and Visual Appraisal
    - *Volume 5: Non-Technical Summary*
- Documents relating to Hollingworth Road only:
    - *Crime Impact Statement*
    - *Energy Strategy Statement*
    - *Sports Impact Assessment*
    - *Agricultural Land Classification Survey*
    - *Minerals Resource Assessment*
    - *Landscape and Biodiversity Management Strategy ('LBMS')*

1.3.7 To avoid unnecessary repetition in this Planning Statement, we cross-refer to the other documents which form part of the application submission wherever appropriate. The application also includes the following plans and drawings:

Plans/Drawings Relating to Both Land Parcels	
Drawing Title	**Drawing Reference**
Location Plan	NW111-PD-1002 A

Plans/Drawings Relating to the Hollingworth Road Land Parcel Only	
Drawing Title	**Drawing Reference**
Site Layout (West)	NW111-PD-1001 D
Site Layout (East)	NW111-PD-2001 D
Coloured Layout	NW111-PD-1001 D
Cross Sections Sheet 1	NW-ENG-CS (Sheet 1)
Cross Sections Sheet 2	NW-ENG-CS (Sheet 2)
House Type Pack – Hill View Primary	1. Bewdley CLA Render (412.PL-02) 2. Bewdley Floor Plans (412.PL-09) 3. Dawlish CLA Render (496.PL-02) 4. Dawlish Floor Plans (496.PL-04) 5. Harwood CLA Brick (481.PL-01) 6. Harwood Floor Plans (481.PL-05) 7. Huxley CLA Brick (NSS.382.PL-01) 8. Kane CLA Brick (NSS.378_378-1.PL-01) 9. Kane CLA Render (NSS.378_378-1.PL-02) 10. Langley CLA Brick (489.PL-01) 11. Langley Floor Plans (489.PL-05) 12. Locke CLA Brick (486.PL-01) 13. Locke CLA Render (486.PL-02) 14. McQueen CLA Brick (315SM_315SM-1.PL-01) 15. McQueen CLA Render (315SM_315SM-1.PL-02) 16. McQueen Floor Plans (315SM_315SM-1.PL-02) 17. Raleigh CLA Brick (571.PL-01) 18. Raleigh Floor Plans (571.PL-05) 19. Sansom CLA Brick (NSS.M2B4P.PL-01) 20. Sansom (3) CLA Brick (NSS.LC0033) 21. Sansom Floor Plans (NSS.LC0033) 22. Sutherland CLA Brick (NSS.M3B5P.PL-01) 23. Sutherland Floor Plans (NSS.M3B5P.PL-08) 24. Sutherland CLA Brick (LC0034) 25. Sutherland Floor Plans (LC0034) 26. Shakespeare CLA Brick (480.PL-01) 27. Shakespeare (480.PL-05) 28. Shakespeare CLA Render (480.PL-02) 29. Shakespeare (480.PL-05) 30. Sherbourne CLA Brick (395.PL-01) 31. Sherbourne Floor Plans (395.PL-10)

	32. Sherbourne CLA Render (395.PL-02) 33. Sherbourne Floor Plans (395.PL-10) 34. Wixham CLA Brick (307.PL-01) 35. Wixham CLA Render (307.PL-02) 36. Wixham Floor Plans (307.PL-05) 37. Wollaton CLA Render (401.PL-02) 38. Wollaton Floor Plans (401.PL-05) 39. Wyatt CLA Brick (476.PL-01) 40. Wyatt Floor Plans (476.PL-05)
House Pack Type – Hill View Secondary	1. Bewdley CLA Stone (412.PL-03) 2. Bewdley Floor Plans (412.PL-09) 3. Dawlish CLA Stone (496.PL-03) 4. Dawlish Floor Plans (496.PL-04) 5. Harwood CLA Stone (481.PL-04) 6. Harwood Floor Plans (481.PL-05) 7. Huxley CLA Stone (NSS.382.PL-04) 8. Langley CLA Stone (489.PL-04) 9. Langley Floor Plans (489.PL-05) 10. Locke CLA Stone (486.PL-04) 11. McQueen CLA Stone (315SM_315SM-1.PL-03) 12. McQueen Floor Plans (315SM_315SM-1.PL-03) 13. Mere CLA Stone (581.PL-03) 14. Mere Floor Plans (581.PL-09) 15. Raleigh CLA Stone (571.PL-04) 16. Raleigh Floor Plans (571.PL-05) 17. Wyatt CLA Stone (476.PL-04) 18. Wyatt Floor Plans (476.PL-05)
House Pack Type – Hollingworth Gateway Primary	1. Bewdley CLA Stone (412.PL-03) 2. Bewdley Floor Plans (412.PL-09) 3. Dawlish CLA Stone (496.PL-03) 4. Dawlish Floor Plans (496.PL-04) 5. Harwood CLA Stone (481.PL-04) 6. Harwood Floor Plans (481.PL-05) 7. McQueen CLA Stone (315SM_315SM-1.PL-03) 8. McQueen Floor Plans (315SM_315SM-1.PL-03) 9. Mere CLA Stone (581.PL-03) 10. Mere Floor Plans (581.PL-09)

House Pack Type – Hollingworth Gateway Secondary	1. Bewdley CLA Brick (412.PL-01) 2. Bewdley Floor Plans (412.PL-09) 3. Locke CLA Brick (486.PL-01) 4. Huxley CLA Brick (NSS.382.PL-01) 5. Kane CLA Brick (NSS.378_378-1.PL-01)
House Pack Type – Lakeside Primary	1. Bewdley QA Brick (412.PL-04) 2. Bewdley Floor Plans (412.PL-09) 3. Dalgety QA Brick (410.PL-01) 4. Dalgety Floor Plans (410.PL-06) 5. Huxley QA Brick (NSS.382.PL-05) 6. Kane QA Brick (NSS.378_378-1.PL-04) 7. Locke QA Brick (486.PL-05) 8. Lullingstone QA Brick (408.PL-01) 9. Lullingstone Floor Plans (408.PL-06) 10. McQueen QA Brick (315SM_315SM-1.PL-04) 11. McQueen Floor Plans (315SM_315SM-1.PL-04) 12. Mere QA Brick (581.PL-04) 13. Mere Floor Plans (581.PL-09) 14. Oulton QA Brick (404.PL-01) 15. Oulton Floor Plans (404.PL-06) 16. Ruabon QA Brick (573.PL-01) 17. Ruabon Floor Plans (573.PL-06) 18. Verwood QA Brick (405.PL-01) 19. Verwood Floor Plans (405.PL-06) 20. Watercroft QA Brick (403.PL-01) 21. Watercroft Floor Plans (403.PL-06) 22. Wetton QA Brick (411.PL-01) 23. Wetton Floor Plans (411.PL-06)
House Pack Type – Lakeside Secondary	1. Bewdley QA Brick (412.PL-04) 2. Bewdley Floor Plans (412.PL-09) 3. Huxley QA Brick (NSS.382.PL-05) 4. Kane QA Brick (NSS.378_378-1.PL-04) 5. Locke QA Brick (486.PL-05) 6. Lullingstone QA Brick (408.PL-01) 7. Lullingstone Floor Plans (408.PL-06) 8. Lyford Buxton QA Brick (NSS.817.PL-04) 9. Lyford Buxton Floor Plans (NSS.817.PL-09) 10. McQueen QA Brick (315SM_315SM-1.PL-04)

	11. McQueen Floor Plans (315SM_315SM-1.PL-04) 12. Oulton QA Brick (404.PL-01) 13. Oulton Floor Plans (404.PL-06) 14. Sansom QA Brick (NSS.M2B4P.PL-03) 15. Sansom QA Brick (NSS.LC0035) 16. Sansom QA Brick (NSS.LC0035) 17. Sherbourne QA Brick (395.PL-05) 18. Sherbourne Floor Plans (395.PL-10) 19. Sutherland QA Brick (NSS.M3B5P.PL-03) 20. Sutherland Floor Plans (NSS.M3B5P.PL-08) 21. Sutherland QA Brick (NSS.LC0036) 22. Sutherland Floor Plans (NSS.LC0036) 23. Sutherland QA Brick (NSS.LC0037) 24. Sutherland Floor Plans (NSS.LC0037) 25. Sutherland Floor Plans (NSS.LC0037) 26. Verwood QA Brick (405.PL-01) 27. Verwood Floor Plans (405.PL-06) 28. Watercroft QA Brick (403.PL-01) 29. Watercroft Floor Plans (403.PL-06) 30. Wetton QA Brick (411.PL-01) 31. Wetton Floor Plans (411.PL-06) 32. Whalton QA Brick (310.PL-01) 33. Whalton Floor Plans (310.PL-06)
House Pack Type - Garages	1. Single Brick (GL01.PL-01) 2. Paired Brick (GL02.PL-01) 3. Double Brick (GL02.PL-01)
Landscape Concept Plan	NW111-LS-001
Site Landscaping	1. NW111-LS-002b 2. NW111-LS-003a 3. NW111-LS-004 4. NW111-LS-005 5. NW111-LS-006a 6. NW111-LS-007a 7. NW111-LS-008
Site Landscaping Specification and Schedule	NW111-LS-009b
Site Landscaping Site Cross Sections A-A, B-B, C-C	NW111-LS-010

Site Landscaping Site Cross Sections D-D, E-E, F-F, G-G	NW111-LS-011
Street Scenes	NW111-PD-060
Fencing Layout (West)	NW111-PD-1004 B
Materials Layout (West)	NW111-PD-1007 D
Vehicle Charging Layout (West)	NW111-PD-1011 B
Shed and Bin Layout (West)	NW111-PD-1012 B
Hard Surfacing (West)	NW111-PD-1014 B
Chimney Layout (West)	NW111-PD-1017 B
Build Route (West)	NW111-PD-1018 B
Character Area Plan	NW111-PD-1050 B
Fencing Layout (East)	NW111-PD-2004 B
Materials Layout (East)	NW111-PD-2007 D
Vehicle Charging Layout (East)	NW111-PD-2011 B
Shed and Bin Layout (East)	NW111-PD-2012 B
Hard Surfacing (East)	NW111-PD-2014 B
Chimney Layout (East)	NW111-PD-2017 B
Build Route (East)	NW111-PD-2018 B
Parameter Plan: Green Infrastructure	BL-M-03 rev C
Parameter Plan: Scale	BL-M-04 rev B
Parameter Plan: Land Use and Access	BL-M-02 rev B
Plans/Drawings Relating to the Rakewood Road Land Parcel Only	
Drawing Title	**Drawing Reference**
Existing Site Plan	LN-LP-07
General Arrangement Sheet 1 (Proposed Site Plan)	35025-RG-LD-01 rev B
General Arrangement Sheet 2 (Proposed Site Plan)	35025-RG-LD-01 rev B
Illustrative Masterplan	35025-RG-LD-03 rev B
Illustrative Sections	35025-RG-LD-02 rev A
Typical Details	35025-RG-LD-04 rev A
Preliminary Drainage Layout	BLH41-RWD-BET-ZZ-XX-DR-C-1001- P03
Access Road Longitudinal Section (Ramp Section)	BLH41-RWD-BET-ZZ-XX-DR-C-1002- P01

1.4 Structure of this Planning Statement

1.4.1 The remainder of the Planning Statement is structured as follows:

- Section 2 describes the location and characteristics of the application site (which comprises two land parcels) and the surrounding area, and it summarises the planning history associated with each land parcel;

- Section 3 provides a description of the proposed development, including key features of the scheme, as well as an Affordable Housing Statement;
- Section 4 sets out the planning policy context;
- Section 5 establishes the principle of the development, both in terms of the PfE allocation and the location of the car park extension within the Green Belt;
- Section 6 contains a summary of the main findings from the key design, environmental and technical reports submitted as part of the application and assesses the proposed development against the relevant policies in the development plan and other material considerations which, in this case, includes the NPPF; and
- Section 7 provides our summary and overall conclusions.

2 Site Context

2.1 Introduction

2.1.1 The application site is 21.49 hectares in size and comprises two land parcels, 'Land to the West of Hollingworth Road' (18.85 hectares) and 'Land off Rakewood Road' (2.64 hectares). The site is located in the north-eastern part of Rochdale borough. Below, we describe the location and characteristics of each land parcel.

2.2 Land to the West of Hollingworth Road

2.2.1 The Hollingworth Road land parcel comprises 18.85 hectares of land to the immediate west of the B6225 Hollingworth Road, north-east of Smithy Bridge and south-west of Littleborough town centre.

2.2.2 The land is predominantly used for grazing horses and cattle with field boundaries enclosed by dry stone walls and hedgerows. Lower Cleggswood Farm is located in the centre of the land parcel and is surrounded by eight fields. Heald Lane, which runs south to Lake Bank, is a private road and Public Right of Way ('PRoW') which bisects the land parcel and provides access to some residential dwellings and Lower Cleggswood Farm.

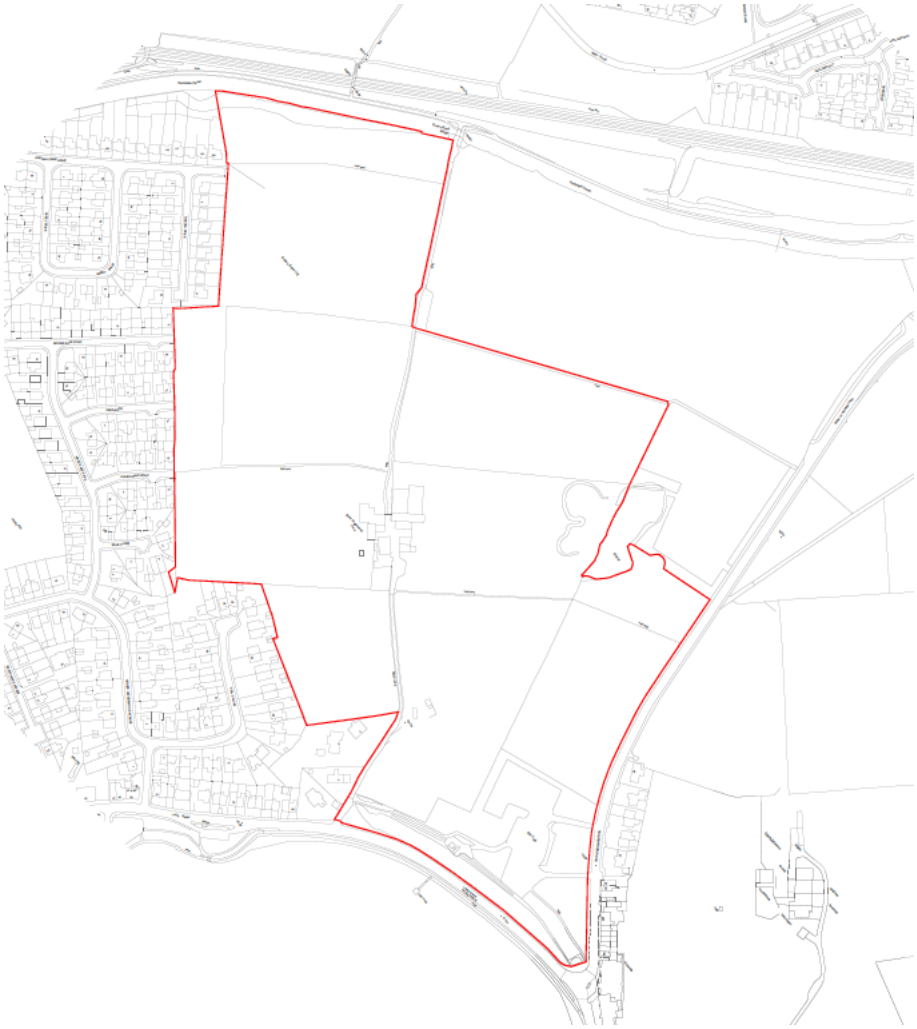
2.2.3 The topography varies considerably and the land drops steeply towards the Rochdale Canal to the north. This variable topography is characteristic of the surrounding landscape. The proposed development has been designed to accommodate the varying topography.

2.2.4 The south-eastern part of the land parcel comprises an existing car park for visitors to Hollingworth Lake. The car park is accessed off Hollingworth Road via two access junctions, one of which is entry-only and the other is exit-only.

2.2.5 The land parcel is bounded to the north by the Rochdale Canal and the former Akzo Nobel site. The latter is now controlled by Vistry Partnerships, which recently secured planning permission for the development of up to 127 dwellings at the site (ref: 21/01146/FUL). Beyond the Rochdale Canal is the Calder Valley Railway Line, which runs between Todmorden and Rochdale. To the east of Hollingworth Road is agricultural land, while to the west of the land parcel is the residential settlement of Smithy Bridge. Lake Bank Road is located to the south of the land parcel, beyond which is Hollingworth Lake, a 130-acre reservoir.

2.2.6 Figure 2-1 below shows the extent of the Hollingworth Road land parcel.

Figure 2-1 Land to the West of Hollingworth Road



2.2.7 The allocation to the west of Hollingworth Road is very well related to both Smithy Bridge (to the south-west) and Littleborough (to the north-east). The land parcel is approximately 800m from Littleborough town centre, which has a range of shops, several GP surgeries, a library and a Post Office as well as multiple leisure facilities including restaurants, pubs and cafés.

2.2.8 Smithy Bridge has a small range of shops and services catering for local residents including a couple of small foodstores as well as a library, pharmacy, church, café, restaurant and takeaway. Smithy Bridge Primary School is located approximately 450m to the west of the land parcel and there are a number of other primary schools within the surrounding area.

2.2.9 The land parcel is located approximately 750m to the south-west of Littleborough Railway Station and 570m to the east of Smithy Bridge Railway Station. Both stations are on the Calder Valley Line, offering services to Leeds, Manchester, Halifax, Preston and York.

2.2.10 More detailed assessments of local facilities and services are provided within the Design & Access Statement and the Transport Assessment.

Planning History

2.2.11 Planning applications relevant to the Hollingworth Road land parcel are summarised in Table 2-1 below (other applications have been submitted but are not deemed relevant to this proposal).

Table 2-1 Hollingworth Road Land Parcel Relevant Planning History

Application reference	Application description	Status
84/D16802	New farmhouse	Refused
93/D29466	Use of land to form golf driving range and crazy golf course	Refused
00/D37334	Erection of 3 two storey dwellings	Withdrawn
19/00910/SO	Screening opinion in relation to residential development of around 350 dwellings, a primary school and associated works	Decided – EIA required
23/00169/SCO	Request for scoping opinion in respect of proposed development of up to approximately 330 residential dwellings, a primary school and associated works	Decided – EIA required
24/00526/SCO	Request for scoping opinion in respect of proposals for residential development and new primary school alongside alterations and extension to the car park at Hollingworth Lake Country Park, Rakewood Road, Littleborough	Awaiting decision

2.2.12 The planning history described above indicates that Bloor has had a longstanding interest in developing the land parcel for residential use.

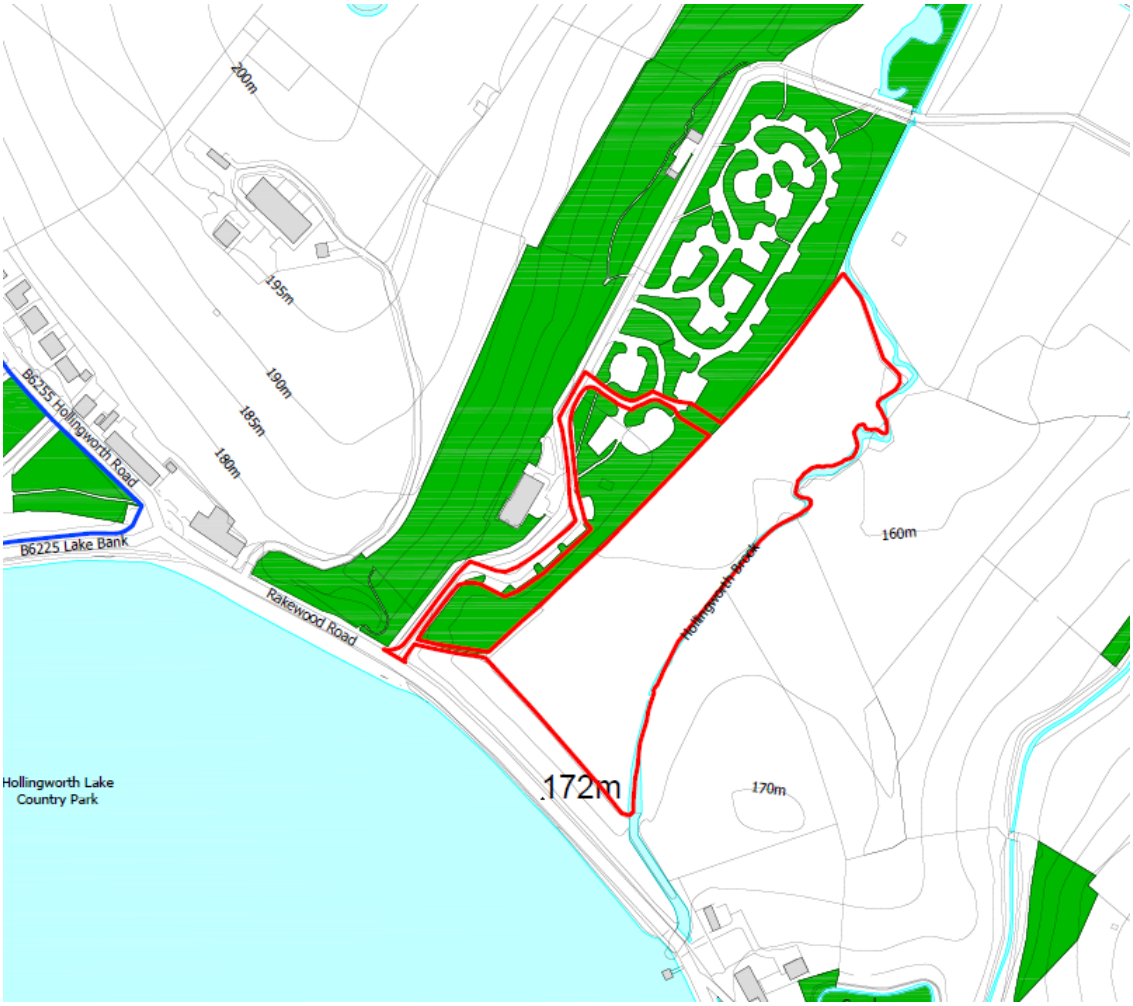
2.3 Land off Rakewood Road

2.3.1 Bloor also controls 2.64 hectares of land to the north-east of Rakewood Road. The Rakewood Road land parcel is located adjacent to the existing car park at Hollingworth Lake Country Park.

2.3.2 The main part of the land parcel, which extends to 2.38 hectares, will accommodate the proposed extension of the car park at Hollingworth Lake Country Park and comprises land which has most recently been used for cattle grazing. The remaining 0.26 hectares of land includes an access route to the proposed extended car park from Rakewood Road through the existing Hollingworth Lake Country Park car park, alongside a number of existing car parking spaces, which are proposed to be reconfigured. A wooded embankment separates the south-eastern extent of the existing car park from the main part of the land parcel. There is an agricultural access at the south-western corner of the land parcel, which will be retained, and a segregated pedestrian footpath will link the car park extension to this access off Rakewood Road.

2.3.3 As shown by Figure 2-2 below, Hollingworth Brook is located adjacent to the northern and eastern boundaries of the land parcel, which is a Main River as designated by the Environment Agency. Hollingworth Lake Visitor Centre is located to the west of the site, with the lake itself located to the south-west. A steep managed embankment adjacent to Rakewood Road separates the site from Hollingworth Lake.

Figure 2-2 Land off Rakewood Road



2.3.4 Beyond the land parcel's immediate surroundings are agricultural fields and the Peak District moorlands to the east, and developed areas of Smithy Bridge and Littleborough to the west and north respectively.

Planning History

2.3.5 Planning applications relevant to the Rakewood Road land parcel are summarised in Table 2-2 below. The Council's planning application map search function shows both application refs. 19/00910/SO and 23/00169/SCO (highlighted in Table 2-1 above) as relevant to the Rakewood Road land parcel as well as the Hollingworth Road land parcel. As we explained earlier, however, those requests for EIA screening and scoping opinions relate to the proposals at Hollingworth Road only, whereas the request for an EIA scoping opinion that we submitted to the Council in May 2024 covers both the Hollingworth Road land parcel as well as the Rakewood Road land parcel.

Table 2-2 Rakewood Road Land Parcel Relevant Planning History

Application reference	Application description	Status
21/00166/FUL	Single storey extensions to existing building to form animal welfare centre with meeting room, café and public toilets including separate park ranger pod and associated external works	Grant subject to conditions
21/01290/DOC	Submission of details to comply with conditions 3 (Materials), 4 (Boundary Treatments), 5 (Bat Survey), 8 (Foul Drainage) and 9 (Surface Water Drainage) of planning permission 21/00166/FUL	Request completed and some conditions discharged[5]

2.3.6 There are several other planning applications within close proximity of the Rakewood Road land parcel relating to the Hollingworth Lake Visitor Centre and the existing Hollingworth Lake Country Park car park, for example, but we do not highlight them in Table 2-2 because they are not directly relevant to the current proposals.

[5] Conditions 3, 4 and 5 have been discharged; however, insufficient information was submitted to satisfy the requirements of Conditions 8 and 9. In the Decision Notice, the Case Officer noted that discussions are still ongoing between the Council's Drainage Engineers and the Applicant's Drainage Engineers and said that the Council will contact the Applicant once those discussions have concluded.

3 Proposed Development (Incorporating Affordable Housing Statement)

3.1 Introduction

3.1.1 In this section of the Planning Statement, we provide an overview of the proposed development and an Affordable Housing Statement.

3.2 Scheme Overview

3.2.1 Bloor proposes the development of a high-quality residential scheme and a new primary school at the Hollingworth Road land parcel – which is consistent with the aspirations of PfE Policy JP Allocation 20 – alongside alterations to and an extension of Hollingworth Lake Country Park car park.

3.2.2 The description of the proposed development is as follows:

> *'Planning application seeking full permission for residential development including the construction of vehicular/pedestrian accesses, landscape measures, open space and associated works at land off Hollingworth Road, alongside reconfiguration of and extension to the existing car park and associated works off Rakewood Road; and outline permission for the development of a primary school (access into the school site to be considered – all other matters reserved for future approval.'*

3.3 Land to the West of Hollingworth Road

Mix and Tenure

Residential Use

3.3.1 The majority (265) of the 312 proposed dwelling houses are for private ownership, with the remaining 47 homes being social rented. The private dwelling houses will range from 3 to 5 bedroom homes whilst the social rented dwelling houses will be either 2 or 3 bedroom homes. The majority (262) of the 312 proposed dwelling houses will be two storeys in height, with the remaining 50 homes being 2.5 storeys in height. A schedule of the proposed dwellings is provided by Table 3-1 below.

Table 3-1 Residential Unit Mix

Private (84.9%)		
Bedrooms	**Storeys**	**Number**
3	2	87
3	2.5	44
4	2	122
5	2	6
5	2.5	6
		Total: 265
Social Rent (15.1%)		
Bedrooms	**Storeys**	**Number**
2	2	31
3	2	16
		Total: 47

Non-Residential Use

3.3.2 PfE Policy JP Allocation 20: Land North of Smithy Bridge requires the developer to *'facilitate the delivery of a new primary school and associated outdoor playing space'*. The planning application reserves the south-eastern part of the Hollingworth Road land parcel, which currently accommodates a public car park for visitors to Hollingworth Lake, for a new primary school and associated outdoor playing space.

3.3.3 The proposed school has been earmarked an 'in-principle' school (as opposed to a 'pre-opening' school), meaning that it has been pre-approved by the Department for Education in the circumstances that there is a demonstrated need for additional school places.

3.3.4 Should a need for additional school places be demonstrated, it is envisaged that the primary school (Use Class F1a) would have a floorspace of approximately 2,300 sq.m, set within a plot of approximately 2 hectares (which would include the outdoor playing space). The school would be a feature building, the majority of which would be 2-storey with some parts 3-storey (subject to detailed design). The number of parking spaces within the primary school would also be determined during the reserved matters stage.

Affordable Housing Statement

Planning Policy Context

3.3.5 Paragraph 60 of the NPPF affirms the Government's commitment of significantly boosting the supply of homes to meet the needs of groups with specific housing requirements. The December 2023 update of the NPPF also contains a new sentence at the end of paragraph 60: *'The overall aim should be to meet as much of an area's identified housing need as possible, including with an appropriate mix of housing types for the local community.'*

3.3.6 The Council's affordable housing policy is set out within Policy C4 ('Providing affordable homes') of the Rochdale Adopted Core Strategy (2016). The policy confirms that the Council will seek affordable housing on all developments of 15 dwellings or more and a contribution to affordable housing of 7.5 per cent of the development sales value of the overall scheme. The text beneath the policy states:

> *'In 2008 the Council adopted an Affordable Housing Supplementary Planning Document. This Supplementary Planning Document sets out more detail regarding the provision of affordable housing. It also sets out the calculation for the contribution within the policy which is* ***based on an assumption of 15% of the homes being affordable*** *with an average discount of 50% of the open market value. The level of off-site contribution will be calculated in the same way as on-site provision (i.e. 7.5% of the total development sales value).'*

[Our emphases added]

3.3.7 Policy C4 goes on to explain that affordable housing should be:

- Provided on-site, and the type, size and tenure of housing should be agreed by the developer and the local authority based on local evidence and, where appropriate, delivered in partnership with a Registered Provider; or
- Provided via an off-site financial contribution in exceptional circumstances.

3.3.8 Examples of exceptional circumstances might include where: the local authority considers that the site is not an appropriate location for affordable housing (such as poor access to local services and public transport); the type of housing on the site makes it difficult to provide an element of affordable housing; or it is not practical to properly manage an element of affordable housing on the site, for instance where on-site provision would only deliver a very small number of homes.

3.3.9 The Council will take the following factors into account when negotiating the level of affordable housing and how it is to be provided:

i. the type of affordable housing required in the area;

ii. the availability of Social Housing Grant or equivalent;

iii. the need to deliver other planning objectives with a higher priority; and

iv. the economic viability of the development.

Assessment of Conformance with Local Planning Policy

3.3.10 The proposed development comprises 312 dwelling houses, of which 47 will be affordable properties, equating to 15.1 per cent of the overall provision. The proposed development therefore accords with the 15 per cent affordable requirement established by the supporting text to Policy C4. The intention is to provide all of the affordable units on-site, which is the Council's preference as indicated within the policy.

3.3.11 The draft Section 106 Heads of Terms, provided within Appendix A to this Planning Statement, includes the provision of affordable housing.

Layout and Density

3.3.12 The proposed layout of the Hollingworth Road land parcel has largely been driven by the aspiration to retain and integrate most of the existing PRoWs within the development, most notably Heald Lane which bisects the land parcel[6]. Two access junctions are proposed, with the northern access leading towards the homes to the east of Heald Lane, and the southern access leading towards the land reserved for the new primary school and the remainder of the homes proposed to the west of Heald Lane.

3.3.13 The scheme layout incorporates a permeable grid of streets which will provide a network of connections throughout the land parcel. The PRoWs along Brown Lodge Drive[7] and Higher Bank Road will be utilised to enable high quality connections to Smithy Bridge and other key destinations.

3.3.14 The topography of the land parcel has also informed the proposed layout, and a variety of housing types have been used to exploit these level changes.

3.3.15 Figure 3-1 shows the proposed layout of the dwellings and the land reserved for the new primary school.

[6] It is proposed that Heald Lane will be diverted slightly to avoid the proposed swales.

[7] It is proposed that this PRoW will be diverted slightly to avoid the proposed attenuation basin.

Figure 3-1 Coloured Layout of the Hollingworth Road Land Parcel



Source: Bloor Homes

3.3.16 Residential density will be highest along Hollingworth Road, creating a defined gateway to the land parcel, with lower density areas along the edges of the development. Densities will vary across the Character Areas; in 'Hollingworth Gateway' the homes will be medium density, in 'Lakeside' the homes will be medium density with a tighter grain within the centre of the character area and in 'Hill View' the homes will be medium density with a tighter grain on the western edge to respond to the strong linear form in Smithy Bridge.

Movement and Accessibility

3.3.17 Vehicular access to the Hollingworth Road land parcel is to be taken from two access junctions with Hollingworth Road. Emergency access is proposed to be taken from Bridge Bank Road, Highlands or Higher Bank Road through extending the existing road layout to the west of the land parcel. Further detail regarding the access arrangements can be found within the Transport Assessment which is submitted as part of the application.

3.3.18 The majority of the existing PRoWs which traverse the land parcel will be retained and integrated into the layout of the proposed development with some minor diversions to ensure the delivery of a high-quality development. For example, the eastern PRoW off Hollingworth Road will be diverted through the scheme's highway network with multiple connection points to the central PRoW.

3.3.19 Vehicle parking is to be provided in accordance with the adopted parking standards set out in Appendix 5 of the Rochdale Adopted Core Strategy (2016). The development will include two car parking spaces per dwelling, suitable for use by those with disabilities. Cycle parking will be provided within the curtilage of each dwelling.

3.3.20 Details of parking provision in relation to the new primary school will be provided as part of a reserved matters application.

Landscape and Green Infrastructure

3.3.21 A landscape-led approach has been applied to the design of the proposed development, which reflects the rural character of the Pennine fringe.

3.3.22 A large swathe of grassland will be retained within the centre of the land parcel, running in a north-south direction. New trees will be planted along the park edge and other landscape features will include street trees, local open space and wildflower meadows.

3.3.23 A Neighbourhood Equipped Area for Play ('NEAP') with associated kick-about area will be located to the north of the land reserved for the new primary school.

3.3.24 As evidenced elsewhere within the application submission, the proposals at the Hollingworth Road land parcel will achieve 11 per cent BNG. The Coloured Layout shows a network of green infrastructure, providing wildlife corridors and links through the proposed development, from Rochdale Canal in the north to Hollingworth Lake in the south.

3.3.25 A number of swales and attenuation basins will be located throughout the land parcel for sustainable drainage purposes.

3.3.26 The south-eastern corner of the land parcel benefits from existing landscape buffers which mitigate the visual effects of the proposed development.

3.4 Land off Rakewood Road

Vision and Design

3.4.1 The vision is to successfully integrate the extension of the existing car park at Hollingworth Lake Country Park into the surrounding landscape without compromising the sensitivity of the surrounding landscape or that of the existing habitats within the area. As explained within the accompanying Design & Access Statement, an Illustrative Masterplan has been developed in response to the characteristics of the land parcel and its wider context, to ensure the delivery of a development which is of the highest design quality, is sensitive to the locality, integrates well with the surrounding natural environment, preserves existing assets and creates the best possible facility for visitors to Hollingworth Lake Country Park.

3.4.2 The physical characteristics of the land parcel were considered from the outset to ensure that any special features will not only be preserved but will form key structuring elements of the design.

3.4.3 A key factor that has informed the design of the scheme is the wooded embankment which separates the south-eastern extent of the existing car park from the main part of the land parcel. A series of topographical and ecological surveys have been undertaken to inform the location of the new access ramp, which will enable access to and from the extended car park. The design of the new access ramp takes account of the changes in levels and seeks to minimise the loss of high-quality trees and the disturbance of ecology.

3.4.4 As a result, the proposed development is considered to be the optimum design solution. Key features of the scheme include:

- An at-grade car park which will provide overflow car parking for Hollingworth Lake Country Park without compromising the sensitivity of the surrounding landscape and existing habitats;
- Vehicle and pedestrian access from the existing car park via a new ramp, alongside a segregated pedestrian footpath linking the main part of the land parcel to the access road off Rakewood Road which currently serves the existing Country Park car park;
- Retention of high-quality trees, with new native woodland edge planting to reinforce the existing woodland edge, provide a protective buffer and create robust green connections through the land parcel and wider landscape;
- Extensive landscape measures including the creation of a wildflower meadow and new woodland, creating a tranquil space that supports wildlife. The grassland and wildflower meadow will provide a natural buffer between the extended car park and Hollingworth Brook;
- Addressing the impacts of climate change by incorporating sustainable drainage systems; and
- Improved legibility and the creation of natural points of interest through the planting of feature trees at key entry locations.

Access Considerations

3.4.5 As explained above, vehicular access to the proposed development will be taken from the existing Hollingworth Lake Country Park car park off Rakewood Road.

3.4.6 It is proposed that there will be a new priority junction with the existing car park's internal road, with the access road off Rakewood Road forming the minor arm. A new access ramp will commence at this junction, providing access to the proposed car park extension. The ramp is proposed to be 4.8m wide, which will enable two-way traffic along the straight sections. The maximum gradient will be 5 per cent (1:20), to be both Disability Discrimination Act compliant and to provide safe vehicular access, considering the bend within the ramp.

3.4.7 The Transport Assessment contains details of the swept path analysis of a large car, providing a view of the proposed access ramp. A single 2-metre-wide footway will be located along the western edge of the proposed vehicular access ramp to facilitate safe pedestrian access.

3.4.8 In addition to the proposed vehicular/pedestrian ramp, there will be an alternative segregated pedestrian footpath linking the main part of the land parcel to the access road off Rakewood Road which currently serves the existing Country Park car park. The footpath will be provided with steps.

Proposed Parking Provision

3.4.9 The applicant proposes to deliver 140 new parking spaces at Rakewood Road, including parking for disabled people and families. The size of the new parking facility at Rakewood Road is based on the assumption that all of the existing spaces at the Hollingworth Road car park will be lost and so an equivalent facility will be provided nearby to ensure that there is no reduction in parking availability. In addition to the car park extension, the tarmacked area at the existing Hollingworth Lake Country Park car park is proposed to be reconfigured. The tarmacked area currently contains a total of 24 parking spaces, including 17 standard spaces, five disabled spaces and two permit holder spaces. The reconfigured tarmacked area will contain 12 disabled spaces, three parent and child spaces and two permit holder spaces, bringing the total capacity of this area down from 24 to 17 spaces. The reconfiguration will ensure that visitors requiring larger parking spaces will be able to park near to Hollingworth Lake and its amenities. The increase in accessible parking and parent and child space provision is considered a betterment vis-à-vis the current situation.

3.4.10 The Transport Assessment contains further detail, including a drawing which illustrates the reconfiguration of the existing car park.

Landscape and Biodiversity

3.4.11 As the Design & Access Statement explains, the proposed development has been carefully designed to ensure that it integrates carefully into the surrounding landscape. Opportunities to enhance biodiversity have been maximised through the reinforcement of the existing woodland edge to provide a protective buffer and create robust green connections through the land parcel and the wider landscape, whilst maintaining view and the openness of the countryside.

3.4.12 The landscape strategy for the car park extension is predicated on the provision of appropriate mitigation measures in response to the rural character of the surrounding countryside, taking into consideration wider views, whilst promoting the positive management of the landscape by introducing a greater diversity of native flora and fauna to support a sustainable landscape where wildlife can thrive.

3.4.13 Overall, the car parking proposal is guided by the opportunity to protect the surrounding landscape and existing habitats, enhance biodiversity and the wildlife value of the land parcel and provide infrastructure to allow local communities to use and enjoy the space whilst simultaneously providing additional car parking spaces close to the Country Park.

3.4.14 In terms of BNG, the car parking proposals will result in a net gain of 5.32 habitat units (equating to 102.32 per cent) and a net gain of 2.41 hedgerow units (equating to 100 per cent).

Drainage

3.4.15 A drainage strategy has been devised, which focuses on the sustainable management of surface water run-off to ensure that no increased flood risk results from the proposal.

3.4.16 Based on the ground conditions identified by online datasets and soil classifications, it is likely that infiltration would not offer a viable drainage management solution due to the cohesive nature of the underlying strata and so other surface water discharge methods have been reviewed.

3.4.17 Investigations show that the wider area drains naturally with the topography towards Hollingworth Brook adjacent to the northern and eastern boundaries of the land parcel. The watercourse flows in a north-easterly direction, joining with Shore Lane Brook to form Ealees Brook. The existing regime will be mimicked, with surface water run-off continuing to be discharged into Hollingworth Brook. A combination of sustainable drainage systems will be

utilised, including permeable surfacing, bio-filtration tree pits and a conveyance swale to outfall where feasible.

3.4.18 As Hollingworth Brook is a designated Main River, the Illustrative Masterplan allows for an 8m offset to be maintained from the top of the bank, to facilitate maintenance, in accordance with the Environment Agency's requirements.

4 Planning Policy Context

4.1 Introduction

4.1.1 In this section, we set out the planning policy context in relation to the proposed development.

4.2 The Development Plan

4.2.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that:

> *'…if regard is to be had to the Development Plan for the purpose of any determination to be made under the planning acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.'*

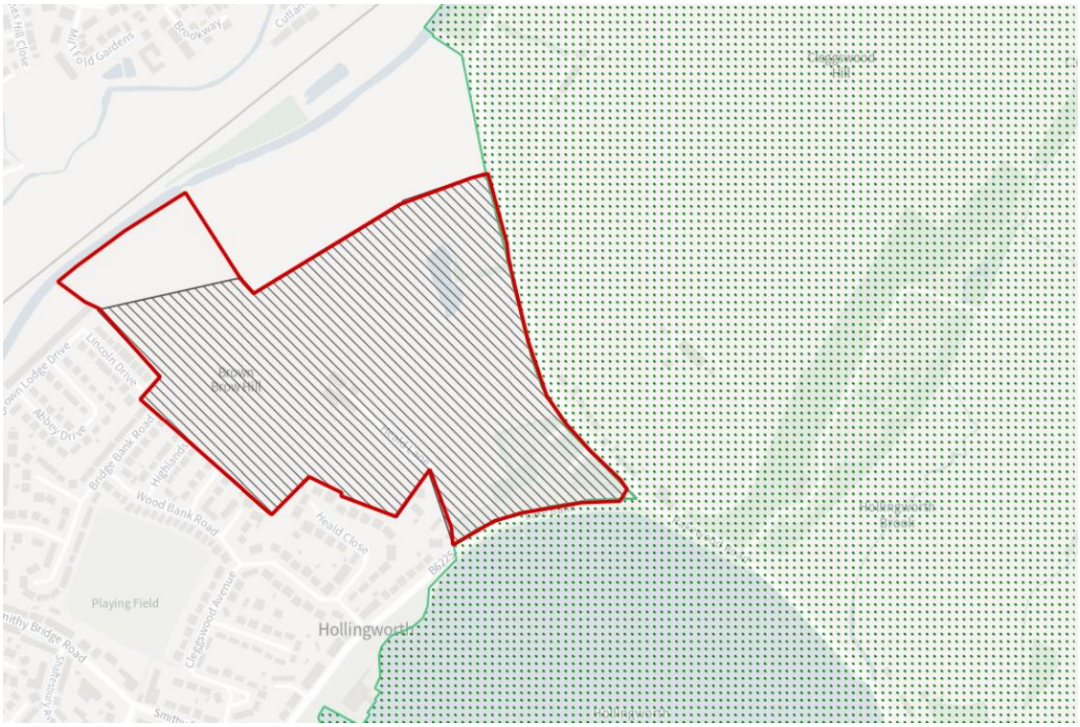
4.2.2 In Rochdale's case, the development plan comprises:

- Places for Everyone Joint Development Plan Document (March 2024);
- Rochdale Adopted Core Strategy (October 2016);
- Greater Manchester Joint Minerals Development Plan and Map (April 2013);
- Greater Manchester Joint Waste Development Plan and Map (April 2012); and
- The 'saved' policies of the Rochdale Borough Unitary Development Plan and Proposals Map (June 2006).

4.2.3 Figure 4-1 below is an extract from the PfE Policies Map which shows that the following designations are applicable to the application site:

- Hollingworth Road land parcel:
  - Policy JP Allocation 20: Land North of Smithy Bridge, which allocates the land parcel for residential use and a primary school
- Rakewood Road land parcel:
  - Green Belt

Figure 4-1 Extract from the Places for Everyone Policies Map



4.2.4 The Unitary Development Plan Proposals Map[8] shows that the following designations are applicable to the application site:

- Greenspace Corridors (G/8)
- Recreational Management Areas (RE/7)

4.2.5 The Joint Minerals Development Plan Map shows that the site is located within Safeguarding Areas for Coal, Brick Clay and Sandstone.

4.2.6 The development plan policies which are considered relevant to the determination of this application are set out below.

4.3 Policies Relevant to the Proposal

4.3.1 Table 4-1 lists the development plan policies that we consider are relevant to the proposed development.

[8] There is not a Proposals Map associated with the Rochdale Adopted Core Strategy.

Table 4-1 Relevant Development Plan Policies

Development Plan Document	Policy	Description
PfE Plan	Policy JP Allocation 20	Land North of Smithy Bridge
PfE Plan	Policy JP-Strat13	Strategic Green Infrastructure
PfE Plan	Policy JP-S1	Sustainable Development
PfE Plan	Policy JP-S2	Carbon and Energy
PfE Plan	Policy JP-S3	Heat and Energy Networks
PfE Plan	Policy JP-S4	Flood Risk and the Water Environment
PfE Plan	Policy JP-S5	Clean Air
PfE Plan	Policy JP-S6	Resource Efficiency
PfE Plan	Policy JP-H1	Scale, Distribution and Phasing of New Housing Development
PfE Plan	Policy JP-H2	Affordability of New Housing
PfE Plan	Policy JP-H3	Type, Size and Design of New Housing
PfE Plan	Policy JP-H4	Density of New Housing
PfE Plan	Policy JP-G1	Landscape Character
PfE Plan	Policy JP-G2	Green Infrastructure Network
PfE Plan	Policy JP-G3	River Valleys and Waterways
PfE Plan	Policy JP-G5	Uplands
PfE Plan	Policy JP-G7	Trees and Woodland
PfE Plan	Policy JP-G8	A Net Enhancement of Biodiversity and Geodiversity
PfE Plan	Policy JP-G9	The Green Belt
PfE Plan	Policy JP-P1	Sustainable Places
PfE Plan	Policy JP-P2	Heritage
PfE Plan	Policy JP-P5	Education, Skills and Knowledge
PfE Plan	Policy JP-P6	Health
PfE Plan	Policy JP-P7	Sport and Recreation
PfE Plan	Policy JP-C1	An Integrated Network
PfE Plan	Policy JP-C2	Digital Connectivity
PfE Plan	Policy JP-C5	Streets for All
PfE Plan	Policy JP-C6	Walking and Cycling
PfE Plan	Policy JP-C8	Transport Requirements of New Development
PfE Plan	Policy JP-D2	Developer Contributions

Development Plan Document	Policy	Description
Rochdale Adopted Core Strategy	Policy SD1	Delivering sustainable development
Rochdale Adopted Core Strategy	Policy SP1	Rochdale borough's role in the city region
Rochdale Adopted Core Strategy	Policy SP2	The Spatial Strategy for the borough
Rochdale Adopted Core Strategy	Policy SP3/P	The Strategy for Pennines
Rochdale Adopted Core Strategy	Policy E5	Encouraging the visitor economy
Rochdale Adopted Core Strategy	Policy E6	Supporting and diversifying the rural economy
Rochdale Adopted Core Strategy	Policy C3	Delivering the right type of housing
Rochdale Adopted Core Strategy	Policy C4	Providing affordable homes
Rochdale Adopted Core Strategy	Policy C7	Delivering education facilities
Rochdale Adopted Core Strategy	Policy P1	Improving image
Rochdale Adopted Core Strategy	Policy P2	Protecting and enhancing character, landscape and heritage
Rochdale Adopted Core Strategy	Policy P3	Improving design of new development
Rochdale Adopted Core Strategy	Policy G6	Enhancing green infrastructure
Rochdale Adopted Core Strategy	Policy G7	Increasing the value of biodiversity and geodiversity
Rochdale Adopted Core Strategy	Policy G8	Managing water resources and flood risk
Rochdale Adopted Core Strategy	Policy G9	Reducing the impact of pollution, contamination and land instability
Rochdale Adopted Core Strategy	Policy G10	Managing mineral resources
Rochdale Adopted Core Strategy	Policy T2	Improving accessibility
Rochdale Adopted Core Strategy	Policy DM1	General development requirements
Rochdale Adopted Core Strategy	Policy DM2	Delivering planning contributions and infrastructure
Greater Manchester Joint Minerals Development Plan	Policy 8	Prior Extraction of Mineral Resources
'Saved' policies of the Rochdale Borough Unitary Development Plan	Policy G/8 (A)	Greenspace Corridors
'Saved' policies of the Rochdale Borough Unitary Development Plan	Policy RE/7	Recreational Management Areas

4.4 Relevant Supplementary Planning Documents

4.4.1 The following Supplementary Planning Documents ('SPDs') are relevant to the proposal:

- Affordable Housing SPD
- Provision of Recreational Open Space in New Housing SPD
- Guidelines and Standards for Residential Development SPD
- Urban Design Guide SPD
- Residential Design Guide SPD

4.5 Other Material Considerations

National Planning Policy Framework

4.5.1 We consider that the following sections of the NPPF are relevant to the proposed development:

- Achieving Sustainable Development
- Delivering a Sufficient Supply of Homes
- Promoting Healthy and Safe Communities
- Promoting Sustainable Transport
- Making Effective Use of Land
- Achieving Well-Designed Places
- Meeting the Challenge of Climate Change, Flooding and Coastal Erosion
- Conserving and Enhancing the Natural Environment
- Conserving and Enhancing the Historic Environment
- Facilitating the Sustainable Use of Minerals

Planning Practice Guidance

4.5.2 First published in March 2014, the national Planning Practice Guidance ('PPG') provides further context to the NPPF. The PPG contains numerous sections which cover a wide range of planning matters; the sections that are most relevant to the proposed development are listed below.

- Biodiversity Net Gain
- Climate Change
- Environmental Impact Assessment

5 Principle of the Proposed Development

5.1 Introduction

5.1.1 In this section, we establish the principle of the proposed development, both in terms of the PfE allocation and the location of the proposed car park extension adjacent to Hollingworth Lake Country Park within the Green Belt.

5.2 Places for Everyone Plan

5.2.1 The PfE Plan took effect and became part of the statutory development plan for each of the nine PfE authorities on 21 March 2024. The primary purpose of the PfE plan is to allocate strategic housing and employment sites. Bloor's land at Hollingworth Road is identified as residential allocation 'Policy JP Allocation 20: Land North of Smithy Bridge' within the adopted PfE Plan. In this section, we demonstrate how the proposed development is consistent with Policy JP Allocation 20, which establishes the principle of residential development at the site.

5.2.2 The policy allocation reads as follows:

> *'Development at this site will be required to:*
>
> *1. Deliver around 300 new homes, including provision of larger (4, 5 and 6 bedroom) houses, or similar types of larger homes as agreed with the Local Planning Authority, and affordable housing in accordance with relevant local plan requirements;*
>
> *2. Achieve excellent design and sustainability through masterplanning and the use of design codes for the whole site to ensure comprehensive development;*
>
> *3. Deliver a landscape-led development, incorporating high-quality green and blue infrastructure, that takes advantage of the site's attractive setting next to Hollingworth Lake and the Rochdale Canal and reflects and responds to the special qualities and sensitivities of the key characteristics of the Pennine Foothills (West /South Pennines) landscape character type in accordance with policy JP-G1;*
>
> *4. Define the archaeological potential of the development site through the completion of archaeological evaluation in the form of geophysics, field walking and trial trenching for areas specified in the Land North of Smithy Bridge Historic Environment Assessment 2020. The masterplan must detail where significant archaeology must be preserved in situ and demonstrate how the development has responded sympathetically to this;*
>
> *5. Make provision for new and improved sustainable transport and highways infrastructure having regard to the indicative transport interventions set out in Appendix D in accordance with policy JP-C8. This should include facilitating high quality, safe and convenient walking and cycling routes through the site to provide improved linkages to key local destinations including Littleborough Town Centre, Hollingworth Lake, Rochdale Canal and the two railway stations – Smithy Bridge and Littleborough;*
>
> *6. Make provision for compensatory improvements to the environmental quality and accessibility of remaining Green Belt in the vicinity of the site in accordance with policy JP-G2;*
>
> *7. Carry out a project specific Habitats Regulation Assessment in relation to the Rochdale Canal for planning applications of 50 dwellings or more;*
>
> *8. Mitigate the recreation disturbance impacts on the South Pennine Moors SAC/SPAs with reference to JP-G5, criterion 7 (c);*
>
> *9. Facilitate the delivery of a new primary school and associated outdoor playing space. Make financial contributions for offsite additional secondary school provision to meet needs generated by the development in accordance with policy JP-P5;*

10. Development will be required to retain and enhance the existing visitor car parking spaces on the site, or provide replacement visitor car parking spaces in a suitable location nearby for any existing spaces lost; and

11. Consider the extraction of any viable mineral resources within Mineral Safeguarding Areas, in accordance with Policy 8 of the Greater Manchester Joint Minerals Development Plan (or any relevant policies in subsequent minerals plans).'

5.2.3 The indicative transport interventions referred to above are reproduced as Figure 5-1 below.

Figure 5-1 Appendix D of PfE Plan

JPA20 Land North of Smithy Bridge	**Necessary** • A58 Halifax Road / B6225 Hollingworth Road / A6033 Todmorden Road – localised improvements covering two adjacent junctions • A58 Wardle Road – localised junction improvements • Hollingworth Lake car park - relocation • Traffic calming and parking management measures along Hollingworth Road • Active travel improvements including secure cycle parking at Littleborough Rail Station • Bus stop upgrades along Hollingworth Road and Lake Bank **Supporting** • A58 Residential Relief Road • A58 local improvements

Delivery of New Homes

5.2.4 The proposed development will deliver 312 new homes, which is commensurate with the number of homes referred to in the allocation ('around 300'). The scheme will deliver large family homes, the majority of which will contain 3-5 bedrooms.

Design and Sustainability

5.2.5 Design considerations are set out within the Design & Access Statement. Very careful consideration has been paid to formulating a scheme of an appropriate scale and layout which responds to the specific characteristics of the site and surrounding area.

5.2.6 The Energy Strategy Statement calculates the total energy demand and associated CO_2 emissions arising from the proposed development and demonstrates that a Building Regulations standard or better can be achieved through the use of 445kWp Solar Photovoltaics, Showersave Waste Water Heat Recovery and improved fabric efficiency measures.

Landscape-led Development

5.2.7 A landscape-led approach has been applied to the design of the proposed development, which reflects the rural character of the Pennine fringe. The unique topography of the site has informed the proposed layout, and a variety of house types have been used to exploit the level changes within the land parcel.

5.2.8 The Site Layout plan shows a network of high-quality green and blue infrastructure, providing wildlife corridors and links through the proposed development, from Rochdale Canal in the north to Hollingworth Lake in the south.

Archaeological Potential

5.2.9 The Historic Environment Desk-Based Assessment for the Hollingworth Road land parcel explains that, based on existing evidence, and ahead of further archaeological investigation, there is nothing to indicate that there will be any archaeological remains of designated (national) heritage significance present within the site. Nevertheless, the Hollingworth Road land parcel contains – and has the potential to contain further, as yet unknown – archaeological remains. It is believed that the loss of the known and potential archaeological and built heritage resource as a result of the proposed scheme can be mitigated through a proportionate programme of archaeological work that has been agreed with the Greater Manchester Archaeological Advisory Service ('GMAAS').

5.2.10 The GMAAS requires that a pre-application archaeological evaluation be conducted across the site to establish its archaeological potential and the significance of any archaeological remains present. A geophysical survey, conducted in March 2023[9], concluded that the archaeological potential of the site is deemed to be low. The results of the geophysical survey will inform a phase of targeted trial trench evaluation and the results of the evaluation will inform the requirement and scope of archaeological mitigation.

Sustainable Transport and Highways Infrastructure

5.2.11 The details of any mitigation that may be required to mitigate highway impacts at junctions associated with the proposed development will be determined through the planning application process.

5.2.12 The application seeks full planning permission for alterations to and an extension of the existing Hollingworth Lake Country Park car park to enable those parking spaces that are lost to development at Hollingworth Road to be re-provided at Rakewood Road.

5.2.13 The scheme layout incorporates a permeable grid of streets which will provide a network of connections throughout the Hollingworth Road land parcel. The PRoWs along Brown Lodge Drive and Higher Bank Road will be utilised to enable high quality connections to Smithy Bridge and other key destinations.

Green Belt

5.2.14 The Rakewood Road land parcel will result in a net gain of 5.32 habitat units (equating to 102.32 per cent) and a net gain of 2.41 hedgerow units (equating to 100 per cent), thereby ensuring the delivery of substantial improvements to the environmental quality of Green Belt land in the vicinity of the allocated part of the site (that is, the Hollingworth Road land parcel). The proposals at Rakewood Road will open up private land for public use and will provide a wildflower meadow and new woodland planting for all visitors to enjoy.

South Pennine Moors SAC/SPAs

5.2.15 A large swathe of grassland will be retained within the centre of the Hollingworth Road land parcel. This central area of public open space will be accompanied by other forms of recreational open space such as a NEAP with associated kick-about area and informal open space, the latter of which provides opportunities for recreation to people of all ages. The Greenspace Corridor in the north-west of the land parcel will also be retained.

5.2.16 At Rakewood Road, a wildflower meadow and new woodland planting will be provided for all visitors to enjoy.

5.2.17 The aforementioned measures will mitigate recreation disturbance impacts on South Pennine Moor SAC/SPAs.

[9] The report was published in April 2023.

New Primary School

5.2.18 The south-eastern part of the Hollingworth Road land parcel is reserved for a new primary school and associated outdoor playing space. The proposed school has been earmarked an 'in-principle' school, meaning that it has been pre-approved by the Department for Education in the circumstances that there is a demonstrated need for additional school places. Should a need for additional school places be demonstrated, it is envisaged that the primary school would have a floorspace of c.2,300 sq.m, set within a plot of approximately 2 hectares.

Visitor Car Parking

5.2.19 Part 10. of Policy JP Allocation 20 contains the following requirement:

> *'*Development will be required to retain and enhance the existing visitor car parking spaces on the site, or provide replacement visitor car parking spaces in a suitable location nearby for any existing spaces lost.'

5.2.20 The Reasoned Justification reads as follow':

> *'*11.270 The southern end of the site is currently occupied by a car park which accommodates visitors to the lake. Any spaces lost as a result of the development will need to be replaced by an equivalent facility in order that the parking needs of visitors to the lake are met and to avoid displacing car parking on to nearby roads and streets. The delivery of appropriate parking will need to be linked to the overall delivery of the wider proposal.'

5.2.21 Thus, if the proposed development at the Hollingworth Road land parcel results in the loss of any visitor car parking spaces, there is a policy requirement to replace those spaces nearby. The applicant controls land at Rakewood Road, adjacent to the existing car park at Hollingworth Lake Country Park, and proposes to provide alterations to and extension of the existing car park.

5.2.22 The applicant proposes to deliver 140 new parking spaces at Rakewood Road, including parking for disabled people and families. The size of the new parking facility at Rakewood Road is based on the assumption that all of the existing spaces at Hollingworth Road car park will be lost and so an equivalent facility will be provided nearby to ensure that there is no reduction in parking availability. Improvements to the existing car park at the Country Park will continue to enable people to visit and enjoy the Hollingworth Lake area, thereby helping to support a prosperous rural economy.

5.2.23 The existing car park at Hollingworth Lake Country Park has an informal layout where the majority of spaces are not demarcated. The only section which is demarcated is the tarmacked section near the Rakewood Road entrance. It is estimated that the car park has a total of approximately 188 spaces, with approximately 186 spaces available for public use (once two permit holder spaces are considered). A parking occupancy survey was commissioned to understand the typical usage of the car park on a weekend. The car park occupancy survey demonstrated that Hollingworth Lake Country Park car park would not be able to accommodate any additional parking requirements and highlighted a need to provide additional parking facilities to serve visitors to the Hollingworth Lake area. Whilst the extended car park will be available to the public at large, it has the added benefit of providing replacement visitor car parking spaces for the existing spaces lost at Hollingworth Road.

Mineral Extraction

5.2.24 The Minerals Assessment submitted as part of the application concludes that there is no realistic prospect that the minerals underlying the site will ever be worked, and so they are of no economic value.

Conclusions in Relation to the PfE Plan

5.2.25 In this section, we have demonstrated how the proposed development is consistent with the aspirations of Policy JP Allocation 20.

5.3 Sustainable Development

The Development Plan

5.3.1 Policy SD1 ('Delivering sustainable development') of the Rochdale Adopted Core Strategy sets out the presumption in favour of sustainable development. The policy follows the approach to sustainable development set out in the NPPF.

5.3.2 The application proposal embodies sustainable development. The Hollingworth Road land parcel is identified as a residential allocation within the PfE Plan, and so it has already been deemed to be a suitable location for new homes. A broad range of amenities and services are available locally within the nearby settlements of Smithy Bridge and Littleborough. The proposed scheme will be delivered by the multi-award winning Bloor Homes, one of the largest privately owned house building groups in the country with a commitment to delivering development schemes of a very high standard. The proposed development has been designed with this ethos firmly in mind. The proposal represents a natural north-eastern extension of Smithy Bridge. The land parcel is easily accessible by private and public transport, and the proposed scheme will not result in any significant adverse impacts on the natural or built environment. The development will therefore assist in delivering the new homes required to meet present and future needs.

5.3.3 Moreover, the car park extension will be located adjacent to the existing car parking facilities at Hollingworth Country Park and will continue to enable people to visit and enjoy Hollingworth Lake and its associated tourism and recreational facilities.

5.3.4 As we explain below, the proposed development will result in a range of demonstrable, mutually dependent economic, social and environmental benefits. Moreover, the application accords with the policies in the Council's development plan and should therefore be approved without delay. The material considerations in this case are also supportive of the scheme.

Other Material Considerations

5.3.5 The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 then sets out three overarching objectives of sustainable development, namely economic, social and environmental. Below, we explain how the proposed development will result in demonstrable, mutually dependent economic, social and environmental benefits.

Economic Benefits

5.3.6 The proposed development will play a beneficial economic role by:

- Increasing the number of local residents, thereby helping to ensure the vitality and viability of the shops, schools, services and facilities in Littleborough and Smithy Bridge;
- Should a need for additional school places be demonstrated, resulting in a new primary school being built, teaching / support jobs will be created during the operational phase of the development;
- Encouraging visitors to the Hollingworth Lake area, thereby helping to support a prosperous rural economy;
- Reinvesting money raised through additional car park charges into Hollingworth Lake Country Park, thereby helping to sustain and improve this already popular tourist destination;

- Contributing to the needs of the Borough for economic growth through the further expenditure generation and job creation effects of housing development, both directly in construction and indirectly; and

- Generating potential New Homes Bonus revenues to support the delivery of public services.

Social Benefits

5.3.7 The proposed development will deliver a range of social benefits, including:

- A significant contribution to the supply of high-quality family homes, including both market and affordable homes, at a site that is allocated for residential use in the adopted PfE Plan;

- Approximately 7 hectares of public open space will be created at the Hollingworth Road land parcel within a strong network of green infrastructure, for the enjoyment of the whole community. An additional 0.67 hectares of wildflower meadow will be created at the Rakewood Road land parcel for the public to enjoy;

- Delivery of 140 parking spaces, including parking for disabled people and families, which will continue to enable people to visit and enjoy the Hollingworth Lake area; and

- Appropriate Section 106 financial contributions will be secured towards affordable housing, open space provision, highways mitigation and mitigation of recreation disturbance impacts on the South Pennine Moors SAC/SPAs.

Environmental Benefits

5.3.8 The proposals will also play a beneficial environmental role, as described in more detail within the Design & Access Statement and other supporting reports, including:

- Creation of a high-quality residential development with a strong sense of identity, integrated sensitively into its surroundings;

- Successful integration of the Hollingworth Lake Country Park car park extension into the surrounding landscape without compromising the sensitivity of the surrounding landscape or that of the existing habitats within the area;

- A high-quality landscape-led masterplanning approach has been taken, following detailed environmental assessment of the site's ecological, landscape and heritage context and the identification of an extensive network of green infrastructure into which the development is integrated sensitively;

- By enhancing green assets, planting new trees and hedgerows and forming new public spaces and outdoor facilities, a strong sense of place and character will be formed, and biodiversity will be significantly enhanced;

- At Rakewood Road, the wildflower meadow, new native woodland edge planting and strengthened hedgerows will result in carbon sequestration, helping to offset the proposed development's impact on the air quality in the surrounding area; and

- The proposed car park extension will minimise the need for visitors to search for an available space within the existing Hollingworth Lake Country Park car park, thereby reducing carbon emissions.

5.3.9 In the light of the benefits described above, we consider that the proposed development clearly contributes to the achievement of sustainable development, which is the overriding purpose of the planning system.

5.4 Green Belt

Policy Background

5.4.1 As we explained in Section 1.2, the Rakewood Road land parcel is situated within the designated Green Belt.

5.4.2 The fundamental aim of Green Belt policy – as set out within paragraph 142 of the December 2023 version of the NPPF – is to prevent urban sprawl by keeping land permanently open. The same paragraph also states that the essential characteristics of Green Belts are their openness and permanence. PfE Policy JP-G9 ('The Green Belt') is consistent with paragraph 142 of the NPPF.

5.4.3 Paragraph 152 of the NPPF advises that: *'Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.'* Paragraph 153 advises that LPAs should give substantial weight to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

5.4.4 Paragraph 154 states that LPAs should regard the construction of new buildings as inappropriate in the Green Belt, unless the proposed development is one of several specified exceptions. The exceptions specified within bullets a) to g) beneath paragraph 154 are all buildings of some description, aside from the exceptions specified within bullet b), which refers to *'appropriate facilities…for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments.'*

5.4.5 Paragraph 155 states that certain other forms of development within the Green Belt are also not inappropriate, providing they preserve its openness and do not conflict with the purpose of including land within it. One of the specified forms of development, under bullet c), is *'local transport infrastructure which can demonstrate a requirement for a Green Belt location.'*

5.4.6 Paragraph 155 c) of the NPPF makes clear that local transport infrastructure is exempted from the definition of 'inappropriate development', provided that there is a requirement for a Green Belt location, the openness of the Green Belt is preserved, and it does not conflict with the Green Belt purposes.

5.4.7 We consider that the proposed development, insofar as it relates to the car park extension, clearly falls within the scope of paragraph 155 c), for the reasons set out below.

5.5 Interpretation of the term 'local transport infrastructure'

5.5.1 We have researched how Planning Inspectors (and, in the Hinxton decision, the Secretary of State) have interpreted the term 'local transport infrastructure', to determine which types of schemes have been supported. We provide our findings regarding various appeal decisions below, in reverse chronological order, and we then draw out the implications from the decisions insofar as they provide a steer regarding assessment of the scheme. We use the shorthand 'IR' followed by a number to denote salient paragraph numbers within the relevant Inspector's Report (for instance, 'IR100' would refer to paragraph 100 from the Inspector's Report that we are referring to).

5.5.2 We note that the decisions cite earlier versions of the NPPF and so they reference different paragraph numbers to those within the December 2023 version of the NPPF.

Land At Heathrow North Service Station, Shepiston Lane, Hayes[10] (November 2021)

5.5.3 An Inspector stated in this appeal decision (provided within Appendix B.1) that a proposed electric vehicle charging station *'would provide transport-related infrastructure in the form of ten EV charging units in an immediate area not well served by the fastest public EV charging points. Whilst the source and nature of the energy provided by the charging units may differ from that provided by fuel pumps at a conventional PFS they are essentially similar in purpose. Neither party has robustly or comprehensively demonstrated how the proposal falls within the Framework's description of 'local transport infrastructure' as opposed to merely being infrastructure related to transport.'* [IR13] The Inspector went on to state [IR12] that: *'Even if I were to conclude that the proposed EV charging station could satisfactorily be considered as 'local transport infrastructure' however, the Framework states that a requirement for a Green Belt location must be demonstrated.'*

Dog Inn, Henley Road, Mappleborough Green B80 7DR[11], August 2021

5.5.4 The Inspector stated in this appeal decision (provided within Appendix B.2): *'The development comprises the erection of a 1 x 4 metre high column with an automatic number plate recognition (ANPR) camera and associated cabinet. It is understood that the ANPR camera functions for the private benefit of the Dog Inn and is of limited utility to the wider public transport netwI... Consequently, I cannot conclude that it is local transport infrastructure, and it would not fall within Paragraph 150 c) of the Framework.'* [IR12]

Secretary of State decision ref. APP/W0530/W/18/3210008, Whittlesford, Hinxton, 9th April 2020

5.5.5 This decision (provided within Appendix B.3) relates to an appeal by Smithsonhill Limited against South Cambridgeshire District Council's refusal of an application seeking planning permission for:

> *'An AgriTech technology park comprising up to 112,000 m² (gross) employment floorspace, supporting infrastructure, amenities and landscape works including publicly accessible informal open space, enhancements to parkland, vehicle and cycle parking, service areas, bus/cycle interchange on land west of the A1301/ north of A505, and infrastructure works including new vehicular accesses, highway improvement works, pedestrian and cycle links with bridge crossings over A1301/A505 and River Cam, site re-profiling, drainage works, foul and water pumping stations and primary electricity sub station, telecommunications infrastructure and other associated works in accordance with application ref: S/4099/17/OL.'*

5.5.6 The appeal Inspector had stated in paragraph 87 of his decision that:

> *'The term "local transport infrastructure" is not defined in the Framework. The word "local" before transport infrastructure must qualify the term in a meaningful way.* ***The term means transport infrastructure which is delivered to meet a public need within a local area, as distinct from infrastructure to serve the future needs of a new single private development****. If the position were to be to the contrary, then it would follow that any form of private development would, in principle, be entitled to introduce into the Green Belt transport and access related infrastructure to serve that development. When introducing the reference to "local transport infrastructure" into the NPPF 2012, the Secretary of State, in his Impact Assessment (CD59), stated that in addition to park and ride schemes* ***other local transport infrastructure schemes could be beneficial to communities in the Green Belt****, including for example, infrastructure to support more*

[10] Appeal ref. APP/R5510/W/21/3279160.

[11] Appeal ref: APP/J3720/W/21/3267947.

public transport, such as opening new routes, providing bus shelters and small public transport interchanges.'

[Our emphases added]

5.5.7 Paragraph 13 of the Secretary of State's decision stated:

'The part of the proposal to take place in the Green Belt includes the bus/cycle interchange and pedestrian/cycle connections along with part of the proposed bridge. The Secretary of State has carefully considered the Inspector's assessment of the proposals impact on the Green Belt at IR320-331 and he considers that the transport infrastructure would provide useful connections for general public use. He further agrees with the Inspector at IR326 that ***it would be very difficult to achieve the transport infrastructure works without using Green Belt land****. The Secretary of State agrees with the Inspector (IR326) that* ***the interchange works are local transport infrastructure that would require a Green Belt location****.'*

[Our emphases added]

5.5.8 Paragraph 13 of the Secretary of State's decision continued as follows:

'The Secretary of State agrees with the Inspector at IR327 that the transport infrastructure would erode the open feel of this part of the Green Belt in special and visual terms and would harm openness. He further agrees with the Inspector at IR328 that the works would have an urbanising influence on this part of the open countryside and that the proposal would, to some extent, conflict with the purpose of the Green Belt to assist in safeguarding the countryside from encroachment. However, he agrees with the Inspector (IR329) that ***the local transport infrastructure proposed in the Green Belt would not by reason of its nature and scale be sufficient to exceed the threshold set out at paragraph 146 of the Framework****. As such he concludes that* ***the exception for local transport infrastructure would apply, and that the proposed development would therefore not be inappropriate development in the Green Belt****. As such the Secretary of State concludes that* ***the proposal would not result in harm to the Green Belt, and there would be no conflict with local or national Green Belt policy.****'*

[Our emphases added]

5.5.9 The Secretary of State went on to consider the proposed development against a range of factors, and ultimately decided to dismiss the appeal for various reasons including the overall development's 'substantial significance' on the character and appearance of the area; the loss of 33 hectares of best and most versatile agricultural land; and harm to nearby heritage assets.

5.5.10 Nevertheless, whilst the overall proposal was dismissed, the bus/cycle interchange and pedestrian/cycle connections along with part of the proposed bridge were accepted as representing 'local transport infrastructure' [Secretary of State, paragraph 13]. Moreover, the local transport infrastructure component of the scheme was deemed to be 'not inappropriate development' [Inspector, paragraphs 89 and 159], which confirms that it is possible to successfully advance a case for such facilities in Green Belt locations. By definition, that possibility must be available given the existence of the exemption within NPPF paragraph 155 c) (which was paragraph 146 of the NPPF at the time of the Hinxton decision).

5.5.11 The Hinxton decision reveals that, so far as the Secretary of State is concerned, 'local transport infrastructure' is infrastructure which is 'beneficial to communities' in that it would address an existing deficiency or requirement within the local community. Such facilities would therefore not include infrastructure which is to serve the future needs of a new single private development.

Land North East of Junction 37(M) of the A1(M) Motorway, Marr Roundabout, Doncaster[12], July 2019

5.5.12 This appeal decision (provided within Appendix B.4) relates to the construction of a new motorway service area ('MSA'). The Secretary of State agreed (paragraph 12) with the Inspector's reasoning within IR187-190 and the Inspector's conclusion within IR188 that *'MSAs are aimed at providing services for drivers on the strategic road network and are not aimed at catering for the needs of drivers on the local highway network.'* In reaching his view, the Inspector had regard to the appeal decision relating to the Cobham MSA on the M25 (ref. APP/K3605/W/17/3187505) but pronounced that: *'that proposal was for additional HGV parking within an existing MSA…I do not find it directly comparable such that it leads me to a different conclusion.'*

Cobham Motorway Service Station, Cobham, Elmridge[13], February 2016

5.5.13 In this decision (provided within Appendix B.5), an Inspector determined that additional HGV parking at a MSA serving the M25 was 'local transport infrastructure' which served a local public purpose. The Inspector stated [IR9]: *'I consider that the proposal would constitute a local transport infrastructure facility, supporting a local geographic need, albeit that would support various journeys including many that are not local trips. Given that it would also address a potential safety issue in a publicly accessible and generally heavily used facility, I consider that there are sound reasons in the wider public interest for the provision of the additional parking facility in this location.'*

Ouchthorpe Lane, Fieldhead, Wakefield[14], January 2016

5.5.14 In this appeal decision (provided within Appendix B.6), an Inspector found that a private access road to serve a residential development was not 'local transport infrastructure' within the meaning of the 2012 NPPF because *'it [the private access road] would not represent such a form of development, as it would be included under engineering operations and the government's intentions indicated by the Impact Assessment for the Framework do not include an access road for a limited number of houses within the examples given of this type of development.'* [IR10]

Pembroke Avenue, Denny End Industrial Estate, Waterbeach, Cambridge, Cambridgeshire[15], February 2015

5.5.15 A private car park to serve an industrial estate was found not to be 'local transport infrastructure', with the Inspector observing [IR9] that there must be *'public interest for local transport infrastructure'*. In this decision (provided within Appendix B.7), the Inspector considered that 'local transport infrastructure' means *'those physical assets which enable people and goods to move about efficiently'* [IR8], and he also referred in the same paragraph to *'facilities necessary to support communities and sustainable development through the movement and circulation of people and goods by various transport modes.'* The Inspector then concluded [IR9] that *'I am not persuaded that local transport infrastructure at paragraph 90 of the Framework would include a private surface car park to meet the needs of an individual business.'*

Land North of Berry Hill Purification Works, Throop, Bournemouth[16], October 2014

5.5.16 In this decision relating to a proposal for an access track to an existing water treatment works (provided within Appendix B.8), an Inspector noted [IR10]: *'The main parties agree that the*

[12] Appeal ref. APP/F4410/W/18/3197290.

[13] Appeal ref. APP/K3605/W/17/3187505.

[14] Appeal ref. APP/X4725/W/14/3001702.

[15] Appeal ref. APP/W0530/A/14/2228347.

[16] Appeal ref. APP/C1245/A/14/2221524.

proposed development constitutes '…local transport infrastructure requiring a Green Belt location and involves engineering works'. Both local transport infrastructure and engineering works are among the exceptions listed in the Framework. (It is a nice point as to whether the track, which would be a private road not open to the public, comprises local transport infrastructure or another form of engineering operation. Since the Framework applies the same criteria to both forms of development, however, this is not a matter that need concern me).'

Application for the Grade Separation of Junction 10A Serving the M1[17] (October 2013)

5.5.17 Regarding a proposal for the grade separation of a junction serving the M1 motorway, an Examining Authority in its report of findings and conclusions and recommendation to the Secretary of State for Transport (provided within Appendix B.9) stated: *'This scheme's objectives are all local and the improvements must be undertaken at and around the existing junction which lies in the Green Belt. Consequently I regard the Scheme as a prime example of local transport infrastructure and accordingly it would not be inappropriate in the Green Belt.'*

Application for the Proposed M54 to M6 Link Road Development Consent Order[18] (April 2022)

5.5.18 Within paragraphs 73 to 76 of the Secretary of State's decision (provided within Appendix B.10) endorsing the recommendation of the Examining Inspectors (provided within Appendix B.11) regarding an application for a Development Consent Order for the M6 to M54 link road[19] – a Nationally Significant Infrastructure Project – the Secretary of State agreed that a proposal for a new length of motorway running through the Green Belt, for which there is a clear need in the national interest, did not fall within the predecessor of paragraph 150 c) of the NPPF (now paragraph 155 c), as of 19 December 2023). The reasoning of the Examining Inspectors' report was that, whilst the new length of motorway was transport infrastructure, it related to the strategic road network and therefore could not amount to 'local transport infrastructure'[20].

5.6 Implications for the proposed development

5.6.1 In our assessment, the following principles may be derived from the appeal decisions referred to above:

- The term 'local' should be given meaning. In other words, if the infrastructure is to meet a national need such as a motorway service area on the strategic road network, it is unlikely to qualify as 'local transport infrastructure' for the purposes of NPPF paragraph 155 c). We note that the Inspector and the Secretary of State both considered that a motorway service area fell outside the scope of the definition for this reason as part of their determination of appeal reference APP/F4410/W/18/319790, Land North East of Junction 37(M) of the A1(M) Motorway, Marr Roundabout, Doncaster.

- The foregoing principle is further endorsed within the Secretary of State's decision regarding an application for the M6 to M54 link road, whereby the Secretary of State

[17] This decision followed an examination regarding the application made by Luton Borough Council for the 'M1 Junction 10a (Grade Separation) Order 2013' under sections 37, 114, 115, 117(4), 120 and 122 of the Planning Act 2008. The front page of the Department for Transport's decision, dated 30 October 2013, contained the reference 'TWA 8/1/5'.

[18] This decision followed an examination into the application made by Highways England for the 'M54 to M6 Link Road Development Consent Order' under section 37 of the Planning Act 2008 as amended. The front page of the Department for Transport's decision, dated 21 April 2022 did not contain a reference.

[19] The decision (TR010054-001200-Decision Letter - M54 to M6 Link Road.pdf (planninginspectorate.gov.uk) of the Department is dated 21st April 2022, endorsing the recommendation dated 21st July 2021 at paragraphs 8.6.2 to 8.6.4 and 15.3.22 of the examiners' report.

[20] Paragraph 8.6.5.

agreed that a proposal for a new length of motorway running through the Green Belt, for which there is a clear need in the national interest, did not fall within the predecessor of paragraph 150 c) of the NPPF (now paragraph 155 c), as of 19 December 2023).

- Equally, development to serve private interests alone is likely to fall outside of the definition. In the appeal concerning Land at Ouchthorpe Lane, Fieldhead, Wakefield, the Inspector found that a private access road fell outside of the definition and, in relation to the appeal concerning the Dog Inn, Henley Road, Mappleborough Green, an Inspector found that an ANPR camera and apparatus were for the private benefit of the owner of the pub and therefore fell outside of the definition.

- Development does not have to be small-scale to fall within the definition. Indeed, within the Hinxton decision, the Inspector cited the Secretary of State's own impact assessment in relation to the exemption which stated that it was intended to encompass facilities such as park and ride developments, new transport routes, bus shelters and small public transport interchanges. It is therefore clear that relatively large projects including new transport routes and structures or buildings of some sort are capable of falling within the scope of paragraph 155 c).

5.6.2 Furthermore, in relation to both paragraph 155 c) and other developments which are specified within the NPPF as not being inappropriate (provided they preserve the openness of the Green Belt and the purposes of including land within it), it is important to note that they should be interpreted in a way which permits the intended development. In other words, paragraph 155 c) must mean that some level of operational development which amounts to 'local transport infrastructure' is within the scope of paragraph 155 c) in a way which does not, for the purpose of the paragraph, harm openness or conflict with the purposes of including land within the Green Belt. Beyond that 'level', development would become inappropriate but the 'level' cannot be set at a nil or zero effect upon the openness of the Green Belt. This is referred to by the Inspector and the Secretary of State in the Hinxton decision as the 'paragraph 146 threshold'. In today's terminology, that would translate as the 'paragraph 155 threshold'; we are mindful that the substance of the paragraph has not changed with the publication of the new NPPF in December 2023.

5.6.3 With reference to the Hinxton decision, the proposed extension to the Hollingworth Lake Country Park car park will clearly be for 'general public use' and so it will be 'beneficial to communities'. Whilst the car park extension will enable the requirements of Policy JP Allocation 20 'Land North of Smithy Bridge' to be met – insofar as the provision of replacement visitor car parking spaces is concerned – both the parking spaces that will be lost to development at Hollingworth Road and the re-provided spaces at Rakewood Road are visitor parking spaces by definition as opposed to spaces associated with private residences. In short, the proposed car park extension fulfils Rochdale Council's long-standing ambition to improve visitor parking associated with Hollingworth Lake Country Park whilst enabling one of the requirements of Policy JP Allocation 20 to be met. As such, the proposal accords with the Secretary of State's understanding of the term 'local transport infrastructure', specifically *'The term means transport infrastructure which is delivered to meet a public need within a local area, as distinct from infrastructure to serve the future needs of a new single private development.'*

5.6.4 In terms of addressing an existing deficiency, the results of the Hollingworth Lake Country Park car park occupancy survey revealed a maximum car park usage of approximately 83 per cent during the weekend peak hour. Due to the informal nature of the car park, however, this usage could have represented full capacity if some car park users were not parking efficiently. Additionally, it is considered that there will be times on a summer's day or on a bank holiday when usage is likely to be higher, potentially at full capacity.

5.6.5 We also understand that various proposed uses in and around Hollingworth Lake Country Park are likely to increase demand for parking locally. The Head of Strategic Projects at Your Trust Rochdale noted at a meeting on 10 August 2023 that there are plans to replace the Hollingworth Country Park Activity Centre, which will increase demand for parking locally. As

such, Your Trust Rochdale would like to see an increase in local car parking provision to support future investment in the area.

5.6.6 In the light of the foregoing, we consider that the scheme clearly falls within the scope of paragraph 155 c). The scheme will provide an overspill car park which is of local, rather than national, significance and it will not serve private interests alone (as in the Wakefield and Mappleborough Green cases, for instance). Instead, the scheme will be accessible to the public at large – as opposed to being directly related to a particular private sector development proposal – and it will deliver widespread public benefits, including providing much needed parking provision in the Hollingworth Lake area, which will enable visitors to enjoy its recreational and tourism offer.

5.7 Requirement for a Green Belt location

5.7.1 The proposed car park extension requires a Green Belt location for the reasons set out below:

- The car park extension will serve as an overflow facility for Hollingworth Lake Country Park and therefore needs to be located within close proximity of the existing car parking facilities and the Country Park itself;
- Hollingworth Lake Country Park (including the existing car parking facilities) and the land surrounding it, with the exception of Smithy Bridge, are located within the currently defined Green Belt and so the proposed car park extension must also be located within the Green Belt to ensure it is within close proximity of the existing car parking facilities and the Country Park itself;
- Smithy Bridge, the only land surrounding Hollingworth Lake Country Park which is not within the currently defined Green Belt, is developed up to the settlement boundary and contains no undeveloped land available and suitable for the proposed development (the only two undeveloped parcels of land are designated as existing recreational open space, one of which is for a school); and
- The stretch of Rakewood Road that is within Hollingworth Lake Country Park is double yellow lined and so there is no scope for existing or potential future visitors to park along it. Furthermore, double yellow lines have recently been added to Hollingworth Road. As a result, and as we were informed by the Hollingworth Lake Country Park Manager, people often circle for parking spaces in the existing car park at Hollingworth Lake Country Park, which demonstrates a requirement for additional parking spaces in the Hollingworth Lake area, the majority of which is located within the Green Belt.

5.7.2 As a result, we consider that the direction within NPPF paragraph 155 c) to ‘demonstrate a requirement for a Green Belt location’ has been satisfied.

5.8 Preserving the openness of the Green Belt

5.8.1 Paragraph 155 c) of the NPPF does not require exempted forms of development to ‘fully’ preserve the openness of the Green Belt. The existence of criterion c) means that it must be possible for some development to come forward within the Green Belt which, by extension, means that a degree of impact on openness can be tolerated.

5.8.2 With reference to paragraph 001 of the Green Belt section of PPG, the car parking proposal would have a limited and localised impact on the openness of the Green Belt in spatial and visual terms. Whilst permission is sought for a permanent car park extension, the Illustrative Masterplan shows how the proposal successfully integrates into the surrounding landscape, with very careful attention to the sensitive use of materials and surface treatments.

5.8.3 Furthermore, the proposal is for a surface-level car park, as opposed to an above-ground structure and, rather than being a form of development which will generate traffic, it will accommodate those vehicles searching for a parking space within the Hollingworth Lake area.

5.8.4 For the reasons outlined above, we consider that that the proposed development falls within the terms of paragraph 155 c) of the NPPF.

5.9 Paragraph 154 b) of the NPPF

5.9.1 Paragraph 154 of the NPPF states that LPAs should regard the construction of new buildings as inappropriate in the Green Belt, unless the proposed development is one of several specified exceptions. The exceptions specified within bullets a) to g) beneath paragraph 154 are all buildings of some description, aside from the exceptions specified within bullet b), which refers to *'appropriate facilities…for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments'*.

5.9.2 Whilst we firmly believe that the car parking proposal constitutes local transport infrastructure and therefore does not represent 'inappropriate development' in the Green Belt, bullet b) beneath paragraph 154 can also be used to describe the proposal. The Rakewood Road proposal would provide overflow car parking facilities for Hollingworth Lake Country Park and can therefore be deemed an appropriate facility for outdoor recreation. Development falling under bullet b) is considered an exception to Green Belt policy *'so long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it'*. For the reasons that we have outlined above, the car parking proposal satisfies these requirements.

5.10 Summary

5.10.1 In this section, we have demonstrated that the car parking proposal clearly constitutes local transport infrastructure and falls within the terms of paragraph 155 c) of the NPPF. The proposed car park is also acceptable under paragraph 154 b) of the NPPF as it is an appropriate facility for outdoor recreation. The proposed development does not therefore represent 'inappropriate development' in the Green Belt. As such, there is no requirement to demonstrate that very special circumstances exist.

6 Other Planning and Technical Considerations

6.1 Introduction

6.1.1 In this section, we summarise the main findings of the key design, environmental and technical reports submitted as part of the planning application and assess the proposed development against the relevant policies in the development plan and the NPPF.

6.2 Residential

6.2.1 Chapter 3 of the Rochdale Adopted Core Strategy sets out the following spatial vision for the Borough in 2028:

> *'To become a prosperous borough: to grow our economy and develop our place through co operation and partnership, improving the lives of local people.'*

6.2.2 The vision goes on to identify a range of criteria which, inter alia, include the following:

- Rochdale borough will be an attractive, vibrant and thriving place where people want to live, work, visit and do business.
- It will be celebrated for its…choice of housing.
- The borough will be a more desirable place to live in with attractive housing and strong communities.
- The north of the borough will have attractive housing communities, regenerated urban sites, and a stronger Pennine identity…

6.2.3 Chapter 3 of the Core Strategy then sets out five Strategic Objectives, which are designed to achieve the vision. The one that is most relevant to the current application is Strategic Objective 2 *'To create successful and healthy communities'*. To achieve this Strategic Objective the Council will focus on, inter alia:

- *'Delivering sufficient housing to meet demand;*
- *Improving the range of housing to meet everyone's needs and aspirations, including affordable housing and more high value housing; and*
- *Creating well designed desirable housing areas to retain and attract residents'*

6.2.4 The vision and Strategic Objective 2 support the principle of the proposed development. The scheme will deliver a range of high-quality homes and encourage the natural 'growth' of Smithy Bridge, an already well-established residential community, at a site that is allocated for such use. The homes have been sensitively designed to reflect the residential properties within the local area and to respond to the land parcel's proximity to the Pennine fringe.

6.2.5 Chapter 6 of the Core Strategy contains three underlying spatial policies for the Borough, the third of which is spilt into four to reflect the Borough's four 'Townships', namely Heywood, Middleton, Pennines and Rochdale. The spatial policies that are most relevant to the application are highlighted below.

6.2.6 Core Strategy Policy SP1 ('Rochdale borough's role in the city region') identifies how Rochdale will contribute to the success of the Manchester city region and the North West. One way in which the Council will do this is by promoting the borough as an attractive location in terms of housing, and providing improved housing quality and choice by working with private and public sector partners.

6.2.7 Core Strategy Policy SP2 ('The Spatial Strategy for the borough') identifies where the Council will focus its investment, development and improvements. Policy SP2 goes on to state that, in the Pennine fringe, it will *'promote a scale of new housing, employment and commercial development appropriate to the accessibility and character of the Pennine fringe.'*

6.2.8 The scheme will provide a range of high-quality homes, thereby promoting the borough as an attractive location in terms of housing. The quantum of new homes proposed is proportionate to the size of the site and its Pennine fringe location. The Landscape and Visual chapter within the Environmental Statement concludes that the land parcel is considered to have the capacity to accommodate the proposal without undue or unacceptable effects on landscape character and visual amenity.

6.2.9 Core Strategy Policy C3 ('Delivering the right type of housing') explains that the Council will deliver the right types of homes to meet the overall needs and aspirations of the borough. In the north of the borough, there will be a focus on providing a range of higher value housing to attract and retain residents. The Council will support lower density development if it delivers higher value dwellings of a type and size that are currently in short supply across the borough.

6.2.10 The scheme will deliver homes ranging in size from two to five bedrooms, and so it will provide a variety of higher value homes that are sought in the north of the borough. Given the need to provide larger, higher value homes, the development will be of a low to medium density.

6.2.11 Core Strategy Policy C4 ('Providing affordable homes') states that the Council will seek a contribution to affordable housing of 7.5 per cent of the development sales value of the overall scheme. Affordable housing should be provided on-site or provided via an off-site contribution in exceptional circumstances.

6.2.12 The Council's affordable housing policy is based on an assumption of 15 per cent of the homes across development sites being affordable. The scheme will deliver 15.1 per cent of affordable housing and therefore conforms with Policy C4. For this same reason, the proposal also aligns with paragraph 66 of the NPPF, which explains that planning policies and decisions should expect at least 10 per cent of the total number of homes to be available for affordable home ownership.

6.3 Education Facilities

6.3.1 Another criterion of the Core Strategy's spatial vision is *'Its population will be more prosperous, better educated and healthier.'* Furthermore, in order to achieve Strategic Objective 2 *'To create successful and healthy communities'*, the Council will also focus on '*Improving the general health and quality of people's lives through better access to health facilities and services, education, community and cultural facilities and open space.'*

6.3.2 Core Strategy Policy C7 ('Delivering education facilities') states that the Council will improve education, skills and training in the borough and raise educational achievement by, inter alia, providing good quality primary and secondary educational facilities. The Council will achieve this through, inter alia:

- *'Providing educational facilities in appropriate and accessible locations;*
- *Improving accessibility to educational facilities by foot, cycling and public transport;*
- *Seeking high quality design of educational buildings with facilities appropriate to support learning;*
- *Ensuring educational facilities are sustainable and provide good access to communities, the natural environment, heritage, culture and lifelong learning; and*

- *Seek developer contributions for the provision of educational facilities (including new school places) and employment skills and training.'*

6.3.3 Paragraph 99 of the NPPF emphasises the importance of a sufficient choice of school places being available to meet the needs of existing and new communities.

6.3.4 Outline planning permission is sought for the erection of a primary school in the south-eastern part of the site, with all matters reserved except for access. The allocation of the Hollingworth Road land parcel for residential and educational use demonstrates that it is acknowledged to be sustainably located, on the edge of the built-up area of Smithy Bridge and to the south of Littleborough town centre. The Transport Assessment demonstrates how the application site is accessible by foot, cycle and public transport and is well-placed to provide good access to communities (such as those in Smithy Bridge and Littleborough), the natural environment (for example, the Pennine landscape), heritage and culture (for instance, the Rochdale Canal and Littleborough town centre) and lifelong learning (including nearby secondary schools). Details regarding the design of the new primary school will form part of the reserved matters application should a need for a new school be demonstrated.

6.4 Impact on Amenities

6.4.1 The socio-economics chapter of the Environmental Statement seeks to estimate the impact of the population injection arising as a result of the Hollingworth Road proposals on the local education and healthcare provision as well as access to open space. The proposed development will have a major-moderate beneficial effect on nursery school provision, as the increase in capacity resulting from the new primary school[21] will exceed the increase in demand for places. There will be a moderate-minor beneficial effect on primary school provision, as the proposed primary school will increase net spare capacity to over 400 places. On the other hand, there will be a major-moderate adverse effect on secondary school provision as the proposed development will increase the net oversubscription to nearly 200 places. However, Bloor will make an appropriate financial contribution to additional off-site secondary school provision to meet the needs generated by the development.

6.4.2 There will be a minor adverse effect on local GP provision and a minor-negligible adverse effect on local dentistry provision as the proposed development will increase the local population without providing additional practices. However, post development provision will be sufficient to meet the needs of the local population and Bloor is amenable to making an appropriate healthcare contribution.

6.4.3 Paragraph 102 of the NPPF states that access to a network of high-quality open space is important for the health and well-being of communities. The proposed development will generate the need for local open space provision on-site including a children's play area to NEAP standards. Approximately 7 hectares of public open space will be created on-site including the provision of a NEAP with associated kick-about area. The play equipment will be well-connected to the surrounding residential development, thereby providing safe and convenient access for residents.

6.4.4 The Health Impact Assessment concludes that the proposed development will deliver a range of benefits including the provision of open space for formal and informal recreation. The proposed development will also connect public realm and internal routes to local and strategic cycle and walking networks and increase the levels of walking, cycling and public transport use to and from the site, and reduce reliance on the private car. Due to wider demands and pressure on local health services, further mitigation may be required to support local healthcare provision in the form of a financial contribution, subject to a S106 Agreement.

6.4.5 Paragraph 104 of the NPPF states that planning decisions should protect and enhance PRoWs and access, including taking opportunities to provide better facilities for users. As we

[21] It is estimated that the new primary school will include capacity for 26 nursery school places.

have explained elsewhere in this Planning Statement, the majority of the existing PRoWs which traverse the Hollingworth Road land parcel will be retained and integrated into the layout of the proposed development, with some minor diversions to ensure the scheme delivers a high-quality design. The scheme also includes additional footpaths to improve connections throughout the land parcel.

6.5 Recreational Management Areas

6.5.1 Policy RE/7 ('Recreational Management Areas'), a 'saved' policy within the Rochdale Borough Unitary Development Plan, explains that the Council will enhance the recreational potential of Hollingworth Lake Country Park and its environs through effective management. Within these areas the Council will promote outdoor recreational uses that are consistent with the conservation and enhancement of the local landscape and ecology. Existing land uses will be safeguarded, and new built development will not generally be permitted unless it is in connection with an existing building or use, or is ancillary to an outdoor use, and is of an appropriate scale, design and layout.

6.5.2 At Hollingworth Road, the 'Recreational Management Areas' policy designation only affects the south-eastern part of the land parcel which currently accommodates a public car park for visitors to Hollingworth Lake. Policy JP Allocation 20 requires the developer to *'facilitate the delivery of a new primary school and associated outdoor playing space'* and *'retain and enhance the existing visitor car parking spaces on the site, or provide replacement visitor car parking spaces in a suitable location nearby for any existing spaces lost.'* It has been determined that the south-eastern part of the land parcel is the only logical place to accommodate the new primary school and associated outdoor playing space (should a need for additional school places be demonstrated), and therefore it is envisaged that its current use as a car park will cease. Bloor has identified its land at Rakewood Road, as a suitable location to accommodate the replacement visitor car parking spaces. Only the outdoor playing space is proposed to be located within the Recreational Management Area ('RMA') itself, with the land immediately north of the RMA reserved for the school building. As such, that part of the land parcel within the RMA will be used for recreational purposes only and will therefore be free from built development.

6.5.3 The Rakewood Road land parcel is also located within a RMA; however, the proposals will enhance the recreational potential of Hollingworth Lake Country Park and its environs by providing a wildflower meadow for the public to enjoy. Whilst the proposed car park extension represents new built development, it an extension of an existing use (Hollingworth Lake Country Park and Visitor Centre) and, as we demonstrated in Section 5.9, is ancillary to an outdoor recreational use.

6.5.4 PfE Policy JP-G8 ('A Net Enhancement of Biodiversity and Geodiversity') explains that development will be expected to mitigate recreation disturbance impacts on the South Pennine Moors SAC/SPAs. The Ecology and Biodiversity chapter within the Environmental Statement states that the PfE Habitat Regulations Assessment concludes that, as most visitors do not visit the core areas of the European site, it is considered unlikely that significant increases in adverse effects will arise simply from local population increases. Although increased recreational impacts are considered unlikely to have a significant effect on the European site, the proposed development will include the following as mitigation:

- residents will be provided with information packs concerning alternative recreational areas and the importance of the South Pennine SAC;
- high-quality green infrastructure within the site and direct access to alternative green infrastructure (Rochdale Canal and Hollingworth Lake) will be provided; and
- contributions to the local Nature Recovery Network will be provided.

6.5.5 PfE Policy JP-G5 ('Uplands') states that the Greater Manchester Combined Authority will ensure that new development does not have an adverse impact on protected habitats of the South Pennine Moors SAC and the South Pennine Moor Phase 2 SPA from urban edge effects, loss of and/or disturbance to functionally linked habitats and recreation disturbances. Within 7km of the SAC and SPA boundaries, new residential development (including that at Policy JP Allocation 20 'Land North of Smithy Bridge') will be required to mitigate recreation disturbance impacts on the SAC and SPAs through:

i. the provision of on-site suitable alternative natural greenspace or financially contribute to off-site provision of such greenspace; and

ii. a financial contribution to the implementation of a Strategic Access, Monitoring and Management Strategy for the SAC and SPAs.

6.5.6 We consider that the mitigation measures identified above satisfy the conditions of Policy JP-G5.

6.6 Promoting Tourism

6.6.1 The adopted Core Strategy sets out broadly how much and what sort of development the Council wants and where it wants it to go. Core Strategy Policy SP3/P ('The Strategy for Pennines') provides the overarching spatial strategy for the Pennines. One of the Council's priorities for the Pennines is to enhance the South Pennine gateway and promote tourism by, inter alia, enhancing the role of Hollingworth Lake Country Park as a strategic gateway to the South Pennines and improving access to existing and potential recreational areas, routes and facilities. The reconfiguration of the existing Hollingworth Lake Country Park car park will improve access to Hollingworth Lake for those visitors that require larger parking spaces.

6.6.2 The principle of the proposed development has also been established by Core Strategy Policy E5 ('Encouraging the visitor economy') which, among other things, seeks to promote and support development that can enhance the visitor attraction of the area covering Hollingworth Lake and Country Park, Rochdale Canal and Littleborough town centre through, for example, improving access to and within the Hollingworth Lake area for cars. Policy E5 specifically refers to 'new car parks', and states that they should be located where vehicles will not increase traffic generation at Smithy Bridge and Lake Bank. As the Transport Assessment explains, any vehicular impact on the surrounding area will be negligible in terms of highways, traffic, and transportation, particularly considering that the peak generation times of the car park do not coincide with the typical peak times of the highway network.

6.6.3 Core Strategy Policy E6 ('Supporting and diversifying the rural economy') stipulates that the Council will support proposals which enhance the recreational and tourist value of Hollingworth Lake where they are in accordance with national Green Belt policy and other criteria. The scheme will continue to enable people to visit and enjoy Hollingworth Lake and its associated tourism and recreational facilities and, as we demonstrated in Section 5, the scheme accords with national Green Belt policy.

6.7 Design

Hollingworth Road land parcel

6.7.1 Paragraph 131 of the NPPF emphasises that good design is a *'key aspect'* of sustainable development and the *'creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve'.*

6.7.2 Core Strategy Policy P3 ('Improving design of new development') notes that the Council will require all new developments, including associated landscaping, to adhere to the specified design principles where relevant and that proposals for residential development should have

regard to the principles outlined in the Residential Design Guide SPD (September 2007) and the Guidelines and Standards for Residential Development SPD (2016).

6.7.3 Matters such as appearance, layout and building design are addressed in the Design & Access Statement ('D&AS'). The application team believes that the proposed development accords with the design principles specified in Policy P3. The time and resources committed to the masterplanning exercise by Bloor Homes demonstrates the applicant's commitment to achieving a high-quality scheme. Very careful consideration has been paid to formulating a scheme of an appropriate scale and layout which responds to the specific characteristics of the site and surrounding area, with very generous provision of open space.

6.7.4 The proposals at Hollingworth Road incorporate design techniques which will help future residents feel secure and avoid creating 'gated communities'.

Rakewood Road land parcel

6.7.5 The D&AS explains that the vision – in terms of the design of the car park extension – is to successfully integrate the scheme into the surrounding landscape without compromising the sensitivity of the surrounding landscape or that of the existing habitats within the area. The physical characteristics of the land parcel were considered from the outset to ensure that any special features of the land parcel's natural context and environment were not only preserved but formed key structuring elements of the design.

6.7.6 The protection of the openness of the Green Belt and biodiversity protection are of the utmost importance and have been considered carefully by the design team. Care has been taken to ensure the retention of high-quality trees in addition to mitigating impacts on the river edge and other ecological constraints. Opportunities to enhance biodiversity have been maximised through the reinforcement of the existing woodland edge to provide a protective buffer and create robust green connections throughout the land parcel and the wider landscape.

6.7.7 A key factor which has informed the design of the scheme is the wooded embankment which separates the south-eastern extent of the existing car park from the main part of the land parcel. As part of the early design process, various access options were considered against existing constraints such as the changes in levels and the presence of high-quality trees.

6.7.8 The landscape strategy was informed by the land parcel's opportunities and constraints. Opportunities include protecting and enhancing surrounding habitats; improving biodiversity and the wildlife value of the land parcel; and using natural and sustainable materials throughout the design. Any ecological constraints and root protection areas have been taken into account in designing the scheme.

6.7.9 It was not possible to avoid some level of impact such as the loss of some trees (although an effort was made to reduce the number and quality of trees affected), and a marginal impact on an outlier badger sett.

6.8 Landscape and Visual

Hollingworth Road land parcel

6.8.1 Core Strategy Policy P2 ('Protecting and enhancing character, landscape and heritage') states that the Council will protect and enhance the borough's character, the distinctiveness of its town centres, housing areas and countryside and the qualities of its landscapes by, inter alia,

- *'Requiring new development to integrate successfully with the key natural features of the borough, e.g. river valleys and the Pennine landscape;*
- *Requiring new development to take opportunities to protect and open up important views of hills and valleys which are part of the borough's unique character; and*

- *Conserving and enhancing townscape character.'*

6.8.2 A landscape-led approach has been adopted in regard to the design of the proposed development which reflects the rural character of the Pennine fringe and will ensure that the development integrates successfully with one of the borough's key natural features. The retention of a large swathe of grassland within the centre of the Hollingworth Road land parcel, which will be kept free from development, will ensure that views of the surrounding hills and valleys are protected. The scheme layout also incorporates a permeable grid of streets which will also preserve views of the surrounding area.

Rakewood Road land parcel

6.8.3 In terms of the car parking proposals, the Landscape and Visual Appraisal concludes that, in landscape and visual terms, there is potential for a sensitive development at the land parcel which will complement and enhance the existing character of the surrounding landscape; minimise harm to landscape character and views; and provide potential for extensive locally characteristic and important multi-functional green infrastructure.

6.9 Heritage

Hollingworth Road land parcel

2.1.1. Policy P2 also explains that the Council will protect the borough's heritage by, inter alia, conserving, enhancing and promoting key heritage assets, such as listed buildings and conservation areas, taking account of their wider settings.

2.1.2. The Historic Environment chapter within the Environmental Statement concludes that a programme of historic building recording will be required prior to the demolition of Lower Cleggswood Farm and numerous drystone walls within the Hollingworth Road land parcel; however, given the low/local heritage significance of these assets, it is considered that a Historic England Level 1 Survey (Historic England 2016) is sufficient subject to the Conservation Officer's agreement. The proposals at Hollingworth Road will have no more than a negligible impact upon the heritage significance of any other non-designated heritage asset but an overall slight permanent effect upon the significance of the historic landscape. The proposals will not impact upon any designated heritage asset (or their setting). Based upon existing evidence, there is nothing to indicate that there will be any archaeological remains of designated (national) heritage significance present within the land parcel; however, the land parcel contains, and has the potential to contain further, as yet unknown, archaeological remains. It is believed that the loss of the known and potential archaeological and built heritage resource can be mitigated through a proportionate programme of archaeological work that has been agreed with Greater Manchester Archaeological Advisory Service ('GMAAS').

Rakewood Road land parcel

6.9.1 The HEDBA for Rakewood Road concludes that, whilst there are several listed buildings and conservation areas within 1km of the land parcel, the land parcel does not contribute towards the significance of any designated heritage asset and the car parking proposals will not alter this.

6.9.2 The assessment indicates that the land parcel has unknown potential to contain prehistoric remains and evidence of Romano-British to medieval activity. Remnants of post-medieval ridge and furrow earthworks may survive within the land parcel as buried remains, and there is a moderate potential for further medieval to post-medieval agricultural deposits and features to be present. There is some potential that mining infrastructure could be present, although no mine shafts are presently recorded with the land parcel.

6.9.3 The HEDBA goes on to say that, based upon existing evidence and ahead of further archaeological investigation, there is nothing to indicate that there will be any archaeological remains of designated (national) heritage significance present at Rakewood Road.

6.9.4 There is potential for intrusive groundworks associated with the car parking proposals to impact shallow archaeological deposits should these be found to be present. The scope and timing of appropriate evaluative works are subject to agreement with the GMAAS but may comprise a programme of geophysical survey followed by targeted trial trenching, if required. The results of the evaluation will inform the requirement and scope of any archaeological mitigation, if required.

6.9.5 Whilst the car parking proposals will result in the loss of a portion of piecemeal enclosure historic landscape, this Historic Landscape Character type is relatively common within the area.

6.10 Ecology and Biodiversity

Hollingworth Road land parcel

6.10.1 Core Strategy Policy G7 ('Increasing the value of biodiversity and geodiversity') states that no development should result in a net loss of biodiversity or geodiversity interest in the borough. The countryside around towns is one of the Council's particular priorities for biodiversity and geodiversity, where its focus is to protect and enhance the biodiversity interest of river valleys, woodland, water and farmland including the reclamation of derelict and neglected land and flood risk management measures. The Council will also support actions which enhance public access and enjoyment of countryside close to urban areas and the wider countryside.

6.10.2 The Council expects development proposals to, inter alia:

- *'Protect and include existing biodiversity within new developments;*
- *Protect and enhance existing features such as trees and hedges;*
- *Take opportunities to promote biodiversity and create new habitats through new development using landscaping and building and construction features wherever possible (e.g. species of vegetation, green roofs and walls);*
- *Enhance strategic wildlife corridors and the most natural areas and ensure that habitats and corridors are not fragmented by development; and*
- *Improve access where appropriate to new or existing biodiversity interest for public enjoyment.'*

6.10.3 The results of the Biodiversity Net Gain Assessment show that the proposed development will result in a net gain of 5.97 habitat units (equating to 11.75 per cent) and a net gain of 9.04 hedgerow units (equating to 1050.9 per cent).

6.10.4 The Ecology and Biodiversity chapter within the Environmental Statement explains that no ecological constraints have been identified that would prevent the development being in compliance with relevant wildlife/nature conservation legislation and policy as long as the identified mitigation measures are implemented in full. It is considered that the mitigation measures can be secured through appropriately worded planning conditions, including the preparation of an ecological enhancement strategy (detailing bird/bat box provisions) and adherence to a Construction Environmental Management Plan and a Landscape and Biodiversity Management Plan. Opportunities also exist to enhance the land parcel's value to certain species groups through the inclusion of the following measures:

- *Installation of widespread bat roost boxes;*
- *Installation of widespread bird nest boxes; and*
- *Bringing retained habitats into better condition and more favourable management.*

6.10.5 The proposed development takes every opportunity to promote biodiversity and create new habitats, where possible. For example, the planting schedule includes a vast array of species of vegetation to create new habitats and attract different types of wildlife. The scheme also seeks to ensure that habitats and corridors are not fragmented by development by, for example, including unlit areas within the green infrastructure to provide dark corridors for the local bat population.

6.10.6 The proposed development will incorporate SuDS features such as permeable surfacing, rainwater gardens, swales and attenuation basins which will provide added benefits in terms of biodiversity improvements. Moreover, the proposal will enhance public access and enjoyment of the countryside around Littleborough.

Rakewood Road land parcel

6.10.7 With regard to the Rakewood Road land parcel, the Ecological Impact Assessment concludes that the car parking proposals will primarily affect habitats of negligible ecological importance (modified grassland). A small area of woodland and one tree of local ecological importance will be lost to the development, which will be compensated for through additional planting.

6.10.8 Five trees were found to contain potential bat roosting features, but all trees have been avoided through the proposed design. One outlier badger sett has been recommended for closure under a Natural England licence to allow room for the access ramp, but the main badger setts that were found along the embankment have been avoided and will be retained and protected. The otter and water vole surveys found no recent evidence of either species.

6.10.9 The results of the Biodiversity Net Gain Assessment show that the proposed development will result in a net gain of 5.32 habitat units (equating to 102.32 per cent) and a net gain of 2.41 hedgerow units (equating to 100 per cent).

6.10.10 The scheme therefore conforms with Policy G7 of the Core Strategy in that it seeks to incorporate existing biodiversity into the development, protect and enhance existing ecological features, create new habitats, ensure that habitats and corridors are not fragmented by development and improve public access to existing and new biodiversity interest.

6.11 Trees

Hollingworth Road land parcel

6.11.1 PfE Policy JP-S2 ('Carbon and Energy') explains that the aim of delivering a carbon neutral Greater Manchester no later than 2038, with a dramatic reduction in greenhouse gas emissions, will be supported through a range of measures including increasing the range of nature-based solution including tree planting. Policy G6 ('Enhancing green infrastructure') explains that the Council will expect development proposals affecting green infrastructure to, inter alia, *'protect ancient woodlands and hedgerows, support new woodland and tree planting in new developments, and replace removed trees from a site at a ratio of 2:1.'*

6.11.2 With regard to the Hollingworth Road land parcel, the proposal seeks to protect and enhance existing trees; however, the principle of site-wide alterations and associated vegetation removal and replacement is established in the PfE Plan, which allocates the land for residential development. A total of 41 no. individual trees, 20 no. tree groups, 1 no. woodland area and 1 no. hedgerow were recorded onsite during the tree survey. Surveyed trees and hedgerows comprise a mix of Low Value (Category C) and Moderate Value / Quality (Category B) field boundary trees with occasional High Value / Quality (Category A) specimens present. Soft landscape proposals have been submitted with the application detailing the arrangement of new trees, shrubs, hedgerows, groundcover planting, pond and marginal vegetation, including for the planting of 206 new individual Heavy Standard trees and over 10,200 hedging planting. This will deliver a net gain in canopy coverage and tree numbers on-site given the limited and localised tree removals being proposed. No trees of high arboricultural value will be removed to facilitate the proposed development and no

ancient woodland, ancient trees or veteran trees are to be affected by the proposed development. Overall, the layout demonstrates a clear design effort to safeguard trees wherever possible whilst maximising tree planting across the land parcel within areas of formal public open spaces and incidental landscaped areas, the quantum and arrangement of which is considered to represent robust and proportionate mitigation that will extend and diversify the land parcel's overall Green Infrastructure credentials.

Rakewood Road land parcel

6.11.3 In relation to the Rakewood Road land parcel, the Arboricultural Impact Assessment ('AIA') confirms that, whilst three individual trees and part of one group of trees are to be lost to the development, the majority of them are low quality and their loss is considered unavoidable. The Tree Constraints Plan shows that the trees proposed for removal are situated where the new access ramp is due to be located. A soft landscape scheme has been devised which provides for approximately 77 new native trees, adequately compensating for the necessary tree removals. It is unknown if any trees at Rakewood Road are subject to a Tree Preservation Order and so the local authority has been contacted in this regard. The AIA confirms that the proposed development will be set within a well-treed environment and the collective visual amenity that the trees provide to the area results in the proposal not being considered harmful to the character of the area. The proposal also meets the local authority's requirement for replacement tree planting at a ratio of 2:1.

6.12 Green Infrastructure

Hollingworth Road land parcel

6.12.1 Policy G6 ('Enhancing green infrastructure') of the Core Strategy explains that the Council will expect development proposals affecting green infrastructure to, inter alia:

- *'be consistent with the…wider than local value that green infrastructure can have;*
- *have regard to local landscape character and contribute to its conservation or enhancement;*
- *in the case of residential development, provide or contribute financially towards recreational open space, including maintenance, in accordance with the standards set out in the Provision of Recreational Open Space in New Housing Supplementary Planning Document (SPD);*
- *take opportunities to improve access to, and the provision of, natural greenspace in accordance with local strategies and standards;*
- *not sever, or impede the key functions of designated greenspace corridors or river valleys, or detract from their natural, visual or recreational quality, but enhance their value and accessibility;*
- *protect ancient woodlands and hedgerows, support new woodland and tree planting in new developments, and replace removed trees from a site at a ratio of 2:1;*
- *take opportunities, where feasible, to improve the water quality and biodiversity of water bodies and their environs in compliance with the Water Framework Directive or equivalent.'*

6.12.2 The Landscape and Visual chapter within the Environmental Statement explains that the land parcel has no landscape designations and has been subject to significant neglect and loss of its historic landscape features which has resulted in a degraded landscape character. The land parcel is contained by development and transport infrastructure and is no more than typical of the urban fringe landscape as identified by the published landscape character assessments. The chapter concludes that the land parcel is considered to have the capacity to

accommodate the proposal without undue or unacceptable effects on landscape character and visual amenity, and with the potential for considerable improvements to the landscape structure of the land parcel itself, which in the long term will provide a beneficial effect.

6.12.3 Bloor's proposed scheme incorporates a central area of public open space as well as other forms of recreational open space. The proposals include a NEAP with associated kick-about area. The scheme has been designed to ensure that the NEAP is overlooked by surrounding dwellings, and that it is easily accessible by foot and cycle from all parts of the development. The proposals also include areas of informal open space which provide opportunities for recreation to people of all ages, and which promote passive recreational activities such as walking.

6.12.4 The large swathe of grassland will be retained within the centre of the land parcel and will be accessible to all of the development's future occupants as well as the general public. The north-western part of the land parcel will be kept free from development, thereby ensuring the protection of the Greenspace Corridor, and the proposed development will also retain the PRoW which traverses this part of the land parcel to ensure the public can continue to access and appreciate the corridor.

6.12.5 The Flood Risk Assessment and Drainage Management Strategy ('FRA&DMS') explains that, in terms of the sustainable management of surface water run-off, an infiltration-based solution is not likely to be practical and therefore the next optimal solution is to discharge surface water run-off to a watercourse, the nearest being the Rochdale Canal. A pre-development response from the Canal and River Trust has confirmed that it would allow a connection into the canal at a restricted discharge rate. All sites should endeavour to achieve as close to pre-development greenfield rates as is viable and therefore the proposals are to restrict the surface water run-off to mimic the pre-development greenfield situation. The restricted flow will generate a storage requirement during extreme storm events. The proposed SuDS features (permeable surfacing, rainwater gardens, swales and attenuation basins) will aid in the attenuation requirements and provide added benefits in terms of water quality and biodiversity improvements.

6.12.6 Policy G/8 (A) ('Greenspace Corridors'), a 'saved' policy within the Rochdale Borough Unitary Development Plan, explains that the Council will protect Greenspace Corridors and permit development which will enhance their recreational, ecological or landscape and amenity value. Policy G/8 (B) states that *'Any new development permitted within or adjacent to the corridors will be of a design, and use materials appropriate to, the character and setting of the corridor.'* Policy G/8 (D) states that *'Development proposals will be permitted that protect and enhance Greenspace Corridors and realise their potential for recreation and nature conservation.'*

6.12.7 The 'Greenspace Corridors' policy designation only applies to the north-western corner of the Hollingworth Road land parcel, which will be kept free from development, thereby ensuring the protection of this Greenspace Corridor. Moreover, the proposed development will enhance the recreational, ecological and amenity value of the corridor by enhancing the public's access to it and affording people opportunities to use and enjoy it. An attenuation basin is proposed adjacent to the Greenspace Corridor, which will increase wildlife in this part of the land parcel as well as the general surrounding area and will enhance the ecological value of the corridor. The design of the proposed development reflects the rural character of the Pennine fringe and materials have been selected which will enable the development to blend seamlessly with the surrounding area. As such, there will be no conflict with the policies referred to above.

6.13 Transport

Hollingworth Road land parcel

6.13.1 Paragraph 117 of the NPPF states that all developments which will generate significant amounts of movement should be required to provide a travel plan, and the planning application should be supported by a transport statement / assessment.

6.13.2 Core Strategy Policy T2 relates primarily to requirements to be met by developers, which include:

- Proposals must satisfy the Council's accessibility hierarchy;
- Proposals are as far as possible accessible for all;
- Developments must provide parking in compliance with the Council's Car Parking Standards;
- Developments will be expected to contribute financially to transport improvements where additional traffic movements cannot be accommodated on the existing network; and
- Developments will contribute to essential transport infrastructure to service their proposals and to measures to alleviate any additional congestion resulting from their proposals on existing bottlenecks.

6.13.3 With regard to the Hollingworth Road land parcel, the Transport Assessment concludes that there is not considered to be an existing highway safety issue that is likely to be exacerbated by the proposed development. The land parcel is accessible by sustainable modes of transport and a significant package of sustainable transport mitigation is also proposed. Other design elements such as access and parking are also in line with standards, and the design of the development complies with the accessibility hierarchy.

6.13.4 The traffic impact assessment shows that some of the junctions on the local highway network are predicted to operate with a sufficient amount of residual capacity available in the future year traffic scenario, with and without the development in place. However, some junctions on the wider highway network are predicted to operate over capacity in the future year traffic scenarios, especially the junctions that are already operating beyond practical capacity (that is, the A58/Canal Street junction and the Kiln Lane/Wildhouse Lane junction). To mitigate this, Bloor is prepared to make an appropriate financial contribution, subject to further post-submission discussions. Notwithstanding the above, the proposal would not have an unacceptable impact on highway safety, nor would there be a severe residual cumulative impact on the surrounding highway network. As such, from a traffic and transportation perspective, there are no reasons why the development proposals should not be granted planning approval.

6.13.5 As noted from scoping discussions, officers at Rochdale Council are considering highway improvements at the A58 Halifax Road / A6033 Todmorden Road junction (in conjunction with mitigation at the A58 Halifax Road / Canal Street junction), albeit there are no definitive timescales to progress the works. Curtins has explored the possibility of some form of interim mitigation, but this does not appear feasible within land under Bloor's control. On this basis, a proportionate financial contribution towards the A58 corridor as a whole may be appropriate to mitigate impacts, and this has been accepted in principle by Rochdale Council during scoping discussions.

6.13.6 Regarding the other indicative transport interventions set out within Appendix D of the PfE Plan, Curtins notes that some of these interventions are not exclusive to Policy JP Allocation 20: Land North of Smithy Bridge (rather, they relate to multiple allocations including Policy JP Allocation 22: Roch Valley). The Transport Assessment explains that Bloor is committed to further post-submission discussions to discuss the details and extent of their involvement in the indicative transport mitigation.

6.13.7 Additionally, the proposed measures in the Framework Travel Plan seek to increase the level of walking, cycling and public transport use to and from the land parcel, and to reduce reliance on the private car. Some measures are specific to the residential element of the scheme (for instance, Welcome Packs will be supplied to all residents at the development), and others are

specific to the educational component (e.g., incorporate discussions on travel and its impacts on the climate within the Personal, Social, Health and Economic Curriculum).

Rakewood Road land parcel

6.13.8 The Transport Assessment confirms that the car parking proposals can be expected to generate up to four two-way vehicle trips in the weekday AM and PM peak hours, which will be transferred from the existing Hollingworth Road car park. As such, the proposals will have a negligible impact on the local highway network.

6.14 Flooding and Drainage

Hollingworth Road land parcel

6.14.1 Paragraph 173 of the NPPF states that, when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere and, where appropriate, applications should be supported by a site-specific flood risk assessment.

6.14.2 Core Strategy Policy G8 ('Managing water resources and flood risk') states that the Council will ensure that new development (including flood risk mitigation measures) does not lead to any form of increased flooding locally or further downstream, does not impede natural water and flood risk management, is not detrimental to existing or potential flood storage areas, contributes where possible to alleviating existing flood risk, is itself well protected from flood risk and ensures prudent use of water resources.

6.14.3 With regard to the Hollingworth Road land parcel, the FRA&DMS explains how the land parcel is located within Flood Zone 1 and, given that the proposals are mostly residential in nature, the proposed development is classed as 'more vulnerable' according to the PPG. This type of development is appropriate within Flood Zone 1, providing there is no increase in flood risk elsewhere as a result of the proposal. The report reviews all sources of flood risk both to and resulting from the proposed development and concludes that the proposals are at very low risk from fluvial flood risk and that the risk of flooding associated with the Rochdale Canal is low. Hollingworth Lake reservoir is located less than 100m to the south of the land parcel and is in an elevated position. Initial enquiries and a review of the key publications have not identified any historic flooding issues at the land parcel associated with the reservoir; however, to promote community preparedness it is advised that future residents prepare a household Flood Plan, detailing the important measures to take in the event of a future flood incident.

6.14.4 Following discussions with various bodies, no historical incidents of flooding have been identified at the land parcel. The primary flood risk potential is therefore considered to be from surface water run-off; this risk varies across the land parcel and is closely associated with the existing topography. The risk associated with surface water flooding will be reduced and sustainably managed post-development, following the implementation of mitigation measures proposed within the FRA&DMS.

Rakewood Road land parcel

6.14.5 With regard to the Rakewood Road land parcel, the FRA&DMS concludes that:

- The car parking proposal is 'less vulnerable' in NPPF terms, and the PPG confirms that this type of development is appropriate within Flood Zone 1, providing there is no increase in flood risk as a result;
- The proposed development is at 'low' risk from the flood sources reviewed as part of the assessment;
- Given the low flood risks identified, the key focus of the assessment is on the sustainable management of surface water run-off to ensure that no increased flood risk results from the proposed development;

- Based on the ground conditions identified by the published online datasets and the soil classifications, it is likely that infiltration would not offer a viable drainage management solution due to the cohesive nature of the underlying strata and, therefore, other surface water discharge methods were reviewed;

- The existing regime will therefore be mimicked, and surface water run-off will continue to be discharged into Hollingworth Brook which is located adjacent to the northern and eastern boundaries of the land parcel; and

- A combination of sustainable drainage systems will be utilised, including permeable surfacing, bio-filtration tree pits, along with a conveyance swale to outfall where feasible.

6.15 Ground Conditions, Pollution and Mineral Extraction

Hollingworth Road land parcel

Ground Conditions

6.15.1 The Hollingworth Road Phase 1 Ground Conditions Assessment notes that there is an area of landslip shown on the published geology map on the northern boundary of the site. Generally, the risk is considered to be low, with moderate risk in the area of landslip and where the topography is steeper. These parts of the land parcel (landslip and areas of steep topography) are not being considered for development.

6.15.2 The Ground Conditions Assessment identifies a generally low to moderate potential for site-wide contamination; however, it recommends that Bloor should undertake further risk assessment and delineation of localised soil contamination encountered in the Betts Geo preliminary ground investigation in the areas of the land parcel being proposed for development.

6.15.3 The Coal Mining Risk Assessment identifies that the land parcel is in a location that has been subject to historical underground coal mining activity, but no specific mitigation strategy is proposed and nor are there any constraints or restrictions regarding the layout of the proposed development, other than in the far north-west corner where a suitable stand-off zone will need to be agreed with the Coal Authority. The land parcel, however, sits within a historical mining area and so there is a residual risk of the presence of unrecorded mine entries. The authors of the report therefore recommend that all site operatives should be made aware of this potential risk and a watching brief should be maintained during site works. The report also recommends that, as part of ground investigation works to inform foundation design, a ground-gas risk assessment should be undertaken. As such, the application has taken account of ground conditions including unstable and contaminated land.

Pollution

6.15.4 Core Strategy Policy G9 ('Reducing the impact of pollution, contamination and land instability') states that the Council will reduce all forms of pollution by, inter alia:

- *'Requiring that development does not have impacts that lead to an unacceptable increase in air, water, noise, light or other pollution;*

- *Ensuring sensitive new developments such as housing, schools and hospitals are not adversely affected by existing sources of pollution such as roads and certain types of industry;*

- *Requiring a Low Emissions Strategy where development requires a Transport Assessment, and in other circumstances as appropriate; and*

- *Using planning conditions or obligations to control pollution from new development, or the impact of pollution on new development.'*

6.15.5 The Air Quality chapter within the Environmental Statement notes that the construction works have the potential to create dust and therefore it is recommended that a package of mitigation measures is put in place to minimise dust nuisance in the surrounding area (see below for more detail). With mitigation in place, the residual impacts from construction are judged as not significant. The impacts resulting from the proposed development during its operation are judged to be 'not significant' and so additional mitigation is not required. However, additional transport related mitigation measures contained within the Framework Travel Plan will be employed to reduce emissions from the proposed development. Overall, the proposed development is considered to be in accordance with the requirements of relevant local and national planning policy and guidance regarding air quality.

6.15.6 The Construction Environmental Management Plan lists a number of mitigation measures to reduce emissions of dust and limit dispersion. For example, in terms of site preparation, the Site Manager / Ground Works Contractor should plan the site layout so that machinery and dust causing activities are located away from receptors, as far as is possible. During the construction itself, these same individuals should ensure that sand and other aggregates are stored in bunded areas and are not allowed to dry out, to avoid windblown dust.

6.15.7 The Hydrology and Drainage chapter within the Environmental Statement explains that, to minimise the effect from construction activities on water quality, construction traffic should be managed effectively, and interceptors should be incorporated within the temporary drainage system to trap any pollutants before they are able to enter downstream surface water receptors.

6.15.8 The Noise and Vibration chapter within the Environmental Statement concludes that, with mitigation, the residual effects are likely to range between negligible and minor adverse (that is, not significant). The potential noise impact on the residential areas of the proposed development has been assessed and the impact is considered to be minor and not significant. For those properties directly adjacent to the roads and railway lines, it is expected that appropriate internal noise levels can be achieved with the use of acoustic double glazing and acoustic trickle ventilation. Away from roads and across the majority of the land parcel, it is expected that appropriate internal noise levels can be achieved with the use of standard double glazing and trickle ventilation. With appropriate mitigation, the overall impact on internal noise levels in the proposed dwellings is negligible and not significant. It is likely that the parts of the development directly overlooking a noise source (i.e. the railway line and Hollingworth Road) will be exposed to noise levels above the relevant criteria. As such, openable windows are unlikely to be a suitable method to prevent overheating in these locations (this will be addressed as part of the development's compliance with applicable Building Regulations). The change in noise levels as a result of the traffic generated by the proposed development is likely to be negligible at all noise sensitive receptors and, with appropriate design, it is likely that the effects on the proposed primary school would be negligible also.

6.15.9 The Lighting Assessment confirms that, provided care and consideration is taken within the design and installation of lighting schemes, no significant 'obtrusive light' at thresholds exceeding those contained within guidance is anticipated. Whilst sky glow and loss of night skies has been considered in the assessment, the introduction of new sources of light is considered to have a minor adverse effect due to the land parcel being surrounded by lit development. Due to the topography of the land parcel and the natural screening this affords, there is limited visibility from the south of the land parcel. The proposed development will mainly impact directly adjacent neighbours and views from the north. However, whilst the proposed development will result in additional lighting, its location between the two existing areas of light (Hollingworth Road to the east and the existing residential areas to the west) means that it is not expanding outside of the boundaries of the existing lit extents. Overall, whilst the proposed development represents an increase in lit areas, the topography and surrounding screening, coupled with expected best practice lighting installations, limits the

predicted impacts to some local immediate views and an awareness of the land parcel in extended vistas, and limited increases in illuminance to the boundaries and hedgerows. As such, no significant impacts are expected.

Mineral Extraction

6.15.10 Paragraph 218 of the NPPF states that LPAs should not normally permit development proposals in Mineral Safeguarding Areas if it might constrain potential future use for mineral working.

6.15.11 Core Strategy Policy G10 ('Managing mineral resources') states that the Council will ensure the sustainable management of mineral resources and make an appropriate contribution towards helping Greater Manchester to meet its contribution to the regional apportionment for land-won aggregate and maintaining an appropriate land bank. The Council will therefore, inter alia, promote the use of secondary/recycled aggregates wherever possible as an alternative to primary extraction and expect proposals to balance the environmental, social and economic impacts of minerals extraction, storage, processing and transfer within the Borough.

6.15.12 Policy 8 ('Prior Extraction of Minerals Resources') of the Greater Manchester Joint Minerals Development Plan states that *'All non-mineral development proposals within the Mineral Safeguarding Areas should extract any viable mineral resources present in advance of construction.'* Proposals that do not allow for the prior extraction of minerals will only be permitted when certain circumstances apply, one of which is '*It can be clearly demonstrated that the mineral is either not present or of no economic value or too deep to extract in relation to the proposed development'.*

6.15.13 The Minerals Resource Assessment produced in support of the Hollingworth Road proposals confirms that the solid geology of the land parcel comprises two geological formations, both of which are safeguarded for their potential to contain a commercially viable quantity of coal, brick clay or sandstone. However, the Assessment concludes that there is no realistic prospect that the minerals underlying the land parcel will ever be worked, and so they are of no economic value. The proposal is therefore considered acceptable within the Mineral Safeguarding Areas.

6.15.14 The proposal accords with Policy G10 of the Core Strategy and Policy 8 of the Joint Minerals Development Plan given that the Assessment considers the economic impacts of extracting the minerals at the land parcel despite ultimately concluding that there is no economic justification to do so.

Rakewood Road land parcel

6.15.15 The Rakewood Road Geo-Environmental Desk Study and Coal Mining Risk Assessment Report concludes that there is a high risk of unrecorded shallow workings at the land parcel, which is within a Coal Mining Reporting Area as well as a Development High Risk Area. A Consultants Coal Mining Report has been acquired which records historical workings beneath the land parcel; however, these workings are unlikely to pose a risk to future development.

6.15.16 Although it is thought unlikely that there are unmapped shafts at the land parcel, the presence of unrecorded shallow workings in the north-eastern part of the parcel cannot be ruled out and so a ground investigation is advised. The qualitative risk assessment confirms a generally low to moderate risk of contamination and ground gas. A site investigation is required to confirm the risk potential and design remedial actions where necessary.

6.16 Sustainability

Hollingworth Road land parcel

6.16.1 The Climate Change chapter in the Environmental Statement notes that the Future Homes Standard ('FHS'), which calls for an uplift to energy efficiency standards, will be introduced by 2025 and will provide a pathway to highly efficient homes and non-domestic buildings which are 'zero carbon ready'. As construction is expected to be completed in September 2031, it is likely that most of the proposed development will be required to comply with the FHS. It is therefore anticipated that dwellings will be built to a very high level of energy efficiency, therefore reducing the greenhouse gas emissions associated with heating and cooling of buildings.

6.16.2 The Energy Strategy Statement identifies a number of opportunities for incorporating renewable and low carbon energy generation technologies into the proposed development such as solar photovoltaic panels and waste water heat recovery. The amount of energy to be provided by renewable low carbon technologies will be confirmed at the detailed design stage and secured through condition.

6.16.3 The Site Layout plan shows a series of attenuation basins throughout the land parcel and a number of swales within the central open space which are designed to safely manage excess surface water run-off. The FRA&DMS notes that the proposals are to restrict the surface water run-off to mimic the pre-development greenfield situation. At present, the land parcel is mostly undeveloped with the exception of several existing farm buildings. As a result, approximately 95 per cent of the land parcel is permeable in its current state. Due to the nature of the proposed development, however, areas of impermeable land will increase onsite (it is estimated that the post-development impermeable areas will increase to approximately 55 per cent). Notwithstanding the above, the principle of site-wide alterations and the associated increase in impermeable areas is established by the PfE Plan, which identifies the land parcel as a residential allocation.

6.16.4 PfE Policy JP-S2 ('Carbon and Energy') explains that the aim of delivering a carbon neutral Greater Manchester no later than 2038 will be supported through a range of measures including an expectation that new development will, unless it can be demonstrated that it is not practicable or financially viable, be net zero which applies from adoption to regulated operational carbon. Development proposals should set out how this has been achieved in an energy statement in accordance with the energy hierarchy, which in order of importance seeks to:

i. Minimise energy demand;

ii. Maximise energy efficiency;

iii. Use renewable energy;

iv. Use low carbon energy; and

v. Utilise other energy sources.

6.16.5 The Energy Strategy Statement identifies opportunities for embedding sustainable energy into the proposed development. The Statement notes that the proposed energy strategy should be delivered in accordance with the following hierarchy: Be Lean (reducing energy needs through improved design and construction), Be Clean (supply energy efficiently through the use of decentralised energy where feasible) and Be Green (further reduce CO_2 emissions through the use of on-site renewable sources, where practical). It recommends that all dwellings include fabric efficiency measures to ensure the development is Building Regulation (Part L1 2021) compliant or better in terms of carbon reduction. These measures could include improving U-values, reducing thermal bridging, improving air tightness and installing energy

efficient ventilation and heating services. With regard to Low to Zero Carbon technologies, the scheme could include 445kWp solar photovoltaics and Showersave Waste Water Heat Recovery.

6.17 Planning Contributions

6.17.1 Core Strategy Policy DM2 ('Delivering planning contributions and infrastructure') states that for new residential development, unless on site / other provision is made, the Council will seek contributions for:

- 'Affordable housing (Policy C4);
- Open space provision and maintenance (Policy G6);
- Health and well-being (Policy C6);
- Education facilities (Policy C7); and/or
- Community facilities (Policy C8).'

6.17.2 Policy DM2 goes on to state that, for all types of development, the Council will seek contributions for any infrastructure or other measures necessary to mitigate any on site or off-site impacts from the development.

6.17.3 The Draft Section 106 Heads of Terms can be found within Appendix A.

6.18 Summary

6.18.1 The proposed development has been meticulously designed and refined over several years in response to in-depth discussions with the Places Matter Design Review Panel and other consultees. For the reasons outlined within this section of the Planning Statement and detailed more fully within the technical reports which form part of the planning application submission, we consider that the proposed development accords with the relevant policies of the development plan when taken as a whole.

7 Summary and Conclusion

7.1 Summary

7.1.1 This Planning Statement has been prepared to support an application which seeks full planning permission for a residential development at land to the west of Hollingworth Road as well as alterations to and an extension of the existing Hollingworth Lake Country Park car park off Rakewood Road, and outline planning permission for a new primary school at land to the west of Hollingworth Road, Littleborough, Rochdale.

7.1.2 The Planning Statement describes the application site (which consists of two parcels of land) and the proposed development, sets out the planning policy context, establishes the principle of the proposed development and explains how the scheme accords with relevant local and national planning policies. We have demonstrated that the site is a suitable and appropriate location for the proposed development and is therefore exactly the type of development that is advocated by the NPPF, and which should be approved in accordance with the presumption in favour of sustainable development.

7.2 Conclusion

7.2.1 The starting point for the assessment of the planning application is that it should be determined in accordance with the development plan unless material considerations indicate otherwise.

7.2.2 We consider that the proposed development is in accordance with the relevant policies of the development plan, for the reasons set out in Section 5 (regarding the PfE allocation) and Section 6 (other planning and technical considerations).

7.2.3 Other material considerations also weigh firmly and decisively in favour of approving the application. Section 5 explains how the car parking proposals fall within the terms of paragraph 155 c) of the NPPF (as well as paragraph 154 b) of the NPPF). The scheme is therefore exempted from the definition of 'inappropriate development' and so the applicant is not required to demonstrate that very special circumstances exist.

7.2.4 Furthermore, the proposed development will result in demonstrable and mutually dependent economic, social and environmental benefits, thereby contributing to the achievement of sustainable development.

7.2.5 For the reasons outlined above and as required by paragraph 11 c) of the NPPF, the application proposals accord with the development plan and should be approved without delay.

Appendices

Appendix A **Draft S106 Heads of Terms**

Appendix B **Appeal Decisions and Examiner Reports Referred to in Section 4 of this Statement**

B.1 Land At Heathrow North Service Station, Shepiston Lane, Hayes (November 2021)

B.2 Dog Inn, Henley Road, Mappleborough Green B80 7DR (August 2021)

B.3 Secretary of State decision ref. APP/W0530/W/18/3210008, Whittlesford, Hinxton (April 2020)

B.4 Land North East of Junction 37(M) of the A1(M) Motorway, Marr Roundabout, Doncaster (July 2019)

B.5 Cobham Motorway Service Station, Cobham, Elmridge (February 2016)

B.6 Ouchthorpe Lane, Fieldhead, Wakefield (January 2016)

B.7 Pembroke Avenue, Denny End Industrial Estate, Waterbeach, Cambridge, Cambridgeshire (February 2015)

B.8 Land North of Berry Hill Purification Works, Throop, Bournemouth (October 2014)

B.9 Application for the Grade Separation of Junction 10A Serving the M1 (October 2013)

B.10 Application for the Proposed M54 to M6 Link Road Development Consent Order (TR010054-001200) (21 April 2022)

B.11 M54 to M6 Link Road (TR010054-001200) – Extracts from Examiners' Report (21 July 2021)

Appendix A Draft S106 Heads of Terms

Proposed Development at Hollingworth Road and Rakewood Road, Littleborough

Date: June 2024

Subject: Draft Section 106 Heads of Terms

Site: Land to the West of Hollingworth Road and Land off Rakewood Road, Littleborough

Applicant: Bloor Homes (North West) Ltd

Proposed Development:

> *'Planning application seeking full permission for residential development including the construction of vehicular/pedestrian accesses, landscaping, open space and associated works at land off Hollingworth Road, alongside reconfiguration of and extension to the existing car park and associated works off Rakewood Road; and outline permission for the development of a primary school (access into the school site to be considered – all other matters reserved for future approval).'*

Obligations

1. ***Affordable Housing***
   15 per cent of the approved dwellings are to be provided as affordable housing.

   The definition of affordable housing to be delivered is in line with Annex 2 to the National Planning Policy Framework (or any successor definition in Government policy).

2. ***Open Space Management and Maintenance***
   Open space management and maintenance to be provided by a management company, unless otherwise agreed with the Local Planning Authority.

3. ***Highways Mitigation***
   A proportionate financial contribution towards local highway network mitigation will be provided, to be agreed in conjunction with the Local Highways Authority.

4. ***Mitigation of the recreation disturbance impacts on the South Pennine Moors SAC/SPAs***
   A financial contribution to the implementation of a Strategic Access, Monitoring and Management Strategy for the South Pennine Moors SAC and SPAs, to be agreed in conjunction with Greater Manchester Ecology Unit.

5. ***Other***
   Other contributions may be identified through the planning consultation process. Consideration will be given to their inclusion subject to meeting the appropriate tests of necessity and reasonableness.

Appendix B Appeal Decisions and Examiner Reports Referred to in Section 4 of the Planning Statement

Appendix B.1 Land At Heathrow North Service Station, Shepiston Lane, Hayes (November 2021)

The Planning Inspectorate

Appeal Decision

Site Visit made on 21 September 2021

by G Robbie BA(Hons) BPl MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th November 2021

Appeal Ref: APP/R5510/W/21/3279160
Land At Heathrow North Service Station, Shepiston Lane, Hayes UB3 1LL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by EG Group Limited against the decision of London Borough of Hillingdon.
- The application Ref 76359/APP/2021/1525, dated 16 April 2021, was refused by notice dated 21 June 2021.
- The development proposed is the development of an electric vehicle charging facility, access road, substation, switchgear enclosure and associated infrastructure.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework). The timing of this appeal has been such that both main parties have had the opportunity to comment on the effect of the revised Framework upon their respective cases and I have taken these matters into consideration in reaching my decision. I have determined the appeal in the context of the revised Framework, using the paragraph numbers of the latest version of the Framework.

Main Issue

3. The main issues are:

- Whether or not the proposed development would be inappropriate development within the Green Belt, having regard to the Framework and any relevant development plan policies;
- Whether or not the proposed development would preserve the openness of the Green Belt or conflict with the purposes of including land within it;
- The effect of the proposed development on the character and appearance of the surrounding area; and
- If inappropriate, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

4. The appeal site is located within the Green Belt, sandwiched between the M4 motorway to the south of the site and Shepiston Lane to the north. Heathrow airport is a short distance to the south of the M4. The appeal site lies immediately adjacent to a recently developed drive-through coffee shop and car park on Shepiston Lane, itself an extension to an existing petrol filling station (PFS) complex, whilst a short distance further west lies a large modern hotel.

5. The appeal site is comprised of sloping bunds surrounding the southern and eastern sides of the coffee shop car park and access roads. Photographs submitted by the appellant show these areas to be recently re-graded and replanted to grass. Trees and shrubs provide a visual screen atop the bund to the south and the motorway beyond, with a more overgrown scrubby area to the east. Three trees, protected by a Tree Preservation Order, stand within the site.

Whether inappropriate

6. The fundamental aim of Green Belt policy, the Framework states, is to prevent sprawl by keeping land permanently open; the essential characteristics of Green Belts being their openness and their permanence. Openness is the absence of development and it has both spatial and visual aspects. Framework paragraph 138 sets out the five purposes of the Green Belt.

7. The construction of new buildings within the Green Belt should be considered, with the exception of the forms of development set out at Framework paragraph 149, to be inappropriate. Framework paragraph 150 goes on to state that certain other forms of development are also not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. Local Plan: Part One (LP1) policy EM2, Local Plan: Part 2 (LP2) policy DME14 and London Plan policy G2 reflect the provisions of the more recent Framework and I give them weight accordingly.

8. It is submitted by the appellant that the proposed electric vehicle (EV) charging station is not inappropriate development by virtue of Framework paragraph 150. That paragraph states that engineering operations[1] and local transport infrastructure which can demonstrate a requirement for a Green Belt location[2] may be considered to be not inappropriate development, subject to the provisos set out above.

9. However, with regard to engineering operations whilst the proposal does contain elements which may be considered engineering operations in their own right, these works are part and parcel of a larger overall development which should be assessed as a whole. Taking the proposal as a whole, therefore, I do not consider the proposed development to be an engineering operation for the purposes of Green Belt assessment.

10. The Framework does not define what constitutes 'local transport infrastructure'. However, the Council have not explicitly challenged the appellant's approach that the proposed development should be considered under the local transport

[1] Framework paragraph 150(b)
[2] Framework paragraph 150(c)

infrastructure provision set out in the Framework[2]. Nor have the Council, despite disputing the extent to which the proposal requires a Green Belt location, sought to challenge the appellant's assessment of alternative EV charging points close to the appeal site and the nearby motorway junction.

11. The proposal would provide transport-related infrastructure in the form of ten EV charging units in an immediate area not well served by the fastest public EV charging points. Whilst the source and nature of the energy provided by the charging units may differ from that provided by fuel pumps at a conventional PFS they are essentially similar in purpose. Neither party has robustly or comprehensively demonstrated how the proposal falls within the Framework's description of 'local transport infrastructure' as opposed to merely being infrastructure related to transport.

12. Even if I were to conclude that the proposed EV charging station could satisfactorily be considered as 'local transport infrastructure' however, the Framework states that a requirement for a Green Belt location must be demonstrated. The appellant is in the business of providing roadside facilities that provide a fuel, retail and food and drink offer. This, it is explained, precludes the delivery of stand-alone EV recharging facilities, or the delivery of EV charging facilities at other, non-Euro Garages, sites.

13. The appellant operates two other sites within the vicinity of Heathrow airport and the motorway network. Neither, the appellant states, are suitable or preferable to the appeal site. I have no evidence to suggest that that is disputed but nor does it demonstrate a requirement for a Green Belt location in the current instance. For the appellant, it may be desirable but that does not amount to a requirement in the parlance of the Framework. Nor has it been demonstrated that existing facilities at the appellant's other sites could not be repurposed to accommodate the shift, likely to continue ahead of legislative changes regarding the sale of new petrol and diesel-engined vehicles in 2030, from petrol and diesel vehicles to EVs. As such, the extent of the appellant's demonstration of alternative sites is limited and fettered as a consequence and cannot be relied upon to demonstrate a requirement for a Green Belt location.

14. Thus, for these reasons, the proposed EV charging station development is not local transport infrastructure, nor has it been demonstrated that it requires a Green Belt location. The exception provided by Framework paragraph 150(c) does not therefore apply to the proposal before me.

Openness

15. Even if I were to conclude that the proposal was 'local transport infrastructure' which could demonstrate a requirement for a Green Belt location, Framework paragraph 150 development must also preserve the openness of the Green Belt and not conflict with the purposes of including land within it. I turn now to the matter of openness and the purposes of including land within the Green Belt.

16. The existing drive-through coffee shop building stands adjacent to the forecourt entrance to the PFS. In very broad terms, its physical and visual relationship with the PFS canopy is very similar to that of the kiosk / shop / sales building with the canopy. It is also evident upon reading the conclusions

of a previous Inspector in relation to the 'drive-thru' development[3] that this relationship was a key element of the reasoning in allowing that appeal.

17. The appeal site is on the far side of the drive-through coffee shop's car park from that building and, in turn, the rest of the PFS. Although not substantial structures in the manner of the PFS forecourt canopy or the drive-through building, the canopies over the charging bays are nevertheless not insignificant structures. Whilst the appellant seeks to emphasise the modest scale of the charging points and downplay their size, I do not agree, and they add to the bulkiness and clutter of the proposed development.

18. Each canopy would stand between approximately 3.2 metres and 3.8 metres in height, each supported by a single vertical column. Their sloping roofs would be angled towards the south, with solar panels atop, in two rows of three and four canopies, respectively. The roofs would almost overlap each other resulting in a rise-and-fall roofline along the length of both rows.

19. Although essentially open-sided, the structures would not, from many angles, be viewed in the manner projected by the submitted elevations. Viewed dynamically, the height of the canopies and their rise-and-fall roofs and the cumulative impact of two rows of charging units and canopies would be a substantial intervention on a site some distance from the existing coffee shop and PFS complex.

20. Unlike the coffee shop unit relative to the PFS, the charging station would stand some distance from the coffee shop building and further still from the PFS. Although seen in close context with the furthest, open extent of the existing car park, the canopies would appear dislocated in both visual and physical terms from the existing buildings and structures within the coffee shop and PFS complex. So too would the substation and switchgear enclosure, where two substantial cabinets would be set within a recessed area in the northern bund, detached from both the existing development and structures, and also detached from the proposed EV charging stations and canopies.

21. Moreover, both elements would be sited within what is currently a sloping, landscaped bund beyond the eastern and northern edges of the existing car park. Neither the canopies, the charging units, substation and switchgear nor access road and turning area would be within, or contained by, the existing bunds. That the coffee shop building and its car park was contained within the existing bunds was a source of support for the previous development. That would not be the case in this instance, the proposal instead extending into and beyond the existing bunds previously considered to visually contain other developments, and into an area of scrub vegetation and trees beyond.

22. Due to the distance between the appeal site, the proposed structures within it and existing buildings and structures at the coffee shop and PFS complex, the proposal would result in the further, incremental, outward spread of existing development. There would as a consequence be a loss of openness in both spatial terms, through the presence of the canopy structures and charging units, and in visual terms from the further outward spread of development along Shepiston Lane.

[3] APP/R5510/W/19/3229922

23. Although the extent to which the appeal site and neighbouring group of buildings can spread further eastwards along Shepiston Lane is limited by the narrowing spit of land between it and the motorway, the continued spread of development at this location would cause harm to the openness of the Green Belt. I acknowledge the constant presence of the motorway and its proximity to the appeal site, and the effect that this has on the experience of the Green Belt in this location. However, this to my mind does not diminish the Green Belt harm that would arise from the proposed development.

24. The area of scrub vegetation and trees beyond the existing developed area of the petrol filling station and coffee shop building makes an important contribution, in the context of the surrounding uses, to Green Belt openness. The appeal site is part of that area and contributes to openness and as such contributes to providing relief from the oppressive nature of the motorway and its traffic. The further outward spread of development around the existing PFS complex would erode the openness of a pressured area of Green belt, causing further, albeit limited, harm to openness.

25. Local Plan: Part 1 (LP1) policy EM2 states that proposals within the Green Belt will be assessed against national and London Plan policies, whilst Local Plan: Part 2 (LP2) policy DME14 and London Plan policy G2 reflect the Framework's approach to development in the Green Belt. The proposal would not, for the reasons set out above, benefit from the exceptions provided by Framework paragraph 150(b) or 150(c) and is therefore inappropriate development in the Green Belt.

Character and appearance

26. The proposed EV charging station would be viewed in the commercial and transport related context of the exiting PFS and drive-through buildings. Within the drive-through building's associated car park are a range of fixtures and fittings, including lighting columns, height restriction beams, signage and an intercom unit for ordering. The EV charging units and canopy structures would not be out of place amongst such features.

27. Whilst the proposal would result in moderate harm to Green Belt openness for the reasons set out above, it does not necessarily follow that the proposal would be harmful to the character or appearance of the surrounding area. Despite the loss of overgrown vegetation from the area to the east of the existing car park, the proposed development would be seen in the context of the heavily commercialised PFS and drive-through building. The hotel building further to the west adds to the cluster of commercial and transport-related buildings, whilst the motorway is an ever-present factor within the Shepiston Lane environment.

28. The charging units and canopies would not be entirely alien structures in the context of the PFS complex and whilst the proposal would fail to preserve openness, causing moderate harm in terms of Green Belt openness, it would not cause harm to the character of appearance of the appeal site and its immediate locality. However, the absence of harm or conflict with LP2 policy DME14, insofar as its provisions relate to matters of character and appearance, is a neutral factor and weighs neither in support of, nor against, the proposal.

Other considerations

29. It is not disputed between the parties that local EV charging provision is limited in terms of both numbers of units and access to the fastest forms of charging units. The need for further and improved provision is noted by the Council. The 2030 Government target for prohibiting the sale of new diesel and petrol vehicles is drawing closer and the parties acknowledge the need for increased provision of, and access to, EV charging facilities to further facilitate the shift in the method of propulsion and the uptake of EVs.

30. The proposed development would also facilitate access to some of the fastest chargers currently available – capable, it is stated by the appellant[4], of adding up to 218 miles of range to a suitable vehicle in just 15 minutes - and faster than the locally available alternatives. Despite the somewhat limited qualitative and quantitative assessment of provision and demand for charging facilities, these broad factors nevertheless carry significant weight in support of the proposal.

31. The canopy above each charging unit would accommodate solar PV panels which would provide the main power source for the charging points. The sustainable source of energy for the units, at least in the main, is also a positive factor which weighs moderately in support of the proposed development.

32. Taken together, these factors, and the contribution that the scheme would make towards an albeit unquantified reduction in carbon emissions and improving local air quality, all weigh in support of the proposal. I therefore give these factors significant weight in the role that they would play in encouraging a shift away from petrol and diesel-engined vehicles and ensuring that EV charging facilities become as accessible as petrol filling stations.

Green Belt balance

33. Inappropriate development is, by definition, harmful to the Green Belt. Substantial weight should be given to any harm to the Green Belt and proposals should not be approved except in very special circumstances. Such circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm is clearly outweighed by other considerations.

34. The proposed development is inappropriate development in the Green Belt which fails to preserve the openness of the Green Belt. It would also result in the further outward sprawl of development around the petrol filling station. These are all matters to which I give substantial weight, in line with the Framework's approach to such matters. The proposal would as a consequence be in conflict with the purposes of including land within the Green Belt.

35. There are, as I have set out above, other considerations to which I give moderate and significant weight to and which weigh significantly in support of the proposal. The absence of harm to character and appearance is a neutral factor which weighs neither in support of nor against the proposal.

[4] 'Charging Times and Distance Guide' Electric Car Chargers Uk / Office of Low Emission Vehicles – based on chargers being 150kW (Ultra) to 375kW

36. The Framework is clear that not only should substantial weight be given to any Green Belt harm, but that 'very special circumstances' will not exist unless that harm, and any other harm, is clearly outweighed by other considerations. Whilst there are therefore other considerations that weigh in support of the proposal in the Green Belt balance, they would not, either individually or cumulatively, clearly outweigh the Green Belt harm sufficient to amount to the 'very special circumstances' envisaged by the Framework.

Conclusion

37. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

G Robbie

INSPECTOR

Appendix B.2 Dog Inn, Henley Road, Mappleborough Green B80 7DR (August 2021)

The Planning Inspectorate

Appeal Decision

Site visit made on 22 June 2021

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2021

Appeal Ref: APP/J3720/W/21/3267947
Dog Inn, Henley Road, Mappleborough Green B80 7DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Euro Car Parks Limited against the decision of Stratford on Avon District Council.
- The application Ref 20/02106/FUL, dated 28 July 2020, was refused by notice dated 10 November 2020.
- The development is erection of a 1 x 4 metre high column with automatic number plate recognition (ANPR) camera.

Decision

1. The appeal is dismissed.

Procedural Matter

2. Development has been carried out and therefore planning permission is being sought retrospectively. The appeal has been determined using the plans submitted to the Council, which provide the basis for which planning permission is being sought.

3. The revised National Planning Policy Framework (the Framework) was published 20 July 2021 and introduced a number of revisions that may be pertinent to the proposal. Consequently, the main parties were given an opportunity to comment on the revised Framework and any subsequent implications that may have emerged.

Main Issues

4. The main issues are:

   (a) whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;

   (b) the effect on the Green Belt's openness and the area's character and appearance; and

   (c) whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify development.

Reasons

Inappropriate Development

5. The site comprises land associated with the Dog Inn, which is a grass verge located adjacent to an access off Henley Road. The immediate vicinity is characterised by residential dwellings, education facilities and garden centres. Beyond that is open countryside, and this is reflective of the site's location within the West Midlands Green Belt.

6. The development comprises the erection of a 1 x 4 metre high column with an automatic number plate recognition (ANPR) camera and associated cabinet. It is understood that the ANPR camera functions for the private benefit of the Dog Inn and is of limited utility to the wider public transport network.

7. In this context, the Framework is clear that new buildings are inappropriate development in the Green Belt, and there is no evidence in front of me demonstrating that the ANPR camera does not comprise a building[1].

8. Therefore, to be regarded as not inappropriate development it would need to satisfy one of the exceptions identified under Paragraph 149 of the Framework or comprise a specified form of other development under Paragraph 150 of the Framework.

9. Paragraph 150 c) of the Framework sets out that local transport infrastructure is regarded as being not inappropriate in the Green Belt, provided such infrastructure preserves its openness, does not conflict with the purposes of including land within it and can demonstrate the need for a Green Belt location.

10. In this case, and in the absence of tangible countervailing evidence, the development would serve a private interest associated with the operation of the Dog Inn and would not contribute to the wider public transport network.

11. Consequently, I cannot conclude that it is local transport infrastructure, and it would not fall within Paragraph 150 c) of the Framework. Accordingly, the development comprises a new building which fails to satisfy the exceptions identified under Paragraph 149 of the Framework or comprise a specified form of other development under Paragraph 150 of the Framework.

12. Therefore, the development comprises inappropriate development in the Green Belt. Paragraph 147 of the Framework makes clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 of the Framework goes onto establish that substantial weight is given to any harm to the Green Belt.

13. Policy CS10 within Stratford-on-Avon District Core Strategy 2016 (CS) provides the development plan's Green Belt policy and is largely consistent with the Green Belt policy within the Framework insofar as it is relevant to the subject matter of this case.

[1] Any structure or erection under Section 336 of the Town and Country Planning Act 1990.

14. In essence it also resists inappropriate development in the Green Belt, except in cases where very special circumstances are justified in accordance with the provisions of national policy and does not include provision for development akin to ANPR cameras within the Green Belt.

Effect on Openness and Character and Appearance

15. It is clear from the site's context that the development would sit amongst other similar kinds of structures and erections, such as lampposts, traffic lights, signage, bollards, and electrical kiosks, among other things. The development would be similar in its utilitarian nature, scale, and siting, and alongside these other structures and erections would be read collectively as an item of street furniture. This helps the development assimilate neatly into the local context.

16. Given the limited footprint of the development, it would have a correspondingly limited effect on the spatial component of the Green Belt's openness. Similarly, due to its relationship and consistency with other street furniture in the immediate locality, the development would have a limited effect on the visual component of the Green Belt's openness.

17. Notwithstanding the above, there is no evidence that an assessment of openness or other such effects on the Green Belt can overcome my earlier findings on the provisions within Paragraph 147 and 149 of the Framework, which makes clear that inappropriate development is, by definition, harmful to the Green Belt.

18. The development would assimilate into the character and appearance of the area for similar reasons outlined in my preceding paragraphs in relation to effects on openness, due to its position amongst other similar forms of street furniture. Consequently, it would not harm the character and appearance of the area or the qualities of the Arden Special Landscape Area.

19. Overall, the development would not harm the character and appearance of the area and would be in accordance with Policy CS.9, CS.12 and AS.10 of the CS, which among other things requires development to respect the relationship with the landscape. However, the development would still harm the Green Belt by reason of inappropriateness.

Other Considerations and Very Special Circumstances

20. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the development, is clearly outweighed by other considerations.

21. In relation to effects on the character and appearance of the area, an absence of harm or a reduced level of harm should not be counted as a positive consideration in support of the development, wherein the relevant judgement[2] has established that the absence of a severe harm cannot reduce the harm by reason of inappropriateness.

[2] R (Lee Valley Regional Park Authority) v Broxbourne BC [2015] EWHC 185 (Admin)

22. In order for other considerations to clearly outweigh the totality of harm these must be positive factors that weigh in favour of the proposal. Enhancing the Green Belt's openness may comprise one such other consideration that could potentially be advanced in support of a development. However, there is no evidence of enhancements being delivered in conjunction with the development in this case.

23. It is understood that the ANPR camera functions for the private benefit of the Dog Inn and is not of any utility or operational benefit to the wider public transport network. There may be other benefits associated with how the Dog Inn operates on a day to day basis and socio-economic benefits therein. However, it has not been demonstrated how the ANPR camera would boost socio-economic activity or reduce antisocial activity to any particular degree.

24. For example, among other things, there are no business records demonstrating the positive effect the ANPR camera has had on trade since it was installed. Consequently, it is not clear what level of public benefit can be derived from the development.

25. I note the emerging Site Allocations Plan. However, given that it has not been examined, allocations within the plan can change accordingly, and would carry limited weight in the balance.

26. Overall, the development is inappropriate development in the Green Belt, and I have found that the other considerations in this case would be limited and would not clearly outweigh the identified Green Belt harm which carries substantial weight.

27. The very special circumstances necessary to justify the development do not exist. Consequently, the development would not accord with Paragraphs 147, 148, 149 and 150 of the Framework, or Policy CS.10 of the CS, which among other things seek to control inappropriate development in the Green Belt.

Conclusion

28. For the reasons given, the appeal is dismissed.

Liam Page

INSPECTOR

Appendix B.3 Secretary of State decision ref. APP/W0530/W/18/3210008, Whittlesford, Hinxton (April 2020)

Ministry of Housing, Communities & Local Government

Our ref: APP/W0530/W/18/3210008
Your ref: S/4099/17/OL

Paul Rogers
Terence O'Rourke

Paul.rogers@torltd.co.uk

9 April 2020

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78 APPEAL MADE BY SMITHSONHILL LIMITED
LAND TO THE EAST OF THE A1301, SOUTH OF THE A505 NEAR HINXTON AND WEST OF THE A1301, NORTH OF THE A505 NEAR WHITTLESFORD, HINXTON
APPLICATION REF: S/4099/17/OL

1. I am directed by the Secretary of State to say that consideration has been given to the report of John Woolcock BNatRes(Hons) MURP DipLaw MRTPI who held a public local inquiry on 11-13, 18-21 June and 2-5 July into your client's appeal against the decision of South Cambridgeshire District Council to refuse your client's application for planning permission for an AgriTech technology park comprising up to 112,000 m² (gross) employment floorspace, supporting infrastructure, amenities and landscape works including publicly accessible informal open space, enhancements to parkland, vehicle and cycle parking, service areas, bus/cycle interchange on land west of the A1301/ north of A505, and infrastructure works including new vehicular accesses, highway improvement works, pedestrian and cycle links with bridge crossings over A1301/A505 and River Cam, site re-profiling, drainage works, foul and water pumping stations and primary electricity sub station, telecommunications infrastructure and other associated works in accordance with application ref: S/4099/17/OL, dated 20 November 2017.

2. On 23 October 2018, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to dismiss the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Ministry of Housing, Communities & Local Government
Phil Barber, Decision Officer
Planning Casework Unit
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Tel: 0303 444 2853
Email: PCC@communities.gov.uk

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. Having taken account of the Inspector's comments at IR311, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Matters arising since the close of the inquiry

6. On 19 December 2019, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the decision by South Cambridgeshire District Council to resolve to approve planning application S/4329/18/OL on 24 October 2019. These representations were then circulated to the main parties.

7. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. A list of these representations is at Annex B. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

Policy and statutory considerations

8. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

9. In this case the development plan consists of the South Cambridgeshire Local Plan 2018, which was adopted in September 2018. The application was originally determined by the Council in the context of the South Cambridgeshire Development Control Policies DPD 2007, the South Cambridgeshire Core Strategy DPD 2007 and the draft South Cambridgeshire Local Plan 2014.The Secretary of State considers that relevant development plan policies include those set out at Annex B of the IR.

10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.

11. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

12. In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Main issues

Green Belt

13. The part of the proposal to take place in the Green Belt includes the bus/cycle interchange and pedestrian/cycle connections along with part of the proposed bridge. The Secretary of State has carefully considered the Inspector's assessment of the proposals impact on the Green Belt at IR320-331 and he considers that the transport infrastructure would provide useful connections for general public use. He further agrees with the Inspector at IR326 that if would be very difficult to achieve the transport infrastructure works without using Green Belt land. The Secretary of State agrees with the Inspector (IR326) that the interchange works are local transport infrastructure that would require a Green Belt location.

14. The Secretary of State agrees with the Inspector at IR327 that the transport infrastructure would erode the open feel of this part of the Green Belt in special and visual terms and would harm openness. He further agrees with the Inspector at IR328 that the works would have an urbanising influence on this part of the open countryside and that the proposal would, to some extent, conflict with the purpose of the Green Belt to assist in safeguarding the countryside from encroachment. However, he agrees with the Inspector (IR329) that the local transport infrastructure proposed in the Green Belt would not by reason of its nature and scale be sufficient to exceed the threshold set out at paragraph 146 of the Framework. As such he concludes that the exception for local transport infrastructure would apply, and that the proposed development would therefore not be inappropriate development in the Green Belt. As such the Secretary of State concludes that the proposal would not result in harm to the Green Belt, and there would be no conflict with local or national Green Belt policy.

Impact on character and appearance

15. The Secretary of State has considered the impact of the proposals on character and appearance as set out in IR332-342. He notes that the site is not a designated landscape and is identified in the Local Plan as Landscape Character Area B – Chalklands. The Secretary of State agrees with the Inspector's view at IR335 that a development of this scale in this location would have an adverse effect on the landscape character of the area of substantial significance. He also agrees with the Inspector that mitigation measures would never completely screen the built form within the AgriTech park, but would transform the open landscape by closing off distant views and by increasing the sense of enclosure. The Secretary of State agrees with the Inspector that this would result in a major landscape change that would not be mitigated over time.

16. In terms of visual effects, the Secretary of State agrees with the Inspector at IR337 that the scheme would have an enduring adverse effect of moderate to substantial significance on the visual amenity of the area. Overall, the Secretary of State agrees with the Inspector at IR342 that the proposed development would have an adverse effect on the character and appearance of an area of substantial significance. He agrees with the Inspector that due to the impacts of the proposal on local character and distinctiveness,

the proposal would conflict with SCLP Policy NH/2 and would also conflict with the design principles set out in SCLP Policy HQ/1.

Impact on the setting and appearance of designated heritage assets

17. There are six heritage assets in the locality of the proposed development, four of which are designated, including the Grade II listed Hinxton Grange, the Grade II* listed Hinxton Church of St Mary and St John the Evangelist and Hinxton conservation area. The Secretary of State has consider the Inspector's consideration of the heritage impacts at IR343-349. He agrees with the Inspector that the loss of open land adjacent to designated park land at Hinxton Grange would result in harm to the listed buildings at the Grange. He further agrees that this harm would be less than substantial. He also agrees that the proposal would also result in an adverse change to the setting to the Hinxton conservation area and the Church of St Mary and St John the Evangelist. He agrees with the Inspector (IR346-347) that this harm would be less that substantial, that there would not be an impact on Pampisford Hall, and that there would be moderate harm caused to the significance of a non-designated WWII pillbox. The Secretary of State agrees with the Inspector at IR348 that the proposal would lead to less than substantial harm to both designated and non-designated heritage assets. He further agrees that this harm would be of moderate significance. In line with paragraph 193 of the Framework, the Secretary of State considers that considerable weight should be given to this these harms.

Impact on agricultural land

18. The proposal would result in the loss of 33 ha of best and most versatile (BMV) agricultural land. The Inspector considers at IR349 that this loss would be at odds with the requirement in the Framework to recognise the economic and other benefits of BMV agricultural land. He agrees with the Inspector's conclusion that this loss would result some harm to agricultural land with an adverse effect of minor significance.

Transport and highway safety

19. The Secretary of State has considered the Inspector's consideration of transport and highway matters at IR350-355. He agrees with the Inspector's conclusions that subject to the appropriate planning conditions and obligations, there are no grounds to dismiss the appeal for highway safety reasons. He further agrees that securing highway improvements through the scheme would be a benefit of minor significance, and that the proposal would comply with SCLP Policies TI/2, TI/3 and TI/8.

Employment and economic benefits

20. The Secretary of State has carefully considered the Inspector's consideration of the employment and economic impacts of the proposal at IR365-376. He agrees that there would be benefits in providing agricultural land for field trials and that the proposed incubator units would be beneficial to start up enterprises and that the provision of AgriTech employment floorspace would generate considerable economic benefits. He agrees with the Inspector's view at IR370-371 that the benefits of the proposed AgriTech park could only be realised if an effective user restriction was imposed to ensure the occupiers complied with specified AgriTech requirements so that the development did not become a general business park, which would be of limited benefit. He agrees with the Inspector that none of the proposed conditions to restrict occupation would meet the tests of necessity, reasonableness and precision, and that the absence of an appropriate mechanism to control occupation of the park diminishes the weight that can be given to

the claimed benefits of the development. The Secretary of State agrees with the Inspector's conclusion at IR375 that the need for and benefits of the proposed development would be of minor significance.

Biodiversity

21. The Secretary of State agrees with the Inspector's view at IR356-357 that the proposal would, overall, have a beneficial effect of minor significance on biodiversity of the area.

Planning conditions

22. The Secretary of State has given consideration to the Inspector's analysis at IR372-374 and IR390-408 of the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

Planning obligations

23. Having had regard to the Inspector's analysis at IR409-411, the planning obligation dated 31 July 2019, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR410 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal.

Occupation of the site

24. The Secretary of State has had regard to the Inspector's conclusion (IR417) that were he minded to allow the appeal, it would be necessary to go back to the parties to devise controls on the future occupation of the site. However, the Secretary of State agrees that (IR381) even were the site to be used as an AgriTech park, and substantial weight thus to be afforded to the benefits of the scheme, the planning balance would still fall against the proposal. As such the Secretary of State concludes that any such controls would not alter his decision, and it is therefore not necessary to seek the parties' views on them.

Planning balance and overall conclusion

25. For the reasons given above, the Secretary of State considers that the appeal scheme is in conflict with SCLP policies NH/2 regarding character and landscape, HQ/1 concerning preservation of the rural area, NH/3 on preserving agricultural land, SC/9 on countryside, E/9 regarding the promotion of clusters, and S/7 on development outside development frameworks, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

26. The Secretary of State considers that the proposal's impact on character and appearance attracts substantial weight against the proposal. The loss of BMV agricultural land also attracts slight weight against the proposal. Conflict with the aims of the Framework also weighs against the proposal.

27. The Secretary of State considers that the economic benefits attract slight weight in favour of the proposal and that the provision of biodiversity improvements and transport benefits also provide slight weights in favour of the proposal.

28. As the Secretary of State has concluded that the proposal would not result in harm to the Green Belt, and that there would be no conflict with local or national Green Belt policy, this is neutral in the planning balance.

29. The Secretary of State has considered whether the identified 'less than substantial' harm to the significance of the above heritage assets is outweighed by the public benefits of the proposal. In accordance with the s.66 duty, he attributes considerable weight to the harm.

30. Overall the Secretary of State considers that the benefits of the appeal scheme as set out above are not collectively sufficient to outbalance the identified 'less than substantial' harm to the significance of the heritage assets. He considers that the balancing exercise under paragraph 196 of the Framework is therefore not favourable to the proposal.

31. Overall the Secretary of State considers that the material considerations in this case indicate a decision in line with the development plan – i.e. a refusal of permission. He therefore concludes that the appeal should be dismissed and planning permission refused.

Formal decision

32. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for an AgriTech technology park comprising up to 112,000 m² (gross) employment floorspace, supporting infrastructure, amenities and landscape works including publicly accessible informal open space, enhancements to parkland, vehicle and cycle parking, service areas, bus/cycle interchange on land west of the A1301/ north of A505, and infrastructure works including new vehicular accesses, highway improvement works, pedestrian and cycle links with bridge crossings over A1301/A505 and River Cam, site re-profiling, drainage works, foul and water pumping stations and primary electricity sub station, telecommunications infrastructure and other associated works in accordance with application ref: S/4099/17/OL, dated 20 November 2017.

Right to challenge the decision

33. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

34. A copy of this letter has been sent to South Cambridgeshire District Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Philip Barber

Authorised by the Secretary of State to sign in that behalf

Annex B Schedule of representations

Representations received in response to the Secretary of State's letter of 9 December 2019

Party	Date
Terence O' Rourke, on behalf of the appellant	13 January 2020
Duxford Parish Council	14 January 2020
Ickleton Parish Council	16 January 2020
South Cambridgeshire District Council	16 January 2020
Hinxton Parish Council	17 January 2020

The Planning Inspectorate

Report to the Secretary of State for Housing, Communities and Local Government

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

an Inspector appointed by the Secretary of State

Date: 18 November 2019

Town and Country Planning Act 1990 Sections 78 and 79

appeal by

SmithsonHill Limited

against the decision of

South Cambridgeshire District Council

Inquiry Held on 11-13, 18-21 June and 2-5 July 2019

Land to the east of the A1301, south of the A505 near Hinxton and west of the A1301, north of the A505 near Whittlesford

File Ref: APP/W0530/W/18/3210008

File Ref: APP/W0530/W/18/3210008
Land to the east of the A1301, south of the A505 near Hinxton and west of the A1301, north of the A505 near Whittlesford

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by SmithsonHill Limited against the decision of South Cambridgeshire District Council.
- The application Ref.S/4099/17/OL, dated 20 November 2017, was refused by notice dated 13 March 2018.
- The development proposed is an AgriTech technology park comprising up to 112,000 m2 (gross) employment floorspace, supporting infrastructure, amenities and landscape works including publicly accessible informal open space, enhancements to parkland, vehicle and cycle parking, service areas, bus/cycle interchange on land west of the A1301/north of A505 and infrastructure works including new vehicular access, highway improvement works, pedestrian and cycle links with bridge crossings over A1301/A505 and River Cam, site re-profiling, drainage works, foul and water pumping stations and primary electricity sub station, telecommunications infrastructure and other associated works.
- The appeal was recovered for determination by the Secretary of State by direction dated 23 October 2018.

Summary of Recommendation: The appeal be dismissed.

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ABBREVIATIONS

AAP	Area Action Plans
BMV	Best and most versatile agricultural land
CCC	Cambridgeshire County Council
CD	Inquiry Core Document
CPCA	Cambridgeshire and Peterborough Combined Authority
CPIER	Cambridgeshire and Peterborough Independent Economic Review
CPRE	Campaign to Protect Rural England
DAS	Design and Access Statement
Defra	Department for Environment Food and Rural Affairs
DPC	Duxford Parish Council
EA	Environment Agency
EIA	Environmental Impact Assessment
ECC	Essex County Council
ES	Environmental Statement
FEI	Further Environmental Information
Framework	*Revised National Planning Policy Framework 2018*
GLVIA3	*Guidelines for Landscape and Visual Impact Assessment, Third Edition* Landscape Institute
GAPC	Great Abington Parish Council
Guidance	*National Planning Practice Guidance*
HPC	Hinxton Parish Council
IPC	Ickleton Parish Council
ID	Inquiry Document – document submitted at Inquiry
LAPC	Little Abington Parish Council
LCA	Landscape Character Area
LSCC	London Stansted Cambridge Consortium
LVIA	Landscape and visual impact assessment
MSA	Motorway services area
NE	Natural England
NDO	Neighbourhood Development Order
NIAB	National Institute of Agricultural Botany
NPSE	*Noise Policy Statement for England*
NUGV	North Uttlesford Garden Village
PPC	Pampisford Parish Council
SCDC	South Cambridgeshire District Council
SCLP	South Cambridgeshire Local Plan 2018
section 106	Section 106 of the Town and Country Planning Act 1990
SoCG1	Statement of Common Ground dated 3 October 2018 and updated on 3 June 2019
SoCG2	Transport Statement of Common Ground 16 May 2019
SoCG3	Statement of Common Ground re amended parameter plan
VSC	Very special circumstances for Green Belt policy
WPC	Whittlesford Parish Council
WWII	Second World War
1990 Act	Town and Country Planning Act 1990 as amended

Procedural and background matters

1. The application by SmithsonHill Limited (hereinafter the appellant) is for outline planning permission with all matters reserved. However, the application plans to be determined include parameter plans for land use, movement and access, landscape and open space, development density and height. Other details show on plans and the appeal documentation are illustrative material not forming part of the outline application.

2. The application was accompanied by an Environmental Statement (ES), dated November 2017, in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 (hereinafter the EIA Regulations).[1] An addendum was submitted in February 2018 with additional information about transport, drainage and flood risk.[2] Further Environmental Information was submitted in May 2019 (FEI); with an additional landscape and visual impact assessment (LVIA), revisions to the traffic and lighting assessments, and an ecological walkover survey update.[3] In response to consultation about the FEI 15 written submissions were received.[4]

3. South Cambridgeshire District Council (SCDC) refused the application on 9 grounds because, in summary, the proposal would conflict with relevant policies concerning; (1) unsustainable development located outside of the village development Framework and within the open countryside; (2) prematurity; (3) harm to the Cambridge Green Belt; (4) an inadequate LVIA and failure to preserve or enhance the local character of the area and unacceptable adverse impact on the countryside and landscape character; (5) insufficient information in the Transport Assessment; (6) a Stage 1 / 2 Road Safety Audit had not been carried out on all the submitted drawings; (7) insufficient information about parking demand and provision; (8) harm to the setting and significance of heritage assets; and (9) the loss of Best and Most Versatile (BMV) agricultural land.

4. The application was determined in the context of the then adopted South Cambridgeshire Development Control Policies DPD 2007, the South Cambridgeshire Core Strategy DPD 2007 and the draft South Cambridgeshire Local Plan 2014. These were superseded with the adoption of the South Cambridgeshire Local Plan 2018 (SCLP) in September 2018. Reason for Refusal 2 concerning prematurity was subsequently withdrawn in April 2019.[5] SCDC also made a minor change to the wording of Reason for Refusal 6 to refer to the Local Highway Authority being not able to fully assess the scheme on the submitted information.

5. On 23 October 2018 the appeal was recovered for decision by the Secretary of State by a direction made under section 79 of the 1990 Act. The reason for the

[1] CD2.4. The transitional provisions in the Environmental Impact Assessment (EIA) Regulations 2017 mean that the 2011 EIA Regulations continue to apply because the request for a scoping opinion was made on 6 February 2017.
[2] CD3.3.
[3] CD12.1-12.4.
[4] Red Folder on Appeal File part 2.
[5] CD5.5.

direction was that the appeal involves proposals for significant development within the Green Belt.

6. A Pre-Inquiry Note was issued on 7 May and updated on 30 May 2019 to deal with procedural matters.[6] A Statement of Common Ground (SoCG1) between the appellant and SCDC is dated 3 October 2018 and was updated on 3 June 2019.[7] Following the submission of further evidence and analysis, along with discussions after the application had been determined, the appellant, Cambridgeshire County Council (CCC) and Highways England signed a Statement of Common Ground on Transport Planning Matters dated 16 May 2019 (SoCG2).[8] Following agreement at the Inquiry about the terms of planning obligations SCDC formally withdrew reasons for refusal 5, 6 and 7.

7. SCDC advised on 10 June that 12 written objections to the application had not been included in the appeal documents, and so objectors had not been notified about the appeal or the Inquiry. Letters giving notice were delivered on 10 June 2019.[9] None of those notified has made any representations either on the appeal or to say that they wish to do so or to appear at the Inquiry. In those circumstances the appellant considers that it can properly be concluded that none of those affected has been prejudiced by SCDC's error. As the Inquiry was not closed in writing until 16 August 2019 there was an opportunity for those who wished to do so to appear or to submit written submissions.

8. On the first day of the Inquiry the appellant submitted a revised landscape and open space parameter plan Drawing No.235701B-LA-PP103A.[10] Given that the parameter plans are part of the proposal assessed in the ES and FEI, the parties agreed at the Inquiry that this would be an amendment to the proposed development at the appeal stage. The parties agreed a statement of common ground (SoCG3) in relation to this proposed revision.[11] SoCG3 provides that the original plan contained a minor error and omitted to show the removal of approximately 70 m of hedgerow along the north-eastern side of the A1301 to accommodate the northern visibility splay for the proposed access. The revised plan indicated a replacement hedgerow planted slightly further back into the appeal site.

9. The parties agree, given that the proposed changes are minor, that there would be no prejudice to any interested persons if the appeal was determined on the basis of the revised parameter plan. Whether the determination of the appeal should be on the basis of the amended parameter plan is a matter for the Secretary of State. The Inquiry proceeded on the basis that it would hear evidence about both the original and amended parameter plans. During the discussion about possible planning conditions the appellant requested that an addition be made to the description of the proposed development to specify 'surface' water pumping. There was no objection to this minor correction.

[6] PIN on file.
[7] CD1.6.
[8] CD1.7.
[9] ID7.
[10] APP5.5.
[11] ID50.

10. I visited the area in which the appeal site is located on several occasions during the course of the Inquiry, on different days and at various times of the day, including the am and pm peak hours for traffic. An accompanied site visit was conducted on 4 July 2019, which included visiting Granta Park and Chesterford Business Park.[12]

11. Draft planning obligations were submitted in the lead up to the Inquiry. The terms of an agreement were discussed at the Inquiry, and the parties were given time for a signed version to be submitted. The agreement between the appellant, landowners, SCDC and CCC is dated 31 July 2019.[13] The section 106 obligations include provisions concerning a public and private transport service strategy, a private shuttle bus, parking management and monitoring, a new bus/cycle interchange, along with improvement works to McDonalds roundabout, and to the junctions at A505/Moorfield Road and A505/Hunts Road. The obligations are summarised in Annex A to this report.

The proposed development

12. The scheme proposes an AgriTech technology park comprising up to 112,000 m^2 (gross) of employment floorspace. How AgriTech development would be defined is considered in more detail later in this report.

13. Planning conditions agreed by the appellant and SCDC would limit the gross external floorspace of the permitted use classes to;

    B1a office / B1b R&D / B1c light industrial - 92,000 m^2
    B1b laboratories - 11,800 m^2
    A3 / A5 - 2,000 m^2
    D1 - 3,000 m^2
    D2 - 3,200 m^2

14. The appeal site consists of a main part (108.6 ha) proposed for commercial development, along with a 6.9 ha site for a bus/cycle interchange to the north-west of the main site. This would be accessed via a proposed foot/cycle bridge over the A505/A1301. Vehicular access to the main site would be via a new roundabout on the A1301. The scheme also proposes on and off-site highway works and improvements. Planning conditions would require works to be carried out to Junction 10 of the M11 and to the junction of the A11/A1307 prior to the occupation of buildings. A proposed planning condition would limit on-site car parking to 2,000 spaces.

15. Approximately 10.9 ha of land within the southern part of the main site would continue in agricultural use, with top soil from the development being redistributed over these fields to improve the agricultural land quality.

16. The proposed development would result in the loss of agricultural land, including 33 ha of grade 2 and 3a agricultural land, which is classified as BMV agricultural land.[14]

[12] The itinerary for the site visit is at ID70.
[13] ID58.2.
[14] ID23 and SoCG1 paragraph 5.28.

The site and surroundings

17. The A1301 forms the western boundary of the main site, beyond which lies farmland in the shallow valley floor of the River Cam with the village of Duxford (2 km from the site) on the western banks of the river. The site is bordered to the north by farmland, beyond which lies the A505 and the villages of Sawston and Pampisford (3 km and 1.5 km respectively). To the north-east is farmland, Pampisford Hall and its Park and Garden (1.5 km), the A11, Granta Park (a science, technology and bio-pharmaceutical park) and Great Abington (3 km). The Babraham Institute Campus also lies to the north.[15] To the east the site is bordered by four private residences, by Hinxton Grange, Mighton Products (a sash window business), beyond which is farmland and the A11. Tichbaulk Road, which is a permissive right of way, borders the appeal site to the south. To the south-west are the village of Hinxton and the Wellcome Trust Genome Campus, a world leading campus for genome and biodata research.[16] Cambridge city centre is approximately 12 km to the north of the main site. The main research/technology and business parks in and around Cambridge are shown on ID22 and companies listed at ID34.

18. The bus/cycle interchange site lies both within the countryside and within the Cambridge Green Belt, north of the A505, west of the A1301 and east of Whittlesford Parkway railway station, and includes a strip running north towards Sawston and the McDonald's roundabout. The River Cam runs through this part of the appeal site, beyond which lie a small industrial estate, the station and the railway line. Mill Farm Lane and a small cluster of dwellings lie to the north-west of the site. An aerial photograph of the appeal site and surrounds is at ID16.

19. Immediately to the south of the appeal site and Tichbaulk Road is Hall Farm, the main proposed "future expansion area" for the Genome Campus. An outline planning application for this development was submitted in December 2018.[17] At the time of the Inquiry this had not been determined.

20. There are six heritage assets in the locality, four of which are designated; Hinxton Grange (grade II), the Stable and Coach House (grade II), Hinxton Church of St Mary and St John the Evangelist (grade II*), and Hinxton conservation area. Hinxton Grange associated designed parkland is a non-designated heritage asset (Historic Environment Record No.12121). A World War two (WWII) pillbox to the south-east of the Grange is also a non-designated heritage asset (Historic Environment Record No.15107).

[15] ID56.
[16] ID55 and ID61.
[17] The outline planning application (ref: S/4329/18/OL), submitted in December 2018, is for a phased mixed use development comprised of up to 150,000 m^2 of flexible employment uses including research and development, office and workspace and associated uses falling within Use Classes B1, B2 and B8; up to 1,500 residential dwellings (Use Class C3); supporting community uses and social infrastructure including a nursery (Use Classes D1); conference facility (Use Class D1) and associated hotel (Use Class C1); retail uses including shops (Use Class A1).

21. The appeal site lies wholly within National Character Area 87, the East Anglian Chalk.[18] In the Cambridgeshire Landscape Guidelines: A Manual for Management and Change in the Rural Landscape 1991, the site is located in character area 2 – Chalklands, within an area described as a broad-scale landscape of large fields, trimmed hedges and few tree over a smooth rolling chalkland landform.[19] The site is located in character area B – Chalklands in the South Cambridgeshire District Design Guide SPD adopted March 2010. Key characteristics of this Landscape Character Area (LCA) are a distinctive landform of smooth rolling chalk hills and gently undulating chalk plateau, a mostly large-scale arable landscape of arable fields, low hedges and few trees giving it an open, spacious quality, in which small beech copses on the brows of hills, and occasional shelterbelts, are important features. This LCA has mostly a strong rural character though this is disrupted immediately adjacent to major roads, such as the A505 and the M11.[20]

Planning policy guidance and statutory requirements

Development plan

22. The development plan for the area includes the South Cambridgeshire Local Plan 2018 (SCLP). Relevant policies are summarised in Annex B of this report.

National policy and guidance

23. *National Planning Policy Framework* (hereinafter the *Framework*) paragraph 80 provides that decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity. This is particularly important where Britain can be a global leader in driving innovation. The *Framework* cites the Government's 2017 *Industrial Strategy: Building a Britain fit for the future*. Paragraph 82 of the *Framework* states that decisions should recognise and address the specific locational requirements of different sectors, including making provision for clusters or networks of knowledge and data-driven, creative or high technology industries.

24. Paragraphs 133, 134, 143, 144 and 146 of the *Framework* set out relevant policy for Green Belts, which is considered in more detail later in this report. Paragraph 170 provides that decisions should contribute to and enhance the natural environment by, amongst other things; protecting and enhancing valued landscapes, sites of biodiversity, or geological value and soils in a manner commensurate with their statutory status or identified quality in the development plan; recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of BMV agricultural land, and of trees and woodland; minimising impacts on and providing net gains for biodiversity. Footnote 53 states that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

[18] CD9.5.
[19] CD9.1.
[20] CD6.9.

25. The parties commented on the recent revisions to the *National Planning Practice Guidance* (hereinafter the *Guidance*).[21] The *Guidance* provides that the impact of a proposal on the openness of the Green Belt requires a judgement based on the circumstances. It adds that relevant matters could include spatial (volume) as well as visual impacts, along with the degree of activity generated, including traffic generation. In assessing the possibility of potential harm to a designated heritage asset the *Framework* requires it to be categorised as either less than substantial harm or substantial harm, and that great weight should be given to the asset's conservation. Any such harm requires clear and convincing justification. The *Guidance* provides that within each category of harm the extent of harm may vary and should be clearly articulated.

Statutory duty

26. The development must be considered in the context of the statutory duty under the Planning (Listed Buildings and Conservation Areas) Act 1990 to give special regard to the desirability of preserving the setting of the grade II* listed Parish Church of St Mary and St John the Evangelist, and the grade II listed Hinxton Grange, its stable and coach house.

The case for South Cambridgeshire District Council (SCDC)

The following summary of SCDC's case broadly follows SCDC's closing submissions to the Inquiry, with additional reference where necessary to the evidence adduced.[22]

The nature of the proposed development

27. There is a lack of clarity as to what form the proposed development could take. A substantial measure for research and development is not sought or expected. By day 9 of the Inquiry, the appellant was suggesting a new condition to control the use of the proposed development for AgriTech, which would comprise "all or any of the following purposes namely research into, development of, commercialisation of and production of goods, services and applications for use in agriculture, horticulture and the food chain". The wide breadth and scope of this definition is of concern.

28. The floorspace proposed could be delivered as B1(a) office floorspace or B1(c) light industrial floorspace. The appeal scheme could be one large corporate headquarters or multiple small manufacturing operations, producing goods for the food chain. The intended and likely range of occupiers are important matters which are material both to whether the claimed benefits of this scheme would be achieved and whether there is a need for a large single greenfield site, in the countryside, to accommodate such uses.

29. The proposals are wholly and entirely speculative. There are no committed future occupants for any of the floorspace proposed, and no material expressions of interest. Nor is the development funded. The proposals are in

[21] ID71 and ID72.
[22] ID2 and ID66.

outline form at this stage, but it is quite remarkable that no support in the form of a commitment or active consideration of the take up of floorspace can be shown by the appellant. The need for the proposals, and their claimed benefits, must be considered in that context.

30. SmithsonHill comprises Russell Smith Farms, a family farming business, and the Hill Group, a firm of housebuilders, with some limited experience in commercial development (Classes A and B1(a)). The appellant has no experience in the AgriTech sector, let alone in the bringing forward of development for that sector. This undermines confidence that the scheme and its claimed benefits can or would be successfully delivered. The appellant company (formerly known as Hinxton Land Limited) was at first promoting the appeal site for development, including as a corporate HQ, a conference centre or a hotel, without any suggestion of the need or appropriateness of AgriTech development on the site.[23]

31. What the appellant seeks to secure here is without any established precedent in the UK. The absence of any precedent is not of itself a factor weighing against the proposal. However, it is certainly a factor which should lead to caution, particularly in conjunction with the wholly speculative nature of the scheme, as to whether the claimed need is genuine and whether there is confidence the claimed benefits can be delivered.

Character and appearance

32. It is common ground that the proposals would cause significant adverse landscape and visual effects, but there is disagreement about the extent, physical and temporal, of those effects. The appellant maintains that the proposals looked at as a whole "conserve" and "retain" the character of the local landscape, rather than enhance it. This cannot however be reconciled with its acceptance that there would be a substantial adverse effect on the landscape character within the entirety of the land within the red line during the construction stage reducing, in its judgement, to slight only by year 15.[24] Phasing over 15 years would mean that substantial adverse effects on the landscape would be accepted for up to 30 years after construction commences.

33. The timing of the primary mitigation proposals, the bunds and planting intended to screen the development, would depend upon the phasing of the proposals and cannot therefore be relied upon as delivering mitigation, as intended, at the start of construction or at any time before completion. The primary mitigation in large measure would depend upon the phasing because the bunds would be created through the topsoil generated by progressive cut and fill. There would be substantial adverse effects on the landscape within the appeal site for up to 30 years, a period of time which the GLVIA3 considers to be long-term.[25] This of itself renders the proposals in conflict with the local and national landscape policies.

[23] CD7.15 pp 2325.
[24] ID40 p 1, APP5.2 paragraph 5.1.8, CD2.4 p 9-14 and CD2.3 p 69.
[25] *Guidelines for Landscape and Visual Impact Assessment, Third Edition* Landscape Institute at CD9.4 paragraph 5.51.

34. However, the effects on landscape character would in reality be far greater, in two main respects: first, those effects would be experienced across the wider area of open Chalklands landscape within which the appeal site sits; second, they would not subside as a result of mitigation even by year 15 (i.e. after 30 years from the commencement of construction).

35. On the first point, there are important differences between the parties with respect to the definition of the landscape baseline, in particular whether the appeal site is to be treated as part of the open chalklands LCA or subdivided into two LCAs: (a) the wooded and enclosed Granta Valley LCA (identified as L5 on ID40), which covers the western side of the appeal site to be developed under the proposals, and (b) the open Chalk Hills LCA (identified as L6) which covers the eastern side of the appeal site to be kept largely free from built development under the proposals. The origin of L5 is the Cambridge Inner Green Belt Study of 2015.[26] However, it was beyond the scope of the Study to carry out a full and comprehensive assessment of the landscape character of the whole of the Cambridge Green Belt, or, indeed, the character of the countryside outside the Green Belt.

36. The appeal site is an indivisible part of a wider tract of arable land and parkland within the triangle of land defined by the fixed boundaries of the A11, the A505 and the A1301, which represents the gently undulating character of the Chalklands landscape, recognised in both the Cambridgeshire Landscape Guidelines and the South Cambridgeshire District Design Guide.[27] This LCA has a broad scale landscape of large fields with limited tree cover, and this description correctly and properly reflects any reasoned assessment of the appeal site and its landscape character and context.[28] This landscape is a "valued landscape" in *Framework* paragraph 170(a) terms.

37. There would be a substantial adverse effect beyond the immediate confines of the site frontage to include the A1301, Tichbaulk Lane, the A505 and the rural setting of Hinxton, which would reduce to moderate adverse for a wider part of the triangular tract of Chalklands LCA in which the site lies, by reason of the severing effect of the proposals on the landscape character of that area.

38. It would not be possible to meaningfully mitigate the landscape effects of the proposals. The bridge proposed across the A505/A1301 would inevitably urbanise the local highways network and would not be capable of any meaningful mitigation. The quantum, mass, siting, and the partially elevated position in which the buildings comprising the business park would be located, would erode the established landscape character. This would unavoidably generate substantial adverse landscape impacts which cannot acceptably be addressed. The proposed landscape strategy could over time, and to some extent, shield some element of these buildings from wider view, but the enclosing of the appeal site on its southern and western boundaries by bunds up to 3.5 m high with planting would erode the open nature of the site and its existing character and landscape contributions.

[26] CD9.3.
[27] LPA3.2 paragraphs 5.9-5.18, and SoCG1 paragraphs 5.20-5.21.
[28] CD9.1, CD6.9, LPA3.2 paragraph 6.78, and CD9.4 Box 5.1 at p 84.

39. Given the limited space available to accommodate bunds within the parameter plans, 3.5 m high bunds would likely be highly engineered features. Screening built development within the site would itself appear alien in the otherwise open Chalklands landscape. This is demonstrated by the photomontages for viewpoint 2 from the Church of St Mary and St John the Evangelist looking north [29], viewpoint 4 from the A1301 looking west [30], and viewpoint 10 from Tichbaulk Road looking north [31]. The "shallow bunding" present at the boundary of part of the existing Wellcome Trust campus, is not a precedent for the incongruous bunding and planting that the appellant proposes.

40. The appellant relies on secondary mitigation to reduce landscape effects at year 15 from moderate to slight.[32] Secondary mitigation is defined within the ES as potential measures that could come forward at the reserved matters stage, including minimising the scale of buildings and articulation of built form, architectural design, boundary treatments, the use of materials, design and location of lighting and internal landscape structure. But at detailed design stage it would not be possible to compel the introduction of buildings at a height less than the maxima shown on the height parameters plan. Furthermore, several of these matters, such as internal landscape structure, are already encompassed within the parameter plans included within the assessment of primary mitigation, such that there is a risk of double-counting.

41. Regarding visual impact, the appellant accepts significant visual effects from many receptors during construction and at completion. This extent of impact would remain for receptors along Tichbaulk Road, from Hinxton Grange and from Hinxton conservation area at year 15 following completion with primary mitigation.[33] However, the visual effects would be greater and much more extensive than accepted by the appellant.[34]

42. The principal differences between the parties relate to (1) the effect of primary and secondary mitigation on visual impact, and the visual effect therefore at 15 years following completion, (2) the visual effects of the highways infrastructure element of the proposals on receptors, in particular when approaching the McDonalds roundabout, and (3) the significance of visual effects that would be felt by more distant receptors.

43. The appellant uses secondary mitigation to justify a reduction in visual impact for receptors at Hinxton Grange from a moderate adverse (and significant) impact at year 15 post completion with primary mitigation, to a slight adverse impact (which is not significant) in the same year when regard is had to secondary mitigation. The Design and Access Statement (DAS) recognises that Hinxton Grange was designed to have an open view across the designed parkland to the west.[35] That view has not changed since Hinxton Grange was built in 1835. But it would change substantially with the introduction of the

[29] CD12.2 Figures 9.29-33.
[30] CD12.2 Figures 9.39-43.
[31] CD12.2 Figures 9.60a-62b.
[32] CD2.4 Table 9.4 pp 9-28/30.
[33] CD2.4 Table 9.3 at 9-28, APP5.2 at 5.1.21, and CD12.1 paragraphs 2.52-4.
[34] ID40 sets out a comparison table by the landscape experts for landscape and visual effects. For views 'DH Views [number]' refers to SCDC's evidence, 'RB V[number]' the appellant's.
[35] CD2.3 Figure 16 p 27.

proposed built development, which would be seen as straddling the parkland on its northern and southern sides from viewpoint 3.[36] There would be a substantial adverse effect on this receptor at completion, which would not reduce by year 15 as the designed view currently enjoyed from this location would be unavoidably lost.

44. Primary mitigation would not reduce the visual effects for receptors at Tichbaulk Road because the mitigation would alter an otherwise open view. There is no evidence to suggest that Tichbaulk Road, a permissive right of way, is any less well used or valued by local inhabitants than other parts of the limited rights of way network which is available for them to use. The adverse effects on pedestrians using Tichbaulk Road would be substantial at both completion and year 15. If it is assumed that primary mitigation would have the effect of screening the site from Pampisford and Hinxton conservation area receptors would not benefit from secondary mitigation internal to the site.

45. With respect to the A1301 roundabout, the appellant's assessment claims effects would be slight by completion (year zero). This conclusion again simply does not withstand scrutiny. Viewpoint 4 show that an open view is currently enjoyed across the appeal site, which would be replaced by significant bunding and perimeter planting enclosing the site from view.[37] However, that view would not be typical given that it omits from view the proposed access roundabout which would necessarily remove a section of the frontage hedgerow and introduce signage, lighting and other roadside paraphernalia. Receptors using the A1301 would experience different amounts of development along it. The level of impact would be moderate increasing to substantial adverse when approaching the McDonalds roundabout.

46. Receptors travelling along the A505 and A1301 approaching the McDonalds roundabout would experience significant adverse effects when the highways elements of the proposals came into view, which could not be mitigated. Those road corridors would inevitably change from rural in character to urban due to the introduction of a prominent bridge of 7.5 m in height (9.9 m total including parapets) altering the skyline and the introduction of footways, crossing points, lighting and the bus/cycle interchange.

47. For more distant visual receptors moderate adverse effects would be experienced by pedestrians on footpaths 68/7 and 134/1, and the receptors at Ickleton Road between Duxford and Abbey Farm, at Coploe Hill, and at Quicksett Road and Duxford Road. Views from the higher ground at Coploe Hill and Quicksett Road, towards and over the Cam Valley are identified as particularly sensitive in the Essex Landscape Study.

48. The proposals would conflict with SCLP Policy NH/2 since the development would not respect and retain local character and distinctiveness of the local landscape. It would not preserve or enhance the character of the local rural area nor would it respond to its context in the wider landscape and so would be at odds with Policy HQ/1 1.a, nor would it be compatible with its location or appropriate in terms of its surrounding area (HQ/1 1.d). The inevitable requirement of external lighting would give rise to harm to the surrounding

[36] CD12.2 Figures 9.34-38.
[37] CD12.2 Figures 9.39-43.

countryside contrary to Policy SC/9. The harm identified should attract significant weight.

Heritage assets

49. The heritage assets at Hinxton Grange were designed as a cohesive whole in 1835 following Parliamentary enclosure of Hinxton Parish in 1833. The designed parkland landscape is of high value to the significance of the listed buildings and remains intact from the layout as designed. The particular designed view enjoyed westwards from Hinxton Grange across its parkland makes an essential contribution to the significance of the grade II listed building. A positive contribution is also made by the reciprocal views from the A1301, from which the main house sitting elevated within its parkland setting, and thus its status, may be appreciated from outside the appeal site. The importance of these views is that they were designed to emphasise the status and wealth of the occupier.

50. The avenue is a strong feature in the local landscape. Its role in the significance of the heritage assets at Hinxton Grange is recognised in the DAS, which refers to the open views enjoyed from the avenue through gaps north towards the Church Tower at Pampisford and south towards Hinxton Church. Agricultural land within the appeal site forms part of the designed landscape setting of the listed buildings and has high value through the historic and functional association it shares with the listed buildings as the landholding of the farm.

51. The effects the proposed development would have on the heritage assets at Hinxton Grange are agreed, namely the proposals would lead to (1) the loss of open farmland that formed the estate, 2) the loss of open land to the south and west of the designed parkland which allows an understanding of the designed parkland within the surrounding agricultural land, 3) the presence of built development along the park boundary to the south and west, and along and either side of the avenue, which would close off the principal designed views from Hinxton Grange and introduce incongruous modern development, and 4) the loss or closing off of the open views currently enjoyed from the house of the wider area and reciprocal views, including from the A1301.[38] The experts agree on the extent of harm these effects would have on the significance of the grade II listed Hinxton Grange as within the middle of the range of less than substantial harm. This harm attracts great weight and importance in the planning balance both as a matter of law and of policy.[39]

52. There is some measure of disagreement however on the extent of harm to the stable and coach house and the non-designated parkland landscape. The level of harm must correspond with the agreed level of harm identified for the grade II listed Hinxton Grange given that, as is also agreed, there is group value between these assets. Therefore, the level of harm to the stable and coach house would be within the middle of the less than substantial scale. With respect to the designed parkland, the level of harm caused to this heritage

[38] CD2.4 paragraph 6.99.

[39] *East Northamptonshire DC & Barnwell Manor Wind Energy Ltd v Secretary of State* [2015] 1 WLR 45; and *R (Forge Field Society) v Sevenoaks DC* [2015] JPL 22. *Framework* paragraph 193.

asset would be moderate to high. Suggested enhancements to this heritage asset through the removal of damaged trees and the introduction of public access might give rise to a slight beneficial effect, but would not contribute positively towards its significance in heritage terms.

53. The experts agree that the harm to Hinxton conservation area and the grade II* Church of St Mary and St John the Evangelist, through change to setting, is less than substantial at the lower end of the range.

54. It is common ground that the appeal site comprises part of the setting of the WWII pillbox, which was sited in its present location because of the topography and open fields. Its setting makes more than a neutral contribution to the heritage asset's significance. The proposals, by introducing buildings that would substantially close off views westward, would erode that significance.

55. Harm would be caused to the significance of the grade II listed Hinxton Grange and its separately listed stable and coach house, as well as the non-designated designed parkland, the Hinxton conservation area and the Church of St Mary and St John the Evangelist (grade II*). As a matter of law, great weight and importance must be attached to this harm.

56. It is only if public benefits outweigh the cumulative harm to the significance of the designated heritage assets that planning permission should be granted in accordance with national and development plan policy.[40] Harm to the significance of the designed parkland is moderate to high and the harm to the WWII pillbox is moderate. *Framework* paragraph 197 requires a balanced judgement to be taken having regard to the scale of that harm and the significance of the assets.

57. The public benefits balance is addressed later, but it is submitted that the public benefits of the proposal do not outweigh the heritage or indeed any other harm. As such, a conflict with SCLP Policies NH/14 and HQ/1 (and in this context in particular HQ/1 1.b arises. For the same reasons, given the acknowledged level of harm, which is not outweighed by public benefits, there is conflict with *Framework* paragraph 196 and 197.

Agricultural land

58. The proposals would result in the loss of 33 ha of grade 2 and 3a BMV agricultural land. SCLP Policy NH/3 directs that permission should be refused unless sustainability considerations and the need for the development are sufficient to override the need to protect the agricultural value of the land. The appellant argues that the loss of this agricultural land would be compensated for by the proposals enabling advances in agricultural productivity elsewhere. But this argument relies upon a need for a development of this size for a dedicated AgriTech park, and that the occupiers of the park would generate new technologies that would lead to improved agricultural productivity.

59. For the reasons set out later, no need has been demonstrated for the floorspace in this location. Secondly, the speculative nature of the proposal casts significant doubt upon whether the scheme would attract occupiers who would be capable of generating the new agricultural productivity improvements

[40] *Framework* paragraph 196 and SCLP Policies NH/14 and HQ/1 1.b.

upon which the appellant relies. Thirdly, and in any event, AgriTech businesses or institutions who may wish to take up floorspace in South Cambridgeshire have ample opportunity to do so in existing business locations, or within future floorspace which will be delivered pursuant to existing commitments or consistently with the policies of the SCLP. As such, any benefits that such organisations may deliver in terms of agricultural advancement would be secured in any event.

60. Accordingly, the proposals conflict with Policy NH/3 of the SCLP. In particular, given the policy conflict which the development generates, and its adverse impacts, the loss to productive agricultural land cannot be considered as sustainable. The loss of this land is also in conflict with *Framework* paragraph 170(b) which requires decision-makers to recognise the economic and other benefits of the BMV agricultural land. For these reasons, the proposals would conflict with Policies NH/3 and HQ/1 1.b of the SCLP and paragraph 170(b) of the *Framework*.

Need and benefits

61. SCDC recognises the economic importance of the AgriTech sector nationally and regionally, and shares the support expressed by Government and of others for fostering and capitalising the opportunities presented by this sector. However, it does not accept that these important objectives require the release for development of a large greenfield site in a sensitive location such as the appeal site, which gives rise to substantial conflict with local and national policy. The objective for the sector can be achieved through the use and redevelopment of existing floorspace, through commitments and through planned growth consistent with the recently adopted SCLP and other components of the recently adopted development plan.

62. The appellant's claims that there is a pressing need for a 50 ha AgriTech park must be considered in the context of there being no identified occupier with identified need for any part of the proposed floorspace, let alone one who is prepared to commit or indeed to express a firm intention to occupy the proposed park or any part of it. The need would seem doubtful when considered in this context alone.

(a) Pattern of existing AgriTech related development

63. It is common ground that there is an established presence of AgriTech businesses and research establishments (both commercial and academic) in and around Cambridge, as well as in the wider East of England region, which is operating successfully.[41] These include some large multinational AgriTech operators, including Bayer Crop Sciences, Monsanto, Syngenta and Certis. AgriTech businesses and institutions are distributed around South Cambridgeshire and the surrounding area. ID32 shows 18 AgriTech businesses occupying existing business parks or locations. It follows therefore that there already exists a cluster of AgriTech businesses dispersed throughout the area, which is not dependent on, nor does it require, co-location on a single site. The existing pattern demonstrates that there is no impediment to AgriTech

[41] CD2.5 paragraphs 2.56-2.49 (pp 32-33) and paragraphs 5.4-5.6 (p 83).

businesses occupying spaces on existing multi-disciplinary business and research parks.

64. There is no evidence to demonstrate that any AgriTech operator already established in Greater Cambridge is failing to thrive or to realise its potential by reason of the absence of space for co-location on a single large dedicated site. No evidence has been submitted that any operator was disincentivised from locating in Greater Cambridge (or indeed the UK) by the absence of sites.

65. A successful cluster does not require co-location as opposed to agglomeration within a geographic area, as demonstrated by the operation of other successful clusters operating in and around Cambridge. The Cambridge biomedical and life sciences cluster is well established and highly successful. It operates from a range of locations in and around Cambridge including within University Departments within the City, at the biomedical campus in the south, the Cambridge Science Park to the north, the Wellcome Trust Genome Campus at Hinxton, and at Granta Park and the Babraham Research Parks in rural South Cambridgeshire.[42] A 20 mile radius from the centre of Cambridge is a widely used definition of the Cambridge life sciences cluster, demonstrating that this highly successful cluster operates successfully on a distributed basis without co-location on a single site.[43]

66. Moreover, the opportunities for interaction and knowledge exchange between organisations within the cluster is widely recognised as being successfully facilitated and achieved by networking organisations, exemplars of which are well established in and around Cambridge.[44] It is notable that such networking organisations, including in respect of venture capital, are already established in the AgriTech sector through AgriTech East and Cambridge AgriTech and they transcend the various locations that comprise the cluster.[45] Seen in the context of this clear evidence, the need for 50 ha of co-locational space is simply not made out.

(b) Adjacency to agricultural land for field trials

67. The appellant asserts a need for not less than 10 ha of land for field trials, with the quality of that land being determined by matters of soil structure and characteristics, including moisture content, field topography and the ability to carry out rotational cropping. However, what has become apparent during the Inquiry is that there is in fact no need for AgriTech operators to be sited adjacent to fields to be used for crop and seed trials, as such trials could be spread around a range of farms.

68. The National Institute for Agricultural Botany (NIAB), a world leader in plant-based research does not require such adjacency. The NIAB uses several hundreds of hectares around Cambridge and its surroundings, much of it in the Duxford area, for its field trials, notwithstanding that its principal research base

[42] ID35.
[43] APP4.2 paragraph 5.26.
[44] ID33 pp 1-3, 5-6 and 8-9, CD7.11 p 60, CD 7.5 p 11 and CD 7.18 p 48.
[45] ID33 pp 4 and 7.

is on the edge of Cambridge, at Huntingdon Road.[46] The world renowned Rothamsted Research Institute, based at Harpenden, Hertfordshire uses land at Woburn, Bedfordshire and at Brooms Barn Farm in Suffolk for its field trials.[47] More locally, organisations who use Russell Smiths Farms land for crop trials rotate those fields regularly and, for example, KWS, based at Thriplow, use fields adjacent to the appeal site, at Hinxton, which is some six miles from their Thriplow base.[48] The need for AgriTech operators to be adjacent to fields to carry out crop and seed trials is not made out.

69. It is difficult to see how on any logical basis factors such as accessibility, quality of environment and a parkland setting can give rise to a need for what is proposed here. The allocation of land and wider policy support for employment development within the SCLP has been formulated and identified by reference to the availability of sustainable modes of transport. For example, established business parks such as the Cambridge Science Park, which is allocated for expansion through SCLP Policy E/1, are located close to main transport hubs, such as Cambridge North Station. Existing business and research parks are of consistently high quality (e.g. Granta Park, Babraham and Cambourne Business Park) and new development, delivered consistently with policy, can be expected to be of the same standard.

(c) The availability of existing, committed and planned employment floorspace and its suitability for the AgriTech sector

70. The generous supply of employment land in the Cambridge area, in qualitative as well as quantitative terms, can accommodate further demand from the AgriTech sector in whatever form it may take. This existing floorspace comprises various forms, including office, B1(b) and B1(c) floorspace, in varied locations. Current and anticipated availability, within just zones 4-5 (the Bio Cluster and out of town sites), comprises 251,500 sq.ft., representing some 69% of the proposed floorspace through the appeal scheme. This unavoidably represents a snapshot in time, but considers only zones 4 and 5 and, as such, it considers only a partial supply of existing floorspace.[49] For the remaining 13 years of the current local plan period, commitments and planned supply amount to over four times the assessed need. The SCLP provides for a significantly larger quantum of floorspace than is required to deliver 22,000 new jobs to 2031.[50] The allocated floorspace provided through the SCLP and other Area Action Plans (AAP) are being delivered.[51]

71. Existing and established employment locations, including business and research parks, have existing capacity as well as capacity to grow. At Granta Park there is committed but unimplemented floorspace for an additional 62,789 m^2, which

[46] LPA2.3 Appendix C. It is notable that NIAB has disposed of its fields located adjacent to its existing and expanding Huntingdon Road base for development, and in so doing has lost access to an existing bridge crossing the A14 to link those fields with others that it owns to the north (see ID47 and ID57).
[47] ID36.
[48] CD2.3 p.22.
[49] APP4.2 paragraphs 5.11 and 6.3 (as amended by ID38).
[50] CD6.7A paragraphs 2.36-2.37 and CD5.6 paragraph 134.
[51] ID19 and ID46.

could be developed for an AgriTech development.[52] Chesterford Research Park has consented floorspace for two new buildings of 28,000 sq.ft. and 22,000 sq.ft.[53] At the Cambridge Research Park, there is again clear existing capacity along with unimplemented floorspace arising from a 2012 planning permission and a current application for planning permission for 28,000 m^2 of mixed B-class floorspace, which is to include not less than 10,096 m^2 of B1(a) and B1(b) floorspace.[54] There is also available floorspace at the Cambridge Science Park and at Cambourne.[55] Quantitatively, there is a generous amount of floorspace available to any AgriTech operator who wishes to expand or to relocate to Cambridge or South Cambridgeshire.

72. In qualitative terms, the need for adjacency to fields for trials has not been demonstrated. No qualitative reason for need arises from adjacency. Many existing and proposed business and research parks in rural South Cambridgeshire are surrounded by agricultural fields in any event. The opportunities for knowledge exchange are well established within the Cambridge clusters, including amongst AgriTech businesses and institutions, which operate without co-location on a single site. It is difficult to see why an office based AgriTech business could not operate successfully in one of the established business parks in and around Cambridge or in South Cambridgeshire, nor indeed is there any reason why any AgriTech light-industrial business operating within use class B1(c) could not take up business floorspace in existing or planned locations in the District, or indeed the wider sub-region.

73. The alternative site assessment submitted by the appellant considered in detail only sites of at least 50 ha.[56] But the need for co-location on a single site has not been demonstrated. The assessment also includes, as a central criterion, matters concerning soil quality and hydrology, associated with the use of at least 10 ha of land for crop trials. However, adjacent land for crop and seed trials is not necessary. The appellant's evidence concerning alternative sites is unreliable and should be discounted. Moreover, Mr Hill's evidence reveals that the decision to promote the appeal site for AgriTech uses was a product of him becoming familiar with the site as a result of passing it when travelling to work. The entire exercise set out in the Planning Statement concerning the assessment of alternative sites (flawed as it is) is an after-the-event attempt to justify a decision to advance a site which was not accompanied by any attempt to consider alternatives and in particular more suitable and less harmful opportunities for provision of floorspace for the AgriTech sector.

(d) Any policy support for the delivery of AgriTech floorspace in the form proposed by the appellant.

[52] This represents the position as at March 2018, the last monitoring date. Part of this floorspace has now been taken up in the form of the Illumina building.
[53] ID37.2.
[54] There are a range of occupiers at the Cambridge Research Park including B1 and research and development operators (e.g. Horizon and Stemcell Technology).
[55] ID39 and ID51.
[56] CD2.5 and updated APP8.3 Appendix J.

74. SCDC wishes to attract new investment and employment, in all sectors with a link to Cambridge, including the AgriTech sector, and the SCLP has been prepared and adopted precisely to secure this. However, and notably, nowhere in either Government policy or expressions of support for the AgriTech sector, set out in the Industrial Strategy (CD7.3), in "Growing the Bioeconomy" (CD7.22) and the UK Strategy for Agricultural Technology (CD7.2), nor in those of the Combined Authority, is there stated to be a requirement for a single 50 ha site dedicated to the AgriTech sector, and particularly for AgriTech development of the very broad nature proposed by the appellant. It is notable in particular that the Cambridgeshire and Peterborough Independent Economic Review (CPIER), September 2018 (CD7.11), recognises the opportunities for the sub-region from the AgriTech sector, but confirms that "business space is not a critical issue in the Cambridge and Peterborough area".[57] The support expressed for AgriTech, which is shared by SCDC, does not require what is proposed here.

(e) The need for incubator space and floorspace for start-up businesses

75. The need for and benefits of the proposed incubator space must be considered in the following context. Start-up and spin-off businesses are a well-established and important element of the economy of Cambridge and South Cambridgeshire.[58] The appellant's evidence refers to several named examples of successful start-up businesses in the sectors which are located in and around Cambridge.[59] That Cambridge and South Cambridgeshire are demonstrably attractive locations for start-up and spin off businesses, including in the AgriTech sector, suggests that there is no quantitative or qualitative constraint related to land supply which is inhibiting the sector.

76. Moreover, SCDC is taking active steps to secure more floorspace for new and growing businesses. The Cambridge Compass Enterprise Zone includes within it the Cambourne Business Park, the Cambridge Research Park and Northstowe. The authorities and landowners within the Enterprise Zone are actively seeking to bring forward new floorspace for start-up and developing businesses.[60] Furthermore, the SCLP identifies Northstowe, North-West Cambridge, Cambridge Northern Fringe East and the Cambridge Science Park as especially suited to include provision for start-ups, SME's and incubator units.[61] The Bradfield Centre, within the Cambridge Science Park, is a good

[57] The Combined Authority for Cambridgeshire and Peterborough in its Non-Statutory Strategic Spatial Framework (CD6.8) supports the strategy set out in the SCLP 2018 and is not seeking to depart from it. If, however, in due course, the Combined Authority were to make more direct suggestions in terms of the AgriTech sector or any other sector of the economy through further iterations of the non-statutory spatial plan, SCDC has expressly committed to have regard to such suggestions, which would inform the new joint local plan with Cambridge City, to be produced in accordance with the timeframe set out in SCLP Policy S/13.
[58] CD6.7A paragraph 8.47 p 183 and CD2.5 paragraph 5.28.
[59] APP2.2 paragraph 2.2.25.
[60] ID15 p 2, ID46 Annex 3 and ID48 annexes 1 and 2.
[61] SCLP Policy E/9 paragraph 2. Development at Northstowe is the subject of the extant Northstowe AAP 2007. Development at NorthWest Cambridge is the subject of the extant North-West Cambridge AAP 2009. Development at both Northstowe and at North West Cambridge is presently under construction, as described at ID19.

example of new "incubator" floorspace being provided, as is the new incubator space being delivered at the Babraham Research Park.[62]

77. There is no identified need for additional provision beyond that which already exists, and which is now being planned for. The provision of incubator space on the appeal site is therefore a factor of limited weight here.

f) Conclusion

78. The appellant's justification for what it proposes is in large measure based on there being a compelling but unmet need for new AgriTech floorspace to be delivered and that the appeal site is the only feasible location to meet this need. Its case in this respect has not withstood scrutiny. In quantitative and qualitative terms there is ample floorspace available for AgriTech operators to take up, without the need to release this large sensitive greenfield site for development.

Employment and the economy

79. In terms of construction jobs, plainly any development if carried out will generate construction jobs and value. That factor therefore cannot be a benefit of itself which can justify an otherwise unacceptable development in planning terms.

80. The speculative nature of the proposal is such that the claimed operational employment and economic benefits cannot be remotely assured at this stage. The appellant's forecast of jobs and economic contribution is predicated on an assumption as to the nature of future occupants. The appellant's economic impact assessment forecasts assume an occupancy profile comprising two large company tenants (UK or multinational) with an estimated 500 staff each, eight large UK/international growth companies with an average of 200 staff each, 25 SME's with an average of 40 staff each, and 35 start-ups.[63] However, not one such occupant who is committed or even has expressed interest in the development has been identified. The appellant's employment and economic forecasts must be considered with caution.

81. In any event, SCDC does not accept that there is a need for the appeal proposal. There is a generous quantum of employment floorspace available now in the District, as well as committed and planned floorspace to meet the needs of AgriTech businesses and establishments, as well as other sectors operating in and seeking to access the Cambridge economy. In qualitative terms, as the existing distribution of AgriTech businesses demonstrates, the range of existing, committed and planned floorspace is entirely suitable for the sector. No evidence has been given to suggest that AgriTech businesses are being held back or disincentivised from establishing in the Cambridge and South Cambridgeshire area by reason of quantitative or qualitative considerations.

82. It follows that the future employment and economic benefits from any AgriTech business which wishes to establish or grow would be secured without the need for the appeal proposals. The jobs that would be generated by the proposals

[62] ID39.
[63] CD2.4.3 paragraph 115.

could be achieved elsewhere if the required floorspace for AgriTech occupiers can be accommodated elsewhere. Additional AgriTech occupiers wishing to take up floorspace within the Cambridge cluster could go into the existing and planned floorspace if they wished to. Thus, if the proposals were implemented, the benefits, if any, created by AgriTech businesses occupying the appeal site would simply be displaced from other locations, and furthermore could be delivered on those alternative locations without causing the level of harm that the proposals would create. No economic or employment benefits would be foregone as a result of the dismissal of this appeal.

Other considerations

83. SCDC does not seek the dismissal of the proposals on the basis of highways grounds, subject to the section 106 agreement and the imposition of the agreed conditions. Nor does it seek dismissal on the basis of the effects on biodiversity, noise, air quality or local hydrology.

Green Belt

84. That part of the appeal proposals which involves development in the Cambridge Green Belt comprises part of the works to secure access to serve the proposed development. It includes part of a pedestrian/cycle/equestrian overbridge of some 7.5 m to deck, together with a 1.4 m parapet on both sides and associated with bridge abutments and supports; a private transport interchange, together with a vehicular access point from the A505, bus shelters, cycle racks, real-time information and associated infrastructure including signage, lighting, fencing and other security features; in all likelihood at least a barrier at A505 carriageway level; and cycle and pedestrian routes alongside the A505 and north along the A1301 to a crossing point on the edge of Sawston, together with, SCDC considers, an engineered facility to accommodate the change in level from the field edge path to the crossing at carriageway level of the A1301.

85. In terms of impact on the Green Belt, consideration should be given also to the use of the transport interchange, particularly by buses, and to the loss of hedgerow which would be necessary to introduce the new access to the interchange and its associated visibility splays.

(a) Does the development in the Green Belt comprise local transport infrastructure?

86. Work proposed in the Green Belt is intended to provide suitable access to serve a single private development. Although the overbridge would be available for use by the public, there is no suggestion that the bridge or any part of the works in the Green Belt are intended to be delivered to address any general or local need. Thus, these are private works to meet the needs of a single private development. Enhancements to Whittlesford Parkway as a transport interchange are in any event being promoted by CCC and by the Greater Cambridge Partnership.[64] That scheme is proposed for a location further to the west, outside the Green Belt, and there has been no evidence to suggest that the appellant's proposed transport interchange is a suitable substitute for that

[64] CD10.4.

Whittlesford Parkway scheme, nor is there evidence that the appellant would make its private facility available for the same purposes.

87. The term "local transport infrastructure" is not defined in the *Framework*. The word "local" before transport infrastructure must qualify the term in a meaningful way. The term means transport infrastructure which is delivered to meet a public need within a local area, as distinct from infrastructure to serve the future needs of a new single private development. If the position were to be to the contrary, then it would follow that any form of private development would, in principle, be entitled to introduce into the Green Belt transport and access related infrastructure to serve that development. When introducing the reference to "local transport infrastructure" into the NPPF 2012, the Secretary of State, in his Impact Assessment (CD59), stated that in addition to park and ride schemes other local transport infrastructure schemes could be beneficial to communities in the Green Belt, including for example, infrastructure to support more public transport, such as opening new routes, providing bus shelters and small public transport interchanges.

88. This explanation reveals that, so far as the Secretary of State is concerned, "local transport infrastructure" is infrastructure which is "beneficial to communities" in that it would address an existing deficiency or requirement within the local community. It would not therefore include infrastructure which is to serve the future needs of a new single private development. This distinction has also been recognised by Inspectors. A private access road to serve a housing development was found not to be "local transport infrastructure" within the meaning of the 2012 NPPF.[65] Additional HGV parking at an MSA serving the M25 was "local transport infrastructure", which served a local public purpose.[66] A private car park to serve an industrial estate was not, with the Inspector observing that there must be "public interest for local transport infrastructure".[67] The two documents submitted for the appellant in this context are also consistent with this approach. These concerned an access road to an existing water treatment works and so performed a critical public function to the benefit of a local community.[68] The other concerned the grade separation of a junction serving the M1 motorway, which again is public infrastructure intended to benefit a wide range of users.[69]

89. Given the private nature of the proposed works in the Green Belt to meet the future needs arising from its development, those works do not amount to "local transport infrastructure" for the purposes of *Framework* paragraph 146(c). As such, those works cannot amount to "not inappropriate" development in the Green Belt.

(b) Can the works demonstrate a requirement for a Green Belt location?

90. If a) above is satisfied the next issue concerns whether those works have been demonstrated to require a Green Belt location. Resolution of this issue relates directly back to the case for the principal elements of the scheme. If the

[65] ID59.
[66] ID60.
[67] LPA1.3.
[68] ID62.
[69] ID63.

AgriTech proposals are found to be unacceptable in planning terms, the associated access works required to deliver that development would not be required and would not therefore require a Green Belt location. If SCDC's case prevails therefore then the inescapable conclusion is that, for this additional reason, the works in the Green Belt are inappropriate development.

c) Do the works preserve openness?

91. The third issue arising from paragraph 146(c), if the Secretary of State gets this far, is to consider whether the development preserves the openness of the Green Belt. The principle in *Europa Oil and Gas Ltd V SSCLG* is plainly not in dispute. The effect on openness of development such as a bus shelter, a new public transport route, etc. are unlikely of themselves to give rise to an unacceptable failure to preserve openness.[70] However, the totality of what is proposed here in the form of private access arrangements to a commercial development gives rise to an unacceptable impact on openness which extends well beyond what could be considered to be the inherent effects of local transport infrastructure.

92. The Green Belt is not a designation which protects landscape or visual interests. It is a spatial designation intended to protect openness. The focus must therefore be on the effect of the development in spatial terms on the openness of that part of the Green Belt proposed to be developed. The components of those elements of the development proposed for the Green Belt would be introduced onto a site which is currently open and undeveloped land.[71] The introduction of part of a 7.5 m high bridge (9.9 m with parapets) and its abutments and approaches, as well as a private transport interchange, must have a material effect, when considered in spatial terms, on the openness of a currently undeveloped parcel of the Green Belt. When considered in the context of a policy which is seeking to "preserve openness" that effect can only reasonably and rationally be adverse.

93. Impact on openness may have a visual dimension. However, in the context of Green Belt policy, the focus must be on the effect of the development in visual terms on the openness of the land proposed to be developed. What cannot logically be correct is for the impact of development on openness of land to be judged by reference to the condition of adjoining land, particularly where that adjoining land lies outside the Green Belt. The quality of openness of land in the Green Belt and the effect of development on that land cannot sensibly be diminished by the existence of development on other land, adjoining or otherwise.

94. When considering the impact of the proposed development on the openness of the Green Belt from a visual perspective, the appropriate comparison here is between an open undeveloped greenfield site where openness has not been previously diminished to any material degree at all, with the effect of development on that land comprising the north-western portion of a large bridge, a private transport interchange and other development. The proposed development would adversely affect the spatial dimension of openness, so too would it adversely affect the visual dimension of its openness. It is submitted

[70] ID59.
[71] LPA3.3B photographs 1 and 2.

therefore that the proposed development fails, and fails substantially, to preserve the openness of the Green Belt. The appellant's case that there is no impact on openness of the Green Belt plainly and demonstrably lacks credibility. Given that two of the appellant's witnesses were under the misunderstanding that Whittlesford Parkway Station, McDonald's restaurant and the petrol filling station were within the Green Belt, it is necessary to treat with caution the appellant's conclusion.[72]

(d) Conflict with Green Belt purposes

95. The introduction of the proposed development would encroach into an area of countryside which comprises one of a series of open fields to the north of the A505. It would also give rise to urban sprawl, not least by introducing new access-related works onto land north of the A505 where such works are currently absent. The development would conflict with national Green Belt purposes (a) and (c), as set out in *Framework* paragraph 134. The SCLP sets out purposes which are particular to the Cambridge Green Belt. This includes protecting a "landscape which retains a strong rural character".[73] The Cambridge Inner Green Belt Boundary Study 2015 identifies a purpose of the outer rural area of the Cambridge Green Belt as "providing a setting for approaches to the Connective, Supporting and Distinctive townscape and landscape".[74] To introduce substantial built development as proposed into an existing open undeveloped area of farmland on the edge of the Cambridge Green Belt would compromise these local Green Belt purposes too. The proposed development, as it affects the Green Belt, amounts to inappropriate development.

Very special circumstances (VSC)

96. The appellant has identified three considerations which give rise to VSC. The first refers to the benefits of the scheme, but for the reasons above no such benefits arise so as to outweigh Green Belt and other harm. The second and third points refer to the public benefit of the proposed access works. However, proposals to improve Whittlesford Parkway station are emerging, with the support of public authorities, in any event. So far as the suggestion of public use of the proposed bridge and pedestrian and cycle links is concerned, no actual or potential future wider public need for such links has been identified, and given the dispersal of the current residential population, from where such a need would arise is unexplained. There are no proposals for such works set out in the development plan or any other policy document. Moreover, it is difficult to see how such links could justify the extent of development proposed.

97. The harm to the significance of heritage assets, both designated and non-designated requires a separate balancing exercise, as required by *Framework* paragraphs 196 and 197. Given the absence of need or benefits which would be forgone, there are no public benefits which are capable or sufficient to displace the harm to heritage assets here.

[72] APP5.2 paragraph 6.2.12 and APP8.2 paragraph 5.5.6.
[73] CD6.7A paragraph 2.31.
[74] LPA3.7 paragraphs 4.14.24-25 and Figure 11.

98. Those parts of the development proposed within the Green Belt conflict with SCLP Policy S/4 and, given the effect of the development on the rural character and openness of the Green Belt, with Policy NH/8. As inappropriate development and in the absence of VSC, the development also conflicts with *Framework* paragraphs 143 and 144, in particular.

Planning policy

99. This appeal must be determined against a recently adopted local plan, which it is common ground is up to date and is otherwise in conformity with national planning policy, set out in the current *Framework*. Moreover, the evidence base for the plan recognised that historic patterns of growth were likely to change and in particular that "recent evidence suggests that the local high-tech cluster is "maturing" and that growth in the research and development sector will be slower than in the past, and other sectors will account for high proportions of growth".[75] The SCLP recognises that "new sectors are likely to include renewable technology, the creative ICT sectors, digital, health/bioscience, high-technology manufacturing, professional business services, tourism and leisure". It follows therefore that the SCLP, and its economic and employment policies in particular, were formulated expressly to address and to accommodate the likelihood of new sectors developing over the plan period.[76]

100. "AgriTech" as a commercial sector is not referred to expressly within the SCLP. However, the strategy is to make provision for a range of sectors to emerge and develop over the plan period.[77] The need for growth sectors, such as AgriTech, was therefore fully considered and addressed through the strategy and policies of the SCLP. The appellant places significant reliance on SCLP Policy E/9, but misconstrues and misapplies that policy. Policy E/9 provides that "development proposals in suitable locations will be permitted which support the development of employment clusters, drawing on the specialisms of the Cambridge area". There is an issue as to what is meant by "suitable locations". Suitability must be interpreted having regard to other policies of the plan. Properly construed, Policy E/9 requires more than that. A suitable location, for the purposes of Policy E/9 is a site which conforms, in locational terms, to the spatial strategy and allocations within the SCLP. This does not include sites, such as the appeal site, which have no development plan support whatsoever. Policy E/9 does not therefore assist the appellant at all.[78]

101. The proposed development is in serious conflict with the strategy of the SCLP in terms of meeting and planning to exceed the need for new employment floorspace over the plan period, and in terms of planning for the delivery of floorspace in a flexible and forward-looking manner. The appeal site is unallocated and outside any location on which employment development is supported by the development plan. The proposed development conflicts with multiple policies of the SCLP and, as such, gives rise to a clear conflict with the development plan as a whole. As a result, and in accordance with the relevant

[75] ID20 Appendix and CD6.7A paragraph 8.4.
[76] CD6.7A paragraph 8.5.
[77] ID20.
[78] ID21.

statutory requirement, a presumption against the grant of outline planning permission arises.

102. The proposed development does not accord with an up to date development plan, so to grant outline planning permission would not amount to sustainable development for the purposes of the *Framework*, and planning permission should be refused.

Conditions and obligations

103. Conditions and a planning obligation are required in order to address matters which are necessary to make the development acceptable in planning terms. Conditions are agreed except for concerns about limiting occupiers to those within the AgriTech sector, and a review of the site wide sustainability strategy. It is common ground that that which is provided for within the obligation is necessary to make the development acceptable in planning terms, and otherwise meets regulation 122 of the Community Infrastructure Levy Regulations 2010.

104. The appellant has advanced its proposals as being necessary to meet the needs of the AgriTech sector. It seeks planning permission on that basis and, if its case in that respect is accepted, it follows that a control must be secured through the planning permission which limits future occupiers to those within the AgriTech sector. This much is common ground, but the difficulty which arises concerns how that control is to be expressed. In large measure this difficulty arises as a result of the lack of clarity on the part of the appellant as to what it means by "AgriTech" in the context of the appeal proposal and how it envisages the appeal site being populated.

105. The appellant has offered multiple definitions of "AgriTech" as it applies to the appeal proposals. In terms of conditions, three alternatives seem to be at large (Conditions 12a, b and c). None of these is sufficiently precise so as to be effective, nor indeed do they reflect the basis on which the appellant has advanced its proposals.

106. If planning permission is granted, SCDC considers that the only precise and effective means of control would be for any future occupiers to demonstrate to SCDC's satisfaction a need to locate on the appeal site, either by reason of an operational need to be located adjacent to fields in agricultural use or by reason of the need to be located together with other existing occupants. Thus, it is submitted, a condition in the form of suggested condition 12d should be imposed. Plainly, such an approach would require on-going input from SCDC. However, if (contrary to the SCDC's case) the appellant's justification of the need for the proposal is accepted, demonstrating compliance with the criteria within draft condition 12d should not be onerous. Conditions containing a substantively similar requirement for an occupier to demonstrate need have been used elsewhere by SCDC, consistent with development plan and national planning policy.[79]

107. For the avoidance of doubt, it is submitted that to seek to incorporate a condition in the form of condition 12a, b or c within condition 12d would not be

[79] ID45.

appropriate given that, by doing so, the same lack of precision and enforceability referred to in respect of condition 12a, b and c alone would necessarily arise.

108. The appellant resists as unreasonable any review of the site-wide Sustainability Strategy and targets in the event of the adoption of a new development plan. The development would be built-out over a period of up to 15 years, and it is likely that development plan policies (and indeed national planning policy) concerning sustainability targets, including the reduction of CO_2 emissions, will evolve and be modified during that period. Condition 54 seeks to achieve a review of the site-wide Sustainability Strategy and targets in the event of the adoption of a new local plan. Such an approach is not unreasonable given the long implementation. It would be necessary to ensure that the proposed development achieves its stated intention to be an exemplar of sustainability.[80] Any unacceptable implication to the development as a result of new policies, e.g. to scheme viability, would be capable of being addressed through the condition, and in particular through the entitlement to offer a justification as to why a revised Strategy and targets are not intended to be introduced.

Conclusions

109. For the reasons given, the Secretary of State is invited to refuse outline planning permission and to dismiss the appeal.

The case for interested persons opposing the scheme

The following persons appeared at the Inquiry objecting to the proposed development, and a summary of their submissions is included below.

110. Professor Brown (Hinxton Parish Council) [81] reiterated the Parish Council's written objections to the proposal, highlighting that the proposed business park would cover an area much the same as that of Hinxton village in open country fields. It would be deeply damaging to the landscape and environment of the village. Associated traffic would have a crippling impact on the economic life of the village. There is no justification for such a business park, with no relevant scientific expertise or substantial future tenants associated with its marketing aspiration of agricultural technology. The claim that alternative sites received detailed consideration is implausible. Hinxton has no principled opposition to employment growth and supported the Wellcome Genome Campus, but the appeal scheme is misdescribed and misplaced with wholly inadequate mitigation.

111. Cllr Peter McDonald (SCDC) [82] gave a local view with a perspective on agri-tech from working in the industry. Concerns were raised about the integration of the proposed development with key agri-tech players such as Rothamsted Research, NIAB, Ceres and large multinational companies. The companies that have indicated an interest in the proposal have limited synergy

[80] CD2.3 pp 68-68.
[81] ID3.
[82] ID25.

with others. Other areas such as the Elveden Estate between Cambridge and Norwich with proximity to the University of East Anglia and the John Innes Centre should be preferred. UK economic arguments for agri-tech are strong but this scheme has no involvement from Defra, Natural England (NE), or Cambridge University Faculty of Plant Sciences.

112. There would be no synergy with the Genome Campus, Babraham Campus or Granta Park, which focus on human health. The scheme predicts 4,000 jobs but long-established facilities such as NIAB, Rothamsted and Jon Innes only employ, respectively, about 200, 400 and 300 employees. The Genome Campus employs 1,500 scientists, is fully integrated into UK biomedical research programmes, and is managed by a Trust with full scientific governance. Whereas the appeal scheme would be managed by a commercial organisation with no scientific governance.

113. Rupert Kirby [83] is a local resident opposed to the scheme on highway grounds. He elaborated on his written submission concerning three main issues. The baseline data does not reflect the reality of existing traffic conditions. The main impact of the proposal would be on McDonalds roundabout. The appellant's survey of queues on a single day is a gross underestimate of the actual situation, as shown by data submitted by Hinxton Parish Council from January 2018 and May 2019. Congestion results in rat-running through local villages, which is demonstrated by Googlemaps routes. The aim to limit commuting by car to 50% of staff is over-ambitious in this rural location. Census data indicates that this is currently 79%. Notwithstanding that the appellant's assessment was modelled on "Business as Usual", public transport does not justify the proposed modal split. The Wellcome Trust staff use a number of free bus routes, and so 55% commute by car. This is markedly different to what is proposed in the appeal scheme. Even if staff of the proposed development used the shuttle from Whittlesford Parkway they would have to transfer to trains or a normal bus service. The proposed travel plan is far too ambitious for this location.

114. The modal split assumptions are allied with restricted parking provision. The proposed 0.5 spaces per employee would be equivalent to 1 space per 58 m^2 of floorspace, which would be very low in relation to comparative business parks. This would put the proposal at a significant disadvantage in terms of attracting tenants and finance, except for very low employment density occupiers. It would also result in 'fly parking' around the site in Hinxton, Duxford and in laybys on the A505 and A1301, with parking controls needed over a wide area.

115. Cllr Peter Topping [84] is district councillor for Whittlesford Ward and county councillor for Duxford Division. The proposal was unanimously opposed by Members of the Planning Committee. The proposal is outwith the SCLP, with wider economic interests for the area, or nationally, that would outweigh this objection. The proposal is not in the right place to support the relevant engine for growth in Cambridgeshire/Peterborough. The economic growth in and

[83] ID26.
[84] ID27.

around South Cambridgeshire is largely driven by knowledge-based research companies taking as their basis work done by the University in a spin-off effect.

116. Agriculturally based research is not opposed per se, but a location further to the north-east should be preferred. KWS seed development company is at Thriplow and the National Cereals Exhibition takes place at nearby Chrishall.

117. The highway improvements now agreed with CCC are welcomed, but concerns remain about the ability of the roads to cope with the possible influx of some 4,000 people, even though some may travel onwards from Whittlesford railway station by bicycle.

118. John F Williams [85] is a resident of Ickleton village who previously worked in the agricultural chemical industry and is concerned about the need for the proposal and traffic infrastructure. The normal definition of 'agri-tech' business is that which involves research or development activities associated with technical advances in agricultural production, with most involving field trials. However, other aspects of AgriTech involving research stages for new crop varieties, chemical and machinery/electronic development do not require fields. The appellant's intention is for a general business or science park and so should be rejected out of hand because it does not require agricultural land and is not an appropriate use for productive agricultural land. Agricultural land is precious and increasingly so will be needed for food production.

119. Problems of traffic congestion have been acknowledged by the appellant and improvements in infrastructure are proposed. However, congestion on the A505 has been going on for years with rat-running through villages. Improvement are sorely needed, but this does not justify the proposed development.

120. The whole of the area to the southern side of Cambridge is now subject to massive proposals for development, leading to suburbanisation of what has been an area of farmland and rural villages. The 'overheating' of the Cambridge region is very unsettling for people. The proposal should be rejected to preserve at least some of what little countryside may be left.

121. Cllr Aureole Wragg (Pampisford Parish Council) [86] opposes the proposed development on a green field site and on good agricultural land. The area is not designated for development in the SCLP and no mitigation measures would mitigate the loss of this land. An incursion into the Green Belt for the bus/cycle interchange should not have been considered. This part of South Cambridgeshire is an area of almost full employment, so 4,000 more jobs are not required.

122. Pampisford village is on higher ground and so suffers from noise from the A505. For long periods of the day there is stationary traffic through the whole parish from the A11 junction to the roundabout on the A1301, as well as from the direction of the railway station. This results in rat-running through local villages, particularly at peak times. None of the suggested road improvements

[85] ID28.
[86] ID29.

would alleviate the situation because of the increased traffic movements that would result from the appeal scheme.

123. Cllr Sian Wombwell (Ickleton Parish Council) [87] maintained the parish council's objection because the proposal would have severe and irredeemable adverse impacts on important open countryside in the locality, lead to a loss of valuable farmland, and increase traffic rat-running primarily via Ickleton and Duxford, but also Hinxton. The site is not allocated in the SCLP and the plan operates to protect the open arable fields and valued chalk landscape. The proposed mitigation by an earth bund is flawed because the bund would not entirely screen views of the buildings, and would itself have a severe and permanent impact on the open landscape.

124. The context of the listed Hinxton Grange would be lost, as would BMV agricultural land. The land is currently used to grow high value crops. The business case for the scheme is weak. There is no nexus of expertise or track record in AgriTech, with no partnership with or actual commitment from any plausible party engaged in AgriTech in putting forward the proposals. The use classifications sought by the appellant do not indicate anything other than a general business park, with the focus on commercialisation. There is currently ample provision of office, laboratory and associated commercial space on existing developments. There is no collaboration with Cambridge University regarding the CERES project, a research initiative involving agriculture, life science and existing AgriTech industries backed by Government funding. The appeal site is geographically distant from existing AgriTech concerns in the East of England.

125. Ickleton residents are most concerned about the implication for traffic, with the village experiencing around 4,000 vehicle movements each working day, the bulk of which are not generated by the 300 homes in the settlement. Most are displaced from congestion on the A505 and A1301. Little attempt has been made to study this rat-running, and the proposed mitigation measures are not believed.

126. The Wellcome Trust entered into a legal agreement when it owned the appeal site agreeing not to develop the site unless it was included in a Local Plan, without the agreement of SCDC, or under a Development Order, or in accordance with planning permission granted by SCDC. At the time local communities believed that the land subject to the agreement had been safeguarded as agricultural land in perpetuity.

127. Tony Orgee [88] maintained his objection to the proposal and addressed the FEI. With respect to the additional traffic modelling and revisions to the mitigation he raised two issues; the failure to deal with flows between junctions, and traffic movements at the entrance to the appeal site. The proposed mitigation would increase the capacity of a number of junctions, but in parts the A505 becomes one lane where backing up would result that would clog junctions. The mitigation includes traffic signals at certain junctions. But local examples of signalled junctions, such as the A1307, do not give cause for confidence. The appellant's assessment indicates that 1,156 cars would arrive

[87] ID30.
[88] ID31.

on site in the am peak hour, with 1,029 leaving in the pm peak hour. Backing up currently occurs at the single entrance to Granta Park, where there are only about 2,800 employees.

128. The additional viewpoints may not represent the enclosed feeling created by the bund for those walking, cycling or driving along the A1301. The restricted views would be a complete change from the present long distance views typical of this area of South Cambridgeshire. Irrespective of the ecological consequences of the proposal, the loss of high quality agricultural land, when there is an need to reduce food air miles and to live more sustainably, would be a retrograde step. The appeal site should be developed only when all other possible potential sites have been exhaustively researched and found to be less appropriate. Such a proposal should have been put forward for consideration in the local plan process, where, if a need was established, consultation could have taken place on a district-wide basis.

129. Dr Peter James (CPRE) [89] raised eight objections to the proposal. The site is in open countryside, is unallocated in the SCLP and would be contrary to SCLP Policy S/7. The proposal should have been raised as part of the local plan process and examined in the context of the district as a whole. SCLP Policy S/11 designated Hinxton as an infill village, which would only provide for a limited number of new dwellings. This is in stark contrast to the scale of the appeal scheme.

130. CPRE normally supports provisions for public transport, but does not believe it necessary to use 7 ha of Green Belt land in this case. The scale of the proposed development would itself have a negative impact upon the nearby Green Belt. The Cambridge Green Belt is small, narrow and highly vulnerable to any adverse impact. It is gradually being eaten away by development and may soon be difficult to recognise, which by then will be too late because the surroundings and character of Cambridge will have changed forever. Cambridge is an academic jewel in the national economy, whose future is increasingly threatened by over-development due to the thriving local economy.

131. Modern farming practices can result in large areas of intensive cultivation which are low in biodiversity. But this can be countered by providing wildlife friendly features, whereas improvements to landscape and biodiversity are not going to be achieved by erecting large buildings in the countryside and adding some park-like features. The undulating rural landscape around Hinxton is worthy of protection and should not be urbanised by a large cluster of buildings. CPRE is concerned about the loss of habitat, particularly for overwintering birds. The proposed mitigation measures would not be effective compensation.

132. BMV agricultural land is a national resource and its protection is becoming more important for a nation which imports nearly 60% of its food supply. Of the 40% of food grown in this country some 60% comes from the fens, which are now at high risk of permanent flooding due to climate change. Everything possible must be done to protect BMV agricultural land that is located on higher ground.

[89] ID37.

133. Despite the laudable intention to increase the use of trains, buses and cycles, the scheme would inevitably generate many car journeys that would affect local roads. This should not be considered as incremental change in isolation from other proposed development in the locality.

134. Light emitted from the proposed buildings and car parks would add to light pollution in this rural landscape, adding to the urbanisation of the landscape on the edge of the Green Belt. This would adversely affect wildlife and appreciation of the night sky.

135. There is concern that development of this scale would further increase flood risk locally and downstream in the River Cam, where other major development is planned.

136. This is a speculative development. None of those who have written in support of the proposal has clearly identified why this site is so significant and why alternative locations, such as Chesterford Research Park, or the new innovation centre at Soham, would not fit their needs. The primary objective of the scheme is to create opportunities for further development in the future. Calling this an AgriTech park is just a convenient cover story.

The case for the appellant

The following summary of the appellant's case broadly follows its closing submissions to the Inquiry, with additional reference where necessary to the evidence adduced.[90]

Introduction

137. The application is for a major development on a site that is not allocated for such development in the SCLP. But the SCLP allows for development of clusters to take place in appropriate circumstances. SCDC's refusal fails to recognise the power and importance of the policy drive to support the AgriTech sector that is clearly established at national and sub-regional levels. The SCLP does not mention the AgriTech sector. Yet it is of huge significance to the future of not only the sub-regional economy, but also to the UK's ability to compete effectively across the globe in this fast-growing sector. There are already a significant number of businesses and other organisations operating in the sector in the Cambridge area, and there is a real opportunity to build on these through the appeal development.[91]

The development

138. The AgriTech park would be the UK's first large-scale campus style development purpose-built to accommodate the needs of the fast-growing UK AgriTech sector.[92] It would assist in the achievement of a number of key, high-

[90] ID1 and ID69.
[91] ID32. There is agreement that "there are multiple departments at the University of Cambridge and many university related partnerships that undertake AgriTech research and other related activities".
[92] APP8.3 Appendix K paragraph K2.1.

level policy objectives that seek to place the UK in the forefront of the advances in agricultural technology that are needed to address effectively the twin global challenges of alleviating hunger and radically improving the sustainability of agricultural practices.

139. It would not be purely a research and development campus. Research is the basic science; development is using this to do something; innovation is the process of proving that the "something" works. Commercialisation is the successful production, marketing, sale and servicing of a range of things, including for example physical products, services or computer-related or other applications. The emphasis here would be on the commercialisation process.

140. Draft Condition 10 sets out the amount of permitted floorspace within each Use Class. Draft Condition 12a sets out the appellant's preferred version of the condition, which both parties agree would be necessary, that would restrict the use of the permitted floorspace to AgriTech purposes. This sets out the appellant's definition of AgriTech with clarity and certainty about the purpose and nature of the development and of the businesses and other organisations that would occupy the site.

Landscape and visual impacts

141. The original ES assessed the scheme's landscape impacts by reference to four character areas (L1–L4).[93] SCDC asked the appellant to consider introducing further character sub-areas, which resulted in the ES Addendum adding two character areas.[94] The landscape to the south of the A505 shares some of the characteristics to the north of the road. Viewpoint 6 in the ES Addendum shows common characteristics of the Granta Valley to both sides of the road.[95] But in any event, this is a non-point because the appellant's conclusions have not materially changed in the light of the additional assessment.[96] The respective positions of the landscape experts, both in landscape impact and visual impact, are set out in the table at ID40.

142. SCDC failed to take into account any of the planting that would be in place on completion.[97] The key difference between the experts relates to the development's impact in year 15. But SCDC has not in fact carried out a visual impact assessment at year 15.[98] Furthermore, SCDC wrongly increased its assessment of landscape sensitivity by reference to the fact that the application is in outline.[99] SCDC also wrongly ignored the secondary mitigation measures identified in the ES.[100] Taking the secondary mitigation into account in addition to the primary mitigation shown on the parameter plans does not amount to "double counting".[101] The methodology is entirely in accordance with

[93] CD2.4 paragraph 9.45 and Figure 9.10 (on which L1 is the site, L2 is the South East Clay Hills, L3 is the Chalklands, and L4 is the River Valley Landscapes. CD2.4 pp 9-14 to 9-18.
[94] ID44. CD12.1 pp 9 and 10 (L5 and L6). CD12.1 Figure 9.10A. Plan at ID40 shows L1–L6.
[95] CD2.12.
[96] CD2.12 pp 9 and 10.
[97] LPA3.3A Appendix 1 p 007 – "Day 1 – excluding proposed "soft" mitigation".
[98] LPA3.2 paragraph 9.18.
[99] LPA3.1 8.10.
[100] CD2.2 p 9-28 paragraph 9.54; and APP5.2.
[101] LPA3.1 p 55 paragraph 8.58.

GLVIA3.[102] SCDC considers that 15 years of mitigation would have no material effect in terms of either the scheme's landscape impact or its visual impact.

143. The appellant's analysis is carried out on a worst-case scenario in terms of building heights – i.e. on the assumption that the land profile would be maximised across the site (this could not happen in the real world as the cut and fill balance would not be achieved).[103] It also assumes that the buildings would all be built to their maximum heights (excluding point features). The assessment is therefore extremely robust.

144. Finally, with regard to cumulative impact, it is common ground between the parties that there is no need for the cumulative impact of any as yet unconsented schemes to be taken into account. If the position changes after the close of the Inquiry, e.g. if the Wellcome application is consented, it may be necessary for the parties to make further representations on this issue.

Heritage impacts

145. The most important elements of the setting to the significance of Hinxton Grange are the garden and the parkland. These comprise its immediate setting, with the agricultural fields beyond forming its wider setting. The garden and parkland would not contain any built development and would be the subject of restoration proposals. The Tree Report identifies which existing trees are dead, dying or dangerous and which are therefore appropriate for removal.[104] The proposed parkland restoration would be based on the historic map from 1886.[105] The orientation of the house, neither as proposed nor as built, provided a view down the avenue. As originally built, there were groups of trees that would have filtered the axial, or principal designed, view from the house through the garden and parkland and across the agricultural land beyond. Views from the house to the west would not therefore have been as open and relatively uninterrupted as they are now.[106]

146. It is also proposed to strengthen the existing hedgerow/woodland planting around the edge of the parkland, on its southern and western sides. Gaps would remain, including one for the proposed path from the south and another on the line of the axial view, beyond which it is proposed to create a square, with buildings beyond which would be orientated not across but along the axis.[107] The more open nature of the boundary of the parkland in its original layout would become more enclosed, significantly mitigating over time the impacts of the built elements of the development on the setting of the Grange.

147. The avenue is also part of the historic setting of the Grange and contributes to its significance. This is presently available for use by vehicles, and whilst it appears not to be much used at present this could change. Under the proposals it would be available for use (other than crossing it) by

[102] CD9.4 p 57 paragraph 4.2.1. CD2.2 pp 9-11 to 9-31.
[103] LPA3.3A Appendix 2.
[104] ID42. CD2.13 Plan 6. LPA4.2 paragraph 7.7.
[105] APP6.3 Figure 5 and Figure 3 LPA4.2 Figure 9.
[106] APP6.3 Appendix 4 plate 2.
[107] APP8.3 Appendix H. CD2.3 pp 64-65 Figures 41 and 42.

pedestrians and cyclists only. The view from the western end of the avenue to the north, towards the tower of Pampisford church would be unaffected by the development because the land immediately to the north of the avenue is proposed as a wetland area. The view at the western end of the avenue to the south, towards Hinxton church tower and spire, would be interrupted by the proposed bunding and planting on top. The buildings on both sides of the avenue are proposed to be set back from it. On the south side, there would be a minimum 50 m wide buffer, with "small scale buildings aligned perpendicularly to the avenue" and "large areas of linear open space permeating through built development".[108]

148. Such glimpses as there are of the Grange from the avenue before it reaches the parkland would not be interrupted by the proposed buildings.[109] The sense that the drive leads to and serves the house, rather than the development, would be retained. The proposed use of the parkland and avenue by the public would not cause any harm to heritage assets or their settings and would enhance the ability to appreciate those assets because more people would be able to see, experience and enjoy them.

149. The access to the northern cluster of development would cross the avenue in the location where a track currently crosses it, and at a point therefore where there is already a gap in the line of trees bordering the avenue. A few trees in this vicinity that are dead, dying or dangerous would be removed, and additional planting is also proposed in that vicinity. Assuming a pro rata distribution of car parking between the development clusters according to floorspace, the amount of traffic crossing into the northern cluster would be around one vehicle a minute on average in the morning and evening peaks, and about half that over a 12-hour day. It would however be possible to locate all or some of the parking that would serve that cluster to the south of the avenue, other than spaces for delivery vehicles and for disabled drivers, thus reducing the amount of traffic using the crossover.[110]

150. The significance of the Stable and Coach House lies in its relationship to the Grange, with which it has group value and to which it was designed to be subservient. The parkland and agricultural fields form part of the setting of the Stable and Coach House only in functional but not in visual terms. The building is not, and would not have been designed to be, readily discernible from outside its immediate courtyard.[111] The impact of the development would occur principally as a result of its impact on the setting of the Grange. The impact is agreed to be less than substantial, in the appellant's submission at the lower end of the range.

151. The significance of the undesignated pillbox lies in its role as part of the GHQ line that ran from the mouth of the Avon near Bristol, round London and

[108] CD2.3 p 79 Figure 51. However, it was clarified after the site visit at ID68 that the Landscape and open space parameter plan shows informal open space including planting extending between 33 m to 37 m to the south of the centre line of the avenue.
[109] APP6.3 Appendix 4 Plate 6 and LPA4.2 Figures 20 and 25 (views 3 and 8).
[110] Suggested Condition 37 includes "A review of parking to the north of the avenue" in the Design Guide.
[111] APP6.3 Appendix 3 Figures 2 and 4; Appendix 4 plates 3 and 4.

up via the Wash to Middlesbrough.[112] It seems likely that, being positioned alongside the track to Hinxton Grange, which was used as a military headquarters during WWII, it was intended to assist in the defence of the Grange itself. There is no evidence of a searchlight battery having been sited adjacent to the pillbox, but if this was so the proposed development would not undermine the ability to appreciate its role as part of the GHQ line, and in particular in protecting the Grange and the activities inside it. There is no evidence to suggest that the pillbox had any significant role in terms of defence of the river or, even less, Duxford airfield, which would have had its own defences.

152. The significance of Hinxton conservation area lies principally in the fabric of its buildings and the intervening spaces.[113] The village is surrounded by agricultural land and includes man-made features such as major roads and other infrastructure. The appeal site thus forms a small part of its setting. The proposed development would be visible from some places within the village, but the closest building would be around 0.5 km from the closest point of the conservation area. The harm to the significance of the conservation area as a result of the effect on its setting would be at the lower end of less than substantial.

153. The Parish Church of St Mary and St John the Evangelist lies some 800 m from the nearest of the proposed buildings. The appeal site lies within the wider setting of the Church, which in physical terms has broadly the same characteristics as the setting of the conservation area. The photograph from the top of the Church tower sheds very little light on the extent of the setting of the Church and the role that the appeal site plays in this.[114] The photo shows only a small part of the view, which is in any event not publicly accessible. The Church tower has a landmark function the setting of which would be affected by the proposed development, but its principal significance, which lies in its historic fabric and its status, would not be affected. The impact on the significance of the Church is therefore at the lower end of less than substantial.

154. It is necessary, in EIA terms, to assess the likely impacts of the development on a worst-case basis having regard to the submitted parameter plans. But the building blocks that are shown on those plans do not represent how in fact the development would appear in reality. For this purpose, regard should be had to the illustrative masterplan, which shows buildings set in an attractive and spacious parkland context with plenty of open space and a permeable development edge.[115]

155. In the case of all of the designated assets, it is agreed that the harm that the development would cause is indirect (that is, to the settings of the assets and not to the assets themselves), and the harm to the significance of the assets would be "less than substantial" in the language of *Framework* paragraph 196. In relation to the undesignated assets, it is agreed that there

[112] APP6.3 Map 7.
[113] APP6.2 paragraph 5.25.
[114] LPA4.2 Figure 31 view 14.
[115] CD2.3 p 83 Figure 53; p 80 text and Figure 52.

would be some harm to the setting of the parkland, and that there would be some direct benefits as a result of the parkland restoration proposals (though the degree of benefit is in dispute). The appellant's position is that there would be no harm to the setting of the pillbox. Historic England have no objection to the proposed development.[116]

156. If, giving particular weight to the less than substantial harm that the development would cause to the settings of the designated heritage assets, and giving weight also to the limited harm that would be caused to the setting of the parkland, it is decided that the public benefits would outweigh that harm, then there would be no conflict with *Framework* or SCLP policy, and planning permission could be granted accordingly.

Green Belt

157. The proposed works in the Green Belt would have an overall footprint of 1.865 ha. These would comprise 1.01 ha hardstanding (including the interchange), an earth bank (0.375 ha) and soft landscaping (0.48 ha).[117] In spatial terms, therefore, they would be very limited in extent. Bus shelters and secure cycle parking would be small and very limited in their visual impact. A correct analysis of *Framework* paragraph 146 must start from the premise that the category in question can be 'appropriate' development in the Green Belt.[118] Some degree of impact on openness and/or Green Belt purposes does not mean that it is, as a result of this, necessarily inappropriate. This is a matter of judgement for the decision-maker.[119]

158. The Green Belt works comprise transport infrastructure that would serve local needs, of both those working at and visiting the proposed development, along with local people walking/cycling in the area or who arrive at or depart from Whittlesford Parkway Station and would find it convenient to use the new facilities. The works would therefore promote sustainable transport in the local area, both to and from the development and more generally, in accordance with important objectives in *Framework* paragraphs 102(c), 108(a) and 110(a).

159. The type of works proposed are commonly encountered in the Green Belt. They would lie close to existing highways infrastructure along the A1301 to the west of the McDonalds roundabout. In the M1 junction 10A decision the Secretary of State agreed that the scheme comprised local transport infrastructure that required a Green Belt location, on the basis that the "scheme's objectives are all local and the improvements must be undertaken at and around the existing junction which lies in the Green Belt".[120] In the Cobham MSA decision, which concerned a proposal to add 79 HGV parking spaces to the existing MSA, the Inspector found that, whilst many HGVs using the MSA would be on longer than local journeys, there was nevertheless a need for HGV parking in the local area, and that this would "need to be local to the motorway". The Berry Hill decision concerned a proposal to construct a new access track and Bailey bridge to serve a sewage treatment works in the Green

[116] APP6.3 Appendix 2.
[117] ID54; APP7.3 Appendix F. CD12.2 Figure 9.45b indicates illustrative design for bridge.
[118] *Europa Oil and Gas Ltd v SSCLG* [2014] 1 P&CR 3 (at paras 64 and 65).
[119] ID72.
[120] ID63 DL10; ID60 DL8.

Belt. The parties had agreed that the development constituted "local transport infrastructure requiring a Green Belt location and involved engineering works".[121] The bridge was found to be not inappropriate development as it would not have compromised the openness or permanence of the Green Belt or any of the purposes of including land within it.[122]

160. In the Ouchthorpe Lane decision, the Inspector found that a proposed access road in the Green Belt, designed to serve a proposed development of 68 dwellings not in the Green Belt, was found not to be local transport infrastructure as the Government's intentions indicated by the Impact Assessment for the NPPF.[123] This Assessment referred to local infrastructure schemes that could be beneficial to communities in the Green Belt including for example, infrastructure to support more public transport, such as opening new routes, providing bus shelters and small public transport interchanges. This is apposite to the sustainable transport measures proposed by the appeal scheme, including those elements that would be sited in the Green Belt, since they would be beneficial to local communities and would support public transport by opening new routes.[124]

161. The Waterbeach appeal decision concerned the development of a private car park to serve the appellant's business. The Inspector thought that "local transport infrastructure" meant "those physical assets which enable people and goods to move about efficiently", and also referred to "facilities necessary to support communities and sustainable development through the movement and circulation of people and goods by various transport modes".[125] Again, the sustainable transport measures proposed in the Green Belt for the AgriTech scheme fully meet that Inspector's interpretation of what local transport infrastructure comprises.

162. The Green Belt works are an essential element of the proposed sustainable transport strategy, and there is no alternative location for them outside the Green Belt. Therefore, if it is decided to grant planning permission for the AgriTech Park, it must follow that a "a requirement" for the Green Belt works to take place in "a Green Belt location" has been demonstrated.[126]

163. The pedestrian/cycle/equestrian bridge, the northern end of which would lie in the Green Belt, would be provided in any event. However, it has been agreed that a contribution in lieu of the bus/cycle interchange and its access may be made in the event that the CCC requests it.[127] That eventuality would be likely to arise if a satisfactory and acceptable scheme emerges from the Whittlesford Parkway Station Masterplan Stage 2 Report, which the parties agree would also enable the objectives of the sustainable transport strategy for

[121] ID62 DL10.
[122] ID63 DL18.
[123] ID59 DL10.
[124] CD2.4.10 Plans 11 and 12 shuttle bus and diversion of the Citi7 service into site and also into Pampisford.
[125] LPA1.3 Appendix PJ1 DL8.
[126] ID24.
[127] S106 agreement Schedule 1 paragraph 7.

the development to be achieved.[128] The Green Belt works are compatible with a number of elements of the Station Masterplan proposals. They would also be "engineering operations" for the purposes of *Framework* paragraph 146(b).

164. The *Framework* envisages that certain types of development, for example engineering operations, local transport infrastructure, and development proposed under a Neighbourhood Development Order (NDO) of a sufficient scale to require planning permission can in principle be brought forward without harming the openness of the Green Belt. By way of example, the impact assessment for the NPPF envisaged schemes of up to 10 houses coming forward under NDOs without impacting on the openness of the Green Belt.[129] That puts the present case very much in context.

165. Individually and cumulatively the components of the Green Belt works would be small scale and low key. The bridge would be elegant, with SCDC being able to secure a high quality design through reserved matters approval.[130] The bridge would be elevated at the point where it crosses the Green Belt boundary.[131] This would allow views under the bridge, before it joined the earth banking further west, with the multi-user surface then running down along the earth banking and reaching grade a little over 100 m from the interchange.[132] The remainder of the multi-user route, connecting the interchange to the station and running north along the eastern side of the A1301, would also be at grade. There would be some built structures associated with the interchange, including bus shelters, bicycle storage/hire facilities etc. which would be no more than would be expected on any small transport interchange.[133]

166. In assessing the impact that development would have on the openness of the Green Belt it is necessary to take into account the 'baseline' situation, including buildings and other structures in the vicinity, both inside and outside the Green Belt. The proposed works would be seen in the context of existing highways infrastructure (i.e. the roads, signs and lighting columns), the BP filling station and the McDonalds restaurant. The remaining (majority) part of the new bridge would also be apparent. All of this would serve to limit views of the Green Belt works from viewpoints to the south and would serve as a backdrop to the Green Belt works in views from the north. Additionally, the Green Belt works would be sited at the very extremity of the Green Belt, reducing their impact on the wider Green Belt still further. Both in spatial and visual terms the Green Belt works would not harm the openness of the Green Belt. It therefore meets the "preserve" test set out in *Framework* paragraph 146.

167. Building in the Green Belt does not necessarily result in encroachment into the countryside. The Green Belt works would be small scale and low key, with much comprising open space. They would also be seen as part of the

[128] CD10.24.
[129] ID59 p 61 paragraph (iii).
[130] CD2.3 p 60; CD12.2 Figures 9.44-9.48; APP5.3 Appendix C.
[131] APP7.3 Appendix J.
[132] APP7.3 Appendix F.
[133] ID59 p 61.

existing transport infrastructure. The Green Belt works would not be seen as development that encroaches into the countryside.

168. There is no evidence to suggest that the Green Belt works would undermine the delivery of any derelict or other urban land. The Green Belt works cannot be located anywhere else (and obviously not on any derelict or other urban land), so building them could not sensibly be said to undermine the prospects of any derelict or urban land being brought forward for development.

169. SCDC also contends that the scheme would conflict with a "local purpose", that is to "maintain and enhance the quality of [Cambridge's] setting".[134] This is inconsistent with SCDC's acceptance that the scheme would not offend the equivalent criterion in the *Framework* paragraph 134(d), "to preserve the setting and special character of historic towns". But the site is 8 km from the edge of the city, with no intervisibility, and no suggestion that there are any locations from where views of both the city and the site could be obtained. The Green Belt works fall within *Framework* paragraph 146(c).

170. Should it be concluded, contrary to these submissions, that the infrastructure works in the Green Belt comprise inappropriate development, then the appellant submits alternatively that VSC exist that justify the grant of planning permission.[135] The proposed Green Belt works would facilitate the development and are necessary for it. On that assumption, the VSC lie in the need for a bespoke AgriTech park in this location and the huge benefits that it would bring in terms of meeting key policy objectives and enabling the UK economy to compete effectively in this rapidly growing sector. Also relevant are the public benefits that would arise from the sustainable transport strategy and the net biodiversity gain.[136] They are, in other words, the material planning considerations that weigh strongly in favour of granting planning permission for the development.[137]

171. The Green Belt works would not be inappropriate development because (a) they would comprise local transport infrastructure that can demonstrate a need for a Green Belt location, (b) they would not harm the openness of the Green Belt, and (c) they would not conflict with any of the purposes for which land is included in the Green Belt.

Transport impacts

172. All transport-related matters have been agreed between the appellant and the two highway authorities following a rigorous and thorough assessment which demonstrates that the impacts are acceptable. The wide-ranging sustainable transport strategy can be delivered comprising a number of elements, including the multi-user route from Whittlesford Parkway Station to the main site, bus service improvements, and the implementation of a

[134] LPA1.2 p 35 paragraph 7.60.
[135] CD6.3 paragraph 144.
[136] The Habitat Impact Assessment Calculator at ID41 for woodland, grassland, wetland and other habitat including the built environment records a net score of +32.15 (derived from a losses score of 171.22 and gains score 203.37) with a hedgerow impact score of +9.94.
[137] APP8.2 paragraphs 5.5.15 and 6.6.4-6.6.12.

Framework Travel Plan, a Parking Management Plan and a Monitoring Plan, along with sufficient cycle and car parking.[138]

173. The target mode shares, whilst ambitious, are achievable and realistic, and consistent with what is already being achieved locally at the Wellcome site.[139] The proposed off-site highways works would accommodate, on a Business as Usual (and therefore reasonable worst-case) basis, the traffic that the development would generate, such that delays and queuing on the local and strategic road network would reduce compared to the existing situation. Using the target mode shares, there would be further improvements at these junctions compared to the existing situation. Sensitivity tests show that, with the Wellcome expansion and the North Uttlesford Garden Village (NUGV), neither of which is yet committed, the proposed highway works would still reduce delays compared to the baseline position at all the junctions assessed.[140]

174. All the proposed measures would be secured through appropriate and agreed planning conditions and obligations.[141] The multiuser bridge and the improvements to the McDonalds roundabout would be provided in any event, but the planning obligations allow CCC to require a financial contribution to be made in lieu of (a) the bus/cycle interchange and (b) the improvements to the Hunts Road and Moorfield Road junctions.[142] If exercised, this option would provide for up to 10,000 m^2 of floorspace to be occupied, at which point CCC must commit either to undertaking those works or alternative works or releasing the bonds, in which event the appellant would carry them out. Thereafter, the works must be completed before any more than 25,000 m^2 of floorspace could be occupied.

175. The Secretary of State will need to be satisfied, on the basis of CCC's Compliance Statement, that the provisions relating to CCC's ability to choose whether to require the appellant to pay a contribution in lieu of undertaking the works identified at (a) and (b) above − meet the requirements of regulation 122 of the CIL Regulations and *Framework* paragraph 56. On this, the appellant makes no submissions either way, but if it is decided that they do not meet those requirements, the obligations make provision for all of the works to be completed before first occupation of the development.

176. Essex County Council seeks a contribution of £2.5 m to the cost of a pedestrian and cycle bridge linking the appeal site to the proposed NUGV.[143] This should be given no weight because it lacks any justification whatsoever. The NUGV is at an early stage and the link is not required in order to make the AgriTech development acceptable. No justification is provided by reference to any Essex policy or guidance relating to financial contributions that are required

[138] APP7.2 paragraph 4.4.
[139] CD2.4.10 p 54 Table 4.1: 50% vehicle driver, 10% vehicle passenger, 40% bus/rail, 7% cycle, 3% on foot APP7.2 section 6.
[140] APP7.2 paragraphs 6.71-6.74 (including Tables 6.16-6.21).
[141] Grampian conditions cover the works to form the site access roundabout junction with the A1301; and the works to Junction 10 of the M11 and the A11/ A1307 junction.
[142] S106 agreement Schedule 1 paragraphs 7 and 9.
[143] ID18. The 10 June request for an education contribution has not been pursued.

to be made before planning permission is granted, and the amount sought is not justified by reference to any costings or other relevant material. Nevertheless, the appellant recognises the desirability of a link between the developments should NUGV proceed, and so would enable a link to be provided from its land.[144]

177. The expert evidence submitted addresses all transport-related issues raised by third parties.[145] The use of a single survey to establish baseline conditions is normal practice and has never been questioned by either of the highway authorities. The information provided by third parties about baseline traffic conditions is inconsistent and unreliable, as the basis on which it has been collected is unclear. The days appear to have been randomly selected, and it is not known whether it was decided not to record data from the days on which there was less traffic. There is journey time information for a single whole week in May 2019 which shows a consistent pattern of some, but limited, delays in the morning and evening peak hours compared to the free flow journey time.[146] The delays recorded on 16 January 2019 were exceptional and coincided with the closure of the M11.

178. The third party evidence fails to address the future situation with the development and its associated transport measures (including the junction improvements) in place, when assessment shows that delays would reduce at all the junctions assessed. The mode share targets are realistic and achievable, and so the development would be very unlikely to lead to increased rat-running or off-site parking in local roads.[147] These are matters which could, if they arose, be effectively addressed through the Monitoring Plan.[148] It is lack of junction, and not link, capacity that causes current congestion in peak hours. The appeal proposals would improve junction capacity. The new site access junction has been fully considered on an unrealistic worst-case basis, and it would operate entirely satisfactorily.

179. In conclusion, the *Framework* provides that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. The proposed development would not have any adverse effect on highway safety, and the residual cumulative effects on the local road network (including the M11), far from being severe, would in fact be beneficial.

Agricultural land

180. The proposal would result in the loss of 33 ha of BMV agricultural land. SCLP Policy NH/3 provides that planning permission will not be granted for development which would lead to the irreversible loss of BMV agricultural land unless sustainability considerations and the need for the development are sufficient to override the need to protect the agricultural value of the land. The

[144] S106 agreement Schedule 1 paragraph 11.
[145] APP7.2 section 8; APP7.4 section 4; APP/7.5.
[146] APP7.4 p 7 paragraph 4.16 and Table 4.1; the week is representative, not being a Bank or school holiday week APP7.5 paragraph 2.8.
[147] APP7.4 sections 3 and 4.
[148] APP7.4 paragraph 4.5.

policy does not require the development to be for the purposes of agriculture. The very focus of this development is to improve agricultural productivity and sustainability across the UK and internationally. If it achieved that purpose the development would be compliant with SCLP Policy NH/3.

Economic impacts

181. It is highly significant that the SCLP does not mention the existence of an AgriTech sector in the Cambridge area or the need to support it by making land available for development. The first recognition of the existence of AgriTech as a separate sector of the UK economy was in the Government's UK July 2013 Strategy for Agricultural Technologies.[149] This noted that the full economic potential of the sector was only just starting to be understood, and believed it had major value to the UK and global agriculture and that the UK's competitiveness in agriculture had been in decline for a number of years.

182. In September 2014 the Greater Cambridge Greater Peterborough Enterprise Partnership published its Strategic Economic Plan, which under the heading "Internationally Competitive/Nationally Significant" the Executive Summary included "A leader in AgriTech, underpinned by the highest concentration of best quality farmland in the UK".[150] The Plan also noted that innovation centres and science parks could provide supportive environments for SMEs, and had a number of characteristics, including that physical clustering of organisations made it efficient to deliver business support services in one location.[151]

183. In 2015 the London Stansted Cambridge Corridor Sector (LSCC) Profile "Agrifood" noted that Agrifood employment in the Corridor had grown by 26% over the previous 4 years, that East Anglia contained some of the most productive agricultural land in the UK, and that there were a number of world class research institutions in the area. AgriTech East was the UK's first business-led AgriTech cluster organisation, and included a summary of the UK Strategy for Agricultural Technologies.[152] In July 2016, the LSCC Growth Commission published its Findings and Recommendations, which noted that London, Cambridge and the Corridor competed for international investment and jobs that would otherwise go overseas, and included the ambition that by 2036 the Corridor would be "the leading technology region in Europe" and "the prime location choice for tech and life sciences firms looking to locate in the UK".[153]

184. None of these ambitions and objectives as they related to AgriTech found their way into the SCLP. Subsequent documents were not considered during the plan preparation process.[154] Not only are the needs of the AgriTech sector not acknowledged, provided for or considered in the SCLP, but if (as SCDC suggests) those needs can be met on existing and allocated sites, which the appellant does not accept – then that is a happy coincidence and emphatically not the result of any proper assessment of those needs and the taking of steps

[149] CD7.2 p 14.
[150] CD7.8.
[151] CD7.8 pp 50-51.
[152] CD7.9 sections 2 and 4.
[153] CD7.10 pp 3 and 28.
[154] ID20.

to provide land to meet them. The SCLP is therefore not out of date so far as provision for the AgriTech sector is concerned; rather, it has failed to make any provision. In those circumstances, the development control system can, and should, step in to ensure that the needs of the sector are properly met.

185. The appellant has set out a full explanation of the nature and importance of the AgriTech sector and of the nature and scale of the global hunger and sustainability challenges which it is helping to meet.[155] This also includes a comprehensive account of the planning and economic policies which seek to promote the AgriTech sector in the UK in order to restore the UK's competitiveness in agriculture.[156] The following highlights key elements of policies that bear especially on the importance of the AgriTech sector to the UK, but more specifically to Cambridgeshire.

(i) UK Industrial Strategy: "We will put the UK at the forefront of the global move to high-efficiency agriculture".[157]

(ii) Technology and Innovation Future: "Convergent technologies [in food] have clear potential to improve productivity of UK farming and its contribution to the economy".[158]

(iii) East of England Science and Innovation Audit: four themes, of which one is Agri-Tech; "the East of England innovation ecosystem is world-leading, but it needs to continue to evolve rapidly – and it must be empowered and resourced to do so"; recognition of benefits from co-location and clustering and need to make "appropriate physical provision … to unlock a future growth dynamic".[159]

(iv) CPIER Key Recommendation 3 that the Government "should adopt a 'Cambridge or overseas' mentality towards knowledge-intensive business in this area"; under "Sector in Focus: AgriTech" reference to AgriTech as "one of the four pillars for East of England for knowledge-led growth", this being a "Cambridge-based cluster" with the need to "support new production clusters close to concentrations of agricultural production"; "There is a real opportunity for the area to become an international leader in this sphere, both in innovation and application".[160]

(v) Cambridge and Peterborough Local Industrial Strategy: under AgriTech, "Our region is poised to become the UK capital of this industry".[161] There is huge, untapped potential opportunities in the Fens and across the area for growing and strengthening this sector specialism, and by creating better connections with local clusters in clean growth, advanced manufacturing, artificial intelligence and machine learning. It aims to establish our position as the UK capital of AgriTech, and states that AgriTech is one of the strategic growth

[155] APP2.2 section 2.
[156] APP2.2 section 3.
[157] CD7.3 pp 47 and 75.
[158] CD7.4 p 20.
[159] CD7.5 pp 2, 8 and 9.
[160] CD7.11 pp 11 and 57.
[161] CD7.12a March 2019 draft. CD7.12b published July 2019.

sectors which does not yet have central agglomerations which will be a key ingredient in its future success.[162]

(vi) Partnering for Prosperity – A new deal for the Cambridge-Milton Keynes-Oxford Arc refers to knowledge-intensive firms and technology clusters which compete on the world stage to maximise the economic potential of this arc and the contribution it makes to UK output, trading accounts and tax revenues. The Government response refers to the Arc being home to world-leading technology clusters which influence and shape the innovation economy.[163] Government ambition for the Oxford-Cambridge Arc is to build upon strengths in individual parts of the Arc, especially in science, technology and high-value manufacturing, to transform the Arc as a whole into a world-leading economic area and to broaden the economic base of Cambridgeshire and Peterborough, by expanding its key industrial sector clusters and networks, and by improving the long-term capacity for growth in Greater Cambridge.[164]

(vii) Growing the Bioeconomy: "Our vision is that in 2030 the UK is a global leader in developing, manufacturing, using and exporting bio-based solutions"; "The global market for agricultural biotechnology is set to grow from £22 bn in 2016 to £40 bn by 2022".[165]

(viii) Cambridgeshire and Peterborough Combined Authority's Assurance Framework: "Agri-Tech is one of our strategic growth sectors identified by the CPIER; our ambition is to use the Local Industrial Strategy to step up our programme to ensure we are the 'go to' centre for UK Agri-Tech".[166]

186. These, taken individually and together, represent a very powerful statement, at the highest levels, of the importance to the UK economy of building on the existing AgriTech sector in the Cambridge area. The importance of taking action now to help achieve these policy aims can hardly be overestimated. Yet the SCLP manifestly fails to make any positive provision for AgriTech development. The SCLP does indicate that it "provides more flexibility than recent past policies as part of delivering the objective to support economic growth by maintaining South Cambridgeshire's position as world leader in research and technology based industries, research, and education by continuing to support proposals that build on the successful employment clusters".[167] But in the light of this it is even more surprising, and unsatisfactory, that this is not taken forward into specific provision for AgriTech.

187. There is ample evidence which demonstrates that the AgriTech sector has been experiencing high levels of growth, and that this is expected to continue, both in the UK and worldwide. Agriculture is expected to be one of the fastest growing sectors in adopting the Internet of Things, with an anticipated

[162] CD7.12 pp 18-19 pp 35-36.
[163] CD7.13 p 7, CD7.14 pp 1 and 2.
[164] CD7.27 pp 7 and 23.
[165] CD7.22 pp 13 and 52.
[166] CD7.32 p 16 paragraph 3.3.23.
[167] CD6.7A paragraph 8.5.

compound annual growth rate of 22% between 2014 and 2024.[168] The European AgriFood Tech Investing Report for 2018 (published in 2019) shows that, since 2013, when the UK Strategy for AgriTech was published, annual global venture capital investment in AgriTech has grown by 360%, and that compared with 2017 upstream investment grew by 200%.[169] AgriTech is a vibrant and rapidly growing sector which is attracting substantial new commercial investment.

188. SCDC relies on BIS Research Paper No 284 "Agri-Tech Industrial Strategy: Evaluation Scoping Study and Baseline".[170] This was published in July 2016, based on data collected in 2013 and 2014, which makes the document somewhat dated. It does not represent Government policy, planning or otherwise. In any event, its first objective was to provide an informed view of how the sector might develop without the Strategy, so the document therefore has no value as evidence of how the AgriTech sector may grow in line with the objectives set out in the Strategy.

189. The appeal site is ideally placed to make a major contribution to meeting these aims and objectives. It falls within all four of the strategic policy designations where a very strong emphasis is placed on the need to sustain and strengthen economic growth, including in the AgriTech sector.[171] It is easily accessible to Stansted Airport, London and Cambridge, by road and by rail. It is also geographically within the existing clusters of research/technology and business parks that exist around Cambridge, and more particularly within the southern bioscience cluster. The 'Cambridge cluster' may be taken very broadly to include an area of about 20 miles around the city, but in terms of the reality on the ground, and the commercial market, there are three distinct clusters, each with a distinct character and function.[172]

190. There is clear empirical evidence of the importance of clustering to the growth and success of knowledge-based businesses. SCDC's case seems to be that AgriTech businesses have prospered in the Cambridge area in the absence of a dedicated site. But this quite misses the point. The presence of a significant number of AgriTech businesses and other organisations in the Cambridge area is the result of the strong draw of the area, which derives from a number of factors including its strategic location, the presence of Cambridge University and of the bioscience and the electronics/digital/ICT clusters, and the availability of venture capital funding and a nationally significant cluster of business support services for high growth technology companies.

191. There is powerful and convincing expert evidence about the benefits of clustering, and how this has been a key factor in achieving strong growth in other sectors of the economy. A single large bespoke site for AgriTech is what is required if policy ambitions are to be achieved. Furthermore, it cannot be inferred from the existence of a number of AgriTech businesses in the Cambridge area that they are all prospering as well as they might be had they

[168] APP2.2 paragraph 2.2.6.
[169] APP2.2 paragraphs 2.2.9-2.2.11; CD7.31.
[170] LPA2.5 Appendix A.
[171] APP8.3 Appendix D. ID22. CD7.13 p 21 Figure 1.
[172] APP4.2 paragraphs 4.28-4.31.

been able to enjoy the benefits of clustering on a single site. Not all of the space that is currently occupied by AgriTech businesses is particularly well-suited to use for that purpose.[173] The units that would be available in the appeal development would, by contrast, be specifically designed for such businesses. Support from existing businesses is very clear about the benefits that the development would bring to the AgriTech sector, including access to and collaboration with the AgriTech community that would establish itself there.[174]

192. The proposed incubator units would provide ideal space for AgriTech start-up companies. These businesses would be able to grow into larger premises within the development. There is no likelihood of as much as 3,000 m^2 of new incubator space being developed on one site in the future, and certainly not one dedicated to AgriTech start-ups. The early provision of the incubator space would therefore be particularly important because it would enable start-up companies in the AgriTech sector to come into being and then survive the challenges of the first few years of operation. Without a critical mass of commercial space, a stand-alone incubator would not be financially viable without public sector support.

193. A key aspect of clustering is the way in which co-location allows businesses and other institutions that operate in the same sector to collaborate and draw on each other's knowledge and expertise. This is a very well-established phenomenon and is something that is recognised and encouraged by policy. Access to the best scientific talents as well as to complementary skills offered by workers in allied fields such as computer sciences and engineering is also critical. The proposed development would have all of these attributes.[175]

194. There is no evidence that the presence of a "virtual cluster", in the form of various networking and other similar organisations, is any substitute for physical proximity.[176] Indeed the evidence is clear that co-location is essential if the beneficial effects of clustering are to be fully and properly realised. The creation of a pool of specialised skills and labour resources creates clear benefits for both employees and employers. Businesses benefit from the sharing of information, knowledge and material inputs such as R&D outcomes, infrastructure and specialised equipment and facilities. Close proximity of businesses speeds up this process of "creative collisions". Clustering around universities and research institutes helps to deepen and accelerate the development of new knowledge and scientific discovery. Clustering also means that the commercialisation process is likely to be more effective. Thus, the co-location of businesses and research activity in the AgriTech sector at a single site would result in the sector being more competitive and successful in the longer term compared to a dispersed model.

195. Absent a dedicated AgriTech site the future growth of AgriTech in the Cambridge area would be significantly constrained, and it is likely that much of

[173] ID32 p 2.
[174] CD4.1.
[175] ID11.
[176] ID33.

the AgriTech-related business activity that would otherwise have taken place in the Cambridge area would instead go to locations elsewhere in Europe, the USA or the Far East.[177] The AgriTech park would be able to draw on the expertise base in and around Cambridge.[178] AgriTech will move towards inter-disciplinary solutions which require the combination of multiple technologies. It is unsuitable for locations which only specialise in agri-science, but very suitable for Cambridge which provides a wealth of enabling technologies including engineering, ICT, data, physics, chemistry and environmental sciences as well as plant and crop science.

196. A further advantage of the appeal site is that it would enable businesses and other organisations based there to have access to agricultural land for crop and seed trials and other activities that involve the trialling of new agricultural methodologies, technologies and practices. For that purpose, at least 10 ha of land would be set aside within the appeal site.[179] There is also other adjacent and nearby agricultural land within the appellant's ownership that has already been used for crop trials on a substantial scale and could be used for that purpose in connection with the proposed development.[180]

197. Much of the trialling work for new technologies and techniques, rather than "traditional" crop and seed trials, which are often undertaken on a large scale, will not require large amounts of land and would be able to take place within the appeal site. Not just on the 10 ha, but also on land that would be available between the buildings. In many cases only small areas of land are needed. But businesses along the supply chain need to work together for a cluster to work effectively and access from benchtop to field scale land is essential. For many trials (such as robotics) there is a need for the personnel to be close to the workshops, as access to the trial plots is often required a number of times each day. If parts of the AgriTech market are driven away because of lack of field trial access, the whole cluster effect would inevitably be devalued.

198. There are many examples of locations where agricultural research is undertaken on land that is adjacent, or very close to, the organisation's premises. In the UK these include; NIAB [181], Rothamsted Research in Hertfordshire [182], Peatlands Science Park in Scotland [183], and Syngenta near Bracknell [184]. The appeal site was not suitable to accommodate NIAB's requirement for a new field trial station, but NIAB's letter of representation makes it clear that "ideally the fields used for the trials should be nearby".[185] The exemplar sites from abroad are also of key relevance because they

[177] APP3.2 paragraphs 5.41, 5.69-5.78, and 6.17-6.20.
[178] APP2.2 pp 48-53 section 4.4.
[179] CD2.3 p 36 Figure 20.
[180] ID16. CD2.2 (the blue land is other land within the appellant's control).
[181] ID47 and ID57.
[182] ID36.
[183] APP2.2 paragraph 2.4.5.
[184] APP2.2 paragraphs 2.4.6-2.4.7.
[185] LPA2.3 Appendix C paragraph 8.

demonstrate the success of large, inter-disciplinary clusters which draw on a wide range of new agricultural technologies.[186]

199. There is no alternative to the appeal site if the appeal development as proposed is to be accommodated on a single site. If it is accepted that a single site dedicated to AgriTech is what is required, that is an end of the matter. The appellant undertook an alternative sites assessment which was updated for the purposes of the appeal.[187] SCDC has criticised the 50 ha site size criterion, but this is an appropriate basis for this exercise. In any case, SCDC has not suggested any site that might be suitable and available for the appeal development, either in South Cambridgeshire, the wider Cambridge area or the search area that was chosen for the alternative sites assessment. Elveden has been mentioned as a possible alternative location for the appeal development. However, it lacks the appropriate infrastructure and is about 30 miles from Cambridge, which is well outside the area of the Cambridge clusters.

200. SCDC considers that there is ample employment floorspace and land (including allocated sites) on which the demand from AgriTech organisations could be met. There is no substantial dispute about the quantum of available floorspace and land.[188] The dispute is about whether that floorspace and land is or would be suitable not merely to accommodate the demand for it, but also to provide the right type of accommodation in the right environment so that the policy ambitions for the AgriTech sector can be met.

201. Existing business parks are also unlikely to accept AgriTech occupiers on a scale that would allow the benefits of co-location and collaboration to be realised.[189] At Cambourne Business Park the land to the south of the access road that is now (largely) allocated for residential development has been available for commercial development for over 20 years but has not been taken up because of its poor location. What remains is unlikely to be attractive to AgriTech operators.[190] At North East Cambridge the AAP is not due for adoption until 2022, and there is an issue concerning the relocation of the existing sewage treatment works that is not yet resolved.

202. Savills do not have a register of AgriTech occupier requirements because they do not have a scheme to offer to the market. Nor are they aware of any such requirements for the space that they are marketing in the southern and northern clusters, either because they would not be likely to be welcome in those locations or because the space is in any case not suitable for or attractive to them. General requirements in these specialist sectors are rarely registered; more typically prospective occupiers will register interest in a specific location but only once this has planning permission.[191]

203. Future tenants are not known at this stage because there would be a 10-15 year time horizon to develop the park fully and because of the speed at which AgriTech is developing. Many of the technologies have not yet emerged

[186] APP2.2 paragraph 2.4.4. APP2.3 Appendix 2. ID11.
[187] CD2.5 section 5 Appendix D. APP8.3 Appendix J.
[188] APP4.2 paragraphs 5.10-5.13 and 6.3, as updated by ID38.
[189] APP4.2 paragraph 6.7.
[190] Plan attached to ID46.
[191] APP4.2 paragraphs 6.9-6.11.

or been commercialised. This has been true of the other business parks developed in the past for the technology and life sciences sectors. Inward investment, and new start-ups and spinouts not currently active in the UK, would be attracted to the AgriTech park over time. Any attempt to base an assessment of demand only on AgriTech businesses that are already in the area is thus fundamentally flawed.

204. The quantified economic benefits of the development have not been challenged.[192] This includes an assessment of displacement effects. The net employment supported by the project (after completion) at regional level is estimated at 4,887 jobs, with a GVA p.a. (at 2018 prices) of at least £278 m.[193] SCDC questions this only on the basis that the floorspace proposed in the development could be provided in a disaggregated manner across a number of sites elsewhere. The appellant fundamentally disagrees with this, and the quantified benefits are real and significant weight should be attached to them.

205. The case for the development of a dedicated AgriTech park is therefore very clear, and there is no prospect of the need being met other than on the appeal site, which, with its distinct locational and other advantages, is ideally placed to do this. The need already exists and should therefore be met as soon as possible. There is no sound reason to delay the decision on whether the site should be released until the Local Plan review. The need can be met at the appeal site consistently with the development plan and with only limited adverse impacts (on the landscape and on heritage assets). There is no preferable alternative site on which the need could be met, and delay would mean that inward investment would be lost, and the UK would fall further behind in terms of its international competitiveness in agriculture and AgriTech.[194]

Development plan

206. The proposed development complies with the development plan. As such, the development should be permitted unless material considerations (i.e. the factors that are relevant to the determination of the appeal other than the development plan) indicate (i.e. justify) the appeal being determined other than in accordance with the plan. The appellant's position is that all the material considerations before the Inquiry lend further support to the case for planning permission to be granted.

207. If, contrary to the appellant's case, the Secretary of State was to conclude that the proposed development would not comply with the development plan, the appellant's position is that the same material considerations would strongly justify the grant of permission other than in accordance with the plan.

208. The proposed development would comply with the objective of Policy S/1 for South Cambridgeshire "to demonstrate impressive and sustainable economic growth"; the objective of S/2(a) "to support economic growth by supporting South Cambridgeshire's position as a world leader in research and

[192] AAP2.2 p 44 section 4.2. APP3.2 p 35-39 section 5.4.
[193] APP3.2 p 39 Table 5.2.
[194] APP8.2 paragraph 6.6.12.

technology based industries, research, and education, and supporting the rural economy"; and the objective of Policy S/5 to create 22,000 additional jobs over the plan period "to support the Cambridge Cluster and provide a diverse range of local jobs".

209. Furthermore, and importantly, the proposed development would accord with Policy E/9. This policy supports development proposals in suitable locations which "support the development of employment clusters, drawing on the specialisms of Cambridge in a range of sectors listed in the policy as well as "other locally driven clusters as they emerge". AgriTech is not one of the named sectors in the list. The supporting text states that Policy E/9 deliberately provides flexibility by supporting the development of new locally driven clusters where they emerge. The policy has been carefully drafted to refer to "suitable locations". SCDC is wrong to contend that "suitable locations" means "existing businesses located in the rural areas, established employment areas, allocations and within development Frameworks".[195] SCLP Policy S/7 allows development outside development Frameworks "which needs to be located in the countryside". Or, putting it another way, if SCDC's argument was right then Policy E/9, which is the very policy in the SCLP designed to support clusters, would rule out clusters coming forward in the countryside even if they could demonstrate a need to be there.

210. The problem with SCDC's interpretation and application of Policy E/9 in the present case is that it flies in the face of the *Framework* and of the approach that it says the SCLP takes. If SCDC's interpretation and approach are right, then for AgriTech; (i) the SCLP would in fact have no flexibility to respond to the rapid changes that have taken place both to policy and in terms of the sector's rate of growth; nor (ii) would the SCLP have made appropriate provision for AgriTech to emerge and develop over the plan period. Plainly, then, SCDC's reading of Policy E/9 is wrong. In this context "suitable" simply and obviously means "suitable, taking into account all other relevant policies in the plan". For the reasons set out in the appellant's evidence, the appeal site is incontrovertibly a suitable location for the proposed development.

211. On this basis the proposed development would accord with Policy NH/8. But even if (contrary to the appellant's case) the Green Belt works would be inappropriate development in the Green Belt the wider public benefits of the overall scheme (i.e. the creation of a world-class AgriTech park with all the economic, environmental and social benefits it would deliver) would clearly constitute the VSC necessary to justify the grant of planning permission. On either scenario the proposed development would therefore accord with local and national Green Belt policy.

212. Similarly, with regard to the protection of heritage assets, it is common ground that the proposed development would cause less than substantial harm to a limited number of designated heritage assets, which must be weighed against the public benefits it would deliver. Policy NH/14 does not expressly contain an equivalent provision but plainly the same approach must be taken if the policy is to be applied in a way that is consistent with national policy. The benefits that the proposed development would deliver very heavily outweigh

[195] APP1.2 p 26 paragraph 7.13.

the harm that it would cause to heritage assets. Harm to undesignated assets is justified here. On this basis, the proposed development would accord with both national and local policy in relation to the protection of heritage assets. With regard to landscape and visual impact, SCDC's analysis is flawed and the proposed development would comply with Policy NH/2. It is common ground that the scheme complies with the SCLP's transport Policies TI/2, TI/3 and TI/8.[196] The public benefits that the scheme would deliver would very heavily outweigh the loss of agricultural land in this case, so the proposal would comply with Policy NH/3, which allows BMV agricultural land to be lost where "sustainability considerations and the need for the development are sufficient to override the need to protect the agricultural value of the land".[197]

Conditions and planning obligations

213. The following user restriction would be sufficient to ensure that occupation was restricted to AgriTech companies:

The B1 floorspace hereby approved shall be used for no purpose other than AgriTech namely the science-based and/or technology-based development of products, services and applications that are designed to improve yield, resource efficiency, sustainability, health and profitability in agriculture, horticulture and the food chain.[198]

214. This would provide adequate safeguards, requiring all occupiers to be engaged in AgriTech. It is precise, reasonable and enforceable, and would therefore be effective to ensure that the development was only occupied by organisations that are genuinely undertaking activities in the AgriTech sector. SCDC's complaint that the concept of AgriTech is nebulous is odd, given the Government's recognition six years ago of AgriTech as a discrete sector of the economy.

215. SCDC wants an additional level of control, namely that each occupier should have to demonstrate a need to occupy space at the AgriTech park, either by virtue of the need to be in proximity to the agricultural land available for crop and technology trials, or by virtue of the need to co-locate with other AgriTech occupiers. This is not necessary. There is no policy requirement for a needs test.[199]

216. SCDC's submission that, absent a needs test, all of the use class B1 floorspace could be used for manufacturing is wholly unrealistic and unlikely to happen. In any event, the imposition of a needs test would overcome SCDC's objections to the way in which the AgriTech user restriction is drafted.

217. If the Secretary of State considers, contrary to the appellant's submissions, that a needs test meets the *Framework* tests then the appellant proposes the following wording:

The B1 floorspace hereby approved shall be used for no purpose other than AgriTech namely the science-based and/or technology-based development of

[196] SoCG2 at CD1.7.
[197] APP8.2 at p 47 section 5.6 and ID23.
[198] Other options are included in the draft conditions for consideration.
[199] CD6.7A paragraph 8.45.

products, services and applications that are designed to improve yield, resource efficiency, sustainability, health and profitability in agriculture, horticulture and the food chain. Prior to first occupation of any B1 floorspace (other than the occupiers of the incubator building), or prior to any subsequent occupier within the first 10 years from the date of first occupation, details of the proposed occupier(s) shall be submitted to the local planning authority for approval. The details shall demonstrate either: a need for the prospective occupier to be located on the site for reasons of proximity to land in agricultural use; or a need for the prospective occupier to be co-located with other AgriTech occupiers on the site. No B1 building shall be occupied until the local planning authority has given its written approval.

218. SCDC would want the needs assessment to be submitted as part of any reserved matters application, but this is wholly unworkable and unreasonable as a committed occupier for each part of the development may not be known at that stage. The appellant could not respond flexibly to meet the needs of potential occupiers. The condition would be used to revisit the question of need at the reserved matters stage, when this would already have been established by the grant of outline planning permission. An occupation restriction would plainly be sufficient should a needs assessment be thought necessary.

219. It would not be necessary or appropriate to require the scheme to comply with as yet unknown sustainability standards in future local plans, as is suggested in Condition 54. Phased housing schemes are not required to review their affordable housing offer following a local plan review, and there is no reason why a different approach should be taken with regard to sustainability targets. In any event, the proposed condition is vague and unworkable as it is not clear when an exception to the requirement might arise. The phrase "whether by reason of viability impact or otherwise" is entirely unclear as to its intended operation. The suggested pre-commencement conditions are agreed.[200]

220. The section 106 obligations require the appellant to undertake the proposed off-site highways works to the McDonalds Roundabout and the proposed shared multi-user route.[201] The parties agree that these obligations are regulation 122 compliant. With regard to the other off-site works, CCC has requested that it should be able to require the appellant to pay CCC to do the works (or such alternative works as CCC may choose to do in their place). The appellant is content with this and has agreed the wording of additional obligations to secure it. The Secretary of State will however have to consider whether these additional obligations are regulation 122 compliant, i.e. whether they can properly be said to be necessary to allow the development to proceed. In the event that the Secretary of State was to conclude that the additional obligations are not compliant then the clauses would fall away, and the appellant would be required to undertake the works.[202]

[200] ID67.
[201] S106 agreement Schedule 1 paragraphs 6.1 and 8.1.
[202] S106 agreement Schedule 1 paragraphs 7.8-7.10 and 9.8-9.10.

Other matters

221. The impacts of the development in terms of air quality, the water environment and noise were covered in the ES. A briefing note has also been provided to cover these matters.[203]

222. The Wellcome Trust Ltd entered into a section 106 obligation, dated 5 December 2002, when it was the freehold owner of the Hinxton Estate, of which the appeal site formed part.[204] This covenanted not to change the use of the Hinxton Estate, or any part of it except (a) in accordance with the Local Plan, or (b) under a Development Order, or (c) in accordance with a planning permission granted by the Council. SCDC could not seek to use the obligation to prevent the proposed development coming forward in the event that the Secretary of State granted outline planning permission for the appeal scheme. Condition (c) would, as a matter of construction, likely encompass a grant of permission on appeal; further and in any event SCDC could not lawfully refuse to release the deed in the event that the Secretary of State had granted permission for the proposed development.

223. The appellant and SCDC both invite the Secretary of State to determine the appeal on the basis of the revised landscape and open space parameter plan.[205] There is no possible prejudice to any interested party. In the event that the Secretary of State considered that there might be prejudice to an interested party there are two solutions: (i) allow the interested party/parties a further opportunity to comment on the revised plan; or (ii) determine the application on the basis of the original parameter plan, as the changes are so minor that they could in any event be carried out within the scope of Condition 6, which requires the development to be carried out in accordance with the approved plans save for minor variations.

Overall planning balance

224. The development complies with the development plan, read as a whole. There are no material considerations to indicate that planning permission should be refused. If the Secretary of State finds that the development materially conflicts with the development plan, the economic benefits of the development, and the need for it, decisively outweigh that conflict.[206] In particular, it would bring over 4,000 new jobs to the region, result in a GVA of at least £278 m p.a., and enable the UK to fulfil key national and sub-regional policy objectives, which were not even taken into account, let alone provided for, in the SCLP, to put the UK at the forefront of the global move to high-efficiency agriculture and to establish the area as the UK capital of AgriTech. On either basis, therefore, the appeal should be allowed, and outline planning permission should be granted for this nationally important development.

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[203] ID53.

[204] LPA1.3 Appendix 2.

[205] ID50 (better copy at back of ID58).

[206] APP8.2 section 9; NB the reference in para 9.1.8 to "the material considerations outlined in Section 6 and the benefits identified in paras 9.2.1 to 9.2.16" should read "the material considerations outlined in Section 6 and in particular the benefits summarised in para 6.2.19".

Written representations

Pre-application consultation

225. The appellant's Statement of Consultation sets out the consultation that has taken place to inform the development proposals.[207] Representatives of the appeal scheme first attended a meeting at Hinxton Village Hall with community representatives in November 2015. Public exhibitions were held in June 2016 and May 2017. The 2016 exhibition was advertised in the local press and a postcard was sent to approximately 1,500 homes in the surrounding villages. Over the three days of the exhibition 224 people formally signed in, but a number did not complete registration. Following receipt of feedback forms an FAQ document was published on the project website.[208] In January 2017 a meeting was held with Hinxton Parish Council and village residents, which was attended by about 40 people. Questions put at this meeting were considered in a March 2017 FAQ document.[209]

Application stage

226. SCDC received 252 written responses to the application.[210] These included 198 objections and 42 letters in support of the proposal. Observations or comments, without expressing a view, were submitted by 12 respondents. The main objections are summarised as follows:[211]

- Site not allocated and application premature
- No designated end user
- No need or justification for development of this scale
- Not sustainable given distance to housing and services
- Large number of science/business parks in the area
- No relationship with existing bio-tech/research parks
- Impact on heritage assets
- Loss of agricultural land and open/rural character
- Urbanisation with scale and height of buildings
- Traffic concerns for A1301 A505 A11 and M11
- Vehicle trip rates underestimated
- Traffic congestion and parking in nearby villages
- Increased flood risk and reduced aquifer recharge
- Noise and light pollution and impact on air quality health and well-being
- Bus/cycle interchange impact on the Green Belt
- Loss of wildlife habitats
- Impact on Duxford aerodrome
- Other better locations such as Norwich and near Northstowe
- Relationship concern with expansion of Genome Campus in Hinxton

227. The main issues cited by those supporting the proposal are summarised as follows:[212]

- The need for the scheme and job creation

[207] CD2.6.
[208] CD2.6 Appendix F.
[209] Appendix H of CD2.6.
[210] CD4.1.
[211] CD5.1 paragraph 68.
[212] CD5.1 paragraph 69.

- An opportunity for trials and small food business startups
- Well placed for transport access and improve pedestrian/cycle access
- Social and environmental benefits with sustainable food distribution
- A local community asset and opportunity for producers food hub
- Important for UK to have its own high tech facility and cluster research
- Deliver positive outcomes for farming
- Opportunities for collaboration with proximity of other business parks
- Location embedded in a rural/agricultural area
- A hub for businesses to support each other

Inquiry stage

228. The Planning Inspectorate received 30 written representations at the appeal stage.[213] These are summarised as follows.

229. District Councillor Peter McDonald provided a local view and a perspective on agri-tech as someone working in the industry. Whilst not denying the importance of AgriTech in the UK economy there are concerns about the context and integration of the proposal at Hinxton. It would not be integrated with the key UK AgriTech players, including Ceres which is the UK's primary AgriTech collaboration and has already received £4.8 m of Government funding. There has been limited discussion with local farmers about collaboration, and concerns about soil health and natural capital. Other concerns include scientific governance, employee numbers, the need for trials at Hinxton, along with measures for crop protection and pest management.

230. Specific comments addressing the Collinson Associates submission include concerns about investment in the proposal from significant players in the sector, and the focus on European crops. A large site with no infrastructure issues located mid-way between Cambridge and Norwich is already heavily involved in AgriTech. The proposal does not mention involvement by Defra, Natural England, or the Government's agri-advisory service. There is no integration with Cambridge University Faculty of Plant Sciences, the College of West Anglia or any other major research facility. Hinxton already has a well-established human biotech/gene-based R&D centre at the Welcome Genome Campus.

231. Sir Jim Paice former Member of Parliament and Minister of Agriculture from 2010-2012 supports the proposal. The Cambridge sub-region has been the centre for agricultural research and technology for many years. The site is close to other Science Parks with many synergies. The UK agricultural industry is going through considerable change and productivity has to improve whilst reducing inputs for climatic and economic reasons. The synergies between robotics, plant breeding, specialist IT systems, plant chemistry and bio-science are considerable and the chance to work together on a single site would benefit all. The site is opposite the Genome Centre and benefits from existing transport routes, including the M11, Stansted airport and Whittlesford railway station. There is a clear need for a special AgriTech park, and this site is highly suitable for it.

[213] Part 1 Red folder in Appeal File.

232. James Palmer Mayor of Cambridgeshire and Peterborough supports the proposal in principle. The recent Independent Economic Review made clear that implementation of technology into the agricultural industry is vital to its future success. The link between food production and the local knowledge intensive industry is key to the future prosperity of agriculture across the globe. A link between Peterborough University's Agri-tech faculty and Hinxton Park could be forged for mutual benefit.

233. Rupert Kirby is a local resident concerned about unrealistic parking ratios and the reality of the existing highway capacity. Institutional finance will not be forthcoming for a scheme with such a restricted car parking ratio of one space per 58 m^2 gross floor area. Parking is essential for schemes that are not in central Cambridge. There is a risk of approving the scheme on the basis of an unachievable parking standard required to reduce the highways impact on an already overstretched network. Development of this scale should not take place until there is full access to the M11 at junction 9 and the A505 has been widened to dual-carriageway to avoid huge queues on the network and rat-running through villages. There would be severe consequences for highway safety and environmental impact from queuing and satnavs directing drivers to take much longer routes to avoid congestion.

234. John Shropshire OBE is CEO of G's Group Holdings Ltd, a grower-to-marketing organisation, and supports the proposal. World agriculture is entering a period of dramatic opportunity and change. The Cambridge region could be at the centre of the new technically-driven agricultural revolution. To do so the tech sector will need to be closely aligned with the agri part and creating a designated AgriTech cluster in proximity to academic research in Cambridge and the expertise of East Anglia farmers will be essential to achieve this goal.

235. Tim Nowak Executive Director of the World Trade Center St Louis writes in support of the proposal and sees how it would support the development of the UK AgriTech sector. The proposal is seen as a potential international partner and the certainty of planning permission is necessary to progress the interest in collaboration.

236. James Carter Director Britannia Bud Company Ltd is an international AgriTech entrepreneur considering the UK as a location for investment. The appeal site would provide an optimal location with prime positioning for national logistics and proximity to high quality staff. The certainty of planning permission is necessary to progress interest in the site.

237. D William A Burgess Chairman of Produce World Investments Limited, a business which employs c500 people and grows/markets fresh produce to major retailers, supports the proposal. The East of England is in a great position to be world leaders in this field. The proposed AgriTech park is essential to facilitate a new cluster of companies to help deliver the much-needed growth in this sector.

238. Dr Ann Limb CBE DL Chair of the London Stansted Cambridge Consortium (LSCC) supports the proposed development provided the growth is sustainable and achieved in accordance with relevant local national policies. The LSCC is a strategic partnership of local government, colleges and universities together with business organisations in the geographic area of the Innovation Corridor.

The Corridor is important as the leading cluster for life sciences and tech in the UK. The proposed development would have a beneficial impact on the agriculture and AgriTech industries locally, nationally and globally, with significant overlap with the life sciences cluster in the area. Pending planning certainty LSCC would like to explore further collaboration with the appellant and the AgriTech community which would be based at the site.

239. David Flanders PhD is CEO of Agrimetrics, a big-data AgriTech company, and supports the proposal. Agrimetrics provides, connects and analyses complex data to drive greater productivity for AgriFood businesses and deliver food sustainability. The appeal scheme would have a positive impact on the agriculture and AgriTech industries locally, nationally and globally, bringing new investment to the area. Pending planning certainty Agrimetrics would like to explore further collaboration with the appellant and the AgriTech community that would be based at the proposed site.

240. Jinzhao Li Managing Director Cambridge China Centre expressed support for the proposal. The Centre facilitates interaction and collaboration between members. The AgriTech start-up and scaleup companies in the Centre's membership would greatly benefit from the office space in an incubator building and access to an on-site AgriTech community and development at the appeal site. The Centre has had interest from China in potential investments in the AgriTech sector and would be keen to explore further collaboration with the proposal.

241. Dr Sean Butler from Cambridge AgriTech Ltd, a syndicate composed mainly of owners and directors of some of the largest food and agricultural businesses in the UK, expressed support for the proposal. The Cambridge area is already an acknowledged hub for AgriTech, and it is important that the infrastructure available in the region keeps up with demand. Start-up and scale-up companies would greatly benefit from the office space in an incubator building, and access to an on-site AgriTech community at the site. The proposal would have a beneficial impact on the agriculture and AgriTech industries locally, nationally and globally.

242. Michael Coto Co-Founding Partner Primera Impact supports the proposal. Primera Impact is a Cambridge-based investment fund which aims to catalyse game-changing startups in the health, energy, environment and AgriTech sectors. The level of innovation in Cambridge is exceptional, but many of the most promising start-ups lack the early stage support necessary to reach their full potential. The companies Primera Impact work with would greatly benefit from office space in an incubator building and access to an on-site AgriTech community and development at the appeal site. Pending planning certainty, Primera Impact would like to explore further collaboration with the appellant and the AgriTech community which would be based at the proposed site.

243. Ed Fuchs CEO and Co-Founder Folium Science supports the proposal. Folium Science leads the way in bioscience to replace antibiotics with an alternative technology for agriculture and animal husbandry. Folium Science was an AgriTech start-up founded in Cambridge, but had to initially relocate work to Bristol as there were no suitable office locations near Cambridge. With the building of an agricultural strategy a location in Cambridge is now sought. There is a need for office, lab and crop trial space at the proposed AgriTech

development. The stage has been reached where planning certainty is required in order to progress discussions.

244. Oli Hilbourne Founder/Director of Operations Outfield, an early stage agri-tech startup based in Cambridge, supports the proposal. Outfield is developing systems to help apple growers to better manage crops using drones and image recognition and has benefitted from the startup ecosystem in Cambridge. But there is little business support tailored specifically to agri-tech companies. The proposal would support Outfield's scale-up and that of other local companies, but planning certainty is required in order to progress any discussions.

245. Matt McLaren CEO Entomics Biosystem supports the proposal. Entomics Biosystem is a Cambridge-based startup looking at the up-cycling of food waste streams into high value agricultural resources, such as functional feeds for farmed salmon, using insects as the conversion engine. The appeal scheme would be a massive opportunity to develop a world-leading hub that supports growth and innovation spanning the diverse world of 'food'. East Anglia is already a leading region in terms of agricultural knowledge, research and identity. There is an opportunity to create more synergies across the entire food production chain. Dedicated resources are required to bring these disparate threads together, and this ambitious and timely project would address that need. If the project becomes a reality Entomics would be interested in becoming a key partner, potentially having some physical presence at the site in addition to forging commercial and research collaborations. However, in order to progress these discussions planning certainty is required.

246. Richard Hobson Founder and CEO Herdsy Ltd supports the proposal. Herdsy is an AgriTech start-up with offices in Cambridge and Ireland. It is set to become the world's largest livestock tracking company. Cambridge suffers from a lack of affordable office space. Cambridge helps create start-up AgriTech companies and then loses valuable jobs and tax revenue as competition from larger tech and pharma giants forces them to look elsewhere to grow. The appeal scheme would attract global talent and lay the foundations for the continued success of AgriTech in the UK, an industry that currently employs 545,000 people and is worth £14.5 billion. Herdsy would consider office space in an incubator hub at the appeal site but require planning certainty in order to progress any discussions.

247. Whittlesford Parish Council supports the surrounding Parish's objections.[214] The proximity to Hinxton and scale of the development would have a damaging impact on such a small village. The proposal does not comply with existing and emerging planning policy. No significant scientific-based activity has been identified by which the site could benefit from the purported potential to offer quality arable land for crop trials. The NIAB is developing its own crop science research facility with Cambridge University on the northern side of Cambridge. By default, the appeal scheme could become a general business and warehouse park.

248. The traffic surveys are flawed and not credible. The A1301 and A505 are very congested at peak times. The proposed modification to the roundabout

[214] ID5.

are wholly inadequate and the surrounding villages would suffer from rat runs. The environmental impact of the proposal is of concern regarding aquifer damage, air, water and light pollution and landscape harm. The traffic and environmental impact have been underestimated by the appellant.

249. Since the appeal was lodged there have been two further developments which could have considerable negative influences on the life styles of people living in Hinxton and the surrounding villages. Immediately adjacent to the southern boundary of the appeal site Welcome Trust have applied for permission to build 1,500 new houses, a hotel, shops and bars along with the creation of 4,200 new jobs on the associated business area. On the eastern boundary of the Wellcome Trust site a proposed new garden village of 5,500 new houses in Uttlesford is under consideration by the Secretary of State. There are also proposals for the substantial increase in the number of jobs at Babraham and Granta Park in Great Abington. SCLP does not envisage this scale of development. The Parish Council would like the Secretary of State to carry out a full review of all these development proposals as one exercise, where all the infrastructure deficiencies could be evaluated, and recommendations made on remedial action and funding prior to the applications being considered further.

250. Victoria Nichols, a local resident, supports the objection by Hinxton Parish Council, with primary concerns as follows. A development of this scale would completely compromise the historic village environment within which Hinxton exists. There is no 'AgriTech' operator associated with the proposal and no scientific leadership or focus. There is already significant traffic pressure on the A1301 and the A505 both morning and evening in both directions. The appeal scheme would bring the A505 to a standstill and push more traffic through Hinxton and Ickleton. There is not the infrastructure in place to support the proposal. Environmental concerns include aquifer damage, flood risk, pollution, biodiversity and landscape harm. This is not the right location.

251. Tony Orgee, a local resident, maintains an objection to the proposal, and notes that development plans for the area have been approved, which strengthens the objection. A proposal of this magnitude needs to be considered in the context of developing a new local plan. There is a commitment to commence reviews in 2019 for a joint plan. In addition to prematurity, concern is expressed about traffic and transport infrastructure. Local roads would not be able to cope with the additional volume of traffic resulting from commuting, even with the suggested mitigation measures. Reliance on non-car transport is unrealistic and the proposed bus/cycle/rail interchange is not appropriately sited and is inappropriate in the Green Belt. A strategic plan for the whole area is required.

252. HPC's concerns about possible impact on biodiversity, aquifers and flood risk are fully shared. Unlike other development in the area the proposed development would be situated in open countryside with long distance views. Tall buildings and roadside bunds would be alien features in the Chalklands LCA resulting in harm to the landscape. Much of the grade 2 and 3 agricultural land on the site would be lost. Adverse impact on air quality and noise have not been quantified, but the ES acknowledges a substantial adverse effect from light pollution.

253. SCDC's commitment to the development of 'employment clusters' does not specifically cite 'AgriTech'. The proposal would presumably fall into Use Class B1(b) – high technology / research and development. There is concern that if the AgriTech aspirations for the site were not realised then it could simply transform into another general B1(b) use.

254. Hinxton Parish Council (HPC) endorses SCDC's nine reasons for refusal. The appeal scheme would be 300 m from the village's High Street, and with several thousand employees would have a deeply damaging impact on the village of about 150 homes. The proposal does not comply with relevant planning policy. HPC is not opposed in principle to a manageable level of commercial development, AgriTech or otherwise, and Hinxton Hall has hosted the Genome Campus for 25 years. But the appeal scheme is of a fundamentally different nature, with no evidence of any scientific leadership or focus. Nor is there any justification for its being classified for planning purposes as B1(b) and by default would become a general business and warehouse park. The NIAB intends to develop the Cambridge Centre for Crop Science with the University of Cambridge to enhance research in crop sciences and resilience if food security on the northern side of Cambridge. This accords with SCDC's aspiration to focus AgriTech industrial development in the Cambridge-Norwich corridor.

255. The traffic analysis supporting the proposal is not credible and greatly understates potential congestion. The proposed mitigation, improved roundabout and modal shift, are inadequate. The model ignores associated service traffic and possible nearby development. Environmental concerns relate to aquifer damage, increased flood risk, air/water/light pollution, biodiversity and landscape. Hinxton village is prone to flooding. Hydraulic modelling is inadequate despite the site's designation as a groundwater source protection zone of High to Intermediate vulnerability.

256. Robert Spriddell, Royston, supports the proposal as the concept of AgriTech is very important for the UK and Cambridge region economy. This is an ideal location, given the proximity of the University, Research Parks and the Genome Park. The developers are highly integrated into the agricultural community in the region and long-standing investors in the AgriTech arena.

257. Little Abington Parish Council (LAPC) considers the proposal speculative with few, if any, clear plans for the type of research and activities on the site, and the great number of matters left for the detailed applications. A development of this scale cannot be considered in isolation but must be considered within the overall strategic vision for South Cambridgeshire.

258. It is unrealistic to expect only half of the proposed 4,000 employees would drive to work. Local experience contradicts the findings of the traffic surveys and modelling. The A505 and A1301 are already over capacity with traffic jams for long periods and dangerous backups to the M11. The fixes around McDonalds roundabout are inadequate. A strategic plan and significant investment are necessary to solve the problems of an inadequate road network, which must include improvements to Stump Cross and better access to the M11. The train service to Whittlesford Parkway is full, the service unreliable and with local car parks at their capacity commuters park in the

street. Estimates of a five-minute cycle ride or 20-minute walk to the proposed development seem astonishingly optimistic.

259. Pollution from additional road traffic would impact on the environment. Strategically it would make more sense to site the proposal close to other agricultural research sites in East Anglia. There is concern about underoccupancy and decay if the proposed business model was not workable. Residents are already affected by intrusive background noise and overnight lighting from Granta Park, and there is concern about impact on the aquifer and flood risk. The intention to provide public access and community facilities would be worthless unless enshrined in law.

260. Paul Breen, local resident, considers that the AgriHub is merely an excuse for yet another industrial estate. 4,000 extra staff would add to the existing chaos on roads around Hinxton. Run-off would add to local flooding and harm extraction from the aquifer. The loss of prime agricultural land would be unacceptable, and the proposal would be inappropriate development in a beautiful location.

261. Campaign to Protect Rural England (CPRE) object to the proposed development in an area of open, rolling, Cambridgeshire countryside. BMV agricultural land is a national resource whose protection for the purpose of food production is becoming increasingly important. CPRE supports SCDC's reasons for refusal, particularly in protecting the Green Belt and landscape around Cambridge which is increasingly threatened by incremental and permanent erosion of the countryside as the local economy thrives. Other concerns raised by CPRE are that the generation of many car journeys would overwhelm the capacity of local roads, light pollution, flooding and about speculative development. None of the institutions expressing support for the proposal have said that they need space for expansion and would definitely be interested in occupying one of the buildings. The business case for the enterprise must be examined carefully to ensure that it would be worth the price of sacrificing this part of the countryside.

262. Great Abington Parish Council (GAPC) supports SCDC's refusal of this speculative proposal, which has few, if any clear plans for the type of research and activities on the site. Alignment with local development strategies is important given significant developments in progress in or near Sawston, including a trade park, along with the prospect of development in North Uttlesford. A major proposal such as the appeal scheme must be considered in the wider strategic context and the SCLP. GAPC shares the views of LAPC about traffic and transport implications, and harm to the environment.

263. Duxford Parish Council continues its rejection of the scheme, especially since the adoption of the SCLP, the application by the Wellcome Trust to expand the Hinxton Campus, and the announcement by the NAIB and Cambridge University of the development of a joint AgriTech park to the north of Cambridge. These further reduce the need for a scheme to the south of Cambridge, along with the continually increasing flows of traffic along the A505 and A1301.

264. Pampisford Parish Council feels strongly that this is not an appropriate use of good agricultural land. There are no obvious institutions interested in using the site for research, and there are other research centres in the area,

including an Agri-Tech hub at Soham supported by NIAB, some of which are expanding. 85% of Cambridge funding for research is from EU sources, so with Brexit there is a question about the expansion of such facilities. The road system cannot cope with current traffic and there are no significant plans for mitigation. The proposed flyover and urban sprawl with earth bunds and light pollution would adversely affect the open character of the landscape. The scheme would affect recharge of the aquifer and increase flood risk downstream. The loss of grade 2 agricultural land cannot be afforded at a time when all possible arable land will be required in order to improve food security. The proposed development is not included in the SCLP.

265. Sam Nichols, local resident, supports the objection by HPC, with primary concerns as follows. A development of this scale would completely compromise the historic village environment within which Hinxton exists. There is no 'AgriTech' operator associated with the proposal and no scientific leadership or focus. There is already significant traffic pressure on the A1301 and the A505 both morning and evening in both directions. The appeal scheme would bring the A505 to a standstill and push more traffic through Hinxton and Ickleton. There is not the infrastructure in place to support the proposal. Environmental concerns include aquifer damage, flood risk, pollution, biodiversity and landscape harm. This is not the right location.

266. Ickleton Parish Council (IPC) agrees with SCDC's reasons for refusal. The proposal would have a strong and irremediable adverse impact on important open countryside, result in a loss of valuable farmland for no good reason, and increase traffic rat-running via Ickleton and Duxford villages. SCLP makes no provision for a business park on this site and seeks to preserve landscape character. The proposed earth bunds would be destructive to the open rural landscape as would the concentration of buildings and car parks. The proposal would cut off views to open countryside that surrounds the grade II listed Hinxton Grange. Views of the proposed development from Hinxton would have an adverse impact upon the Hinxton conservation area and listed buildings, including the church. There is also concern about the effects on biodiversity, light pollution, aquifer damage and increased flood risk.

267. NIAB and Cambridge University with other academic entities acting together in the Ceres consortium is largely based to the north of the city. Elveden would be a more logical location free from the infrastructure issues associated with the appeal site. Cambridge University, University of East Anglia and John Innes already collaborate in the Cambridge to Norwich Tech Corridor. In the absence of a serious local academic player or private sector concern with relevant expertise IPC questions the credentials of the appellant.

268. With planned expansion of the Wellcome Genome Campus immediately to the south of the appeal site it is impossible to believe that there is sustainable capacity for two proposals of this scope in the local area. It is doubtful that Whittlesford Parkway would have sufficient capacity to facilitate both. The appellant has never understood the nature of rat-running in the area and has not considered the impact of the proposed development.

269. The consultation process and community engagement has been unsatisfactory, with selective disclosures about the true nature of the project. The AgriTech hub was portrayed as involving field trials and laboratories and

NIAB was named as an interested party. At workshops and meetings many vague references to contributions to solutions for infrastructure problems were made. But actual commitments are cosmetic, minimal in nature considering the existing problems, and do not remotely address what was outlined at the workshops and exhibitions.

Other correspondence submitted in the lead up to the Inquiry [215]

270. Cllr Peter Topping, District Councillor for the Whittlesford Ward of SCDC and County Councillor for Duxford Division of Cambridge County Council, continues to oppose the scheme principally as it is outwith the SCLP. There are no compelling reasons, such as the wider economic interests, or nationally, that would outweigh this objection. The proposal is not in the right place to support the findings of the CPIER report on the economic outlook for Cambridgeshire and Peterborough. There has been a strong agricultural research trend along the Cambridge-Norwich axis. Cllr Topping is not aware of any large agri-sector company proposed as anchor tenant for the scheme. KWS seed development is at Thriplow, and the national Cereals Exhibition is at Chrishall. More recent work on the mitigation of traffic issues is welcome, but there are still concerns about the ability of the area to cope with the influx of 4,000 people.

271. Cllr Bridget Smith, Leader South Cambridgeshire District Council, along with HPC, IPC, DPC, PPC, WPC, GAPC and LAPC expressed concerns about the propriety of the submissions in support of the proposed development by James Palmer, Mayor of Cambridgeshire and Peterborough, and his interpretation of the CPIER.

272. Hazel Technologies Inc, a US based producer of postharvest technologies for reducing produce waste, supports the proposal and is considering the UK as a location for investment and a potential R&D expansion site, with genuine interest in the appeal proposal. Cambridge has several benefits, including proximity to Kent, the key produce and logistics region in the UK, access to Stansted and London airports, and is a hub of scientific business in the UK. Hazel Technologies would benefit greatly from participating in that community. It has had an ongoing dialogue with the appellant and is now at the point where the certainty of planning permission is necessary to progress interest in the site.

Written submissions in response to FEI [216]

273. Hinxton Parish Council stated that there is nothing in the FEI that significantly alters the substantial material objections to the proposal. The appellant has had to revise its earlier traffic analysis which failed to acknowledge the severe peak congestion on the A505 and A1301. The revised modelling still does not predict the well documented long queues at peak times on the A1303 approach to the McDonalds roundabout from the south. The proposed new mitigation measures lack credibility, and do not deal with the narrowing of the A505 to single lanes, the grid-locking effect of three new sets of traffic lights, or rat-running through villages. The computer simulations and wide-angle images in the additional material confirm the extent to which the

[215] Part 1 Red folder in Appeal File.
[216] Part 2 Red folder in Appeal File.

scheme would dominate and oppress the surrounding countryside. The amendments withdraw use by local residents of the proposed mixed-use centre.

274. Great Abington Parish Council maintains its objection because of traffic issues. The A505/A1301 roundabout is beyond its capacity at peak times. The proposed additional traffic lights and limited capacity between junctions would result in traffic backing up at peak times. Roadside bunds would be intrusive and alien features in an area with an open aspect and long-distance views. Irrespective of ecological claims, high quality agricultural land should only be built on in the most extreme circumstances. The originally proposed public availability of facilities such as a gym, restaurants and creche was a potential benefit, and its removal without explanation would not be well received.

275. Tony Orgee maintains objections on highway and landscape grounds, and concerns about the loss of agricultural land. The proposed new mitigation measures concern junctions and fail to address the issue between junctions. Insufficient consideration has been given to traffic movements at the proposed entrance to the site. Bunds would give the area a much more enclosed feel creating a complete change from the existing long-distance views typical of this part of South Cambridgeshire. No explanation has been given for the appellant's change of stance on public access to facilities.

276. Pampisford Parish Council states that the additional information is not a reason for overturning the refusal. The agricultural land is not designated for commercial or research purposes in the SCLP and brownfield sites are available. With almost full employment the area does not need 4,000 more jobs. Most workers would use cars on already overloaded roads.

277. James Binney Will Trust expressed concerns about pressure on existing transport infrastructure given the scale of the proposed development, which has scant local support. The Trust concurs with the views of Pampisford Parish Council. Planning proposals for this area just beyond the Green Belt include the Babraham Institute, Granta Park Phase II, Gonville and Caius at Duxford, Huawei land acquisition at Sawston and the Wellcome Trust expansion. These all have links to intellectual exchange, research and development with the University of Cambridge. But this would not be the case for the appeal scheme, which is private and commercial. The appellant is unable to identify a single creditable prospective occupier. The existing traffic problems and noise would not be solved by piecemeal mitigation. Comparison with the Wellcome Trust's Green Travel Plan is disingenuous given the way that this plan is highly organised compared with that proposed in the appeal scheme. Notwithstanding the proposed bunds and planting, the appeal scheme would produce light pollution and impair views that would harm heritage assets at Pampisford Hall and its listed arboretum. Concerns were also expressed about the effects on local archaeology and wildlife. A legal agreement inhibits development on the appeal site for any purpose other than farming. It is high quality agricultural land that has been used for seed trials, but was previously proposed by the owners as an Eco Town, before this proposal was withdrawn after consultation.[217]

[217] ID64 written representation by A Binney.

278. Michelle Irwin is concerned that the area is at great risk of being significantly overdeveloped, crippling the local road network for local people.

279. Ickleton Parish Council notes that one of the alterations to the proposals is that local residents would not have access to facilities of the mixed-use centre originally proposed, which was promoted as a benefit to local communities. The additional material fails to establish a credible business case. The failure to acknowledge severe peak congestion on the A505 and A1301 continues despite the submission of further analyses. The three new sets of traffic lights on the A505, new site entrance roundabout and pedestrian/cyclist-controlled crossings, would add to driver perception that the A1301 and A505 are slow roads subject to congestion. This would be a recipe for rat-running through local villages.

280. The CGI representations bear out submissions about the substantial damage to the landscape, with the bridge, bunds and the development itself comprising large urban intrusions into a rural landscape.

281. The proposed development would have a massive requirement for water in the driest part of the UK. With an ongoing trend towards drier weather patterns water is a finite resource and the sustainability of the proposed development is questioned.

282. The Ickleton Society refers to insufficient traffic mitigation, resulting in backing up to the M11 and rat-running through villages. The additional information and photographs continue to seriously underplay the visual impact of the proposal. The wide-angle views give a false impression of the visibility of the buildings and bund and their impact on the long open views of agricultural land. With no serious agri-tech business interest in relocating to this site there is no justification for development of a greenfield site contrary to the SCLP.

283. Andrew Walker notes that the scheme would breach the SCLP and significantly alter a particularly attractive tract of South Cambridgeshire landscape. It would also add to already unacceptable traffic congestion, without mitigation, and result in intolerable increased pressure on other infrastructure.

284. Virginia Walker supports the objections by HPC and SCDC, and in particular is concerned about the proposal not being included in the SCLP and conflicting with national policy. Hinxton is declared as an 'infill village' only. The proposal has no potential involvement with national crop trials. Current traffic levels are unsustainable with no serious mitigation proposed. The appeal site is valuable arable land and is scenically and environmentally very important. There are alternative areas in the UK crying out for employment so why force further development in an area already under unsustainable pressure for housing, employment and infrastructure.

285. Nicholas Bosc considers that the proposal would have a considerable negative impact on road traffic on the A505, the environment, and the real estate market.

286. Other submissions supported the views of HPC. Some considered that the AgriTech park was a fig leaf to cover a purely commercial venture which

would not offer any of the claimed benefits. There is no business case for the proposal and still no significant investors. Research could be done in other more suitable locations supported by major research organisations. The Wellcome Trust entered into a section 106 agreement restricting development. Major development proposals in the area include; the Wellcome Trust application, a 500-acre site purchased by Huawei at the Spicer site, the Sawston Unity Campus site, expansion at the Babraham and Welding Institutes, all of which need proximity to Cambridge University. No sensible landscape or heritage mitigation has been offered as the proposed bunds would not screen the proposed development. Northbound access to the M11 and adaptation of local roads would be necessary. The development would harm beautiful rolling open countryside, which along with the flora and fauna, deserves protection.

Written representations from other consultees

The following sets out the views of other consultees, where these are not summarised elsewhere in this report.

287. Sawston Parish Council [218] endorses the submissions of the other parish councils. CCC recently announced a study of the A505 corridor. Piecemeal solutions such as the appeal scheme are premature, mutually exclusive and unlikely to result in satisfactory mitigation in the longer term. The site is unallocated in the SCLP. It would be a new site, with no extant established businesses, and therefore no locus or gravitational effect to attract other AgriTech companies. Demand is questionable given that at Chesterford Research Park 65% of the permitted floorspace remains unbuilt.

288. A major concern is that the proposed organisational structure does not appear to involve any overall scientific directorship of the site. It is unclear how tenants would be selected other than by their ability to meet rental or leasehold costs. Some of the interest in this site comes from companies involved primarily in distribution rather than research. In the absence of any clear commitment from bona fide research organisations, there is a risk that distribution use class B8 usage, with associated HCV movements, could eventually form a significant proportion of the activity on the site. The cumulative impact with other proposed development in the area should be taken into account.

289. Essex County Council (ECC) referred to a bridge link over the A11 to link proposed major residential development with the proposed AgriTech site. Such a bridge was estimated to cost £5 m. Given the mutual benefit that the AgriTech site and the NUGV would gain from a bridge, Essex Highway Authority requested a contribution of £2.5 m. Amendments to the obligation were requested to provide a financial contribution towards the provision and implementation of links across the A11 to be agreed with ECC as Highway Authority. The proposed provision of a 'landing zone' for a bridge was considered insufficient. ECC also initially requested a contribution of more than £2 m for childcare based on the Essex Adopted Developers Guide, but later noted that the appeal scheme was proposing 3,000 m^2 of mixed D1 floor space,

[218] ID4.

and that it was for the appellant to provide evidence to SCDC to judge if this provision was sufficient.[219]

290. A list of consultees who made no comment on the application is included at paragraph 57 of CD5.1.[220] The following includes other responses to consultation summarised in SCDC's report.

291. Cambridge Fire and Rescue recommended a condition to provide fire hydrants.

292. British Horse Society asked why access under the existing A505 bridge near the station could not be used to negate the need for the enormous bridge over the A505/A1301.

293. Cambridge Past Present and Future recommended refusal as the proposal is not plan led and should not be determined in isolation. There should be no development north of the entrance drive to the Grange as it would harm the setting and character of the historic parkland and listed building and would be a precursor to further expansion.

294. The Environment Agency (EA) has no objection in principle, subject to conditions.

295. Historic England has no objection on heritage grounds, but its comments did not consider the setting of grade II listed buildings on site.

296. The Lead Local Flood Authority required more information about drainage.

297. Natural England (NE) does not consider that the proposal would trigger its Impact Risk Zones regarding designated sites. NE supported the EA concerning hydrology and recommended a site wide biodiversity strategy. It added that the proposal should be compliant with the requirements of Policy NH/3 to protect agricultural land.

298. Great Chesterford Parish Council expressed identical concerns to that of HPC.

299. Uttlesford District Council requested that the proposal considers the North Uttlesford Garden Community in transport modelling.

300. Agri-Tech East supports the proposal.

301. The Wellcome Trust commented that its Genome Campus is recognised as being of national and international importance. It added that it is imperative that the AgriTech proposals do not fetter the ability of the campus to optimise the opportunities emanating from genomics and biodata, particularly with regards to local infrastructure capacity.

[219] ID6, ID17 and ID18.
[220] CD5.1.

Conditions and obligations

Conditions

302. SCDC and the appellant largely agree about the imposition of planning conditions in the event that outline planning permission was granted, but two conditions remain in dispute.[221] These concern firstly controls on the occupation of the site, and secondly provisions to update sustainability standards in future. The need for, and wording of, suggested planning conditions is considered in the following Conclusions section of this report. But it is necessary to set out here the main parties' respective positions on the first dispute concerning an occupation restriction.

303. The appellant suggested three alternative conditions regarding an occupation restriction.

Condition 12a: *The B1 floorspace hereby approved shall be used for no purpose other than AgriTech namely the science-based and/or technology-based development of products, services and applications that are designed to improve yield, resource efficiency, sustainability, health and profitability in agriculture, horticulture and the food chain.*

Condition 12b: *The B1 floorspace hereby approved shall only be used for any or all or the following purposes namely research into, development of, commercialisation of and production of goods, services and applications for use in agriculture, horticulture and the food chain.*

Condition 12c: *The B1 floor space hereby approved shall only be used for the purpose of research into and development and commercialisation and production of products, services and applications for use in agriculture, horticulture and the food chain.*

304. The appellant considers that suggested Condition 12a would provide a user restriction sufficient to ensure that occupation was restricted to AgriTech companies. SCDC considers that 12a would be insufficiently precise and not supported by adopted policy. SCDC adds that the AgriTech sector definition would be too broad and uses could be unrelated to adopted Policy E/9, with no relevance to clusters drawing on the specialisms of the Cambridge area. It would also allow for large scale speculative development and lacks specific evidence of a requirement for companies locating to the site to be provided. Furthermore, ancillary uses could occupy a significant (undefined) amount of floorspace and the ancillary uses definition has no requirement for such uses to link to an AgriTech occupier on the site.[222] SCDC notes that 12b does not refer to AgriTech and considers that it is too broadly scoped to be of any useful purpose in relation to possible enforcement. The appellant submits that Condition 12a fully reflects the proposed AgriTech uses, in accordance with the definition for AgriTech as set out in APP2.1/2.2, and is therefore not imprecise, does not allow for large-scale speculative development, and is necessary and fully supported in respect to Policy E/9.

[221] ID49.2.
[222] LPA2.1 and LPA2.2.

305. Condition 12d was also discussed at the Inquiry. This would provide that: *Other than a reserved matters application for the incubator building pursuant to Condition 17, any reserved matters application for floorspace within the B1 use class of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification, shall be accompanied by a needs assessment which sets out the nature of the prospective occupier(s) and their specific requirements for locating onto the site. The needs assessment shall demonstrate either: (a) an operational need for the prospective occupier to be located on the site in relation to the proximity to nearby land in agricultural use; or (b) need for the prospective occupier to be located adjacent to other permitted businesses on the site. Prior to the occupation of any business within the incubator building, a needs assessment demonstrating compliance with either criteria a) or b) above shall be submitted to and approved in writing by the local planning authority. Subject to any needs assessment being approved by the local planning authority, the first and subsequent occupation of any building shall be substantially in accordance with the associated needs assessment.*

306. The appellant objects to this condition because it would seek to introduce a needs assessment in respect to any reserved matters application for floorspace, which would be unnecessary, overly restrictive and unreasonable. In the event that planning permission was granted, the need for the development and principle of AgriTech use would have been satisfied and therefore there would be no further requirement for a needs assessment. The planning application and appeal would have been the forum to justify the need. In addition, the appellant argues that this condition would impact on funding and securing tenants and in this respect represents a condition that unreasonably impacts upon the deliverability of a development, placing an unjustifiable and disproportionate financial burden on the appellant, thus failing the test of reasonableness. Additionally, other Conditions 10 and 12a-c would place restrictions on use and a condition requiring the appellant to demonstrate need is unnecessary and unjustified. In the appellant's view the condition is also onerous as the requirements are loosely drafted with no agreement as to what the exact requirements are that SCDC needs to be satisfied with.

307. As an alternative the appellant suggested Condition 12e: *The B1 floorspace hereby approved shall be used for no purpose other than AgriTech namely the science-based and/or technology-based development of products, services and applications that are designed to improve yield, resource efficiency, sustainability, health and profitability in agriculture, horticulture and the food chain. Prior to first occupation of any B1 floorspace (other than the occupiers of the incubator building), or prior to any subsequent occupier within the first 10 years from the date of first occupation, details of the proposed occupier(s) shall be submitted to the local planning authority for approval in writing. The details shall demonstrate either: (a) a need for the prospective occupier to be located on the site for reasons of proximity to land in agricultural use; or (b) a need for the prospective occupier to be co-located with other AgriTech occupiers on the site. No B1 building shall be occupied until the local planning authority has given its written approval.*

308. However, SCDC objected to Condition 12e arguing that the first part of the condition (compliance) suffered from the same defect as Condition 12a/b/c.

The second part of the condition (needs assessment) was not agreed because (a) there would be no requirement for a needs assessment to accompany a reserved matters application, which could lead to large scale speculative development where presently there are no confirmed prospective occupiers for any of the floorspace being sought, and (b) there is no requirement for subsequent occupation to accord with the identified need.

Obligations

309. The obligations in the section 106 agreement are summarised in Annex A to this report. The agreement includes a clause that if the Secretary of State concludes that any of the obligations are not compatible with any of the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL Regs) and attaches no weight to that obligation then that obligation shall cease to have any effect and there shall be no obligation to comply with it. SCDC submitted a CIL Compliance Statement, which sets out its view that the obligations are necessary, directly related to the proposed development, and fairly and reasonably relate to the proposal in terms of scale and kind.[223] The Conclusions section of this report considers how the obligations square with policy and statutory requirements.

Conclusions

Preliminary matters

310. The following conclusions are based on the written submissions, the evidence given by those who appeared at the Inquiry, and inspections of the site and its surroundings. In this section the figures in parenthesis [ ] at the end of paragraphs or sections indicate source paragraphs from this report. [10]

311. The application is for outline planning permission with all matters reserved, but includes parameter plans for land use, movement and access, landscape and open space, development density and height, which would be imposed by planning conditions. I am satisfied that the ES and FEI submitted for the appeal scheme, which were available for comment during the appeal proceedings, reasonably comply with the requirements of the EIA Regulations. In considering the appeal, and in making my recommendation, I have taken into account the Environmental Information, which includes all the evidence adduced at the Inquiry. In doing so I have come to a different view about the significance of, and weight to be given to, some environmental effects from that set out in the ES and FEI. [1,2]

312. South Cambridgeshire District Council (SCDC) refused the application on 9 grounds. SCDC considered that the proposal would conflict with relevant policies concerning; (1) unsustainable development located outside of the village development Framework and within the open countryside; (2) prematurity; (3) harm to the Cambridge Green Belt; (4) an inadequate Landscape and Visual Impact Assessment (LVIA) and failure to preserve or enhance the local character of the area and unacceptable adverse impact on

[223] ID65.

the countryside and landscape character; (5) insufficient information in the Transport Assessment; (6) a Stage 1 / 2 Road Safety Audit had not been carried out on all the submitted drawings; (7) insufficient information about parking demand and provision; (8) harm to the setting and significance of heritage assets; and (9) the loss of Best and Most Versatile (BMV) agricultural land. [3]

313. The application was determined in the context of the then adopted development plan, but these policies were superseded in September 2018 with the adoption of the South Cambridgeshire Local Plan 2018 (SCLP). Reason for refusal 2, concerning prematurity, was subsequently withdrawn in April 2019. Following the submission of further analysis, the appellant, Cambridgeshire County Council (CCC) and Highways England signed a Statement of Common Ground on Transport Planning Matters, dated 16 May 2019 (SoCG2). This enabled the main parties to agree at the Inquiry the terms of planning obligations. On this basis, SCDC withdrew reasons for refusal 5, 6 and 7. [4,6]

314. An amendment proposed by the appellant at the Inquiry would involve a minor alteration to the landscape parameter plan. The revised scheme would not be substantially different from that considered by SCDC and consideration of the amended proposal would not be prejudicial to the interests of any party or persons. It is a matter for the Secretary of State to consider, but it seems to me that it would be appropriate here to determine the appeal on the basis of the amendment proposed at the Inquiry. It would also be acceptable to amend the description of the proposed development to include reference to 'surface' water. [8,9,223]

315. The development proposed is an AgriTech technology park comprising up to 112,000 m^2 (gross) employment floorspace, supporting infrastructure, amenities and landscape works including publicly accessible informal open space, enhancements to parkland; vehicle and cycle parking; service areas; bus/cycle interchange on land west of the A1301 / north of A505; and infrastructure works including new vehicular accesses, highway improvement works, pedestrian and cycle links with bridge crossings over A1301/A505 and River Cam, site re-profiling, drainage works, foul and surface water pumping stations and primary electricity sub station; telecommunications infrastructure and other associated works.

316. Planning conditions would limit the gross external floorspace of the permitted use classes as follows; B1a office / B1b R&D / B1c light industrial (92,000 m^2), B1b laboratories (11,800 m^2), A3 / A5 (2,000 m^2), D1 (3,000 m^2) and D2 (3,200 m^2). Suggested planning conditions would require at least 10 ha of land within the site to be made available for crop/technology trials and demonstration, and for the early provision of 3,000 m^2 of incubator units. [12-16]

317. Late notification about the appeal was given to 12 objectors. However, there was a reasonable opportunity for objectors to appear at the Inquiry, or to submit written representations before the Inquiry closed, and so no prejudice arises from the delayed notification. [7]

Main considerations

318. The Secretary of State's reasons for recovering the appeal state that it involves proposals for significant development in the Green Belt. However, the direction did not include details about any matters about which the Secretary of State particularly wishes to be informed for the purposes of considering this appeal. The evidence indicates that the main considerations here are as follows. [5,10]

(1) The effects of the proposed development on the openness of the Green Belt and upon the purposes of including land within it, and whether the development conflicts with policy to protect the Green Belt.
(2) The effects of the proposed development on the character and appearance of the area.
(3) The effects of the proposed development on heritage assets.
(4) The effects of the proposed development on agricultural land.
(5) The effects of the proposed development on the local road network and the need to travel by car.
(6) The effects of the proposed development on other matters.
(7) The effects of the proposed development on employment and the economy, including the need for and benefits of the proposed AgriTech technology park.
(8) The planning balance.
(9) The extent to which the proposed development would be in accordance with the development plan for the area.
(10) The extent to which the proposed development would be in accordance with the National Planning Policy Framework (the *Framework*) and the National Planning Practice Guidance (the *Guidance*).
(11) Whether any permission should be subject to planning conditions or obligations and, if so, the form that these should take.

319. The remainder of this report addresses the matters outlined above, using the following approach. For each of the main considerations 1-7 above the report considers the likely effects of the proposed development. Impacts are described and significance assessed taking into account, where appropriate, necessary planning conditions and obligations. The significance of effects is a matter of judgement, and for consistency a rating scale is used for negative and positive effects (harm and benefits), increasing from negligible, minor, moderate, substantial and finally major significance. In considering the relative weight to be given to various considerations a scale is used; increasing from negligible (little or no weight), slight, moderate, substantial, and finally great weight. However, there is scope within these bands for varying degrees of fit, and reference to these categories implies no mathematical or objective basis for analysis across the range of considerations involved in this case. My recommendation is based on these findings.

(1) Green Belt

320. The part of the appeal site that lies north of the A505 is within the Green Belt, as defined in the development plan for the area. The *Framework* states that the Government attaches great importance to Green Belts. It adds that the essential characteristics of Green Belts are their openness and their permanence. Paragraph 141 provides that in planning positively to enhance

the beneficial use of the Green Belt authorities should look for opportunities to provide access; to provide opportunities for outdoor sport/recreation, and to retain and enhance landscapes, visual amenity and biodiversity.

321. When located in the Green Belt inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (VSC). The *Framework* provides that substantial weight should be given to any harm to the Green Belt, and that VSC will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

322. Paragraph 146 provides that local transport infrastructure which can demonstrate a requirement for a Green Belt location is not inappropriate development in the Green Belt provided that it preserves its openness and does not conflict with the purposes of including land within it. These purposes are; to check the unrestricted sprawl of large built-up areas; to prevent neighbouring towns merging into one another; to assist in safeguarding the countryside from encroachment; to preserve the setting and special character of historic towns; and to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

323. Paragraph 146 of the *Framework* must mean that some level of local transport infrastructure which can demonstrate a requirement for a Green Belt location would preserve its openness and would not conflict with its purposes, and that beyond that level the development would become inappropriate in the Green Belt, and so the exception would no longer apply. Determining the tipping point would depend upon the particular circumstances, as a matter of fact and degree. In assessing the impact on openness the *Guidance* notes that relevant matters could include spatial (volume) as well as visual impacts, along with the degree of activity generated, including traffic generation.

324. The Movement and access parameter plan indicates that the proposed bus/cycle interchange and pedestrian/cycle connections, along with part of the proposed pedestrian/cycle/equestrian bridge, would be sited within the Green Belt. The details of these works would be considerations for reserved matters. But the appellant considers that works within the overall footprint of 1.865 ha in the Green Belt would comprise 1.01 ha hardstanding (including the interchange), an earth bank (0.375 ha) and soft landscaping (0.48 ha). The works would include bus shelters and secure cycle parking.

325. Such works in the Green Belt would be transport infrastructure that would not only serve the proposed AgriTech park, but would also provide useful pedestrian/cycle connections for general use by the public in an area where highway and traffic conditions make for hazardous pedestrian and cycle trips. I saw at my site visits how difficult it is for pedestrians and cyclists to negotiate the McDonalds roundabout. The proposed bridge over the A505/A1301 roundabout, whilst not providing for all pedestrian/cycle movements at this junction, would be particularly beneficial in this regard. This indicates to me that the works would be local transport infrastructure for the purposes of applying paragraph 146.

326. I do not agree with the appellant that a determination about whether the scheme should be approved or refused would also demonstrate whether or not

there was a requirement for a Green Belt location. Whether it is, or is not, inappropriate development in the Green Belt will affect the planning balance that applies in determining the appeal, and so is a matter that must be resolved as an intermediate step. Investigations are underway about transport improvements in the locality and connections to the railway station. But it is not clear at this stage whether the outcome of these investigations would be likely to result in a scheme which provided the works necessary to enable the appeal scheme to proceed, with all such works undertaken on land outside the Green Belt. It seems to me that it would be very difficult to achieve the necessary pedestrian/cycle connections in the vicinity of McDonalds roundabout without using Green Belt land in a way similar to that envisaged in the Movement and access parameter plan. I find, therefore, that the proposed local transport infrastructure would require a Green Belt location.

327. The area north of the A505 and located to the north-west of the McDonalds roundabout is an open field. The proposed works in the Green Belt would erode the open feel of this part of the Green Belt, both in spatial and visual terms. The part of the bridge, along with the ramp leading to it would introduce a feature with considerable volume into this open area. Any bus shelters and secure cycle parking would add visual clutter that would harm openness. The proximity of the petrol filling station/restaurant and highway infrastructure located outside the Green Belt would not diminish this loss of openness. The bus/cycle interchange would generate a degree of activity from vehicle movement. Whether this loss of openness is sufficient to exceed the paragraph 146 threshold is a matter of judgement.

328. The works would not conflict with Green Belt purposes concerning unrestricted sprawl of large built-up areas, preventing neighbouring towns merging, preserving the setting and special character of historic towns, or assisting in urban regeneration. However, the works would have an urbanising influence on this part of the open countryside. I find that the proposal would, to some extent, conflict with the purpose of the Green Belt to assist in safeguarding the countryside from encroachment. Again, whether this conflict is sufficient to exceed the paragraph 146 threshold is a matter of judgement.

329. I have had regard to the other decisions adduced regarding local transport infrastructure in Green Belts. I have also taken into account the type of works proposed here in terms of their effects on openness and the purposes of the Green Belt. Notwithstanding the harm to openness and conflict regarding encroachment into the countryside, in my judgement the local transport infrastructure proposed in the Green Belt would not by reason of its nature and scale be sufficient to exceed the paragraph 146 threshold. I find that the exception for local transport infrastructure would apply, and that the proposed development would not be inappropriate development in the Green Belt.

330. If the Secretary of State agrees with this finding, then the proposal would not result in harm to the Green Belt, and there would be no conflict with local or national Green Belt policy. In this scenario, the planning balancing exercise would be a straightforward weighing of the benefits and the harm, having regard to relevant policy considerations.

331. However, if the Secretary of State concludes that the proposed Green Belt works are not local transport infrastructure, or that a requirement for a Green

Belt location cannot be demonstrated, or that the works would not preserve the openness of the Green Belt, or that the works would conflict with any of the purposes of including land within it, to such an extent that would exceed the threshold implicit in paragraph 146, then the exception for local transport infrastructure would not apply. The works then would be inappropriate development in the Green Belt, which is by definition harmful. In this scenario, harm to the Green Belt and any other harm must be weighed against other considerations to determine whether VSC exist. These alternative planning balances are considered in more detail in section (8) of these Conclusions.

[84-95,121,130,137,157-171,226,261]

(2) Character and appearance

332. The appeal site lies wholly within National Character Area 87, the East Anglian Chalk. In the Cambridgeshire Landscape Guidelines: A Manual for Management and Change in the Rural Landscape 1991, the site is located in character area 2 – Chalklands, within an area described as a broad-scale landscape of large fields, trimmed hedges and few trees over a smooth rolling chalkland landform. The site is located in character area B – Chalklands in the South Cambridgeshire District Design Guide SPD adopted March 2010. Key characteristics of this Landscape Character Area (LCA) are a distinctive landform of smooth rolling chalk hills and gently undulating chalk plateau, a mostly large-scale arable landscape of arable fields, low hedges and few trees giving it an open, spacious quality, in which small beech copses on the brows of hills, and occasional shelterbelts, are important features. It was apparent from my site visits that this LCA has mostly a strong rural character though this is disrupted immediately adjacent to the A505 and the A11. [17-21]

333. The appellant's definition of the landscape baseline subdivides the Chalklands LCA into the wooded and enclosed Granta Valley LCA, and the Chalk Hills LCA. However, it was evident from my site visits that this division is not reflected enough in the features on the ground to warrant the distinction. In any event, the revised baseline did not make any difference to the appellant's initial assessment of the significance of the landscape change that would result from the proposed development. It was apparent when visiting the area that the appeal site lies within a tract of land that is bounded by major roads, namely the A11, the A505 and A1301. This area is characterised by large arable fields with parkland features at Hinxton Grange and Pampisford Hall, along with field boundaries marked largely by gappy hedgerows. With few hedgerow trees the area has an open feel and offers long views over the gently rolling landform. The topography of the area is shown on Figure 12 of the DAS at CD2.3. The openness of this part of the countryside on the fringe of Cambridge is shown in the aerial photographs at ID16 and Figure 7 of the DAS.

334. The appeal site is not the subject of any of the designations given to landscapes whose character and appearance justifies either a statutory status or recognition of their quality in the development plan. But neither is a large part of the English countryside, which is nonetheless much appreciated for its open views and the sense of space it provides. These landscapes can be especially important as a foil to urban settlements. This applies to the appeal site insofar as it forms part of the wider countryside setting to Cambridge.

335. The parameter plans would provide for the development of the appeal site along the lines of the scheme shown in the illustrative masterplan (Figure 53 DAS). Development of this scale in this location would have an adverse effect on the landscape character of the area of substantial significance. The appellant considers that this would reduce to a slight and not significant effect after 15 years. I disagree. The Landscape and open space parameter plan provides for extensive earth bunding, up to 3.5 m high, with woodland planting. These would extend along the eastern side of the A1301 from near McDonalds roundabout to Tichbaulk Road (about 1.4 km) with breaks only for the avenue to Hinxton Grange and the proposed access to the AgriTech park. Another bund along the southern boundary of the appeal site would extend for about 700 m along Tichbaulk Road. These bunds and planting would never completely screen the proposed built form within the AgriTech park, but would transform the open landscape by closing off distant views over the undulating countryside. As planting matured the sense of enclosure would become more pronounced. This would result in a major change to the landscape resource that would not be mitigated over time.

336. Lighting would be a matter for detailed consideration at the reserved matters stage. However, for such a large-scale development it would be likely that necessary lighting would at times produce a prominent glow in the night sky. This would be out of keeping with the night time character of this unlit countryside location. Overall, the proposed development would have an adverse effect on the landscape character of the area of substantial significance.

337. Turning to visual effects, the difference in the landscape experts' judgements about significance are set out in ID40. The views from the A1301 would be affected by the proposed bund, but the development and activity within the AgriTech park would be visible through the breaks in the bund at the avenue and for the proposed site access. The part of the appeal scheme located to the north of the avenue would appear particularly intrusive in what is currently a large open field with parkland beyond. The bund would close off longer views across the open countryside. I consider that the appeal scheme would have an enduring adverse effect of moderate significance, increasing to substantial significance from some vantage points along the A1301 (DH Views 9 10 11; RB V4).

338. Notwithstanding the proposed bund, it would be likely that buildings would be prominent in views from Tichbaulk Road, and in this otherwise rural context would appear out of place, with an adverse impact of substantial significance (DH Views 13 14 15 16; RB V10). The elevated bridge over the A505/A1301 would dominate all approaches to this roundabout. The structure and associated highways and transport infrastructure for the bus/cycle interchange would add visual clutter that would be more prominent than the existing petrol filling station and restaurant (DH Views 1 2 3 4 5 6 7; RB V4 V5). The adverse impact on the visual amenity of the area would be moderate increasing to substantial close to the roundabout. From the northern end of Hinxton (DH Views 19 20; RB V2) built development on the appeal site would be likely to be apparent, particularly in the winter months. But given the separation distance and screening it would have an adverse visual effect of moderate significance.

339. The parameter plans indicate scope for a detailed design and layout to be devised that would not, by reason of an overbearing impact on neighbouring residential occupiers, result in unacceptable living conditions for nearby dwellings. However, properties towards the southern edge of Pampisford (RB V1) would be likely to see parts of the built development proposed to the north of the avenue in winter months. This would result in an adverse impact of moderate significance that would reduce to slight as mitigation planting matured.

340. From distant vantage points it was evident from my site visits that the proposed development, with extensive planting, would be seen to be more absorbed into the wider pattern of fields and vegetation. Built form might be apparent in some longer views, and the overall scale of the development might be apparent in its wider context. However, the separation distance and paucity of elevated vantage points in this landscape would mean that where distant views were possible, they would be of negligible or slight significance for the visual amenity of the wider area. Nevertheless, the overall visual harm I have identified from the proposed development would be of moderate/substantial significance.

341. If outline planning permission is granted for the expansion of the Wellcome Trust's Genome Campus into the fields to the south of the appeal site before determination of this appeal it would be necessary to obtain a cumulative LVIA and to provide an opportunity for the parties and interested persons to comment on it. This would need to be assessed to consider whether the cumulative assessment would alter the significance of the proposed AgriTech park on the character and appearance of the area. [144,226,268]

342. Taking all the above into account, I find that the proposed development would have an adverse effect on the character and appearance of the area of substantial significance, which is a consideration that should be given substantial weight in the planning balance. This would bring the proposal into conflict with SCLP Policy NH/2, which provides that development would only be permitted where it respects and retains, or enhances the local character and distinctiveness of the local landscape. The application is for outline planning permission with all matters reserved. However, even allowing for the scale and nature of the development, the parameter plans indicate that the scheme would conflict with the design principles set out in SCLP Policy HQ/1 concerning the preservation of the character of the rural area (1.a) and compatibility with its location (1.d).

[17-21,32-48,123,128,131,134,141-143,226,248,250,252,255,260,261,264-266,273-275,277,280,282,283,286]

(3) Heritage assets

343. At Hinxton Grange the proposed development would lead to the loss of open farmland that formed the estate, the loss of open land adjacent to the designed parkland with built development along the park boundary and along and either side of the avenue, and the loss or closing-off of views from the house and reciprocal views, including from the A1301 (RB V3). The extent of the resultant harm on the significance of the grade II listed Hinxton Grange would be within the middle of the range of less than substantial harm. Given the group value

between the Grange, its stable and coach house, the same level of harm would apply to these listed buildings.

344. The scale and proximity of the proposed built development would significantly erode the historic significance of the non-designated parkland landscape and the avenue. The enhancements proposed for the parkland to remove damaged trees and provide public access would be of some benefit, but would not materially enhance the significance of the heritage assets. The proposed development would be set back 37 m from the centre line of the avenue towards its western end. At its eastern end development is proposed both to the north and south of the avenue, set back some 33 m from its centre. The proposed bunds along the eastern side of the A1301 would step down to the existing ground level at the entrance to the avenue, and so would not screen views into the appeal site and along the avenue from the road.

345. Notwithstanding the proposed landscaping, it would be likely that the built development and activity associated with it would be apparent from this vantage point on the A1301. The part of the proposed built development to the north of the avenue would be a particularly intrusive feature in this historic landscape. Commercial and other vehicles crossing the avenue towards its eastern end would give the impression that the avenue was to a part of the AgriTech park and not to an historic house. The level of harm caused to the parkland and avenue would be moderate to high.

346. It was apparent at my site visits that Hinxton conservation area and the grade II* Church of St Mary and St John the Evangelist have a similar setting, which would be adversely impacted by the proximity of the proposed AgriTech park. The change to the setting of these assets would diminish their historic significance, but this harm would be less than substantial and at the lower end of the range. Given the separation distance and intervening trees and woodland, along with the local topography, I do not consider that the proposed development would have an adverse effect on Pampisford Hall and its registered park and garden, which I visited on my accompanied site visit.

347. The appeal site comprises part of the setting of the non-designated WWII pillbox. There is some doubt about the reasons why the pillbox was placed in this location, but it is probable that a key consideration was the views it offered over the adjoining open fields. This open aspect makes a significant contribution to the significance of the pillbox. The proposed built form within the AgriTech park would substantially close off views to the west, and so would erode this significance. The level of harm caused to the pillbox would be moderate.

348. The proposed development would harm heritage assets. The harm to designated heritage assets would be less than substantial for the purposes of applying the *Framework*. This harm should be weighed against the public benefits of the proposal. The appeal scheme would also adversely affect non-designated heritage assets, requiring a balanced judgement having regard to the scale of this harm. Overall, I consider that the proposal would have an adverse effect of moderate significance on heritage assets, which should be given moderate weight in the planning balance.

[26,49-57,145-156,226,266,277,293,295]

(4) Agricultural land

349. Some 33 ha of BMV agricultural land would be permanently lost if the appeal scheme was implemented. The appellant considers that the proposed development would be compliant with relevant local and national policy if the scheme was successful in attracting development intended to improve agricultural productivity and sustainability across the UK and internationally. However, it seems to me that even if the proposal achieved these aims that would not bring it into conformity with provisions in the *Framework* about decisions contributing to and enhancing the local environment by, amongst other things, protecting soils. The 33 ha of agricultural land would no longer be available for agricultural production. That outcome would be at odds with the requirement in the *Framework* to recognise the economic and other benefits of BMV agricultural land. There would be some harm to agricultural land, which I consider would be an adverse effect of minor significance, but nonetheless should be given some slight weight in the planning balance.

[58,59,118,121,123,124,128,132,180,226,252,260,261,264,266,274,275,277, 284,297]

(5) Transport and highway safety

350. Local concerns about the impact of the additional traffic generated by the appeal scheme are understandable given the existing congestion on the local road network. Long queues at the junction of the A505 and A1301 were evident in both am and pm peak hours whenever I visited the site. Local residents are critical of the traffic surveys on which the appellant relies, but the relevant highway authorities are satisfied that these are acceptable. There is also doubt that the scheme would be likely to achieve the modal split used in the appellant's projections. This is acknowledged to be ambitious. However, the proposed pedestrian/cycle enhancements would be particularly beneficial. With the provisions in the section 106 agreement set out in Annex A to this report, along with the suggested planning conditions, it would be a reasonable assumption that the planned modal split could be achieved by the time the scheme was fully occupied. I am satisfied that the technical evidence presented by the appellant about the existing highway network and the predicted traffic impact represents a reasonable worst-case assessment.

351. The technical evidence indicates that the proposed roundabout that would provide access to the appeal site from the A1301 would accommodate the likely traffic flows without having an unacceptable effect on the local road network. In terms of off-site highway improvements, the suggested planning conditions would secure works to junction 10 of the M11 and to the A11/A1307 junction prior to the first occupation of any building on the appeal site. The section 106 agreement would require completion of the McDonalds roundabout junction improvements prior to any occupation of the proposed development. The agreement also provides for CCC to elect for either the owners to deliver improvements to the A505/Moorfield Road junction and the A505/Hunts Road junction or to deliver a bond which would enable the funding of alternative works. No more than 25,000 m^2 of floorspace on the appeal site could be occupied unless these works, or approved alternative works, had been completed.

352. The technical evidence demonstrates that these off-site improvements to the local road network would reasonably make adequate provision for the additional traffic that would be generated by the proposed AgriTech park. Local residents have concerns about constraints that might result from inadequate link capacity between the improved junctions. However, the evidence here indicates that it is the capacity of junctions which is the limiting factor on the flow of traffic on the local network. Sensitivity tests indicate that even with the proposed Wellcome expansion and the NUGV, neither of which is yet committed, the proposed highway works would still reduce delays compared to the baseline position at all the junctions assessed.

353. There is evidence that existing congestion at times results in rat-running of through traffic in nearby villages, and there is local concern that this has not been appropriately taken into account in the appellant's highway assessment. But it seems to me that if the proposed junction improvements operated in the way that is envisaged, then even with the additional traffic from the AgriTech park, drivers would be less likely to seek alternative routes through villages. Furthermore, the section 106 agreement requires a parking management monitoring plan with provision of a monitoring response bond, along with provision for measures to overcome any off-site parking or rat-running.

354. Subject to the imposition of appropriate planning conditions and the obligations set out in the section 106 agreement, I find no grounds to dismiss the appeal for highway safety reasons. The appeal scheme would comply with SCLP Policies TI/2, TI/3 and TI/8 concerning sustainable travel, parking and infrastructure provision.

355. The highway authorities are aware of the local problems on the network and there is to be a study of the A505 corridor. It is not possible at this stage to know if any measures are likely to emerge from this process that would achieve some of the highway improvements proposed by the appeal scheme. But implementation of the appeal scheme would provide certainty about achieving highway improvements that would not only be necessary to enable the proposed AgriTech park to proceed, but would also be of more general benefit to those using the local road network. If the appeal scheme secured these benefits earlier than would be so if they were delivered as part of improvements initiated by the Highway Authority, then that would be a benefit of minor significance that should be given slight weight in the planning balance.

[83,113,114,117,119,122,123,125,127,133,172-174,177-179,226,233,248, 250,251,255,258,264-266,270,273-275,277-279,282,283,285-287,292,299]

(6) Other considerations

Biodiversity

356. In terms of biodiversity the existing arable fields are of limited habitat value, but the woodland, trees, hedgerows and field margins are of some nature conservation interest. The scheme proposes improved woodland management, additional tree planting and more hedgerows. With the imposition of appropriate planning conditions, the appellant's Habitat Impact Assessment Calculator for the scheme, which was not disputed at the Inquiry, records a net biodiversity gain. This takes into consideration woodland, grassland, wetland and other habitat, including the built environment, with a

net score of +32.15. This is derived from a loss score of 171.22 and a gain score of 203.37. It also records a hedgerow impact score of +9.94.

357. However, the scheme would predominantly provide urban type habitats replacing rural countryside. In the long-term rural habitats might be locally more valued for threatened wildlife because of their scarcity, whereas urban type habitats are likely to be become more common with future expansion of built development in the wider Cambridge area. For these reasons, I find that the proposal would, overall, have a beneficial effect of minor significance on biodiversity, which should be given slight weight in the planning balance.

[120,130,131,134,170,226,250,252,255,265,266,277,297]

Hydrology

358. There is local concern about the effects of the proposal on ground and surface water, and the risk of flooding. Others raised issues about demand for water in an area where rainfall might be adversely affected by climate change. The evidence submitted indicates that local surface and ground water resources could be safeguarded by the imposition of appropriate planning conditions, and there is nothing to indicate that the scheme would have an unacceptable impact on water resources. There are no grounds to dismiss the appeal because of its likely impact on hydrology.

[83,135,226,248,250,252,255,259,260,264-266,281,294,296,297]

Pollution

359. There are local concerns about the effects of the proposal on the amenity of the area from air and noise pollution. These are matters that could be reasonably addressed by the imposition of appropriate planning conditions. There are no grounds to find against the proposal because of likely harm to the amenity of the area from pollution.

[83,122,221,226,259,265,277]

Other matters

360. Many objectors commented on the fact that the appeal site is not allocated for development in the recently adopted SCLP. Some considered that the proposal would result in piecemeal development in the absence of a strategic plan for the area which took into account potential other development, such as the NUGV and Wellcome Trust campus expansion. Cumulative impact was raised as an issue that should best be considered in a review of the local plan. However, the proposal falls to be determined having regard to current policy. In the circumstances, it would not be appropriate to refuse the scheme on the grounds of its prematurity pending a review of the local plan.

[205,249,251,257,262,263,268,277,287,288,293,301]

361. Some objectors suggested alternative sites or schemes. But it is only in exceptional circumstances that an alternative proposal will be relevant. This is not a case where consideration of a less harmful alternative development becomes a material planning consideration. [116,199]

362. The Inquiry was advised about a legal agreement affecting the appeal site, which was undertaken by the Wellcome Trust when it owned the land. The agreement binds successors in title. However, this is a legal matter for the parties involved, and is not a consideration which would justify dismissing the appeal. [126,222,277,286]

363. Some representations considered that consultation about the scheme was inadequate, but the proposal was given appropriate publicity with reasonable opportunities for local comment. [225,269]

364. There is local concern about the effects of the proposal on the real estate market, but this should not be an influential consideration in determining this appeal. [285]

(7) Employment and the economy

365. The SCLP does not specifically mention the AgriTech sector, but national and regional strategies and economic policies encourage and promote the sector. There is evidence that the AgriTech sector is an important sector of the regional and national economy that has the potential for considerable growth. SCDC shares the support expressed by the Government and other organisations for fostering and capitalising on the opportunities presented by this sector, but disputes that these objectives require the release of the appeal site for an AgriTech park. [61,62,74,181-187]

366. The Cambridge cluster encompasses businesses and institutions within about a 20-mile radius of the city. There is clear evidence of the benefits of clustering to the growth and success of knowledge-based businesses, which is reflected in the aims of SCLP Policy E/9. The appeal scheme would provide some agricultural land for field trials on site, with the appellant offering adjoining agricultural land if more extensive areas for crop trials were required by occupiers of the proposed AgriTech park. Some businesses may benefit from the proximity of land for trials, but there is evidence that many agricultural research establishments utilise land for trials a considerable distance from their main research premises. The proposed incubator units would be beneficial to start-up enterprises. But these benefits should be seen in a local policy context that is very supportive of new and growing businesses. [67-69,75-77,118,189-194,196-198,204,240,241,284]

367. Supporters of the scheme refer to the opportunities it would create for synergies with other science parks in the Cambridge sub-region, and that it would provide access to an on-site AgriTech community. This is considered to be especially significant as it would be located in East Anglia, which is an important agricultural area. There is evidence of considerable interest in the scheme, but no specific commitments to taking up the opportunities that the AgriTech park is perceived to provide. The representations in support of the proposal are of a general nature, which appear to have been made without the benefit of any details about how the site would be managed and operated, and particularly how occupation of the site would be controlled. Representations refer to a wide range of activities, including an opportunity for a producer's food hub, sustainable food distribution and national logistics. Representations refer to the need for planning permission to provide certainty, as a basis to explore further collaboration with the appellant and the AgriTech community, and in order to progress discussions. Even where genuine interest in the

appeal scheme is expressed, or consideration given to taking up office space in the incubator units, taking this interest further was considered by supporters of the scheme to be dependent upon the AgriTech park receiving planning permission. Nevertheless, if the scheme achieved the benefits claimed by the appellant it would gain support from national and regional strategies and economic policies to encourage and promote the AgriTech sector. [227,231,232,234,235,236-246,256,272,300]

368. A use class B1 development with 112,000 m^2 of employment floorspace within the Cambridge area would generate considerable economic benefits, the quantum of which was not disputed at the Inquiry. However, many submissions expressed concern about the wide breadth and scope of the appellant's definition of AgriTech, and the possibility that the scheme would in future become a general business park, with a focus on commercialisation. Some objectors question whether there is a credible business case for the scheme in the absence of any collaboration or relationship with the University of Cambridge, or with existing bio-tech research parks and establishments in the locality. With no identified anchor tenant for the scheme, objectors argue that the proposal would not be integrated with key UK AgriTech enterprises. There is also concern about the scheme lacking the scientific leadership, focus or governance, that would be necessary to mitigate against any future divergence from the AgriTech credentials of the initiative, leading to it effectively operating as a general science or business park. [27,28,79,115,124,204,226,229,230,247,250,253,254,259,260,262,265,267,270,277, 279, 282,286-288]

369. There is an existing cluster of AgriTech businesses in the Cambridge area operating from a number of dispersed sites and locations. There is also a generous supply of employment land in the area. Some objectors argue that with almost full employment there is no need for an additional 4,000 jobs. The appellant considers that the Cambridge cluster would be significantly enhanced if existing and future businesses had the opportunity to co-locate on a large site, which provided agricultural land for research, trials and the commercialisation of AgriTech innovations in the field, so that the sector would be more competitive and successful in the longer term compared to a dispersed model. [63-66,70-73,81,121,137,194,200,201,276]

370. Some businesses might benefit from co-location on a single AgriTech site, but others might be content to share information, skills and ideas more remotely within a dispersed AgriTech cluster within the Cambridge area. There is no convincing evidence to quantify the need for co-location on a single large site. There is nothing to demonstrate the level of likely advantage such a cluster might have over the future development of the dispersed cluster that has emerged in the Cambridge area. This is especially so as the appellant argues that many of the enterprises that would take up premises in the proposed AgriTech park do not currently exist, and that the emergence of some would be dependent upon technologies and applications which have yet to be invented. That may well be so, but it does mean that the proposal must then be put forward on a speculative basis. However, the fact that the application is in outline, and the lack of identified likely occupiers, are not considerations which weigh against the proposal. Nevertheless, the particular nature and scale of this speculative proposal means that it would be imperative that

effective controls were imposed regarding future occupation of the proposed AgriTech park. [31,80,202,203]

371. The benefits of the proposed AgriTech park, over and above those which might in any event result from future development of the existing AgriTech cluster in Cambridge utilising existing and allocated employment provision, would be significant if the economic contribution envisaged by the appellant could be achieved in practice. However, these benefits would only be realised if an effective user restriction was imposed to ensure that occupiers complied with specified AgriTech requirements, so that the development did not become a general business park. But there was no agreement at the Inquiry about what form these necessary restrictions should take. [82]

372. Suggested Condition 12a would define AgriTech as science-based and/or technology-based development of products, services and applications designed to improve yield, resource efficiency, sustainability, health and profitability in agriculture, horticulture and the food chain. This definition could encompass many and varied uses and activities and would be so imprecise that it would be likely to give rise to disputes about compliance and difficulties in taking effective enforcement action. The reference to 'the food chain' could potentially incorporate a wide range of activities that would fall outside the appellant's concept of AgriTech as it was advanced at the Inquiry. The appellant states that the emphasis here would be on the commercialisation process, which it considers to be the successful production, marketing, sale and servicing of a range of things, including physical products, services or computer-related or other applications. Such an expansive user restriction, combined with the appellant's emphasis on commercialisation, would be open to a wide interpretation that could result in the development operating largely as a general business park. Conditions 12b and 12c would similarly lack the necessary precision to comply with the tests for valid planning conditions. [138]

373. Condition 12d suggested by SCDC would require a needs assessment at reserved matters stage and for initial and subsequent occupation of the proposed incubator units. A needs assessment must demonstrate either an operational need for the prospective occupier to be located on the site in relation to the proximity to nearby land in agricultural use; or a need for the prospective occupier to be located adjacent to other permitted businesses on the site. But it seems to me that this might exclude occupiers who did not meet these requirements, but might otherwise accord with legitimate aspirations for the proposed AgriTech park. The first occupier would have to meet requirement a) proximity to land in agricultural use, as compliance with b) would not apply if there were no other occupiers. Furthermore, an innovative AgriTech use, which did not need to be co-located with other AgriTech occupiers on the site at that time, and required no nearby agricultural land, would fail to comply. A requirement for such a needs assessment at reserved matters stage could also unreasonably impact on the deliverability of the development where the occupier might not be known at that stage. The condition would require first and subsequent occupation of any building to be substantially in accordance with the associated need assessment. This would lack precision in setting out what was required to discharge the condition. I do not consider that Condition 12d would meet the tests for valid conditions.

374. Condition 12e incorporates the appellant's preferred definition for AgriTech (12a), and adds a requirement for approval prior to occupation with need demonstrated by either a requirement of proximity to agricultural land or for co-location with other uses on site. The incubator units would be excluded from a needs assessment. For the incubator units and after 10 years of first occupation for other users, an occupation restriction would only apply by virtue of the 12a part of the condition. However, for the reasons set out above, 12a would lack the necessary precision. I do not consider that Condition 12e would meet the tests for valid conditions.

375. The *Framework* provides that significant weight should be placed on the need to support economic growth and productivity. However, without effective controls there would be nothing to prevent the proposed AgriTech park from becoming a general business park. Given the ample existing and planned provision in the Cambridge area for employment and business development, the benefits that would result from a general business park in this countryside location would be limited. Some form of occupier restriction would be necessary to ensure that the claimed benefits of the AgriTech park would be realised. However, in my view none of the suggested conditions would meet the tests of necessity, reasonableness and precision. The absence of an appropriate mechanism to control occupation of the AgriTech park diminishes the weight that can be given to the claimed benefits of the proposal. In these circumstances, I find that the need for and benefits of the proposed development would be of minor significance, and a consideration which should attract no more than slight weight in the planning balance.

376. However, if the Secretary of State considers that any of the occupancy restriction conditions suggested by either SCDC or the appellant would be policy compliant, or that it would be possible, by going back to the parties, to devise a lawful and policy compliant means to restrict occupation, so that the scheme would achieve the benefits claimed by the appellant, then the contribution to the economy would be a matter that should be given substantial weight in the planning balance.

[78,104-107,213-218,302-308]

(8) Planning balance

377. The appellant's case for the AgriTech park relies on an argued need for the scheme and the benefits which would result. This is based on the view that a single large bespoke site for AgriTech is required if policy ambitions are to be achieved. For the reasons set out above, I am not convinced that the evidence indicates that this is the decisive consideration that warrants the weight attributed to it by the appellant. However, the Secretary of State may come to a different view about this, and the following balancing exercises consider alternative inputs, depending upon whether the need/benefits issue is awarded slight weight, on the basis of my findings in section (7) of this report, or should attract substantial weight reflecting the appellant's case.

378. Before doing so it is necessary to consider how the *Framework* deals with heritage assets. Considerable weight and importance should be given to the harm identified to the designated heritage assets. In my judgement, the public benefits of the scheme in terms of employment and its contribution to the economy would outweigh the harm to both designated and non-designated

heritage assets if substantial weight was given to the need for and benefits of the appeal scheme. However, this would not be the case if the need/benefits consideration was only given slight weight. In the latter case the moderate harm to heritage assets would not be outweighed by the public benefits of the proposal.

379. If the Secretary of State finds that the proposed development is inappropriate in the Green Belt, the planning balance would be whether the harm by reason of inappropriateness, and any other harm, was clearly outweighed by other considerations, so as to amount to the VSC necessary to justify the development. The harm to the Green Belt should, by definition, be given substantial weight. In addition, the proposal would have an adverse effect on the character and appearance of the area, which should be given substantial weight. Moderate weight should be given to the harm identified to heritage assets. Slight weight should be given to the loss of BMV agricultural land. If the appeal scheme brought forward highway improvements sooner than otherwise would be so, then the beneficial impact should be given slight weight. The benefits to biodiversity should also be given slight weight for the reasons set out above. In this scenario, irrespective of whether the need/benefits consideration was given slight or substantial weight, it is my judgement that the harm by reason of inappropriateness, and any other harm, would not be clearly outweighed by other considerations, and the VSC necessary to justify the development would not exist.

380. If the Secretary of State finds that the proposed development is not inappropriate development in the Green Belt the planning balance is a straight weighing of benefits against harm. If the need/benefits consideration was given slight weight, I do not consider that this, combined with the slight weight for both transport and biodiversity benefits, would be sufficient to outweigh the substantial weight to be given to the harm to the character and appearance of the area, along with the moderate weight to the harm to heritage assets and slight weight arising from the loss of BMV agricultural land. If the need/benefits consideration was given substantial weight the matter would be more finely balanced. However, in my judgement, the overall harm I have identified would still be sufficient to tip the planning balance against the proposal.

381. In scenarios for both inappropriate and 'appropriate' development in the Green Belt, and for awarding the need/benefits of the appeal scheme either slight or substantial weight, I find that the planning balance falls against the proposed development.

[96-98,170,224]

(9) Development Plan

382. The Secretary of State is required to decide this appeal having regard to the development plan, and to make the determination in accordance with it, unless material considerations indicate otherwise. The development plan includes the South Cambridgeshire Local Plan 2018 (SCLP), relevant policies of which are summarised in Annex B of this report. Irrespective of how the appeal scheme came about, and submissions about previous proposals to develop the appeal site, the current scheme should be determined on its planning merits having regard to relevant policy. The SCLP does not specifically refer to AgriTech

development. However, it was found to be sound on the basis of the policies contained within it for employment provision and economic growth.

383. The requirement in SCLP Policy HQ/1 1.a to preserve or enhance the character of the local urban and rural area is not inconsistent with the *Framework* because the application of this requirement is qualified as appropriate to the scale and nature of the development. SCLP Policy NH/14 sets out when development proposals would be supported, and so is not inconsistent with heritage policies in the *Framework*. I have had regard to the basket of policies which are most important for determining this appeal (as set out in Annex B to this report), and I am satisfied that they are, taken as a whole, consistent with the *Framework*.

384. Subject to the imposition of appropriate planning conditions and the obligations set out in the planning agreement, the appeal scheme would comply with SCLP Policies TI/2, TI/3 and TI/8 concerning sustainable travel, parking and infrastructure provision. The proposal would not gain support from Policy S/1 if the planning balance fell against it because in those circumstances it would not represent sustainable development. In terms of Policy S/2 the proposal would support economic growth, but would not protect the character of South Cambridgeshire. The scheme would gain some support from Policy S/5 because it would assist in achieving the plan's target for additional jobs. Some support would also come from Policy NH/4, which requires new development to aim to maintain or enhance biodiversity. However, the proposal would harm heritage assets and so would not gain support from Policy NH/14.

385. For the reasons set out above the proposal would conflict with Policies HQ/1 and NH/2 concerning the local landscape. It would also be at odds with Policy SC/9 because lighting would be likely to have an unacceptable adverse impact on the surrounding countryside. If the Secretary of State finds that the planning balance falls against the proposed development, then sustainability considerations and the need for the development would not be sufficient to override the need to protect the agricultural value of land. As the scheme would result in the irreversible loss of BMV agricultural land it would consequently be at odds with Policy NH/3. Policy E/9 provides for locally driven clusters as they emerge. However, if the Secretary of State finds that the planning balance falls against the proposed development the scheme would not be in a suitable location, and so would conflict with Policy E/9 concerning the promotion of clusters. Overall, the proposal would not be supported by other policies in the SCLP, and so would conflict with Policy S/7 concerning development outside development frameworks.

386. If the Secretary of State finds that the development would be inappropriate in the Green Belt and finds that VSC do not exist, then the proposed development would not accord with the objectives set out in Policy S/2, and it would also conflict with Policies S/4 and NH/8.

387. Taking all the above into account, I find that the proposal would, if the planning balance falls against the scheme, conflict with the development plan when taken as a whole.

[22,29,30,60,99-102,184-186,206-212,277]

(10) Framework and Guidance

388. Relevant provisions of the *Guidance* have been taken into account in assessing the appeal scheme. In terms of compliance with the *Framework* the scheme would gain some support from the need to support economic growth and productivity, and from providing net gains for biodiversity. On transport grounds the proposal would have a neutral or slight beneficial effect, not the unacceptable impact on highway safety or severe residual cumulative impacts on the road network that would justify a refusal on highway grounds.

389. However, the appeal scheme would be at odds with policy about enhancing the local environment and recognising the intrinsic character and beauty of the countryside and the economic and other benefits of BMV agricultural land. In applying policies in the *Framework* for heritage assets, I have found that the public benefits of the scheme would outweigh the harm to both designated and non-designated heritage assets if substantial weight was given to the need for and benefits of the proposal, but would not do so if the need/benefits consideration was only given slight weight. If the Secretary of State finds that the development would be inappropriate in the Green Belt and finds that VSC do not exist, then the proposed development would also conflict with national policy concerning the Green Belt. But irrespective of whether the proposal is inappropriate or 'appropriate' development in the Green Belt, and whether the appellant's need/benefits case is given slight or substantial weight, I consider that the scheme would be at odds with the policy in the *Framework,* when considered as a whole. [23-25]

(11) Planning conditions and obligations

Conditions

390. Suggested conditions, in the event that outline planning permission was granted, were the subject of a round-table without-prejudice discussion at the Inquiry. The written list of conditions submitted by the appellant includes pre-commencement conditions which are agreed. In the following paragraphs the Condition numbers are as they appear in the Schedule of Conditions attached to this report.

391. The standard outline conditions would be necessary which specified appropriate time periods (Conditions 1-5). Otherwise than as set out in the decision and conditions, it would be necessary that the development was carried out in accordance with the approved plans, to ensure that it was in accordance with the scheme considered at the Inquiry (Condition 6).

392. Provision for access and highway improvements would be necessary in the interests of highway safety in accordance with SCLP Policies TI/2 and TI/8. (Conditions 7-9). Condition 10 would be necessary in order to clarify the parameters of the permission in terms of overall floorspace for uses and total number of car parking spaces. A condition would be required to ensure that agricultural land was available for AgriTech occupiers (Condition 11).

393. The parties could not agree on the wording for Condition 12 concerning an occupancy restriction. None of the suggested variations to this condition would pass the relevant policy tests. In the event that the Secretary of State is minded to grant outline planning permission it would be necessary to go back

to the parties to devise a valid occupancy condition or other appropriate means to control occupation of the proposed AgriTech park.

394. A condition would be required to ensure that the class D1 and D2 uses did not attract additional external traffic movements to the site (Condition 13). Condition 14 would be necessary to ensure that appropriate mitigation was carried out. Conditions would be required to ensure that A3 and A5 uses remained ancillary to the function of the site and did not attract external trips onto the network unrelated to the AgriTech function of the site, and a restriction of permitted development for office conversions to dwelling houses would be necessary and reasonable because of the particular needs of the proposed scheme to be located in this rural location (Condition 15).

395. Condition 16 would be necessary to clarify how the site was to be phased to assist with the determination of subsequent reserved matters applications and in order to ensure that major infrastructure provision and environmental mitigation was provided in time to cater for the needs and impacts arising out of the development in accordance with SCLP Policy TI/8. Early provision of the proposed incubator units would be necessary to achieve the benefits of the proposed development (Condition 17). Reporting on the phased delivery of infrastructure and mitigation would be necessary to identify any changes required to phasing (Condition 18).

396. Condition 19 would be necessary to ensure sufficient sewerage infrastructure capacity in accordance with SCLP Policies CC/9 and TI/8. In order to prepare the site for development a condition would be necessary regarding enabling works (Condition 20). Site-wide and detailed Construction Environmental Management Plans (CEMP) would be required to protect the amenities and environment of residents and other sensitive receptors in accordance with SCLP Policy CC/6 (Conditions 21 and 22).

397. A community liaison group would be required given the scale and wide-reaching environmental impacts of the proposal in accordance with SCLP Policy CC/6 (Condition 23). A site wide Construction Transport Management Plan (CTMP) would ensure that the construction of the development minimised its environmental impacts in accordance with SCLP Policies CC/6 and TI/2 (Condition 24). For similar reasons a site wide Construction Waste Management Plan (CWMP) would be necessary (Condition 25). Controls to avoid unnecessary noise from piling operations in accordance with SCLP Policy CC/7 and to prevent pollution would be required (Condition 26).

398. Condition 27 would ensure that no contaminated material was brought onto the site, in accordance with SCLP Policy CC/6. Odour controls would protect the amenities of users of the AgriTech park in accordance with SCLP Policy SC/14 (Condition 28). A site-wide car parking strategy would ensure that the number of car parking spaces on site did not exceed 2,000 and that parking provision was provided at appropriate levels for each permitted use, having regard to SCLP Policy TI/3 (Condition 29). Condition 30 would provide for a site wide Ecological Conservation Management Plan (ECMP) to ensure that the development of the site conserved and enhanced ecology (SCLP Policy NH/4).

399. A lighting strategy would be necessary to minimise light pollution in accordance with SCLP Policy SC/9 (Condition 31). Condition 32 would seek to

ensure that the development and subsequent reserved matters proposals adequately addressed climate change in accordance with SCLP Policies CC/1, CC/3 and CC/4. A site wide Heritage Protection and Management Plan would ensure heritage assets were afforded protection to comply with SCLP Policy NH/14 (Condition 33). Condition 34 would require a Strategic Surface Water Drainage Strategy in order to safeguard against the risk of flooding, to ensure adequate flood control, maintenance and efficient use and management of water within the site, to ensure the quality of the water entering receiving water courses was appropriate and monitored and to promote the use of sustainable urban drainage systems in accordance with SCLP Policies CC/7, CC/8, CC/9 and Adoption and Maintenance of Sustainable Drainage Systems in South Cambridgeshire (2016). To comply with SCLP Policies CC/1 and TI/8 a Refuse and Recycling Strategy would be necessary (Condition 35).

400. In the interests of the public realm a site-wide Estate Management Strategy would be required having regard to SCLP Policies HQ/1 and TI/3 (Condition 36). A Design Guide should be approved and implemented to ensure high standards of urban design consistent with SCLP Policy HQ/1 and District Design Guide: High Quality and Sustainable Development (2010) Supplementary Planning Document (Condition 37). A site-wide topographical plan with cross-sections (Condition 38) would be necessary to provide a strategic approach to land form cut and fill in the interests of the visual amenity of the area (SCLP Policies HQ/1 and NH/2). [Condition 39 was not used]

401. A Strategic Landscape and Ecological Management Plan (SLEMP) would be required in accordance with SCLP Policy HQ/1 and SCDC Landscape in New Developments (2010) SPD (Condition 40). For similar reasons measures would be necessary to protect trees (Conditions 41, 42 and 43). Details for hard and soft landscaping, along with ecological measures would need to be specified and implemented (Conditions 44, 45 and 46) to ensure that the development was consistent with SCDC's Landscape in New Developments (2010) SPD, and enhanced ecology in accordance with SCLP Policies NH/4 and HQ/1. A detailed lighting scheme for each phase would be necessary in the interests of the appearance of the area (Condition 47). Pedestrian and cycle routes for each phase (Condition 48) should be approved and implemented to ensure that appropriate connections were provided for the scheme (SCLP Policies HQ/1 and TI/2). For similar reasons details of car and cycle parking in each phase would need to be approved and implemented (Conditions 49 and 50).

402. BREEAM standards (Conditions 51 and 52) should be specified in accordance with the ES commitments and to ensure a high level of sustainable design (SCLP Policies CC/1, CC/2, CC/3 and CC/4). A Sustainability Statement (Condition 53) would be necessary in the interests of reducing carbon dioxide emissions and promoting principles of sustainable construction and efficient use of buildings (SCLP Policy CC/1).

403. There is a dispute about Condition 54 concerning the future review of the sustainability strategy and targets. SCDC considers that the condition would be necessary in the interests of reducing carbon dioxide emissions, promoting principles of sustainable construction, the efficient use of buildings, and in view of the duration of the proposed development, having regard to SCLP Policies CC/1, CC/3 and CC/4. These are laudable aims, but I am not convinced, given the wording of the suggested condition, that it would meet the policy tests. I

share the appellant's view that the condition would not provide the necessary certainty about what was required from the developer, and so in the form suggested it would be unreasonable. [108,219]

404. Conditions 55, 56 and 57 would be necessary to reduce carbon emissions and in the interests of climate change adaptation. The location and provision of fire hydrants (Condition 58) would need to be approved in order to secure appropriate firefighting infrastructure in accordance with the advice of the Cambridgeshire Fire and Rescue Service (SCLP Policy TI/8). Condition 59 requires a minimum of 20% of the car parking spaces to have electric vehicle charging points in the interests of adapting to and mitigating climate change (SCLP 2018 Policies TI/2 and CC/1).

405. A Detailed Surface Water Scheme (Condition 60) would be necessary in order to safeguard against the risk of flooding, to ensure adequate flood control, maintenance and efficient use and management of water within the site, to ensure the quality of the water entering receiving water courses is appropriate and monitored and to promote the use of sustainable urban drainage systems (SCLP Policies CC/7, CC/8, CC/9 and Adoption and Maintenance of Sustainable Drainage Systems in South Cambridgeshire (2016). A scheme to dispose of foul water drainage would be necessary to prevent pollution (Condition 61).

406. A programme of archaeological work (Condition 62) would be necessary in order to appropriately protect and investigate the archaeological heritage of the site (SCLP Policy NH/14). Soil movement and restoration (Condition 63) would need to be controlled to accord with SCLP Policies NH/3 and NH/4.

407. Condition 64 concerning land contamination and remediation would be necessary to ensure that risks from land contamination to the future users of the land and neighbouring land were minimised in accordance with SCLP Policy SC/11.

408. It would not be necessary to impose any other conditions. Some minor changes to the wording of conditions suggested by the parties are necessary to ensure that a permitted scheme would accord with the details of the proposal that was considered at the Inquiry, and to ensure that conditions were precise and enforceable. I have omitted discretionary clauses which could result in fundamental changes to some aspects of the scheme considered at the Inquiry. References to some of the documents cited in the suggested conditions have also been updated in the Schedule of Conditions attached to this report.

Obligations

409. The obligations concerning a Public and Private Transport Service Strategy, with a Service Level Agreement and a Private Shuttle Bus Service would be necessary to ensure that appropriate bus services were provided given the rural location. Parking Management and Monitoring Plans, along with a Monitoring Response Sum Bond would be required to overcome any off-site parking or rat-running. A Shared Multi-User Route pursuant to the Highways Act, along with junction improvements to McDonalds roundabout would be required to secure necessary highway improvements. A Framework Travel Plan, along with an Annual Action Plan, with Review and Monitoring and Individual Travel Plans, together with a Travel Plan Enhancement Bond would

be necessary to minimise reliance on transport by private cars. A Strategic Public Open Space Plan would be required in the interests of the amenity of the area. These obligations would be necessary, directly related to the proposed development, and fairly and reasonably related to the proposal in terms of scale and kind.

410. The obligation provides for CCC to elect for the owners to deliver the New Bus/Cycle Interchange, the A505/Moorfield Road Works, and the A505/Hunts Road Works, or to deliver bonds which would enable the funding of alternative works. No more than 25,000 m^2 of floorspace could be occupied unless these works had been completed. These provisions would provide a pragmatic solution if it proved that highway constraints on the appeal scheme could be better resolved in a scheme initiated by the Highway Authority. On this basis, it seems to me that the possibility of a contribution instead of constructing the works would reasonably comply with the CIL Regulations.

411. Essex County Council seeks a contribution of £2.5 m to the cost of a pedestrian and cycle bridge linking the appeal site to the proposed NUGV. However, planning for the NUGV is at an early stage and the link would not be necessary in order to make the AgriTech development acceptable in planning terms. Furthermore, no justification has been provided by reference to any Essex policy or guidance relating to such financial contributions. However, it would be necessary and reasonable for the obligation to recognise the desirability of a link between the developments should the NUGV proceed, and for the owners to use reasonable endeavours to allow implementation to permit pedestrians, cyclists or other suitable transport users to move between the appeal site and the NUGV. [11,103,175,176,220,289,302-309]

Overall conclusions

412. I have found that the planning balance would fall against the proposed development in all scenarios, irrespective of whether the scheme is, or is not, inappropriate development in the Green Belt, and whether the appellant's need/benefits case is given slight, or substantial, weight. The proposal would conflict with the development plan, taken as a whole, and would not gain support from the *Framework*. There are no material considerations which indicate that the appeal should be determined other than in accordance with the development plan. For the reasons given above and having regard to all other matters raised in evidence, I conclude that the appeal should be dismissed.

413. However, if the Secretary of State considers that substantial weight should be given to the appellant's need/benefits case for the appeal scheme, and also finds that the planning balance falls in favour of the proposed development, having regard to relevant policy, then it would be necessary to devise appropriate occupancy controls to enable a valid outline planning permission to be granted.

Recommendations

414. The appeal be determined on the basis of the amended Landscape and open space parameter plan Drawing No.235701B-LA-PP103A.

415. The description of the proposed development be amended to an AgriTech technology park comprising up to 112,000 m^2 (gross) employment floorspace, supporting infrastructure, amenities and landscape works including publicly accessible informal open space, enhancements to parkland; vehicle and cycle parking; service areas; bus/cycle interchange on land west of the A1301 / north of A505; and infrastructure works including new vehicular accesses, highway improvement works, pedestrian and cycle links with bridge crossings over A1301 / A505 and River Cam, site re-profiling, drainage works, foul and surface water pumping stations and primary electricity sub station; telecommunications infrastructure and other associated works.

416. I recommend that the appeal should be dismissed for the reasons set out above.

417. However, if the Secretary of State is minded to allow the appeal and to grant outline planning permission, then the conditions considered necessary to be imposed, with two exceptions, are set out in the Schedule of Conditions attached to this report. It would be necessary to go back to the parties to devise controls on the future occupation of the site, by imposing an amended version of Condition 12, or by means of an appropriate planning obligation. It would not be reasonable to impose suggested Condition 54.

John Woolcock
Inspector

APPEARANCES

FOR SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL:

Douglas Edwards QC Horatio Waller of counsel	Instructed by Richard Pitt SCDC

They called

David Huskisson Dip LA CLMI	Principal landscape practice
Adrian Gascoyne BA(Hons) FSA MCIFA	Head of Place Services Essex County Council
Cristina Howick MA(Oxon) MSc(Econ)	Director Peter Brett Associates LLP
Phillipa Jarvis BSc (Hons) DipTP MRTPI	Principal of PJPC Ltd

FOR THE APPELLANT:

Neil King QC Robert Walton QC	Instructed by Terence O'Rourke Ltd on behalf of SmithsonHill Ltd

They called

Andy Hill	Founder and Chief Executive Hill Group and Director of SmithsonHill (CIOB)
Martin Collison BSc (hons) FRSA FCIEA FRAgS MIAgrM	Director Collison and Associates Limited
Steve Lucas BSc MSc economics	Director Development Economics Limited
Rob Sadler BSc MRICS	Director Savills Cambridge
Richard Burton DipLA CMLI AoU	Director Terence O'Rourke Limited
John Trehy BA MCIfA	Technical Director Terence O'Rourke Limited
Rupert Lyons MSc CMILT MIOD	Founding Director Transport Planning Associates Limited
Tim Hancock BA (Hons) MPhil DMS MRTPI AoU	Managing Director Terence O'Rourke Limited

Continued -

INTERESTED PERSONS:

Prof William Brown	Chair Hinxton Parish Council
Cllr Peter McDonald	District Councillor SCDC
Rupert Kirby	Local resident
Cllr Peter Topping	District Councillor for the Whittlesford Ward of SCDC and County Councillor for Duxford Division of Cambridge County Council
John F Williams	Local resident
Cllr Aureole Wragg	Pampisford Parish Council
Cllr Sian Wombwell	Ickleton Parish Council
Tony Orgee	Local resident
Dr Alan James BSc Tech PhD MBCS CITP MIMMM CEnv	Chairman CPRE Cambridgeshire & Peterborough

PROOFS OF EVIDENCE and APPENDICES

Appellant

APP1 Andy Hill
- 1.1 Summary
- 1.2 Proof of Evidence
- 1.3 Appendices 1-3

APP2 Martin Collison
- 2.1 Summary
- 2.2 Proof of Evidence
- 2.3 Appendices 1 and 2

APP3 Steve Lucas
- 3.1 Summary
- 3.2 Proof of Evidence

APP4 Rob Sadler
- 4.1 Summary
- 4.2 Proof of Evidence
- 4.3 Appendix 1

APP5 Richard Burton
- 5.1 Summary
- 5.2 Proof of Evidence
- 5.3 Figures 1-7 and Appendices A-F
- 5.4 Rebuttal and Figure 1

[The following submitted at the Inquiry]
- 5.5 Response by Mr Burton to LPA3.4 including Drawing No.235701B-LA-PP103A

APP6 John Trehy
- 6.1 Summary
- 6.2 Proof of Evidence
- 6.3 Appendices 1-4

APP7 Rupert Lyons
- 7.1 Summary
- 7.2 Proof of Evidence
- 7.3 Appendices A-O
- 7.4 Supplementary and Rebuttal Appendix RL-A

[The following submitted at the Inquiry]
- 7.5 Further Rebuttal Proof

APP8 Tim Hancock
- 8.1 Summary
- 8.2 Proof of Evidence
- 8.3 Appendices A-S

Continued

South Cambridgeshire District Council

LPA1	Phillipa Jarvis
	1.1 Summary
	1.2 Proof of Evidence
	1.3 Appendices PJ1 and PJ2
LPA2	Cristina Howick
	2.1 & 2.2 Main Proof of Evidence
	2.3 Appendices A-D
	2.4 Rebuttal
	2.5 Rebuttal Appendices A and B
LPA3	David Huskisson
	3.1 Summary
	3.2 Proof of Evidence
	3.3A Appendices 1-4
	3.3B Plans and Photographs
	3.4 Response of SCDC to FEI landscape and visual matters
	[The following submitted at the Inquiry]
	3.5 Updated table of effects Day 1 Winter
	3.6 Errata
	3.7 DH1 DH2 and DH3
	3.8 Extract with plans Cambridge Green Belt Study CD9.3
LPA4	Adrian Gascoyne
	4.1 Summary
	4.2 Proof of Evidence & Figures 1-34
	4.3 Appendices A-G

SCHEDULE OF PLANS AND DRAWINGS

Application plans and drawings

Site location plan Drawing No.235701B-LA-001 A3
Existing site plan Drawing No.235701B-LA-002
Land use parameter plan Drawing No.235701B-LA-PP101 rev A
Movement and access parameter plan Drawing No.235701B-LA-PP102
Landscape and open space parameter plan Drawing No.235701B-LA-PP103
Development density parameter plan Drawing No.235701B-LA-PP104
Height parameter plan Drawing No.235701B-LA-PP105

Amended plan submitted at the Inquiry

Landscape and open space parameter plan Drawing No.235701B-LA-PP103A

ANNEX A

Summary of obligations in section 106 agreement dated 31 July 2019

Schedule 1

Requires the owners of the site to submit a Public and Private Transport Service Strategy for approval prior to commencement. Prior to occupation a Service Level Agreement would ensure that a bus service is provided in accordance with the approved Public and Private Transport Service Strategy for a period of 5 years or until the service is commercially viable and self-sufficient.

Requires the owners of the site to provide a Private Shuttle Bus Service in accordance with the approved Public and Private Transport Service Strategy for the lifetime of the development.

Requires the site owners to submit for approval a Parking Management Plan prior to occupation and thereafter implement it for the duration of the development.

Requires the site owners to submit for approval a Parking Management Monitoring Plan prior to occupation and thereafter implement it with provision of a Monitoring Response Sum Bond, and provision for measures to overcome any offsite parking or rat running.

A Shared Multi-User Route pursuant to the Highways Act would be required.

The obligation provides for CCC to elect for the owners to deliver the New Bus/Cycle Interchange or to deliver a bond which would enable the funding of alternative works for the New Bus/Cycle Interchange. No more than 25,000 m^2 of floorspace could be occupied unless the Interchange or approved alternative works had been completed.

Requires the owners to complete the McDonalds Roundabout junction improvements prior to occupation.

The obligation provides for CCC to elect for the owners to deliver the A505/Moorfield Road Works or to deliver a bond which would enable the funding of alternative works. No more than 25,000 m^2 of floorspace could be occupied unless the A505/Moorfield Road Works or approved alternative works had been completed.

The obligation provides for CCC to elect for the owners to deliver the A505/Hunts Road Works or to deliver a bond which would enable the funding of alternative works. No more than 25,000 m^2 of floorspace could be occupied unless the A505/Hunts Road Works or approved alternative works had been completed.

In the event that the North Uttlesford Garden Village (NUGV) is allocated for housing and planning permission granted within 7 years which provides links across the A11 the owners shall use reasonable endeavours to allow

implementation to permit pedestrians, cyclists or other suitable transport users to move between the appeal site and the NUGV.

Requires submission for approval of a Framework Travel Plan, along with an Annual Action Plan, with Review and Monitoring and Individual Travel Plans. It also provides for a Travel Plan Enhancement Bond.

Requires the owners to submit for approval a Strategic Public Open Space Plan.

Schedule 2 sets out CCC's obligations

ANNEX B

Summary of relevant policies of the South Cambridgeshire Local Plan 2018 (SCLP)

S/1 The vision provides for sustainable economic growth with residents having a superb quality of life in an exceptionally beautiful, rural and green environment.

S/2 Sets out 6 key objectives; a. to support economic growth and South Cambridgeshire's (SC) position as a world leader in research and technology based industries, research, and education, and supporting the rural economy; b. to protect the character of SC, including built and natural heritage, protecting the GB, new development should enhance the area, and protect and enhance biodiversity; c. To provide land for housing; d. to deliver high quality well-designed development; e. to ensure new development provides or has access to a range of services and facilities that support healthy lifestyles and well-being; and f. to maximise potential for journeys to be undertaken by sustainable modes.

S/3 Accords with the presumption in favour of sustainable development as set out in the 2012 NPPF.

S/4 Defines the Cambridge Green Belt and states that new development in the Green Belt would only be permitted in accordance with national Green Belt policy.

S/5 Development will meet the needs for 22,000 additional jobs to support the Cambridge Cluster and provide a diverse range of local jobs.

S/6 Sets out a development strategy for jobs in the following order of preference: on the edge of Cambridge, at new settlements, in the rural area at rural centres and minor rural centres.

S/7 Provides that outside development Frameworks only development for, amongst other things, uses which need to be located in the countryside or where supported by other policies in the plan would be permitted.

S/13 Provides for a review of the SCLP to commence before the end of 2019.

CC/1 Concerns mitigation and adaptation to climate change.

CC/2 and CC/3 Deal with renewable and low carbon energy generation.

CC/4 Concerns water efficiency.

CC/6 Concerns construction methods.

CC/7 Concerns water quality.

CC/8 Concerns sustainable drainage.

CC/9 Concerns flood risk.

HQ/1 Requires high quality design. As appropriate to the scale and nature of the development, proposals must, amongst other things, 1.a preserve or enhance the

character of the local rural area and respond to its context in the wider landscape, 1.b conserve or enhance important natural and historic assets and their setting, and 1.d be compatible with its location and appropriate in terms of scale, density, mass, form, siting, design, proportion, materials, texture and colour in relation to the surrounding area.

NH/2 Permits development where it respects and retains, or enhances the local character and distinctiveness of the local landscape and of the individual National Character Area in which it is located.

NH/3 Provides that planning permission would not be granted for development which would lead to the irreversible loss of Grades 1,2 or 3a agricultural land unless 1. The land is allocated for development, 2. Sustainability considerations and the need for the development are sufficient to override the need to protect the agricultural value of the land.

NH/4 States that new development must aim to maintain, enhance, restore or add to biodiversity.

NH/8 States that any development in the Green Belt must be located and designed so that it would not have an adverse effect on the rural character and openness of the Green Belt.

NH/14 Supports development proposals when they sustain and enhance the special character and distinctiveness of the SCDC's historic environment.

E/1 Supports employment development on Cambridge Science Park where they enable the continued development of the Cambridge Cluster of high technology research and development companies.

E/9 States, amongst other things, that development proposals in suitable locations will be permitted which support the development of employment clusters, drawing on the specialisms of the Cambridge area in certain specified sectors, along with other locally driven clusters as they emerge.

E/15 Concerns established employment areas

SC/9 Permits development which includes new external lighting only where it can be demonstrated that lighting and levels are the minimum required for reasons of public safety and security, and there is no unacceptable adverse impact on the local amenity of nearby properties, or on the surrounding countryside.

SC/11 Concerns contaminated land.

SC/12 and SC/14 concern emissions to air.

TI/2 States that development must be located and designed to reduce the need to travel, particularly by car, and promote sustainable travel appropriate to its location. Planning permission for development likely to give rise to increased traffic demands will only be granted where the site has or will attain sufficient integration and accessibility by walking, cycling or public and community transport. Larger

developments (over 1 ha) are required to demonstrate that they have maximised opportunities for sustainable travel.

TI/3 Sets out indicative parking standards

TI/8 Concerns infrastructure provision to make schemes acceptable in planning terms.

The Glossary defines 'Clusters' as groups of companies in related activities, often sharing similar skills and infrastructure, within a specific area – The Cambridge Clusters are related to high tech clusters (including high tech firms, Cambridge University and the research institutes and related specialist services e.g biotech and medical uses at Granta Park.

SCHEDULE OF PLANNING CONDITIONS (Conditions 1-64)

If outline planning permission is granted for an AgriTech technology park comprising up to 112,000 m^2 (gross) employment floorspace, supporting infrastructure, amenities and landscape works including publicly accessible informal open space, enhancements to parkland; vehicle and cycle parking; service areas; bus/cycle interchange on land west of the A1301 / north of A505; and infrastructure works including new vehicular accesses, highway improvement works, pedestrian and cycle links with bridge crossings over A1301 / A505 and River Cam, site re-profiling, drainage works, foul and surface water pumping stations and primary electricity sub station; telecommunications infrastructure and other associated works at Land to the east of the A1301, south of the A505 near Hinxton, and west of the A1301, north of the A505 near Whittlesford in accordance with the terms of the application Ref.S/4099/17/OL, dated 20 November 2017, as amended [if amendment accepted], it is recommended that the permission be subject to the following conditions:

1) No development of any individual development Phase, Parcel or part thereof shall commence until approval of the details of the means of access, appearance, landscaping, layout and scale (hereinafter called the 'reserved matters') within that Phase, Parcel or part thereof has been obtained from the local planning authority in writing. The development shall be carried out as approved.

2) The application for approval of the first reserved matters shall be made to the local planning authority no later than three years from the date of this permission.

3) The application for the approval of the last reserved matters shall be made to the local planning authority no later than 12 years from the date of this permission.

4) Details of reserved matters of any development Phase, Parcel or part thereof shall be submitted to and approved in writing by the local planning authority before development is commenced on that particular Phase, Parcel or part thereof save for any Enabling Works. The development shall be carried out in accordance with the approved details.

5) The development hereby permitted shall begin either not later than the expiration of 5 years from the date of this permission, or not later than the expiration of 2 years from approval of the first reserved matters to be approved, whichever is later.

6) The development hereby permitted shall be carried out in accordance with the following approved plans save for only minor variations where such variations do not deviate from this permission nor have any additional or materially different likely significant environmental effects to those assessed in the Environmental Statement accompanying the application and February 2018 and May 2019 addendums:
235701B-LA-001 A0 – Site Location Plan
235701B-LA-PP101 rev A - Land Use Parameter Plan
235701B-LA-PP102 – Movement and Access Parameter Plan
235701B-LA-PP103 rev A – Landscape and Open Space Parameter Plan
[or 235701B-LA-PP103 if amendment not accepted]
235701B-LA-PP104 – Development Density Parameter Plan
235701B-LA-PP105 – Height Parameter Plan

7) No building shall be occupied until the new site access roundabout junction illustrated indicatively in TPA's proposed site access (Junction 11) drawing (No.180-72-PL 05, revision B, August 2018) has been substantially completed in accordance with the final approved plans pursuant to Condition 8.

8) No development apart from Enabling Works shall commence on site until details of the proposed access point to the site from the A1301 have been submitted to and approved in writing by the local planning authority. The access shall be designed to accommodate the predicted transport (all modes) that the site may generate and will have been developed to such a point that a Stage Two Safety Audit has been completed and any outstanding issues identified within the Stage Two Audit having been resolved in accordance with the written approval of the local planning authority. The design of the access point shall include a detailed engineering scheme/plan showing cross sections (existing/proposed), levels changes, including large scale cross-sections of the kerb and associated shared use pathway/cycleway, foundation design and construction and all associated improvements and links to existing pathways/cycleways within the vicinity of the junction. The scheme shall be carried out in accordance with the approved details.

9) No development apart from Enabling Works shall commence on site until details of the works proposed to be carried out to the M11/Junction 10 and the A11/A1307 junction have been submitted to and approved in writing by the local planning authority. The design of the improvements shall be to the standards set out in the Design Manual for Roads and Bridges. The M11/Junction 10 works scheme shall include the widening of the southbound off-slip road at Junction 10 of the M11 Motorway and the provision of associated works to provide traffic signal control of the southbound off-slip road and circulatory carriageway as shown indicatively on drawing number PL01C titled 'Proposed Mitigation at Junction 1: M11 Junction 10', TPA - Transport Planning Associates, 29 April 2019. The A11/A1307 scheme works shall include amendments to the white lining on the southbound off-slip road approach to the grade separated junction of the A1307 with the A11 as shown indicatively on drawing number SK01A titled 'Sketch of Possible Mitigation at Junction 9: A11/A1307 Junction', TPA - Transport Planning Associates, 24 April 2019. The schemes' works shall be completed in accordance with the approved details prior to the first occupation of any building.

10) The gross external floorspace of the following use classes hereby permitted shall not exceed:

B1a office / B1b R&D / B1c light industrial - 92,000 m^2
B1b laboratories - 11,800 m^2
A3 / A5 - 2,000 m^2
D1 - 3,000 m^2
D2 - 3,200 m^2

The total number of car parking spaces on the site shall not exceed 2,000 spaces.

11) As from the date of first occupation, at least 10 ha of land within the site shall be made available at all times for crop/technology trials and demonstration.

12) [the parties disagreed about suggested conditions to control occupation of the site and put forward options for consideration]

12a The use class B1 floorspace hereby approved shall be used for no purpose other than AgriTech; namely the science-based and/or technology-based development of products, services and applications that are designed to improve yield, resource efficiency, sustainability, health and profitability in agriculture, horticulture and the food chain.

or

12b The use class B1 floorspace hereby approved shall only be used for any or all or the following purposes; namely research into, development of, commercialisation of, and production of, goods, services and applications for use in agriculture, horticulture and the food chain.

or

12c The use class B1 floor space hereby approved shall only be used for the purpose of research into and development and commercialisation and production of products, services and applications for use in agriculture, horticulture and the food chain.

12d Other than a reserved matters application for the incubator building pursuant to Condition 17, any reserved matters application for floorspace within the B1 use class of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification, shall be accompanied by a needs assessment which sets out the nature of the prospective occupier(s) and their specific requirements for locating onto the site. The needs assessment shall demonstrate either: (a) an operational need for the prospective occupier to be located on the site in relation to the proximity to nearby land in agricultural use; or (b) need for the prospective occupier to be located adjacent to other permitted businesses on the site. Prior to the occupation of any business within the incubator building, a needs assessment demonstrating compliance with either criteria a) or b) above shall be submitted to and approved in writing by the local planning authority. Subject to any needs assessment being approved by the local planning authority, the first and subsequent occupation of any building shall be substantially in accordance with the associated needs assessment.

12e The use class B1 floorspace hereby approved shall be used for no purpose other than AgriTech; namely the science-based and/or technology-based development of products, services and applications that are designed to improve yield, resource efficiency, sustainability, health and profitability in agriculture, horticulture and the food chain. Prior to first occupation of any B1 floorspace (other than the occupiers of the incubator building), or prior to any subsequent occupier within the first 10 years from the date of first occupation, details of the proposed occupier(s) shall be submitted to the local planning authority for approval in writing. The details shall demonstrate either: (a) a need for the

prospective occupier to be located on the site for reasons of proximity to land in agricultural use; or (b) a need for the prospective occupier to be co-located with other AgriTech occupiers on the site. No B1 building shall be occupied until the local planning authority has given its written approval.

[For the reasons set out above, if the Secretary of State is minded to allow the appeal and to grant outline planning permission it would be necessary to go back to the parties to devise an appropriate condition or other means to control future occupation of the site.]

13) Any buildings within use classes D1 and D2 shall be used only for the benefit of the occupiers and users of the site.

14) The development shall be carried out in accordance with the mitigation measures as set out in Chapter 2 of the Environmental Statement, dated September 2017, as amended by the Addendums of February 2018 and May 2019.

15) Individual planning units within use classes A3 and A5 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification shall not exceed 650 m^2 and 50 m^2 gross external floor space respectively.

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development within Class O of Part 3 of Schedule 2 of the Order shall take place unless expressly authorised by planning permission granted by the local planning authority in that behalf.

16) Prior to or concurrently with the submission of the first reserved matters application(s) for development for the site, a site wide phasing plan (SWPP) shall be submitted to the local planning authority for approval in writing. The SWPP shall be based on the indicative phasing plan (Figure 2.7) in the submitted Environmental Statement accompanying the application. It shall include information in relation to the proposed sequence of development across the entire site and timing information by reference to the commencement or completion of development of any Phase or the provision of any other element or to any other applicable trigger point. The SWPP shall include:
    (a) Major infrastructure including all accesses, roads, footpaths and cycleways, the proposed transport interchange and bridge link as shown on PP102.
    (b) Landscaping provisions including strategic woodland and planting areas, parkland restoration zone, bunding and re-grading areas as shown on PP103A [or PP103 if amendment not accepted].
    (c) Informal open space and the natural open water/swimming lake as shown on PP103A [or PP103 if amendment not accepted].
    (d) Strategic SUDS and surface water drainage features, such as balancing ponds and the wetland infiltration area as shown on PP103A [or PP103 if amendment not accepted].
    (e) Strategic potable water main provisions.
    (f) Strategic on-site foul water drainage and pollution control features.

(g) Electricity and telecommunications networks.
(h) Environmental mitigation measures specified in the Environmental Statement and February 2018 and May 2018 addendums.

No development shall commence apart from Enabling Works approved in writing by the local planning authority until such time as the SWPP has been approved in writing by the local planning authority. The development shall be carried out in accordance with the approved SWPP and any subsequent approved revisions to it pursuant to Condition 18.

17) Prior to or concurrently with the submission of the first reserved matters application(s) for development of the site, a reserved matters application for the 3,000 m^2 of incubator units as part of Phase one shall be submitted to the local planning authority for approval in writing. The reserved matters shall include a statement which sets out the range of facilities and the internal floorspace configuration to be provided in the form of the incubator units based upon the identified and anticipated needs of start-up firms, small and medium enterprises (SMEs) and new business ventures, and shall include, but not be limited to, the consideration of need for a range of office sizes from 25 m^2 (with fit out options), meeting rooms (shared or individually rented), shared workspaces and business support services. Prior to first occupation of any use class B1 development on the site, the 3,000 m^2 of incubator units shall be completed in accordance with the approved reserved matters.

18) From the date of approval of the SWPP and for a period of no less than 12 years thereafter, an annual written statement detailing the delivery of the approved phasing provisions pursuant to Condition 16 shall be submitted to the local planning authority. It shall report on the progress and delivery of all of elements (a)-(h) submitted as part of the SWPP. Any revisions to the phased delivery of infrastructure shall be approved in writing by the local planning authority and shall be delivered in accordance with Condition 16.

19) No development of a Phase, apart from Enabling Works, shall be commenced until a scheme for the disposal of foul water for that Phase has been submitted to and approved in writing by the local planning authority. The scheme shall include an implementation plan to ensure that sufficient foul capacity will be available to accommodate each Phase of the development. The scheme shall be implemented in accordance with the approved details.

20) An Initial Earthworks and Archaeology and Enabling Works Strategy (IEAEWS) shall be submitted to the local planning authority for approval prior to the commencement of any Enabling Works. No development or Enabling Works shall commence until the IEAEWS has been approved in writing. The IEAEWS shall set out how the Enabling Works are to be implemented in order to gain access into the site and prepare the site for development. The Enabling Works shall be carried out in accordance with the approved IEAEWS.

21) Prior to the commencement of any development a site wide Construction Environmental Management Plan (CEMP) shall be submitted to and

approved in writing by the local planning authority. The site wide CEMP shall include details of:

(a) Hours of construction and hours of deliveries.
(b) Proposed earthworks including a method statement for the stripping of topsoil for reuse, the raising of land levels (if required) and arrangements for the temporary topsoil storage to BS3882:2015.
(c) Archaeological protection and mitigation measures to be implemented during the construction process.
(d) Measures to ensure that any soils brought to the site are free of the seeds / root / stem of any invasive plant covered under the Wildlife and Countryside Act 1981.
(e) Contractor's access and parking arrangements for vehicles, plant and personnel including the location of construction traffic routes to and from the site, details of their signing, monitoring and enforcement measures.
(f) Haul routes.
(g) Avoidance and mitigation measures for protected and notable species including, but not limited to, badger and nesting birds, to be implemented during construction works.
(h) A plan specifying the area and siting of land to be provided for parking, turning, loading and unloading of all vehicles visiting the relevant parts of the site and siting of contractors' compound(s) and details of any temporary buildings during the construction period to be approved on a phased basis.
(i) Noise and vibration (including piling) impact / prediction assessment, monitoring and recording protocols / statements and consideration of mitigation measures in accordance with the provisions of BS5228-1:2009+A1:2014: Code of practice for noise and vibration control on construction and open sites.
(j) Results of a noise assessment of the potential impact of construction noise on any significantly affected residential properties and details of suitable mitigation measures.
(k) Measures to be applied to prevent contamination of the water environment during construction; including a scheme to treat and remove suspended solids from surface water run-off during construction.
(l) Dust monitoring, assessment and mitigation.
(m) Measures for soil handling.
(n) Concrete crusher and/or batching plant if required or alternative procedure.
(o) Waste sorting and dispatch facilities.
(p) Odour control systems including maintenance and manufacture specifications.
(q) Maximum noise levels and required mitigation for construction equipment, plant and vehicles.
(r) Site lighting for the relevant part of the site, including for cranes.
(s) Screening and hoarding details.
(t) Access and protection arrangements around the site for pedestrians, cyclists and other road users during construction and on completion of the development.
(u) Procedures for interference with public highways.

(v) External safety and information signing notices.
(w) Liaison, consultation and publicity arrangements, including dedicated points of contact.
(x) Complaints procedures, including complaints response procedures.
(y) Membership of the considerate contractors' scheme.
(z) The loading and unloading and storage of plant and materials used in constructing the development, with particular attention on the unloading and storage of oil, chemicals and other hazardous material.

The development shall be carried out in accordance with the approved site wide CEMP.

22) Prior to the commencement of development of any approved reserved matters, a detailed CEMP relating to the approved reserved matters shall be submitted to and approved in writing by the local planning authority. The detailed CEMP shall include reference and further detail as appropriate to each of the items referred to in Condition 21 above in relation to the site wide CEMP. The construction shall be carried out in accordance with the detailed CEMP as approved in writing by the local planning authority.

23) Prior to any Enabling Works, a Community Liaison Group (CLG) shall be established to engage nearby residents on impacts associated with the construction of the site. The CLG shall be organised and administered by the developer and its detail of operation shall include a regular meeting place, contact information, publicity and draft terms of reference, which shall be submitted to and approved in writing by the local planning authority prior to the first Enabling Works.

24) No development shall be commenced until a site wide Construction Transport Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The objectives of the CTMP shall be to:
(a) Identify clear controls on routes for large goods vehicles and vehicle types.
(b) Identify temporary highway works required to accommodate construction traffic.
(c) Minimise the number of private car trips to and from the site (both workforce and visitors) by encouraging alternative modes of transport and identifying control mechanisms for car use and parking.
(d) Assess the need for improvements to the public transport network to accommodate the additional number of trips associated with construction site activity.

The site wide CTMP shall include as a minimum the following information:
(a) The arrangements for liaison with the relevant highway authorities and emergency services.
(b) Road closures implementation and management.
(c) Direction signing to worksites.
(d) Workforce distribution, mode share and assignment, to include proposals for transport provision for movement of construction workforce.

(e) Rail station servicing to support workforce travel arrangements by rail.
(f) How any off-site parking overflow issues are to be dealt with.
(g) Parking provision for and management of construction workers' motor cars and vans used to travel to the site.
(h) Provisions for walking and cycling.
(i) Lorry holding areas.
(j) Driver standards and enforcement within the construction sites.
(k) Complaints procedures.
(l) Monitoring and review provisions to ensure the effective implementation of the Construction Transport Management Plan.

The development shall be carried out in accordance with the site wide CTMP as approved in writing by the local planning authority.

25) The development shall not be commenced until a site wide Construction Waste Management Plan (CWMP) has been submitted to and approved in writing by the local planning authority. The objectives of the CWMP shall be to ensure that all waste arising from the construction works is managed in a sustainable manner, maximising the opportunities to reduce, reuse and recycle waste materials. The CWMP shall also detail the compliance and assurance requirements to be maintained on the site during all phases of construction. The CWMP shall include as a minimum the following information:
(a) Classification of all waste, including hazardous waste, according to current legislative provisions.
(b) Performance measurement and target setting against estimated waste forecasts.
(c) Reporting of project performance on quantities and options utilised.
(d) Measures to minimise waste generation.
(e) Opportunities for re-use or recycling targets.
(f) Provision for the segregation of waste streams on the site that are clearly labelled.
(g) Licensing requirements for disposal sites.
(h) An audit trail encompassing waste disposal activities and waste consignment notes.
(i) Returns policies for unwanted materials.
(j) Measures to provide adequate training and awareness through toolbox talks.

The development shall be carried out in accordance with the site wide CWMP as approved in writing by the local planning authority.

26) Piling, including impact piling, or any other foundation designs and investigation boreholes using penetrative methods shall not be permitted other than with the express written consent of the local planning authority. Consent for piling works may be given for those parts of the site where it has been demonstrated via a piling risk assessment submitted to the local planning authority that there is no resultant unacceptable risk to groundwater and where it has been demonstrated that impact piling would not give rise to unacceptable amenity impacts. The development shall be carried out in accordance with the approved details.

27) No soils or infill materials (including silt dredged from watercourses), shall be imported onto the site until written consent has been obtained from the local planning authority that they present no risk to human health, planting and the environment. Documentary evidence to confirm the origin of all imported soils and infill materials, supported by appropriate chemical analysis test results, shall be submitted to and approved in writing by the local planning authority prior to that import.

28) The air conditioning, extraction system(s) and any other plant generating external noise installed within those parts of the development falling within use classes A3 and A5 shall be maintained for the lifetime of the development in accordance with details previously approved in writing by the local planning authority.

29) Prior to or concurrently with the submission of the first of the reserved matters application(s) a site wide Car Parking Strategy (CPS) shall be submitted to the local planning authority for approval in writing. The CPS shall accord with and give effect to the principles for such a plan proposed in the Environmental Statement Technical Appendix J Traffic and Transport dated February 2018 submitted with the application. The CPS shall set out the maximum level of parking to be provided for each of the use classes permitted, identify parking levels for employees and visitors and parking levels for people with mobility impairments. The subsequent provision of car parking across the site shall accord with the CPS approved in writing by the local planning authority.

30) Prior to or concurrently with the submission of the first of the reserved matters application(s), a site wide Ecological Conservation Management Plan (ECMP) shall be submitted to the local planning authority for approval in writing. The ECMP shall accord with and give effect to the principles for such a plan proposed in paragraphs 10.156 to 10.177 of the Environmental Statement submitted with the application. As a matter of principle, the ECMP shall set out an objective of enhancing the net biodiversity of the site as a result of development and shall include:

(a) Contractor responsibilities, procedures and requirements.
(b) Full details of appropriate habitat and species surveys (pre and post-construction), and reviews where necessary, to identify areas of importance to biodiversity.
(c) Details of measures to ensure protection and suitable mitigation to all legally protected species and those habitats and species identified as being of importance to biodiversity both during construction and post-development, including consideration and avoidance of sensitive stages of species life cycles, such as the bird breeding season, protective fencing and phasing of works to ensure the provision of advanced habitat areas and minimise disturbance of existing features.
(d) Identification of habitats and species worthy of management and enhancement together with the setting of appropriate conservation objectives for the site. Prescriptions shall be provided to detail how habitat and species management and enhancement shall be provided alongside measures to provide habitat restoration.

(e) A summary work schedule table, confirming the relevant dates and/or periods that the prescriptions and protection measures shall be implemented or undertaken by within.
(f) A programme for Monitoring/Environmental Audits to be carried out four times annually during the construction phase.
(g) Confirmation of suitably qualified ecologist responsible for over-seeing implementation of the ECMP commitments.
(h) A programme for long-term maintenance, management and monitoring responsibilities for a period of 25 years to ensure an effective implementation of the ECMP ensuring periodic review of the objectives and prescriptions and reporting measures regarding biodiversity gain.

No development shall commence until such time as the ECMP has been approved in writing by the local planning authority. All species and habitat protection, enhancement, restoration and creation measures shall be carried out in accordance with the approved ECMP.

31) Prior to or concurrently with the submission of the first reserved matters application, a site wide Lighting Strategy shall be submitted to the local planning authority for approval. No development shall commence apart from Enabling Works until the site wide Lighting Strategy has been approved in writing. The site wide Lighting Strategy shall set out how the development will provide external lighting across the site. All reserved matters applications shall accord with the details of the approved site wide Lighting Strategy and shall include the specified detail pursuant to Condition 47.

32) Prior to or concurrently with the submission of the first reserved matters application, a Site Wide Sustainability Strategy that accords with section 4 of the Design and Access Statement shall be submitted to the local planning authority for approval. No development shall commence apart from Enabling Works until the Site Wide Sustainability Strategy has been approved in writing. The Site Wide Sustainability Strategy shall set out: (a) how the development will secure carbon dioxide emission reductions of 10% against the 2013 Building Regulations; and (b) how the development of the site will address mitigation and adaptation to climate change and include water efficiency targets. It will promote principles of sustainable construction and efficient use of buildings across the site. All reserved matter applications shall accord with the provisions of Condition 53 in terms of the submission of a Sustainability Statement which demonstrates compliance with the details of the approved Site Wide Sustainability Strategy.

33) Prior to or concurrently with the submission of the first reserved matters application, a Site Wide Heritage Protection and Management Plan that accords with section 5 of the Design and Access Statement shall be submitted to the local planning authority for approval. No development shall commence apart from Enabling Works until the Site Wide Heritage Protection and Management Plan has been approved in writing. The Site Wide Heritage Protection and Management Plan shall set out how the development shall secure the heritage protection and enhancement measures and mitigation set out in the submitted Environmental Statement accompanying the application. All reserved matters

applications shall provide a statement which sets out how the proposal accords with the details of the approved Site Wide Heritage Protection and Management Plan.

34) Prior to or concurrently with the submission of the first reserved matters application involving buildings, roads or other impermeable surfaces, a Strategic Surface Water Drainage Strategy (SSWDS) for the site shall be submitted to the local planning authority for approval in writing. The SSWDS shall include phasing arrangements, details of primary infrastructure for each Phase and plans for drainage asset operation, maintenance and contingency. The SSWDS shall set out what information, design parameters and design details will need to be submitted at the reserved matters stage for each Phase of the development. The development shall subsequently be implemented in accordance with the approved SSWDS.

35) Prior to or concurrently with the submission of the first reserved matters application for any occupied building, a site wide Refuse and Recycling Strategy (RRS) shall be submitted to the local planning authority. No development shall be occupied until the site wide RRS has been approved in writing by the local planning authority. All reserved matters applications shall include a recycling and waste reduction statement demonstrating compliance with the approved RRS. The development shall be carried out in accordance with the approved RRS.

36) Prior to the first occupation of an approved permanent building, a site wide Estate Management Strategy shall be submitted to and approved in writing by the local planning authority. It shall incorporate key principles for the management and maintenance of the public realm open to staff and visitors to the site and include the following; (a) details of the operational estate management structure; and (b) management and maintenance principles. The management of the estate shall be carried out in accordance with the approved details.

37) Prior to or concurrently with the submission of the first reserved matters application a Design Guide for the site that accords with the principles set out in sections 4 and 5 of the Design and Access Statement shall be submitted to the local planning authority for approval in writing. The Design Guide shall include the following elements:

(a) The layout of blocks and the structure of public spaces and nodes for key transport interchanges.
(b) The street hierarchy, typical street cross-sections including street trees.
(c) Design principles for different building typologies, with reference to the treatment of: point features as per approved plan PP105; frontages; access; and threshold definition with particular reference to blocks adjacent to the proposed parkland restoration zone.
(d) The public realm (roads, paths, open spaces) including guidance for the character and design of key areas of public realm within the site.
(e) The strategic approach to lighting, signage, utilities, CCTV and any other street furniture.

(f) Cycle parking provision and types, including the distribution of occupier /visitor parking, charging points and location in the development of a rental hub(s).
(g) The approach to the location and layout of car club spaces, electric vehicle charging points/hubs in relation to particular buildings and the location and design of car parking structures.
(h) The design of SUD's features.
(i) A materials reference palette for buildings and the public realm.
(j) The needs of mobility and visually impaired users.
(k) A wayfinding strategy.
(l) A review of parking to the north of the Hinxton Grange avenue to minimise the need for cars crossing the avenue.

No development apart from Enabling Works shall commence until such time as the Design Guide has been approved in writing by the local planning authority. The development shall be implemented in accordance with the approved Design Guide and subsequent reserved matters applications shall include a Design Guide Statement of Compliance.

38) Prior to the commencement of development apart from Enabling Works, a proposed site wide topographical plan for the site shall be submitted to and approved in writing by the local planning authority. It shall be accompanied by proposed cross-sections of any proposed bunding and plateaux at an approved scale. Subsequent reserved matters applications shall have regard to, and be in substantial accordance with, the approved site-wide topographical plan and shall include AOD levels information as appropriate to the design of the building(s) being proposed.

39) NOT USED

40) A Strategic Landscape and Ecological Management Plan (SLEMP), including long term design objectives for a period of 25 years, shall be submitted to and approved in writing by the local planning authority prior to or concurrently with any reserved matters application for landscaping approval. The SLEMP shall encompass all publicly accessible spaces, areas of structural edge planting, bunding, woodland and all retained and proposed vegetation to be delivered/managed and include:

(a) Description and evaluation of the features to be managed.

(b) Aims and objectives of the management.

(c) Prescriptions for management actions.

(d) Maintenance schedules for all landscape areas, including an annual work plan.

(e) Details of the body or organisation responsible for the implementation of the plan.

(f) On-going monitoring and remedial measures.

The SLEMP shall also include details of the mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The approved SLEMP will be implemented in accordance with the approved details.

41) Within any reserved matters application for landscaping details pursuant to this approval, the details required by Condition 1 shall include a tree and hedge survey, arboriculture method assessment and tree protection strategy, applicable to the associated Phase. The surveys shall include:

(a) Plans showing the location of all trees, shrub masses and hedges, categorizing the trees or groups of trees for their quality and value.

(b) Plans showing trees to be removed identified by number.

(c) Plans showing trees to be retained identified by number, with canopies accurately plotted.

(d) A tree constraints plan that identifies root protection areas of retained trees within, adjacent to, or which overhang the development site.

(e) The precise location and design details for the erection of protective tree barriers and any other physical protection measures.

(f) The location of streams, buildings and other structures, boundary features and services.

(g) Spot heights of ground level throughout the site.

(h) A method statement in relation to construction.

42) Details of the specification and position of fencing, or any other measures to be taken for the protection of any trees from damage during the course of development approved pursuant to Condition 41, shall be implemented in accordance with that approval before any equipment, machinery or materials are brought onto the site for the purpose of development (including demolition). The approved means of protection shall be retained on site until all equipment, and surplus materials have been removed from the site. Nothing shall be stored or placed in any area protected in accordance with this condition, and the ground levels within those areas shall not be altered nor shall any excavation be made without the prior written approval of the local planning authority.

43) Prior to the installation of any service which passes through the root protection zone of any tree within the "Existing vegetation retained" zone shown on PP103A [PP103 if amendment not accepted], full details of the position and proposed depth of excavation trenches for those services (including cables, pipes, surface water drains, foul water drains and public utilities) and their means of installation, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

44) Within any reserved matters application for landscaping details pursuant to this approval the details required by Condition 1 shall include detailed landscape designs and specifications for the associated reserved matters site. The details shall be accompanied by a design statement that demonstrates how the landscaping scheme accords with any emerging or approved details sought as part of the Design Guide for the site and shall include the following:

Soft Landscaping

(a) Full details of planting plans and written specifications, including cultivation proposals for maintenance and management associated with plant and grass establishment, details of the mix, size, distribution, density and levels of all trees/hedges/shrubs to be planted, proposals for irrigation (of no less than 3 years) and the proposed time of planting. The planting plan shall use botanic names to avoid misinterpretation. The plans should include a full schedule of plants.

(b) 1:100 plans (or at a scale otherwise approved) with cross-sections of mounding, ponds, ditches and swales and proposed treatment of the edges and perimeters of the site.

(c) The landscape treatment of roads (primary, secondary, tertiary and green corridors) through the development.

(d) A specification for the establishment of trees within hard landscaped areas including details of space standards (distances from buildings etc.), tree pit details, 3D cellular confinement systems or structural soils, specification/cross section of tree pits/trenches.

(e) The planting and establishment of all key landscape typologies.

(f) Full details of any proposed alterations to existing watercourses/drainage channels.

(g) Details and specification of proposed earth modelling, mounding, re-grading and/or embankment areas or changes of level across the reserved matters site to be carried out including soil quantities, topsoil storage to BS 3882:2007, haul routes, proposed levels and contours to be formed, sections through construction to show make-up, and timing of works. The topographical plan shall be in compliance with the site wide approved topography plan pursuant to condition 38.

Hard Landscaping

(a) Full details, including cross-sections, of all bridges and culverts.

(b) The location and specification of minor artefacts and structures, including furniture, refuse or other storage units, signs and lighting columns/brackets.

(c) 1:200 plans (or at a scale otherwise approved) including cross-sections, of roads, paths and cycleways.

(d) Details of all hard surfacing materials (size, type and colour).

The landscaping within the application site areas shall be implemented in accordance with the approved plans for implementation and replacement of landscaping.

45) If within a period of 5 years from the date of the planting of any tree or shrub, that tree or shrub, or any tree or shrub planted as a replacement for it, is removed, uprooted, destroyed or dies or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall

be planted at the same place, unless the local planning authority gives written consent to any variation to any re-planting provision.

46) Each reserved matters application shall include a detailed Ecological Measures Implementation Plan (EMIP) that demonstrates how it accords with the aims and objectives of the Site Wide Ecological Conservation Management Plan submitted and approved pursuant to Condition 40. It shall detail which specific ecological measures are proposed and the timing for their delivery. No development above slab level shall commence within the part of the site (defined by plan) for which reserved matters approval is being sought until such time as the EMIP has been approved in writing by the local planning authority. The ecological measures shall be carried out in accordance with the approved EMIP. The EMIP shall include (but not be limited to) the following elements:

(a) Updated ecological survey reports.

(b) An explanation of how the habitats and species on the site will be protected from any adverse effects of the development both during the construction phase and once the development is complete.

(c) Mitigation measures and ecological enhancements.

(d) What buffer strips are in place to protect the river and any other watercourses.

(e) How existing ecological features on the site such as hedgerows or waterbodies are to be protected and enhanced.

(f) How wildlife corridors linking habitats to the wider countryside are to be maintained and enhanced.

The development shall be carried out in accordance with the approved details.

47) Each reserved matters application for a Phase which includes any form of illumination or artificial lighting shall include a detailed artificial lighting scheme which demonstrates accordance with the Site Wide Lighting Strategy. Each reserved matters application shall include details of any external lighting on that Phase such as street, floodlighting, security lighting and a programme for their delivery, as well as an assessment of impact on any sensitive receptors on and off site. No lighting shall be installed until the detailed artificial lighting scheme for that part of the development has been approved in writing by the local planning authority. The artificial lighting for a Phase shall be installed, maintained and operated in accordance with the approved artificial lighting scheme.

48) Each reserved matters application for a Phase that has a building or public open space shall include details of the pedestrian and cycle routes for that Phase. No building shall be occupied or activity brought into use within the relevant Phase until the approved pedestrian and cycle routes relating to that building or activity (as appropriate) have been carried out.

49) Each reserved matters application shall include details of how it accords with the site wide Car Parking Strategy submitted and approved pursuant to Condition 29. No building shall be occupied until the approved

vehicular parking provision relating to that building has been fully laid out and completed in accordance with the Car Parking Strategy.

50) Any reserved matters application that includes a building or public open space shall include details of facilities for the parking of bicycles. Cycle parking provision for employment space shall be covered and provided within main building footprints or within close proximity to main entrances. Building designs shall accommodate locker, shower and drying facilities together with CCTV coverage of cycle parking entrances/exits and secure access arrangements. Cycle parking provision for individual buildings shall be in accordance with the adopted standards referred to in Policy TI/3 (figure 11) of the SCLP 2018.

51) All buildings, except for those exempt from BREEAM standards, shall achieve BREEAM 'Very Good'. In the event that such a rating is replaced by a comparable national measure of sustainability for building design, the equivalent level of measure shall be applicable to the proposed development. Unless otherwise approved by the local planning authority, each reserved matters application containing a building which is not exempt from BREEAM standards will be accompanied by a pre-assessment statement setting out how the standard will be met.

52) Within 6 months of first occupation of any building that requires a BREEAM assessment a post-construction review shall be undertaken by an approved BREEAM Assessor. It shall be submitted to the local planning authority, indicating that the relevant BREEAM rating has been met in respect of that building or, where the certificate shows a shortfall in credits for the required BREEAM rating, a statement shall be submitted identifying how and when the shortfall will be addressed. Any retrospective works to help meet the shortfall shall be carried out in accordance with the BREEAM review.

53) All future reserved matters applications for permanent employment buildings shall be accompanied by a Sustainability Statement setting out how the proposals meet the commitments and targets set out in the approved site-wide Sustainability Strategy. These measures include, but are not limited to:

(a) Not less than 20% of construction materials, by value, used in the development shall be from a re-used, recycled source or certified/accredited sustainable source.

(b) Not less than 25% of aggregate, by weight, used in the permanent works forming part of the development shall be from a recycled source.

(c) The development of a sustainable procurement plan to reduce the environmental impact of materials.

(d) The provision of smart meters for all non-residential units enabling building occupiers to monitor their energy usage by way of a digital display showing total power consumption and figures for cost and $C0_2$ emissions and comparison of energy use on a daily, weekly or monthly basis.

The measures outlined in the Sustainability Statement shall be implemented prior to occupation, unless otherwise approved in writing by the local planning authority.

54) [There is a dispute about the imposition of Condition 54]

Prior to the submission of any application for the approval of reserved matters following the adoption of any new or revised local plan, there shall be submitted to the local planning authority for approval a review of the approved site-wide Sustainability Strategy and the targets therein which shall set out a revised strategy and targets to reflect the terms of the new or revised local plan together with a justification where no revised strategy or target is proposed, whether by reason of viability impact or otherwise. No application for approval of reserved matters shall be made until such time as the review of the approved site-wide Sustainability Strategy and targets has been approved in writing by the local planning authority. Any reserved matters application shall thereafter be submitted in accordance with the approved review.

[For the reasons set out above it is not considered that this would be a reasonable condition to impose]

55) Within one year following practical completion of an occupied employment building, a Post Occupancy Sustainability Review shall be carried out and submitted to the local planning authority for approval in writing. It shall include the results of monitoring of key performance metrics including energy, overheating, carbon emissions and water use and compare actual achieved performance levels with those measures originally set out as part of the Sustainability Statement submitted as part of the original relevant reserved matters application. The results of these reviews will be used to inform the preparation of future phases of development and be referenced as part of Sustainability Statements for similar reserved matters applications for buildings/uses put forward for approval.

56) All future reserved matters applications for permanent buildings shall be accompanied by a carbon reduction statement, which demonstrates how the proposal meets the proposed energy strategy for the site as outlined in the site-wide Sustainability Strategy. This shall include details to demonstrate at least a 10% carbon against the 2013 Building Regulations reduction of the development's total predicted energy requirements. The carbon reduction statement shall include the following details:

(a) The carbon emissions of the proposal set out in Kg/CO_2/annum.

(b) A schedule of proposed on-site renewable/low carbon energy technologies, their respective carbon reduction contributions, location, design and a maintenance programme.

The proposed renewable/low carbon energy technologies shall be fully installed and operational prior to the occupation of any approved buildings.

57) The development shall be designed to ensure adequate adaptive capacity for future climate change using UKCP18 (or successor versions) future weather years data based on at least a medium emission scenario, moderate percentile (50%), for the 2030s rather than current weather

data, including overheating analysis undertaken to the latest CIBSE guidelines. Each application for the approval of reserved matters shall be accompanied by a statement for the approval in writing by the local planning authority setting out how this condition has been complied with including (but not limited to) how the following measures have been considered as part of the design:

(a) Maximising the design of green and blue spaces to provide cool, shaded outdoor spaces for public use.

(b) Water sensitive design including permeable paving and rainwater gardens to reduce the risk of surface water flooding.

(c) Large canopy deciduous trees along streets and in the public realm to provide shade and evaporative transpiration, with occasional use of evergreens to provide improved shelter from winter wind.

(d) Inclusion of green roofs, to provide additional evaporative transpiration and reduce heat absorption while offering additional biodiversity benefits.

(e) Permeable paving and rain gardens.

(f) Where possible promoting narrow plan, double aspect buildings oriented and shaded to minimise overheating.

(g) The use of lighter coloured materials with increased albedo (reflection coefficient) to reduce heat absorption and its impact on the urban heat island effect. This applies in particular to exterior building materials (e.g. light-coloured brick), as well as materials used for pathways and principal areas of hard landscaping.

(h) Building design, including orientation, ventilation, shading, thermal mass, materials and cooling.

58) No building within any Phase shall be occupied until (a) a scheme for the provision and location of fire hydrants to serve that Phase and (b) access and facilities for the Fire Service has been submitted to and approved in writing by the local planning authority. The approved scheme shall thereafter be implemented in accordance with the phasing and delivery programme contained therein.

59) A minimum of 20% of car parking spaces shall have Electric Vehicle (EV) charge points with the provision of infrastructure to facilitate the future installation of an additional 20% of EV charge points. Prior to the occupation of each building, evidence of the implemented charging points shall be submitted to the local planning authority.

60) Any reserved matters application shall include a Detailed Surface Water Scheme pursuant to the reserved matters site for which approval is sought. The scheme shall demonstrate how the management of water within the reserved matters application site for which approval is sought accords with the approved details of the Strategic Surface Water Drainage Strategy. The scheme shall be based upon a SuDS hierarchy, including an assessment of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in The SuDS Manual CIRIA C753, the NPPF and the NPPG. The results of the assessment shall be provided in writing to the local

planning authority. The system should be designed such that there is no surcharging for a 1 in 30 year event and no internal property flooding for a 1 in 100 year event + 40% allowance for climate change. Infiltration systems shall only be used where it can be demonstrated that they will not pose a risk to groundwater quality. The submitted details shall include:

(a) Information about the design storm period and intensity, the method employed to delay and control the surface water discharge rate and volume from the site and the two treatment stages used to prevent pollution of the receiving groundwater and/or surface waters.

(b) Details of infiltration testing to BRE 365 in locations where infiltration is proposed.

(c) A plan indicating flood exceedance routes, both on and off site in the event of a blockage or rainfall event that exceeds the designed capacity of the system.

(d) A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime, including details of land ownership, maintenance responsibilities, a description of the system the identification of individual assets/services and access requirements, and details of routine and periodic maintenance activities.

(e) Details of phasing during drainage operations and construction.

The approved drainage works shall be carried out in their entirety, fully in accordance with the approved details, prior to the occupation of any building or in accordance with phased drainage operations approved in writing by the local planning authority. The surface water drainage scheme shall be managed and maintained thereafter in accordance with the approved management and maintenance plan for the lifetime of the development.

61) No building generating a foul water discharge shall be commenced until such time as a scheme to dispose of foul water drainage for that building, including trade effluent, has been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented as approved.

62) No development shall take place within an area of archaeological interest until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, which has been submitted to and approved in writing by the local planning authority. This written scheme shall include the following components, completion of each of which will trigger the phased discharging of the condition:

(a) Fieldwork in accordance with the agreed Written Scheme of Investigation.

(b) Completion of a Post-Excavation Assessment report (PXA) and approval of an approved Updated Project Design, to be submitted within six months of the completion of fieldwork, unless otherwise approved in advance by the local planning authority.

(c) Completion of the programme of analysis and submission of a publication report to be completed within two years of the completion of fieldwork, unless otherwise approved in advance by the local planning authority.

(d) Production of an archive report and the preparation of site archive for deposition at the Cambridgeshire Archive facility, or another appropriate store approved in writing by the local planning authority.

63) Any soil movement and restoration shall be carried out in accordance with the details set out in the Land Use and Soils Chapter of the Environmental Statement.

64) No development of a Phase or Parcel shall be commenced until:

(a) The application site has been subject to a detailed desk study, including site walkover and preliminary Conceptual Site Model, to be submitted to and approved in writing by the local planning authority.

(b) The application site has been subject to a further detailed scheme for the investigation and recording of contamination and remediation objectives have been determined through risk assessment and approved in writing by the local planning authority.

(c) Detailed proposals for the removal, containment or otherwise rendering harmless any contamination (the Remediation method statement) have been submitted to and approved in writing by the local planning authority.

(d) The works specified in the Remediation method statement have been completed, and a Verification report submitted to and approved in writing by the local planning authority, in accordance with the approved scheme.

If, during remediation and/or construction works, any contamination is identified that has not been considered in the Remediation method statement, then remediation proposals for this material should be approved in writing by the local planning authority.

Definitions

Block: An individual building(s) within a Parcel

Enabling Works: All works necessary to prepare the site for construction of the development hereby permitted. Such works could include; site or ground clearance, initial earthworks, construction of temporary accesses and/or highway works to facilitate the carrying out of the development, archaeology, ecological surveys, investigations or assessments, site preparation, construction of boundary fencing or hoardings including for site security, erection of temporary facilities for security personnel, the

erection of security cameras, excavation, interim landscaping works, construction of temporary internal roads, provision of underground drainage and sewers and the laying and diversion of other services and service mediums, erection of temporary buildings, building access routes, temporary use of land for car parking, or other works or operations to enable any of these works to take place.

Parcel: An area of land within a Phase

Phase: One of four phases as indicatively shown in the Development Phases plan in the Environment Statement

DOCUMENTS SUBMITTED AT THE INQUIRY (ID)

ID1	Opening statement on behalf of the appellant
ID2	Opening submissions on behalf of the local planning authority South Cambridgeshire District Council
ID3.1	Hinxton Parish Council's confirmation of objections presented by Prof Brown
ID3.2	Emails and minutes from Parish Council meetings
ID4	Written response from Sawston Parish Council
ID5	Written response from Whittlesford Parish Council
ID6	Email dated 10 June 2019 from Essex County Council raising transport and infrastructure considerations
ID7	Letters dated 10 June 2019 from SCDC to 12 objectors giving notice about the appeal/Inquiry
ID8	SCDC email to appellant concerning draft unilateral undertaking
ID9	Thornbury appeal decision 1 May 2019 APP/P0119/W/17/3189592
ID10	Supporting note and map showing AgriTech businesses/institutions in the Cambridge area [replaced by ID32]
ID11	Note by Mr Collinson on Wageningen, Agroparc Avignon and 39 North St Louis in response to rebuttal evidence of Ms Howick
ID12	Table of further details about sites shown on ID10 [replaced by ID32]
ID13	Proposed new condition concerning incubator units
ID14	Errata sheet for evidence of Philippa Jarvis
ID15	Copy of webpages detailing Cambridge Compass Enterprise Zone
ID16	Aerial photograph of appeal site dated April 2015
ID17	Email to Essex County Council dated 12 June 2019 concerning ID6
ID18	Email from Essex County Council dated 17 June 2019 concerning contribution to bridge link
ID19	SCDC note on the progress of new settlements and other strategic allocations in the SCLP 2018
ID20	SCDC note on whether certain core documents were considered as part of the Local Plan Examination
ID21	SCDC note concerning SCLP Policy E9
ID22	Agreed plan showing main research/technology and business parks and other locations in and around Cambridge
ID23	Agricultural land clarification note
ID24	Note to Inspector re appellant's opening statement paragraph 21
ID25	Presentation by Councillor Peter McDonald
ID26.1	Statement by Rupert Kirby
ID26.2	Emails dated 28 June and 2 July by Rupert Kirby commenting on current traffic levels and clarifying queue data for McDonalds/BP roundabout
ID27	Statement by Councillor Peter Topping

ID28	Statement by John F Williams
ID29.1	Statement by Cllr Aureole Wragg on behalf of Pampisford Parish Council
ID29.2	Draft Minutes 13 June 2019 Pampisford Parish Council
ID30.1	Statement by Cllr Sian Wombwell on behalf of Ickleton Parish Council including correspondence dated September 2002 concerning The Welcome Trust
ID30.2	Comments on Further Rebutall Proof of Rupert Lyons dated 3 July 2019
ID31	Statement by Tony Orgee
ID32	Map showing AgriTech businesses/institutions in the Cambridge area and supporting note [replacement for ID10 and ID12]
ID33	SCDC note on Cambridge networking organisations with appendix pages 1-9
ID34	List of companies in Cambourne Business Park, Granta Park, Science Park and St John's Innovation Park
ID35	Extracts from Cambridge Ahead's webside Cluster Maps
ID36	Extract from brochure about Rothamsted Farms
ID37.1	Statement by CPRE
ID37.2	Chesterford – Current Availability
ID37.3	Chesterford – Build to Suit
ID37.4	Chesterford – Meet the occupiers
ID37.5	NIAB -News: New agricultural innovation centre for East
ID37.6	Extract from Branch Committee Meeting 4 June 2019
ID37.7	Email from CPRE dated 19 June clarifying ground level map
ID38	Update to Mr Sadler's Proof of Evidence
ID39	Properties to rent Cambridge Science Park
ID40	Comparison Tables – Landscape and visual effects 18 June 2019
ID41	Biodiversity Offsetting Calculations revision 13 June 2019
ID42	Aboricultural Impact Assessment – update June 2019
ID43	Errata sheet for APP5.2 and CD2.3
ID44	Extract from Cambridge Inner Green Belt Boundary Study
ID45	SCDC note on selective management of economy controls
ID46	Note on Cambourne West and Cambourne Business Park
ID47	SCDC note on Mr Collison's evidence concerning an agricultural bridge crossing the A14 and the NIAB facility on Huntingdon Road
ID48	Note concerning references to "Innovation Launchpad Facilities" within CD7.12 (Draft Cambridgeshire and Peterborough Local Industrial Strategy"
ID49.1	Note on Draft Conditions 1 July 2019 including revised wording for Conditions 16 and 51
ID49.2	Final version of suggested conditions
ID50	SoCG3 in relation to a revision to the landscape and open space parameter plan
ID51	Rob Sadler response to ID39
ID52	Errata sheet for Proof of Evidence of Tim Hancock
ID53	Appellant's Briefing Note on air quality, hydrology and noise
ID54	Plan showing extent of hardstanding, earth bank and soft landscape in the Green Belt

ID55	Hinxton Hall and parkland within Wellcome Genome Campus
ID56	Babraham Hall within the Babraham Institute Campus
ID57	Appellant's note in response to LPA note on Mr Collison's evidence concerning an agricultural bridge crossing the A14 and the NIAB facility on Huntingdon Road
ID58.1	Position statement on section 106 agreement as of 1 July 2019
ID58.2	Section 106 agreement dated 31 July 2019
ID59	Fieldhead appeal decision 14 January 2016 Appeal Ref:APP/X4725/W/14/3001702
ID60	Cobham Motorway Service Area appeal decision Appeal Ref:APP/K3605/W/17/3187505
ID61	Extract from Wellcome Genome Campus concerning its conference centre
ID62	Throop appeal decision Appeal Ref:APP/C1245/A/14/221524
ID63	Grade separation M1 junction 10A application Ref:TWA 8/1/5
ID64	Statement by A Binney with Appendix 1 South East Cambridgeshire Planning Proposals and SCDC Report concerning Eco-towns dated 12 June 2008
ID65	CIL Compliance Statement by SCDC
ID66	Closing submissions on behalf of SCDC
ID67	Appellant's statement in relation to pre-commencement conditions
ID68	Appellant's note and annotated extract from Landscape and Open Space Parameter Plan concerning the avenue
ID69	Closing submissions on behalf of the appellant
ID70	Itinerary and plan for accompanied site visit
ID71	SCDC comments dated 2 and 15 August 2019 on the revised *Guidance*
ID72	Appellant's supplemental note and email dated 12 August 2019 on the revised *Guidance*

JUDGMENTS

R (on the application of Shimbles) v City of Bradford MDC [2018] EWHC 195 (Admin)
Europa Oil and Gas Ltd v SSCLG [2013] EWHC 2643 (Admin)

CORE DOCUMENTS

CD1.1	Appeal application forms	August 2018
CD1.2	Grounds of appeal	August 2018
CD1.3	Decision notice	March 2018
CD1.4	List of drawings and supporting documents	August 2018
CD1.5	SCDC Statement of Case	Nov 2018
CD1.6	Statement of Common Ground and SCDC clarification letter SoCG1	15 & 24 April 2019
CD1.7	Transport SoCG2	May 2019
CD2.1	Planning application cover letters and forms	Nov 2017
CD2.2	Planning application drawings	Nov 2017
CD2.3	Design and access statement	Nov 2017
CD2.4	Environmental statement	Nov 2017
CD2.4.1	ES Technical Appendix A EIA Scoping	Nov 2017
CD2.4.2	ES Technical Appendix B Air Quality	Nov 2017
CD2.4.3	ES Technical Appendix C Community and Social Effects	Nov 2017
CD2.4.4	ES Technical Appendix D Cultural Heritage	Nov 2017
CD2.4.5	ES Technical Appendix E Ground Conditions and the Water Environment	Nov 2017
CD2.4.6	ES Technical Appendix F Land Use and Agriculture	Nov 2017
CD2.4.7	ES Technical Appendix G Landscape and Visual Effects	Nov 2017
CD2.4.8	ES Technical Appendix H Natural Heritage	Nov 2017
CD2.4.9	ES Technical Appendix I Noise and Vibration	Nov 2017
CD2.4.10	ES Technical Appendix J Traffic and Transport Assessment	Nov 2017
CD2.4.11	ES Technical Appendix K Waste	Nov 2017
CD2.5	Planning statement including alternative sites assessment	Nov 2017
CD2.6	Statement of consultation	Nov 2017
CD2.7	Utility statement	Nov 2017
CD2.8	Health impact assessment	Nov 2017
CD2.9	Sustainability statement	Nov 2017
CD2.10	Energy and carbon reduction statement	Nov 2017
CD2.11	Water conservation statement	Nov 2017
CD2.12	Earthworks strategy	Nov 2017
CD2.13	Arboricultural impact assessment including tree survey	Nov 2017
CD2.14	EIA scoping opinion	April 2017

CD3.1	Letter dated 13 February to South Cambridgeshire District Council	Feb 2018
CD3.2	ABA designer response	Feb 2018

CD3.3	Environmental Statement Addendum • Updated section 8 and appendix G of the Flood Risk Assessment and Drainage Strategy (including foul drainage assessment), replacing section 8 and appendix G of Technical Appendix E2 of the ES • Replacement Technical appendix J (Transport Assessment, February 2018) of the ES	Feb 2018
CD4.1	Third party consultation responses referenced in the appellant's and local planning authorities' proofs of evidence (included in appeal questionnaire)	Nov 2018
CD5.1	South Cambridgeshire planning committee report	March 2018
CD5.2	South Cambridgeshire planning committee report update	March 2018
CD5.3	Pre-application response	July 2017
CD5.4	EIA screening opinion & scoping opinion	April 2017
CD5.5	South Cambridgeshire planning committee update report	April 2019
CD5.6	Inspectors Report – South Cambridgeshire Local Plan	29 Aug 2018
CD5.7	South Cambridgeshire planning committee report minutes	March 2018
CD6.1	Town and Country Planning Act 1990 (as amended)	Internet resource
CD6.2	Planning and Compulsory Purchase Act 2004 (as amended)	Internet resource
CD6.3	National Planning Policy Framework, Ministry of Housing, Communities and Local Government	Feb 2019
CD6.4	National Planning Practice Guidance, Ministry of Housing, Communities and Local Government	Internet resource
CD6.5	South Cambridgeshire Core Strategy, South Cambridgeshire District Council	Jan 2007
CD6.6	South Cambridgeshire Development Control Policies Development Plan Document, South Cambridgeshire District Council	July 2007
CD6.7 (A & B)	South Cambridgeshire Local Plan, South Cambridgeshire District Council (A), SCLP 2018 Adopted Policies Map (B)	Sept 2018
CD6.8	Cambridgeshire and Peterborough Non-Statutory Strategic Spatial Framework	2018
CD6.9	South Cambridgeshire District Council Design Guide SPD	March 2010
CD6.10	Planning (listed building and conservation area) Act 1990	Internet resource
CD6.11	Cambridge City and South Cambridgeshire - Employment Land Review	July 2008

CD6.12	Employment Land Review Update and Review of Selective Management of Employment Policies	July 2012

CD7.1	Beddington, Professor Sir John, Government Office for Science	2011
CD7.2	UK Strategy for Agricultural Technologies, HM Government	2013
CD7.3	Industrial Strategy – Building a Britain fit for the future, HM Government	Nov 2017
CD7.4	Technology and Innovation Futures 2017, Government Office for Science	2017
CD7.5	East of England Science and Innovation Audit sponsored by the Department for Business, Energy and Industrial Strategy	Sept 2017
CD7.6	Health and Harmony: the future for food, farming and the environment in a Green Brexit, Department for Environment Food and Rural Affairs	Feb 2018
CD7.7	The Clean Growth Strategy, HM Government	Oct 2017
CD7.8	Strategic Economic Plan, Greater Cambridge Greater Peterborough Local Enterprise Partnership	Sept 2014
CD7. 9	London Stansted Cambridge Consortium Sector profile on agrifood	2015
CD7.10	Findings and recommendations of the London Stansted Cambridge Corridor Growth Commission – The next global knowledge region: setting the ambitions and delivering the vision	July 2016
CD7.11	Cambridgeshire and Peterborough Independent Economic Review	Sept 2018
CD7.12a	Emerging Cambridgeshire and Peterborough Local Industrial Strategy	March 2019
CD7.12b	Cambridgeshire and Peterborough Local Industrial Strategy	19 July 2019
CD7.13	'Partnering for Prosperity: A New Deal for the Cambridge-Milton Keynes-Oxford Arc', National Infrastructure Commission (NIC)	Nov 2017
CD7.14	Government response to 'Partnering for Prosperity: A New Deal for the Cambridge-Milton Keynes-Oxford Arc'	Oct 2018
CD7.15	Cambridge high tech cluster growth, Opportunities to the south of Cambridge SQW	April 2014
CD7.16	[not used]	
CD7.17	[not used]	
CD7.18	The Cambridge Cluster at 50 - the Cambridge economy, retrospect and prospect	March 2011
CD7.19	UK Agriculture Bill (HC Bill 266)	Sept 2018
CD7.20	Reference not used	
CD7.21	A green future: Our 25 year plan to improve the environment	Jan 2018
CD7.22	Bio-economy Strategy	Oct 2018

CD7.23	Made Smarter Review (food strand)	Oct 2017
CD7.24	[not used]	
CD7.25	Living Planet Index	2018
CD7.26	[not used]	
CD7.27	The Oxford-Cambridge Arc Government ambition and joint declaration between Government and local partners	March 2019
CD7.28	Employment Land Review Update and Review of Selective Management of Employment Policies - Report to South Cambridgeshire District Council and Cambridge City Council	July 2012
CD7.29	[not used]	
CD7.30	Declaration: A smart and sustainable digital future for European Agriculture and rural areas	2019
CD7.31	European AgriFood Tech Investing Report 2018 Year in Review	May 2019
CD7.32	Cambridgeshire & Peterborough Combined Authority Annual Council Agenda Pack	29 May 2019

CD8.1	Conservation Principles for the sustainable management of the historic environment Consultation draft	Nov 2017
CD8.2	Barker, Dr N 2015 'Heritage assets and their setting: Views from a practitioner' Joint planning law conference Oxford	2015
CD8.3	Historic England 2017 'Historic environment Good Practice Advice in Planning 3: The setting of heritage assets'	Dec 2017
CD8.4	*East Northamptonshire District Council, English Heritage and the National Trust v Secretary of State for Communities and Local Government and Barnwell Manor Wind Energy Ltd* (Case CO/4231/2012; Appeal Case No. C1/2013/0843)	2013
CD8.5	*The Forge Field Society & Ors, R (on the application of) v Sevenoaks District Council* [2014] EWHC 189 (Case CO/16932/2013)	2014
CD8.6	*Palmer v Herefordshire Council & Anr Case No: C1/2015/3383 Court of Appeal* (Civil Division) [2016] EWCA Civ 1061 WL 06476219	2016
CD8.7	*R (Hayes) v City of York Council and English Heritage Trust Ltd* [2017] EWHC1374	2017
CD8.8	*Forest of Dean District Council v SoSCLG & Gladman* Case No. CO/4852/2015 EWHC421	2015
CD8.9	*R DCLG and Nuon UK Ltd v Bedford Borough Council* EWHC 2847	2013
CD8.10	British Standard 7913: Guide to the Conservation of Historic Buildings	2013

CD9.1	Cambridgeshire Landscape Guidelines: A Manual for Management and Change in the Rural Landscape, Cambridgeshire County Council	1991
CD9.2	Essex Landscape Character Assessment Final Report, Essex & Southend-on-Sea Replacement Structure Plan Review, Chris Blandford Associates	2003
CD9.3	Cambridge Inner Green Belt Boundary Study, Landscape Design Associates for South Cambridgeshire District Council	2015
CD9.4	Guidelines for Landscape and Visual Assessment (3rd Edition), Landscape Institute and Institute of Environmental Management and Assessment	2013
CD9.5	National Character Area Profiles 87 East Anglian Chalk, Natural England website www.naturalengland.org.uk	2018
CD9.6	An Approach to Landscape Character Assessment, Natural England	2014
CD9.7	Cambridge Green Belt Study A Vision of the Future for Cambridge in its Green Belt Setting	2002
CD9.8	Braintree, Brentwood, Chelmsford, Maldon and Uttlesford Landscape Assessments, Chris Blandford Associates	2006
CD10.1	Design Manual for Roads and Bridges, Highways England	2018
CD10.2	[not used]	
CD10.3	Guidelines for Planning for Public Transport in Developments, The Institution of Highways and Transportation	1999
CD10.4	Guidelines for Providing for Journeys on Foot, The Institution of Highways and Transportation	2000
CD10.5	Junctions 9 User Guide, TRL Limited	2017
CD10.6	LinSig 3.2 User Guide, JCT Consultancy Ltd	2014
CD10.7	Manual for Streets, Thomas Telford Publishing	2007
CD10.8	Manual for Streets 2, Wider Application of the Principles, Chartered Institution of Highways and Transportation	2010
CD10.9	The Traffic Signs Regulations and General Directions 2016, Statutory Instruments 2016 No.362	2016
CD10.10	Traffic Advisory Leaflets, Department for Transport	
CD10.11	Traffic Modelling Guidelines, TfL Traffic Manager and Network Performance Best Practice Version 3.0, Transport for London	2010
CD10.12	[not used]	
CD10.13	Cambridgeshire Local Transport Plan 2011-2031, Cambridgeshire County Council	July 2015
CD10.14	Cambridge City and South Cambridgeshire Transport Strategy: Cambridge City Transport Plan	

CD10.15	Cambridge City and South Cambridgeshire Transport Strategy: Transport Strategy for Cambridge and South Cambridgeshire: TSCSC Transport Strategy and High Level Programme, Cambridge County Council	March 2014
CD10.16	Cambridge City and South Cambridgeshire Transport Strategy: TSCSC Consultation Report, 22 July – 14 October 2013, Cambridgeshire County Council	Oct 2013
CD10.17	CSRM Modelling Summary Report for Cambridge and South Cambridgeshire Local Plans, Cambridgeshire County Council	July 2013
CD10.18	Cambridgeshire Transport Investment Plan, Cambridgeshire County Council	Dec 2017
CD10.19	Uttlesford Local Plan Transport Study Addendum Report, WYG Environment Planning Transport	May 2018
CD10.20	A505 Corridor Improvement, Feasibility Study: A10 to the A11, Uttlesford District Council	Jan 2018
CD10.21	Uttlesford Local Plan, Cambridgeshire County Council Comments Position Statement, Cambridgeshire County Council	June 2018
CD10.22	Cambridge South East Transport Study (CSETS) Summary Report of Consultation Findings, Cambridgeshire County Council	May 2018
CD10.23	TPA Traffic Modelling Report	August 2018
CD10.24	Whittlesford Parkway Station Transport Masterplan Stage 2 Report: Plans and Proposals	Nov 2018
CD10.25	Whittlesford Parkway Station Transport Masterplan Stage One Report: Baseline Conditions and Initial Options	Nov 2018
CD11.1	Application Form and Ownership Certificate, Quod	Dec 2018
CD11.2	Application drawings, Various	Dec 2018 April 2019
CD11.3	Case for Growth, Quod	Dec 2018
CD11.4	Planning Statement	Dec 2018
CD11.5	Transport Assessment	Dec 2018
CD11.6	Travel Plan	Dec 2018
CD12.1	Further addendum to the ES, including additional landscape and visual impact assessment, revisions to traffic and transport assessment, lighting assessment, and ecological walkover survey update	May 2019
CD12.2	Landscape and visual assessment replacement and additional figures [Figures 9.29, 9.39, 9.40, 9.41, 9.42 and 9.43 submitted at Inquiry]	May 2019
CD12.3	Technical appendix J2: Technical Note 01	May 2019
CD12.4	Technical appendix J3: Technical Note 04	May 2019

Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand,London,WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act
With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act
Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

Appendix B.4 Land North East of Junction 37(M) of the A1(M) Motorway, Marr Roundabout, Doncaster (July 2019)

Ministry of Housing, Communities & Local Government

Our ref: APP/F4410/W/18/3197290
Your ref: 17/00301/FULM

Tony Collins
Collins & Coward

Tony.collins@collinscoward.co.uk

8 July 2019

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY MOTO HOSPITALITY LIMITED
LAND NORTH EAST OF JUNCTION 37 OF THE A1(M) MOTORWAY, MARR ROUNDABOUT, DONCASTER, DN5 7AS
APPLICATION REF: 17/00301/FULM

1. I am directed by the Secretary of State to say that consideration has been given to the report of B M Campbell BA(Hons) MRTPI who held a public local inquiry on 11–14 and 18 December 2018 into your client's appeal against the decision of Doncaster Metropolitan Borough Council to refuse your client's application for planning permission for the construction of a new Motorway Service Area (MSA) to comprise Amenity Building, Lodge, Drive Thru Coffee Unit, associated car, coach, motorcycle, caravan, HGV and abnormal load parking and a fuel Filling Station with retail shop, together with alterations to the adjacent roundabout at Junction 37 of the A1(M) to form an access point and works to the local highway network, provision of landscaping, signage, infrastructure and ancillary works, in accordance with application ref: 17/00301/FULM dated 5 February 2017.

2. On 5 April 2018, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that that the appeal be dismissed and planning permission be refused.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with the recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Ministry of Housing, Communities & Local Government
Maria Stasiak, Decision Officer
Planning Casework Unit
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Tel: 0303 444 1624
Email: PCC@communities.gov.uk

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. Having taken account of the Inspector's comments at IR3, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Procedural matters

6. The Secretary of State notes that parties have agreed which drawings should be formally determined (IR4) and has proceeded on that basis.

Policy and statutory considerations

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

8. In this case the development plan consists of the Doncaster Core Strategy (2012) and saved policies from the Doncaster Unitary Development Plan 1998. The Secretary of State considers that relevant development plan policies include those set out at IR18-26.

9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Department for Transport Circular 02/2013. The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.

Emerging plan

10. The emerging plan comprises the Draft Local Plan which has been published for consultation, concluding in October 2018. The Secretary of State considers that the emerging policies of most relevance to this case include Policy 13 Strategic Transport Network which refers to the provision of secure lorry parking facilities and road side service areas along the strategic road network to meet future demand where appropriate.

11. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. As the draft Local Plan is still at an early stage and has not yet been submitted for examination, objections are not yet fully resolved and the policies may be subject to change, the Secretary of State considers that the draft plan carries limited weight.

Main issues

Green Belt

12. The Secretary of State agrees with the Inspector's approach to the application of policy set out in IR179-181. He has considered whether the proposal amounts to inappropriate development in the Green Belt. For the reasons given at IR182, he agrees with the Inspector that it does not fall within any of the exceptions in paragraph 145 of the Framework. He has considered whether the proposal falls within the exception set out at paragraph 146(c) of the Framework. For the reasons set out at IR187-190, he agrees with the Inspector's conclusion that MSAs are aimed at providing services for drivers on the strategic road network and are not aimed at catering for the needs of drivers on the local highway network (IR188). He further agrees that while there is an identified need for additional HGV parking in the area, this need does not call for an operation of the size proposed to be built (IR189). Overall he agrees with the Inspector's conclusion at IR190 that the proposal does not comprise local transport infrastructure, and therefore considers that the proposal does not fall within the exception set out at paragraph 146(c) of the Framework. The proposal therefore represents inappropriate development in the Green Belt and should not be approved except in very special circumstances. Inappropriate development is, by definition, harmful to the Green Belt.

13. The Secretary of State has gone on to consider whether the proposal preserves the openness of the Green Belt and whether it conflicts with the purposes of including land in the Green Belt. For the reasons given in IR193-200, the Secretary of State agrees with the Inspector at IR200 that the proposal would not preserve the openness of the Green Belt. For the reasons given at IR201-205, he also agrees with the Inspector at IR203 that the development would result in a substantial spread of the built environment beyond the well-defined line of the motorway and over an area almost devoid of development, and that this significant material encroachment into the countryside would be in conflict with the purposes of keeping land within the Green Belt, specifically, safeguarding the countryside from encroachment.

14. Overall the Secretary of State agrees with the Inspector in IR230 that as well as the harm from inappropriateness, the development would result in significant harm to the Green Belt from the effect on openness and conflict with the purposes of including land within the Green Belt. He further agrees that the harm to the Green Belt attracts substantial weight against the proposal (IR230), and that the development is in conflict with policy CS3 of the Core Strategy (IR208).

Landscape, loss of countryside and visual amenity

15. For the reasons given at IR209-210, the Secretary of State agrees with the Inspector's conclusion at IR231 that the harm is not insignificant given that minor adverse impacts in landscape and visual amenity terms would remain at year 15 and that no matter how well it is designed, landscaped and screened, the provision of an MSA on the appeal site would result in the permanent loss of a large expanse of open land in the countryside given over to an urbanising form of development. The Secretary of State agrees that significant weight should be attributed to these matters, and that there is conflict with the requirement of policy CS3 to protect and enhance the countryside (IR210).

Loss of agricultural land

16. The Secretary of State has taken account of the Inspector's analysis (IR211-214 and IR232) regarding the agricultural land that would be lost to the development, and notes that some 36% of the appeal site comprises best and most versatile agricultural land. He notes that concerns have been raised regarding the accuracy of the Agricultural Land Classification assessment but agrees with the Inspector at IR213 that no technical evidence has been presented to challenge the most recent report. For the reasons given in these paragraphs, the Secretary of State agrees with the Inspector that the loss of agricultural land, including best and most versatile land, carries moderate weight against the proposal (IR232) and is in conflict with policy CS18 (IR214).

The need for an MSA

17. The Secretary of State has considered the Inspector's analysis at IR220-228 and IR233 of the need for an MSA. While the distance between existing MSAs exceeds the recommended minimum as set out in C2/2013, he agrees with the Inspector's view that the distance between MSAs is recommended rather than mandatory, and that a distance of an additional 1 to 3 miles would be unlikely to add significantly to the drive time between MSAs (IR222). The Secretary of State also notes that each of the identified excessive distances include stretches of trunk road that include signed services, and agrees with the Inspector that while the signed services do not provide all the services required for an MSA, they do make a positive contribution to the safety and well-being of the travelling public (IR223). Overall the Secretary of State agrees with the Inspector's conclusion at IR228 that there is no pressing need to provide an additional MSA on the appeal site. He also agrees with the Inspector that while there is a specific need for additional HGV parking in the area, providing for that specific need does not, of itself, justify the provision of a new, full scale MSA. The Secretary of State agrees with the Inspector at IR233 that the need for an MSA at the appeal site carries limited weight in favour of the proposal.

Other matters

18. The Secretary of State agrees with the Inspector's analysis at IR229 and IR234 that the provision of jobs would be of benefit to the local economy, but that as the proposal is located in the Green Belt and not in an identified employment area, this benefit attracts only very limited weight in favour of the proposals.

19. For the reasons given at IR215-219, the Secretary of State agrees with the Inspector that there is no material harm to weigh in the balance in respect of highway conditions, air quality, heritage assets, noise and light pollution, litter or other matters raised by the JRP or other interested persons.

Planning conditions

20. The Secretary of State has given consideration to the Inspector's analysis at IR171-175, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

21. Having had regard to the Inspector's analysis at IR176-177, the planning obligation dated 12 December 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

22. For the reasons given above, the Secretary of State considers that the scheme is in conflict with Policies CS3 and CS18, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

23. The Secretary of State considers that the need for an MSA attracts limited weight in favour of the proposal, and that the economic benefits attract very limited weight in favour.

24. The Secretary of State considers that the harm to the Green Belt attracts substantial weight against the proposal, that the harm to the landscape, loss of countryside and visual amenity together attract significant weight against the proposal and that the loss of BMV agricultural land also attracts moderate weight against the proposal.

25. The Secretary of State considers that the proposal is inappropriate development in the Green Belt, which should not be approved except in very special circumstances which will not exist unless the potential harm to the Green Belt and any other harm from the proposal are clearly outweighed by other considerations. He considers that there is nothing that individually or cumulatively clearly outweighs the harm identified so as to amount to very special circumstances.

26. The Secretary of State concludes that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan. He therefore concludes that the appeal should be dismissed and planning permission refused.

Formal decision

27. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the construction of a new Motorway Service Area (MSA) to comprise Amenity Building, Lodge, Drive Thru Coffee Unit, associated car, coach, motorcycle, caravan, HGV and abnormal load parking and a fuel Filling Station with retail shop, together with alterations to the adjacent roundabout at Junction 37 of the A1(M) to form an access point and works to the local highway network, provision of landscaping, signage, infrastructure and ancillary works.

Right to challenge the decision

28. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

29. A copy of this letter has been sent to Doncaster Metropolitan Borough Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Maria Stasiak

Authorised by the Secretary of State to sign in that behalf

The Planning Inspectorate

Report to the Secretary of State for Housing, Communities and Local Government

by B M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Date: 9 April 2019

TOWN AND COUNTRY PLANNING ACT 1990

DONCASTER METROPOLITAN BOROUGH COUNCIL

Appeal made by

MOTO HOSPITALITY LIMITED

Inquiry Held on 11 – 14 & 18 December 2018

Accompanied site visit undertaken on 19 December 2018

Land north east of Junction 37 of the A1(M) Motorway, Marr Roundabout, Doncaster DN5 7AS

File Ref: APP/F4410/W/18/3197290

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ABBREVIATIONS LIST

Term	Acronym
Air Quality Management Area	AQMA
All Purpose Trunk Road	APTR
Area of Special Landscape Value	ASLV
Community Infrastructure Levy	CIL
Green Belt sub-area – Adwick Le Street 5	ALS5
Department for Transport Circular 02/2013	C2/2013
Design Manual for Roads and Bridges	DMRB
Doncaster Core Strategy 2012	CS
Doncaster Unitary Development Plan 1998	UDP
Environmental Statement	ES
Highways England	HE
Joint Rural Parishes	JRP
Landscape Character Area	LCA
Landscape and Visual Impact Assessment	LVIA
Local Road Network	LRN
Motorway Service Area	MSA
National Planning Policy Framework	NPPF
Planning Practice Guidance	PPG
Regeneration Priority Area	RPA
Statement of Common Ground	SoCG
Strategic Road Network	SRN
Tree Preservation Order	TPO

CASE DETAILS

File Ref: APP/F4410/W/18/3197290
Land north east of Junction 37 of the A1(M) Motorway, Marr Roundabout, Doncaster DN5 7AS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Moto Hospitality Limited against the decision of Doncaster Metropolitan Borough Council.
- The application Ref 17/00301/FULM, dated 5 February 2017, was refused by notice dated 18 December 2017.
- The development proposed is construction of a new Motorway Service Area (MSA) to comprise: Amenity Building, Lodge, Drive Thru Coffee Unit, associated car, coach, motorcycle, caravan, HGV and abnormal load parking and a Fuel Filling Station with retail shop, together with alterations to the adjacent roundabout at Junction 37 of the A1(M) to form an access point and works to the local highway network. Provision of landscaping, signage, infrastructure and ancillary works.

Summary of Recommendation: The appeal be dismissed

PRELIMINARY MATTERS

1. By letter dated 5 April 2018 the Secretary of State issued a direction recovering the appeal for his own determination. The reason given is that the appeal involves proposals for significant development in the Green Belt.[1]

2. When the appeal was submitted, matters relating to impact on the Strategic Road Network (SRN) remained outstanding such that Highways England (HE) was granted Rule 6 status. However, by letter dated 2 October 2018 HE withdrew from the inquiry having reached a satisfactory outcome with the Appellant.[2] Two Statements of Common Ground between HE and the Appellant can be found at document CD93.

3. The application, the subject of this appeal, was accompanied by an Environmental Statement (ES). The ES has been reviewed in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and has been found to be satisfactory in terms of Schedule 4 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011. None of the statutory or other consultees has suggested that the ES is in any way inadequate.

4. The proposal has not been altered since the application was determined by the Council. Nonetheless, during the course of the inquiry, the main parties sought to clarify which of the many drawings submitted should be formally determined. Those agreed upon are listed in condition 2 of the proposed conditions (Appendix 3) and a short comment on their inclusion or exclusion is provided in the list of core documents (Appendix 2). An additional drawing was added at document CD100 – illustrating tree pit details.

5. An executed planning obligation under section 106 of the Town and Country Planning Act 1990 was submitted during the course of the inquiry and can be

[1] Letter on appeal file APP/F4410/W/18/3197290
[2] Ibid

found at document CD97. A Community Infrastructure Levy (CIL) Compliance Statement is to be found at document INQ1.

6. I undertook an unaccompanied site visit of the general area (including signed services and Ferrybridge Services to the north) on 10 December during the afternoon peak period before opening the inquiry the following day. An accompanied visit took place on 19 December following the close of the inquiry. In addition to inspecting the site itself and the A635, we walked from a residential property along Green Lane through Long Plantation towards the northern edge of the site and went to viewpoints 1-4 as identified in the Appellant's landscape evidence (Document APP8, fig 14A & 14B). Following that accompanied visit I re-visited the signed services to the north and Ferrybridge Services on my own as agreed with the parties.

THE SITE AND SURROUNDINGS

7. The appeal site comprises some 15.1 hectares of agricultural land in the north east quadrant of the Marr roundabout at junction 37 of the A1(M). Formed from a portion of two adjoining fields, it is divided internally by the Mellinder Dike drain running north-south. Existing hedgerows mark the line of the drain which continues to the north beyond the site boundary. Overhead cables currently cross the site.

8. The site has a short boundary with the slip road leading off the southbound carriageway of the motorway and the boundary continues around the roundabout and in an easterly direction along the north side of the A635 leading to Doncaster. The boundary with the A635 is defined by a tree and hedgerow line to the rear of a large layby between the site and the road and includes a telecommunications mast. On the southern side of the A635 is a dense tree belt known as Ducker Holt.

9. The eastern boundary of the site is defined by a substantial linear belt of woodland known as Long Plantation (protected by a tree preservation order (TPO)) which stretches between the A635 and Green Lane to the north. The northern boundary cuts through the existing fields with more farmland extending north to Green Lane but including two further woodland areas, Stane Hill Plantation and Stane Hole Plantation (also protected by a TPO).

10. The eastern field slopes down from approximately 45m AOD to 35m AOD in an east-west direction towards the Dike, whilst the western field slopes more gently with higher ground on the western side varying from 37m AOD to 38m AOD. There are a few free-standing trees within the site and the location of a small former plaster pit.

11. There are some useful photographs of the appeal site in section 4 of document CD74.

12. The site lies within designated Green Belt, just off the north-west fringe of Doncaster. The nearest urban settlement is Scawsby, approximately 1km to the east. The village of Marr lies some 1.3km to the west of junction 37 and Brodsworth village, also on the other side of the motorway, is some 1.8km to the north west of the site.

13. The nearest residential properties to the appeal site are located along Green Lane and Town View Avenue to the north west and on the far side of Long Plantation. Scawsby Hall and Stone Hill School lie some 900m to the east and Marr Grange Cottage 730m to the south west.

14. To the north of the site at junction 38 the A1(M) changes status from motorway to a trunk road, the A1, and continues for that stretch extending from junction 38 to just south of the junction with the M62 where it reverts once again to A1(M) motorway. There are two signed services on each side of this stretch of trunk road – Carcroft and Barnsdale Bar North on the northbound side and Darrington and Barnsdale Bar South on the southbound side. Facilities available at these signed services are set out in a table attached to the Statement of Common Ground (SoCG) at document CD92. These and MSAs on the wider motorway network are depicted on a map at Document LPA2, fig.5.2. (see also document APP12 appendix 9)

15. Figure 1 in document APP8 and the aerial photograph at document INQ10 give an appreciation of the site in its context.

RELEVANT PLANNING POLICY

16. The Development Plan for the area includes the Doncaster Core Strategy (2012) (CS) and the saved policies of the Doncaster Unitary Development Plan 1998 (UDP). In addition, there is a draft Local Plan published for consultation with the consultation period concluded on 26 October 2018. The policies which the main parties agree as relevant to this proposal are listed in the SoCG. (Document CD92)

17. Whilst I have taken all relevant policies into account, I have set out below those most pertinent to the case.

Doncaster Core Strategy (Document CD84)

18. Policy CS1 *Quality of Life* supports proposals which contribute to Core Strategy objectives including: providing employment opportunities; strengthening communities; are place specific in design, work with their surroundings and enhance the built and natural environment; are accessible by a range of transport modes; and which protect amenity and are well designed.

19. Policy CS2 *Growth and Regeneration Strategy* seeks to distribute growth and regeneration so as to support prosperous and sustainable communities by improving the economic performance of towns, promoting regeneration and tackling deprivation

20. Policy CS3 *Countryside* seeks to protect and enhance the countryside. National Green Belt policy is to be applied, including a presumption against inappropriate development other than in very special circumstances.

21. Policy CS7 *Retail and Town Centres* requires town centre uses to be located according to the Retail Hierarchy as set out.

22. Policy CS9 *Providing Travel Choice* supports proposals which make an overall contribution to the improvement of travel choice and the transport network. CS9 (D) 1. Supports facilities for lorry parking and roadside service areas where appropriate.

23. Policy CS14 *Design and Sustainable Construction* seeks high quality design, contributing to local distinctiveness, reinforcing the character of local landscapes and building traditions, responding positively to existing site features and integrating well with its immediate surrounding area. CS14 (C) requires design and layout to adapt to a changing climate and to use energy, water and materials in the most efficient way possible.

24. Policy CS18 *Air, Water and Agricultural Land* aims to conserve, protect and enhance air, water and land resources both in terms of quantity and quality.

Saved policies of the Doncaster Unitary Development Plan (Document CD85)

25. Policy ENV1 sets out the general extent and purposes of including land in the Doncaster Green Belt reflecting four of the five purposes as set out in more recent national policy guidance (preserving the setting and special character of historic towns is not included).

26. Policy ENV3 states that development within the Green Belt other than for purposes as specified within the policy will not be permitted except in very special circumstances – reflecting Government policy that was in force at the time, but which has since been superseded.[3]

Draft Doncaster Local Plan (Document CD86)

27. Policy 13 *Strategic Transport Network* includes at (D) 4. the provision of secure lorry parking facilities and road side service areas along the SRN (including overnight stay accommodation and toilet facilities, where possible) to meet future demand, where appropriate.

National Policy

28. The National Planning Policy Framework (NPPF) contains up to date Green Belt policy to which Core Strategy policy CS3 refers. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved other than in very special circumstances which will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Substantial weight is to be given to any harm to the Green Belt. (paras.143 & 144) The construction of new buildings is inappropriate other than for specified exceptions, none of which embrace buildings at an MSA. (para.145) Certain other forms of development, which include local transport infrastructure which can demonstrate a requirement for a Green Belt location, are not inappropriate provided they preserve openness and do not conflict with the purposes of including land in the Green Belt. (para.146)

29. Department for Transport Circular 02/2013 *The Strategic Road Network and the Delivery of Sustainable Development* (C2/2013) sets out Government policy relating to motorways and trunk roads. Annex B addresses roadside facilities for road users on motorways and all-purpose trunk roads (APTR). The Circular is consistent with the NPPF in identifying the primary function of roadside facilities as supporting the safety and welfare of the road user.

[3] PPG 2 Green Belts

30. Government advice is that motorists should stop and take a break of at least 15 minutes every two hours. The network of service areas on the SRN has been developed on the premise that opportunities to stop are provided at intervals of about half an hour. However, timing is not prescriptive as travel may take longer on congested parts of the network. Thus, the recommendation is that the maximum distance between motorway service areas should be no more than 28 miles. Further, given that speed limits vary on the SRN, the recommended maximum distance between signed services on trunk roads should be the equivalent of 30 minutes driving time. The distances are considered appropriate regardless of traffic flows or route choice. (paras.B4-B8)

THE PROPOSAL

31. The new MSA would provide an amenity building (3,959 sqm), a 103-bedroom lodge (2,865 sqm), a fuel filling station (261 sqm) together with a canopy over the fuel pumps, and a drive through coffee unit (205 sqm). The main car park would provide 492 spaces shared between the amenity building and lodge, including 6 electric charging points (with pre-installed underground ducting to facilitate future increased demand) and 22 spaces for the disabled with another 14 bays for motorcycles. Other separate parking areas would be provided to accommodate 96 HGV spaces, 1 abnormal load bay, 12 caravan spaces, 19 spaces for coaches, 36 spaces at the drive through (two of which would be accessible), 8 spaces at the fuel filling station and 26 spaces for staff parking (two of which would be accessible).

32. Vehicular access to and from the MSA would be gained from a new arm on the roundabout between the exit slip road from the southbound carriageway of the A1(M) and the A635 to Doncaster. Direct access to the MSA from a dedicated slip lane for vehicles travelling southbound on the A1(M) was deleted from the proposal on the advice of HE. Within the site, as is usual for MSAs, signage would separate the traffic, directing it to the appropriate parking area or required facility. New bus stops are proposed outside the site on the A635 and 20 cycle parking spaces in the service yard to encourage staff to travel other than by car.

33. The main buildings − that is the amenity building and lodge − would be located in the opposite corner of the site to the access, in front of a planted mound right in the far north east corner. In front of the amenity building would be outdoor seating areas and space for a number of external concessions with a picnic area to the south. Within the building the normal facilities found at MSAs such as toilets, showers, hot food outlets and shops would be provided.

34. The main car park would extend in a westerly direction from the front of the lodge and amenity building. To the south of this would be the drive through, coach and caravan parks and the one space for an abnormal load. The lorry park would be situated in the south east corner with the fuel filling station to the west of it towards the access into the site. Land within the site close to the access would be left open, landscaped and planted and would accommodate a flood water channel and attenuation basins.

35. The site would be landscaped throughout with heavily planted edges. Most notably a new 10−15m wide woodland buffer along the eastern boundary (parallel to Long Plantation) and a 15-20m wide woodland buffer along the

currently open north western boundary would meet at a tree planted mound in the north east corner behind the main buildings.

36. The main entrance façade to the amenity building would have a facetted arrangement with fin walls defining directional change between large glazed screens. Other elevations would, in the main, be treated with blockwork at low level and horizontal format cladding above. The main roof would be a mix of flat roofed areas and one large shallow roof plane. Roof lines would over-sail the principal glazed façade with V shaped columns supporting the roof in a colonnade-like arrangement. A lower canopy to the southern end would be similarly supported.

37. The lodge building would have a simple L shaped plan form. Although of two storeys, it would be similar in height to the amenity building. Roof forms would be a mix of flat and shallow sloping mono-pitches and the entrance would incorporate glazed features and a projecting canopy, once again supported on V shaped columns.

38. Further detailed descriptions of the proposal are included in documents CD65 section 5, CD74 section 7, CD76 section 4 and APP10 section 4. There is a wealth of drawings detailing the proposed layout of the site, the design and external appearance of the buildings and landscaping (Documents CD1 – CD63). These include computer generated views of the buildings and aerial views of the site. A useful booklet of the drawings at A3 size is to be found at Document INQ2.

MATTERS NOT IN DISPUTE BETWEEN THE COUNCIL AND MOTO HOSPITALITY LIMITED

Green Belt

39. Whilst there is disagreement on whether the proposal would amount to inappropriate development in the Green Belt, the effect on openness, and whether there would be conflict with two of the five purposes of including land in the Green Belt; it is agreed that there would be no conflict with the following three purposes:

Purpose (a) to check the unrestricted sprawl of large built up areas;

Purpose (b) to prevent neighbouring towns merging into one another; and

Purpose (d) to preserve the setting and special character of historic towns.

Gaps between MSAs

40. Relevant gaps between existing MSAs that exceed the recommended distances in C2/2013 are: (see Document LPA2, fig.5.2)

- between Ferrybridge (M62) and Woodall (M1) − 31 miles
- between Doncaster North and Ferrybridge (via the A1 and A1(M)) − 29 miles

Alternative sites (Documents CD66, APP2 section 3.5, APP10 paras.9.1.26-9.1.50, INQ16 paras.32-54)

41. Despite a suggestion to the contrary in the Council's Statement of Case and evidence, it is now agreed that if the need for an MSA is accepted (the need is disputed by the Council), then there are no suitable alternatives to be preferred to the appeal site. Sites around junction 35 are unsuitable being located too

close to Blyth MSA to the south. In addition, potential sites did not perform as well as the appeal site in relation to Green Belt considerations, loss of agricultural land, flooding and on highway grounds. There is insufficient distance between junctions 35 and 36 for an on-line site. No site is available at junction 36 because all four quadrants have been developed. Again, the distances between junctions 36 and 37 and between 37 and 38 are insufficient for an on-line site. Land at junction 38 is too close to Ferrybridge, is considered unsuitable for highway reasons, is in Green Belt and comprises grade 2 agricultural land.

42. Potential sites along the M18 are discounted as not bridging the gaps identified or performing less well than the appeal site.

43. At A1(M) junction 37, an MSA on the south-west and north-west quadrants would have a greater impact on the Green Belt and affect a designated Area of Special Landscape Value (ASLV) and the south-east quadrant comprises the Ducker Holt woodland. The north-east quadrant is agreed as being most suitable.

Highway matters

44. Two SoCG have been agreed with HE and can be found at document CD93. The first sets out highways and transport matters associated with the SRN that are agreed and concludes that the appeal should not be dismissed on highway grounds insofar as it relates to the SRN. The second relates to the level of parking provision and confirms no objection to the full future year parking requirement (year 2027) being provided at the outset.

45. A further highways SoCG has been agreed with the Council. The document sets out agreed highways and transport matters associated with the Local Road Network (LRN) and concludes that the appeal should not be dismissed on grounds of impact on the LRN.

Landscape

46. The findings of the Landscape and Visual Impact Assessment (LVIA) submitted with the planning application are accepted. It is common ground that once the development and landscaping has matured, there would be no impacts greater than minor adverse in landscape and visual amenity terms.[4] (Document CD76 section 10 and Table 10.11 in particular)

Design

47. During the inquiry, the Council changed its stance in relation to design considerations, confirming that it took no issue with the design of the scheme and that there would be no conflict with policy CS14 which requires high quality design.

Other matters

48. There are no issues on *ecological grounds*, *drainage* or *flood risk*. *Archaeological concerns* can be addressed by the imposition of a suitable condition if planning permission was to be granted and there is no impact on any above ground *heritage assets*.

[4] The LVIA Table 10.11 contains a typographical error as noted in document CD92 – there is no "moderate adverse" effect in year 15

THE CASE FOR DONCASTER METROPOLITAN BOROUGH COUNCIL

As noted above, the Council made a number of concessions during the inquiry, but its final case is as summarised in its opening and closing submissions (Documents INQ4 and INQ14)

The main points are:

Whether the proposal amounts to inappropriate development in the Green Belt

49. The Appellant's stance that the development is not inappropriate because it falls within NPPF paragraph 146(c) *local transport infrastructure which can demonstrate a requirement for a Green Belt location* is not made out.

50. Paragraph 145 of the current NPPF, formerly paragraph 89 of the NPPF 2012, says the construction of new buildings in the Green Belt are to be regarded as inappropriate other than for specified exceptions, none of which apply to the appeal proposal. As new buildings are included as part of the appeal proposal, paragraph 145 applies and the development is thus inappropriate. Paragraph 146 covers "other forms of development" and thus must be addressing forms other than the construction of new buildings. It does not therefore apply to the appeal proposal. The Appellant accepted in cross examination that if that is a correct interpretation of paragraphs 145 and 146 then the development must be inappropriate.

51. This interpretation is entirely consistent with the judgement in *R(oao Mrs Jean Timmins) v Gedling Borough Council* [2015] EWCA Civ10 wherein the Court of Appeal held that paragraph 89 (now 145) was "exclusively" the way in which the construction of new buildings could be not inappropriate. The Appellant's interpretation, namely that paragraph 146 can also provide for other types of new buildings in Green Belt is contrary to this judgement as it would mean that paragraph 145 (89 as it was then) is not a closed list of exclusive exceptions. (Document INQ14 attached judgement)

52. The fact that paragraph 146(f) includes as not inappropriate "development brought forward under a Community Right to Build Order or Neighbourhood Development Order" does not lead to the conclusion that it embraces new buildings. There are a number of other types of development that can be brought forward pursuant to such Orders[5] and it is these to which paragraph 146(f) refers – not new buildings which remain to be considered under paragraph 145. Accordingly, simply as a matter of legal interpretation, the development cannot be not inappropriate, because it involves the construction of new buildings in the Green Belt.

53. In addition, the proposed MSA does not constitute "local infrastructure" provided for by paragraph 146(c). An MSA is not "local" given that it serves a national need and will only be afforded limited use by local trips. The MSA would be located on the SRN operated by HE which, by definition, comprises nationally significant infrastructure. Indeed, the Appellant's own surveys included within the Transport Assessment demonstrated that only 3.8% of interviewees using

[5] See Planning Practice Guidance Paragraph: 010 Reference ID: 41-010-20140306 through to Paragraph: 013 Reference ID: 41-013-20140306

MSAs were doing local trips. (Document CD67 para.6.54) The second limb of paragraph 146(c) is that the development can demonstrate a requirement for a Green Belt location. This ties in with the need for an MSA in this location which the Council does not accept and so a requirement for a Green Belt location is not demonstrated.

54. Even if the proposal did fall within paragraph 146(c), such development is only not inappropriate provided it preserves Green Belt openness and does not conflict with the purposes of including land in it. The stance of the Appellant's planning witness was not that there would be no harm or conflict but rather that the extent of harm/conflict would be acceptable. He argued that paragraph 146 must be interpreted as allowing for some acceptable degree of harm to openness/the purposes. Such an argument is contrary to case law. See in particular in *R.(oao Amanda Boot) v Elmbridge BC* [2017] EWHC 12 (Admin) where, having reviewed the authorities, it was held that where there was a finding of harm to the openness of the Green Belt, it followed that the openness would not be preserved. (Document INQ14 attached judgement paras.17-40)

55. There can be no degree of acceptable harm to openness and, by the same token, the same must also be true of conflict with the purposes of including land in the Green Belt – any degree of conflict must contradict paragraph 146. The Court of Appeal judgment in *Samuel Smith Old Brewery v North Yorkshire County Council* [2018] EWCA Civ 489 does not change this position. In that judgment the Court of Appeal established that whilst there could be an impact on openness, this impact could be either harmful or benign. (Document INQ14 attached judgement, para.38)

56. The starting point, in any event, must be the polices in the Development Plan and in the instance UDP policy ENV3 is the relevant policy for determining applications in the Green Belt. It includes no exception for local transport infrastructure. (Document CD 85 page 62).

57. The proposal constitutes inappropriate development in the Green Belt.

Effect on the openness of the Green Belt and the purposes of including land within it

Spatial dimension - openness

58. The proposed development would result in the loss of 15.1 hectares of currently open, undeveloped countryside in the Green Belt. This would result in significant harm. It is hard to see how any other conclusion could be reached. Indeed, the Appellant's planning witness conceded that he was unaware of any decision relating to the Green Belt where a development of such scale had not been found to harm the spatial role of openness. The reality remains that a significant three-dimensional space of entirely open undisturbed land would be permanently removed from the Green Belt. This can only result in significant harm. Landscape mitigation to screen the development has no bearing on the spatial dimension.

Visual dimension - openness

59. There is an obvious overlap with landscape and visual amenity issues under this section. The Council did not call its own evidence on these matters as it accepts the findings of the LVIA as confirmed in the SoCG. The LVIA, in accordance with industry standards, correctly identifies the potential environmental effects at three points: during construction, on completion and after 15 years so as to

enable effects to be understood and considered throughout the life cycle of the development. The LVIA concludes that there would be minor adverse impacts in landscape and visual amenity terms. This clearly contravenes the openness of the Green Belt and should be afforded substantial weight.

Purposes of including land in the Green Belt

Purpose (c) – safeguarding the countryside from encroachment

60. For the purposes of review in 2016, the Green Belt in the Borough was divided into 64 general areas that were assessed against how well the 5 purposes were being fulfilled. The Appeal site lies in the south western corner of Adwick Le Street 5 (ALS5). Although in relation to purpose (c), the area did not score highly, the appeal site is significantly more sensitive to encroachment than ALS5 as a whole which accommodates a degree of built development. In contrast, the appeal site, whilst adjacent to the A1(M) and the A635, comprises open fields with a cluster of deciduous plantations in the area immediately surrounding the site. The Long Plantation in particular separates the site visually and spatially from Scawsby. The site has a strong rural character and a moderate-high sensitivity to encroachment. As such it performs well in terms of its contribution to purpose (c) and significantly better than ALS5 as a whole. The scale of the appeal proposal would be a significant encroachment into the countryside in conflict with purpose (c) and would cause significant harm to the Green Belt. (Documents CD87 page 67 & LPA2 paras.4.3.30-4.3.35 and 5.3.19-5.3.24)

Purpose (e) – assist urban regeneration, by encouraging recycling of derelict and other urban land

61. Area ALS5 scored highly in relation to this purpose being one of 20 of the general areas contiguous with the Borough's defined Regeneration Priority Areas (RPA). The protection of the entirely greenfield appeal site assists in directing development towards brownfield land within development limits, albeit that it is further from the RPA than ALS5 as a whole. Facilities provided at the MSA such as the hotel, or café/restaurants where business meetings could be held, could result in the site becoming a destination in its own right rather than simply providing roadside facilities for users of the A1(M). This could affect the viability of providing facilities within the RPA and discourage visitors from entering and using other facilities in Doncaster. (Document LPA2 paras.5.3.27-5.3.31)

Other harm

Landscape and visual amenity

62. Policy CS3 of the CS states that proposals which are outside development allocations will only be supported where they, '*protect and enhance the countryside'*. As with the discussion of Green Belt policy above, this policy does not envisage an acceptable degree of harm to the countryside. Rather, where a proposal fails to protect and enhance the countryside, it is contrary to the policy. Here, the proposal would result in minor adverse impacts on the countryside in landscape and visual amenity terms and result in the loss of 15.1 hectares of countryside. On any view, this does not protect or enhance the countryside and thus the proposal must be contrary to Policy CS3. Similarly, it must also be contrary to paragraph 170(b) of the NPPF, which seeks to recognise the intrinsic character and beauty of the countryside. (Document CD84 policy CS3)

Agricultural land

63. The Council does not dispute the Appellant's figures on the loss of agricultural land but the development would still lead to the loss of a substantial amount of high quality agricultural land. Policy CS18 of the CS accepts the loss of such land only where it conforms with the Growth and Regeneration Strategy. This strategy is reliant on the settlement hierarchy which, unsurprisingly, envisages that the Green Belt will not be developed except for appropriate development. Nowhere within the policy is it is suggested that Green Belt development of this nature is consistent with the Strategy. Accordingly, the loss of agricultural land is contrary to policy CS18. (Document CD84 policy CS2)

Need for an MSA

64. Whether there is a need for an MSA is resolved through applying C2/2013 and is reliant on whether the maximum spacing distances identified in it are exceeded.

65. The Circular makes clear that "*In determining applications for new or improved sites, local planning authorities should not need to consider the merits of the spacing of sites beyond conformity with the maximum and minimum spacing criteria established for safety reasons*" (Paragraph B8). This can only mean that if the maximum distance is not exceeded, the spacing between MSAs is not a relevant consideration and thus it cannot be said that there is a need for an MSA to 'plug a gap'. Moreover, C2/2013 "*recommends*" the maximum distance of 28 miles between MSAs which denotes a less onerous requirement than other aspects of the Circular which set out "*mandatory*" provisions and "*minimum*" requirements.

66. The Council does not suggest that there is anything inherently objectionable with going below the maximum distances identified in the Circular. However, where this would require the development to be situated in the Green Belt, the Council makes the obvious point that if the maximum distances are not exceeded, it cannot be said that there is a need for an MSA.

Are the maximum distances exceeded?

67. As a matter of fact there is a gap in excess of 28 miles between MSAs. However, to simply rely on this represents an incorrect interpretation of the Circular. The gap that the Appellant seeks to address is comprised of travelling along both trunk road and motorways. Applying the Circular correctly, this cannot give rise to a gap that justifies a need for an MSA. There is no existing gap of 28 miles between MSAs travelling only on motorway that the proposal would address (thus paragraph B6 is satisfied); and one cannot travel more than 30 minutes between signed services on the trunk road (thus paragraph B7 is satisfied).

68. MSAs, by definition, cannot be provided on trunk roads. It would be perverse to interpret paragraph B6 as requiring a maximum distance between MSAs of 28 miles notwithstanding the fact that the relevant 28 mile gap is comprised of roads where an MSA could not possibly be provided. It would be an error in interpretation of the Circular to conclude that there is a need for an MSA here, given that the maximum distances in paragraphs B4 – B7 of the Circular are not exceeded.

69. Even on the Appellant's best case, these maximum distances are, '*only slightly exceeded*' and within those gaps between MSAs there are signed services that

contribute to safety and welfare (Document CD67 para.2.10). On the Appellant's best case the need is not sufficient to justify this development in the Green Belt.

Existing trunk road service stations

70. There is no justification for disregarding contributions made by the signed services on the A1 on highway safety grounds. Insufficient assessment has been made to establish that any has a poor safety record, or that the merge and diverge tapers from Design Manual for Roads and Bridges (DMRB) TD41/95 should be applied. Furthermore, HE has taken no action in relation to these services nor is there any evidence to suggest that it considers them to be dangerous. (Documents INQ7 & INQ14 paras.5.4.2-5.4.5)

71. It would be wrong to discount the signed services on grounds of not meeting the minimum parking requirements set out in C2/2013. That would rely on an incorrect application of the Circular. Paragraph B26 is plain that "*Where a site is subject to a pre-existing sealed agreement which specifies the levels of parking provision, this shall continue to apply until such time as the scale and/or scope of on-site activities is extended*". Accordingly, since the existing services are all subject to sealed agreements (as they must be), the requirements they are expected to meet are those set out in those agreements and not what the Circular now requires. Moreover, paragraph B28 makes clear that levels of parking provision may be adjusted to reflect local conditions through a process of site-specific negotiation. No evidence has been submitted to suggest that the parking provision at any of the signed services is insufficient for the needs of motorists when considered individually or together.

72. The minimum requirements for signed services are substantially met through the existing A1 roadside facilities, save for in respect of free parking (which was met in part) and access to a cash operated telephone. But in any event, these minimum requirements apply to "*various types of roadside facility that may be eligible for signing from the strategic road network*" (paragraph B17) – all of the A1 roadside facilities are already signed.

73. The contribution made by existing services cannot be discounted simply by applying current standards retrospectively. Furthermore, less harm to the Green Belt would result from bringing these existing services up to standard than in constructing the new MSA. In addition, it is pure speculation to suggest that these services will be wiped out if the trunk road is upgraded to motorway and there is nothing to say when or if this upgrade will proceed.

Conclusion on need

74. There is no need for an MSA in this location but even if a need for roadside facilities was identified, this should involve the minimum interference with the Green Belt to meet that need. The proposed MSA goes substantially in excess of what would be required. The mere fact that there are other MSAs in the Green Belt is no justification for this proposal.

Is the harm clearly outweighed by other considerations?

75. If C2/2013 is correctly applied, then there is no need for an MSA and thus no other considerations to weigh in the balance. In the alternative, need only arises from the maximum distances in the Circular being slightly exceeded and given that these distances are "recommended" rather than mandatory that is

insufficient to override Green Belt policy. The harm to the Green Belt is to be afforded substantial weight and there are a number of additional harms as well as conflict with the Development Plan as a whole.

76. The benefits of the proposal do not clearly outweigh the harm and thus very special circumstances necessary to justify the development do not exist.

Accordance with the Development Plan?

77. There is nothing in CS policy CS9 on which the Appellant relies to support a proposal of this nature in the Green Belt.

78. For the reasons given the proposal does not conform with the Development Plan as a whole. That being the case, the presumption in favour of sustainable development does not apply. There is no reason to depart from the default position that proposals contrary to the development plan should be refused.

THE CASE FOR THE JOINT RURAL PARISHES (JRP)

At the inquiry, the JRP addressed a written statement (Document INQ6v2) which was submitted along with attached appendices A-Q. Its case is summarised in its closing submissions (Document INQ15)

The main points are:

Loss of Agricultural Land `

79. The initial agricultural land assessment undertaken for the project by Savills in January 2016 characterised the appeal site as grade 2, best and most versatile and that is the best land available in the Borough. (Document CD73) Permanently removing prime agricultural land out of Green Belt is not sustainable.

80. The second report written in October 2018 by Tim O'Hare Associates, contradicts the findings of the earlier report but contains a number of inconsistencies and errors including within the Legal disclaimer. Whilst a further document responding to the JRP criticisms was submitted to the inquiry, the errors made call into question the validity of the entire report and whether any reliance should be placed on it. It is hard to understand how such fundamental errors could go unnoticed and be presented as written evidence. For these reasons the initial 2016 assessment report is to be preferred. (Documents APP9 appendix 16 & INQ11)

Traffic Congestion

81. The initial traffic counts submitted and used as evidence by the Appellant are 3 years out of date. They do not reflect the current traffic volumes, congestion or queuing experienced by drivers using the A635 or the A1(M) slip roads at the Marr roundabout or indeed the standing traffic this creates on the A1(M) itself at this junction. Further traffic counts to assess whether projected traffic volumes correlate with actual current traffic volumes have not been undertaken.

82. Air quality in Marr is a major concern (already designated an Air Quality Management Area (AQMA) with NOx levels along the A635 twice the legal limit) owing to traffic volume and congestion and tailbacks along the A635 from the junction roundabout towards Marr. The traffic queues observed now of over 30

vehicles in peak times (4.30pm to 5.30pm) do not appear to correlate with the modelled current maximum queue length of two.

83. The explanation given is that the stated maximum queue lengths are not actually maxima as described, but "mean maxima". The Appellant accepted that actual queues of over 30 vehicles, as currently observed, are entirely possible. This brings into question what a mean maxima of 6 as predicted in 2027 if the development went ahead would look like; and what the A1(M) south arm with its 15 "mean maxima" would look like in 2027, particularly since the roundabout is predicted to be operating at full capacity by then. (Document CD67 paras.6.62-6.69)

84. No account has been taken of the added contribution to congestion from Barnsley Council's ongoing large scale employment and housing development along a continuous 5 mile stretch of the A635, west of Hickleton. This would take the Marr roundabout above capacity with severe implications for the A635 and for the SRN.

85. The proposed HS2 project which anticipates a substantial increase in vehicle movements each day during construction will further increase traffic congestion on the A1(M) and A635 and negatively impact air quality. (Document INQ6 appendix Q)

86. Current high levels of congestion are supported by photographic evidence and by well-documented statements from Doncaster and Barnsley Councils as well as from the Sheffield City Region and Transport for the North. Their consistent and aligned view is that the A635 is heavily congested with road safety concerns in Marr and Hickleton (Document INQ6 appendices A, B, I & J). This has led to an identified need for a bypass for Hickleton and Marr.

87. The Appellant's Transport Assessment evidence is 3 years out of date and takes no account of Barnsley's large scale continuing development along the A635. This brings into question the Appellant's projections of congestion and tailbacks at Marr roundabout. It cannot be relied upon to determine future traffic impacts associated with an MSA at this location.

Air Quality

88. The pollution levels from traffic using the A635 have increased to such an extent that both Marr and Hickleton are now in a designated Air Quality Management Area (AQMA). Both Doncaster and Barnsley Councils acknowledge that the heavy increase in traffic levels as well as increased HGV numbers along the A635 are the cause of the increased NOx pollutants. (Document INQ6 appendices F, H, J, K, L)

89. The effect that air pollution and particulates have on health has been well documented. In this appeal, no account has been taken of increased traffic volumes and congestion and the impact that this would have on the health and well-being of local residents due to increased air pollution in a designated AQMA.

Potential Speed Limit Reductions along the A635 approaches to the Marr Roundabout

90. The crossing of the A635 by people using the proposed new bus stops would not be safe. It is an extremely busy road in both directions. The drawing at document CD43 suggests a speed limit reduction along the A635 approaches and circulating carriageway of the roundabout. This might improve road safety for pedestrians but would, as a consequence, reduce the efficiency of the A635. It

would be likely to increase queue lengths and make congestion matters worse at this junction.

The need for an MSA and Safety

91. It is predicted that personal accident injuries at the A1(M)/A635 junction roundabout would increase by 50% from 2 to 3 per year, following the proposed development. There is no evidence put forward to show that the small number of personal injury accidents at the four signed service areas would reduce (on average one accident at each, per year, over the last 5 years) by the provision of an MSA as an alternative stopping facility. The Appellant has shown in its projections that an MSA at this location would increase accident numbers overall. (Document APP2 paras 3.4.11-3.4.17 & 6.1.3-6.1.7)

92. In considering the need for the MSA the existing 10 mile stretch of trunk road and its four signed services (and a number of other easily accessible non-signed services) cannot be ignored when assessing the gap. In terms of supporting the safety and welfare of drivers, these APTR facilities play a major role, as they do on any other trunk road on the SRN, whether or not they connect two motorways. The four signed services have recently been re-furbished at some significant expense.

93. Further south on the A1 there are long stretches of non-motorway trunk road which have similar traffic flows to their connected sections of the A1(M) but, these rely solely on the APTR services (for example the stretch from Blyth MSA to Peterborough MSA).

94. The need for an MSA is very weak with the two identified gaps only slightly above the recommended maximum (one via a longer alternative route), and both served by the trunk road signed services.

95. If there is a case for more lorry parking in the area, C2/2013 makes clear that truck stops can be built up to two miles distant from the SRN. This could avoid the need to use Green Belt or prime agricultural land and potentially make use of brown field sites. The existing signed service at Barnsdale Bar South might be expanded and developed into a larger formal truck stop, making full use of the current unused derelict land and buildings. The Appellant does not appear to have explored this or other possibilities for truck stops.

Report to Planning Committee 12th December 2017 (Document CD83)

96. The written report to the Planning Committee recommending that permission be granted did not make clear that the identified gaps exceeding 28 miles between MSAs included a 10 mile stretch of non-motorway trunk road.

Green Belt

97. A new MSA supporting the SRN, regulated by HE, cannot be described as local transport infrastructure and it is, therefore, inappropriate development in the Green Belt. The expansion of the MSA at Cobham is not comparable as the need seems to have arisen from an increased need for HGV parking in the local area and the Inspector was not considering a brand new MSA. The case of the Rugby MSA was again quite a different proposal as it was a brownfield site and not in the Green Belt. (Documents APP12 appendix 3 & 5)

98. As inappropriate development in the Green Belt, the proposal is, by definition, harmful. In addition there are other harms, the key ones being: adverse impact on openness, visual impact, damage to the landscape, loss of prime agricultural land, environmental impacts on health and well-being of local residents, driver safety on the Marr roundabout and increased congestion at the roundabout, on the A1(M) slip roads, the SRN and the A635.

99. The Appellant has failed to demonstrate very special circumstances in terms of 'need' in the interest of driver safety and welfare.

Other matters

100. It is not understood why Historic England was not consulted given that the appeal site is visible from the grounds of the Grade 1 Brodsworth Hall. In addition, the setting of Marr, a conservation area, would be adversely affected. These findings were made in the Golders Landscape Character and Capacity Study when considering the potential for development. (Document CD89 pages28-30) Visitors to the Hall, in particular those in coaches would have a view of the site when arriving and leaving.

101. As a facility intended to be open 24 hours a day, there would be intrusion at unsocial hours from lighting, including on signage, and from constant activity.

OTHER ORAL AND WRITTEN REPRESENTATIONS

Oral representation

102. Mrs Mitcheson addressed the inquiry as a resident of Green Lane and owner of Long Plantation (protected by a blanket TPO). (Document INQ9) She is concerned about disturbance from noise, light pollution and litter. In addition, reliance should not be placed on Long Plantation to screen the development, nor should it be seen as an integral part of the scheme since it is not owned by the Appellant. The monetary, educational and ecological value of the woodland would be compromised should the development go ahead.

103. Long Plantation is a privately owned piece of land some 56-65m in width, rather than 70-90m as claimed, and since it is wholly deciduous the canopy is not closed for 6 months of the year.

Written responses to the notification of the appeal (red folder in appeal file)

104. Nine representations were received including from a Ward Councillor, the Clerk to Brodsworth Parish Council, from the Chair of the JRP and from the Chair of Scawsby Green Lane, Town View and Pickburn Neighbourhood Watch.

105. Two individuals have written in support of the development commenting that it would provide local employment and provide a needed facility to serve the motorway.

106. The remaining representations oppose the scheme primarily on grounds of:
- Green Belt harm
- Lack of need
- Air pollution
- Loss of agricultural land
- Traffic congestion

Written representations received in response to the planning application

107. Representations received in response to the planning application are summarised in the officer's report to the Planning Committee at sections 4, 5 and 6 of document CD83. They included 53 letters of objection and six letters of support and representations from Councillors, Parish Councils and the Campaign to Protect Rural England.

THE CASE FOR MOTO HOSPITALITY LIMITED

The case for the Appellant is summarised in its opening and closing submissions (Documents INQ3 and INQ16)

The main points are:

108. The appeal proposal would meet a need for MSA provision in this area and is therefore entirely consistent with the principles of sustainable development. The proposal is appropriate development within the Green Belt, but even if that is not accepted very special circumstances have been demonstrated, and the benefits would clearly outweigh any harm to the Green Belt and any other harm.

The need for an MSA

The policy approach

109. Circular 02/2013 says MSAs perform an important road safety function by providing opportunities for the travelling public to stop and take a break in the course of their journey. Road safety is at the heart of the Government's advice on the spacing of MSAs and other roadside facilities. The safety benefits to motorists of being able to stop and break their journey is set out in numerous documents from the Government and bodies such as the Automobile Association (Document APP10 para.9.2.1-9.2.8).

110. The maximum distance between MSAs should be no more than 28 miles. The distance can be shorter, but to protect the safety and operation of the network, access and egress must comply with the requirements of the DMRB. The distances referred to in the guidance are regardless of route choice and the merits of the spacing of sites beyond conformity with the maximum and minimum spacing criteria established for safety reasons need not be considered. (Document CD98 para.B8)

111. The existence of a gap of more than 28 miles should be given very substantial weight. Whilst within that gap there is a section of trunk road, the A1, linking two sections of motorway, the facilities on that road do not fill the gap between MSAs. Many thousands of vehicles each day have to use this stretch of trunk road to pass from one part of the A1(M) to the other, as part of their motorway journey. The safety and rest needs of the drivers of those vehicles do not reduce or change when they are travelling along the relatively short length of trunk road. The policy refers to a gap between MSAs of no more than 28 miles and that cannot be satisfied by roadside facilities which fall short of the requirements for MSAs.

The need in this case

112. Between Woodall and Ferrybridge services, the gap is 31 miles and between Ferrybridge and Doncaster North (taking the longer route) the distance is 29 miles. The Council's argument that the latter only "marginally exceeds" the 28 mile gap ignores the fact that 28 miles is a maximum – not a minimum or average. If 28 miles is exceeded, then further MSA provision is required.

113. The distance between Ferrybridge and Blyth, the nearest services on the A1(M) to the south, is 24 miles which is still substantial having regard to the Circular's aim to secure the safety of motorway users. The safety and welfare benefits of MSA provision are present even where the gap between facilities is less than 28 miles, although there is a particular need once the gap is greater than 28 miles, as here.

114. It is also relevant to consider the distances from Wetherby, even though Ferrybridge lies further south. That is because for those travelling on the A1(M) a diversion is required in order to access Ferrybridge. The distances between Wetherby and Blyth, Woodall and Doncaster North (by whichever route) are substantially greater than 28 miles (43 and 50 miles respectively).

115. In addition to the need for an MSA, there is a specific need in this area for facilities for HGVs. The 2017 National Survey of Lorry Parking shows that the total number of HGVs parked in the Yorkshire and Humberside region exceeds the lorry park capacity, with utilisation over-capacity at Ferrybridge and Woodall services. This lack of capacity at services to the north and south of the site helps explain the prevalence of off-site lorry parking in this area and supports the need for the proposal. (Documents APP12 appendix 16 & APP10 para.9.2.12)

116. There is a clear need for an MSA in the area.

Do the facilities on the A1 meet the need?

117. The services on the A1 do not detract from the need that has been identified and cannot substitute for a new MSA. The facilities available at the services are agreed in the Statement of Common Ground (Document CD92). The A1 services do not provide the mandatory facilities that are required for an MSA which have been identified by the Government as what is required in order to cater for the safety and welfare of drivers.

118. The parking at these services does not even meet the C2/2013 requirements for trunks roads; informal parking areas cannot be relied on. None offers 24 hour hot food and drink for consumption on the premises. None has shower facilities for HGV drivers except Barnsdale Bar South, and those facilities are available only during the opening hours of the diner. None has a cash operated telephone. None of the services has access and egress compliant with DMRB requirements and accident records suggest correlation with deficient access and egress provision (Document APP2 section 3.4). Use of these facilities to meet the identified need should not be encouraged and they cannot be regarded as a substitute for proper MSA provision in accordance with the Circular.

119. It is right to assess the access and egress to the A1 facilities by reference to the tapers recommended for petrol filling stations in Table 2/2 of DMRB TD 41/95. No other tapers are recommended for petrol filling stations and each of the A1 facilities provides other services beyond petrol, so turning traffic

movements greater than for a filling station only would be expected. The motorway traffic using the A1 stretch is well over 30,000 vehicles per day. It cannot seriously be suggested that facilities whose access and egress are inappropriate for turning traffic of more than 450 vehicles per day are sufficiently safe to be an acceptable alternative for the appeal proposal. (Documents APP2 paras. 3.4.7 – 3.4.17 & INQ7 pages 2/6, 2/7, 2/14, 2/15).

120. The final reason why the A1 facilities cannot be relied on to meet the identified need is that they are all likely to cease to exist when the A1 is upgraded to motorway status as intended by the Government. An MSA could not be provided on the newly upgraded motorway because all of it would be too close to Ferrybridge. Operators require a 10 mile minimum distance between MSAs. (Document **APP10 paras. 9.1.23, 9.1.25, 9.1.28**)

121. Any scope for improving the A1 facilities is limited since they are all in the Green Belt. All fall within grade 2 agricultural land on the Council's plan save Carcroft which is shown as being in a grade 3 area. However, the plan does not differentiate between grade 3a and grade 3b, so the area surrounding Carcroft could be best and most versatile land (Document LPA2 Fig.5.1).

122. Non-signed facilities off the A1 and M18 suggested by the JRP do not offer an attractive alternative. None provide the mandatory MSA facilities and it is undesirable to have motorists leaving the motorway and using the local road network to access facilities. Furthermore, the JRP identified junctions along the A1 as dangerous.

Are there alternative sites for an MSA?

123. It is agreed with the Council that if an MSA is required, there is no better site than the appeal site.

Is the development inappropriate in the Green Belt?

124. The development is not inappropriate as it comprises local transport infrastructure which can demonstrate a requirement for a Green Belt location; it preserves openness and does not conflict with the purposes of including land in the Green Belt. It is thus one of the exceptions provided for by paragraph 146 of the NPPF.

125. The Council's contention that paragraph 146 does not apply to the construction of new buildings in the Green Belt is wrong for the following reasons:

- The observation of Richards LJ in *Timmins* (para.31) that paragraph 89 of the 2012 NPPF (now paragraph 145) *"sets out the only exceptions*" to the general rule that the construction of new buildings is inappropriate development is obiter. The Court of Appeal in that case had to decide whether material change use of land to use as a cemetery fell within paragraph 89 or paragraph 90 (now paragraph 146). The Court did not have to decide whether paragraph 90 could apply to development falling within one of the exceptions listed in that paragraph where built development was involved. *Timmins* is not, therefore, binding upon the Secretary of State in determining this appeal.

- The proper approach to paragraphs 145 and 146 is that paragraph 145 exempts only the construction of new buildings in the Green Belt as listed in

that paragraph, and not material changes of use or other built development. Paragraph 146, conversely, exempts "Certain other forms of development" but plainly those other forms of development may include the construction of new buildings.

126. To interpret paragraph 146 as excluding "other forms of development" that include (as part of the development) the construction of one or more new buildings would be to denude paragraph 146 of much of its effect. Mineral extraction, for example, will often require the construction of new buildings;[6] so will the provision of local transport infrastructure. Most obviously, the Government's Planning Practice Guidance (PPG) makes clear that Neighbourhood Development Orders and Community Right to Build Orders can be used to approve the building of (inter alia) homes, shops, businesses and affordable housing for rent or sale.[7] Indeed, the relevant legislation expressly contemplates that housing will be developed using a Community Right to Build Order (and then retained as housing that is affordable in perpetuity). It would be contradictory to permit the forms of development listed in paragraph 146 as "not inappropriate" only then to require very special circumstances to be shown in respect of the construction of any new building included within the development proposal.

127. In summary, paragraph 146 can in principle apply where a development within one of the categories set out in the paragraph includes buildings.

Local transport infrastructure?

128. There is no definition of this phrase in the NPPF but the proposed MSA is local transport infrastructure. The 2018 Cobham appeal decision supports this. The inspector decided additional HGV parking in an existing MSA would be local transport infrastructure. The basis of this conclusion was that the HGV parking was needed "in the local area". She was not deterred from this conclusion by the fact that the journeys made by the HGVs using the facility would be long trips and not local ones. (Document APP12 appendix 3)

129. The same reasoning applies to the present case. This is transport infrastructure and there is a need for it in this local area, even though clearly many or most of those using it would be on journeys that might reasonably be considered greater than local in length. There will be other infrastructure projects, for example projects of national significance, which do not require to be located in a specific area. This project does have specific locational requirements; it is truly local transport infrastructure.

Green Belt location required?

130. It has been demonstrated that this is a proposal which requires a Green Belt location; there is nowhere else that is suitable. It is common ground that if there is a requirement for an MSA in the vicinity, it is likely that it would have to be located in the Green Belt because the majority of the strategic highway runs through the Green Belt.

[6] that is particularly the case if regard is had to the very wide definition of "building" in s. 336 of the Town and Country Planning Act 1990

[7] See Planning Practice Guidance Paragraph: 010 Reference ID: 41-012-20140306

Openness

131. Any correct analysis in relation to openness has to start from the premise that some development falling within the categories set out within paragraph 146 of the NPPF can be appropriate, otherwise the proviso about openness would make paragraph 146 pointless; see *Samuel Smith* paragraph 16.

132. The question of preservation of openness, therefore, has to be considered in the context of the fact that paragraph 146 plainly contemplates development which has a significant physical impact. For example, quarrying and mineral working could have such an impact. Then again, there is development under a Community Right to Build Order or a Neighbourhood Development Order (which in the latter case can include development which it is decided would have significant environmental effects and therefore requires environmental impact assessment). Similar considerations apply with respect to local transport infrastructure. As an example, the additional HGV parking proposed in the 2018 Cobham decision involved hardstanding and HGV parking on an area that was previously a grass slope.

133. The question is whether, having regard to that context, there would be any material effect on the openness of the Green Belt as a result of the development. It is common ground that spatial and visual matters are to be examined.

134. In relation to the spatial aspect, there would be physical development, but in the context of paragraph 146 it would not be material. Buildings would occupy only 4% of the site, hardstanding (parking, roads, pedestrian provision) 40% and 56% of the site would be landscaping. (Document APP8 Figure.3)

135. In relation to the visual aspect, the Council's concern is with the effect on openness arising from the planting proposals. However, the existence of substantial planting is a characteristic of the area around the appeal site, for example Long Plantation, Duckers Holt and the Stane Hill Plantation. That characteristic of the surrounding area is also recognised in the landscape analyses prepared for the Council by Ecus and Golder Associates. (Documents 88 pages 55-65 & 89 pages 28-30)

136. The main view reduction across the site would be from the A1(M). Those views are inevitably fleeting and of relatively low importance in any planning judgement. Moreover, the findings of the LVIA submitted with the application are agreed. That assessment concludes that there would be no more than minor adverse visual and landscape effects once the scheme matures and that the motorway corridor is of low sensitivity in both landscape and visual terms. (Document CD76 paras.534, 543 & pages 168-171)

137. Openness from Green Lane would not be reduced by the appeal proposal. The site is on lower ground and at some distance from the viewpoint and there would be no breach of the skyline. Therefore, whilst the open land that was currently visible would be replaced in the view by trees and landscaping, there would not be any reduction in openness.

138. Overall, given that paragraph 146 contemplates significant development and that the landscape and visual impact of the proposal would not be significant once planting has matured, it is concluded this proposal would preserve the openness of the Green Belt.

Purposes of including land in the Green Belt

Purpose (c) –safeguarding the countryside from encroachment

139. The only Green Belt purpose with which the proposal could be said to conflict is encroachment on the countryside. However, the test of lack of conflict with the purposes of including land in the Green Belt within paragraph 146 has to be read in the light of the fact that the paragraph clearly contemplates development of substance, the semi-urban nature of area ALS5 as assessed in the Council's Green Belt Review, and the presence of the A1 (M) to the west of the site. In that context, there would be not be any material encroachment on the countryside. (Document APP12, appendix 4 page 19)

Purpose (e) – assist urban regeneration, by encouraging recycling of derelict and other urban land

140. There is no conflict with this purpose because there are no brownfield alternative sites for the proposal, and no evidence that the development would prejudice development of any brownfield or other urban sites.

141. The Council's concern that provision of a lodge would affect the viability of hotels in the urban area and affect other facilities by discouraging people from visiting the urban area is rejected. The provision of lodges at MSAs is common, accepted and not contrary to policy. C2/2013 contemplates that they may be permitted and they continue to be permitted. Ninety six of the 116 MSAs in England have lodges and all Green Belt MSAs with sufficient space on their sites have a lodge. (Documents APP10 para.9.3.21 APP12 appendices 3, 5 & 8)

142. That MSA lodges provide overnight rest accommodation for long distance road users is confirmed by a recent survey at nearby MSAs. (Document APP12 appendix 12) The range of facilities provided at MSAs, including hotel and retail facilities, are designed to be attractive to motorway drivers rather than becoming a destination in their own right. It has been accepted that they are unlikely to have any significant adverse impact on the vitality or viability of any nearby centre.

143. Whilst acknowledging that the emerging Local Plan is at an early stage and thus has limited weight, it nonetheless shows the Council's current thinking. Emerging policy 13(d) supports "secure lorry parking facilities and roadside service areas along the SRN (including overnight stay accommodation and toilet facilities, where possible)." Whether that is addressing HGVs needs only, as argued by the Council, or is addressing overnight accommodation in general, it can be seen that the Council is clearly recognising that such accommodation is appropriate and that it is not concerned about the impact of roadside accommodation either on town centres or on investment in the urban area. (Document CD86 page 24)

144. Overall, it cannot be said that the appeal proposal is in conflict with the purpose of assisting in urban regeneration.

Conclusion on appropriateness

145. For the reasons given, the proposal is not inappropriate development in the Green Belt

If inappropriate – effect on openness and Green Belt purposes

146. If, however, it is concluded the proposal is inappropriate, paragraph 146 of the Framework does not set a context for judgements about effect on openness and the Green Belt purposes. Nonetheless, for the reasons already set out, any effect of the proposal on openness and Green Belt purposes is limited, even if material. Further, if an MSA is needed, every reasonable effort has been made to keep those effects to a minimum.

If inappropriate – what other harm

Landscape, loss of countryside and visual harm

147. The findings of the LVIA have been accepted and it is common ground that once the development and landscaping has matured, there would be no impacts that would be more than minor in landscape and visual terms.

148. Even after one year of operation, the impacts would be modest, and even more modest than suggested by the matrix. The visual effects of the proposal have only been considered in terms of the extent to which the on-site planting would develop. The Community Woodland to the north is itself maturing and it is extremely likely that the site would not be visible from the agreed viewpoint or any other viewpoints along the Community Woodland paths within the next 5 to 6 years; with no visual effect at all by year 15. (Document APP6 para.7.3.3)

149. Whilst the site is within Landscape Character Area (LCA) C2 judged to be of high landscape value, as assessed in the Ecus Borough-wide Landscape Character and Capacity Study; there is wide variety within it. The Study distinguishes between the area to the west of the A1, which retains its distinctive rural character and the "more diverse modern influences to the east". It also refers to the "lower landscape quality" east of the A1. Furthermore, even in relation to LCA C2 overall, the Study states that although the area is given an assessment of "high landscape value" in the light of the ASLV and the country parks in the area (the appeal site falls within none of these), the character area "as a whole" is judged to be of "moderate landscape quality". (Documents CD88 pages 55, 56, APP6 section 8.3)

150. Although the MSA would be visible from the ASLV, such visibility is not a breach of the ASLV policy in the UDP (ENV 17), because ENV 17 does not deal with views from the ASLV, but only development within it. (Document 85)

Loss of agricultural land

151. The survey by Savills that was initially submitted suggested that there would be a significant loss of grade 2 land. However, a further more detailed agricultural land assessment has now been undertaken by Mr Askew of Tim O'Hare Associates which shows that only 36% of the site is best and most versatile land falling within grade 2 or 3a (with only 3.6 ha or 23% falling within grade 2). The majority of the land to be developed is grade 3b, and therefore not best and most versatile. Further, the loss of the site to agriculture would not adversely impact on the agricultural unit of which it now forms part. (Documents CD73, APP10 paras.8.4.1-8.4.5, APP9 appendices 16 A & B, APP12 appendix 7)

152. The differences between the reports is set out in document APP9, appendix 16B. In terms of the results, Savills determined one soil type, whereas Mr Askew

determined three types. Also, Savills determined soil wetness as the only limitation but Mr Askew also determined soil droughtiness as a limitation at some profiles. Savills decided the top soil was calcareous, but Mr Askew disagreed and gave his reasons, based on the Soil Survey Field Handbook. Finally, Savills said there was only one type of wetness, but Mr Askew identified a range of wetness on the site.

153. Given Mr Askew's high qualifications, great experience, more meticulous methodology and rigorous assessment, it is not surprising that his results are more precise than those of Savills. His assessment is clearly to be preferred. It accords with the evidence on behalf of the owners that the land is of poorer quality near the roundabout; that is where Mr Askew identifies grade 3b land.

154. The points raised at the inquiry by the JRP in their written submission in respect of the agricultural land classification of the site have been comprehensively addressed in Mr Askew's written response. (Document INQ11)

155. The relevant requirement in CS policy CS18 is that proposals "protect high quality agricultural land (grades 1, 2 and 3a) insofar as this is consistent with the Growth and Regeneration Strategy (as set out in Policy CS2)". Any conflict with policy CS18 is avoided in this case because the appeal proposal falls within policy CS2(C), which provides that "a range of transport schemes will be developed and managed to support the settlement hierarchy and improve access to jobs and opportunities across the borough". (Document CD84)

156. In summary, although there is best and most versatile land at the site, the amount is limited and less than previously thought. Further, that limited loss would not adversely affect the viability of the agricultural unit. Quite apart from the fact that there are no suitable alternative sites, loss of best and most versatile agricultural land is not a sound reason to dismiss the appeal.

If inappropriate, are there very special circumstances

157. There are very special circumstances which clearly outweigh the harm to the Green Belt and any other harm. Reliance is placed on what has already been said about the importance for safety reasons of proper MSA provision as emphasised by Government in C2/2013, on the need for an MSA in this area, and on the lack of alternatives.

Scale of the proposal (Documents APP10 paras. 9.3.10-9.3.29, APP12 appendix 5 & 9)

158. The scale of the proposal is entirely justified and is in line with the type and scale of facilities that experience elsewhere has shown motorway users value and require. The principle of lodge provision is dealt with above under Green Belt purposes and the size of it accords with those provided in other MSAs, including those in the Green Belt and recently permitted. The same can be said of the amenity building and retail provision. There is nothing unusual in the size of the amenity building or lodge proposed here.

159. The drive thru' coffee unit is an appropriate facility at an MSA, because it is a way of providing motorists with a break from their drive. The only difference from other more traditional facilities is that they do not have to leave their car.

160. The proposal is particularly economical in its land-take as compared with expectations for MSAs contained in C2/2013, because although the Circular

requires separate parking for lodges where they are provided as part of MSAs, it has been agreed with Highways England in this case that no separate parking provision is required.

161. MSAs are there to serve people travelling on the motorway network, and they need to be sufficiently attractive to provide motorists with facilities they expect and want. There is good reason for what is proposed. There is no evidence that either the lodge or retail facilities would have any detrimental impact on town centres, or investment in urban areas or derelict land. Highways England supports the proposal, so it is clearly satisfied that the facilities provided would not be a destination in their own right leading to an overall increase in trips.

162. Even if the lodge were not provided and the retail facilities reduced in scale, the effect on the Green Belt would not be materially less. The buildings would cover only 4% of the site. The parking provision would not reduce, because that is based on traffic flow and not the scale of retail facilities and in this case there would be no separate parking provision for the lodge.

Improving the transport network

163. The proposed MSA is supported by the general objective of policy CS9 to make an overall contribution to the improvement of the transport network. It does so by fulfilling a need for an MSA at this location which would in turn improve the safety and welfare of road users. Support is also to be found in CS9(D) specifically which states (Document 84 page 53)

"Proposals will be supported which improve the efficiency of freight transport, and provide alternatives to roadside transport where possible, including…

2. facilities for lorry parking and roadside service areas, where appropriate…"

164. As with emerging policy 13(D) the Appellant does not concur with the Council that this is addressing freight transport only but rather that "roadside service areas" is a general term, and providing for them ensures the Council is complying with the Government guidance in NPPF. (para.104(e) and fn42)

Economy and employment

165. The employment benefits of the appeal proposal would be significant. Some 215 jobs are likely to be created for local people. There would be a range of jobs available and a comprehensive training programme provided. This would benefit the local economy. (Document CD70 page 19)

Policy overview

166. In relation to national guidance, the appeal proposal is not inappropriate development in the Green Belt. Further, it comprises sustainable development in that it would deliver economic, social and environmental objectives, while providing an MSA where one is much needed, in fulfilment of the NPPF's policy on roadside services. For the reasons set out above, even if the proposal is inappropriate development in the Green Belt, very special circumstances in this case clearly outweigh any harm to the Green Belt and any other harm. (Document APP10 para.11.2.2 and NPPF para.104 & fn 42)

167. There is no conflict with the Development Plan read as a whole. The Council's assertions of policy conflict, in particular with policies in relation to countryside (CS3), agriculture (CS18) and the growth and regeneration strategy (CS2) have

to be considered in that context. The Core Strategy contains policy CS9, which supports the proposal insofar as it would improve the transport network, and which also contains specific provision for roadside service areas. But even if conflict were to be found, the need for the MSA provides the strongest material consideration indicating that planning permission should be granted. (Document 84)

Other matters

168. A number of issues raised by third parties, including effect on above-ground built heritage, air quality, impact on local water course, aquifer and flooding, noise, light, the degree of public consultation, health, impact on wildlife and crime are dealt with in the written evidence. None justifies refusal of planning permission. All were considered fully by the Council and relevant consultees, and no objection raised. (Documents APP10 paras.8.5.4 & section 10, & CD83)

169. In response to specific points made by the JRP not dealt with above:

a) The ES concluded that there would be no direct or indirect impact on heritage assets that would affect their significance. Historic England (responsible for Grade 1 listed Brodsworth Hall) was not consulted about the application but nonetheless has subsequently been made aware of the proposal. There would be no views of the site from the Hall and its setting would not be affected.

b) Views of the site afforded to coach travellers visiting the Hall would not normally be assessed in an LVIA. In this case, for those looking out and towards the site, any effect would be influenced by intervening trees and hedgerows and primarily by the motorway in the foreground (including the elevated section at junction 37) which would, in part, screen the site. Once landscaping matured, the site would not be visible.

c) The Environmental Statement had scoped the Marr Conservation Area out of the area in respect of which an assessment of potential effects on archaeological and cultural heritage was required. (Document CD76 chapter 8)

d) Reliance placed on the findings of the Golder Landscape Character and Capacity Study that development of the appeal site should be resisted is misplaced. The site assessed was much larger in size and the development to be accommodated not comparable. Moreover, if development was to take place the report stated it should be to the east of the A1(M). (Document CD89 pages 28-30)

e) The occurrence of observed traffic queues at the roundabout are not disputed but December is not a representative month and the Appellant's figures are mean maximum and so would not reflect the daily variation that would occur. The Appellant's traffic survey data and methodology, using standard industry practice, has been agreed with HE who also commissioned its own independent survey to corroborate the assessment work. Both HE and the Council are satisfied that there would be no severe effect on the road network which would remain within capacity. (Documents CD93 & CD94)

f) The issue of air quality was fully assessed within the ES and the conclusion reached that all impacts during construction and operation would have a negligible impact on air quality. There is no evidence to the contrary. (Document CD76 section 6)

g) The reference to HS2 in the JRP written submission is misplaced as it is not committed development.

h) The design has incorporated a lighting scheme aimed at ensuring levels would not increase above existing levels having regard to existing levels at junction 37. (Documents CD76 section 11 & APP6 pages 16 & 17)

Conclusion

170. The appeal should be allowed:

- An MSA is needed in this area and the scale of facilities proposed is justified;
- There are no suitable alternatives;
- The appeal proposal comprises appropriate development in the Green Belt;
- If it is inappropriate, the need for the development and its benefits comprise very special circumstances which clearly outweigh harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal; and
- There is no conflict with the Development Plan overall, and even if there is, the need for the MSA in this location comprises a material consideration which points strongly to the grant of permission.

PLANNING CONDITIONS AND PLANNING OBLIGATION

171. A list of conditions that might be necessary should planning permission be granted was discussed and refined during the course of the inquiry. The finalised set as agreed by all parties and the reasons for them are set out at Appendix 3 to this report. For those conditions which comprise pre-commencement conditions, and in accordance with the Town and Country Planning (Pre-commencement Conditions) Regulations 2018, the Appellant has confirmed in writing that their inclusion and their wording is necessary and appropriate to enable the grant of planning permission. (Document INQ13)

172. Conditions 1 and 2 are standard conditions relating to the commencement of the development and listing the approved drawings. Not all drawings have been included as, for example, some are illustrative and others demonstrate vehicle tracking. Appendix 1 to this report includes a brief comment as to their inclusion or exclusion.

173. Conditions 3, 4 and 5 are concerned with limiting hours of construction, providing of a Construction Environmental Management Plan and limiting noise levels during construction. These are required to protect neighbouring amenity and to safeguard the environment. For the same reasons condition 6 is intended to limit noise levels from the subsequent operation of the development. In the interests of appearance and protecting the environment, condition 7 requiring details of external materials, condition 12 addressing protection of retained trees, condition 13 concerning planting and condition 17 requiring details of lighting are promoted.

174. Condition 8 addressing a BREEAM assessment and condition 9 addressing CO2 emissions from the development are aimed at promoting sustainable development and minimising the effects of climate change. Conditions 10, 11 and 16 requiring electric vehicle charging points, bus stops along the A635, and the submission of a Travel Plan are aimed at encouraging sustainable modes of travel.

175. To protect the ecological and archaeological interests of the site a Biodiversity Enhancement Master Plan is required by condition 14 and a Written Scheme of Archaeological Investigation by condition 15. Finally a Construction Traffic Management Plan is required by condition 18 to minimise any effect on neighbouring highways during construction of the development.

176. A fully executed planning obligation made under s106 of the Act is to be found at document CD97 wherein the development shall not be occupied until such time as the Travel Plan Transport Bond has been paid to the Council. The Bond shall only be used by the Council in the event that agreed targets in the Travel Plan are not met and then only towards the travel and transport needs which directly arise from the development. In the event that any part of the Bond is not expended within five years, the Council shall repay the money with any interest accrued. In the event that the appeal is dismissed, the deed would cease to have effect.

177. The obligation is necessary to ensure delivery of the Travel Plan targets. It is thus necessary to make the development acceptable, is directly related to the development, and is fairly and reasonably related in scale and kind. A CIL Compliance Statement from the Council which draws support from its published Supplementary Planning Document *Development Guidance and Requirements* is included at document INQ1.

INSPECTOR'S CONCLUSIONS

[Numbers in square brackets [n] denote source paragraphs]

178. The main consideration in this case is whether the proposal amounts to inappropriate development in the Green Belt having regard to Development Plan policies and the provisions of the NPPF and if so whether the potential harm by reason of inappropriateness, and any other harm resulting from the proposal is clearly outweighed by other considerations.

Inappropriate development?

Planning policy - application

179. Saved Doncaster Unitary Development Plan (UDP) policy ENV3 addresses proposals in the Green Belt and states that development will not be permitted except in very special circumstances other than for a number of purposes which are listed. None of those exceptions embrace the construction of a Motorway Service Area (MSA) so the proposal would comprise inappropriate development when assessed against that policy. However, the UDP was first adopted in 1998 and the accompanying text indicates that the policy was aimed at reflecting Government guidance then in force in the *Planning Policy Guidance 2 Green Belts*. That document has since be replaced by more up to date Green Belt guidance in the National Planning Policy Framework (NPPF). In these circumstances, inconsistency with NPPF Green Belt guidance is a material consideration. [26]

180. The Council's Core Strategy (CS) is a more recent document having been adopted in May 2012 after the publication of the first NPPF. Policy CS3 states that one of the key considerations for land in the Green Belt is to apply national policy, including a presumption against inappropriate development other than in

very special circumstances. The policy is, therefore, consistent in its phraseology with national policy in the current NPPF. Criterion (C) 4 of the policy goes on to say that proposals outside development locations will only be supported where they would "preserve the openness of the Green Belt (and ...) and not conflict with the purposes of including land within them". [20]

181. Against this background, in assessing whether the proposal constitutes inappropriate development, it is therefore apt to apply current national policy. Paragraphs 145 and 146 of the NPPF provide guidance as to what development might be found to be not inappropriate.

Paragraph 145 or 146 of the NPPF?

182. Starting then with paragraph 145, this states that the construction of new buildings should be regarded as inappropriate in the Green Belt other than for specified exceptions. Notwithstanding the small percentage of the overall site which the Appellant says would be occupied by building; the amenity building, lodge, drive through and fuel filling station are all significant and substantial elements of the proposal. There is in addition, the canopy over the fuel pumps, and ancillary structures to the rear of the amenity building such as the biomass and energy centres and fenced compounds. The construction of these buildings does not fall within any of the exceptions listed in paragraph 145 and assessed against that paragraph, therefore, the proposal comprises inappropriate development. [28, 31, 50, 134]

183. Since the follow on paragraph, paragraph 146, of the NPPF, begins by stating "Certain other forms of development are also not inappropriate ..." that must mean forms other than the construction of buildings. That would give that sentence its ordinary meaning and would indicate that the categories listed (a) to (f) in paragraph 146 were forms of development other than the construction of buildings. If that is right, paragraph 145 is a closed list addressing all circumstances where the construction of buildings is not inappropriate and, since the appeal proposal involves the construction of significant buildings, paragraph 146 would not apply. [50, 51]

184. The Appellant says the fact that buildings are included in the proposal does not disqualify it from being considered under paragraph 146. In support, attention is drawn to categories 146(a) mineral extraction and 146(f) development brought forward under a Community Right to Build Order or Neighbourhood Development Order. These, the Appellant says, would be likely to involve the construction of buildings particularly given the definition of "building" within section 336 of the Act which includes any structure or erection and any part of a building as so defined but excludes plant or machinery comprised in a building. However, to accept that argument would be to interpret the opening sentences of paragraphs 145 and 146 in a manner other than to give them their ordinary meaning. Moreover, as was pointed out by the Council, other types of development could be brought forward under those categories in paragraph 146 without involving the construction of buildings. Examples might be an extension of a mineral extraction area, the provision of a car park or use of land as a playground. [52, 124-127]

185. I conclude from the above that the proposal does fall to be considered under paragraph 145 of the NPPF and that it comprises inappropriate development in the Green Belt.

Local transport infrastructure which requires a Green Belt location?

186. However, in the event that the Secretary of State does not agree and finds that the proposal should be considered under "Certain other forms of development" addressed under paragraph 146, I go on to consider whether the proposal would come within category (c) – local transport infrastructure which can demonstrate a requirement for a Green Belt location.

187. There is no dispute between the parties that the proposal comprises transport infrastructure and I find no reason to disagree. The disagreement is whether it can properly be described as "local". There is no definition of the term "local transport infrastructure" to assist.

188. The Department for Transport's Circular 02/2013 (C2/2013) says MSAs and other roadside facilities perform an important road safety function. The network of service areas on the Strategic Road Network (SRN) has been developed on the premise that opportunities to stop are provided at intervals of approximately half an hour. That dictates the recommended distance between MSAs. The Circular is clearly aimed at providing services for the benefit of drivers on the SRN (and providing MSAs for the benefit of drivers on the motorways in particular) and not aimed at catering for the needs of drivers on the local highway network. Indeed, caution is expressed in paragraph B11 in relation to trip mileage where there is potential for the facilities to become a destination in their own right. [30, 53, 129]

189. Whilst one element of the overall scheme would assist in addressing a shortage of HGV parking in the area, there is no other identified local need which would call for an operation of the size proposed to be built. There is no local need for a new MSA to be located on the appeal site; the need arises from the distance between existing MSAs on the motorway network which happens to suggest there may be a need in the area. That, in itself, is not sufficient to conclude that the proposal is local transport infrastructure. [115]

190. I find that the proposal does not comprise local transport infrastructure and thus does not fall within paragraph 146 of the NPPF. In reaching that view I have had regard to the appeal decision relating to the Cobham MSA on the M25 drawn to my attention by the Appellant. However, that proposal was for additional HGV parking within an existing MSA. Whilst the inspector in the circumstances of that case found the proposal to constitute a local transport infrastructure facility, it was not a proposal for a new MSA, the need for which is dictated by the distance between services on the motorway network, that was being considered. I do not find it directly comparable such that it leads me to a different conclusion. [97, 128]

191. If, contrary to my view, the Secretary of State was to find the proposal did constitute local transport infrastructure, a requirement for a Green Belt location would be necessary to satisfy paragraph 146(c). It is common ground between the parties that should a need for a new MSA be accepted on the basis of the requirement to fill a gap between existing motorway services, then there is no other suitable site to be preferred to the appeal site. The Appellant's Alternative Sites Assessment and subsequent supplementary evidence has not been challenged and I find no reason to doubt the findings. Thus, a requirement for a Green Belt location could be demonstrated. [41-43, 123, 130]

Preserves openness and does not conflict with the purposes?

192. Paragraph 146 of the NPPF makes clear that even if the proposal falls within 146(c) there are also the provisos of preserving the openness of the Green Belt and not conflicting with the purposes of including land within it.

Effect on the openness of the Green Belt

193. Paragraph 133 of the NPPF sets out the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open and identifies the essential characteristics as openness and permanence.

194. The appeal site forms part of a long swathe of open agricultural fields stretching between the A635 to the south and Green Lane to the north and between the A1(M) to the west and Long Plantation to the east. The only interruption of substance are the two woodland areas, Stane Hill and Stane Hole Plantations. The open expanse of farmland is devoid of development save for the overhead cables and the telecommunications mast at the southern extremity and is physically and visually separated from suburban development to the east and north-east by Long Plantation. In context, the main detractor from the openness of the area within which the site sits and is seen is the existing motorway and the activity along it, but this is contained within well-defined linear boundaries as it passes through the countryside. [7-11, 15]

195. Whilst the Appellant says some 56% of the site would be taken up with landscaping, that still results in almost half of the 15.1 hectare site covered by built development – that is the buildings and the hardsurfaces for parking and vehicular and pedestrian circulation. Given that the facility would be open 24 hours a day, 365 days a year, there is unlikely to be any time when there would be no activity on the site or any time when the extensive areas of parking would be empty, albeit that it would be likely to be quieter late at night and in the early hours of the morning. [31, 58, 101, 134]

196. At present, the appeal site seamlessly forms part of a much larger open area of agricultural land. In spatial terms the built development on the site would result in a substantial loss of openness on the site itself and on the open tract of arable land of which it forms part and this would be exacerbated by the presence of parked vehicles including large lorries, coaches and caravans on the extensive parking areas. Furthermore, notwithstanding that openness is already impacted by the presence of the adjoining motorway, the proposal would result in significant additional harm by the introduction of substantial development beyond the contained line of the road, where currently there is nothing of note.

197. In visual terms, I note the findings of the LVIA that after 15 years there would be no more than minor adverse visual and landscape impacts. From my consideration of the evidence and from my site visit I find no reason to conclude differently. It is clear that the landscape design has been carefully developed to assimilate the MSA into its surroundings. A significant part of that is tree planting, in particular around the site boundaries to screen the development from public viewpoints outside the site. Nonetheless, would still be some minor adverse effect at year 15, the accepted industry standard period for LVIA. Moreover, even in visual terms there would be loss of openness in that the continuous open sweep of arable farmland between the A635 and Green Lane

would be eroded by the enclosure of the appeal site even though, in time, that would have a wooded appearance. [35, 46, 59, 135-137]

198. The impact on openness resulting from the development in spatial terms would be considerable and this would not be lessened by screening the development from view albeit that the wooded effect which would in time be achieved would help to integrate the site in its setting. That substantial built development, as is proposed here, does not have any impact on openness because in time it would barely be seen from any public viewpoint is not a good argument. It could be used to justify all manner of built development in the Green Belt, which would not achieve the aim of keeping land permanently open or preserving openness.

199. I have noted the Appellant's argument that paragraph 146 of the NPPF contemplates development which has a significant physical impact. In this respect the categories of development listed under paragraph 146 plainly anticipate some change and I acknowledge that whether the openness of the Green Belt is preserved, or conversely harmed, is not simply a question of whether something, which by definition has a spatial impact, is to be built. It could be, for example, that an extension proposed to an existing development would have no greater impact overall on the openness of the area. It is a matter of planning judgment. [131-133]

200. For the reasons given above, in my judgement, the appeal proposal would not preserve the openness of the Green Belt.

Conflict with the purposes of including land in the Green Belt?

201. Dispute between the main parties exists only in relation to purposes (c) – safeguarding the countryside from encroachment and (e) – assisting in urban regeneration by encouraging the recycling of derelict and other urban land, as set out in paragraph 134 of the NPPF. [39]

202. Looking at purpose (c) first, the physical and visual separation of the appeal site from existing development to the east and north east, provided by Long Plantation, places the site firmly within the countryside when assessing it both in terms of its character and appearance. Whilst area Adwick Le Street 5 (ALS5) within which it sits in the Council's Green Belt Review is described as reflecting a semi-urban character, that area is far more extensive than the appeal site, accommodates a degree of built development, and in places adjoins built up areas. [60, 139]

203. The presence of the motorway on the western side of the site is an intrusion but motorways, by their very nature, cut through the countryside. The extent of the intrusion is contained by their linear form. In contrast the proposed MSA would result in a substantial spread of built development beyond the well-defined line of the motorway and over an area almost devoid of development. It would result in a significant material encroachment into the countryside and thus be in conflict with purpose (c).

204. With regard to purpose (e), should a need for an MSA be established, then it would be entirely appropriate for it to offer the range of facilities normally to be expected at such an establishment. There is nothing about the scale or range of facilities proposed that would set it apart from other MSAs or that would suggest that it would become attractive as a destination in its own right. The lodge, for example, would offer nothing but basic bedroom accommodation – there would

be no communal lounge, bars or restaurants and no conference room facilities. It is clearly aim at catering for motorway drivers on long journeys in need of a break for the night rather than attempting to attract visitors to the area who would be likely to look for hotels situated in a more inviting environment and offering a better range of facilities. [61, 158-162]

205. There would, of course, be nothing to prevent local people or visitors to the area using the facilities, but their provision on this site would be dictated by the need for an MSA. There is nothing of substance from which to conclude that the MSA would in any way materially affect urban regeneration in the area and thus there is no conflict with purpose (e).

Conclusion on whether the proposal amounts to inappropriate development

206. Since the proposal involves the construction of new buildings, it falls to be assessed under paragraph 145 of the NPPF. The list in paragraph 145 is a closed list which identifies the only exceptions where the construction of new buildings in the Green Belt are not inappropriate. The proposed MSA does not come within any of the exceptions listed and thus comprises inappropriate development.

207. If the Secretary of State disagrees and considers the proposal comes within the description of "Certain other forms of development", then it would fall to be assessed under paragraph 146. However, even if that were to be the case, in my view, the development would still be inappropriate since, for the reasons given, it would not comprise "local transport infrastructure", it would not preserve the openness of the Green Belt and it would be in conflict with one of the purposes of including land within the Green Belt, namely assisting in safeguarding the countryside from encroachment.

208. The development is in clear conflict with policy CS3 of the Core Strategy which is consistent with national Green Belt policy in the NPPF.

Other harm

Landscape, loss of countryside and visual amenity

209. Consideration of these matters overlaps, to a degree, with the assessment already made in terms of loss of openness in visual terms and encroachment into the countryside. In this respect it is common ground between the main parties that there would be some minor adverse impacts in landscape and visual amenity terms at year 15. With those agreed findings, and notwithstanding that planting on the site would continue to mature thereafter, it cannot be argued that no harm would ensue or that there would be no conflict with the requirement of policy CS3 to protect and enhance the countryside. However, having looked from the young Community Woodland to the north, I do agree that views towards the site from that direction are likely to be obscured in the next few years as the planting in that area matures. [20, 46, 62, 147-150],

210. In addition to the landscape and visual effects, the physical loss of this undeveloped site to built development represents an unwelcome intrusion of an urban nature into the countryside. The presence of the adjoining motorway provides no justification for additional development – indeed it might be argued that there is a need for more protection given that land around the motorway junction might be attractive for development.

Loss of agricultural land

211. Policy CS18 supports proposals which protect high quality agricultural land (grades 1, 2 and 3a) insofar as it is consistent with the Growth and Regeneration Strategy as set out in policy CS2. The accompanying text indicates that where the loss of agricultural land to built development is required to deliver the Growth and Regeneration Strategy, poorer quality land should be used in preference to higher quality land to the extent that this is practicable. [24]

212. The Appellant's recent and detailed Agricultural Land Classification assessment concludes that only some 36% of the appeal site comprises best and most versatile land, the remainder being of only moderate quality. That finding is not disputed by the Council. The Joint Rural Parishes (JRP), however, argue that the initial Agricultural Land Assessment, submitted with the application, which found the whole appeal site to be grade 2 should be preferred given the errors and inconsistencies in the later document. [63, 79, 80,]

213. No technical evidence has been presented to challenge the findings of the most recent assessment and the author of that document has gone to some lengths to explain the reasons why a different conclusion has been reached when compared to the initial assessment. Whilst the errors in the document suggest a lack of care in presentation, I find this insufficient reason, in itself, to discount the findings of a what is clearly a much more detailed assessment of the quality of the agricultural land on the appeal site. [151-154]

214. Nevertheless, the proposal would result in the loss of a sizable amount of best and most versatile land (over one third of the site), albeit less than was originally envisaged and, in that respect, there is conflict with policy CS18. The Appellant's suggestion that such conflict is avoided because the proposal falls within policy CS2(C) is not accepted as the MSA is not aimed at supporting the settlement hierarchy or improving access to jobs and opportunities across the Borough. It is intended to provide for the safety and welfare of motorway users. [155]

Other potential harm raised by the JRP and interested persons

215. I can understand the concern of local people about congestion at the junction as it is clear that they have personal experience of queues at certain times of the day. However, the Transport Assessment undertaken for the Appellant has been prepared in accordance with industry standards and the findings scrutinised and agreed by the local highway authority and Highways England (HE), both of whom concur that the residual cumulative impacts of the development would not be severe and that the appeal should not be dismissed on highway grounds. Indeed, HE also commissioned its own independent survey to corroborate the assessment work. In the absence of any contradictory evidence of substance from which to reach a different conclusion I find the development would result in no material harm to existing highway conditions. [2, 44, 45, 81-87, 90, 169(e)]

216. Similarly, it is unsurprising that local people are concerned about air quality given that the Hickleton Air Quality Management Area has recently been extended to embrace Marr. Traffic levels along the A635 through these villages is high. However, that is an existing problem and the effects of the development on air quality was assessed in the Environmental Statement (ES) submitted with the application where it was concluded that there would be a negligible impact. There is no evidence from which to conclude differently. [88, 89, 106, 169(f)]

217. The heritage assets, Brodsworth Hall and the Marr Conservation Area, are both a considerable distance from the appeal site and on the opposite side of the motorway. The distances and the physical separation arising from the line of the motorway are such that there would be no impact on the setting of either. The ES found no direct or indirect impact on heritage assets that would affect their significance. I see no reason why visitors going to the Hall by coach might suffer any material harm by being able to see the MSA beyond the motorway. [100, 169(a), (b) (c)]

218. With regard to concerns raised about noise and light pollution, the MSA would be situated in an area which already suffers from motorway noise throughout the day and night and the lighting scheme design is aimed at ensuring light levels would not increase above existing levels at the junction. In addition, conditions to be attached to any permission granted are suggested to control these matters. Both matters were assessed in the ES. Increase in litter is another concern raised but, in my experience, MSAs are well provided with litter bins. Given that patrons would primarily be travellers on the motorway there is no reason to conclude that an increase in litter in the local area would result. [101, 102, 169(h), 173]

219. Having regard to all other matters raised by the JRP and other interested persons, I find no other material harm to weigh in the balance.

Other considerations

The need for an MSA

220. There is agreement that the distance between Woodall Services on the M1 to the south of the site and Ferrybridge to the north is 31 miles which exceeds the recommended maximum distance between MSAs of 28 miles. In addition, whilst the distance between Ferrybridge and Doncaster North Services is only 19 miles using the shortest route, it is 29 miles using the longer route and paragraph B7 of C2/2013 indicates that the distances set out are considered appropriate regardless of route choice. [40, 112]

221. Although the Appellant describes the distance between the Blythe and Ferrybridge Services of 24 miles as substantial, it does not exceed the recommended maximum and cannot lend support to need, notwithstanding that a lesser gap might be desirable. Furthermore, it would not be appropriate to discount the MSA at Ferrybridge. Although situated on a junction of the M62, it is well signed from the A1(M) with direct access to it and the detour would not add significantly to journey time whether travelling in a north or southbound direction along the A1(M). Ferrybridge is well used and there is nothing from which to conclude that its facilities are not used by travellers on the A1(M). [113, 114]

222. Thus in terms of need, when assessed against C2/2013, there are only two gaps with excessive distances and then only 3 miles and 1 mile greater than the maximum; and the maximum in the Circular is only "recommended". Whilst 28 miles is based on providing an opportunity to stop every half an hour, paragraph B5 of the Circular states that the network of service areas on the SRN has been developed on the premise that opportunities to stop are provided at intervals of "approximately" half an hour. The application of the policy relating to spacing and stopping intervals is thus not mandatory nor is it an exact science.

In terms of time spent travelling along a motorway, an additional 1 to 3 miles would be unlikely to add significantly to the drive time. [30, 69]

223. In addition, in the current instance, each of the two identified excessive distances includes the stretch of some 10 miles of trunk road with two signed services along both the north and south bound carriageways. At each of my visits, at different times of the day, it seemed to me that these services were well used. In my view they make a positive contribution to the safety and well-being of the travelling public by providing opportunities to stop and access relevant facilities. Those signed services do not provide all the mandatory facilities required for an MSA but they could not be expected to do so since they are not MSAs. [67, 68]

224. It would not, therefore, be appropriate to apply the mandatory requirements for an MSA as set out in Table B1 of C2/2013. The nature of the facilities that are available at each of the signed services has been agreed by the parties and is set out in the table attached to the Statement of Common Ground (SoCG) at document CD92. When compared with the minimum requirements for signed service areas for All Purpose Trunk Roads (APTR) in Table B1 it can be seen that not all mandatory requirements are met in full – especially in relation to parking and access to a cash operated telephone. [111]

225. Notwithstanding the shortcomings identified, each of the signed services offers a selection of facilities intended to support the welfare and safety of drivers travelling along this stretch of A1 trunk road. Their positive, if in some aspects limited, contribution to these objectives should not be completely discounted. Indeed, the shortcomings have not disqualified them from continuing to qualify as signed serves, the subject of sealed agreements, and I understand that each one has recently been refurbished. [71-73, 92, 117, 118]

226. With regard to safe ingress and egress at each of the signed services, the personal injury accident records over a 5 year period indicate an average of between 1 and 1.8 accidents a year on the A1 in the vicinity of three of the services and none near the fourth. Without further information, including the number of drivers using the services, it is difficult to draw a conclusion, but the figures do not appear high given that the use of any access poses a risk and the A1 carries high volumes of traffic. The accesses fall short of the standards for entry and exits from a petrol filling station set out in Design Manual for Roads and Bridges (DMRB) TD 41/95 *Vehicular Access to All-Purpose Trunk Roads* but again there is no information regarding level of use to indicate that they should apply. Even assuming that they should, it is not unusual for existing accesses to fall short of modern standards. In this case it is relevant that HE appears to have taken no action under the provisions of highways or roads legislation in connection with the standard of the accesses, nor is there any indication that, because of the standard of the accesses, they will not continue to qualify as signed services. [70, 119]

227. Finally, it would not be appropriate to disregard the contribution made by the signed services merely because there is an intention to upgrade this stretch of trunk road to motorway when there is nothing to indicate when and if such a proposal would proceed. [73, 120]

228. Given that the two gaps identified between MSAs only exceed the recommended distances by 1 and 3 miles and given some contribution is made to

the welfare and safety of the travelling public by the existing A1 signed services, I conclude that there is no pressing need to provide an additional MSA on the appeal site. A specific need for additional lorry parking in the area has been recognised, and such provision is supported by CS9 (D)1. Providing for that specific need would be a benefit of the scheme but that need does not, of itself, justify the provision of a new, full scale, MSA. [22, 115]

Economy and employment

229. It is acknowledged that the MSA would provide some 215 jobs and that this would benefit the local economy. [165]

The balance of considerations

230. Inappropriate development is, by definition, harmful to the Green Belt. Added to that, in my assessment of the proposal in terms of its effect on openness and on the purpose of including land in the Green Belt to safeguard the countryside from encroachment, I have found significant harm would result in relation to both. Paragraph 144 of the NPPF says substantial weight is to be given to any harm to the Green Belt. Also to be weighed in the balance are the other harms identified.

231. With regard to landscape, loss of countryside and visual amenity, the harm is not insignificant given that minor adverse impacts in landscape and visual amenity terms would remain at year 15. In addition, no matter how well it is designed, landscaped and screened, the provision of an MSA on the appeal site would result in the permanent loss of a large expanse of open land in the countryside given over to an urbanising form of development. Overall, significant weight should be attributed to these matters.

232. The amount of best and most versatile land to be taken out of agricultural use by the proposal has been found to be substantially less than was initially envisaged. Nonetheless a little over a third of the site comprises such land and that would be permanently taken out of production by the construction of the MSA. The loss of this land in conflict with policy carries moderate weight in the overall assessment.

233. Turning to the matters weighing in favour of the proposal the primary consideration is whether there is a need for an additional MSA in this location. A thorough assessment of alternative sites has been undertaken and, should such a need be established, the appeal site does represent the most suitable location. In my judgement, however, the gaps between MSAs, identified as being of concern, are not great and, with the contribution from the A1 signed services factored in, there is no pressing need for an additional MSA at the appeal site. Overall the availability of facilities is not so deficient so as to materially threaten the safety or welfare of the travelling public and the benefit of addressing the specific need for additional lorry parking does not warrant a full scale MSA. Thus, in reviewing the particular circumstances appertaining to this case and with the objectives of the safety and welfare of the travelling public in mind, I have concluded that there is no pressing need for the provision of an additional MSA. I therefore afford this matter limited weight.

234. The provision of employment is a corollary of the proposal and is acknowledged as a benefit arising that would support the local economy.

However, broad locations for employment are set out in policy CS2 and do not include Green Belt land. In the circumstances, therefore, the benefit has very limited weight.

235. Taking into account all the considerations weighing in favour of the proposal, I find nothing that, either individually or cumulatively, clearly outweighs the harm identified so as to amount to the very special circumstances necessary to justify inappropriate development in the Green Belt.

236. In contrast to the Appellant, I find conflict with the Development Plan read as a whole. Policy CS9 does support proposals which would improve the transport network but that cannot be interpreted as support for any proposal in any location without having regard for the other policies of the plan and in particular those which seek to protect the Green Belt, countryside and best and most versatile agricultural land. Indeed, the specific support for lorry parking and roadside services areas in policy CS9(D) includes the caveat "where appropriate". I find no considerations sufficient to outweigh the conflict with the provisions of the Development Plan identified or to indicate that the proposals should be determined otherwise than in accordance with it. Development resulting in the harm identified, and in particular to the Green Belt, without overriding justification cannot be found to be sustainable.

INSPECTOR'S RECOMMENDATION

237. I recommend that the appeal be dismissed.

238. If the Secretary of State disagrees, the conditions set out at Appendix 3 should be attached to any planning permission granted.

B M Campbell

Inspector

APPENDIX 1 – APPEARANCES

For Moto Hospitality Limited:

Mr T Corner	Queen's Counsel and
Ms H Sargent	of Counsel, instructed by Collins & Coward Ltd
They called:	
Mr T Russell	Associate, Croft Transport Solutions
Ms S Illman	Managing Director, Illman Young Landscape Design Limited
Mr A Collins	Director, Collins and Coward, planning and development consultants

For Doncaster Metropolitan Borough Council

Mr K Garvey	of Counsel, instructed by Mr S Fawcus, Assistant Director, Legal and Democratic Services
He called:	
Mrs A Leeder	Principal Planning Consultant, AECOM

Interested Persons

Mrs R Job	Chair of the Joint Rural Parishes and Marr Parish Councillor
Mrs P Moorhouse	Secretary to the Joint Rural Parishes and Brodsworth Parish Councillor
Dr N Balliger	Member of the Joint Rural Parishes and Chair of Hampole and Skelbrooke Parish Council
Mrs A Mitcheson	Local resident

APPENDIX 2 – DOCUMENTS AND PLANS

CORE DOCUMENTS	DESCRIPTION	REFERENCE	PLAN NO.	COMMENT RE INCLUSION IN CONDITION 2
CD1	Site Location Plan	BP01	PL-001A	Added to condition 2
CD2	Existing Site Plan	BP02	PL-002A	Added to condition 2
CD3	Proposed Signage	BP03	PL-015A	Not included, as needs separate advert consent
CD4	Amenity Building – Ground Floor Plan	BP04	PL-020A	Already in condition 2
CD5	Amenity Building – First Floor Plan	BP05	PL-021A	Already in condition 2
CD6	Amenity Building – Roof Plan	BP06	PL-022A	Added to condition 2
CD7	Amenity Building – Sections Sheet 1	BP07	PL-025A	Added to condition 2
CD8	Amenity Building – Sections Sheet 2	BP08	PL-026A	Added to condition 2
CD9	Amenity Building - Elevations	BP09	PL-030A	Already in condition 2
CD10	Lodge -Ground Floor Plan	BP10	PL-040A	Already in condition 2
CD11	Lodge – First Floor and Roof Plan	BP11	PL-041A	Already in condition 2
CD12	Lodge – Sections	BP12	PL-045A	Added to condition 2
CD13	Lodge- Elevations	BP13	PL-046A	Already in condition 2
CD14	Costa – Ground Floor, Roof Plan and Sections	BP14	PL-050A	Already in condition 2
CD15	Costa - Elevations	BP15	PL-055A	Already in condition 2
CD16	Fuel Filling Station – Ground Floor Plan	BP16	PL-060A	Already in condition 2
CD17	Fuel Filling Station – Roof Plan	BP17	PL-061A	Added to condition 2
CD18	Fuel Filling Station - Sections	BP18	PL-065A	Added to condition 2
CD19	Fuel Filling Station - Elevations	BP19	PL-066A	Already in condition 2
CD20	Biomass and Energy Centre	BP20	PL-070A	Already in condition 2
CD21	Chiller, Water Tank and Substation	BP21	PL-071A	Already in condition 2
CD22	Amenity and Lodge LPG Compounds	BP22	PL-072A	Already in condition 2
CD23	Proposed Aerial Views	BP23	PL-080C	Not included - aerial view to give an impression.
CD24	Proposed Aerial Views	BP24	PL-081C	Not included - aerial view to give an impression.
CD25	Proposed Amenity Building Views	BP25	PL-082B	Not included – computer image to give impression.
CD26	Proposed Amenity Building Views	BP26	PL-083B	Not included – computer image to give impression.
CD27	Proposed Amenity Building Views	BP27	PL-084C	Not included – computer image to give impression.
CD28	Proposed Lodge View	BP28	PL-085C	Not included – computer image to give impression.

CD29	Proposed Costa Drive thru Views	BP29	PL-086B	Not included – computer image to give impression.
CD30	Proposed Fuel Filling Station Views	BP30	PL-087B	Not included – computer image to give impression.
CD31	Regional Site Location plan	BP31	PL-090A	Not included – just showing site in wider context.
CD32	Extent of Retail Area	BP32	PL-099B	Added to condition 2
CD33	Proposed Site Plan	BP33	21603/001F	Already in condition 2
CD34	Landscape Masterplan	BP34	21603/003H	Already in condition 2
CD35	Entrance Plaza	BP35	21603/004B	Already in condition 2
CD36	Parking Numbers	BP36	21603/005F	Already in condition 2
CD37	Boundary Treatment Plan	BP37	21603/008C	Already in condition 2
CD38	SuDS Schematic	BP38	21603/009D	Already in condition 2
CD39	Planting Strategy	BP39	21603/010C	Already in condition 13 and added to condition 2
CD40	Flood Route Plan	BP40	21603/011D	Already in condition 2
CD41	Sections - Sheet 1 of 2	BP41	21603/012A	Added to condition 2
CD42	Sections - Sheet 2 of 2	BP42	21603/013A	Added to condition 2
CD43	Proposed Access to MSA	BP43	1186-F09F	Already in condition 2
CD44	Potential Bus Stop Arrangement with Pedestrian Facilities	BP44	1186-F03	Added to condition 2
CD45	Storm Drainage	BP45	4576-SK004P2	Already in condition 2
CD46	Foul Drainage	BP46	4576-SK005P2	Already in condition 2
CD47	Vehicle Tracking – Cars	BP47	4576-SK007P3	Not included – purpose is to show that layout plan works for cars.
CD48	Vehicle Tracking – Caravans	BP48	4576-SK008P3	Not included – purpose is to show that layout plan works for caravans.
CD49	Vehicle Tracking – Coaches	BP49	4576-SK009P3	Not included – purpose is to show that layout plan works for coaches.
CD50	Vehicle Tracking – HGV	BP50	4576-SK010P3	Not included – purpose is to show that layout plan works for HGVs.
CD51	Vehicle Tracking – Abnormal Load	BP51	4576-SK011P3	Not included – purpose is to show that layout plan works for Abnormal loads.
CD52	Vehicle Tracking – Fire Engine	BP52	4576-SK012P2	Not included – purpose is to show that layout plan works for fire engines.

CD53	Proposed External Lighting layout	BP53	8231-PE-Z0-XX-DR-E-0102-P04	Not included – details of lighting to be secured by condition 17.
CD54	Existing External Services Plan	BP54	8231-PE-Z0-XX-DR-ME-0800-P03	Not included – not relevant to the proposal.
CD55	Proposed Incoming Services Plan	BP55	8231-PE-Z0-XX-DR-ME-0801-P03	Not included – not relevant to the proposal.
CD56	Topographical Survey Overview Plan 1	BP56	22755_T-1Rev2	Added to condition 2
CD57	Topographical Survey Overview Plan 2	BP57	22755_T-2Rev2	Added to condition 2
CD58	Topographical Survey Overview Plan 3	BP58	22755_T-3Rev2	Added to condition 2
CD59	Topographical Survey Overview Plan 4	BP59	22755_T-4Rev2	Added to condition 2
CD60	Underground Utility Survey Detail Plan 1	BP60	22755_UG-1Rev2	Not included – not relevant to the proposal.
CD61	Underground Utility Survey Detail Plan 2	BP61	22755_UG-2Rev2	Not included – not relevant to the proposal.
CD62	Underground Utility Survey Detail Plan 3	BP62	22755_UG-3Rev2	Not included – not relevant to the proposal.
CD63	Underground Utility Survey Detail Plan 4	BP63	22755_UG-4Rev2	Not included – not relevant to the proposal.
CD64	Planning Application Form	BD01		
CD65	Planning Statement	BD02		
CD66	Alternative Sites Assessment	BD03		
CD67	Transport Assessment	BD04		
CD68	Travel plan	BD05		
CD69	Sustainability Statement	BD06		
CD70	Statement of Community Engagement	BD07		
CD71	Socio-Economic Statement	DB08		
CD72	Landscaping & Public Realm Strategy	BD09		
CD73	Agricultural Land Assessment	BD10		
CD74	Design & Access Statement	BD11		
CD75	Construction Environmental Management Plan	BD12		
CD76	Environmental Impact Assessment	BD13		
CD77	EIA Non-Technical Summary	BD14		
CD78	Business Case & Vision	BD15		
CD79	Lighting Assessment	BD16		
CD80	Employment Strategy	BD17		
CD81	Response to Representations	BD18		
CD82	Decision Notice			
CD83	Committee Report			
CD84	Core Strategy 2011-2028			
CD85	Unitary Development Plan			
CD86	Emerging Local Plan			

CD87	Green Belt Review 2016			
CD88	Landscape Character and Capacity Study (ECUS) Report 2007			
CD89	Landscape Character and Capacity Study (Golders) Report 2010			
CD90	National Planning Policy Framework 2018 ("NPPF2")			
CD91	Planning Practice Guidance ("PPG")	Not used		
CD92	Statement of Common Ground ("SOCG")			
CD93	2 Statements of Common Ground – Highways England			
CD94	Statement of Common Ground – Doncaster Highways			
CD95	Appellant's Statement of Case			
CD96	Council's Statement of Case			
CD97	Appellant's Section 106 agreement			
CD98	Department for Transport Circular 02/2013			
CD99	Council Development Guidance and Requirements SPD (2015)			
CD100	Tree Pit Details		21603/14	Added to condition 2.

APPELLANT DOCUMENTS SUBMITTED PRIOR TO THE INQUIRY

APP1 Correspondence with Doncaster Metropolitan Borough Council
APP2 Proof of evidence – Mr T Russell
APP3 Summary proof – Mr T Russell
APP4 Plans 1-4 to Mr Russell's evidence
APP5 Appendices 1-6 to Mr Russell's evidence
APP6 Proof of evidence – Ms S Illman
APP7 Summary proof – Ms S Illman
APP8 Appendix 1 to Ms Illman's evidence
APP9 Appendices 2-16 to Ms Illman's evidence
APP10 Proof of evidence – Mr A Collins
APP11 Summary proof – Mr A Collins
APP12 Appendices 1-16 to Mr Collin's evidence

COUNCIL DOCUMENTS SUBMITTED PRIOR TO THE INQUIRY

LPA1 Appeal Questionnaire and attachments
LPA2 Proof of evidence of Mrs Leeder with appendices A & B

DOCUMENTS SUBMITTED DURING THE INQUIRY

INQ1 Planning Obligation CIL compliance statement, Inquiry notice, letter of notification of the inquiry and list of those notified
INQ2 Booklet of application drawings at A3 size
INQ3 Appellant opening submissions
INQ4 Council opening submissions
INQ5 Suggested conditions (1st draft)
INQ6 Submission for the Joint Rural Parishes (versions 1 & 2) with appendices A-Q
INQ7 Highways Agency TD41/95

INQ8	Appellant acceptance of pre-commencement conditions (1st version)
INQ9	Representation from Mrs Mitcheson
INQ10	Aerial photograph
INQ11	Appellant response on agricultural land classification
INQ12	Suggested conditions (2nd draft)
INQ13	Appellant acceptance of pre-commencement conditions (final)
INQ14	Council closing submissions
INQ15	Joint Rural Parishes closing submissions
INQ16	Appellant closing submissions

APPENDIX 3 – CONDITIONS

1. The development hereby permitted shall be begun not later than the expiration of three years beginning with the date of this permission.
   REASON
   Condition required to be imposed by Section 91(as amended) of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out and completed entirely in accordance with the terms of this permission and the details shown on the approved plans listed below:

   Overall site
   Drawing number PL001 Rev A (Location plan)
   Drawing number PL002 Rev A (Existing site plan)
   Drawing number 21603-01 Revision F (Site plan)
   Drawing number 21603/03 Revision H (Landscape masterplan)
   Drawing number 21603/10 Revision C (Planting strategy)
   Drawing number 21603/04 Revision B (Entrance Plaza)
   Drawing number 21603/005 Revision F (Parking numbers)
   Drawing number PL099 Rev B (Extent of retail area)
   Drawing number 21603/08 Revision C (Boundary treatment plan)
   Drawing number 21603/09 Revision D (Suds schematic)
   Drawing number 21603/11 Revision D (Proposed flood route alignment)
   Drawing number 1186-F09 Revision F (Site access arrangements)
   Drawing number 1186-F03 Revision F (Bus stop and pedestrian arrangement)
   Drawing number 4576-SK-004 Revision P2 (Storm drainage)
   Drawing number 4576-SK-005 Revision P2 (Foul drainage)
   Drawing number 21603/12 Rev A (Sections)
   Drawing number 21603/13 Rev A (Sections)
   Drawing number BP56 22755_T-1 Rev 2 (Topographical Plan 1)
   Drawing number BP57 22755_T-2 Rev 2 (Topographical Plan 2)
   Drawing number BP58 22755_T-3 Rev 2 (Topographical Plan 3)
   Drawing number BP59 22755_T-4 Rev 2 (Topographical Plan 4)
   Drawing number 21603/14 (Tree Pit Details)

   Amenity building
   Drawing number 8231/PL020 Rev A (Ground Floor Plan)
   Drawing number 8231/PL021 Rev A (First Floor Plan)
   Drawing number 8231/PL022 Rev A (Roof plan)
   Drawing number 8231/PL025 Rev A (Sections sheet 1)
   Drawing number 8231/PL026 Rev A (Sections sheet 2)
   Drawing number 8231/PL030 Rev A (Elevations)

   The Lodge
   Drawing number 8231/PL040 Rev A (Ground floor plan)
   Drawing number 8231/PL041 Rev A (First Floor and roof plan)
   Drawing number 8231/PL045 Rev A (Sections)
   Drawing number 8231/PL046 Rev A (Elevations)

   Costa Drive Thru
   Drawing number 8231/PL055 Rev A (Elevations)
   Drawing number 8231/PL050 Rev A (Ground Floor, Roof Plan and Sections)

   Fuel filling station
   Drawing number 8231/PL060 Rev A (Ground floor plan)

Drawing number 8231/PL061 Rev A (Roof plan)
Drawing number 8231/PL065 Rev A (Sections)
Drawing number 8231/PL066 Rev A (Elevations)

Ancillary buildings
Drawing number 8231/PL070 Rev A (Biomass and Energy Centre)
Drawing number 8231/PL071 Rev A (Aircooled chiller, Water tank and Substation)
Drawing number 8231/PL072 Rev A (LPG Compound)
REASON
To ensure that the development is carried out in accordance with the application as approved.

3. During the construction phase, operations shall be restricted to the hours of 07:00 to 18:00hrs Monday to Friday and 08:00 to 16:00hrs on Saturday. There shall be no operation on Sundays or Bank Holidays (other than special works subject to prior agreement in writing with the local planning authority).
REASON
To safeguard the amenities of the occupiers of the adjoining properties in accordance with guidance set out in the NPPF.

4. No development shall take place until a Construction Environmental Management Plan (based on the draft document BD12 by Arup dated January 2017) has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved plan.
REASON
The document is only in draft form and is required prior to the commencement of development to safeguard the environment and living conditions of neighbouring residents in accordance with guidance set out in the NPPF.

5. Noise levels arising from construction of the development shall not exceed the following noise limits at the specified locations. The exact position within those locations identified below shall be agreed in writing with the local planning authority prior to the commencement of the development :

Noise sensitive receptor	Description	Daytime limit ($dBL_{Aeq,T}$)
1	North of site; Green Lane	65
2	North-east of site; Town View Avenue	65
3	South-east of site; Sheep Walk Lane	70
4	South-west of site; Marr Grange Lane	65
5	South-west of site; Barnsley Road	75

REASON
To safeguard the amenities of the occupiers of the adjoining properties in accordance with guidance set out in the NPPF.

6. Noise levels arising from operation of the development shall not exceed the following noise limits at the specified locations. The exact position within those locations identified below shall be agreed in writing with the local planning authority prior to the occupation of the development:

Noise sensitive receptor	Description	Noise limit values in decibels (dB), $L_{Ar,Tr}$	
		Day (07:00 – 19:00)	Night (23:00 – 07:00)
1	North of site; Green Lane	27	26
2	North-east of site; Town View Avenue	25	23
3	South-east of site; Sheep Walk Lane	33	28
4	South-west of site; Marr Grange Lane	43	40
5	South-west of site; Barnsley Road	42	38

REASON
To safeguard the amenities of the occupiers of the adjoining properties in accordance with guidance set out in the NPPF.

7. Prior to the commencement of the relevant works, details of the proposed external materials shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved materials.
REASON
To ensure that the materials are appropriate to the area, in accordance with policy CS14 of the Doncaster Core Strategy.

8. Before the development commences, a BREEAM pre-assessment, or equivalent assessment, shall be submitted for approval demonstrating how BREEAM 'Very Good' will be met. The development shall be carried out in accordance with the approved assessment.
REASON
In the interests of sustainability and to minimise the impact of the development on the effects of climate change in accordance with policy CS14 of the Core Strategy.

9. No development shall take place in implementation of this permission until a report has been submitted to the local planning authority explaining how CO2 emissions from the development will be reduced by providing at least 10 per cent of the development's energy through on-site renewable energy equipment or improvements to the fabric efficiency of the building. The carbon savings, which result from proposed measures, will be above and beyond what is required to comply with Part L of Building Regulations. The development shall then proceed in accordance with the approved report.
REASON
In the interests of sustainability and to minimize the impact of the development on the effects of climate change in accordance with policy CS14 of the Core Strategy. This condition is required to be discharged prior to commencement as the approved detail may have an impact on the design and fabric of the building during construction or the appearance of the development.

10. Prior to the occupation of the development, 6 electric vehicle charging points shall be installed and be operational in accordance with a scheme previously approved in writing by the local planning authority.
REASON
To contribute towards a reduction in emissions in accordance with air quality objectives and providing sustainable travel choice in accordance with policies CS9 and CS18 of the Doncaster Council Core Strategy.

11. Prior to the occupation of the development, bus stops shall be provided on Barnsley Road in accordance with a scheme previously approved in writing by the local planning authority.
REASON
To encourage sustainable modes of travel to the site in accordance with policy CS9 of the Core Strategy.

12. The erection of impact resistant barriers for the protection of any retained tree shall be undertaken in accordance with the approved Arboricultural Impact Assessment (reference 9277_AIA.001 dated January 2017) and the local planning authority notified of implementation. No works other than the installation of the barriers shall be carried out until the local planning authority has confirmed in writing that they have been properly installed. Thereafter, and throughout the period of construction, all tree protection shall be maintained in full accordance with the approved details until all equipment, machinery and surplus materials associated with the construction have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.
REASON
To ensure that all trees are protected from damage during construction in accordance with core strategy policy CS16: Valuing our natural environment.

13. The planting proposals hereby approved shall be carried out no later than during the first planting season following the date when the development hereby permitted is ready for occupation and shall be in accordance with the scheme of landscaping shown on the Planting Strategy plan (ref: 21603/10 Revision C dated Jan 2017) and the Tree Pit Details plan (ref: 21603/14 dated March 2017). All planted materials shall be maintained for five years and any trees or plants removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced with others of similar size and species to those originally required to be planted.
REASON
In the interests of environmental quality and core strategy policy CS16: Valuing our Natural Environment.

14. No development shall take place until a Biodiversity Enhancement Master Plan has been submitted to and approved in writing by the local planning authority. The content of the Plan shall include:
i) Baseline specifications for biodiversity creation and enhancement works and other ecological features specific to mitigation proposals for habitats, faunal groups and species.
ii) Provision of roosting and nesting opportunities within the site.
The development shall be carried out in accordance with the approved plan.
REASON
To ensure the ecological interests of the site are maintained in accordance with Core Strategy Policy 16.

15. Part A (pre-commencement)
No development, including any demolition or groundworks, shall take place until the applicant, or their agent, or successor in title, has submitted a Written Scheme of

Investigation (WSI) that sets out a strategy for archaeological investigation and this has been approved in writing by the Local Planning Authority. The WSI shall include:

i) The programme and method of site investigation and recording.
ii) The requirement to seek preservation in situ of identified features of importance.
iii) The programme for post-investigation assessment.
iv) The provision to be made for analysis and reporting.
v) The provision to be made for publication and dissemination of the results.
vi) The provision to be made for deposition of the archive created.
vii) Nomination of a competent person/persons or organisation to undertake the works.
viii) The timetable for completion of all site investigation and post-investigation works.

Part B (pre-occupation/use)
Thereafter the development shall only take place in accordance with the approved WSI and the development shall not be brought into use until the Local Planning Authority has confirmed in writing that the requirements of the WSI have been fulfilled or alternative timescales agreed.
REASON
To ensure that any archaeological remains present, whether buried or part of a standing building, are investigated and a proper understanding of their nature, date, extent and significance gained, before those remains are damaged or destroyed and that knowledge gained is then disseminated in accordance with policy CS15 of the Core Strategy.

16. A Travel Plan shall be submitted to the local planning authority within 3 months of occupation of the site. The development shall thereafter be operated in accordance with the approved Travel Plan.
REASON
To encourage sustainable modes of travel to the site in accordance with policy CS9 of the Core Strategy.

17. No lighting shall be installed on site until the details have first been approved in writing by the local planning authority. The lighting shall thereafter be installed and retained in accordance with the approved scheme.
REASON
To minimise light pollution in this countryside location in accordance with guidance set out in the NPPF.

18. The development hereby permitted shall not be commenced until a Construction Traffic Management Plan (CTMP) for the development is submitted to and subsequently approved in writing by the Local Planning Authority. The approved plan shall be adhered to throughout the construction phase. The CTMP shall contain information relating to (but not limited to):

i) the proposed construction traffic route to the site to be identified on a plan
ii) the daily movement of the construction traffic shall be profiled identifying the peak level of vehicle movements for each day
iii) HGVs shall be prohibited from accessing the site during the SRN peak operating hours
iv) details of and agreement to traffic management proposals at Junction 37
v) contractors method for controlling construction traffic and adherence to routes
vi) temporary signage
vii) measures to be taken within the curtilage of the site to prevent the deposition of mud and debris on the public highway including a wheel wash station.
REASON
This information has not been provided and is required prior to the commencement of development to ensure highway safety in accordance with the guidance set out in the NPPF.

Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand,London,WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act
With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act
Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

Appendix B.5 Cobham Motorway Service Station, Cobham, Elmridge (February 2016)

The Planning Inspectorate

Appeal Decision

Site visit made on 29 January 2018

by C Jack BSc(Hons) MA MA(TP) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th February 2018.

Appeal Ref: APP/K3605/W/17/3187505
Cobham Motorway Service Area, between J10 and J9 M25, Cobham KT11 3DB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Ian Banks of Extra MSA Cobham Limited against the decision of Elmbridge Borough Council.
- The application Ref 2016/4031, dated 6 December 2016, was refused by notice dated 24 May 2017.
- The development proposed is an extension to existing motorway service area to include additional 79 HGV parking spaces (use class sui generis), with associated access and landscaping.

Decision

1. The appeal is allowed and planning permission is granted for an extension to existing motorway service area to include additional 79 HGV parking spaces (use class sui generis), with associated access and landscaping at Cobham Motorway Service Area, between J10 and J9 M25, Cobham KT11 3DB in accordance with the terms of the application, Ref 2016/4031, dated 6 December 2016, and subject to the schedule of conditions to this decision.

Preliminary Matter

2. Following consideration of the appellant's statement to the appeal on Air Quality Matters by Wardell Armstrong, the Council now has no significant objection to the proposal in relation to air quality and human health and so it does not seek to pursue its second reason for refusal in the appeal. Consequently, the main issue in this appeal relates to the remaining disputed reason for refusal, concerning the Green Belt.

Main Issue

3. The main issue is whether the proposal is inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies.

Reasons

Background

4. The appeal site forms part of the motorway service area (MSA) between junctions 9 and 10 on the M25 at Cobham. There is an existing HGV parking area at the MSA with 72 spaces, which is well-used and overspill parking is common. As many as 167 HGVs have been recorded at the MSA at once,

significantly in excess of the existing designated parking provision. At the time of my site visit the existing HGV parking was very close to full and there were also significant numbers of HGVs parked in non-designated areas along the internal circulation road in the MSA as well as on the motorway slip road. These HGVs outnumbered the very few empty spaces in the HGV parking area during my visit. I saw that the ad-hoc overspill parking of HGVs has the potential to adversely affect road safety in and near the MSA, including by restricting visibility for other road users and in some cases by forcing manoeuvres that would otherwise not be necessary.

5. It is proposed to create an additional HGV parking area separated from the existing HGV parking by the fuel filling station, which includes a HGV filling area. Other than the M25 itself, the MSA is largely surrounded by fields. The additional HGV parking would be contained within the existing boundary of the MSA, in an area that currently consists of a sloping grassed bund near the edge of the MSA. The appeal site and the MSA lie entirely within the Green Belt.

Whether the proposal is inappropriate development

6. Policy DM17 of the adopted Elmbridge Development Management Plan 2015 states, among other things, that in order to uphold the fundamental aims of the Green Belt to prevent urban sprawl and to keep land within its designation permanently open, inappropriate development will not be approved unless the applicant can demonstrate very special circumstances that will clearly outweigh the harm. It also states that proposals for the limited infilling or the partial or complete redevelopment of previously developed sites will be considered in light of the size, height, type, layout and impact of existing buildings, structures and hard standing, together with the degree of dispersal throughout the site of existing and proposed development.

7. Paragraph 90 of the National Planning Policy Framework (the Framework) sets out a number of forms of development that are not inappropriate development in the Green Belt, provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in it. One of these forms of development is 'local transport infrastructure which can demonstrate a requirement for a Green Belt location'.

8. The Framework does not define local in this context. I consider it is likely that many HGVs using the MSA would be on journeys that might reasonably be considered greater than local in length, whether regional, national or international. However, the number of HGVs stopping at the MSA indicates that there is a need for HGV parking provision in the local area. It is also clear that provision to serve HGVs using this section of the M25 would need to be local to the motorway, and that the existing HGV parking capacity at this MSA is often insufficient to meet demand. I note that there are currently some alternative options for HGV parking near the M25. However, none are particularly nearby, some are on other routes, and there are no other MSAs within around 22 miles or around 30 minutes driving time, or longer in slower-moving traffic conditions.

9. Paragraph 31 of the Framework sets out that the primary function of roadside facilities for motorists should be to support the safety and wellbeing of the road user. Having regard to the number of HGVs seeking to use the MSA, and other factors such as the restrictions on drivers' hours, I am satisfied that there is a need in this locality for additional HGV parking spaces, including in relation to

road safety. As the demand arises principally from the M25, and needs to be addressed within a reasonable driving time, I am also satisfied that the additional parking provision needs to be in the local area. Accordingly, in the particular circumstances of this case, I consider that the proposal would constitute a local transport infrastructure facility, supporting a local geographic need, albeit that would support various journeys including many that are not local trips. Given that it would also address a potential safety issue in a publically accessible and generally heavily used facility, I consider that there are sound reasons in the wider public interest for the provision of the additional parking facility in this location.

10. The M25 lies within the Green Belt and consequently the additional HGV parking requires a Green Belt location. Its provision within the existing MSA would preserve the openness of the Green Belt, being set behind raised bunds and against the context and backdrop of the wider MSA with various buildings and expansive parking areas. I consider that this would result in a neutral effect on Green Belt openness overall, even when the parking area is fully occupied with HGVs. In this regard the proposed location would also have significantly less effect on openness than a proportionately sized additional HGV parking area situated outside the MSA would be likely to do.

11. Paragraph 80 of the Framework sets out the five Green Belt purposes. Given that the proposal would be wholly sited within the existing MSA, and be generally consistent with the height and type of existing uses around it in the MSA, none of the five purposes would be undermined. Moreover, the fundamental aim to prevent urban sprawl by keeping land permanently open would also be maintained.

12. For these reasons, I conclude that the proposal would preserve the openness of the Green Belt and not conflict with the purposes of including land within it. It would therefore accord with the third listed form of development set out in Paragraph 90 of the Framework. Consequently, the proposal would not be inappropriate development in the Green Belt. Furthermore, the proposal would not conflict in this regard with Policy DM17 of the adopted Elmbridge Development Management Plan 2015.

Other Matters

13. I have considered the various other matters raised by interested parties, including that Green Belt very special circumstances have not been demonstrated, the scheme is commercially motivated, any benefits would be remote from the local community, the MSA has already been allowed to evolve beyond that originally approved, prices at the MSA should be increased to manage demand, the existing HGV parking is mismanaged and used as a transit camp, lorries are allowed to stand with their engines running contributing to local air pollution and associated health concerns, light spillage, flood risk, and that providing such facilities encourages unsustainable transport modes.

14. Very special circumstances are not required for development that is not inappropriate in Green Belt policy terms. The scheme would bring about benefits in the general public interest. Each case must be considered on its own planning merits, including previous proposals at the MSA. I have considered the appeal on its merits. There is no significant evidence before me that raising prices or other commercial motivations would effectively manage

demand for HGV parking in this area, or that the existing parking area is mismanaged. I also note the view that car and coach parking could be converted to HGV parking at night. There is no significant detail before me of how this would work satisfactorily, whether adequate provision could be guaranteed in this way, or whether it would be practical and safe to combine the car and HGV facilities in such a way long term.

15. I am satisfied on the basis of the technical evidence provided that the proposal would not be likely to have a significant effect on air pollution and I note the similar view of the Council's technical officers in withdrawing the related reason for refusal. Matters relating to light spillage and flood risk could be controlled by conditions. An existing need for additional HGV parking has been identified, including in relation to safety matters. There is no persuasive evidence before me that the appeal proposal would be particularly likely to encourage HGV use.

16. I conclude that none of the matters discussed in this section of my decision adds materially to the case for or against the appeal.

Conditions

17. In addition to the standard time limit conditions, a condition specifying the approved plans is necessary as this provides certainty. Conditions relating to materials, landscaping and floodlighting are necessary in the interests of the appearance of the area. Conditions relating to the availability of the parking hereby approved and a construction management plan and necessary in the interests of highway safety. Conditions 9, 10, 11, 12, 13, 14 and 15 are necessary in the interests of drainage and flood risk. A condition relating to recommended biodiversity measures is necessary in the interests of protected species. Where needed, and in the interests of clarity and precision, I have altered the suggested conditions to better reflect the relevant guidance.

Conclusion

18. For the reasons give above, and having regard to all matters raised, I conclude that the appeal should be allowed.

Catherine Jack

INSPECTOR

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: COBHGV 010; COBHGV 0012A; COBHGV 0013A; and COBHGV 001G.

3) The parking area shall not be constructed other than in the materials specified in the application or such other materials as have been approved in writing by the local planning authority.

4) No development shall take place until full details of both hard and soft landscaping works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. This scheme shall include indications of all hard surfaces, walls, fences, access features, the existing trees and hedges to be retained, together with the new planting to be carried out, and details of the measures to be taken to protect existing features during the construction of the development.

5) All hard and soft landscaping works shall be carried out in accordance with the approved details. Arboricultural work to existing trees shall be carried out prior to the commencement of any other development. All remaining landscaping work and new planting shall be carried out prior to the occupation of any part of the development or in accordance to the timetable agreed with the local planning authority. Any trees or plants, which within a period of five years of the commencement of any works in pursuance of the development die, are removed, or become seriously damaged or diseased, shall be replaced as soon as practicable with others of similar size and species.

6) The development hereby permitted shall not be brought into use until an external lighting planning statement and external lighting plan including measures to reduce the light overspill along the edge of the HGV parking area has been submitted to and agreed in writing by the local planning authority. The lighting shall be carried out in accordance with the approved details and maintained as such thereafter.

7) The parking spaces shown on the submitted plan shall be made available at all times for the sole use of visitors to the motorway service area.

8) The applicant shall provide a Construction Management Plan with full details of the design, including geotechnical and drainage data, to satisfy the Highways England operations and maintenance provider. The Construction Management Plan shall be approved in writing by the local planning authority prior to commencement of any construction works.

9) Before the commencement of the construction of the development hereby permitted, evidence to discharge to main river and agreement of the discharge rate into the main river shall be submitted to and approved by the local planning authority.

10) Prior to construction of the development hereby permitted the applicant shall supply details for approval in writing by the local planning authority of available spare volume of the existing balancing pond to include the

free board, discharge point and suitability of the existing balancing pond to receive runoff. The development shall be carried out in accordance with the approved details.

11) Prior to construction of the development hereby permitted the following drawings shall be supplied to and approved in writing by the local planning authority:

- a drainage layout detailing the exact location of SUDs elements, geo cellular storage crates, pipes, control devices (i.e. hydrobrake), and existing balancing pond and outfall to the main river; and

- details of all SuDS elements and other drainage features, including long and cross sections, pipe diameters and respective levels , levels of balancing pond including the free board, and invert level of the existing outfall.

The development shall be carried out in accordance with the approved details.

12) Before the commencement of the construction of the development hereby permitted, details of how the Sustainable Drainage System will cater for system failure or exceedance events, both on and offsite, must be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

13) Before the commencement of the construction of the development hereby permitted, details of how the Sustainable Drainage System will be protected and maintained during the construction of the development shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

14) Prior to construction of the development hereby permitted, details of the proposed maintenance regimes for each of the SuDS elements shall be submitted to and approved in writing by the local planning authority. The development shall be maintained in accordance with the approved details.

15) Prior to first use of the development hereby permitted, a verification report carried out by a qualified drainage engineer shall be submitted to and approved by the local planning authority to demonstrate that the Sustainable Drainage System has been constructed according to the agreed scheme details.

16) The development hereby permitted and biodiversity measures, including relating to protected species, shall be carried out in accordance with the recommended actions outlined in Section 4 of the Preliminary Ecological Appraisal Report by Wardell Armstrong dated November 2016.

Appendix B.6 Ouchthorpe Lane, Fieldhead, Wakefield (January 2016)

The Planning Inspectorate

Appeal Decision

Inquiry opened on 17 November 2015

Site visit made on 19 November 2015

by Martin Whitehead LLB BSc(Hons) CEng MICE

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 January 2016

Appeal Ref: APP/X4725/W/14/3001702
Land at Ouchthorpe Lane, Fieldhead, Wakefield WF1 2PY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Miller Homes against the decision of City of Wakefield Metropolitan District Council.
- The application Ref 13/02618/FUL, dated 10 September 2013, was refused by notice dated 8 August 2014.
- The development proposed is given on the application as: '*the erection of 66 dwellings and associated works, including construction of access road from Ouchthorpe Lane with new field access, landscaping and ecological works, public open space, drainage features and pedestrian and cycle circulation'*.

Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. I opened the Inquiry on 17 November 2015 and it sat on 3 days, closing on 19 November 2015.

3. The description of the development proposed is given on the application as above. However, the appellant has stated that, following discussions with the Council regarding affordable housing provision, the housing mix was amended, which resulted in an increase in the dwelling numbers on-site from 66 to 68 dwellings. This change was accepted by the Council and the application was re-advertised with the description changed to reflect the change in the number of dwellings. Consequently, I have determined the appeal on this basis.

4. At the Inquiry the appellant submitted a signed and dated Section 106 Planning Obligation by Unilateral Undertaking (UU) that the Council has examined and agreed. The UU would secure the provision of a commuted sum of £49,708 towards the improvement and maintenance of off-site public open space in the area to compensate for the lack of a reasonably sized recreational public open space within the development, in accordance with Wakefield Local Development Framework (LDF) Core Strategy, 2009 (Core Strategy) policy CS11.

5. The UU would also secure contributions that would be required to meet the shortfall of primary and secondary school places as a result of additional demand that would be generated by the future occupants of the proposed dwellings, amounting to £236,747, in accordance with the objectives in Core

Strategy policy CS5. In addition, it would ensure the provision of 20 affordable houses in accordance with the 30% target set in Core Strategy policy CS6(b).

6. I am satisfied that the evidence that has been provided demonstrates that the obligations in the UU meet the tests in Community Infrastructure Levy Regulations 122 and 123 and I have taken them into account in my determination of this appeal. The inclusion in the UU of a £10,000 contribution towards the Council expenses in connection with making traffic regulation orders is necessary in the interests of highway safety and to accord with Core Strategy policy CS14.

Main Issues

7. The main issues are whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (Framework) and relevant development plan policies; its effect on the openness of the Green Belt and the purposes of including land in the Green Belt; its effect on the character and appearance of the surrounding area; and, if it is inappropriate development, whether the harm by reason of inappropriateness and any other harm would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Whether Inappropriate Development

8. The proposal would include the construction of 68 dwellings, 20 of which would be affordable, a drainage pond and an access road from Ouchthorpe Lane to the east. The access road would run for about 300m along the southern boundary of a field, adjacent to definitive public footpath 28 and the rear gardens of dwellings in Hatfeild View, separated behind a security fence and planting that includes a row of trees that are protected by a Tree Preservation Order.

9. The part of the site that would accommodate the access road would be about 20m wide and would be on land within the Green Belt. It would include the public footpath and landscape buffers on either side. Although the proposed drainage pond and associated works would be located on land within the Green Belt to the north of the proposed dwellings, I am satisfied that it would amount to an engineering operation under paragraph 90 of the Framework that would preserve the openness of the Green Belt and would not conflict with the purposes of including land in the Green Belt. As such, the use of the land as a drainage pond would not represent inappropriate development.

10. In terms of the Green Belt land that would be used for the proposed access road, I agree with the Council's submissions at the Inquiry that it would be an engineering operation in accordance with paragraph 90 of the Framework. The appellant has suggested that it would be local transport infrastructure which can demonstrate a requirement for a Green Belt location in accordance with this paragraph. Although this is not defined in any national or local policy documents, the evidence provided at the Inquiry leads me to the conclusion that it would not represent such a form of development, as it would be included under engineering operations and the government's intentions indicated by the Impact Assessment for the Framework do not include an access road for a

limited number of houses within the examples given of this type of development. However, this does not make any significant difference to my determination of whether or not the proposal would represent inappropriate development.

11. In both of the above circumstances, to qualify as not inappropriate development in the Green Belt, the proposed access road would also have to preserve the openness of the Green Belt and not conflict with the purposes of including land in the Green Belt. In terms of openness, this is not defined in any national planning policy documents or guidance, but the Framework states in paragraph 79 that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Courts have given some indication of what needs to be considered and have indicated that the effect on openness is a matter of planning judgment for the decision-maker.

12. The proposal would not only include the construction of a 5.5m wide carriageway with an estimated maximum peak hour two way flow of 50 vehicles per hour but also an associated footway, street lighting, acoustic fencing, post and rail fencing and planting. Whilst some of these features would be associated with a rural setting, the overall impact would be to introduce an intrusion of urban development into the Green Belt countryside.

13. The acoustic fencing has been deemed to be necessary to ensure that the impact of traffic noise from vehicles using the access road would be acceptable within the rear gardens of properties in Hatfeild View. The street lighting columns, 8 of which I understand would be sited in the Green Belt, would be about 5m high and designed to minimise light pollution but would still represent structures within the Green Belt. Even though street lighting columns are a feature of other highways in the Green Belt, including along Ouchthorpe Lane where they are higher than those proposed, this does not diminish the effect that the proposed street lighting columns would have on openness. Therefore, whilst I accept that the scale of built development in the Green Belt would not be great, the presence of the proposed access road and associated structures would in my opinion be sufficient to significantly harm the openness of that part of the Green Belt.

14. With regard to the 5 purposes of the Green Belt that are given in paragraph 80 of the Framework, as the proposed access road and associated works would be adjacent to the large built up area of Wakefield, the proposal would erode the area of Green Belt that seeks to check the unrestricted sprawl of such an area. Although it would represent a relatively small part of the Green Belt that has been designated in that area, the cumulative impact of such repeated encroachments could have a significant adverse effect on this purpose.

15. At the Inquiry, arguments were put forward as to whether or not the area of Green Belt prevents neighbouring towns merging into one another, which is given as one of the purposes. In terms of Wakefield and Outwood/Stanley, these settlements already appear to me from the plans provided to be attached by built development. As such, I find it hard to believe that the proposal would cause any significant harm to this purpose. However, the proposed area of the access road would be an encroachment into the Green Belt countryside, contrary to the purpose of assisting in safeguarding the countryside from such encroachment. It would also be contrary to Core Strategy Spatial Objective 9,

in that it would seriously erode the clear distinction that the Green Belt has made in that area between the town and country.

16. The appellant has referred to an appeal decision regarding development at Throop, Bournemouth[1] in support of its contention that the proposed access road would not be inappropriate development in the Green Belt. Having considered the information provided in that decision letter and by the appellant at the Inquiry, I find that it involved significantly different circumstances from the present appeal, including the relative location of the road in the Green Belt, its use, the width of the road and the lack of any acoustic fencing or street lighting columns. Although the road in the current appeal would be shorter than that in this other appeal, which also included a raised 'Bailey Bridge', I consider that the above differences make the current appeal road inappropriate development in the Green Belt. Also, that Inspector did not address whether the track would be local transport infrastructure and accepted that traffic along it, which in that case would have been very limited, would result in some visual impact on openness. Whilst I have noted the points made, I do not consider that this other appeal is directly comparable with the current appeal, which I have determined on its own individual planning merits in the light of prevailing policies and guidance.

17. At the Inquiry, the appellant submitted a recent Council decision notice to grant planning permission for the construction of a new access road to serve an existing sports club at the west of Dudfleet Lane, Wakefield, which it had indicated had been considered by the Council to be local transport infrastructure in the Green Belt. Based on the information provided at the Inquiry, the permitted road was associated with a different use from, and at a different relative location to, the appeal proposal. As such, the Council's decision carries limited weight in support of the current appeal.

18. Based on the above, I find that the proposed access road would be an engineering operation but would represent inappropriate development in the Green Belt, as it would fail to preserve the openness of the Green Belt and would conflict with 2 of the purposes of including land in the Green Belt, contrary to the requirements given in paragraph 90 of the Framework and development plan objectives.

Character and Appearance

19. The evidence indicates that the appeal site is located within the Coalfield Landscape Character Area as defined by Natural England. The site consists of agricultural land that is adjacent to the settlement boundary of Wakefield, with the part of the site proposed for housing development within the urban area. The access and drainage areas of the site are outside the boundaries of Wakefield urban area. To the north and north east of the site are agricultural fields, south east is Fieldhead Hospital, and to the south is a relatively new residential area. The part of the site for the proposed access road abuts the boundaries with the Hospital and the gardens of houses in Hatfeild View and 80 Ouchthorpe Lane.

20. I have noted the findings of the Landscape and Visual Impact Assessment (LVIA) that has been carried out by TPM Landscape Ltd for the appellant. This identifies the area of landscape where the proposed access road would be

[1] Appeal Ref APP/C1245/A/14/2221524

located as 'rolling countryside' with a landscape value of 'moderate' and sensitivity of 'medium'. The users of the public rights of way are classed as 'high sensitivity' receptors. In the case of footpath 28, which would run alongside the proposed access road, the landscape change in view to pedestrians is assessed as 'medium' due to them experiencing a more urbanising experience along the access road. At the Inquiry, the appellant's landscape expert witness accepted that, using Table 2.12 in the LVIA to determine the visual effects, these effects would be 'moderate/substantial'. Whilst he indicated that the effects would be mitigated by planting, I have been given insufficient evidence to show how this would significantly reduce that impact, as the access road would in places be very close to the footpath, minimising the scope for planting to separate them.

21. At the Inquiry, the appellant's landscape expert indicated that the proposed planting to the north of the access road would take 3 to 5 years to make a visual impact and that, as it would be a 'living entity', it would be a 'potential' impact. As such, the planting would only provide an adequate screen from views of the access road after a significant period of time and, if and when sufficiently established, it would have the potential to prevent views from footpath 28 over the surrounding countryside. At my site visit I observed that wide expansive views over the countryside and surrounding area are currently available and I am concerned that these could be harmed due to some of the planting being on higher ground than the footpath.

22. At my site visit, I viewed the appeal site from some of the surrounding area, including footpath 36. I accept that, when established, the planting would hide from these views the security fencing around the NHS land at Fieldhead Hospital and at the rear of the Hatfeild View gardens. However, in the interim period vehicles would be visible along the proposed access road and the planting would be unlikely to ever reach a sufficient height and density to hide the roofs of the houses in Hatfeild View that are currently visible. Also, I observed that some of the security fencing is already screened by planting that would be most effective during the summer months and that in many of the views the fencing is hidden behind the higher land along the ridge on which the proposed access road, street lighting and additional planting and fencing would be located.

23. Taking account of the above, whilst there would benefits to visual amenity from the proposed planting, particularly in the long term, they would not be sufficient to outweigh the harm that I have identified that would be caused to the rural character and appearance of the surrounding area due to the urbanising effect of the proposed access road and the activity from vehicles using it close to a ridgeline that is currently open field. As such, the proposal would fail to accord with Wakefield LDF Development Policies Document, 2009, policy D9, which requires new development to make a positive contribution to the environment and amenity of its locality by virtue of high quality design, layout and landscaping, as the location and layout of the access road would not respect the character of the locality and key views from footpaths in the area.

Other Considerations

24. Having found that the proposal would be inappropriate development in the Green Belt, I have considered the other considerations that have been put forward by the appellant.

25. In terms of the houses that the proposal would deliver, the Council has accepted that it cannot currently demonstrate a 5 year supply of deliverable housing sites as required by the Framework. It has provided evidence, which has not been tested at the Inquiry, that demonstrates that it could have the potential to satisfy its 5 year supply. This is based on its Strategic Housing Land Availability Assessment, which is contested and has not been finalised. The appellant has questioned the methodology used by the Council, particularly with regard to whether the 20% buffer to address persistent under delivery should be applied to the backlog as well as the base requirement, and how much windfall allowance should be included, based on past levels of windfall. I have therefore given very little weight to the Council's claim to potentially be able to meet the 5 year housing land supply requirement.

26. The appellant has not suggested an alternative calculation to provide a figure for a 5 year housing supply. As such, the extent of the shortfall has not been agreed, except that the inclusion of the dwellings on the appeal site would be insufficient to address this shortfall, particularly as the site has been included in the LDF Site Specific Policies Local Plan, 2012, (SSPLP) as housing allocation HS1 to provide 104 dwellings within the plan period.

27. The proposal would be in accordance with the Framework's aim to boost significantly the supply of housing. However, although part of the appeal site is allocated for housing development, the access to the site is not referred to in the allocation. If it had been intended that the site should be accessed through the Green Belt at that time, I would have expected that it would have been mentioned. It was promoted in an advocacy report as being accessed from Hatfeild View and was allocated and removed from the Green Belt on the basis of there being no infrastructure or other constraints that would prevent the anticipated housing delivery. The appellant has stated that the option of an access over hospital owned land from the western end of Hatfeild View is no longer available.

28. Sanderson consulting engineers, on behalf of the appellant, has undertaken an Access Review Study, which was updated in January 2014, to examine potential access routes. The Council and appellant have agreed that the Access Review Study demonstrates that there are no other suitable or deliverable access routes into the allocated housing site other than those in the appeal proposal. Although objectors have queried the findings of the Study and have suggested other access options, they have provided insufficient supporting evidence to demonstrate that any of their suggested access arrangements would be feasible and deliverable at the current time. As such, I accept the position that has been agreed between the Council and the appellant that the proposed road is required to ensure that the housing land could be accessed by vehicular traffic.

29. Some of the objectors have expressed concerns about the safety of the junction of the proposed access road with Ouchthorpe Lane. In this respect, I have noted the findings of the Transport Statement[2] and Safety Audit[3] undertaken on behalf of the appellant and the agreed Statement of Common Ground related to highway issues. Taking account of these, together with my observations on site, I am satisfied that adequate visibility splays could be

[2] Transport Statement prepared by Sanderson Associates (consulting engineers) Ltd, dated January 2014
[3] Stage 1 Road Safety Audit by Sanderson Associates (consulting engineers) Ltd, dated January 2014, included as Appendix G to the Transport Statement

provided in accordance with the recommendations in Manual for Streets 2 and that there would be no significant risk to highway safety at that junction, particularly with the proposed provision of vehicle activated warning signs.

30. Based on the above, the evidence suggests to me that part of the appeal site was allocated for housing without knowing that it would require access through the Green Belt, which was only evident to the appellant after the publication of the Inspector's SSPLP examination report. Also, the proposal would provide 68 dwellings, the deliverability of which has not been contested, which would be significantly less than the allocation figure. I find that the proposed provision of housing, including the affordable housing that would be provided to meet the policy requirements, carries significant weight. However, the weight that I have given to this consideration is not as great as it would have been if the road had provided access to more housing development and facilities than are proposed.

31. Paragraph 49 of the Framework indicates that housing applications should be considered in the context of the presumption in favour of sustainable development and that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites. I have found that the Council cannot demonstrate a 5 year supply of deliverable housing sites. However, as the access road would be within the designated Green Belt, specific policies in the Framework indicate that development should be restricted, in accordance with footnote 9 to paragraph 14 of the Framework. Therefore, although relevant policies should be considered to be out-of-date, this does not necessarily mean that planning permission should be granted.

32. With respect to the sustainability of the proposal, the appellant has suggested that the appeal site is in a sustainable location and the proposal would be a sustainable form of development. Whilst I accept that the location of the proposed dwellings is sustainable, that is not the test for sustainable development. I have found that the proposed vehicular access arrangement would have an adverse impact on the environment and would therefore not represent sustainable development.

33. The construction jobs and new expenditure that would be brought into Wakefield's economy would be those provided by any new housing development within or adjacent to Wakefield. Whilst the appellant has given an indication of how much this would be, I attach moderate weight to these benefits, which is a similar level to that given by the appellant. However, the New Homes Bonus can be given very little weight as it is an incentive to Councils to provide much needed housing.

34. The provision of open space and contributions towards open space and education are mitigation and so only minimal weight can be given to these considerations. I agree with the appellant that limited weight should be ascribed to the improvements in accessibility of public footpaths and ecological improvements due to the proposed landscaping. However, the landscaping would act as mitigation and I have found that, taking it into account, there would still be harm to visual amenity due to the access road. Therefore, even though the landscaping would help to reduce many of the detrimental effects that the road would have on the appearance of the area, I have not included it as a positive consideration with regard to visual amenity.

Whether Very Special Circumstances Exist

35. The Framework states in paragraph 88 that substantial weight should be given to any harm to the Green Belt. In addition to this, I have found that overall there would be significant harm to the character and appearance of the surrounding area. This is weighed against the significant benefit that I have identified due to the supply of market and affordable housing, the moderate weight that I have given to the benefits to the economy, the limited weight that I have attached to the improvements to accessibility and ecological benefits, together with the minimal weight that I have given to some of the other considerations put forward. Based on this, and having regard to the advice given in the written Ministerial Statements of 1 July 2013 and 17 January 2014, I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusions

36. For the reasons given, I have found that the proposed access road would reduce the openness of the Green Belt and would have an adverse effect on the purposes of including land in the Green Belt. As such, it would represent inappropriate development in the Green Belt having regard to the Framework and development plan objectives. It would also cause significant harm to the character and appearance of the surrounding area. Other considerations do not clearly outweigh the harm to the Green Belt by reason of inappropriateness and the other harm identified, and the very special circumstances necessary to justify the development have not been demonstrated. The proposal would conflict with policies in the Framework and development plan policies and would fail to represent sustainable development in accordance with the Framework. Therefore, having regard to all matters raised, I conclude that the appeal should fail.

M J Whitehead

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Martin Carter	Of Counsel, instructed by Kevin Winter, Solicitor, Legal Manager, Planning, Highways and Local Land Charges, Wakefield Metropolitan District Council
He called	
Sam Dewar BSc MA	Planning Manager, DPA Planning Ltd

FOR THE APPELLANT:

Andrew Piatt	Solicitor and Partner, Gateley plc
He called	
Rob Greenwood IEng FIHE	Associate Director and Team Leader, Sanderson Associates (Consulting Engineers) Ltd
Kit Patrick BA(Hons) DipLa CMLI	Director, TPM Landscape
David Rolinson BA(Hons) MRTPI DipPEL	Chairman, Spawforths

INTERESTED PERSONS:

Katie Atkinson MA BA DipTP MRTPI	Director, KVA Planning Consultancy on behalf of the Yorkshire and Humber regional branch of CPRE
Councillor David Dews CEng BSc(Eng) MICE ACGI	Wakefield Councillor
Councillor Jacqui Williams	Local Councillor
Councillor Matthew Morley	Wakefield Councillor
Kevin Swift	Local resident and on behalf of Wakefield Civic Society
Mark Fudge BSc(Hons) CEng MICE	Local resident
John Gravett	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

1 Rebuttal Statement of Sam Dewar's Proof of Evidence by David Rolinson, submitted by the appellant at the Inquiry on 17 November
2 Rebuttal Statement of Sam Dewar's Proof of Evidence by David Rolinson-Appendices, submitted by the appellant at the Inquiry on 17 November
3 Opening Statement on behalf of the appellant, submitted by the appellant at the Inquiry on 17 November
4 Opening Statement on behalf of the Local Planning Authority, submitted by the Council at the Inquiry on 17 November
5 Letters, date 10 July 2015 and 23 September 2015 from Andrea Jenkyns MP, submitted by Nick Prior at the Inquiry on 17 November
6 Statement read at the Inquiry by Councillor David Dews, submitted by Councillor David Dews at the Inquiry on 17 November
7 Statement read at the Inquiry by Councillor Jacqui Williams, submitted by Councillor Jacqui Williams at the Inquiry on 17 November

8 Statement read at the Inquiry by Katie Atkinson, submitted by Katie Atkinson at the Inquiry on 17 November
9 Copy of the grant of planning permission for the construction of new access road to serve existing sports club at West Of Dudfleet Lane, Horbury, Wakefield, submitted by the appellant at the Inquiry on 18 November
10 Council's note on Community Infrastructure Levy and S106 contributions, submitted by the Council at the Inquiry on 18 November
11 Statement read at the Inquiry by Mark Fudge, submitted by Mark Fudge at the Inquiry on 19 November
12 Heat mapping plan from a bat transit survey for the resubmission of the planning application, submitted by Mark Fudge at the Inquiry on 19 November
13 Copy of signed and dated Section 106 Unilateral Undertaking Planning Obligation, submitted by the appellant at the Inquiry on 19 November
14 Closing Submission of the Local Planning Authority, submitted by the Council at the Inquiry on 19 November
15 Closing Statement on behalf of the appellant, submitted by the appellant at the Inquiry on 19 November

PLANS SUBMITTED AT THE INQUIRY

A Drawing No 766-01 Rev C- Proposed Improvements, submitted by the appellant at the Inquiry on 18 November
B Drawing No 7566-016 Rev D- Indicative Junction Layout with Junction Visibility Splays, submitted by the appellant at the Inquiry on 18 November

PHOTOGRAPHS SUBMITTED AT THE INQUIRY

1 Photograph of Ouchthorpe Lane, submitted by Mark Fudge at the Inquiry on 19 November
2 Photograph of Footpath 28, submitted by Mark Fudge at the Inquiry on 19 November

Appendix B.7 Pembroke Avenue, Denny End Industrial Estate, Waterbeach, Cambridge, Cambridgeshire (February 2015)

The Planning Inspectorate

Appeal Decision

Site visit made on 5 January 2015

by David Spencer BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 February 2015

Appeal Ref: APP/W0530/A/14/2228347
Land to the south of Pembroke Avenue, Denny End Industrial Estate, Waterbeach, Cambridge, Cambridgeshire CB25 9QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Ede and Ravenscroft against the decision of South Cambridgeshire District Council.
- The application Ref S/0571/14/FL, dated 10 March 2014, was refused by notice dated 6 May 2014.
- The development proposed is 139 car parking spaces, means of access, landscape planting, other engineering operations, all ancillary to units A and D, Units 51 and 51A, Pembroke Avenue.

Decision

1. The appeal is dismissed.

Procedural matter

2. The application form provided a partial address for the appeal site and as such I have expanded it to use the address from the Council's decision notice in order to identify the location of the appeal site.

Background and Main Issues

3. The appeal site consists of arable farmland immediately to the south of the Denny End Industrial Estate. The wider setting of the site is open countryside consisting of fields to the east beyond which the dwellings of Waterbeach are visible, some scattered residential development and a public footpath to the south and the embanked A10 road to the west. The surrounding countryside, scattered dwellings and A10 road are within the Cambridge Green Belt, a designation which washes over the appeal site.

4. As such, it is necessary firstly to establish whether the appeal proposal represents inappropriate development in the Green Belt before proceeding, under the heading of "any other harm", to consider its effects on the openness of the Green Belt, together with other matters such as character and appearance. If it is inappropriate development, paragraph 87 of the National Planning Policy Framework (the Framework) says that it is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Such circumstances will not exist unless the potential harm to the Green Belt by reason of its inappropriateness, and any other harm, is clearly outweighed by other considerations (paragraph 88).

5. Accordingly, I consider the main issues in this appeal are as follows:

   (i) whether the proposal represents inappropriate development in the Green Belt for the purposes of the Framework and development plan policy;

   (ii) the effect of the proposal on the openness of the Green Belt;

   (iii) the effect of the proposal on the character and appearance of the area; and

   (iv) whether any harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether or not the proposal is inappropriate development in the Green Belt

6. Policy GB/1 of the adopted South Cambridgeshire Local Development Framework Development Control Policies Development Plan Document 2007 (the DPD) states a presumption against inappropriate development in the Cambridge Green Belt. Whilst the policy references inappropriate development in the context of the then extant PPG2[1], I nonetheless find that the policy is broadly consistent with Section 9 of the Framework and as such it has significant weight in decision making.

7. The Framework states at paragraph 90 that certain forms of development are not inappropriate in Green belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. These include, amongst other things, local transport infrastructure which can demonstrate a requirement for a Green Belt location.

8. Local transport infrastructure can reasonably be interpreted to mean those physical assets which enable people and goods to move about efficiently. In coming to this view I note that paragraph 31 of the Framework refers to viable infrastructure necessary to support sustainable development and then sets out a number of transport infrastructure examples. Additionally, paragraph 41 of the Framework refers to infrastructure which would widen transport choice. Accordingly, the Framework primarily considers transport infrastructure as being those facilities necessary to support communities and sustainable development through the movement and circulation of people and goods by various transport modes.

9. Consequently, I am of a view that there would need to be sound reasons in the wider public interest for local transport infrastructure to be located in Green Belt. On this basis, I am not persuaded that local transport infrastructure at paragraph 90 of the Framework would include a private surface car park to meet the needs of an individual business.

10. Therefore, in not complying with any of the listed exceptions, the scheme would be inappropriate development in the Green Belt, which paragraph 87 of the Framework states is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 of the Framework states that in considering a planning application substantial weight

[1] PPG 2 Green Belts (1995) - revoked by the publication of the National Planning Policy Framework 2012.

should be given to any harm to the Green Belt. I also find that the proposal does not accord with saved DPD Policy GB/1.

Effect on openness of Green Belt

11. Paragraph 79 of the Framework sets out that openness is an essential characteristic of the Green Belt. The appeal proposal would involve 139 parking spaces, arranged in a single block layout. The parking spaces would be enclosed by perimeter planting however there would be tall steel mesh fencing erected to the inside of this planting. Further ancillary structures would include the low level lighting columns and the street lighting and CCTV columns. As such, the appeal proposal, without any cars that might be parked on it, would have a negative effect on the openness of the Green Belt by reason of the height and distribution of the various ancillary structures on land which is presently uncluttered. Additionally, the presence of such a concentration of parked vehicles would further conflict with the openness of the Green Belt.

12. The appellant submits that the effect on openness in terms of parked vehicles and ancillary structures is no different to park and ride sites elsewhere in the Cambridge Green Belt. I have very few details about the planning history for these park and ride facilities. In any event, such facilities were not inappropriate in the Green Belt as set out in previous guidance in PPG2 which notably limits their comparison to the appeal proposal. Consequently, and for the reasons given above I disagree with the appellant that surface car parking is an essentially open land use. As such the appeal proposal would result in significant harm to the objectives of the Green Belt to which the government attaches significant importance.

Character and Appearance

13. The appeal site is part of the fabric of flat arable farmland which is the predominant character of the countryside at this rural edge of Waterbeach. The appeal proposal would erode this rural character not only in terms of the loss of farmland but also by the introduction of features such as lighting columns, vehicles and associated human activity. Notwithstanding the proposed perimeter planting the appeal proposal would be visible, albeit filtered by intervening trees, from the lay-by on the embanked A10 road to the west and more widely from the public footpath to the south.

14. Whilst some conifers largely screen Unit D, it nonetheless remains that Unit 51A and other large buildings on the industrial estate form a conspicuous built edge in the wider landscape. Whilst the proposed native landscaping including specimen trees would, over time, soften the edge to this part of the industrial estate I do not share the appellant's view that the landscaping would conceal it. The landscaping would take some time to become established and in the interim both the large expanse and ancillary structures of the appeal proposal would be visible as well as the backdrop of the large industrial units.

15. The appellant has referred to Policy GB/2 of DPD in respect of mitigating the impact of development in the Green Belt however this policy does not apply to inappropriate development. The appellant also submits that the screen planting and bund would obscure parked cars. I am not persuaded that the relatively shallow height of the bund and the depth of the perimeter planting would completely mask the presence of vehicles in the short term and possibly beyond if there are weaker points in the landscaping. Furthermore, even if the

landscaping was effective over time in terms visibility, I find that the appeal proposal, by virtue of its scale and the associated level of activity, would be perceptible from public vantage points in the locality and as such harmful to the rural character.

16. In the context of Green Belt, openness and character are two separate issues. Whilst the Council has not put forward a development plan policy in relation to character and appearance in its reason for refusal I nonetheless find that there would be moderate harm to the rural character and appearance at the appeal location. Accordingly, the appeal proposal would conflict with the Framework which states at paragraph 17 that a core planning principle is to recognise the intrinsic character and beauty of the countryside.

Other considerations

Improvements to local parking conditions and demonstrable need for the proposal

17. I am satisfied that as currently configured the appellant has some 55 operationally feasible parking spaces for a business which generally employs 90 core staff, augmented by approximately 100 short-term employees for 6 months of the year from early summer through to Christmas. I therefore accept the appellant's business generates on-street parking.

18. From the evidence submitted by the appellant and from what I saw on my site visit of the Denny End Industrial Estate, which I recognise did not coincide with the peak period of employment for the appellant, there are notable levels of on-street parking including parking on footways and a narrowing of the highway for other users. However, whilst it may be unsightly and moderately disruptive to other highway users I have very little persuasive evidence that the on-street parking, both during peak and off-peak periods of employment, has resulted in a severe impact on highway safety or adversely affected businesses on the industrial estate. As such I only attach limited weight to the benefit of improving parking conditions on the industrial estate.

19. The appellant also submits that the appeal proposal would provide more secure and convenient parking for its employees. Whilst the existing and proposed parking provision through the appeal scheme would be well below the Council's parking standards for the amount of floorspace at the appellant's premises, it seems to me that the more appropriate measure is to look at the particular demands for the appellant's business, including those leasing Unit 51A. In this regard the appellant has undertaken a travel survey of core staff in 2013 which shows that 83% travel to work by car (including car sharing). There is no comparable survey data for seasonal staff and as such it is difficult to gauge whether the appellant has been reasonable to extrapolate the 83% figure to all staff in assessing the scale of parking at the appeal proposal.

20. Furthermore, I am mindful that the appeal scheme does not reflect the impact of any travel planning measures at the appellant's business. Whilst I have before me a Travel Plan Framework (October 2013), it does not set out any SMART goals for travel planning at the business and nor is there any evidence before me that travel plan measures have been implemented and their effectiveness monitored by an updated staff travel survey. As such I am concerned that the appeal proposal represents a theoretical maximum.

21. In arriving at this view, the submitted Transport Statement identifies that the appellant's premises are close to a bus stop served by what the appellant describes as "primarily a commuter service"[2] connecting the industrial estate to Cambridge and Ely. There are also dedicated cycle routes from Waterbeach into Cambridge. In my view, it would be reasonable to assume, given the numbers of core staff living in Waterbeach, Ely and Cambridge[3] that with appropriate travel planning measures the appellant could secure some modal shift to these options thus reducing the demand for car parking.

22. Additionally, whilst I accept the appellant's evidence that its workforce is widely distributed there are nonetheless notable clusters of core staff in certain settlements and locations. Whilst current levels of car sharing are low, the 2013 staff survey identifies the barriers to car sharing which could be addressed through travel planning. Furthermore, the staff survey shows that there are identifiable measures[4] that could be investigated to make car sharing more attractive to staff. Accordingly, I see no reason why with appropriate travel planning, the option of car sharing for both core and seasonal staff could further reduce the demand for car parking at the appellant's premises.

23. I have also noted that the appellant's evidence[5] indicates that the existing yard areas to the business could yield 62-67 additional parking spaces. Whilst I accept that some yard area needs to be retained for operational purposes I observed that these areas were not always suitably demarcated and some areas inefficiently laid out for external storage. As such I find that these areas could be better utilised to provide some modest amounts of additional off-street parking thereby reducing demand for on-street parking.

24. The appellant advises that they have considered alternative parking solutions on the industrial estate and at the nearby Waterbeach Barracks. However, I have very little evidence of when these alternatives were investigated, how long the temporary solution at Sterling House would have been available, and how the efforts to secure alternative provision were undertaken. Given the identified harm to the Green Belt, in my view the evidential standard to demonstrate that alternative sites are not available has not been met.

25. Accordingly, for the reasons set out above, I do not share the appellant's submission that the appeal proposal represents the most sustainable option. Nor, for similar reasons, would it represent the most sustainable pattern of development. Whist I accept that travel planning and better management of existing curtilage areas would reduce rather than remove the need for on-street parking, I am not persuaded that any residual levels of on-street parking would be harmful. Therefore, in bringing all the evidence together, I attach limited weight that there is demonstrable need for the appeal proposal.

Sustaining local employment

26. The appellant is a significant employer, particularly during peak periods. However, I have very little evidence that current parking arrangements would adversely affect the existing and future viability of the business. Accordingly, I attach limited weight to these submissions.

[2] Page 8, Transport Assessment Marc h 2014 and paragraph 25 of the Economic Assessment March 2014
[3] Figure 4.3 page 12, Transport Assessment, SLR, March 2014
[4] Figure 4.8, page 18, Transport Assessment, SLR, March 2014
[5] Table 2, page 7, Planning Statement March 2014

Drainage, Archaeology and living conditions

27. Turning to matters of drainage and archaeology, I have noted the concerns of the Parish Council however I am satisfied from the evidence before me that the site can be appropriately drained. I am also satisfied it can be developed, subject to conditions, without a significant adverse effect on local archaeological interest. I have also noted the concerns of a nearby dwelling regarding living conditions but I am satisfied that given the design, separation distances and background noise levels from the A10 that the appeal proposal would not result in any significant harm in terms of outlook or noise and disturbance. However, these matters do not add weight either in favour or against the development. The absence of harm in one respect cannot outweigh harm in another. Such factors are essentially neutral in the final balance.

Conclusion

28. The proposed development would be inappropriate development and the Framework establishes that substantial weight should be given to any harm to the Green Belt. In addition, there would be a material loss of openness and harm to the rural character. As explained above I give only limited weight to the other considerations given in support of the proposal and conclude that they do not clearly outweigh the harm the scheme would cause. Consequently, there are not the very special circumstances necessary to justify inappropriate development in the Green Belt. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Spencer

INSPECTOR

Appendix B.8 Land North of Berry Hill Purification Works, Throop, Bournemouth (October 2014)

The Planning Inspectorate

Appeal Decision

Hearing held on 23 September 2014
Site visit made on 23 September 2014

by Roger Pritchard MA PhD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 October 2014

Appeal Ref: APP/C1245/A/14/2221524
Land North of Berry Hill Purification Works, Throop, Bournemouth, BH8 0AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Wessex Water Services Ltd against the decision of Dorset County Council.
- The application Ref 8/2012/0514, dated 12 November 2012, was refused by notice dated 26 February 2014.
- The development proposed is an access track and Bailey bridge to serve Berry Hill Sewage Treatment Works.

Decision

1. The appeal is allowed and planning permission is granted for an access track and Bailey bridge to serve Berry Hill Sewage Treatment Works at Land North of Berry Hill Purification Works, Throop, Bournemouth, BH8 0AJ in accordance with the terms of the application, Ref 8/2012/0514, dated 12 November 2012, and subject to the conditions attached as a Schedule to this Decision.

Main Issues

2. I consider the main issues to be whether the proposed development –

   1) Constitutes inappropriate development in the Green Belt and, if it is inappropriate development, whether the harm by reason of that inappropriateness and any other harm, including its effects on the openness of the Green Belt, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development; and

   2) Represents the least environmentally damaging practicable option in the terms set out by Policy 46 of the adopted Bournemouth, Dorset and Poole Waste Local Plan ('the Waste Local Plan').

Reasons

Background

3. The proposed development would construct a new access to the Berry Hill Sewage Treatment Works, which is located in the Green Belt between the northern edge of the built-up area of Bournemouth and the River Stour.

4. An objective of Wessex Water's (henceforth 'Wessex') Asset Management Plan 2010 - 2015 (AMP5) Sludge Strategy is to provide the capability to digest over

90% of all sewage sludge by March 2015 in order to minimise greenhouse gas emissions and increase renewable electricity generation in conformity with the Government's climate change commitments.

5. A key aim of the adopted strategy is '*...to consolidate sludge digestion at fewer sites with round-the-clock treatment capability, to benefit from operational and generation efficiencies.'* By the end of AMP5, sludge digestion will be concentrated at a limited number of sites, one of these being Berry Hill, where Wessex is committed to major investment in additional capacity. Berry Hill is the largest Sludge Treatment Centre (STC) in southeast Dorset, receiving sludge from all over Dorset as well as from some areas across the county boundary.

6. The sole, existing access road to the STC passes through a housing estate in Throop to the south of the STC and there is a history of complaints regarding tanker traffic. Local residents have raised concerns directly with Wessex about vehicle movements, noise and odour and also made representations to the Water Services Regulation Authority (Ofwat).

7. To address those access problems and facilitate improvements in capacity, a new access track ('the track') is proposed, using a northern approach to the STC via a Bailey bridge ('the bridge') across the River Stour. It will provide access to the main highway network on the B3073 (Parley Lane), close to the main entrance to Bournemouth International Airport. The track would be gated, with an access control system at its junction with Parley Lane thereby preventing public use.

8. The southern bank of the River Stour is the administrative boundary between Bournemouth to the south and East Dorset to the north. Wessex thereby made identical applications to Bournemouth and to Dorset County Council (henceforth 'Dorset'), in its capacity as Waste Planning Authority (WPA) for the East Dorset area. The current position is that Bournemouth has resolved to grant planning permission for its section of the access track, subject to the completion of a section 106 Unilateral Undertaking.

Inappropriate development in the Green Belt

9. The track, on both sides of the Stour, and thereby the bridge, are in the South East Dorset Green Belt as formally designated in 1981. The Government's National Planning Policy Framework ('the Framework'), which is a material consideration in all applications and appeals, states (Para 87) that inappropriate development is harmful to the Green Belt and should not be approved except in *'very special circumstances*'. The Framework goes on to state (Para 89) that the construction of new buildings should, subject to certain limited exceptions, be regarded as inappropriate in the Green Belt.

10. The Framework (Para 90) also states, however, that certain other forms of development are considered not inappropriate in the Green Belt <u>provided</u> (*my emphasis*) they preserve its openness and do not conflict with the purposes for which land is included in the Green Belt. The main parties agree that the proposed development constitutes '…*local transport infrastructure requiring a Green Belt location and involves engineering works'*. Both local transport infrastructure and engineering works are among the exceptions listed in the Framework. (It is a nice point as to whether the track, which would be a private road not open to the public, comprises local transport infrastructure or

another form of engineering operation. Since the Framework applies the same criteria to both forms of development, however, this is not a matter that need concern me.)

11. The Framework emphasises (Para 79) that the essential characteristics of Green Belts are their openness and permanence and comments (Para 80) that Green Belts may serve five purposes. The parties to this appeal agreed that the proposed development does not put at risk four of those purposes, but that the critical issue is the third purpose listed, i.e. to assist in safeguarding the countryside from encroachment.

12. However, Policy KS3 of the adopted Christchurch and East Dorset Core Strategy states that the two most important purposes of the Green Belt in its area are to protect the physical identity of individual settlements by maintaining wedges and corridors of open land between them and to maintain an area of open land around the conurbation.

13. I agree that safeguarding the countryside from encroachment is a significant factor in this appeal, but I also consider that the area of land over which the track would pass clearly falls within the category of Green Belt land identified by the first important purpose recognised by Policy KS3. The Stour represents a corridor of open land running from west to east that plays an important role in separating the northern outskirts of Bournemouth from the development to the north of the river. In the area of the proposed development that role is emphasised by the presence of the Airport immediately to the north of the B3073. The Core Strategy removed the Airport from the Green Belt, citing amongst other reasons, the constraint the Green Belt represented on its sustainable growth. Future development of the Airport must therefore be considered to be probable, thereby increasing the important role of the corridor of open, Green Belt land along the Stour to the south of the B3073.

14. Any built development must compromise the openness of the Green Belt to some degree. However, I draw an important distinction between the impact on the purposes of the Green Belt as set out in Paragraph 80 of the Framework, and the effects on the landscape within a defined Green Belt which the Framework advises (Para 81) should be retained and enhanced but which should be considered under the heading of other material harm.

15. The track will be some 830 metres long, with a width of 3.5 metres and be constructed of concrete. There will be three passing places and a small turning area some 50 metres south of the junction with the B3073. The track will be largely at grade (apart from a small section where it climbs the terrace, around 2 metres high, that forms the northern edge of the Stour floodplain and also where it approaches the bridge on low embankments on both sides of the river).

16. I accept that traffic along the track would result in some visual impact on openness but the 'worst case' scenario suggested by Wessex implies only an average of 2-3 lorries per hour during the working day and the absence of public traffic would mean significantly less impact than might arise from a normal highway development, of which there are, of course, many in Green Belts.

17. The track therefore seems to me to represent only the most limited of impacts in terms of encroachment on the open countryside. I consider that impact on

the openness of the Green Belt would be less than either existing development south of the B3073, e.g. the aviation museum or the Adventure Wonderland theme park, both in the Green Belt to the east of the proposed track, or even perhaps of the planned extension to the Parley Court Golf Centre to the west. In coming to that conclusion, I recognise the fear that the proposed development would result in adverse cumulative impacts when taken in conjunction with existing development. Nevertheless, in terms of impact on the openness of the Green Belt here, I consider those effects would still be marginal. I therefore conclude that the track would not be inappropriate development in the Green Belt.

18. The bridge represents slightly different issues. The proposed design is for a low profile, pre-fabricated, girder structure some 40 metres in length that would be constructed off-site and then moved into position. (It is described as a 'Bailey bridge'.). The bridge would have the capacity to take fully loaded sludge tankers with a maximum weight of 44 tonnes. It would represent a more prominent structure than the track, although its positioning along the Stour would limit its visual impact, especially when considered in terms of long-distance views. Consequently, in considering whether the bridge would compromise the openness of the Green Belt, in terms of encroachment into the countryside I consider that its impact would be sufficiently limited so as not to represent inappropriate development in the Green Belt.

19. I have slightly more concerns about putting at risk the role of the Stour valley in separating Bournemouth from the Airport. The track would cross the valley and thereby provide a north-south vehicular link currently absent in this area. It would, however, not do so as a public highway that might encourage or provide a precedent for further development. On balance, I therefore conclude that the track and bridge would not compromise the important role that Policy KS3 of the adopted Core Strategy provides for the Green Belt in this location as a means of separating Bournemouth from the Airport to the north.

20. In considering whether the proposed development is inappropriate in the Green Belt I have also had particular regard to the advice in Paragraph 3 of the still extant Planning Policy Statement 10, *Planning for Sustainable Waste Management* (PPS10). PPS10 advises that waste planning authorities should protect Green Belts but also recognise that, in determining planning applications, the particular locational needs of some types of waste management facilities, together with their wider environmental and economic benefits, are material considerations that should be given significant weight in determining whether planning permission should be given. The Berry Hill STC is in the Green Belt and any surface link to it must cross the Green Belt.

21. Furthermore, in this context, I note that whilst Dorset based its case against the proposal on the presumption that it was inappropriate development in the Green Belt (a view supported by Christchurch and East Dorset Councils), Bournemouth Borough Council confirmed at the Hearing that its position was that the track within its jurisdiction was not inappropriate development.

22. It is my overall conclusion that the proposed development is not inappropriate development in the terms set out by the Framework. I take this view in terms of its neither compromising the openness nor the permanence of the Green Belt. I also conclude that in the specific context of Policy KS3 of the adopted Christchurch and East Dorset Core Strategy, the proposed development would

not conflict with those objectives which that policy sets as especially important in the context of the Green Belt in this area.

The least environmentally damaging practicable option

The consideration of alternatives

23. It is the position of Dorset that Wessex have promoted the proposed development without sufficient examination of the alternatives and that the consequence is that the proposal is contrary to elements of Policy 46 of the adopted Waste Local Plan. These require development associated with the processing of waste water or sewage, including links to sewage works etc., to adopt the least environmentally damaging practicable option and, where built development would normally be inappropriate (as presumably within the Green Belt), to explore the feasibility of subterranean options.

24. From the evidence put to me, I was not convinced that there were realistic alternatives to the expansion of the Berry Hill STC. Apart from the overall drivers of national policy to reduce carbon emissions etc, and Wessex's approved AMP5 strategy, any alternative existing site within south east Dorset seems likely to raise issues similar to those arising here. Either sites, like the Holdenhurst works, are also in the Green Belt or there would similar if not more severe problems of access or a new facility would have to be constructed. Not only would the last option almost certainly raise severe planning problems but it would result in the underuse of existing capacity that would represent so poor a use of resources as to breach the test of practicability. I also note that Wessex commented that the use of Berry Hill as an STC could and would go ahead irrespective of the outcome of the appeal, the only issue being the extent to which the problems of the existing road access would constrain any planned expansion.

25. If Berry Hill is accepted as a site where Wessex should concentrate its sludge treatment facility in south east Dorset, I was equally unpersuaded that there were any alternative track and bridge access options that might be preferable to the proposed development. Because Berry Hill STC is in the Green Belt, all surface access options as alternatives to the current arrangements must raise similar concerns in respect of inappropriate development, impact on the landscape etc. Moreover, none of the alternatives investigated, of which there appear to have been four other than the preferred route, was promoted by any party as preferable. I agree: none demonstrates any advantage over the proposed route.

26. The issue therefore resolves itself into the second of Policy 46's relevant criteria, i.e. whether the subterranean alternatives had been explored in sufficient detail and whether, as Dorset considers, the environmental benefits of a pipeline were undervalued in comparison to the other criteria cited. In general terms, Wessex appears to have rejected the pipeline option on three grounds.

27. The first is practicality. The pumping of sludge over any distance requires high pressures and necessitates 24/7 working in order to avoid blockages building up that can be difficult to shift. Wessex rejects this possibility not because it would be impossible to maintain 24/7 pumping or because it is not proposed to operate Berry Hill on a continuous basis, but because it would be impractical to commission tanker movements on a 24/7 basis to provide a continuous flow of

material into the pipeline. Such movements would be necessary wherever the pumping station at the other end of the pipeline was sited. Dorset suggested that a solution to this might be to dilute the sludge at the pumping station, thereby easing the flow issues. However, I was not persuaded that this would be easy to achieve without significant changes in working practices and that it might raise additional issues in terms of water usage etc.

28. The second ground was risk. In simple terms, Wessex assesses that the failure of a pipeline would be far more likely to result in a serious environmental incident than, say, an accident to a single sludge tanker. Wessex already has experience of a pipeline that exists from Holdenhurst to Berry Hill and maintenance and repair of this pipeline is an on-going issue. I accept that this is a relevant risk.

29. The third ground is cost. Whilst there would be variations in cost depending on the routes chosen, Wessex suggested to me that, on average, the pipeline would be around 50% more expensive than that of a surface track and bridge. No one seriously questioned that estimate. I accept that Ofwat may have approved Wessex's AMP5 budget, in this respect, on the basis of a link to Berry Hill that could be either surface or subterranean but additional expenditure on a pipeline must represent an opportunity cost on Wessex's budget and should not be discounted.

30. Nevertheless, Wessex looked three subterranean options, all of which, however, were limited to providing a pipeline to Berry Hill STC from a new pumping station at the Kinson Sewage Treatment Works around 2½ kilometres to the west. Kinson is on the edge of the built-up area of Bournemouth and, whilst these alternatives would avoid the impact on the Green Belt of the track and bridge option, the necessity of directing sludge lorries to Kinson would raise issues of traffic and environmental disturbance to adjacent residential areas that I suspect would prove even more unacceptable.

The impact on the landscape

31. I have already commented that the Framework (Para 81) advises the retention and enhancement of landscapes within Green Belts. The character of the landscape to the north of the Stour between the river and the B3073 has strong urban fringe elements to it. The immediate river valley is an attractive feature, fringed by trees, that retains a countryside feel, especially when looking south towards the fields and woodland that screens it from the Berry Hill STC. However, north of the river, the presence of the Parley Court Golf Course, Adventure Wonderland, the aviation museum and the riding centre create less of a rural ambience. Nevertheless, I accept Dorset's assessment that whilst the quality of the landscape should be rated only as moderate, it is sensitive to development. I also accept that the track and bridge would add to the already present urbanising tendency.

32. However, I also consider that in the medium-term, the proposals for mitigating landscaping associated with the bridge and track have the potential not only to reduce the magnitude of their impacts to 'minor adverse' but also to generate some overall improvements to the landscape character of the area. The physical appearance of the development should reduce visual impact through use of boundary materials and landscape planting. Wooden post and rail fencing and bollards would blend in with the surrounding landscape, whilst

planting in the form of individual replacement trees and hedgerows as well as supplementary woodland would reduce visual impact.

33. I consider that the material harm to the landscape from the proposed development to the existing landscape would be limited and largely temporary. Mitigation should especially restrict the visual harm that may occur from public viewpoints of the proposed development. At present, I see these as principally being at the junction of the track with the B3073 (where the context must remain very much that of the adjacent Airport) and the views south from the Public Right of Way (PRoW) that runs from the Golf Course to Merritown Lane. I accept that views from the latter could represent some visual material harm in respect of both the track and bridge but consider that with landscape mitigation, the permanent impact would be sufficiently marginal to be acceptable.

34. I therefore conclude that although the proposed development would result in some material harm to the landscape north of the river, the proposed mitigation measures would reduce that impact to the point where the harm would not be so significant to conflict with the requirements of Policy 46.

Traffic issues

35. Wessex made clear that, whilst there were other factors associated with their long-term strategy and national objectives that underpinned the proposed development, its immediate driver is the intention to remove traffic from the residential areas in north Bournemouth through which the sludge tankers currently pass.

36. I saw for myself the issues that are associated with the existing access route to the Berry Hill STC. I can fully appreciate that not only is this route inappropriate in its width and form for the articulated tankers that use it, but that it passes through a residential area, especially along Boundary Lane, some of whose properties are very close to the highway, and accesses the main highway network on to Castle Lane West, where there are already problems of significant congestion.

37. I can appreciate why residents of the areas north of the Stour may be apprehensive about the re-routing of the sludge tankers. There would be some further pressure on Parley Lane which is already heavily trafficked especially because of the access to the Airport. Nevertheless, I consider that the proposed re-routing would, in overall terms, result in a reduction in material harm in respect of environmental damage. The new track would not pass close to any residential property. Furthermore, the design of the new junction with Parley Lane should ensure that the there is no unacceptable risk to other highway users.

38. I therefore agree with the Highway Authority that there can be no sustainable highway or traffic objection to the proposed access arrangements to the Berry Hill STC and that, on balance, these would represent an improvement over the current circumstances.

Flood risk

39. The area immediately north of the Stour plays an important role in providing water meadows that are part of the floodplain which is inundated by excess water after periods of heavy rainfall. The Environment Agency (EA) rightly

insists that this role must continue and that there should be no unacceptable risk of the capacity of the floodplain being reduced by the proposed development. Wessex has calculated that the maximum displacement of flood water as a result of the track and bridge would be of the order of 1.5%. The EA has accepted this and on this basis has raised no objection to the proposed development.

40. However, the consequence of the agreed arrangements is that there will be periods when the new track is sufficiently inundated as to be impassable to the sludge tankers. Wessex recognises this and therefore wishes to retain the route through Throop for use in such emergencies. It is unclear to me how often such circumstances would occur. Wessex suggested around two weeks a year, most probably in the winter. This was not disputed by Dorset, although Hurn Parish Council commented that its experience was that the floodplain was brought into use more frequently.

41. It would obviously not make sense for a new access to be provided if that access was frequently unavailable for use and the current, generally agreed to be unsatisfactory, arrangements had to be reinstated. Nevertheless, the evidence did not persuade me that the frequency of the new access being unavailable would be so often as to represent a significant argument against it. I have therefore set aside the issue of flood risk as one that should weigh against allowing this appeal.

Conclusion on Policy 46

42. I conclude that there is insufficient evidence to persuade me that a subterranean option would represent a less environmentally damaging practicable (*my emphasis*) option or that any alternative surface track and bridge would be preferable. The proposed development is therefore not in conflict with the relevant provisions of Policy 46 of the adopted Bournemouth, Dorset and Poole Waste Local Plan.

Other Matters

43. The current position is that, in respect of section 106 Unilateral Undertakings, Wessex has submitted these separately, but in identical form, to both Bournemouth and Dorset. As Paragraph 8 above comments, Bournemouth has resolved to grant permission for the track on their side of the Stour subject to its agreement of such an Undertaking.

44. The Undertakings provide for contributions to be paid to the respective authorities towards the implementation of '*…improved public access links from Throop and North Bournemouth to Hurn and Parley across the Stour*'.

45. It appears that there was originally an intention to provide a pedestrian/cycle route across the Stour using the new bridge. Its design incorporates features in respect of the abutments etc that would allow a parallel crossing to be provided. However, objections from riparian owners have so far prevented the completion of a Unilateral Undertaking on this basis and I was told at the Hearing that it was now probably the intention to concentrate the funds provided by the Undertakings to improve existing PRoWs in the Stour valley.

46. However, although it may be desirable to improve public access in this area, and I note that the Framework (Para 81) looks to opportunities to provide access in the Green Belt, I cannot accept that the section 106 Unilateral

Undertaking, as put to me, is necessary to allow the proposed development to go ahead. In these circumstances, I conclude that, although properly made, the Undertaking presented to Dorset does not meet the requirements of Section 122 of the Community Infrastructure Levy Regulations 2010 and the advice in paragraph 204 of the National Planning Policy Framework ('the Framework').

47. I therefore conclude that the appeal could be allowed and permission granted without the existence of a section 106 Unilateral Undertaking. However, in coming to that conclusion, I am more than aware that the proposed development cannot be implemented without the parallel approval of the track south of the Stour and that Bournemouth's confirmation of its resolution to give planning permission is dependent on the provision to it of a section 106 Unilateral Undertaking.

Conclusion

48. For the reasons given above I conclude that the appeal should be allowed.

Conditions

49. I have considered the conditions put before me by the Council that it would wish me to impose were the appeal to be allowed in the light of policies towards conditions as now set out in the Government's published Planning Practice Guidance and the model conditions included in the still extant Annex to Circular 11/95, *The Use of Conditions in Planning Permissions*.

50. In addition to standard conditions that set a time-limit for the development and require it to be implemented in conformity with the submitted and approved plans, I consider that conditions are necessary to ensure that prior approval is given to a scheme for the hard and soft landscaping of the site, as well as to arrangements to ensure that those trees which are to be retained are properly safeguarded during construction and that all new and replacement trees that die, are damaged or suffer from disease within five years of being planted are appropriately replaced. By the same token, I consider it essential that appropriate arrangements for the junction with Parley Lane, including highway drainage and necessary visibility splays, and for necessary access, parking and turning areas all to be in place before the track and bridge are brought into use. I shall impose conditions in all these respects.

51. I also consider that a Traffic and Construction Management Plan needs to be in place before development begins. Moreover, I consider that this plan should incorporate the arrangements for the protection of existing rights of way that were originally proposed as a separate condition. I shall therefore amalgamate these two conditions in imposing them.

52. Finally, I agree that, irrespective of the drawings already submitted, final details of the proposed bridge should be submitted and approved before work begins on its construction. I shall therefore impose a condition in this respect.

Roger Pritchard

INSPECTOR

SCHEDULE OF CONDITIONS

1) The development hereby approved must be begun not later than three years from the date of this decision.
2) The development hereby approved shall be carried out in strict accordance with the approved plans D9494/0700 Rev A; D9494/0701 Rev A; D9494/0702 Rev B; D9494/0703 Rev A; D9494/0704 Rev A; D9494/0705 Rev A; D9494/0706 Rev A; D9494/0710 Rev B; D9494/0711 Rev A; D9494/0712 Rev A; D9494/0713 Rev B; and the Environmental Supporting Statement dated November 2012 submitted in support of the application unless otherwise agreed in writing by the Waste Planning Authority. For the avoidance of doubt, the extent of development permitted by this decision is limited to that shown on the approved plans and falling within the red edged area identified on the appeal site location plan comprising Drawing Number D9494/ENV/200/Rev B.
3) No works or development shall take place until full details of both hard and soft landscape proposals have been submitted to, and approved in writing by, the Waste Planning Authority.
   Hard landscaping details shall include, as appropriate:
   i. Proposed finished levels and contours;
   ii. Means of enclosure;
   iii. Surfacing of vehicle and pedestrian access and circulation areas;
   iv. Hard surfacing materials;
   v. Proposed and existing functional services above and below ground, e.g. drainage, power, communication cables, pipelines, etc.; and
   vi. An implementation timetable.
   Soft landscaping details shall include, as appropriate:
   i. Planting plans;
   ii. Written specifications (including cultivation and other operations associated with grass establishment);
   iii. Schedules of plants, noting species, planting sizes and proposed numbers/densities, where appropriate; and
   iv. An implementation timetable.
   The development shall be carried out in accordance with the approved details.
4) All existing trees, shrubs and other natural features not scheduled for removal shall be fully safeguarded during the course of the site works and building operations in accordance with the Arboricultural Impact Appraisal and Method Statement dated November 2012. The protection measures shall be as specified in Drawing Number S101 and the Arboriculture Impact Assessment and shall be retained during the course of the works on site. No unauthorised access or placement of goods, fuels or chemicals, soil or other materials shall take place inside the identified fenced area.
5) Details of the size, species and location of new and replacement trees shall be submitted to and agreed in writing by the Waste Planning Authority before commencing the works hereby permitted and shall be planted within three months from the date that the trees which are removed as a result of this permission are felled, or, if this period does not fall within a planting season, in accordance with a timetable to be agreed in writing with the Waste Planning Authority. Any trees that are removed, die or become, in the opinion of the Waste Planning Authority, seriously damaged or defective within five years of planting shall be replaced with specimens of a similar size and species as originally required.

6) Before any other operations are commenced, the visibility splay areas as shown on Drawing Number D9494/0709 Rev B shall be cleared and excavated to a level not exceeding 0.6 metres above the relative level of the adjacent carriageway. The splay areas shall thereafter be retained and kept free from all obstructions.
7) The development hereby permitted shall not be occupied or brought into use until the access, turning and parking areas shown on Drawing Number D9494/0702 Rev B have been constructed. Thereafter, these areas shall be retained, kept free from obstruction and kept available for access and the parking and turning of vehicles.
8) The surface of the first 100 metres of the internal access road measured from the public highway shall be metalled, drained and kept clear of debris to a specification to be submitted and approved in writing by the Waste Planning Authority. The approved scheme shall be constructed before the bridge over the River Stour is brought into use and shall be retained thereafter.
9) The development hereby permitted shall not be brought into use until provision has been made to ensure that no surface water drains directly from the site onto the adjacent public highway.
10) The development hereby permitted shall not commence until a Construction Traffic Management Plan and programme of works has been submitted to and approved in writing by the Waste Planning Authority. The Plan shall include construction vehicle details (number, size, type and frequency of movements), vehicular routes, delivery hours, and contractors' arrangements (provision of a compound, storage, parking, turning, surfacing, drainage and wheel wash facilities). The plan shall also provide for:
    i) The inspection of the highways serving the site jointly between the developer (or his contractor) and the Waste Planning Authority prior to work commencing and at regular, agreed intervals during the construction phase so that any damage to the edges of the carriageway and verges can be identified and suitable remedial works, to be paid for by the developer, agreed;
    ii) A scheme of signing of the heavy vehicle route to the site agreed with advice/warning signs at appropriate points;
    iii) A programme of works and details of measures for the protection of rights of way that may be affected by the development hereby permitted

    The development shall be carried out strictly in accordance with the approved Construction Traffic Management Plan.
11) Notwithstanding any information already submitted, prior to works commencing, the detailed design and construction of the Bailey bridge and access road from Parley Lane to the River Stour shall be submitted to, and approved in writing by, the Waste Planning Authority. The scheme shall include a working methodology, and details of the earthworks and levels, and works affecting watercourses and details of culverts. The development shall be carried out in strict accordance with the approved scheme.

APPEARANCES

FOR THE APPELLANT:

Stuart Lewis	Wessex Water
Janette Shaw	Senior Planner, Atkins, Consultant to Wessex Water
Sergio Perez	Wessex Water

FOR THE LOCAL PLANNING AUTHORITY:

Huw Williams	Acting Team Leader, Dorset County Council

INTERESTED PERSONS:

Steve Davies	Bournemouth Borough Council
Margaret Phipps	Hurn Parish Council

DOCUMENTS PRESENTED AT THE HEARING

1. Draft Section 106 Unilateral Undertaking to be submitted to Dorset County Council

Appendix B.9 Application for the Grade Separation of Junction 10A Serving the M1 (October 2013)

Department for Transport

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Our Ref: TWA 8/1/5

30 October 2013

Pinsent Masons LLP
30 Crown Place
Earl Street
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EC2A 4ES

For the attention of Robbie Owen

Dear Sirs,

PLANNING ACT 2008
APPLICATION FOR THE PROPOSED M1 JUNCTION 10A (GRADE SEPARATION) ORDER

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to say that consideration has been given to the report of the Examining Authority, Alan T Gray MRICS DipTP MRTPI & Accredited Mediator, who conducted an examination into the application made by your clients, Luton Borough Council ("LBC") on 29 June 2012 for the M1 Junction 10a (Grade Separation) Order ("the Order") under sections 37, 114, 115, 117(4), 120 and 122 of the Planning Act 2008 ("the 2008 Act").

2. The examination of the application began on 16 November 2012 and was completed on 13 May 2013. The examination was conducted on the basis of written evidence submitted to the Examining Authority and by a series of hearings held in Luton between 13 February and 30 April 2013.

3. The Order would grant development consent for the grade separation of M1 Junction 10a at Kidney Wood on the south side of Luton, including the removal of the existing at-grade roundabout, the widening of the M1 Spur and the A1081 Airport Way, and the construction of new slip roads and roundabouts giving access to London Road. The Order would also authorise LBC to acquire, compulsorily or by agreement, land and rights in land and to use land temporarily for the purposes of the scheme. The scheme would allow traffic to flow without interruption between the M1 Spur and Airport Way, which leads to Luton Airport and residential, commercial and industrial areas to the south of Luton.

4. Enclosed with this letter is a copy of the Examining Authority's report. The proposed development is described in section 2 of the report. The Examining Authority's findings are set out in sections 3 to 6 of the report, and his overall conclusions and recommendation are at section 7.

Summary of the Examining Authority's recommendation

5. The Examining Authority recommended that the Order be made, in the form set out in Appendix E to his report.

Summary of Secretary of State's decision

6. **The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this application.** This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Secretary of State's consideration

7. The Secretary of State's consideration of the Examining Authority's report is set out in the following paragraphs. All paragraph references, unless otherwise stated, are to the Examining Authority's report ("ER") and references to Requirements are to those in Schedule 2 to the Order, as set out in Appendix E to the ER.

Policy context

8. The Secretary of State has considered and agrees with the Examining Authority's appraisal of the policy context of this scheme as set out at ER 3.8-40. In particular, he agrees with the Examining Authority that, at the national level, the National Planning Policy Framework ("NPPF") offers broad support for a scheme of this nature in that it would promote economic growth, relieve congestion and ensure the vitality of Luton town centre; and that there is no significant conflict with the NPPF (ER 3.10-11, 3.40). He notes also the specific support for the scheme in the National Infrastructure Plan and the 2011 Treasury Autumn Statement (ER 3.12-14).

9. At the local level, the Secretary of State agrees with the Examining Authority that there is little conflict between the scheme and the Luton Local Plan 2001-2011 ("LLP"), the South Bedfordshire Local Plan Review 2004, and the emerging Development Strategy for Central Bedfordshire; and that such conflict as there is can be effectively mitigated (ER 3.16-3.26, 3.40). As regards the impact of the scheme on the availability of land for a replacement stadium for Luton Town Football Club, he agrees that the scheme would not be in serious conflict with the relevant LLP policy for the reasons given by the Examining Authority (ER 3.29-34).

10. The Secretary of State notes that all of the land required for the scheme in Central Bedfordshire is designated Green Belt. Having regard to section 9 of the NPPF, he agrees with the Examining Authority that, since the scheme is local transport infrastructure and must be located at and around the existing junction which lies in the Green Belt, it would not be inappropriate development in the Green Belt. He agrees also that the scheme would accord with the Green Belt's original purpose of urban containment and that, taking into account the limited and temporary nature of the adverse visual impact of constructing the scheme, it would not detract from the openness of the Green Belt (ER 3.35-39, 4.107-109).

The need for and the costs and benefits of the scheme

11. The Secretary of State agrees with the Examining Authority that the relief of traffic congestion, taken with the additional capacity for proposed development and associated economic growth, creates a sound need for the scheme, which is supported by the policy findings referred to above (ER 4.3-4). He notes that the Examining Authority has tested

the methodology and assumptions used in LBC's business case for the scheme and agrees with his conclusion that the scheme would offer net benefits to users and represents good Value for Money (ER 4.5-18).

Scheme design and alternatives

12. The Secretary of State notes that during the evolution of the scheme there had been extensive and repeated consultations with stakeholders on how to meet the need for additional capacity at Junction 10a. Like the Examining Authority, he is satisfied that the options were properly considered during this process (ER 4.19-28). With regard to the representations relating to the design of the scheme the Secretary of State agrees that, for the reasons given by the Examining Authority, none of the proposed alternatives or modifications to the scheme should be pursued (ER 4.29-47).

Socio-economic impacts

13. The Secretary of State notes the Examining Authority's finding that there are substantial employment sites in the area whose potential is likely to be delayed or frustrated by the lack of capacity in Junction 10a. He agrees with the Examining Authority that by contributing to improved accessibility to Luton and the strategic road network, the scheme would support economic growth opportunities and sustain regeneration through new development. He accordingly agrees that the socio-economic benefits of the scheme would contribute very significantly to the public interest (ER 4.48-59).

Environmental impacts

Geology and soils

14. The Secretary of State notes that for contractual reasons it has not been possible to identify or measure the environmental consequences of transporting by road 115,000m^3 of spoil from the development site. He nevertheless agrees with the Examining Authority that measures such as the Code of Construction Practice ("CoCP") and the Traffic Management Plan are capable of delivering the necessary mitigation. He agrees furthermore that the estimated total number of spoil lorries would be insignificant as a proportion of total traffic flows on Airport Way and the M1 Spur which are the routes likely to be used by such traffic (ER 4.67-4.75). In these circumstances, the Secretary of State does not consider that it is necessary at this stage to identify the exact destination or routeing of spoil lorries for the purposes of reaching a decision on the scheme.

Noise and vibration

15. The Secretary of State agrees with the Examining Authority's assessment that the scheme would give rise to no significant vibration effects during construction or operation (ER 4.76). He also agrees with the Examining Authority that satisfactory mitigation of the unavoidable noise impacts of constructing the scheme could be secured by way of the CoCP and the Construction Environmental Management Plan ("CEMP") (ER 4.77-78, 4.82). As for operational noise, given that in the long term no more than minor increases would be experienced at a few receptors, the Secretary of State agrees further that there is no need to mitigate those impacts of the scheme (4.79-83).

Air quality

16. The Secretary of State agrees with the Examining Authority that during construction implementation of the CEMP and the Dust Management Plan would effectively mitigate adverse impacts at sensitive receptors under normal circumstances. He notes also the Examining Authority's conclusion that in operation the scheme would, overall, have a slight/moderate beneficial effect on air quality at locations where baseline conditions are already within the National Air Quality Objectives (ER 4.84-88).

Landscape and visual effects

17. The Secretary of State has considered and agrees with the Examining Authority's assessment of the landscape, townscape and visual effects of the scheme and the mitigation measures proposed by LBC, as set out at ER 4.89-105. In particular, he agrees that overall the scheme would have a maximum effect on landscape character in the Opening Year of moderate significance, declining to slight by Year 15 as a consequence of the mitigation measures that would be secured by the Requirements (ER 4.89-94). He agrees also that the maximum adverse visual impact would occur at Newlands Farm which lies very close to the scheme, where the impact would be substantial/moderate adverse in the Opening Year, reducing to slight/negligible by Year 15 once mitigation planting had matured (ER 4.96-99). The Secretary of State accordingly agrees with the Examining Authority that, weighed against the positive benefits of the scheme, the limited adverse landscape and visual impacts that would remain after mitigation are broadly acceptable (ER 4.100).

Cultural heritage and archaeology

18. The Secretary of State agrees with the Examining Authority that the visual and aural impacts of the scheme would have very little impact on the setting of the heritage assets at Luton Hoo, and that any such impact would be effectively mitigated as intervening planting matured (ER 4.110-118). He agrees also with the Examining Authority that, in relation to archaeological remains within or near the site of the scheme which might be adversely affected during the construction phase, the mitigation strategy that would be secured by the Requirements is appropriate for safeguarding them (ER 4.120-123).

Ecology and nature conservation

19. The Secretary of State notes that the scheme's construction phase could result in significant impacts on ecological resources as a result of disturbance, fragmentation, pollution and direct loss of hedges, trees and woodland. However, he agrees with the Examining Authority that following mitigation the residual long-term effect would be slight adverse. He notes also in this context that Natural England has no objections to the scheme and he agrees with the Examining Authority that Natural England's mitigation concerns are adequately addressed by the Order. The Secretary of State is accordingly satisfied that, despite some conflict with local nature conservation and biodiversity policies, the significance of the impact on ecological interests is not sufficient to stand in the way of the scheme and the benefits it would bring in the wider public interest (ER 4.124-133).

Infrastructure Planning (Environmental Impact Assessment) Regulations 2009

20. The Secretary of State is satisfied overall that, although there would be some significant adverse environmental impacts of implementing the scheme, they could be

adequately mitigated through design and construction, and that implementation of the proposed mitigation measures would be secured by the Requirements (ER 4.63, 4.136). He confirms for the purposes of regulation 3(2) of the above Regulations that he has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations. For the purposes of regulation 23(2)(d)(iii), the Secretary of State considers that the main measures to avoid, reduce and, if possible, offset the major adverse environmental impacts of scheme are the CoCP, the CEMP and the other plans that would require approval by the relevant planning authority under the Requirements (see ER 4.65-66).

Conclusions on the case for development consent

21. The Secretary of State agrees with the Examining Authority that LBC has made a strong case for the scheme. He agrees that taking into account the need for additional highway capacity, the socio-economic impact of the scheme and the broad policy support for the proposals, the benefits of the scheme outweigh its potentially adverse environmental impacts which could be satisfactorily mitigated (ER 4.134-138). He has therefore concluded that development consent should be given for the scheme.

Compulsory acquisition

22. The Secretary of State has considered the compulsory acquisition powers sought by LBC against the tests concerning compulsory acquisition in sections 122 and 123 of the 2008 Act and relevant guidance, and has considered the one outstanding objection to compulsory acquisition from an Affected Person. He agrees with the Examining Authority for the reasons given that the proposed development is for a legitimate purpose; sufficient resources are likely to be available to fund the scheme; a clear purpose has been identified for each plot of land and no more land is to be acquired than is reasonably necessary for the purposes of the scheme; the public benefits of the scheme outweigh the potential private dis-benefits; and there is a compelling case in the public interest for compulsory acquisition. The Secretary of State also agrees with the Examining Authority that there is no substance in the remaining objection to compulsory acquisition and that, as far as human rights considerations are concerned, the examination process has ensured a fair and public hearing; any interference with human rights is proportionate and strikes a fair balance between the rights of the individual and the public interest; and compensation would be available in respect of any quantifiable loss (ER 5.11-19, 5.25-34, 7.2-3).

Draft Development Consent Order

23. The Secretary of State agrees with the Examining Authority that the various changes to the Order proposed by LBC during the course of the examination are appropriate and necessary (ER 6.10-15). He agrees also that, subject to following qualifications, the further amendments explained by the Examining Authority at ER 6.16-6.37 are justified for the reasons given and should be incorporated in the Order. The qualifications are that:

- the words “unless otherwise agreed in writing by the relevant planning authority” should also be deleted in Requirement 8(1) in the interests of precision and reasonableness, for the reasons given by the Examining Authority at ER 6.30-35; and

- Requirement 18 should be further amended by the deletion of the words “any amendments to”, so as to be consistent with the Examining Authority’s view that the Order should not sanction subsequent amendments by informal arrangements (see ER 6.31).

24. The Secretary of State has also decided to make the following additional modifications to the form of the Order set out in Appendix E to the Examining Authority’s report:

- in article 18 to insert paragraph (4) to make clear that the compulsory acquisition powers in the Order do not apply to Crown interests;

- in Requirements 3 and 4(2), to insert implementation provisions; and

- various minor drafting changes to the Order which do not materially alter its effect, including further changes to conform with the current practice for Statutory Instruments, changes in the interests of clarity and consistency, and changes to ensure that the Order has the intended effect.

He is satisfied that, subject to these further changes, the Order is appropriate for implementation of the scheme.

Secretary of State’s overall conclusions and decision

25. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the grade separation of Junction 10a of the M1. He considers in particular that relieving congestion and providing additional highway capacity in the vicinity of the junction would provide significant benefits. While recognising that the scheme would have a number of limited adverse impacts as identified by the Examining Authority, taking into account the mitigation measures that would be secured by the Order he does not consider that any of those impacts would be unacceptable. The Secretary of State has concluded that, overall, the benefits of the scheme clearly outweigh its likely adverse impacts.

26. The Secretary of State has accordingly decided to accept the Examining Authority’s recommendation at ER 7.5 and is today making the Order granting development consent and imposing the Requirements as proposed by the Examining Authority, but subject to the modifications referred to at paragraphs 23 and 24 above.

27. The Secretary of State confirms that, in reaching this decision, he has had regard to the local impact report prepared jointly by LBC and Central Bedfordshire Council, any matters prescribed by Regulations under the 2008 Act that are relevant to the proposed development, and any other matters which he considers important and relevant to his decision, as required by section 105 of the 2008 Act (decisions in cases where no National Policy Statement has effect).

Challenge to decision

28. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

29. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours faithfully,

Martin Woods

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission or the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks from the date when the Order is published. The M1 Junction 10a (Grade Separation) Order 2013 (as made) is being published on the Planning Inspectorate website at the following address:

http://infrastructure.planningportal.gov.uk/projects/eastern/m1-junction-10a-grade-separation-luton/

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).

STATUTORY INSTRUMENTS

2013 No. 0000

INFRASTRUCTURE PLANNING

The M1 Junction 10a (Grade Separation) Order 2013

Made - - - - *30th October 2013*

Coming into force - - *20th November 2013*

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An application has been made to the Secretary of State, in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**a**), for an order under sections 37, 114, 115, 117(4), 120 and 122 of the Planning Act 2008(**b**) ("the 2008 Act").

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**).

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 122 of, and paragraphs 1 to 3, 10 to 17, 24, 26, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the M1 Junction 10a (Grade Separation) Order 2013 and comes into force on 20th November 2013.

Interpretation

2.—(1) In this Order—

(**a**) S.I. 2009/2264.
(**b**) 2008 c. 29.
(**c**) S.I. 2010/103.

"the 1961 Act" means the Land Compensation Act 1961(**a**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**b**);

"the 1980 Act" means the Highways Act 1980(**c**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**d**);

"the 1990 Act" means the Town and Country Planning Act 1990(**e**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**f**);

"the 2008 Act" means the Planning Act 2008;

"address" includes any number or address used for the purposes of electronic transmission;

"apparatus" has the same meaning as in Part 3 of the 1991 Act;

"the authorised development" means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

"the book of reference" means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in the 1980 Act;

"compulsory acquisition notice" means a notice served in accordance with section 134 of the 2008 Act;

"demolition" means destruction and removal of existing infrastructure, buildings and the like required to facilitate, or which are incidental to, construction of the Works described in Schedule 1 (the authorised development); and such demolition may occur on one occasion or over any period of time.

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(**a**) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1961 Act which are not relevant to this Order.

(**b**) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

(**c**) 1980 c. 66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c .71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c .11), by section 64(1) (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c .19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.

(**d**) 1984 c. 27.

(**e**) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.

(**f**) 1991. c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(b) by other means but while in electronic form;

"the environmental context plans" means the plans certified as the environmental context plans by the Secretary of State for the purposes of this Order;

"the environmental statement" means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

"footpath" has the same meaning as in the 1980 Act;

"highway" and "highway authority" have the same meaning as in the 1980 Act;

"the land plans" means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

"the limits of deviation" means the limits of deviation referred to in article 5 (limits of deviation);

"maintain" includes inspect, repair, adjust, alter, remove or reconstruct and any derivative of "maintain" is to be construed accordingly;

"Order land" means the land shown on the land plans as within the limits of land to be acquired or used permanently and temporarily, and described in the book of reference;

"the Order limits" means the limits of deviation shown on the works plans, within which the authorised development may be carried out;

"owner", in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(**a**);

"the relevant planning authority" means Luton Borough Council in relation to land in its area and Central Bedfordshire Council in relation to land in its area, and "the relevant planning authorities" means both of them;

"the sections" means the sections and other plans certified as the sections by the Secretary of State for the purposes of this Order;

"special road" means a highway which is a special road in accordance with section 16 of the 1980 Act or by virtue of an order granting development consent;

"statutory undertaker" means a statutory undertaker for the purposes of section 127(8), 128(5) or 129(2) of the 2008 Act;

"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"the street plans" means the plans certified as the street plans by the Secretary of State for the purposes of this Order;

"tree preservation order" has the meaning given in section 198 of the 1990 Act;

"the tribunal" means the Lands Chamber of the Upper Tribunal;

"trunk road" means a highway which is a trunk road by virtue of—

(a) section 10 or 19(1) of the 1980 Act;

(b) an order or direction under section 10 of that Act;

(c) an order granting development consent; or

(d) any other enactment;

"undertaker" means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act and article 6 (benefit of Order);

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

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(**a**) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). .

"the works plans" means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are to be taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the street plans.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3. Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

Limits of deviation

5. In carrying out the authorised development the undertaker may—

(a) deviate laterally from the lines and situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and

(b) deviate vertically from the levels of the authorised development shown on the sections—

(i) to any extent not exceeding 1.5 metres upwards; and

(ii) to any extent downwards as may be found to be necessary or convenient.

Benefit of Order

6.—(1) Subject to article 7 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of Luton Borough Council.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

7.—(1) Subject to section 144 of the 2008 Act, the undertaker may, with the consent of the Secretary of State—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) are subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

PART 3

STREETS

Application of the 1991 Act

8.—(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway are treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major highway works if—

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or

(b) they are works which, had they been carried out by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts) or section 184 of that Act (vehicle crossings over footways and verges).

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works carried out under the powers of this Order—

section 56 (directions as to timing);

section 56A (power to give directions as to placing of apparatus);

section 58 (restrictions following substantial road works);

section 58A (restriction on works following substantial streetworks);

section 73A (power to require undertaker to re-surface street);

section 73B (power to specify timing etc. of re-surfacing);

section 73C (materials, workmanship and standard of re-surfacing);

section 78A (contributions to costs of re-surfacing by undertaker); and

Schedule 3A (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary

nature by the undertaker under the powers conferred by article 14 (temporary stopping up of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act referred to in paragraph (4) are—

section 54 (advance notice of certain works), subject to paragraph (6);

section 55 (notice of starting date of works), subject to paragraph (6);

section 57 (notice of emergency works);

section 59 (general duty of street authority to co-ordinate works);

section 60 (general duty of undertakers to co-operate);

section 68 (facilities to be afforded to street authority);

section 69 (works likely to affect other apparatus in the street);

section 75 (inspection fees);

section 76 (liability for cost of temporary traffic regulation); and

section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 9 (construction and maintenance of new, altered or diverted streets) is to—

(a) affect the operation of section 87 of the 1991 Act (prospectively maintainable highways), and the undertaker is not by reason of any duty under that article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or

(b) have effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

Construction and maintenance of new, altered or diverted streets

9.—(1) Subject to paragraph (2), the streets authorised to be constructed, altered or diverted under this Order are to be highways maintainable at the public expense, and unless otherwise agreed with the highway authority in whose area those streets lie are to be—

(a) maintained by and at the expense of the undertaker for a period of 12 months from their completion; and

(b) at the expiry of that period, by and at the expense of the highway authority, provided that the works concerned have been completed to the reasonable satisfaction of the highway authority, and in the case of Work No. 1, article 10(1) has taken effect.

(2) Where a street which is not and is not intended to be a highway maintainable at the public expense is constructed, altered or diverted under this Order, the street (or part of the street as the case may be), unless otherwise agreed with the street authority, is to be —

(a) maintained by and at the expense of the undertaker for a period of 12 months from its completion; and

(b) at the expiry of that period by and at the expense of the street authority provided that the street has been completed to the reasonable satisfaction of the street authority.

(3) In any action against the undertaker in respect of damage resulting from its failure to maintain a street to which paragraph (2) applies, section 58 of the 1980 Act applies as if that street were a highway maintainable at the public expense.

Classification of roads

10.—(1) On a date to be determined by the undertaker, and subject to the procedures in paragraph (2) being satisfied—

(a) the Watford and South of St Albans—Redbourn—Kidney Wood, Luton, Special Roads Scheme 1957 is varied as follows—

(i) for Article 1A substitute—

"The centre line of the special road is indicated in blue on the plan numbered F/D121475/IPC/SR1/001 and marked M1 Junction 10A Grade Separation Variation of Special Road Status, signed by authority of the Secretary of State for Transport and deposited at Deposited Documents Service, Department for Transport, Room F13, Ashdown House, Sedlescombe Road North, St. Leonards-on-Sea, East Sussex, TN37 7GA"; and

(ii) for the Schedule to that Scheme, after the "The Route of the Special Road", substitute—

"From a point on the former London-Aylesbury-Warwick-Birmingham Trunk road (A.41) near Watford in the County of Hertfordshire approximately 350 yards south-east of the centre point of the bridge carrying the said trunk road over the River Colne in a general north-westerly direction to Junction 10 of the M1 Motorway at Slip End, Luton.";

(b) subject to sub-paragraph (c), the highways in respect of which special road status has been removed by virtue of sub-paragraph (a) are to be trunk roads for which the Secretary of State is the highway authority and are to be classified as the A1081 trunk road; and

(c) the section of highway between points A and B on sheet 2 of the street plans, being from the point where the existing M1 Spur road meets London Road at Kidney Wood Roundabout for a distance of approximately 195 metres in a westerly direction, is to cease to be trunk road, is to be classified as the A1081, and is to become—

(i) a principal road for the purpose of any enactment or instrument which refers to highways classified as principal roads; and

(ii) a classified road for the purpose of any enactment or instrument which refers to highways classified as classified roads,

as if such classification had been made under section 12(3) of the 1980 Act.

(2) Prior to the date on which paragraph (1) is to take effect, the undertaker is to—

(a) notify the Secretary of State in writing of the date on which paragraph (1) is to take effect; and

(b) publish in The London Gazette, and in one or more newspapers circulating in the vicinity of the authorised development, notification of the date on which paragraph (1) takes effect, and the general effect of that paragraph.

(3) Upon completion of the authorised development, the following sections of highway are to be classified as the A1081, and are to be principal roads and classified roads for the purpose of any enactment or instrument which refers to highways classified as principal roads and classified roads, as if such classification had been made under section 12(3) of the 1980 Act—

(a) Kidney Wood Eastbound Diverge Slip Road, from the end of the nosing of its taper from A1081 Airport Way (previously M1 Spur) to its junction with the give way line of Kidney Wood Northern Roundabout, a distance of approximately 241 metres;

(b) Kidney Wood Eastbound Merge Slip Road, from its junction with Kidney Wood Northern Roundabout to the start of the nosing of its taper onto A1081 Airport Way, a distance of approximately 187 metres;

(c) Kidney Wood Westbound Diverge Slip Road, from the end of its taper from A1081 Airport Way to its junction with the give way line of Kidney Wood Southern Roundabout, a distance of approximately 331 metres;

(d) Kidney Wood Westbound Merge Slip Road, from its junction with Kidney Wood Southern Roundabout to the start of the nosing of its taper onto A1081 Airport Way (previously M1 Spur), a distance of approximately 310 metres;

(e) Kidney Wood Northern Roundabout, for the extent of its circulatory carriageway;

(f) the A1081 London Road Link, from its junction with Kidney Wood Southern Roundabout to its junction with Kidney Wood Northern Roundabout, a distance of approximately 502 metres;

(g) Kidney Wood Southern Roundabout, for the extent of its circulatory carriageway; and

(h) the A1081 London Road (South), from its junction with the give way line of Kidney Wood Southern Roundabout to the centreline of its junction with Newlands Road, a distance of approximately 300 metres.

Clearways

11.—(1) This article has effect upon completion of the authorised development.

(2) For paragraph 70 of Schedule 1 to the Various Trunk Roads (Prohibition of Waiting) (Clearways) Order 1963(**a**), substitute—

"Between a point 150 yards north of its junction with West Hyde Road, Kinsbourne Green and a point 181 yards south of the centre of its junction with Newlands Road, a distance of approximately 1.39 miles.".

(3) Subject to paragraph (4), no person is to cause or permit any vehicle to wait on any part of a road specified in Schedule 3 (clearways), other than a lay-by, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(4) Nothing in paragraph (3) applies—

(a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—

(i) the removal of any obstruction to traffic;

(ii) the maintenance, improvement, reconstruction or operation of the road;

(iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any telecommunications apparatus as defined in Schedule 2 to the Telecommunications Act 1984(**b**); or

(iv) any building operation or demolition;

(b) in relation to a vehicle being used—

(i) for police, ambulance, fire and rescue authority or traffic officer purposes;

(ii) in the service of a local authority, a safety camera partnership or the Vehicle and Operator Services Agency in pursuance of statutory powers or duties;

(iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(**c**); or

(iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000(**d**); and

(c) in relation to a vehicle waiting when the person in control of it is—

(i) required by law to stop;

(ii) obliged to stop in order to avoid an accident; or

(iii) prevented from proceeding by circumstances outside the person's control; or

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(**a**) S.I. 1963/1172.
(**b**) 1984 c. 12.
(**c**) 1991 c. 56.
(**d**) 2000 c. 26.

(d) to any vehicle selling or dispensing goods to the extent that the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispersed.

(5) Paragraphs (2) to (4) have effect as if made by traffic regulation order under the 1984 Act, and their application may be varied or revoked by such an order or by any other enactment which provides for the variation or revocation of such orders.

(6) In this article, "traffic officer" means an individual designated under Section 2 (designation of traffic officers) of the Traffic Management Act 2004(**a**).

Speed limits

12.—(1) From the date determined in accordance with article 10(1) and (2), the Schedule to the M1 Motorway (Junctions 6A to 10) (Variable Speed Limits) Regulations 2011(**b**) is amended in accordance with Part 1 of Schedule 4 (speed limits).

(2) Upon completion of the authorised development—

(a) paragraph 41 of the Schedule to the County of Bedfordshire (Principal Roads) (De-restriction) Order 1988 is revoked;

(b) the Borough of Luton (Speed Limits) Order 2011 is varied as follows—

(i) in Schedule 3, omit "London Road" from the "road" column, and from the corresponding entry in the "length subject to speed limit" column, omit "From a point 10 metres south-east of the southern boundary of No. 151 London Road to a point 8 metres north of the give-way line at Kidney Wood Roundabout"; and

(ii) in Schedule 4, replace "New Airport Way" with "A1081 Airport Way (previously described as New Airport Way)", and replace the corresponding entry in the "length subject to speed limit" column with "The dual carriageway length from a point immediately below the centre of the Capability Green over-bridge to a point 150 metres south-west of the centre point on Park Street bridge together with the Capability Green eastbound merge slip road from the end of the merge nosing at its junction with the A1081 Airport Way, south-westwards for a distance of 90 metres and the Capability Green westbound diverge slip road from the start of the diverge nosing at its junction with the A1081 Airport Way to its junction with the Capability Green southern roundabout, a distance of 410 metres";

(c) no person is to drive any motor vehicle at a speed exceeding 40 miles per hour in the lengths of roads identified in Part 2 of Schedule 4 to this Order; and

(d) no person is to drive a motor vehicle at a speed exceeding 50 miles per hour in the lengths of roads identified in Part 3 of Schedule 4 to this Order.

(3) No speed limit imposed by this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(**c**) when used in accordance with regulation 3(5) of those regulations.

(4) The speed limits imposed by this article may be varied or revoked by any enactment which provides for the variation or revocation of such matters.

Permanent stopping up of streets

13.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Schedule 5 (streets to be stopped up) to the extent specified and described in column (3) of that Schedule.

(**a**) 2004 c. 18.
(**b**) S.I. 2011/1015.
(**c**) S.I. 2011/935.

(2) No street specified in columns (1) and (2) of Schedule 5 is to be wholly or partly stopped up under this article unless—

(a) the new street to be constructed and substituted for it, which is specified in column (4) of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use; or

(b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) Where a street has been stopped up under this article—

(a) all rights of way over or along the street so stopped up are extinguished; and

(b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article is subject to article 28 (apparatus and rights of statutory undertakers in stopped up streets).

Temporary stopping up of streets

14.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

(a) divert the traffic from the street; and

(b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limitation on the scope of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 6 (temporary stopping up of streets) to the extent specified in column (3) of that Schedule.

(5) The undertaker must not temporarily stop up, alter or divert—

(a) any street specified as mentioned in paragraph (4) without first consulting the street authority; and

(b) any other street, without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld,

except that this paragraph does not apply where the undertaker is the street authority.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b), the street authority is deemed to have granted that consent.

Access to works

15. The undertaker may, for the purposes of the authorised development—

(a) form and lay out means of access, or improve existing means of access, in the locations and of the nature specified in Schedule 7 (access to works); and

(b) with the approval of the relevant planning authority after consultation with the highway authority (where the highway authority is not the undertaker), form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

16.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991 (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works under the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010(**a**).

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(**b**) have the same meaning as in that Act.

(**a**) S.I. 2010/675
(**b**) 1991 c. 57

Authority to survey and investigate land

17.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

(a) survey or investigate the land;

(b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

(a) must, if so required, before entering the land produce written evidence of authority to do so; and

(b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

(a) on land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

18.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate or is incidental to it, or is required as replacement land.

(2) This article is subject to paragraph (3), paragraph (1) of article 19 (time limits for exercise of authority to acquire land compulsorily and to use land temporarily), paragraph (2) of article 20 (compulsory acquisition of rights etc.) and paragraph (9) of article 25 (temporary use of land for carrying out the authorised development).

(3) Paragraph (1) does not apply to the land numbered 2, 2A and 2G in the book of reference and on the land plans.

(4) In relation to Crown Land, the powers in paragraph (1) are limited to interests in that land which for the time being are held otherwise than by or on behalf of the Crown.

Time limits for exercise of authority to acquire land compulsorily and to use land temporarily

19.—(1) After the end of the period of 5 years beginning on the day on which this Order comes into force—

(a) no notice to treat is to be served under Part 1 of the 1965 Act; and

(b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(**a**) as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 25 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights etc.

20.—(1) Subject to paragraphs (2) and (5) the undertaker may acquire compulsorily such rights over the Order land, or impose restrictive covenants affecting the land, as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 8 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land, or the imposition of restrictive covenants affecting the land, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights) where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2) the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of land numbered 3B and 3D in the book of reference and on the land plans.

Private rights over land

21.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

(a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

(a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or

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(**a**) 1981 c. 66.

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over Order land owned by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 27 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

22.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, has effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there is substituted—

"(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

(b) published in a local newspaper circulating in the area in which the land is situated.".

(4) In that section, in subsection (2), for "(1)(b)" there is substituted "(1)" and after "given" there is inserted "and published".

(5) In that section, for subsections (5) and (6) there is substituted—

"(5) For the purposes of this section, a person has a relevant interest in land if—

(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.".

(6) In section 5 (earliest date for execution of declaration)—

(a) in subsection (1), after "publication" there is inserted "in a local newspaper circulating in the area in which the land is situated"; and

(b) subsection (2) is omitted.

(7) In section 7(1)(a) (constructive notice to treat), the words "(as modified by section 4 of the Acquisition of Land Act 1981)" are omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil or air-space only

23.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the air-space over the land referred to in article 18 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of or rights in the subsoil of or the air-space over land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

Rights under or over streets

24.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

25.—(1) The undertaker may, in connection with the carrying out of the authorised development but subject to article 19(1)(time limits for exercise of authority to acquire land compulsorily and to use land temporarily)—

(a) enter on and take temporary possession of—

(i) the land specified in columns (1) and (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and

(ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;

(b) remove any buildings and vegetation from that land;

(c) construct temporary works (including the provision of means of access) and buildings on that land; and

(d) construct any permanent works specified in relation to that land in column (3) of Schedule 10, or any other mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 10; or

(b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

(a) replace a building removed under this article;

(b) restore the land on which any permanent works have been constructed under paragraph (1)(d); or

(c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from acquiring new rights or imposing restrictive covenants over any part of the land specified in Schedule 8.

(10) Where the undertaker takes possession of land under this article, it is not required to acquire the land or any interest in it.

(11) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised development

26.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the authorised development, the undertaker may—

(a) enter upon and take temporary possession of any of the Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and

(b) construct such temporary works (including the provision of means of access) and buildings on that land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, it is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to the acquiring authority) applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article "the maintenance period", in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

27.—(1) Subject to paragraph (2), the undertaker may extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

(2) Paragraph (1) does not have effect in relation to apparatus in respect of which the following provisions apply—

(a) Part 3 (street works in England and Wales) of the 1991 Act;

(b) article 28 (apparatus and rights of statutory undertakers in stopped up streets); or

(c) Parts 2 and 3 of Schedule 12 (protective provisions).

Apparatus and rights of statutory undertakers in stopped up streets

28.—(1) Where a street is stopped up under article 13 (permanent stopping up of streets) any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 13 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

(a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or

(b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

(a) the execution of the relocation works required in consequence of the stopping up of the street; and

(b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

(a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined to be necessary by arbitration in accordance with article 37 (arbitration), then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed

more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

(a) the allowable costs of the relocation works are to be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and

(b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

"apparatus" has the same meaning as in Part 3 of the 1991 Act;

"relocation works" means work carried out, or apparatus provided, under paragraph (2); and

"statutory utility" means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(**a**).

Recovery of costs of new connections

29.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 27 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 27, any person who is—

(a) the owner or occupier of premises the drains of which communicated with that sewer; or

(b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 28 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

"public communications provider" has the same meaning as in section 151(1) of the Communications Act 2003; and

"public utility undertaker" has the same meaning as in the 1980 Act.

(**a**) 2003 c. 21.

PART 6

OPERATIONS

Felling or lopping trees

30.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

Trees subject to tree preservation order

31.—(1) The undertaker may fell or lop any tree described in Schedule 11 (trees subject to tree preservation orders) and identified on the environmental context plans, cut back its roots or undertake such other works described in column (3) of that Schedule if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

(a) the undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and

(b) the duty imposed by section 206(1) of the 1990 Act (replacement of trees) does not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

PART 7

MISCELLANEOUS AND GENERAL

Operational land for purposes of the 1990 Act

32. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

33.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**a**) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(**b**); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded) do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

34. Schedule 12 (protective provisions) has effect.

Certification of plans etc.

35.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

(a) the book of reference;

(b) the environmental statement;

(c) the land plans;

(d) the works plans;

(e) the street plans;

(f) the sections; and

(g) the environmental context plans,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

36.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post;

(**a**) 1990 c. 43.
(**b**) 1974 c.40.

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(**a**) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled only where—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

(d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

(**a**) 1978 c. 30.

Arbitration

37. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, the parties must endeavour to resolve all matters in dispute as soon as practicable and in the event of their failing to resolve such matters any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Traffic regulation

38.—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

(a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;

(b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;

(c) authorise the use as a parking place of any road;

(d) make provision as to the direction or priority of vehicular traffic on any road; and

(e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The power conferred by paragraph (1) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (6) any prohibition, restriction or other provision made under paragraph (1) may have effect both before and after the expiry of that period.

(3) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (4).

(4) The undertaker must not exercise the powers conferred by paragraph (1) unless it has—

(a) given not less than—

(i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or

(ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated; and

(b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(5) Any prohibition, restriction or other provision made by the undertaker under paragraph (1)—

(a) has effect as if duly made by, as the case may be—

(i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the road is situated, as an order under section 32 of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and

(b) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(**a**) (road traffic contraventions subject to civil enforcement).

(6) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (1) within a period of 24 months from the opening of the authorised development.

(7) Before exercising the powers conferred by paragraph (1) the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

(8) Expressions used in this article and in the 1984 Act has the same meaning in this article as in that Act.

(9) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

Procedure in relation to approvals etc. under Schedule 2

39.—(1) Where an application is made to the relevant planning authorities or either of them for any consent, agreement or approval required by a requirement under Schedule 2 (requirements), the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

(a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions); and

(b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

Signed by authority of the Secretary of State for Transport

Martin Woods
Head of the Transport and Works Act Orders Unit
Department for Transport

30th October 2013

(**a**) 2004 c.18.

SCHEDULES

SCHEDULE 1

Articles 2 and 3

THE AUTHORISED DEVELOPMENT

In the administrative areas of Luton Borough Council and Central Bedfordshire Council—

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, and associated development within the meaning of section 115(2) of the 2008 Act, comprising:

Work No.1 — Construction of permanent highway (centred on grid reference TL 09169 18987) (1,332 metres in length) commencing at the M1 Junction 10 Roundabout, running in a north-easterly direction and terminating on the A1081 Airport Way at the Capability Green Overbridge, including—

(a) widening the existing carriageway on the M1 Spur and A1081 Airport Way to a three lane dual carriageway including maintenance lay bys;

(b) construction of new dual carriageway to provide a continuous link and remove the existing M1 Junction 10a at-grade roundabout (known as Kidney Wood Roundabout);

(c) construction of an un-segregated footway and cycleway between the proposed Kidney Wood Northern Roundabout and the Capability Green Junction, located in the eastbound verge;

(d) alterations to the infiltration pond to the west of the M1 Spur and north-east of Newlands Road, including the construction of a new private vehicular access from a point on the north-eastern highway boundary of Newlands Road approximately 435 metres to the north-west of its junction with A1081 London Road (south);

(e) provision of private pedestrian access to maintain highways equipment at:

(i) a point on the south-western highway boundary of Newlands Road approximately 30 metres to the north-west of the underbridge crossing of the M1 Spur;

(ii) a point on the south-western highway boundary of Newlands Road approximately 25 metres to the south-east of the underbridge crossing of the M1 Spur;

(iii) a point on the north-eastern highway boundary of Newlands Road approximately 20 metres to the north-west of the underbridge crossing of the M1 Spur; and

(iv) a point on the north-eastern highway boundary of Newlands Road approximately 30 metres to the south-east of the underbridge crossing of the M1 Spur;

(f) provision of average speed cameras;

(g) erection of overhead gantry signs;

(h) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and

(i) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.2 — Construction of permanent highway (1,115 metres in length) commencing at Newlands Roads junction with the A1081 London Road, running in a north-westerly direction to the proposed Kidney Wood Southern Roundabout, then running in a north-north-westerly direction through a proposed underbridge under the M1 Spur (85 metres in length), then proceeding in a north-westerly direction prior to going through a right hand curve to the proposed Kidney Wood Northern Roundabout, then proceeding in a northerly direction terminating on

London Road approximately 113 metres south of the centre of Ludlow Avenue's junction with London Road, including—

(a) construction of new single carriageway highway;

(b) improvements to the existing highways;

(c) construction of two new roundabout junctions;

(d) construction of footways and cycleways;

(e) construction of an underbridge and associated wing walls and retaining walls;

(f) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and

(g) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.3A — Construction of permanent highway (349 metres in length) commencing at the proposed Kidney Wood Southern Roundabout on the A1081 London Road proceeding in a northerly direction, then through a left hand curve to connect with the M1 Spur's westbound carriageway 455 metres north-east of M1 Junction 10 Roundabout, including—

(a) construction of a new single lane connector road with a hardshoulder;

(b) provision of average speed cameras; and

(c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.3B — Construction of permanent highway (391 metres in length) commencing on the A1081 Airport Way westbound carriageway 480 metres south-west of the Capability Green Overbridge proceeding in a south-westerly direction, then going through a left hand curve followed by a right hand curve before terminating at the proposed Kidney Wood Southern Roundabout on A1081 London Road, including—

(a) construction of new single lane connector road with a hardshoulder;

(b) provision of average speed cameras; and

(c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.4A — Construction of permanent highway (281 metres in length) commencing on the M1 Spur eastbound carriageway 544 metres north-east of the M1 Junction 10 Roundabout proceeding in a north-easterly direction then going through a left hand curve before terminating at the proposed Kidney Wood Northern Roundabout on London Road, including—

(a) construction of new two lane connector road;

(b) provision of average speed cameras; and

(c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway.

Work No.4B — Construction of permanent highway (225 metres in length) commencing at the proposed Kidney Wood Northern roundabout proceeding in a southerly direction then

going through a left hand curve to connect with the A1081 Airport Way eastbound carriageway 448 metres south-west of the Capability Green Overbridge, including—

(a) construction of new single lane connector road with hardshoulder;

(b) construction of a combined un-segregated footway and cycleway;

(c) provision of average speed cameras; and

(d) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No. **5** — Reconfiguration of the existing A1081 London Road (409 metres in length) to provide an access to Bull Wood Cottages, Kidneywood House and Bull Wood to be referred to as Old London Road (South), commencing from the proposed A1081 London Road (South), 150 metres north of its junction with Newlands Road, proceeding in an easterly direction, then going through a left hand curve before continuing in a northerly direction, then terminating 81 metres south of the existing M1 Junction 10a roundabout, including—

(a) construction of new single lane road and junction;

(b) construction of a turning head;

(c) construction works to narrow the existing carriageway to a single track road with passing places;

(d) construction of two private vehicular access points from the west highway boundary of Old London Road (South) to an area of landscaping, at approximately 180 metres and 370 metres to the north of its junction with A1081 London Road (South);

(e) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and

(f) drainage works, earthworks, pavement works, kerbing and paved areas work, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction and modification of the permanent highway;

Work No. **6** — Reconfiguration of the existing London Road (to be stopped up) and part of the adjoining agricultural field into amenity land, including—

(a) construction of a new private vehicular and pedestrian access to Kidney Wood at a point on the eastern highway boundary of London Road approximately 13 metres to the north of its junction with Kidney Wood Northern Roundabout;

(b) construction of a turning head;

(c) construction of works to widen the existing London Road footway to form a public footpath;

(d) landscaping works;

(e) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and

(f) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, works to control access and other works associated with the provision of the amenity land;

Work No 7 — Diversion of public footpath, requiring creation of new path (373 metres in length) commencing 20 metres north-east of Newlands Road proceeding in a north-easterly direction and then in a northerly direction terminating at the proposed A1081 London Road Link, 147 metres south-west of the proposed Kidney Wood Northern Roundabout, including—

(a) erection of footpath gates or stiles;

(b) erection of signing; and

(c) drainage works, earthworks, signing works, fencing works, and other works associated with the creation of the public footpath;

Work No 8 — Construction of a drainage pipe between Kidney Wood Southern Roundabout and the proposed drainage ponds, including—

(a) construction of piped drainage outfall; and

(b) drainage works, earthworks, landscaping works and other works associated with the construction of a drainage pipe;

Work No 9 — Works to excavate existing old tip area down to sound ground and fill back up to original ground level with engineering fill, including—

(a) excavation to sound ground;

(b) fill to original ground levels with engineering fill;

(c) any earthworks strengthening measures as may be required; and

(d) earthworks, drainage works, fencing works, landscaping works and other works associated with this work;

Work No.10 — Construction of drainage ponds, including—

(a) construction of attenuation pond;

(b) construction of infiltration basin;

(c) construction of private vehicular access from the north-eastern highway boundary of Newlands Road, from a point approximately 235 metres to the north-west of its junction with A1081 London Road (South), and construction of turning head and access tracks;

(d) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and

(e) drainage works, earthworks, signing works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the drainage ponds;

Work No 11 — Works to fill old borrow pit to original ground levels, including—

(a) excavation to sound ground;

(b) fill to original ground levels with engineering fill; and

(c) earthworks, drainage works, landscaping works and other works associated with filling the old borrow pit;

Work No 12 — Works to mitigate the impact of the proposed highway works on Kidney Wood, including—

(a) trimming, pollarding and coppicing of trees;

(b) clearance of vegetation, as required to construct the works;

(c) planting of a new boundary hedge;

(d) erection of a new fence to protect the hedge; and

(e) clearance works, fencing works, landscaping works and other works associated with mitigating the impact of the authorised development on Kidney Wood;

Work No 13 — Works to mitigate the impact of the proposed highway works on Bull Wood, including—

(a) trimming, pollarding and coppicing of trees;

(b) clearance of vegetation, as required to construct the works;

(c) erection of a new boundary fence; and

(d) clearance works, fencing works, landscaping works and other works associated with mitigating the impact of the authorised development on Bull Wood; and

in connection with the construction of any of those works, further development within the Order limits consisting of—

(i) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footway, cycle track or verge; and reducing the width of the carriageway of the street;

(ii) works required for the strengthening, improvement, maintenance, or reconstruction of any street;

(iii) ramps, means of access, footpaths, cycleways, embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, wing walls, highway lighting, fencing and culverts;

(iv) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street; works to place or maintain apparatus in a street; works to alter the position of apparatus, including mains, sewers, drains and cables;

(v) works to alter the course of, or otherwise interfere with a watercourse other than a navigable watercourse;

(vi) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;

(vii) works for the benefit or protection of land affected by the authorised development; and

(viii) such other works, including contractors' compounds, working sites, storage areas, temporary fencing and works of demolition, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development.

For the avoidance of doubt, any demolition preceding the Works is to be regarded as an integral part of the authorised development.

SCHEDULE 2

Article 3

REQUIREMENTS

Interpretation

1.—(1) In this Schedule—

"contaminated land plan" means a written scheme for the treatment of contaminated land during construction;

"dust management plan" means a written scheme for the attenuation of dust during construction;

"relevant highway authority" means the highway authority responsible for the highway in question; and

"stage" means a defined section (if any) of the authorised development, the extent of which has been submitted to and approved in writing by the relevant planning authority under requirement 3.

(2) References in this Schedule to numbered requirements are references to the corresponding numbered paragraph of this Schedule.

Time limits

2. The authorised development must not commence later than the expiration of 5 years beginning with the date that this Order comes into force.

Stages of authorised development

3. Where the authorised development is to be implemented in stages, none of the authorised development is to commence until a written scheme setting out all the stages of the authorised development has been submitted to and approved in writing by the relevant planning authority. The authorised development must be carried out in accordance with the approved scheme.

Scheme design changes and staging

4.—(1) The authorised development must be carried out in accordance with the scheme design shown on the works plans and the sections.

(2) No stage of the authorised development is to commence until written details of the layout, scale and external appearance of any proposed gantries relating to that stage have been submitted to and approved in writing by the relevant planning authority. The proposed gantries must be constructed in accordance with the approved details.

Ecology

5.—(1) None of the authorised development, including any site clearance works, is to commence until an ecological strategy relating to the Order land containing details of how the authorised development will affect areas of nature conservation interest and what mitigation, compensatory and enhancement measures, reflecting the environmental statement, need to be incorporated into the authorised development in order to protect and enhance those areas, has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved ecological strategy.

Protection of retained trees and shrubs during construction

6.—(1) No stage of the authorised development is to commence until for that stage written details, reflecting the mitigation measures included in the environmental statement, have been submitted to and approved in writing by the relevant planning authority for the safeguarding of trees, shrubs and hedgerows to be retained.

(2) The approved safeguarding measures must be implemented prior to the commencement of any demolition works, removal of topsoil or commencement of building operations and retained in position until the development is completed.

(3) The safeguarded areas must be kept clear of plant, building materials, machinery and other objects and the existing soil levels not altered.

Landscaping scheme

7.—(1) The authorised development must be landscaped in accordance with a written landscaping scheme, reflecting the environmental statement and incorporating ecological enhancement, mitigation and compensatory measures, that has been submitted to and approved in writing by the relevant planning authority. The landscaping scheme must be approved before the authorised development commences.

(2) The landscaping scheme must be in accordance with the ecological strategy approved under requirement 5, and must include details of all proposed hard and soft landscaping works for all land subject to development within the Order limits, including precise details and, where appropriate, samples relating to the following—

(a) for hard landscaping areas—

(i) proposed finished levels;

(ii) hard surfacing materials;

(iii) minor structures (e.g. street furniture, signs and lighting, to include the colouring of lighting columns);

(iv) retained historic landscape features and proposals for restoration, where relevant; and

(v) boundary treatments and all means of enclosure; and

(b) for soft landscaping areas—

(i) schedules and plans showing the location of proposed planting, noting species consistent with the ecological strategy, use of any species of local provenance, planting, size and proposed numbers and densities;

(ii) written specifications, schedules, and plans showing the proposed treatment and management of retained trees, shrubs and hedgerows;

(iii) services below ground, including drainage, pipelines, power and communication cables; and

(iv) written specifications associated with plant and grass establishment, including cultivation and other operations.

(3) An implementation timetable must be provided as part of the scheme that is consistent with the provisions set out in the approved ecological strategy.

Implementation and maintenance of landscaping

8.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under requirement 7 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice, including the Manual Of Contract Documents For Highway Works: Volume 1 Specification For Highway Works Series 3000 (05/01): Landscape And Ecology.

(2) Any tree, shrub or hedgerow planted as part of the approved landscaping that, within the period of three years after planting, is removed, dies or becomes, in the opinion of the relevant

planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives its written consent to any variation.

(3) If it becomes obvious that the original species and type were unsuitable for whatever reason, an appropriate alternative species may be specified, subject to the written consent of the relevant planning authority.

(4) Any tree, shrub or hedgerow which is retained and safeguarded during construction in accordance with requirement 6 must thereafter be maintained, and if necessary replaced, in accordance with this requirement, unless otherwise agreed in writing by the relevant planning authority.

Drainage

9.—(1) No stage of the authorised development is to be commenced until for that stage written details of the surface and foul water drainage system reflecting the mitigation measures included in the environmental statement, including where appropriate sustainable urban drainage solutions, have been submitted to and approved in writing by the relevant planning authority.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details.

Measures to protect the water environment

10.—(1) None of the authorised development is to commence until—

(a) a detailed site investigation has been carried out with respect to land within the Order limits to establish if contamination is present and to assess the degree and nature of contamination present and the action proposed to be taken to deal with any contamination that is identified;

(b) a risk assessment has been carried out to consider the potential for pollution of the water environment; and

(c) a water pollution prevention plan, reflecting the mitigation measures included in the environmental statement, has been submitted to and approved in writing by the relevant planning authority.

(2) The method and extent of the investigation and any measures or treatment to deal with contamination that is identified as a result must reflect the mitigation measures included in the environmental statement and be approved in writing by the relevant planning authority, following consultation with the Environment Agency and Thames Water Utilities Limited.

(3) The authorised development must be carried out—

(a) in accordance with the approved water pollution prevention plan referred to in sub-paragraph (1)(c); and

(b) incorporating any such measures or treatments as are approved under sub-paragraph (2)..

Flood risk assessment

11.—(1) None of the authorised development is to commence until a flood risk assessment reflecting the mitigation measures included in the environmental statement has been submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency.

(2) The authorised development must be carried out in accordance with any recommendations made in the flood risk assessment.

Archaeology

12.—(1) No stage of the authorised development is to commence until for that stage a written scheme for the archaeological investigation of land within the Order limits has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must identify areas where field work and/or a watching brief are required, and the appropriate measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works and/or watching brief carried out on site under the scheme must be by a suitably qualified person or body approved by the relevant planning authority.

(4) Any archaeological works and/or watching brief must be carried out in accordance with the approved scheme.

Construction traffic and access strategy

13.—(1) No stage of the authorised development is to commence until for that stage written details of construction traffic management measures and a travel plan for the contractor's workforce reflecting the mitigation measures included in the environment statement and including means of travel to construction sites and any parking to be provided, have been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved traffic management measures and travel plan.

Construction work and construction compounds

14.—(1) No stage of the authorised development is to commence until for that stage—

(a) written details of the type and location of screen fencing for the proposed construction compounds;

(b) written details of the type, specification and location of lighting around the compound areas and along the route during the construction phase of the authorised development;

(c) a scheme for the attenuation of noise and vibration during construction;

(d) a dust management plan; and

(e) a contaminated land plan,

in each case reflecting the mitigation measures included in the environmental statement, have been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved details and plans mentioned in sub-paragraph (1).

Site waste management plan

15.—(1) No stage of the authorised development is to commence until a site waste management plan for that stage, reflecting the mitigation measures included in the environmental statement, has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved plan mentioned in sub-paragraph (1).

Code of construction practice

16.—(1) No authorised development is to commence until a code of construction practice has been submitted to and approved in writing by the relevant planning authority.

(2) The code of construction practice must reflect the mitigation measures included in the environmental statement and the requirements relating to construction of the authorised development set out in this Schedule.

(3) The code of construction practice may incorporate the plans, schemes and details required to be approved in writing by other requirements set out in this Schedule.

(4) The authorised development must be carried out in accordance with the provisions of the code of construction practice..

Construction environmental management plan

17.—(1) No authorised development is to commence until a construction environmental management plan has been submitted to and approved in writing by the relevant planning authority.

(2) The construction environmental management plan must be prepared in accordance with the provisions of the approved code of construction practice, and must reflect the mitigation measures included in the environmental statement.

(3) The construction environmental management plan may incorporate the plans, schemes and details required to be approved in writing by other requirements set out in this Schedule.

(4) The authorised development must be carried out in accordance with the provisions of the construction environmental management plan.

Approved details

18. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details must reflect the mitigation measures included in the environmental statement.

Traffic management during construction

19.—(1) The authorised development must be implemented in accordance with a traffic management plan submitted to and approved in writing by each relevant highway authority, after consultation with the police, other emergency services and any other parties considered to be relevant stakeholders by the undertaker.

(2) The traffic management plan must be designed in accordance with relevant legislation, guidance and best practice, balancing the need to minimise disruption to the travelling public, protect the public and the workforce from hazards, and facilitate the economical construction of the authorised development.

(3) The plan must be approved before the authorised development commences.

SCHEDULE 3

Article 11

CLEARWAYS

The roads specified for the purposes of article 11(3) (clearways) are—

(a) M1 Spur/A1081 Airport Way dual carriageway (part of which was previously the M1 Spur) from its junction with the roundabout of Junction 10 of the M1 Motorway to Capability Green Overbridge, a distance of 1,338 metres;

(b) A1081 London Road from a point 165 metres south of the centre of Newlands Road at its junction with the A1081 London Road to Kidney Wood Northern Roundabout, including Kidney Wood Southern Roundabout and Kidney Wood Northern Roundabout, a distance of 1,130 metres;

(c) Kidney Wood Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with A1081 Airport Way (previously the M1 Spur) to the give way line of Kidney Wood Northern Roundabout, a distance of 286 metres;

(d) Kidney Wood Eastbound Merge Slip Road from its junction with Kidney Wood Northern Roundabout to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 224 metres;

(e) Kidney Wood Westbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to the give way line of the Kidney Wood Southern Roundabout, a distance of 395 metres;

(f) Kidney Wood Westbound Merge Slip Road from is junction with Kidney Wood Southern Roundabout to the end of the slip road nosing at its junction with A1081 Airport Way (previously the M1 spur), a distance of 350 metres;

(g) Capability Green Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with A1081 Airport Way to its junction with Capability Green Link Road, a distance of 169 metres;

(h) Capability Green Westbound Merge Slip Road from its junction with the Capability Green Southern Roundabout to the end of the slip road nosing at its junction with A1081 Airport Way, a distance of 153 metres;

(i) Capability Green Link Road from its junction with the Capability Green Northern Roundabout to its junction with the Capability Green Southern Roundabout, a distance of 191 metres; and

(j) Capability Green Southern Roundabout, for the extent of the circulatory carriageway.

SCHEDULE 4

Article 12

SPEED LIMITS

PART 1

M1 MOTORWAY

For the Schedule to the M1 Motorway (Junctions 6A to 10) (Variable Speed Limits) Regulations 2011(**a**) substitute—

"*SPECIFIED ROADS*

1. The specified roads are the—

(a) northbound carriageway of the M1 from marker post 33/4 to marker post 50/0;

(b) carriageways of the northbound slip roads;

(c) southbound carriageway of the M1 from marker post 50/0 to marker post 33/3; and

(d) carriageways of the southbound slip roads.

2. Any reference in this Schedule to—

(a) the letter "M" followed by a number is a reference to the motorway known by that name;

(b) the letter "A" followed by a number is a reference to the road known by that name; and

(c) a junction followed by a number is (unless the context otherwise requires) a reference to the junction of the M1 of that number.

3. In this Schedule—

"northbound slip roads" is a reference to the lengths of carriageway specified in paragraph 4;

"off-slip road" means a slip road intended for the use of traffic leaving the M1;

"on-slip road" means a slip-road intended for the use of traffic entering the M1;

"southbound slip roads" is a reference to the lengths of carriageway specified in paragraph 5; and

"zone sign" means a sign authorised by the Secretary of State under section 64 of the Road Traffic Regulation Act 1984(**b**) for the purpose of indicating that vehicles are entering, have entered or are leaving a specified road.

4. The northbound slip roads are as follows—

(a) the linking carriageways which connect the M25 at junction 21A with the M1 at junction 6A; these commence at the exits from the clockwise and anti-clockwise carriageways of the M25 and end at the junction with the northbound carriageway of the M1;

(b) the off-slip road which connects the northbound carriageway of the M1 with the westbound carriageway of the A414 at junction 7;

(c) the on-slip roads which connect the westbound and eastbound carriageways of the A414 at junction 8 with the northbound carriageway of the M1;

(**a**) S.I. 2011/1015.
(**b**) 1984 c. 27.

(d) the off-slip road which connects the northbound carriageway of the M1 with the A5 at junction 9;

(e) the on-slip road which connects the A5 at junction 9 with the northbound carriageway of the M1;

(f) the off-slip road which connects to the junction 10 roundabout; this commences at the junction of the off-slip road with the northbound carriageway of the M1 and ends at the entry to the Junction 10 roundabout; and

(g) the on-slip road leading to the northbound carriageway of the M1; this commences at the exit from the Junction 10 roundabout and ends at the junction of the on-slip road with the northbound carriageway of the M1.

5. The southbound slip roads are as follows—

(a) the off-slip road which connects (both directly and via the junction 10 roundabout) the southbound carriageway of the M1 with the eastbound carriageway of the Luton spur road; this commences at the junction of the off-slip road with the southbound carriageway of the M1 and ends at a point 45 metres to the north-west of the entry to the Junction 10 roundabout and at an equivalent point on the direct link;

(b) the on-slip road leading to the southbound carriageway of the M1 from the westbound carriageway of the Luton spur road (both directly and via the junction 10 roundabout); this commences at a point 100 metres to the south of the exit from the Junction 10 roundabout and at an equivalent point on the direct link and ends at the junction of the on-slip road with the southbound carriageway of the M1;

(c) the off-slip road which connects the southbound carriageway of the M1 with the A5 at junction 9;

(d) the on-slip road which connects the A5 at junction 9 with the southbound carriageway of the M1;

(e) the off-slip road which connects the southbound carriageway of the M1 with the westbound and eastbound carriageways of the A414 at junction 8;

(f) the on-slip road which connects the eastbound carriageway of the A414 at junction 7 with the southbound carriageway of the M1; and

(g) the linking carriageway which connects the M1 at junction 6A with the M25 at junction 21A; this commences at the exit from the southbound carriageway of the M1 and ends at the junctions with the clockwise and anti-clockwise carriageways of the M25.".

PART 2

ROADS SUBJECT TO 40 MPH SPEED LIMIT

(1) *Number*	*(2)* *Description*
1	A1081 London Road — the single carriageway road from 165 metres south of the centre of its junction with Newlands Road to its junction with the Kidney Wood Southern Roundabout, a distance of 466 metres.
2	Newlands Road — the single carriageway road from its junction with the A1081 London Road to a point 10 metres north of the centre of Stockwood under-bridge, a distance of 520 metres.

PART 3

ROADS SUBJECT TO 50 MPH SPEED LIMIT

(1) *No.*	*(2)* *Description*
1	A1081 Airport Way and the M1 Spur – the dual carriageway from its junction with the roundabout of Junction 10 of the M1 Motorway to a point immediately below the centre of the Capability Green over-bridge, a distance of 1,371 metres, including the circulatory carriageway of the Junction 10 roundabout, a distance of 590 metres.
2	M1 Junction 10 southbound diverge slip road from the end of the entry nosing for the segregated left turn lane to its junction with the roundabout of Junction 10 of the M1 Motorway, a distance of 45 metres, including the segregated left turn lane linking the southbound diverge and the M1 Spur eastbound carriageway.
3	M1 Junction 10 southbound merge slip road form its junction with the roundabout of Junction 10 of the M1 Motorway to the start of the segregated left turn lane exit nosing, a distance of 100 metres, including the segregated left turn lane linking the southbound merge and the M1 Spur westbound carriageway.
4	Kidney Wood Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with the M1 Spur to a point 39 metres north-east of the end of the diverge nosing, a distance of 79 metres.
5	Kidney Wood Eastbound Merge Slip Road from a point 60 metres south-west of the start of the merge nosing to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 100 metres.
6	Kidney Wood Westbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to a point 60 metres south-west of the end of the diverge nosing, a distance of 120 metres,
7	Kidney Wood Westbound Merge Slip Road from a point 74 metres north-east of the start of the merge nosing to the end of the slip road nosing at its junction with the M1 Spur, a distance of 114 metres.
8	Capability Green Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to a point 10 metres north-east of the end of the diverge nosing, a distance of 50 metres
9	Capability Green Westbound Merge Slip Road from a point 40 metres north-east of the merge nosing to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 80 metres.

SCHEDULE 5

Article 13

STREETS TO BE PERMANENTLY STOPPED UP

(1) *Area*	*(2)* *Street to be stopped up*	*(3)* *Extent of stopping up*	*(4)* *New Street to be substituted*
Luton Borough Council and Central Bedfordshire Council	A1081 London Road	Between points A and B on the street plans, sheet 3 (being from a point 10 metres to the south of the A1081 London Road junction with M1 Junction 10a Kidney Wood Roundabout, southwards for a distance of 80 metres).	Work Nos.1, 2, 3A, 3B, 4A, 4B and 5
	London Road	Between points C and D on the street plans, sheet 3 (being from the London Road junction with M1 Junction 10a Kidney Wood Roundabout, northwards for a distance of 220 metres), including private means of access to Kidney Wood at points J and K on those plans (being respectively 87 metres and 200 metres to the north of the junction with M1 Junction 10a Kidney Wood Roundabout).	Work Nos.1, 2, 3A, 3B, 4A, 4B, 5, 6(a) and 6(c)
Luton Borough Council	M1 Junction 10a Kidney Wood Roundabout	Between points E and F on the street plans, sheet 3 (being part of the circulatory carriageway, from a point 25 metres west of its junction with the centreline of London Road, eastwards for a distance of 45 metres)	Work Nos.1, 2, 3A, 3B, 4A, 4B and 5

(1) *Area*	*(2)* *Street to be stopped up*	*(3)* *Extent of stopping up*	*(4)* *New Street to be substituted*
	Public Footpath Ref FP43	Between points G and H on the street plans, sheet 3 (being from a point 20 metres from its junction with the north-eastern highway boundary of Newlands Road to its junction with the highway boundary of M1 Junction 10a Kidney Wood Roundabout).	Work No. 7
Central Bedfordshire Council	Newlands Road	At point I on the street plans, sheet 3 (being private means of access to an infiltration pond to the south-east of the M1 Spur and north-east of Newlands Road to be at a point on the north-eastern highway boundary of Newlands Road 435 metres to the north-west of the junction with A1081 London Road).	Work No.1(d)

SCHEDULE 6

Article 14

TEMPORARY STOPPING UP OF STREETS

(1) *Area*	*(2)* *Street to be temporarily stopped up*	*(3)* *Extent of temporary stopping up*
Luton Borough Council and Central Bedfordshire Council	M1 Junction 10 Roundabout	Night-time closures of all or part of the roundabout will be required to facilitate the safe construction of the authorised development
Central Bedfordshire Council	M1 Junction 10 Northbound Diverge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
	M1 Junction 10 Northbound Merge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	M1 Junction 10 Southbound Diverge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
Central Bedfordshire Council	M1 Junction 10 Southbound Merge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	M1 Junction 10 Southbound Diverge Dedicated Left Turn Lane	Short term closures will be required to facilitate the safe construction of the authorised development
Central Bedfordshire Council	M1 Junction 10 Southbound Merge Dedicated Left Turn Lane	Short term closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	M1 Spur	Night-time closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council	M1 Junction 10a Kidney Wood Roundabout	Night-time closures of all or short term closures of part of the roundabout will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	A1081 Airport Way	Night-time closures will be required to facilitate the safe construction of the authorised development

(1) *Area*	*(2)* *Street to be temporarily stopped up*	*(3)* *Extent of temporary stopping up*
	Capability Green Eastbound Diverge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
	Capability Green Westbound Merge	Night-time closures will be required to facilitate the safe construction of the authorised development
	A1081 London Road	Short term closures will be required to facilitate the safe construction of the authorised development.
	Newlands Road	Short term closures will be required to facilitate the safe construction of the authorised development.
Luton Borough Council	London Road	Short term closures will be required to facilitate the safe construction of the authorised development.
	Public Footpath FP43	Closure of the footpath for the duration of the works required to facilitate the safe construction of the authorised development
	Newlands Road	Field access to arable farmland to the north-west of the M1 Spur, north-east of Newlands Road and east of London Road, from a point on the north-eastern highway boundary of Newlands road 45 metres to the north-west of its underbridge crossing of the M1 Spur. To be stopped up during the duration of the works in order to allow the use of adjacent land for construction purposes

SCHEDULE 7

Article 15

ACCESS TO WORKS

(1) *Area*	*(2)* *Reference on street plans, sheet 3*	*(3)* *Description of access*
Luton Borough Council	T1	A temporary vehicular access from a point on the western highway boundary of London Road 165 metres to the north of its junction with the existing M1 Junction 10a Kidney Wood Roundabout. This temporary access is to provide access and egress for site vehicles and plant and site workers' personal vehicles to the construction compound and to the aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.
	T2	A temporary vehicular access to be provided from the north-western quadrant of the proposed Kidney Wood Northern Roundabout. This temporary access is to provide access and egress for site vehicles and plant and site workers' personal vehicles to and from the construction compound and to or from the aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.
	T3	A temporary vehicular access to be provided from the north-eastern highway boundary of Newlands Road, from a point 45 metres to the north-west of the underbridge crossing of the M1 Spur. This temporary access is to be located at an existing gated access to arable farmland, and is to provide access and egress for site vehicles and plant to or from those aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.

(1) *Area*	*(2)* *Reference on street plans, sheet 3*	*(3)* *Description of access*
	T4	A temporary vehicular access to be provided from a point on the south-western highway boundary of Newlands Road 30 metres to the north-west of the underbridge crossing of the M1 Spur. This temporary access is to provide access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the north-west of the M1 Spur and to the south-west of Newlands Road. Upon completion of the works, this access is to be replaced with a permanent pedestrian private means of access at the same location that is to provide access to maintain highways equipment.
Central Bedfordshire Council	T5	A temporary vehicular access to be provided from a point on the south-western highway boundary of Newlands Road 25 metres to the south-east of the underbridge crossing of the M1 Spur. This temporary access is to provide access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur and to the south-west of Newlands Road.
	T6	A temporary vehicular access to be provided from a point on the north-eastern highway boundary of Newlands Road 30 metres to the south-east of the underbridge crossing of the M1 Spur. This temporary access is to provide access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.

(1) *Area*	*(2)* *Reference on street plans, sheet 3*	*(3)* *Description of access*
	T7	A temporary vehicular access to be provided from a point on the north-eastern highway boundary of Newlands Road 235 metres to the north-west of its junction with the A1081 London Road (south). This temporary access is to provide access and egress for site vehicles and plant and site workers' personal vehicles to the satellite construction compound and to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.
	T8	A temporary vehicular access to be provided from a point on the western highway boundary of the existing A1081 London Road 305 metres to the south of its junction with M1 Junction 10a Kidney Wood Roundabout. This temporary access is to provide access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.
	T9	A temporary vehicular access to be provided from a point on the western highway boundary of the existing A1081 London Road 110 metres to the south of its junction with M1 Junction 10a Kidney Wood Roundabout. This temporary access is to provide access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.

SCHEDULE 8

Article 20(2)

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) *Number of land shown on land plans, sheet 1*	*(2)* *Purpose for which rights over the land may be acquired*
1A	Provision of diverted public right of way.
3B	Construction, inspection and maintenance of a buried drainage pipe.
3D	Construction, inspection and maintenance of a reinforced earthworks slope.

SCHEDULE 9

Article 20(4)

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(**a**) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

(a) for the words "land is acquired or taken" there are substituted the words "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for the words "acquired or taken from him" there are substituted the words "over which the right is exercisable or the restrictive covenant enforceable".

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

(a) for the word "part" in paragraphs (a) and (b) there are substituted the words "a right over or restrictive covenant affecting land consisting";

(b) for the word "severance" there are substituted the words "right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden";

(c) for the words "part proposed" there are substituted the words "right or restrictive covenant proposed"; and

(d) for the words "part is" there are substituted the words "right or restrictive covenant is".

(**a**) 1973 c. 26.

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

(a) the right acquired or to be acquired; or

(b) the land over which the right is or is to be exercisable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard is to be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.".

5. For section 8 of the 1965 Act (provisions as to divided land) there is substituted the following section—

"**8.**—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house ("the relevant land")—

(a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal ("the tribunal"); and

(b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—

(i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or

(ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the M1 Junction 10a (Grade Separation) Order 2013(**a**) ("the Order"), in relation to that person, ceases to authorise the purchase of the right and is deemed to authorise the purchase of that person's interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(**a**) S.I. 2013/[ ]

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.".

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the undertaker.

7. Section 11 of the 1965 Act (powers of entry) is modified so as to secure that, as from the date on which the undertaker has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) is modified so as to enable the undertaker, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 10

Article 25

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) *Location*	*(2)* *Number of land shown on land plans, sheet 1*	*(3)* *Purpose for which temporary possession may be taken*	*(4)* *Relevant part of the authorised development*
Luton Borough Council	1	To provide access to the area of the works to the north-east of Newlands Road and north-west of the M1 Spur form Newlands Road.	All works
	1A	Construction of a boundary fence and diverted public right of way.	Work No.1, Work No.2, Work No.4A and Work No. 7
	1B	Construction of a boundary fence.	Work No.1, Work No.2 and Work No.4A.
	1D	Provision of a site compound, including but not limited to site offices, welfare facilities, parking for workers' private vehicles and works vehicles, storage of plant, material and topsoil and the treatment of site-generated waste.	All works
Luton Borough Council and Central Bedfordshire Council	2B	Carrying out works to trees, construction of fencing and planting of a hedgerow.	Work No.12
Luton Borough Council	2C	Construction and use of the vehicular access to the site compound, and construction of part of a turning head.	All works
	2H	To provide access during the works and to allow the construction of new means of access.	Work No.1
	2I	To allow the realignment of London Road and the associated works to the verges, footways and earthworks.	Work No.2 and Work No.6

(1) *Location*	*(2)* *Number of land shown on land plans, sheet 1*	*(3)* *Purpose for which temporary possession may be taken*	*(4)* *Relevant part of the authorised development*
	2J	To allow the widening of A1081 Airport Way and the associated improvements to Capability Green junction.	Work No.1
Central Bedfordshire Council	3A	Storage of materials and works to infill existing burrow pit.	All works
	3B	Construction of drainage pipes, access, the storage of materials and works to infill existing burrow pit.	Work No. 8
	3C	Access to the area of the works to the south-east of the M1 Spur and to the north-east of Newlands Road, and the storage of materials and plant	All works
	3D	Excavation of existing tip area and works to infill to original ground levels.	Work No. 9
	3E	Use as a satellite compound for works to the south-east of the M1 Spur, including but not limited to site offices, welfare facilities, parking for workers' private vehicles and works vehicles, storage of plant, material and topsoil and the treatment of site-generated waste.	All works
	3F	Regrading of part of earth bunds that extend beyond the proposed highway boundary	Work No.1 and Work No.3A
	4B	Carrying out works to trees, and construction of fencing	Work No.1 and Work No.3B
Luton Borough Council and Central Bedfordshire Council	5A	Carrying out works to trees, and construction of fencing	Work No.1 and Work No.3B
	6C	To allow the widening of the M1 Spur, the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3A, Work No.3B, Work No.4A and Work No.4B

(1) *Location*	*(2)* *Number of land shown on land plans, sheet 1*	*(3)* *Purpose for which temporary possession may be taken*	*(4)* *Relevant part of the authorised development*
	6D	To allow the widening of the M1 Spur, the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.3A, Work No.3B, Work No.4A and Work No.4B
	6E	To allow the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3B and Work No.4B
	7C	To allow the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3A, Work No.3B, Work No.4A and Work No.4B
	7D	To allow the provision of a continuous link between the M1 Spur and A1081 Airport Way, the widening of A1081 Airport Way and the associated improvements to Capability Green junction.	Work No.1, Work No.3B and Work No.4B
	7E	To allow the widening of A1081 Airport Way and the associated improvements to Capability Green junction.	Work No.1
	7F	To allow the provision of the realigned A1081 London Road, the modification of A1081 London Road to form Old London Road (South) to provide access to Kidneywood House and Bull Wood Cottages, access to the works, the construction of the access to the proposed attenuation and infiltration ponds and the improvements to Newlands Road and its junction with A1081 London Road.	Work No.2, Work No.5 and Work No.10

SCHEDULE 11

Article 31

TREES SUBJECT TO TREE PRESERVATION ORDERS

(1) *Type of tree*	*(2)* *Reference of trees on environmental context plans*	*(3)* *Work to be carried out*
Birch, oak, ash, rowan and hornbeam.	Kidney Wood Tree Preservation Order shown on sheets 1 and 2	Removal, trimming, lopping and coppicing of trees within Kidney Wood Tree Preservation Order to be carried out to facilitate the construction of the authorised development and to ensure its future viability and stability.

SCHEDULE 12

Article 34

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF HIGHWAY AUTHORITIES

1. Unless otherwise agreed in writing between the undertaker and the highway authority concerned, the following provisions of this Schedule have effect in relation to any highway for which the undertaker is not the highway authority.

2. In this Schedule—

"highway" means a street vested in or maintainable by the highway authority; and

"plans" includes sections, drawings, specifications and particulars (including descriptions of methods of construction).

3. Wherever in this Schedule provision is made with respect to the approval or consent of the highway authority, that approval or consent must be given in writing and may be given subject to such reasonable terms and conditions as the highway authority may impose but must not be unreasonably withheld.

4. Before commencing any part of the authorised development the undertaker must submit to the highway authority for its approval in writing proper and sufficient plans and must not commence that part of the authorised development until those plans have been approved or settled by arbitration in accordance with article 37 (arbitration).

5. If, within 21 days after any plans have been submitted to a highway authority under paragraph 4, it has not intimated its disapproval and the grounds of disapproval, it is to be deemed to have approved them except to the extent that the plans involve departures from Highways Agency standards.

6. In the event of any disapproval of plans by a highway authority under paragraph 4, the undertaker may re-submit the plans with modifications and, in that event, if the highway authority has not intimated its disapproval and the grounds of disapproval within 21 days of the plans being re-submitted, it is to be deemed to have approved them except to the extent that the plans involve departures from Highways Agency and local highway authority standards.

7. Except in an emergency or where reasonably necessary to secure the safety of the public, no direction or instruction is to be given by the highway authority to the contractors, servants or agents of the undertaker regarding construction of the authorised development without the prior consent in writing of the undertaker but the highway authority is not be liable for any additional costs which may be incurred as a result of the giving of instructions or directions under this paragraph.

8. To facilitate liaison with the undertaker, the highway authority concerned must provide so far as is reasonably practicable a representative to attend meetings arranged by the undertaker about the authorised development.

9. The authorised development must be completed in accordance with the reasonable requirements of the highway authority or, in case of difference between the undertaker and the highway authority as to whether those requirements have been complied with or as to their reasonableness, in accordance with such requirements as may be approved or settled by arbitration in accordance with article 37.

PART 2

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application and interpretation

10. —(1) For the protection of the statutory undertakers referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned, have effect.

(2) In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable the statutory undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(**a**)), belonging to or maintained by that statutory undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a water undertaker, mains, pipes and other apparatus belonging to or maintained by the undertaker for the purposes of water supply; and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the undertaker under the Water Industry Act 1991(**b**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"emergency works" has the same meaning as in section 52 of the 1991 Act;

"functions" includes powers and duties;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon land;

"plans" includes sections and method statements;

"undertaker" means the undertaker as defined in article 2 (interpretation); and

"statutory undertaker" means—

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(**c**);

(c) a water undertaker within the meaning of the Water Industry Act 1991; and,

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the statutory undertaker to whom it belongs or by whom it is maintained.

(**a**) 1989 c. 29.
(**b**) 1991 c. 56.
(**c**) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

(3) Except in the case of paragraph 11, this Part of this Schedule does not apply to anything done or proposed to be done in relation to or affecting any apparatus in so far as the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

(4) Article 28 (apparatus and rights of statutory undertakers in stopped up streets) does not apply in relation to a statutory undertaker referred to in this Part of this Schedule.

(5) Paragraphs (1) and (2) of article 29 (recovery of costs of new connections) have effect as if it referred to apparatus removed under this Part of this Schedule.

Apparatus of statutory undertakers in stopped up streets

11.—(1) Where any street is stopped up under article 13 (permanent stopping up of streets), any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up but nothing in this sub-paragraph affects any right of the undertaker or of the statutory undertaker to require the removal of that apparatus under paragraph 13 or the power of the undertaker to carry out works under paragraph 15.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 14 (temporary stopping up of streets), and subject always to the power of the undertaker to make provisions for the alteration of such apparatus, the statutory undertaker is at liberty at all times and after giving reasonable notice except in the case of emergency to take all necessary access and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to inspect, repair, maintain, renew, alter, remove or use any apparatus which at the time of the temporary stopping up or diversion was in that highway.

Acquisition of Apparatus

12. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire under this Order any apparatus or rights or interests of the statutory undertaker to access, maintain or otherwise assert their rights in relation to such apparatus otherwise than by agreement.

Removal of apparatus

13.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of a statutory undertaker to use, maintain, repair, renew, alter or inspect that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question, and the provisions of sub paragraph (2) to (5) apply in relation to such works.

(3) (2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the use, maintenance, repair, renewal, alteration and inspection of that apparatus.

(4) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonably necessary to obtain the

necessary facilities and rights in the land in which the alternative apparatus is to be constructed, but such obligation does not extend to the requirement for the statutory undertaker to use its compulsory purchase powers to achieve this end.

(5) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(6) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 37, and subject to the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(7) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the statutory undertaker in question, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of, the statutory undertaker.

(8) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

14.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a statutory undertaker facilities and rights for the construction, use, maintenance, renewal and inspection in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the statutory undertaker in question or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus the arbitrator must—

(a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker or the traffic on the highway; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which the same are to be granted are in the opinion of the arbitrator less favourable on the whole to the statutory undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to the statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

15.—(1) Not less than 28 days before commencing the execution of any works authorised by this Order that are near to or will or may affect any apparatus the removal of which has not been

required by the undertaker under paragraph 13(2), the undertaker must submit to the statutory undertaker in question a plan of the works to be executed.

(2) Those works are to be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) must be made within 21 days after the submission to them of a plan, section and description under sub-paragraph (1).

(4) If a statutory undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 10 to 14 apply as if the removal of the apparatus had been required by the undertaker under paragraph 13(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan of those works subsequently and must comply with sub-paragraph (2) so far as reasonably practicable in the circumstances.

Expenses

16.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the statutory undertaker reasonable expenses incurred by that statutory undertaker in, or in connection with—

(a) the inspection, removal and relaying or replacing, or alteration or protection of any apparatus or the construction of any new or alternative apparatus or connections to apparatus which may be required in consequence of the execution of any such works as are required under this Part of this Schedule, including any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus;

(b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(c) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 37 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this

Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess except where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs are to be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) (and having regard, where relevant to sub paragraph (2)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

17.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of the authorised development, or any works required under this Schedule by or on behalf of the undertaker, or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or other property of a statutory undertaker or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and

(b) indemnify that statutory undertaker for any other expenses, loss, damages, claims, penalty or costs incurred by or recovered from that statutory undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(3) A statutory undertaker must give the undertaker reasonable notice of any such claim or demand received under sub-paragraph (1) and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

18. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a statutory undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

19. Where in consequence of the proposed construction of any of the authorised development the undertaker or a statutory undertaker requires the removal of apparatus under paragraph 13(2)

or a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 15(2), the undertaker and the statutory undertaker must use their best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and the safe and efficient operation of the statutory undertaker's undertaking.

Access

20. If, in consequence of the exercise of any powers under this Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

PART 3

FOR THE PROTECTION OF NATIONAL GRID

Interpretation

21. In this Part of this Schedule—

"National Grid" means National Grid Gas Plc whose registered address is 1-3 Strand, London WC2N 5EH ("National Grid");

"the high pressure gas main" means the Kinsbourne Green to Dallow Road high pressure gas main; and

"plans" means all drawings, designs, sections, specifications, method statements and other documentation that are reasonably necessary to properly and sufficiently describe the work to be executed.

High pressure gas main: application of Parts 2 and 3

22.—(1) Subject to sub-paragraphs (2) and (3), this Part of this Schedule applies to the high pressure gas main in addition to Part 2.

(2) Paragraph 23 of this Part of this Schedule applies to the high pressure gas main instead of paragraph 15 of Part 2.

(3) Paragraph 23 of this Part of this Schedule (except in the case of paragraph 23(6)) has effect including in circumstances where the high pressure gas main is regulated by the provisions of Part 3 of the 1991 Act, and in those circumstances paragraphs 16 to 20 of Part 2 have effect, except as provided for in paragraph 24 of this Part.

High pressure gas main: protection

23.—(1) Not less than 42 days before commencing the execution of any works authorised by this Order which will or may be situated on, over or under the high pressure gas main, or within 3 metres respectively from the high pressure gas main measured in any direction, or which involve embankment works within 3 metres of the high pressure gas main, the undertaker must submit to National Grid detailed plans describing—

(a) the exact position of those works;

(b) the level at which those works are proposed to be constructed or renewed;

(c) the manner of their construction or renewal; and

(d) the position of the high pressure gas main.

(2) The undertaker must not commence the construction or renewal of any works to which sub-paragraph (1) applies until National Grid has given written approval of the plans so submitted.

(3) Any approval of National Grid under sub-paragraph (2)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (4);

(b) must not be unreasonably withheld.

(4) In relation to a work to which sub-paragraph (1) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to the high pressure gas main.

(5) Works to which this paragraph applies must be executed only in accordance with—

(a) the plan approved under sub-paragraph (2); and

(b) such reasonable requirements as may be made in accordance with sub-paragraph (4) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it,

and National Grid is entitled to watch and inspect the execution of those works.

(6) If in consequence of the works proposed by the undertaker National Grid reasonably requires the removal of the high pressure gas main and gives written notice to the undertaker of that requirement, paragraphs 10 to 14 apply as if the removal of the apparatus had been required by the undertaker under paragraph 13(2).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, instead of the plan, previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan, of those works subsequently and must comply with—

(a) sub-paragraph (5) so far as reasonably practicable in the circumstances; and

(b) sub-paragraph (9) at all times.

(9) At all times when carrying out any works authorised under this paragraph the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid high pressure gas pipelines and associated installations requirements for third parties T/SP/SSW27" and HSE's "HS(G)47 Avoiding danger from underground services".

Conduct of claims and demands

24.—(1) Sub-paragraph (2) applies instead of paragraph 17(3) of Part 2 in relation to claims and demands made against National Grid under that paragraph.

(2) National Grid must give the undertaker reasonable notice of any such claim or demand received under paragraph 17(1) of Part 2 and no settlement or compromise is to be made without first consulting the undertaker and considering the undertaker's representations (such representations not to be unreasonably withheld or delayed).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Luton Borough Council (referred to in this Order as the undertaker) to make improvements to Junction 10a of the M1, including the removal of the existing Junction 10a roundabout and provision of a continuous and widened carriageway between the M1 Junction 10 and A1081 Airport Way, and new roundabouts and slip roads giving access to London Road, and to carry out all associated works. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land temporarily for this purpose. The Order also makes provision in connection with the designation and maintenance of the new section of highway.

A copy of the various plans, the book of reference and other documents mentioned in this Order and certified in accordance with article 35 of this Order (certification of plans etc.) may be inspected free of charge during working hours at Luton Borough Council, Town Hall, Luton LU1 2BQ.

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008 (as amended)

GRADE SEPARATION of M1 JUNCTION 10a LUTON

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport

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Alan T Gray

MRICS DipTP MRTPI & Accredited Mediator

Examining Authority

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File Ref TR010009

M1 Junction 10a (Grade Separation) Development Consent Order 201[3]

- The application, dated 29 June 2012, was made under section 37 of the Planning Act 2008 and was received in full by the Planning Inspectorate on 29 June 2012.
- The applicant is Luton Borough Council (LBC).
- The application was accepted by the Planning Inspectorate for examination on 27 July 2012.
- Examination of the application began on 16 November 2012 and was completed on 13 May 2013.
- The proposed development (the scheme) comprises the grade separation of Junction 10a of the M1, which is currently an at-grade roundabout by Kidney Wood on the south side of Luton. The roundabout is located at the north-eastern end of the Motorway Spur connecting the M1 at Junction 10 with Airport Way (A1081), which affords access to Luton Airport and to residential, commercial and industrial areas on the south side of Luton. The scheme would include slip roads connecting the main line to two new roundabouts north and south of an improved Motorway Spur/Airport Way. These roundabouts would, in turn, provide connections to the existing side road network.
- Once completed and operational, the scheme would be owned, managed and maintained by LBC, albeit partly within the administrative boundary of Central Bedfordshire.

Summary of Recommendation

The Examining Authority recommends that the Secretary of State for Transport should make the Development Consent Order in the attached, proposed form in Appendix E.

ABBREVIATIONS used in the REPORT

AGLV	Area of Great Landscape Value
ALLI	Area of Local Landscape Importance
AP	Affected Person
APP	Application Document
AS	Additional Submission
AST	Appraisal Summary Table
ASV	Accompanied Site Visit
BCR	Benefit/Cost Ratio
BIS	Department for Business Innovation & Skills
BoR	Book of Reference
CA	Compulsory Acquisition
CA	Conservation Area
CBC	Central Bedfordshire Council
CEMP	Construction Environmental Management Plan
CLP	Contaminated Land Plan
CMR	Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010
CoCP	Code of Construction Practice
CPRE	Council for the Protection of Rural England
DCLG	Department for Communities and Local Government
DCO	Development Consent Order
DEC	Procedural Decision
DECC	Department of Energy & Climate Change
DfT	Department for Transport
DMP	Dust Management Plan
DMRB	Design Manual for Roads and Bridges
DoS	Degree of Saturation
DPD	Development Plan Document
DSCB	Development Strategy for Central Bedfordshire: Pre-Submission 2013
EA	Environment Agency
ECHR	European Convention on Human Rights
EH	English Heritage
EIA	Environmental Impact Assessment
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
ES	Environmental Statement
EV	Preliminary Meeting or Hearing Document
ExA	Examining Authority
GB	Green Belt
GLVIA	Guidelines for Landscape and Visual Impact Assessment

HA	Highways Agency
HCA	Homes and Communities Agency
HMT	Her Majesty's Treasury
IP	Interested Party
IPC	Infrastructure Planning Commission
ISH	Issue Specific Hearing
J10	(M1) Junction 10
J10a	(M1) Junction 10a
LBC	Luton Borough Council
LCA	Landscape Character Area
LDF	Local Development Framework
LIR	Local Impact Report
LLP	Luton Local Plan 2001-2011
LP	Local Plan
LPA	Local Planning Authority
LTP3	Luton Local Transport Plan 2011-2026
MM	Managed Motorway (hard shoulder running with gantries etc)
MoU	Memorandum of Understanding
NE	Natural England
NIP	National Infrastructure Plan
NPPF	National Planning Policy Framework 2012 (the *Framework*)
NSIP	Nationally Significant Infrastructure Project
PA	Planning Act 2008
PD	Project Document
PINS	Planning Inspectorate
PM	Preliminary Meeting
PPG	Planning Policy Guidance
R	Requirement
RGF	Regional Growth Fund
RHPG	Registered Historic Park and Garden
RR	Relevant Representation
RSS	Regional Spatial Strategy
SBLPR	South Bedfordshire Local Plan Review 2004
SOCG	Statement of Common Ground
SoR	Statement of Reasons
SoV	Schedule of Variation
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
SPPH	Stockwood Park Property Holdings Limited
SSCLG	Secretary of State for Communities and Local Government
SSECC	Secretary of State for Energy and Climate Change
SST	Secretary of State for Transport
SWMP	Site Waste Management Plan

TfL	Transport for London
TMP	Traffic Management Plan
TWA	Transport and Works Act 1992
USV	Unaccompanied Site Visit
VfM	Value for Money
REP	Written Representation
RR	Relevant Representation
ZTV	Zone of Theoretical Visibility

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Textual References

References within the text to the examination library shown thus APP-015

References within the text to another paragraph shown thus 4.37

The Planning Inspectorate

ERRATA SHEET – M1 Junction 10a Grade Separation – Luton - Ref. TR010009

Examining authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport, dated 13 August 2013.

Corrections agreed by the Examining Authority prior to a decision being made

Page No.	Paragraph	Error	Correction
19	4.33	last sentence seems to have missing or superfluous words	Delete 'with'
22	4.42	the Examining authority's conclusion seems at odds with his findings in the preceding paragraphs. Should the sentence read "should <u>not</u>" rather than "should"?	Agreed
25	4.63	the current second sentence is incomplete: should it be merged into the following sentence by replacing the full stop with a comma?	Replace full stop with comma
26	4.65	second line - CoCP is the Code of Construction <u>Practice</u>, and not as shown. (see page ii – abbreviations used in report)	Agreed

Page No.	Paragraph	Error	Correction
28	4.80	last sentence seems to have missing or superfluous words	Rephrase: 1% of receptors at dwellings would…..
29	4.85	seventh line – “dry” not “dray”.	Agreed
31	4.99	second sentence seems to have missing or superfluous words	Replace the second ‘also’ with ‘states’ and insert ‘the’ before ES
34	4.121	second sentence seems to have missing or superfluous words	Replace ‘recoding’ with ‘recording’
53	7.4	the Examining authority’s conclusion seems at odds with his findings earlier in the report. Should the sentence read “no reason ” rather than “every reason”?	Agreed
A5ff	Appendix B	in the scanned copy supplied to us by PINS, none of the purported hyperlinks are active.	Link to appendix B with hyperlinks now active: http://infrastructure.planningportal.gov.uk/wp-content/uploads/2013/09/Appendix-B-Examination-Library.pdf

1 INTRODUCTION

The Application and the Examination

1.1 Annex E to the letter of 23 October 2012 (giving notice of the Preliminary Meeting etc) confirmed my appointment as the Single Examining Inspector to be the Examining Authority (ExA) for the examination of this application DEC-003. This report sets out my findings and conclusions, and my recommendation to the Secretary of State for Transport (SST) under section 83 of the Planning Act 2008 (as amended) (*the 2008 Act*).

1.2 The scheme for which consent is required under Section 31 of the 2008 Act comprises the grade separation of Junction 10a of the M1 on the south side of Luton as described earlier and later in this report (i) & 2.8-11. It lies wholly within England and comprises a Nationally Significant Infrastructure Project (NSIP) as defined by sections 14(h) and 22(2) of the 2008 Act.

1.3 The applicant notified the Planning Inspectorate (PINS) in July 2011 under Regulation 6(91)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) that an Environmental Statement (ES) would be provided in respect of the scheme. The application was accompanied by an ES, which satisfies the definition in regulation 2(1) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. I can confirm that I have taken account of the environmental information as defined in the aforementioned regulation 2(1).

1.4 The application was accepted for examination on 27 July 2012 by PINS. It was then advertised by the applicant, Luton Borough Council (LBC) and 16 relevant representations (RRs) were received. I subsequently accepted 3 late representations and treated them as if they were RRs.

1.5 A Preliminary Meeting (PM) was convened on 15 November 2012 when Interested Parties (IPs) and Affected Persons (APs) were able to make representations about the process of examining the application. The examination then commenced and my procedural decisions about the timetabling and form of the examination were communicated on 30 November 2012.

1.6 Hearings about Specific Issues were held with regard to the Draft Development Consent Order (DCO), needs, costs and benefits, environmental impacts and mitigation proposals, and compulsory acquisition matters.

1.7 I undertook Accompanied Site Visits (ASVs) on three occasions with IPs and an AP's representative in attendance. I made unaccompanied Site Visits (USVs) before and during the examination.

1.8 A Local Impact Report (LIR) was prepared jointly by Luton Borough and Central Bedfordshire Councils (LBC and CBC) in their capacities as Local Planning Authorities (LPAs). It was accompanied by a Statement of Common Ground between them (SOCG). The scheme straddles the boundary separating the administrative areas of Luton and Central Bedfordshire, both of which are unitary authorities.

1.9 I posed two rounds of written questions, which prompted substantial responses. A number of additional questions were also posed in a request for further information[1].

1.10 The application together with RRs, other submissions, procedural decisions, my questions, responses and comments thereon were all made available (and remain) online.

1.11 The examination closed on 13 May 2013.

1.12 Other consents are required. One has already been secured, namely Crown consent for compulsory acquisition of SST (Highways Agency) highway interests APP-058. Environmental licences would be required by way of Discharge Consents and Waste Management Permits, and applications would need to be made to the Environment Agency (EA) [2]. Protected species consents may be required. The ES identifies the potential for badgers and bats in the area. Protected Species Licences would be required if any protected species are found in pre-construction surveys and if required, applications would need to be made by the contractor to Natural England (NE)[3].

1.13 Applications would also need to be made to the relevant LPAs in order to comply with Requirements (Rs).

1.14 A Replacement Land Certificate in respect of public open space to be compulsorily acquired was originally envisaged, but is no longer required as the relevant land has been acquired by agreement 5.23.

1.15 Two Memoranda of Understanding have been signed, largely dealing with highway matters, the first between the applicant and HA and the second between the applicant and CBC REP-027 & EV-022.

[1] Regulation 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR)
[2] Discharge Consents & Waste Management Permits from the EA under the Environmental Permitting Regulations 2010
[3] Licences from NE under the Conservation Habitats and Species Regulations 2010, Wildlife and Countryside Act 1981 & Badger Act 1992

2 MAIN FEATURES OF THE SCHEME

Land

2.1 Land within the scheme boundary comprises highway land including the existing Kidney Wood roundabout, the M1 Spur to the south-west, a length of Airport Way (A1081) to the north-east, and stretches of London Road North and London Road South (A1081); agricultural land, woodland, public open space and part of an agricultural compound.

2.2 Useful plans for locating and describing the scheme are the Location Plan in the ES Non-Technical Summary and the Works Plan, respectively APP-034 & APP-077.

Location

2.3 The scheme is located immediately to the south of Luton, at and around Junction 10a of the M1 (known as the Kidney Wood roundabout). The M1 and Junction 10 lie approximately 1km along the M1 Spur to the south-west, Capability Green Business Park lies to the north of its grade-separated junction with Airport Way (A1081) some 500m to the north-east, with Luton Airport situated about 2.5km farther along the A1081 to the north-east.

2.4 Stockwood Park Golf Course and Athletics Centre are immediately to the north on the western side of London Road (North), with Kidney Wood on the eastern side. Luton Hoo Registered Historic Park and Garden (RHPG), Hotel, Spa and Golf Course lie approximately 500m to the south-east on the eastern side of London Road (South). Bull Wood separates Luton Hoo from the A1081 to the north.

2.5 There are several dwellings close to the scheme. Approximately 150m south-east of the Kidney Wood roundabout on London Road South (A1081), there are five dwellings (Bull Wood Cottages and Kidney Wood House). There is a further dwelling (Newlands Farm) on Newlands Road (B4540), approximately 125m east of where it is crossed by the M1 Spur, south-west of the Kidney Wood roundabout

2.6 To the south of the Kidney Wood roundabout, running through the application site in a north-east to south-west direction, there are overhead power lines. To the north of the Kidney Wood roundabout is a telephone line running through the proposed scheme in an approximately east-west direction.

2.7 Close to the existing London Road (North) there are multiple underground services, including a gas pipeline.

Works

2.8 The scheme comprises the grade-separation of M1 Junction 10a, which is currently an at-grade, unsignalised roundabout. Works would extend from Junction 10 of the M1 to the Capability Green Junction on Airport Way. Further works are also proposed on and around London Road to the north and south of the existing Kidney Wood roundabout.

2.9 The scheme would include slip roads connecting the widened main line to two new roundabouts north and south of an improved M1 Spur/Airport Way. These roundabouts would, in turn, provide connections to the existing side road network on London Road (North and South). The existing M1 Spur from J10 to J10a and Airport Way as far as the Capability Green grade separated junction, would be widened to provide three lanes in each direction, with lane-gains and lane-drops at the proposed Kidney Wood junction and at the improved Capability Green junction.

2.10 Works to the south would extend along London Road (South) as far as the junction with the Newlands Road. Works to the north would terminate approximately 113m south of the junction of London Road (North) with Ludlow Avenue.

2.11 The M1 Junction 10 roundabout and M1 Spur would cease to be motorway and would become an all-purpose trunk road, to a point near the Spur's west facing slip road entries/exits. The existing arrangements for traffic leaving or entering the M1 Junction 10 would be modified to provide three lanes in each direction.

Substantial Changes

2.12 No substantial changes to the scheme were made during examination of the application, nor any of significance.

3 POLICY CONTEXT

Introduction

3.1 The planning policy context is the first of the seven identified determining issues for the scheme.

3.2 Up to and by the completion of this report, no National Policy Statement (NPS) for National Networks has been published in draft or any other form[4]. In the absence of an NPS regard must therefore be paid to[5]:

- The Local Impact Report (LIR) prepared jointly by LBC and CBC;
- Any matters prescribed in relation to development of a description to which the application relates; and
- Any other matters considered both important and relevant to the decision.

Local Impact Report

3.3 A joint LIR associated with a Statement of Common Ground (SOCG), was produced by LBC and CBC as the Local Planning Authorities (LPAs) because the scheme straddles the boundary separating the administrative areas of Luton Borough and Central Bedfordshire Councils PD-011 & PD-012.

3.4 The LIR addresses the following matters and reaches conclusions summarised below as appropriate:

- Site Description, Surroundings and History
- Relevant Development Plan Policies
  - Two adopted local plans and emerging plans
  - Broad accord with relevant policies
  - Potential landscape, visual and Green Belt conflict
- Highway Justification
  - Scheme would increase capacity and relieve congestion
  - Regeneration would benefit
- Air Quality
  - Construction dust could be adequately mitigated
  - Slight beneficial change in operational air quality
- Cultural History
  - Archaeological remains could be undervalued
  - Archaeological mitigation needs scrutiny
  - Impact on Luton Hoo needs further investigation
- Ecology and Nature Conservation
  - Potential impact on badgers

[4] *Action for Roads* was published in July and presages publication of a draft NPS in the near future, but it has not been taken into account in the production of this report
[5] s105 of The Planning Act 2008 (as amended)

    - Monitoring and mitigation basically sound
    - Pre-construction surveys required for bats
- Landscape and Visual Impacts
    - Scheme would follow ground contours
    - Landscaping would change historic character
    - Scheme lies largely in Area of Great Landscape Value (AGLV)
    - More scrutiny of visual impact required
- Land Issues
    - No recent planning applications within vicinity of scheme
- Noise and Vibration
    - Adequate requirements for mitigation
- Pedestrian/Cycle Interests
- Vehicle Travellers
    - Implications for driver stress unclear
- Water
- Geology/Soils
    - Difficult to assess impact of waste spoil disposal
- Economic Impact
    - Inadequate highway infrastructure frustrates development
- Development Consent Order
    - Need for Construction Environmental Management and Site Waste management Plans

3.5 The LIR notes that other than in its construction, the scheme would not directly create employment. But additional highway capacity would encourage development with a positive impact on local regeneration, resulting in related employment opportunities with positive social implications. There would be some adverse environmental impacts for landscape, air quality and noise levels but effective mitigation measures would offset impacts. On balance, the LIR concludes that the social and economic benefits of the scheme would outweigh its adverse environmental impacts and the scheme should be supported.

3.6 I find the LIR, with the associated SOCG, accords with guidance, is comprehensive and well-balanced[6].

Background

3.7 The applicant's justification for the scheme is that Junction 10a is congested at peak periods, and the stated need for the scheme is to provide capacity and alleviate congestion, thus encouraging economic growth and regeneration in Luton. It is against this background that the policy context should be considered.

[6] PINS Advice Note 1

3.8 From consideration of the above factors, taken together with the application, the relevant representations and responses thereto, and the proceedings of the hearings, various policy considerations emerge which are addressed below APP-059. What is considered is the scheme's support from, or the potential for its conflict with policy. The policy appraisal is essentially an overview because conclusions on detailed issues emerge from more detailed consideration in later in the report Section 4.

3.9 There is only one policy-based representation and it is considered later in this section of the report 3.29-34.

National Policy

National Planning Policy Framework (the Framework)

3.10 The Framework was published in 2012 and identifies a need for improvements to infrastructure and systems that support economic growth. In the absence of an NPS it should carry considerable weight as an expression of national policy. As the LPAs, LBC and CBC acknowledge that in the LIR; and no-one disagrees PD-011. The ES considers the Framework and the applicant relies upon it in respect of transport, Green Belt, and natural and local environment APP-035 APP-059.

3.11 Subject only to further remarks on the Green Belt, I can find no significant conflict with the Framework. On the contrary, it offers broad encouragement for a scheme of this nature in promoting economic growth, relieving congestion and ensuring the vitality of Luton's town centre.

National Infrastructure Plan (NIP)

3.12 The 2011 National Infrastructure Plan specifically supports the improvement of Junction 10a under local infrastructure funding programmes through support from the Regional Growth Fund (RGF) for:

> *A project to improve Junction 10A of the M1 motorway, which is currently creating a traffic bottleneck stopping economic growth in the area and will complement the Junction 6a-10 and Junction 10-13 M1 improvement schemes* APP-059.

3.13 The 2012 update of the plan has not weakened this support.

Treasury (HMT) Autumn Statement 2011

3.14 The Statement specifically lists the Junction 10a improvement as *an infrastructure project that will be taken forward* APP-059.

Regional Policy

3.15 The East of England Plan was the applicable Regional Spatial Strategy (RSS) when the application was accepted. It was revoked on 3 January 2013 during the examination and is no longer relevant to examination of the application.

Local Policy

3.16 Annex 1 of the Framework states that full weight should still be given to relevant policies adopted since 2004, even if there is a limited degree of conflict with the Framework. The scheme lies within the administrative areas of Luton Borough and Central Bedfordshire Councils. Two local plans therefore have relevance and they are the saved policies of the:

- Luton Local Plan 2001-2011; and
- South Bedfordshire Local Plan Review 2004.

There is no relevant Supplementary Planning Guidance (SPG), nor any Supplementary Planning Documents (SPDs) or Development Briefs within Luton Borough or Central Bedfordshire Plans affecting the scheme.

3.17 The Framework also affords weight to emerging policy and thus the policies of the:

- Development Strategy for Central Bedfordshire - Pre-Submission 2013; and
- Luton Local Plan 2011-31

3.18 The Luton and Southern Central Bedfordshire Joint Core Strategy was withdrawn in 2011, but its evidence base is up-to-date PD-011.

Luton Local Plan 2001–2011 (LLP)

3.19 The LLP was adopted in 2006. It is being reviewed and should be subject to consultation in 2013. Meantime, the LIR identifies following saved Policies as relevant to the scheme and I consider them now briefly, in terms of the scheme's support from or conflict with the policy PD-011:

- *ENV4* Protection and promotion of countryside access and public footpath network: No significant conflict.

- *ENV5* Protection and enhancement of nature conservation: Some conflict. ES identifies a partial slight averse effect on County Wildlife Sites (CWSs) near the scheme which mitigation measures would not fully address.

- *ENV9* Design principles: No serious conflict on account of effective mitigation.

- *ENV10* Landscaping: ES identifies only slight adverse residual effects and thus no serious conflict with effective mitigation.

- *ENV14* Water Environment: ES assesses no increased flood risk or contamination of watercourses from scheme with effective mitigation measures in place and EA has no outstanding objection REP-041.

- *SA1* Identifies the Stockwood Park Action Area and the site for a football stadium: No apparent conflict because policy requires completion of the junction improvement as pre-requisite of development; but it is suggested that there could be and that is addressed later RR-014 & 3.29-34.

- *T12* Protects land for road proposals including Junction 10a: Supportive of scheme.

- *T8* Protects and seeks improvement of existing pedestrian and cycle routes: Scheme accords with policy.

3.20 The LIR does not identify saved Policy ENV2 which seeks the preservation and enhancement of Areas of Local Landscape Importance, of which Stockwood Park is one. The ES does, however, and I deal with that later; but I find no serious conflict as a result of effective mitigation measures.

3.21 I am satisfied that there is broad conformity between the LLP and the Framework and any potential for conflict with its policies could be satisfactorily addressed by the design and construction of the scheme or by the effectiveness of mitigation measures. Where necessary, therefore, findings on issues will be balanced against any policy conflict later in the report Section 4.

South Bedfordshire Local Plan Review 2004 (SBLPR)

3.22 The SBLPR was adopted in 2004. The following saved Policies are relevant to the scheme and I consider them now briefly in terms of the scheme's support from, or conflict with the policy:

- *NE3* Safeguarding landscape generally and the Area of Great Landscape Value (AGLV) within which the scheme lies: No serious conflict with effective mitigation.

- *NE10* Use of agricultural land, subject to provisos relating *inter alia* to safeguarding best quality land, traffic generation and Green Belt: No conflict as scheme does not use best quality agricultural land PD-011, but potential Green Belt conflict.

- *BE7* Protects historic parks and gardens: No serious conflict with effective mitigation.

- *BE8* Design and environmental assessment criteria: No serious conflict because impact effectively mitigated.

- *R14* Encourages countryside access: No significant conflict.

- R15 Protects public rights of way network: No significant conflict.

3.23 I am satisfied that there is general conformity between the SBLPR and the Framework, but there is the potential for conflict with Policy NE10 according to the scheme's appropriateness in the Green Belt. I deal with that below.

Emerging Local Policies

Development Strategy for Central Bedfordshire - Pre-Submission 2013 (DSCB)

3.24 The DSCB was produced for and approved by CBC, and published for a six week consultation period in January 2013 during the examination PD-011. The results of the consultation are not known, but it was produced in the light of the Framework, mostly in the wake of its publication and is the most up-to-date expression of local policy for Central Bedfordshire.

3.25 The following DSCB Policies are relevant to the scheme and, as before, I consider them in terms of the scheme's support from, or conflict with the policy:

- *Policy 1* Seeks sustainable development: No significant conflict.

- *Policies 3 & 36* Green Belt designation and inappropriate development: Potential conflict.

- *Policy 23* Safeguards public rights of way: No significant conflict.

- *Policy 25* Identifies and prioritises the scheme: Support for scheme.

- *Policy 43* Seeks high quality development: No obvious conflict.

- *Policy 44* Protects against pollution: No conflict provided effective mitigation measures employed.

- *Policy 45* Safeguards historic environment: No conflict provided impact minimal and effective mitigation measures employed.

- *Policy 48* Encourages adaptation to climate change: No conflict.

- *Policy 49* Assesses potential flood risk implications: Scheme not within higher risk flood zone so no conflict provided effective mitigation measures employed.

- *Policy 50* AGLV designation: No serious conflict with effective mitigation.

- *Policy 56* Encourages access to high quality open spaces: No significant interaction.

- *Policy 57* Addresses issues of biodiversity and geodiversity, and habitats and species: Some conflict but could be outweighed by scheme benefits.

- *Policy 59* Addresses amenity and climate change benefits of tree cover: No significant conflict.

3.26 I am satisfied that there is well-developed consistency between the emerging DSCB and the Framework, but there is a potential for the scheme to conflict with DSCB Policies 3 & 36 & 57, according to the severity of the scheme's impact and/or the effectiveness of mitigation measures coupled with green belt factors. Findings on issues will be balanced against any policy conflict later in the report Section 4.

Luton Local Plan 2011-2031

3.27 Luton's Local Plan is being reviewed by LBC but the process was not sufficiently advanced to produce any meaningful evidence for the examination, except to say that the production of a Community Infrastructure Levy is envisaged.

Luton Local Transport Plan 2001-2026 (LTP3)

3.28 LTP3 has been produced and prepared by LBC in accordance with national requirements[7]. It specifically cites improvements at Junction 10a as being necessary because of its importance for reducing congestion, improving connections to key employment sites in the area, enabling development and facilitating economic growth generally APP-059.

Local Policy-based Representation

3.29 Stockwood Park Property Holdings Limited (SPPH) argues that the scheme has a degree of conflict with LLP Policy SA1, because as a consequence of the need to acquire land north of Junction 10a,

[7] Transport Act 2000 & Transport Act 2008

the area of land available for implementation of the policy would be unrealistically restricted. The company owns the land which is identified in Policy SA1 for development of a 15,000 all-seated replacement football stadium for Luton Town Football Club. SPPH does not consider that the residue of Policy SA1 land north of the M1 Spur would be sufficient to accommodate the development needs REP-015.

3.30 Although an Affected Person, SPPH does not object to Compulsory Acquisition (CA) and importantly, nor does the company oppose the scheme. Earlier discounted options would have had a lower land take but the reasons for rejecting them are accepted by SPPH. The purpose of the company's representation is to gain acknowledgment of its belief that more land would need to be allocated to compensate for the scheme's land take and thus implement Policy SA1 effectively REP-025.

3.31 The company's concern arises from the application's failure to recognise that, rather than stating that the scheme would have no *material impact* on the development potential of the allocated land APP-059. SPPH's justification for challenging that view is based on its calculation of the residual developable land north of the M1 Spur being 8.52ha following implementation of the scheme, which would be insufficient for the proposed stadium according to SPPH.

3.32 The applicant broadly agrees with the extent of the residue (8.74ha) but disagrees with the company's method of calculating the extent of reduction and that, as a consequence of the scheme, the Policy SA1 allocation would be insufficient to accommodate the proposed stadium. No planning application has been made, traffic generated by the proposed stadium would require improvement of Junction 10a to accommodate it and Policy SA1 recognises that on its face RR-017, REP-032 & REP-033.

3.33 In summary, SPPH neither objects to the scheme nor CA of its interest. It claims the residue of the SA1 allocation would be too restricted to develop a stadium and the applicant disagrees, although both accept that the allocation would be reduced by a similar amount on implementation of the scheme.

3.34 I do not consider this representation is about the scheme, but about the developability of a development plan allocation. As such, it should be considered in the context of the emerging LLP 2011-2031, at the examination if necessary. In the meantime, therefore, I conclude that the scheme would not be in serious conflict with LLP Policy SA1.

Green Belt

3.35 All of the land required for the scheme falling within Central Bedfordshire is designated Green Belt. The Green Belt Policies (GB1, 2, 3 & 4) of the SBLPR were not saved because the former

PPG2 was still in existence and could be relied upon for development control purposes.

3.36 For Green Belt Policy it is now necessary to look to section 9 of the Framework, which reiterates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It also explains that certain forms of development are not inappropriate provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt. These include local transport infrastructure which can demonstrate a requirement for a Green Belt Location.

3.37 The term *local transport infrastructure* would embrace the scheme, in my opinion. It is clearly transport infrastructure. The scheme is an NSIP, but not all NSIPs necessarily have national significance in themselves. This scheme's objectives are all local and the improvements must be undertaken at and around the existing junction which lies in the Green Belt. Consequently I regard the scheme as a prime example of *local transport infrastructure* and accordingly it would not be inappropriate in the Green Belt.

3.38 It is also necessary to consider whether the scheme would preserve the Green Belt's openness and conform with the purposes of including the land in the Green Belt. The land was originally included as an extension of the Metropolitan Green Belt, for the *purpose of containing the outward growth of Luton and other towns*[8] because of the expansion pressures on settlements at the time PD-012. The scheme would reinforce the existing barrier to development formed by the M1 Spur-Airport Way route and the Kidney Wood roundabout. So to my mind the scheme would accord with the Green Belt's original purpose of urban containment.

3.39 I am also satisfied that it would have no real impact on openness of the Green Belt in the long-run and I address that in detail when considering landscape and visual effects Section 4.

Conclusions

3.40 There is broad policy support for the scheme at national and local levels and relatively little by way of conflict; and, as later consideration reveals, such conflict as there is can be effectively mitigated. As for protection of the Green Belt, later consideration of landscape and visual matters, reveals that the scheme would have no significant on openness 4.104.

[8] South Bedfordshire Local Plan Review 2004 paragraph 2.3

4 ISSUES AND FINDINGS

Principal Issues

4.1 Seven principal issues were identified for examination following the Preliminary Meeting DEC-004:

- Planning Policy Context
- Need, Costs and Benefits
- Highway Design
- Socio-Economic Impacts
- Environmental Impacts
- Compulsory Acquisition and Funding
- Development Consent Order

4.2 The policy context is addressed in Section 3, CA and Funding in Section 5 and the Draft DCO in Section 6. The remaining four issues are addressed in this section.

Need, Costs and Benefits

4.3 The applicant's identified need for the scheme is based on the alleviation of traffic congestion and the resultant reduction in delays, coupled with additional capacity for proposed development and associated economic growth in Luton APP-059. The alleviation of congestion and enhanced access is borne out by the later findings in this section, as are the benefits for development potential and regeneration.

4.4 Some IPs argue that the scheme is unnecessary and that the alleviation of congestion (which they consider is largely in peak periods) could be achieved by simpler or less expensive means, involving widening and signalising the existing roundabout RR-001, RR-010 & RR-016. Alternative means of relieving congestion have already been addressed and rejected by the applicant 4.22. I am therefore satisfied that relief from traffic congestion creates a sound need for the scheme and that is underpinned by the policy findings 3. 40.

4.5 Yet it is important to quantify benefits and compare them with scheme costs to ensure that the former exceed the latter to the extent that the scheme can reasonably be said to represent good value for money (VfM) in the wider public interest.

4.6 The business case for the scheme was originally produced in the spring of 2012, using the outcome from forecast traffic flows on the network and reporting in terms of the scheme's transport-related economics, the costs and benefits that might accrue. The methodology is commonly used in assessing the VfM of highway and other schemes, within DfT mandatory requirements. It revealed a benefit/cost ratio (BCR) of 5.57:1.

4.7 That BCR was manually revised to 5:1 for the application's CA Statement of Reasons, by advancing the base year for scheme costs from summer 2011 to spring 2012 APP-013. I did not regard that as a wholly adequate basis for reaching an important conclusion, but on further enquiry it emerged that the business case was being updated in the light of the latest DfT Design Manual for Roads and Bridges (DMRB) and WebTAG guidance REP-046. It was produced late in the examination process, taking account of current scheme costs and traffic data AS-013. The resulting mid-range BCR is 4.82:1.

4.8 The updated business case uses the outcomes from forecast traffic flows on the network (with and without the scheme) to express the potential costs and benefits that might result in terms of the scheme's transport-related economics. Scheme economics are based on costs and savings (benefits) relating to:

- Scheme building and maintenance costs;
- Increases in time and vehicle operating costs for road users during construction;
- Reduction in time and vehicle operating costs throughout the life of the scheme; and
- Change in the number of road traffic accidents.

4.9 An updated Traffic Forecasting Report was produced late in the examination process AS-011. It uses a more sophisticated approach to demand forecasting and does not influence the business case which uses the *core scenario* flows.

4.10 The economic appraisal is not peculiar to this scheme and is widely used. I find no fault with it. The methodology accords with DMRB and WebTAG guidance, using a suite of computer programmes (including COBA[9]) to derive costs and benefits over a 60 year operating period as required by HMT; and information sources are in accordance with the HMT Green Book AS-013. I believe there are also likely to be some wider economic costs (mainly beyond the modelled network), but more importantly benefits. They do not, however, feature in the economic appraisal.

4.11 The benchmark for the appraisal is the *do minimum* option, which anticipates the junction remaining as it is now (ie effectively a *do nothing* option other than committed future network improvements). That is contrasted with the *do something* option which anticipates the network with the scheme (and committed improvements). Committed network improvements are thus taken into account for both options.

4.12 The appraisal period and modelled years are:

[9] HA sponsored Cost Benefit Appraisal computer programme for highway schemes

- First Construction Year 2013 (part)
- Last Construction Year 2015
- First Full Scheme Year 2016
- First Intermediate Year 2021
- Last Traffic Growth Year 2029
- Local Plans' Horizon Year 2031
- Horizon Year 2075

4.13 The analysis years are self-explanatory other than 2029 and 2031. The former is the last in which the *core scenario* forecast is employed, which predicts outcomes without the scheme. The latter is the last year for which local plans allocate development sites and this year was used for developing a *full development scenario* forecast. It was to all these years, from 2013 to 2075, that the COBA model was applied.

4.14 In summary, the appraisal methodology employs the following elements:

- Traffic forecasts cover a range of possibilities including core, full development, and low and high uncertainty;
- Scheme costs including land acquisition, construction and maintenance are appropriately discounted to £27.31m at 2010 prices; and
- User delays during construction are costed.

4.15 The following are then assessed for both *do minimum* and *do something* options:

- Journey times;
- Road safety, using personal injury accident data; and
- Driver stress;

4.16 The results show a range of BCRs from low growth at 4.01:1 through core growth at 4.82:1 to high growth at 9.29:1. These appear to be robustly positive results across the full range of uncertainty forecasts appraised. In my experience, rigorous analyses of major highway schemes requiring SST approval[10] have favourably regarded lower BCRs than any in this case, so the mid-range BCR of 4.82:1 convinces me that the scheme represents good VfM.

4.17 The customary Appraisal Summary Table (AST) is also produced for environmental impacts.

4.18 Neither the business case nor its methodology have been challenged in any respect by any IP or anyone other than me; nor have the resultant BCRs. But through the examination process I

[10] eg Mersey Gateway Project - BCR 3.97

have tested methodology and assumptions as necessary. I accept the veracity of the data used, the variables and the assumptions employed in the appraisal; and that has assured me that the scheme would offer net benefits to users.

Highway Design

4.19 The Kidney Wood roundabout experiences congestion at peak periods. Queuing traffic results in long tail-backs on each of its four arms with resultant implications for delay, principally of vehicles, and road safety for vehicle drivers, cyclists and pedestrians. On the M1 Spur in the AM peak period, congestion can be so acute that stationary traffic may be seen queuing on the north-bound carriageway of the M1 itself as far as the eye can see from the elevated vantage point of Junction 10, as my site inspections confirmed.

4.20 There has been a keen desire in Luton to do something about Junction 10a for some time. The scheme has been evolving for a number of years and has been the subject of extensive consultation with the general public, national agencies, local authorities, statutory undertakers, business interests and other stakeholders. Alternative ways of dealing with congestion have been considered and rejected in favour of the scheme. Within the RRs there is relatively little by way of objection to the scheme and significant support from local authorities and other statutory bodies, and the business community APP-016-033.

4.21 The lack of capacity is quantitatively illustrated in the ES and confirms the observational remarks above APP-036 & APP-060. The applicant is no doubt that the provision of extra capacity is needed and I strongly endorse that view. The question is not what to do but how to do it.

4.22 There were four consultation rounds with statutory bodies, other stakeholders and the general public APP-016-033. The first was in 2009 and the second in 2010, prior to the scheme being considered as an NSIP. The third round was in 2011 in full accordance with the requirements of the 2008 Act and the fourth was in 2012, shortly before the application was made to PINS.

4.23 The first consultation round in 2009 was on two options. The first (low cost) option involved a connector road linking Newlands Road with London Road (North) to the north-west of the M1 Spur and three associated roundabouts; the second involved a different arrangement of two roundabouts with a new bridge under the M1 Spur. The second consultation in 2010 was to demonstrate how the preferred (second) option layout had been developed in response to the results of the first round; and the third in 2011 demonstrated how the scheme had been developed in response to the second consultation round.

4.24 The third and last consultation resulted in two final changes to the scheme:

- The site of the proposed northern roundabout was relocated to minimise the impact on Stockwood Park and eliminate any land take from the golf course; and
- Proposals were revised for what would be the redundant stretch of London Road (South) to assuage local residents' concerns about anti-social behaviour.

4.25 As a result of these changes, further consultation was undertaken in 2012 and the scheme is the result. Its objectives are to:

- Reduce congestion and delay;
- Make the road safer;
- Reduce congestion;
- Make journey times more reliable;
- Improve facilities for pedestrians and cyclists; and
- Improve access to existing and potential development sites for employment and housing.

4.26 The scheme proposes to create continuity of vehicular movement between the M1 Spur and Airport Way(A1081)) by grade separation of the existing surface roundabout junction of that route with London Road and the provision of slip roads to two new roundabouts north and south of the proposed junction to connect with London Road. That would permit easier movement from the M1 at Junction 10 to the eastern side of Luton via Airport Way, which has recently been improved between Junction 10a and Luton Airport as part of the East Luton Corridor.

4.27 The scheme would provide additional capacity by providing an uninterrupted south-west/north-east connection between the M1 Spur and Airport Way, both of which would be widened; and slip roads would be provided to connect with two roundabouts serving the existing north/south road network.

4.28 I agree that options were properly considered and the scheme developed through a series of balanced responses to wide and repeated consultations. Notwithstanding that extensive engagement, however, four objections relating *inter alia* to the design of the scheme were made in Relevant Representations from three IPs who had expressed concern about the scheme at earlier stages and one who had not and their representations follow.

Relevant Representations promoting Alternatives

Elizabeth E Higgens

4.29 Mrs Higgens considers that the need for the scheme's extensive works could be avoided by easing peak period congestion through the use of traffic lights, which would prevent traffic backing up

badly on each of the four legs as happens at present. Significant congestion occurs in peak periods. Traffic lights work well at roundabouts in the vicinity, notably at Stevenage, Milton Keynes, Old Stratford and M25 Junction 20 RR-001.

4.30 In her opinion, reduction or enforcement of the Airport Way 50mph speed limit would also help to reduce entry speeds and ease flows at Kidney Wood. But accelerating traffic movements through the Kidney Wood roundabout would simply move the queue more quickly to the next junction at Gypsy Lane (B653) or thereafter at Kimpton Road (A505).

4.31 However, similar objections were raised in earlier Community Consultation exercises and were rejected for good reasons. Signalisation and enlargement of the roundabout was one of the four options considered and rejected because traffic lights, with or without associated widening, would not safely provide the required capacity to meet predicted traffic flows at the junction; nor would they solve existing problems RR-017.

4.32 Whether or not signalisation and associated highway improvements would significantly alleviate or even eradicate current congestion, I find that it would be a short-life solution which would not cater for future growth.

Slip End Parish Council

4.33 The Parish Council is concerned that the scheme does not include improvement of the junction of Newlands Road and London Road South (A1081). Street lighting and the imposition of a 40mph speed limit are proposed and would be helpful, but insufficient to eliminate road traffic accidents. Traffic calming measures are needed in addition to ensure that traffic approaches the junction at a safe speed. A roundabout of appropriate diameter with would better regulate movements and slow traffic on the A1081 to around 20mph RR-016.

4.34 I recognise that road safety is an issue for the Newlands Road junction. But LBC point out that the inclusion of works at the junction within the scheme were considered at an earlier stage but rejected because they would increase land-take and costs, and reduce the scheme's benefits RR-017. CBC (the highway authority) support the scheme which includes changes to the junction complementing works undertaken in 2009, since when accident rates have fallen. The scheme measures would include improved signage, street lighting, high friction surfacing and lowering the speed limit to 40mph RR-032.

4.35 There is no doubt that LBC and CBC take the safety of the Newlands Road junction very seriously and whilst the Parish Council's concern is understandable, I think it entirely reasonable that the highway authority's view should prevail. CBC confirms

that it will continue to monitor the junction and take such action as may be required in the interests of road safety.

Mike Sanders

4.36 As a long-time resident of Slip End, Mr Sanders has a wealth of local knowledge and in addition, has occupational highway experience. In summary, he has been a user of M1 Junctions 10 and 10a since their construction and has actively participated in all the consultations regarding their improvement. In his opinion the scheme is flawed in terms of traffic forecasting and particularly in terms of its potentially adverse impact on local traffic movements. Moreover, it would simply move congestion to the next signalised junctions on the route, at M1 Junction 10 to the east or west to Gypsy Lane (A505/B653); the scheme would not alleviate congestion RR-010.

4.37 Mr Sanders believes Option 1 in the 2009 Consultation was wrongly rejected. A new connector road should be provided between Newlands Road and London Road North, coupled with connections and widening of existing features of the Kidney Wood roundabout, either instead of or at least in addition to the scheme. That would be of great value to local highway users from the east and north, who could thus avoid conflicting traffic movements on the proposed southern roundabout; they would be separated from most airport traffic and their journeys would be significantly shortened. Furthermore, the land that would be lost to the connector road is of limited agricultural value, utilities would need to be relocated for the scheme anyway and the cost of the connector road would be in the order of only £1.5m REP-028.

4.38 He also has adverse weather concerns arising from the local microclimate, the topography and the design of the scheme. The scheme would be situated at one of the highest points in Bedfordshire and consequently cuttings and design features exposed to prevailing winds could be affected by adverse winter weather. He points out that the existing network has experienced that in the past.

4.39 The applicant confirms that all Mr Sanders's previous concerns have been addressed and are recorded in the Consultation Report RR-017 & APP-017. There follows a brief summation of conclusions emerging from the statistical analysis to which his representations have been subjected REP-032:

- It is not economic to design for unpredictable events which give rise to heavy congestion (eg M1 closure);
- The aim of the scheme is to eliminate congestion at M1 J10a and by doing so avoid blockages of M1 J10;
- Modelling of the nearest junctions (at M1 J10 and Gypsy Lane) show that in the Design Year the Degree of Saturation (DoS) at M1 J10 would be up to 77% which is

well short of the maximum acceptable level of 90% or less; at Gypsy Lane the junction would operate at up to 83% APP-061.

- It is neither practical nor cost-effective to upgrade all junctions on a route at the same time and it may become necessary to undertake future improvements to other junctions along the East Luton Corridor between the M1 and the airport;
- A roundabout with additional features was discounted as an earlier option because it could not operate satisfactorily with predicted traffic flows in this location;
- A roundabout with *cut through* carriageways would provide adequate capacity but would have operational flaws in terms of design standards;
- The need for the scheme has been fully assessed and is clear; a temporary scheme would not be cost-effective; the scheme represents good VfM;
- Traffic on Newlands Road (where the proposed connector road would begin) originates from a wide area as Mr Sanders suggests; and there is broad agreement with his predictions of its destinations;
- Modelling reveals that in the Design Year the proposed southern roundabout would be operating well within capacity APP-061;
- Mr Sanders's alternative solution has been quantitatively analysed, showing that J10a would operate slightly over capacity in the base year, queues of over 500 vehicles would build up in the PM peak period on the *core growth* scenario and queues of over 900 in the *with development* scenario; these would be unacceptable REP-032; and
- By meeting the appropriate design standards, scheme gradients should cope with adverse weather conditions, while gritting and salting of highways are operation concerns of the highway authorities.

4.40 Mr Sanders's representation demonstrates considerable concern for the local road network and its implications; and the applicant has taken the concern seriously by the comprehensive nature of the response. I appreciate the value of local knowledge in assessing the scheme and it has certainly reinforced the examination process. But so too has the detail of the applicant's response to the representation.

4.41 I recognise the attraction of the connector road and the benefits it could offer to traffic originating in the north and west. But these benefits would come at a price. The first cost would be that of construction , especially if in addition to scheme costs and the second would be the failure to achieve a satisfactory overall solution if the connector road were provided in isolation. I believe there is also a third and that is the implications for the land allocated for the development of a football stadium under Policy SA1 of the LLP, which is discussed elsewhere. The land take from

that site as a consequence of the proposed connector road would be far greater than that of the scheme.

4.42 Consequently, I conclude that the scheme should be modified in the way that Mr Sanders proposes.

Malcolm C Howe

4.43 Mr Howe regards the scheme as over-designed. It would absorb too much open land, some 50% of which is within an Area of Great Landscape Value (AGLV). Congestion and delay at the Kidney Wood roundabout usually occurs at peak periods and the scheme's cost to the public purse is an excessively expensive response. In his opinion, the provision of additional highway capacity would be the wrong response and would increase car dependency in a town where it is allegedly higher than most. The roundabout should be modified and signalised for times of congestion, as other similar junctions have been successfully treated, and each approach to the roundabout should be widened RR-016 & REP-022.

4.44 The applicant explains, however, that Mr Howe expressed these concerns in response to the 2010 Preferred Option Exhibition, which were considered and addressed in the Consultation Report, as also in response to the 2011 Community Consultation Exercise. The results are documented in the extensive Consultation and Options Reports APP-016-033. The signalised/modified objection was studied and modelled using TRASYT software[11], which demonstrates that it would be severely over capacity, would not meet future needs and would not be long-lived. Conversely, the scheme would meet long-term demand and following the 2011 exercise it was redesigned to reduce its land take and, inter alia, the impact on public open space RR-017, APP-018 & APP-024.

4.45 I recognise that other similar junctions have been improved by way of traffic signals and land widening/reconfiguration, but the outcomes depend on factors unique to those junctions. What matters here are the problems of Junction 10a and its needs. I am persuaded by the applicant's quantitatively analysed responses that modification of the existing roundabout would simply not cater for future needs.

4.46 Whether or not road improvements generate demand in themselves is a perennially posed question in relation to the provision of increased capacity. In this case, however, traffic forecasts using TEMPro[12] software have included background traffic growth REF. Moreover, derived forecasts have been produced against a range of uncertainties APP-060 & AS-011.

[11] TRL programme for assessing junction performance and optimising signalised solutions
[12] DfT programme for traffic planning purposes

4.47 Consequently I find no persuasive arguments why the scheme should be modified to meet Mr Howe's concerns.

Socio-Economic Impacts

4.48 The LIR explains that Luton was designated as a Priority Area for Economic Regeneration in the former RPG9. It has one of the highest levels of unemployment of any Borough in the South East and is within the 10% most deprived areas in England.

4.49 Luton is still recovering from the impact of Vauxhall closures a few years ago and worklessness remains a key challenge as the town tries moving towards a more mixed economy. Strategy and aims of the emerging Local Plan and LDF for Central Bedfordshire address these matters. There are areas of land in and around Junction 10a which are being promoted through the emerging plans as potential areas of future growth.

4.50 The withdrawn Core Strategy identified potential strategic housing and employment sites across its administrative areas. Its Chapter 4 (Infrastructure Delivery Strategy) defined the types and levels of infrastructure required to accommodate planned growth. Work to improve Junction 10a was listed as being a critical transport infrastructure project ie infrastructure identified as being of the highest level of need and *infrastructure that must happen to enable physical development*.

4.51 Despite its demise, the work undertaken in its production remains the most up-to-date and relevant policy guidance at the local level, evidenced by Central Bedfordshire's intention for the withdrawn Core Strategy to form 'development management guidance' for an interim period. This has been endorsed by the Executive of Central Bedfordshire stating that:

The Luton and Southern Central Bedfordshire Core Strategy has been in production for the past 6 years, is underpinned by extensive technical evidence, has been subject to widespread formal and informal consultation, was 'strongly supported and endorsed' by Central Bedfordshire and continues to reflect the Council's preferred approach to development for the South Central Bedfordshire area.

4.52 Against that background, the LIR observes that as a result of relieving congestion and creating additional capacity, the scheme would have economic benefits. That view is strongly shared by the applicant because the M1 Spur/Airport Way is an important access route to Luton town centre, to its eastern employment areas and to Luton Airport.

4.53 The LIR explains that development proposals continually emerge for the town and the employment areas; and expansion is planned for the airport which would result in a substantial increase in passenger numbers and associated functions. But growth is

currently constrained by congestion at the Kidney Wood roundabout, which acts as a bottleneck or pinch point. It is the weak link in the critical infrastructure which is a key requirement for triggering economic development and regeneration. It is the missing link between the M1 and the airport in the East Luton Corridor. Grade-separation would, in the applicant's view, be a relatively modest investment for high value returns in unlocking jobs.

4.54 The applicant's concern is significantly reinforced by the support which the scheme has received from CBC and local enterprises[13], whose representations demonstrate a substantial interest in further development and some have ambitious plans eg RR-003, RR-008, RR-015, AS-004 & AS-005.

4.55 Yet planning applications submitted to LBC in the past have repeatedly faced highway concerns, resulting in lengthy delays in determination while Highways Agency (HA) holding directions remained in place. These were withdrawn only following extensive negotiations with applicants involving detailed modelling work to establish the impact of potential traffic generation during the peak periods. Furthermore, achieving the withdrawal of directions required the imposition of strict conditions ensuring developments are implemented in a phased manner and S106 agreements securing contributions to highway improvements. Such negotiations have been laboured and costly exercises, potentially discouraging further development, inward investment and employment generation PD-011 & APP-013.

4.56 Nevertheless, the LIR reflects the hopes of the applicant and developers that up to about 17,000 jobs could be created on a series of sites, the majority of which have outline planning permission and await the necessary investment, but are frustrated by the lack of capacity in Junction 10a. Significantly, at the close of the examination London Luton Airport Operations Limited had a live planning application for works that would substantially increase the operating capacity of the airport. It is already a major employment generator providing jobs for a wide range of skills and levels of remuneration, which is important to the economy of Luton and the surrounding area. It alone, could produce around 3,000 new jobs.

4.57 Experience suggests to me that accurately predicting job creation is, at best, challenging and such figures do not attract great certainty. But whether or not the prediction of jobs is to be relied on, there is no doubt that there are substantial employment sites whose potential is likely to be delayed or frustrated by the lack of capacity in Junction 10a, as the planning history reveals.

[13] including the Augur Group Limited, Legal & General Property Partners Limited, Power Court Luton Limited, Prologis UK Limited, Luton Airport, The Mall Luton & Wates Construction Limited

4.58 I agree that the proposed scheme would contribute to improved accessibility to Luton and the surrounding strategic road network, bringing with it the potential for supporting economic growth opportunities and sustaining regeneration through new development. Improvements at Junction 10a could unlock the potential for some of the employment-generating development which would otherwise be held up in the planning process due to a lack of adequate highway infrastructure. Not undertaking the scheme would frustrate development and constrain regeneration potential.

4.59 I therefore conclude that the scheme would offer socio-economic benefits contributing very significantly to the public interest.

Environmental Impacts

General

4.60 When it emerged from the earlier assessment of options, the scheme was perceived as the best in design terms but not necessarily the least damaging environmentally APP-059.

4.61 The scheme's environmental impacts are comprehensively assessed in the Environmental Statement (ES), supplemented by answers to questions posed by the ExA and informed by the proceedings at hearings. In addition, the customary Appraisal Summary Table (AST) accompanies the updated Business Case APP-034-055 & AS-010.

4.62 The ES assesses the environmental impacts in accordance with standard practice and reference to appropriate professional standards, for a full range of issues including these particular areas of interest in relation to the principal issues[14]:

- Proposed Scheme
- Geology and Soils
- Noise and Vibration
- Air Quality
- Landscape and Visual Effects
- Cultural Heritage
- Ecology and Nature Conservation

4.63 I draw on these chapters in addressing the principal identified issues. For some, as later considerations reveal. I am satisfied that the scheme either has no predicted significant adverse impacts, or significant adverse impacts which could be satisfactorily mitigated through design and construction, or appropriate requirements within the DCO for regulation by the LPA or the appropriate statutory consultee as regulatory authority[15]. This can be said of air quality, ecology and nature conservation, and noise and vibration.

[14] eg GLVIA, LCA, DMRB, WebTAG, etc
[15] eg EA, EH. HA, NE, etc

4.64 I was concerned, as were IPs, to ensure that mitigation measures identified in the ES could be securely delivered by the DCO, but as a consequence of the examination process I am now content on that score, subject to comments in Section 6 (DCO) and those that follow.

4.65 However, it is necessary briefly to mention the Code of Construction Plan (CoCP) and the Construction Environmental Management Plan (CEMP). These should be important means through which mitigation measures would be secured and/or delivered in the construction phase and they feature in some of the Requirements (Rs) AS-017. The CEMP would have to be prepared in accordance with the CoCP and both would have to be approved by the appropriate LPA (LBC and/or CBC) before the commencement of development. Having seen a draft of the CoCP, I am satisfied that it should be robust and effective REP-045.

4.66 There are also other plans which will require LPA approval, including the Dust Management Plan (DMP) the Contaminated Land Plan (CLP), the Site Waste Management Plan (SWMP) and the Traffic Management Plan (TMP), to which it may also be necessary to make brief reference in addressing following matters.

Geology and Soils

4.67 The ES reveals that an imbalance between cut and fill would arise in the scheme's construction and consequently there would be an estimated export of spoil from the site amounting to 115,000m^3 APP-035. For contractual reasons it remains unclear where that spoil would be deposited or how it might reach its destination, except that it would be by road and it seems likely that the M1 Spur or Airport Way would be used REP-027. But because of the uncertainty surrounding destination and routeing, it is impossible to identify or measure the environmental consequences of transporting waste.

4.68 It is a matter of concern to me that the impacts could include traffic consequences coupled with additional noise and vibration, and reduced air quality for occupants of buildings close to the waste route, wherever they may be. Furthermore, to remove the spoil the ES estimated the required number of 20m^3 lorry loads at 5,750, whereas it transpired during the examination, in response to my questions, that the number would be double the previous estimate, at 11,500 REP-027.

4.69 The disparity appears to have been no more than an arithmetic error but it reflects adversely on the reliability of the ES and caused me to exercise caution when considering its conclusions in other areas. However, no more errors came to light during the examination.

4.70 Although the additional traffic generation could be staggered by stockpiling, the other implications would remain. This means that effectively mitigating these potentially significant impacts would have to rely upon DMRB defined contractual working restraints, together with the CoCP, the CEMP, the SWMP and the DMP. I

have seen a draft of the CoCP which strengthens my belief that it could deliver the necessary mitigation REP-045.

4.71 The applicant has stated that the maximum number of HGV daily and peak period movements would be restricted; that routeing restrictions would be agreed with the highway authorities through the Traffic Management Plan; and that lorries would neither be allowed to use London Road north-bound nor London Road (A1081) south-bound when exiting the site, thereby avoiding passing roadside dwellings REP-027.

4.72 I am also encouraged by the fact that, as a highway authority, LBC routinely undertakes traffic counts at key locations and one is undertaken annually on between Capability Green and Junction 10a. The last manual count shows some 20,200 out-bound (west-bound) vehicles passing the count in a 12 hour, daytime, mid-week period (07:00-19:00 on Thursday 6 September 2012) and 18,700 inbound (east-bound) EV-023.

4.73 Spoil lorries would be likely to join the observed flow, or a lesser one as some of the flow would peel off at Junction 10a. The ES foresees 115 HGV out-bound HGV movements/working day exporting spoil. Doubling the number would mean an additional 115 traffic movements/working day, which as a proportion of 22,200 would result in an increase of some 0.57%.

4.74 As I have noted, the flow would probably be less than 22,200 outbound between J10a and the M1 so the proportion would be higher. But the proportion is so small and the increase so marginal that I regard it as relatively insignificant against the background that the recognised daily variation in traffic flows can be up to 5% EV-022. And by calculating on the same basis, the in-bound proportion would be 0.61% (18,700/115=0.61).

4.75 I agree that the total number of spoil lorries would be insignificant as a proportion of total traffic flows. My concerns have been laid to rest and I shall not therefore pursue the issue further.

Noise and Vibration

4.76 Turning to vibration, no piling is proposed in construction of the scheme. Consequently, construction vibration was scoped out of the assessment for the ES PD-009. So far as operation vibration is concerned, there is an absence of roadside occupied dwellings or other buildings, or any other sensitive receptors in the immediate vicinity of the scheme. Consequently, operational vibration has not been considered in the ES either APP-035. Furthermore, there are no known vibration concerns associated with Junction 10a or the M1 Spur and I therefore consider there is no reason to conclude that the scheme would give rise to vibration effects of any significance.

4.77 For noise, the ES shows 15 sensitive receptors as dwellings on London Road North/Ludlow Avenue (9) and London Road South (5), and Newlands Farm. In the construction phase the predicted impacts would be moderate adverse at most by day for the

dwellings on London Road South and minor adverse at night. For the closest dwellings on London Road North, the predicted impacts would be major adverse by day during a single phase of connecting the scheme to the existing highway and moderate during another phase. But there would be no night-time effects on London Road dwellings. At Newlands Farm, the predicted impacts by day or night are not predicted to be significant.

4.78 These unavoidable noise impacts associated with the scheme's construction would require specific mitigation measures such as localised, temporary noise barriers round specific construction activities; and these would have to be secured by specific Requirements. Examples are provided in the ES and I am satisfied that they could be secured by way of the CoCP and the CEMP APP-035 & Appendix E.

4.79 As to the scheme's operational phase, in the Opening Year new low noise surfacing could have a beneficial impact on noise from the M1 Spur and the realigned A1081, but it has no been factored in because of inadequate research about existing use of such surfacing generally. Nevertheless, no change in impact is predicted at 46% of the façades of dwellings in the ES study area, a negligible impact at 33% and a minor/moderate decrease at the five dwellings on London Road South[16]. There would be negligible impact across the majority of Luton Hoo RHPG and Stockwood Park APP-035.

4.80 In 2009, taking the worst case of comparing 2014 *do minimum* with 2029 *do something* scenarios, 92% of dwellings are predicted to experience a negligible increase in noise levels and 6% a minor increase in the long-term. Minor increases are also predicted at non-residential receptors including the closest parts of Luton Hoo RHPG. 1% of dwellings would receptors would experience no change and 1% would experience a decrease in the long-term as a result of the scheme.

4.81 No specific operational noise mitigation measures are proposed, although its design would, in itself, reduce the potential impact by way of cuttings and bunds. The Es explains that it is not practical to introduce noise mitigation measures remotely, at some distance from the scheme along roads that would experience significant increases in traffic generation and noise by 2029 as a consequence of *very likely* developments facilitated by the scheme. That would require later assessment during the consenting process for such developments.

4.82 I agree that there is no need to mitigate the operational noise implications of the scheme and I agree with the applicant's approach to noise mitigation in the construction phase.

4.83 It should also be noted that, according to the ES, the scheme would not have any significant effect on the implementation of

[16] The study area boundary has remained consistently at 2km from the scheme, notwithstanding the reduction in DMRB requirement to 1km

Defra's Noise Action Plan for Major Roads because at most, only relatively small changes (<+25%) in traffic flows are predicted on the M1 north of Junction 10.

Air Quality

4.84 According to the ES, the operation of the scheme would have a slight/moderate beneficial effect in air quality APP-030.

4.85 The generation of dust during construction of the scheme is a potential air quality issue APP-035. But requirements relating to construction, including the CEMP and the Dust Management Plan (DMP) if properly observed, would effectively mitigate adverse impacts under normal circumstances at sensitive receptors such as nearby dwellings, ensuring there were no significant effects. Conversely, in periods of dray and or windy weather it would be possible for dust to have a minor adverse effect at nearby receptors.

4.86 Without the scheme in 2009 and 2014, when measured at all receptors in the study area[17], annual mean concentrations of NO_2, PM_{10}, PM_{25} and the number of exceedances of the 24 hour PM_{10} objective are predicted to be well within the National Air Quality Objectives. With the scheme operational there would be a marked decrease in pollutant concentrations at dwellings on London Road South and a negligible change elsewhere. They would all be well within national requirements in 2014.

4.87 There would also be a net increase in total emissions of pollutants if and when the scheme becomes operational, mainly because of the increased distance travelled by vehicles in the study area. With the scheme there would be a marked decrease at nearby dwellings owing to the realignment and rerouting of carriageways. Elsewhere, any change would be negligible and overall, the scheme is assessed as having a slight/moderate beneficial effect at locations where baseline conditions are already below the respective objective values.

4.88 I agree with these assessments and have no significant concerns about air quality.

Landscape and Visual Effects

4.89 The scheme lies partly within and is surrounded by various landscape designations. It lies partly within the Green Belt (GB) and an Area of Great Landscape Value (AGLV). There is an Area of Local Landscape Importance (ALLI) approximately to the north (Stockwood Park), and an RHPG (Luton Hoo) with its associated Conservation Area (CA) to the south. The Chilterns Area of Outstanding National Beauty lies over 3km to the north-west.

4.90 NE does not consider that the scheme would be likely to have a significant effect upon the setting of the Chilterns AONB because

[17] The study area is illustrated in ES Figure 4.1, is drawn tightly and does not extend very far beyond the scheme in any direction

the scheme would be some 3.2km distant and beyond the M1, which forms an existing landscape buffer.

4.91 The ES points out that the presence of landscape designations underlines that the urban fringe within which the scheme lies is sensitive to landscape and visual change. The scheme straddles two landscape character areas within Central Bedfordshire (Slip End and Caddington/Luton Hoo) and abuts three townscape character areas in Luton (Ludlow Avenue, Farley Hill and Capability Green) APP-035.

4.92 The LIR points out that the design of the scheme employs minimal super-elevation (eg embankments or flyovers substantially above surrounding ground levels) with the main line following the natural contours of the ground, and the link between London Road North and South using an underpass. Reliance is placed on ground moulding and landscaping to offer additional mitigation but they would alter the historic wooded edge along Airport Way, east of London Road. Conversely, landscaping would otherwise strengthen characteristic elements in the longer term as woodland planting matures and hedgerows rejuvenate PD-011.

4.93 The ES assesses landscape and visual impacts in the well-established and widely understood way, using the GVLIA, LCA and DMRB methodologies AP-035.

4.94 As for landscape impact, according to the ES the impact of the scheme on the Slip End LCA would be of medium magnitude in the Opening year falling to low magnitude in Year 15 as a consequence of woodland development and landscape management. On the Caddington/Luton Hoo LCA, the magnitude of the landscape impact would be of low magnitude in the Opening Year and very low by Year 15 and because of the limited incursion and as a consequence of landscape mitigation proposals. Overall the scheme would have a maximum effect on landscape character in the Opening Year of moderate significance, declining to slight by Year 15. The mitigation measures can be secured by the Requirements and I therefore agree with these conclusions.

4.95 Turning to townscape impact, there would be no direct or indirect effects on Farley Hill as a result of the intervening distance, topography and vegetation. Nor would there be any impact on Capability Green for the same reasons. There would be an impact of very low magnitude on Ludlow Avenue/London Road in the Opening Year as a consequence of tree loss, but that would be compensated by new planting and increased woodland cover so that there would be no impact by Year 15. I agree with these assessments and conclude there would be no significant impact on townscape character.

4.96 The ES has assessed the significance of the scheme for visual impact by comparing the sensitivity of the receptor with the magnitude of the effects at representative viewpoints. Of the 13, five would experience no significant adverse impact from the

scheme at any stage and another four of slight/negligible significance would experience low or very low adverse impacts.

4.97 For one the result would be a beneficial effect of slight/negligible significance, but for the remaining three the impact would be more marked.

4.98 At Stockwood Park Golf Course and Halfmoon Overbridge (over the M1) the significance of the impact would be moderate/slight in the Opening Year, reducing to slight/negligible in Year 15 as a result of mitigation. The ES states and I agree that the maximum adverse visual impact would occur at Newlands Farm which lies very close to the scheme, below and to the south of the M1 Spur. The significance of the impact there would be substantial/moderate adverse in the Opening Year reducing to slight/negligible as a result of maturing mitigation planting by Year 15.

4.99 Personal observations on site visits have reinforced my agreement with these assessments, not least because the M1 Spur, the Kidney Wood roundabout and Airport Way are existing features in that landscape and the assessment must necessarily be concerned with change from that baseline. It also has to be remembered that ES also the scheme would have visual and landscape impacts of positive significance, albeit modest. These would occur at Kidney Wood House as a result of realignment of London Road South, at London Road North as a result of additional open space linkage, and at Kidney Wood, Bull Wood and Stockwood Park as a result of woodland management and landscape reinforcement.

4.100 The scheme would result in adverse landscape and visual impacts, but I agree that effective mitigation measures would ensure that they were eventually only slightly adverse. And weighed against the positive benefits of the scheme, I consider that limited impact broadly acceptable.

4.101 IPs have other concerns about landscape and visual effects.

4.102 Whilst offering broad support for the scheme, CPRE is concerned about its inter-relationship with Kidney Wood to the north-east. Because London Road (North) would be re-aligned, a void would be created between the wood and the proposed northern roundabout. CPRE propose that the former carriageway should be tree-planted with complementary species to become a westward extension of Kidney Wood, which is used by the general public for recreational purposes RR-002 & REP-021.

4.103 However, as the applicant explains, the scheme involves creating a transitional meadow between Kidney Wood (within the AGLV) and Stockwood Park (within the ALLI) to the west. The edge of the wood reveals historic boundary features. They would be lost to further planting, disturbing the wood's ecological balance and creating difficulties for statutory undertakers who would require access to remaining apparatus RR-017 & REP-032.

4.104 I consider that either solution would represent a fair transition from open land to woodland. However, whilst site visits confirmed that LBC has enhanced the wood by improving public access and traditionally relaying the boundary hedgerow, it also confirmed the presence of apparatus which would not, in my opinion, satisfactorily co-exist with substantial tree planting of appropriate complementary species. I therefore find the scheme's treatment of residual land more appropriate than the CPRE alternative, principally for the practical reasons relating to services.

4.105 CBC is concerned about the visual impact of many new lighting columns on open agricultural land to the south of the scheme, west of London Road (South) which would be prominent in the landscape. The applicant points out that the design height of columns has been reduced from 15m to 12m to reduce prominence and that LPAs would have control of appearance through requirements, including R7 which has been amended to refer specifically to column colour. Consequently I agree that the visual impact can be disguised and that CBC's concern can be met.

4.106 I am satisfied that with effective mitigation measures in place, there would be no serious conflict with LLP Policies ENV2, ENV9 and ENV10, or SBLPR Policies NE3 and BE8, or emerging Policy DSCB 50.

4.107 And finally there is the question of whether the scheme would detract from the openness of the Green Belt. I have already reached the conclusion that the scheme would not be inappropriate in the Green Belt. But I have also reached the conclusion that it would have a substantial/moderate adverse visual impact in the Opening Year. It therefore follows that it could be said to detract from the openness of the Green Belt.

4.108 However, I do not think so because it would be limited and mainly experienced on the urban side of the scheme which is otherwise acceptable. Moreover, the impact would not be permanent; the adverse impact would worst at first and decrease over time. I do not therefore consider that the scheme would detract from the openness of the Green Belt.

4.109 If, however, SST were to disagree any minor conflict with policy should be outweighed by the public interest in meeting the scheme's objectives; and an exception made to the Framework and SBLPR Policy NE10 together with emerging DSCB Policies 3 & 36, 43 & 50.

Cultural Heritage

4.110 The juxtaposition of the scheme with Luton Hoo is important. It comprises the extensive Grade II* Registered Historic Park and Garden (RHPG) landscaped by Capability Brown, the Grade I Listed Mansion originally designed by Robert Adam, the Grade II* Listed Stables, and several other Grade II Listed buildings with the Conservation Area embracing several of them. English Heritage (EH) and CBC do not object to the impact of the scheme

on the Luton Hoo setting. Both sought adequate mitigation arising from a more informed assessment than provided in the ES.

4.111 The RHPG lies to the south-west of the scheme. The Mansion is now an hotel and spa resort, while a substantial part of the parkland has been developed as a golf course. Thus Luton Hoo can no longer be viewed as the entity it once was; the house has been resited and rebuilt while much of Brown's landscaping has been lost, not least as a result of constructing the golf course. But the impact of the scheme on the setting still merits careful consideration, not least because of the national and local policy considerations.

4.112 I agree with the ES assessment that the setting of Luton Hoo is influenced by both visual and aural factors. The M1 to the west together with its lighting columns and also similar lighting columns for J10 and the Motorway Spur to the north-west are variously visible from quite a few vantage points near the Mansion and on the golf course; and they clearly contribute to the Luton Hoo setting. So too, do overhead power lines to the north.

4.113 The same goes for noise impact. The ES measurement of ambient noise levels was undertaken at the only three sensitive receptors (dwellings) within 600m of the site, although it noted that the dominant noise sources included the M1 and Luton Airport's approaching/departing aircraft. Based upon observations made on my site visits, M1 traffic noise is constant but variable depending upon wind direction. From some parts of the RHPG and especially the golf course, it is difficult to ignore planes landing or taking off from the Airport to the north-east, over Stockwood Park and Capability Green to the north, in both directions. In my opinion, civil aviation movements also contribute to Luton Hoo's setting, both visually and aurally.

4.114 There is therefore a well-established context for assessing the impact of the scheme on the setting of Luton Hoo. I was greatly assisted in making the preceding and following findings by site visits undertaken with the aid of additional photographs, photomontages and long sections through the RHPG provided in response to my request during the examination REP-044 & LBC 8.7.

4.115 The majority of the RHPG lies outwith the Zone of Theoretical Visibility (ZTV) for the scheme and to my mind its visual impact on the setting would be very limited as the ES confirms. Only some of the lighting columns and the upper parts of gantries would be visible and less so when new planting as a consequence of R7 becomes established, reinforcing the existing, substantial, intervening mature tree belt. Furthermore, the visual impact could be further restricted by appropriate colouring of lighting columns in accordance with R7.

4.116 Regarding the impact of noise, the ES concludes that this would not be significant as there would be a negligible increase in levels in the scheme's opening year across the RHPG and I see no reason to question that conclusion. But overall the ES assesses

the effects as slight adverse for the RHPG and neutral for the CA because of its greater distance from the scheme. I regard the assessment of impact on the setting of the RHPG as overly cautious.

4.117 I have considered whether the scheme might have a cumulative impact if coupled with other development, as yet unbuilt. The only potential candidate would be the proposed Stockwood Stadium, but it would be on the farther side of the scheme and in the absence of any detailed design details at this early stage in its evolution, I am unable to find at this stage that the scheme would have a significant impact on the setting of Luton Hoo, cumulatively with any other development.

4.118 Consequently I find that the scheme would have very little impact on the setting of Luton Hoo and such impact as it might have, would be effectively mitigated as intervening planting matures. I find no significant conflict with the Framework, SBLPR Policy BE7 or emerging DSCB Policy 45.

4.119 Archaeological heritage assets have been identified within the site and near the scheme. According to the ES, the scheme has the potential to cause direct physical impacts on the archaeological resource leading to a number of adverse effects during the construction phase. The potential for Palaeolithic remains has been identified in two areas where field surveys have been conducted and the potential is unknown in two others where no field survey work has been undertaken APP-035.

4.120 Archaeological assets have been identified of which there is a potential for 11 to be impacted by construction of the scheme resulting in disturbance or loss of the archaeological resource. No remains of medium, high or very high value have been identified and the low value remains would be of importance at the local level. But the potential Palaeolithic remains, if found, could be of medium-high value because of their rarity and regional-national significance.

4.121 Mitigation measures to reduce or avoid adverse impacts have been incorporated in planning the scheme's construction, involving a phased programme of archaeological works in two stages. The first would comprise an investigation of the unknown areas and the second would comprise a programme of mitigation measures to preserve remains in situ, which failing recoding and appropriately disseminating information about them. This would be achieved through the CEMP resulting in an overall effect of measured as slight adverse.

4.122 I agree with the principle of the approach and the assessment of the impact. But the LPAs consider that the significance of the Palaeolithic remains may have been underestimated. They express concern about potential Palaeolithic remains, which if found in good condition, could even be of international importance PD-011. They believe that the design and implementation of

mitigation measures is therefore of considerable importance and much of the effectiveness turns on rapidly evolving fieldwork techniques.

4.123 Both the LPAs and I were exercised by the use of terms in the ES and or the DCO which seemed ill-defined and considered that there ought to be more certainty over the mitigation strategy. Detailed consideration of this matter follows later in the context of the DCO. But there I eventually conclude that its drafting, in reflection of the ES, is appropriate for safeguarding the remains and I therefore find no unacceptable threat to them as a consequence of the scheme 6.21.

Ecology and Nature Conservation

4.124 There are nine non-statutory County Wildlife Sites (CWS) within 2km of Junction 10a, six of which have connectivity with it. The nearest are at Kidney and Bull Woods (adjacent), and at Stockwood Park (240m north); the next nearest are at Heavens and Chalk Wood (1km), and at Luton Hoo RHPG (1.9km) to the south.

4.125 According to the ES and in summary, the scheme's construction phase could result in significant impacts on ecological resources, especially habitats as a result of disturbance, fragmentation, pollution and direct loss, particularly of hedges, trees and woodland. Mature specimens could not readily be replaced and the resultant ecological impact, notwithstanding mitigation, would result in a residual long-term slight adverse effect. I agree with that assessment.

4.126 Natural England (NE) is the statutory nature conservation body. NE is satisfied that the scheme would not be likely to have a significant effect on any Natura 2000 or Ramsar sites because at 5km or more, it would be too distant from such sites to present any concern. NE is also satisfied that the scheme would not be likely to affect any Sites of Special Scientific Interest (SSSIs) for the same reason. The nearest site is some 12km away and no connecting environmental pathways have been identified. Nor does NE anticipate that the scheme would be likely to have a significant effect upon the Chilterns Area of Outstanding Natural Beauty (AONB) because the scheme would be some 3.2km distant, beyond the M1.

4.127 NE regards the ES as robust, including its assessment of the lack of connectivity with the scheme in terms of air quality and hydrology REP-019.

4.128 The ES states that there is no need to invoke NE's licensing function in respect of European protected species such as bats and/or badgers and no application for a licence has been made APP-035. NE concurs fully with the ES assessment, but should such species be discovered (eg by pre-felling tee inspection as required by the CEMP) I realise that NE would be required to exercise its licensing function RR-013.

4.129 NE broadly welcomes proposed enhancements to offset the scheme's local ecological and landscape-related impacts, and is satisfied that they would be sufficiently secured through the DCO's Requirements. Amenity and species-rich grassland, hedgerows, together with areas of woodland and heathland would make an important contribution towards local green infrastructure provision, and local biodiversity and open space targets APP-035 & REP-019.

4.130 I am satisfied that NE has no objections to the scheme and find that its mitigation concerns are adequately addressed by the Proposed DCO Appendix E, RR-013 & REP-019 & AS-017.

4.131 Badger surveys conducted in 2009 and 2010 leading to the conclusion in the ES that no badger setts were present within the scheme's footprint APP-035. However, CBC is concerned about badgers re-establishing setts before, during, or as a result of the scheme's construction and migrating across Airport Way to the woodland opposite REP-014. The applicant responds, however, that monitoring badger kills on Airport Way between Kidney Wood and Bull Wood is not proposed because they currently occur and it would be difficult to identify an accurate causal link with the impact of the scheme. Furthermore, to provide an underpass or subway under Airport Way would necessitate retro-fitting a tunnel in cutting with extensive fencing required to encourage its use.

4.132 In my opinion, such mitigation measures would have extensive engineering implications for construction impacts, land take and cost. Moreover, it is by no means clear that this solution would be effective and it might even be counter-productive for badger safety. And finally, considering NE is content to rely on requirements to secure safeguards, I can find no reason to recommend any modification of the scheme or the DCO in relation to CBC's concerns for badgers.

4.133 The slight adverse impact on ecological interests following mitigation should not stand in the way of the scheme and the benefits it brings in the wider public interest. Consequently I find that despite some conflict wit LLP Policy ENV5 and emerging DSCB Policy 57, it should be possible to make an exception in view of the scheme's benefits to for the wider public interest.

Conclusions

4.134 Drawing the threads together, it is clear that the applicant, with support from CBC, local businesses and others, has made a strong case for the scheme.

4.135 It has evolved consultatively through options in pursuit of additional highway capacity to alleviate congestion and stimulate economic growth in the interests of regenerating Luton. Socio-economic impacts would be positive and the scheme would offer good VfM. Furthermore, the scheme finds support in national planning policies and broadly at local level; and I judge it not inappropriate development within the Green Belt.

4.136 There would be some significant adverse environmental and ecological impacts and they should not be lightly ignored. But there is an identified need to provide additional highway capacity in the wider public interest. In my opinion, that benefit should outweigh the potentially adverse effects which could be satisfactorily mitigated by design, or in construction, or through compliance with requirements.

4.137 In so finding, I have had regard to the LIR, prescribed matters in relation to a highway scheme and all other relevant and important matters.

4.138 There is no reason to doubt that other required consents for environmental permits and protected species licences (if required) would not be forthcoming from the EA and NE, respectively.

5 COMPULSORY ACQUISITION

Land to be Acquired

5.1 The land that would be the subject of Compulsory Acquisition (CA) lies to the south of Luton and to the east of the M1. It is predominantly agricultural land, mainly arable but some pasture and part of an agricultural compound. The remaining land is woodland and open space. In summary, it comprises land bounded by the B4540 (Newlands Road), the A1081 (London Road South) and the M1 Spur. Land would also be taken between the M1 Spur and the London Road (North) north of the existing M1 Junction 10a APP-006.

Purpose of Compulsory Acquisition

5.2 Compulsory acquisition powers would enable construction and maintenance of the proposed development.

Draft Order Powers[18]

5.3 The Draft DCO seeks compulsory acquisition powers for land through Article 18 and for related rights through Article 20. In summary, other articles affecting land, rights and interests include:

- 21 Private rights over land
- 22 Vesting
- 23 Subsoil or air-space only
- 24 Rights under or over streets
- 25 Temporary use of land for carrying out the development
- 26 Temporary use of land for maintaining the development
- 27(28) Statutory undertakers
- 18(29) Apparatus and rights in stopped-up streets
- 29(30) Recovery of costs of new connections

5.4 The Book of Reference (BoR) submitted with the application identifies affected persons and land in three categories APP-015. There are seven parcels containing 45 plots of land to be acquired together with owners, lessees, tenants, occupiers or other interests. During the Examination, the BoR was the subject of two Schedules of Variation (SoV). The first amended entries of owners and lessees or tenants of Crown, Special Category and Replacement land[19] PD-003. The second amended the entries of owners and claimants in respect of open space PD-004.

[18] Proposed DCO articles used throughout with original Draft DCO articles in parentheses
[19] The Draft DCO originally included Special Category and Replacement land relating to open space

5.5 The Statement of Reasons (SoR) concludes that there is sufficient justification to exercise compulsory purchase powers over all identified land, rights and interests APP-013.

5.6 Finally, Article 26 of the draft DCO seeks powers of entry to and temporary possession of nearby land for purposes of occasional, but significant maintenance of the proposed development, while accommodating other uses in the interim. These powers would not extend to any house and/or garden, or any other occupied building.

Tests for Compulsory Acquisition

5.7 In summary, for the compulsory acquisition of land or rights to be authorised SST must be satisfied that the land is:

- required for the development to which the development consent relates,
- required to facilitate or is incidental to the proposed development, or
- is replacement land which is to be given in exchange for the order land

and that there is a compelling case in the public interest to do so[20].

5.8 In balancing the public benefits against the loss of private rights, the considerations are essentially that[21]:

- All reasonable alternatives to compulsory acquisition have been explored and discounted;
- A clear use for the land or need for the rights has been identified; and
- There is likelihood that adequate funds for the development will be available.

5.9 Furthermore, there is also a need to be satisfied that the stated purpose of acquisition is legitimate and sufficient to justify interference with the human rights of those affected[22].

5.10 The objectives for the scheme, its policy context and alternatives to it were considered in Sections 3 and 4, leading to the conclusions that there is a need for the scheme and no reasonable alternative to it. It is now necessary to assess the representations made and the special considerations applying to the compulsory acquisition of local authority, statutory undertaker and Crown land, and in relation to public space, before going on to consider funding and human rights issues.

[20] Planning Act 2008 ss122 & 123
[21] Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 & Planning Act 2008: Guidance related to procedures for compulsory acquisition (February 2010)
[22] Planning Act 2008: Guidance related to procedures for compulsory acquisition (February 2010)

Affected Persons (APs)

5.11 There are some 17 APs in total, of whom seven[23] made representations in writing. Two did not object to CA and four subsequently withdrew their objections, leaving only one objection outstanding from Ms Elizabeth Eldridge RR-014 REP-025 RR-011 PD-016, PD-021 & PD-019. A CA Hearing was requested and held, but Ms Eldridge did not attend REP-016.

AP's Case and Applicant's Response REP-071 & REP-023

5.12 Ms Eldridge is a Category 1 Person as defined in s57 of the 2008 Act. She tenants part of Plot 3, Plots 3A, 3B, 3C and part of Plot 3E, comprising pasture land. It lies generally to the south-east of the M1 Spur, north and north-east of Newlands Road, between Newlands Farm and London Road South (A1081).

5.13 She has rented land and buildings at Newlands farm for the last five years to stable her 25 competition ponies and provide them with adjoining grazing. She has also used the facilities to develop, break-in and produce (equine) teams for national and international (carriage) drivers. CA would mean the loss of grazing land. Furthermore, the ponies are valuable and the stables at Newlands Farm allow securely managed operations with minimal risk.

5.14 Ms Eldridge has spent five years building a client base and hoping to establish a reputation as one of the leading horse breaking yards in the country while enjoying her hobby. But in the current, difficult economic climate, loss of the grazing land could spell the demise of all her hard work. Furthermore, because she lives in nearby Harpenden with an elderly relative and has a child attending a local school, proximity to her ponies is very important.

5.15 The applicant replied promptly to Ms Eldridge's representation and met with her shortly thereafter to gain a better understanding of her pony operations and interest in the land RR-017. LBC has been assisting her in a search for alternative premises but by the close of the examination had still found it impossible to identify any which wholly met her extensive requirements. Nevertheless, relocation discussions continue with Ms Eldridge who has submitted the heads of her compensation claim to LBC EV-018.

5.16 It is clear to me that CA powers are required for the proposed scheme, which could not be constructed within the existing highway boundary. The land which she occupies as a tenant is required for construction of the proposed southern roundabout and associated highways.

[23] L&G Property Partners (Life Fund) Ltd, L&G Property Partners (Life Fund) Nominee Ltd, Stockwood Park Property Holdings Limited, Central Bedfordshire Council, National Grid plc, Mr Gary Speirs & Ms Elizabeth Eldridge

5.17 Alternative routes (for the scheme) have been considered, subjected to wide consultation and rejected by the applicant APP-016. Some alternatives have also been actively pursued by IPs through the examination and considered within this report. Nevertheless, alternatives would also have necessitated CA and none of those suggested have I found preferable to the scheme Section 4.

5.18 The land being compulsorily acquired is no more than is necessary for the proposed development and not all of the tenancy would be required; although the grazing would need to be taken for the scheme, the stables would not. The resultant inconvenience of severance is clear, but it is also clear that the applicant is making significant efforts to assist with relocation; and compensation exists to address all quantifiable losses.

5.19 Consequently I cannot find any substance in this objection to CA.

Statutory Undertakers

5.20 Seven statutory undertakers have rights to keep apparatus within the Order lands APP-015. Only one objected and the objection was subsequently withdrawn PD-021. Furthermore, the rights of Statutory Undertakers are adequately protected by Articles 28 and 29 of the Final Draft DCO.

Crown Land

5.21 It is proposed to compulsorily acquire:

- Plots 6 & 6A - Land at the Kidney Wood roundabout vested in the Secretary of State for Transport (SST), managed by the Highways Agency and largely occupied by LBC; and
- Plot 3G - Land at Newlands Farm in the ownership of Legal and General, occupied by SST and managed by the Highways Agency.

5.22 Crown consent for the acquisition was provided by the Highways Agency on behalf of SST REP-035. Additionally, there is a signed Memorandum of Understanding (MoU) between the applicant and the Highways Agency regarding mutually acceptable arrangements for works and other matters relating to the proposed development REP-027. And finally, there are protective provisions for highway authorities such as the Highways Agency in Schedule 12 of the Final Draft DCO.

Open Space

5.23 There was originally a proposal to compulsorily acquire public open space and consequently also replacement land APP-013. That would have involved the applicant seeking a certificate from the Secretary of State for Transport (SST) in order to avoid the need

for Special Parliamentary Procedure (SPP)[24]. But the applicant was able to appropriate land already owned by LBC[25] and acquire other interests outright, by agreement. Consequently, there is no need for the applicant to apply for a certificate or for the relative suitability of replacement land to be examined PD-003.

Local Authority Land

5.24 Land, almost exclusively highway, is being acquired from LBC and CBC. Neither objects to CA nor the principle of the proposed development. Furthermore, there are signed MoUs between the applicant and CBC, and HA regarding arrangements for implementation of the proposed development EV-021 & 1.15.

Funding APP-014 & EV-020

5.25 The cost estimate of the scheme is £29,399,315 and the available funds broadly match AS-010. The funding amounts to £29.2m and the components are:

- LBC will continue to make budgetary provision for promotion of the application, relying *inter alia* upon £1m of Growth Area Funding from the Homes and Communities Agency (HCA) and £900,000 of its own funds;
- Regional Growth Funding (RGF) amounting to some £24.8m has been secured from the Department for Business, Innovation & Skills (BIS);
- London Luton Airport Limited and London Luton Airport Operators Limited will contribute £2.5m; and
- LBC will continue to seek contributions from other sources, including private sector developers likely to benefit from the scheme.

5.26 On any land to be compulsorily acquired, a notice to treat could be served up to five years from the date of making the Order[26]. Whilst RGF funds must effectively be spent by June 2015, there is no such constraint on other funding. Consequently, the likelihood of the availability of sufficient resources to meet compensation claims and the cost of acquiring blighted land appears firmly established.

Human Rights Considerations

5.27 In reaching conclusions on CA I am required to have regard to the relevant articles of the European Convention on Human Rights (ECHR) as implemented by the Human Rights Act 1998.

[24] Planning Act 2008 s131
[25] Local Government Act 1972 s122
[26] Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 regulation 3(2)

5.28 Article 6 requires a fair and public hearing by an independent and impartial tribunal. The procedures under the 2008 Act make provision for objections to be heard by the ExA as an independent tribunal and for challenges to be brought by judicial review in the High Court. Moreover, I am satisfied that the examination process including the written representations both at the outset and during the examination, together with the CA Hearings and accompanied site visits, have ensured a fair and public hearing under Article 6.

5.29 Article 8 is not invoked because no dwellings are the subject of CA.

5.30 Article 1 of the First Protocol provides the right to peaceful enjoyment of possessions and is invoked in respect of Ms Elizabeth Eldridge's potential loss. However, only part of her interest is being acquired. Moreover, she continues to occupy the land and graze her ponies while the applicant actively assists with relocation. The plots on which her ponies graze comprise a substantial and important proportion of the land required for the scheme, acquisition of her interest is necessary to implement the scheme and compensation is available in respect of quantifiable loss. In therefore find that the interference is proportionate and strikes a fair balance with the public interest.

5.31 For the scheme as a whole, I find that any potential interference with human rights is proportionate and strikes a fair balance with the public interest, for which a compelling case has been made Section 4. The land to be acquired is no more than required to implement the scheme which would offer very significant public benefits. The benefits could only be realised by implementing the scheme which in turn, requires CA. Furthermore, APs have had access to a fair and public hearing and would be entitled to compensation in respect of quantifiable losses.

Conclusions on Compulsory Acquisition

5.32 As a consequence of the examination process, including consideration of:

- The relevant representations and all written submissions;
- Two rounds of questions and the relevant responses;
- A request for further information and responses thereto; and
- The proceedings of four hearings including specifically, a compulsory acquisition hearing,

I am satisfied that the proposed development is for a legitimate purpose, that there is a likelihood of sufficient resources being available to fund it and that each plot to be acquired has been identified for a clear purpose. I am also satisfied that no more land is being acquired than is reasonably required for the purpose

of the scheme, or is reasonably necessary for facilitating or incidental to the purpose, and is proportionate. I am satisfied that the public benefits of the proposed development outweigh any potential private disbenefits and that there is a compelling case in the public interest for CA.

5.33 In reaching these conclusions I am satisfied that the mitigation measures set out in the ES can be provided, retained and maintained where necessary through construction of the scheme and the DCO's Requirements, which would satisfactorily minimise the environmental impacts of the proposed development Section 4. Furthermore, the DCO also includes provisions to ensure adequate monitoring of environmental impacts and remedial measures if necessary.

5.34 And finally, so far as human rights are concerned, I am satisfied that the examination process has ensured a fair and public hearing; that any interference with human rights arising from implementation of the scheme is proportionate and strikes a fair balance between the rights of the individual and the public interest; and that compensation would be available in respect of any quantifiable loss.

6 DEVELOPMENT CONSENT ORDER

Draft DCO

6.1 The Draft DCO is accompanied by the required Explanatory Memorandum and both form an integral part of the application APP-011 & APP-012.

6.2 The DCO is sought in order to authorise construction of a new junction at M1 J10a to replace the existing roundabout. The purpose of the new junction would be to permit less restricted south-west/north-east vehicular movements. The DCO would authorise:

- Modification of lanes for traffic leaving or entering M1 Junction 10 when travelling to or from the M1 Spur;
- Creation of a continuous highway between the M1 Spur and Airport Way (A1081);
- Widening of the road between M1 Junction 10 and Capability Green to three lanes in each direction; and
- Realignment of sections of London Road (North and South) coupled with construction of two new roundabouts and a bridge beneath the M1 Spur as well as construction of new slip roads between the new roundabouts at the M1 Spur, allowing traffic to join or leave the motorway by way of M1 Junction 10a.

6.3 The DCO also provides for associated development including APP-011:

- Reconfiguration of highways; and
- Construction of a diverted footpath APP-011.

6.4 Schedule 1 of the DCO does not differentiate between Works forming part of the NSIP and Works which are associated development because there may be some definitional overlap and there is no statutory requirement to do so.

6.5 Ancillary matters (ie provisions not comprising development) provided for by the DCO include:

- Compulsory acquisition (CA);
- Improvement, alteration, diversion and stopping-up of highways;
- Classification and re-classification of highways;
- Stopping-up and creation of new means of access;
- Provision of clearways;
- Variations of speed limits;
- Application and disapplication of relative legislation; and
- Deemed consents.

6.6 The drafting of the DCO is generally based on the model provisions[27]. However, because of the linear nature and related characteristics of the scheme some articles are based on the associated model provisions for railways and Orders[28] or Transport and Works Act (TWA) model clauses[29] and Orders[30] or other NSIP DCOs which have been made by SST[31] and Hybrid Bills. Although there is no longer a legal requirement to use the model provisions, they are a useful point of for comparison.

6.7 For the most part, definitions replicate the model provisions. Some definitions have been adapted from models, some models have not been used and some definitions have been added where un-modelled. I am generally satisfied with the applicant's reasons for doing so APP-011 & APP-012.

6.8 Most Articles and Requirements replicate or are very similar to the model provisions and where departures have been made it is generally because the power sought is not modelled in the infrastructure provisions[32]. Where variations from the model provisions are proposed I am satisfied that there are good reasons and that a broadly suitable alternative approach has been adopted[33].

6.9 Articles and Requirements requiring further consideration are dealt with as necessary, below 6.13.

Development of the DCO through Successive Drafts

6.10 The DCO developed during the examination and it may be helpful to follow the trail. Drafting was amended iteratively in response to my questions and responses thereto, together with representations, submissions and hearing proceedings; and also in response to negotiations between the applicant and IPs and APs. Consequently there are now four substantive (a, c, e & g) and three developing (b, d & f) versions. Tracked changes are used on successive drafts to illustrate revisions and allow comparisons with the First Draft DCO. They are:

- First Draft DCO submitted with the application APP-011;
- Draft DCO (Schedule 2) with revisions as at 13 March 2013 REP-035;
- Draft DCO with all revisions as at 10 April 2013 AS-007;
- Draft DCO with revisions between 11 and 26 April 2013 AS-016;
- Draft DCO with all revisions as at 26 April 2013 AS-015;

[27] Infrastructure Planning (Model Provisions)(England and Wales) Order 2009
[28] eg Network Rail (Nuneaton North Chord) Order 2010
[29] Transport and Works Act (Model Provisions) Order 2006
[30] eg Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 & Nottingham Express Transit System Order 2009
[31] eg Network Rail (North Doncaster Chord) & Rookery South (Resource Recovery Facility) DCOs 2011
[32] eg clearways, speed limits, classification of highways etc
[33] Articles modelled on made DCOs or TWA Orders or other Orders

- Draft DCO with revisions between 27 April and 3 May 2013 AS-018; and
- Final Draft DCO with all revisions as at 3 May 2013 AS-017.

6.11 Another version of the DCO is appended in a final form for making, if all recommendations relating to the Final Draft are accepted:

- Proposed DCO as at 12 August 2013[34].

6.12 In considering DCO provisions I shall refer mainly to the first and the last versions as the First Draft DCO and Final Draft DCO. I shall also refer to the Proposed DCO.

Revisions Proposed by the Applicant

6.13 Most of the applicant's revisions were either directly or indirectly in response to my questions, or an agreement with an IP or AP, or as a result of subsequent discussion at hearings. The applicant also undertook un-prompted revisions AS-014.

6.14 The drafting style has been modernised throughout so that the language of the Final Draft DCO now accords with current drafting practice for statutory instruments. A series of minor inaccuracies have been corrected, and definitions added and deleted; and there have also been amendments of the provisions relating to compulsory acquisition of open space and replacement land. These are important but uncontroversial revisions.

6.15 I am satisfied that these changes are necessary and that the DCO has been improved as a result, particularly in respect of comprehension.

DCO Drafting needing Further Consideration

6.16 The Final Draft DCO does not address all the concerns about drafting raised during the examination. In some cases, however, I am satisfied that that the concerns have been resolved by re-drafting consistently or in a more modern style, or through further clarification.

6.17 Nevertheless, there are other concerns where the applicant was not persuaded that the drafting should be revised, but which I regard as sufficiently important to highlight below. In doing so I am mindful that insofar as the adequacy of requirements under the 2008 Act is concerned, regard should be had to the advice in Circular 11/95 as is required for the consideration of conditions under the 1990 Act.

[34] Appendix E of this report incorporates tracked changes to the applicant's Final Draft DCO

Part 1 Article 2 and Schedules 1 & 2: Demolition

6.18 During the examination I expressed concern about *demolition* and the extent to which it might subvert the intention of requirements DEC-004 & REP-034. That is because there are a number of requirements which must be fulfilled before the authorised development may commence. I realise that the extent of demolition would be fairly restricted in the scheme but it is essential to avoid ambiguity. The description of authorised development in Schedule 1 makes no reference to demolition works, save for a brief mention as *further development* in (viii). But I regard it inappropriate to refer to demolition as further development when it should be unambiguously included within the meaning of authorised development.

6.19 In my view there is a need to be clear that demolition is within the description of authorised development. For example, Schedule 2, R5(1) states:

None of the authorised development, including any site clearance works is to be commenced until an ecological strategy ....has been submitted to and approved by…

6.20 The process of demolition may precede site clearance, but as demolition is not embraced within the context of authorised development it seems to me that demolition could occur without triggering any requirement for an ecology strategy, with adverse consequences potentially arising.

6.21 The term demolition should therefore be defined in Article 2. The applicant accepts that a definition would be possible along the following lines REP-027:

Destruction and removal of existing infrastructure, buildings and the like required to facilitate, or which are incidental to, construction of the scheme; and such works may occur on one occasion or over any period of time.

6.22 Reference should then be made to demolition at the end of Schedule 1 in the following terms:

For the avoidance of doubt, any demolition preceding the Works shall be regarded as an integral part of the authorised development.

6.23 I realise that three DCOs have been made by SST without defining demolition or clarifying its inclusion within the meaning of authorised development. I am unaware of the circumstances or related considerations in drafting other DCOs, but in this case I do see very considerable merit in defining and including it to ensure that demolition does not occur ahead of discharging a requirement.

Archaeology: Tool Box Talks and General/Targeted Watching Brief

6.24 I also expressed concern about use of the terms *tool box talks* and *watching brief* because they seemed ill-defined REP-034 & DEC-011. They appear in the ES in the context of archaeological remains where suitable mitigation measures may include APP-050:

- a general watching brief would be required to identify, assess the significance of and record any surviving Palaeolithic remains;
- a targeted watching brief …. where archaeological remains of low value have been identified within the scheme alignment; and
- a series of tool box talks for the Principal Contractor or earth moving contractor …. to provide advice on the identification of archaeological remains in advance of and during construction.

6.25 If discovered, Palaeolithic remains would be of importance and it is therefore essential to secure effective mitigation for protecting, recording or preserving them. That responsibility would apply also to remains of lower value.

6.26 My concern was shared by CBC and LBC, to whom it would fall (as LPAs) to monitor and if necessary, enforce R12 (Archaeology) REP-014. However, the term *tool box talks* does not appear in R12 and perhaps should, but would then require to be defined. Conversely, *watching brief* features in R12, but the LPAs would prefer to see it deleted because it could become dated by developing archaeological practice.

6.27 I recognise the anxiety of the LPAs to include the use of expert archaeological expertise in any mitigation strategy, but I believe that is most likely to be secured through implementation of the requirement as drafted, including the term *watching brief*. As the applicant explains, the term *watching brief* is well-established, broad and not intended to limit the techniques used in archaeological work. Specifically, it should not preclude the use of newer techniques, as and when they evolve, but ensure that archaeological works are carried out at least to the standard of the *watching brief*. Moreover, R12 provides that no work can take place without the LPA's approval of an investigative scheme REP-033, REP-035 & AS-014.

6.28 Furthermore, I have concluded that the term need not be defined in the DCO in order to permit some flexibility for both applicant and LPAs in order to make use of the most appropriate mitigation techniques available at the time of exploration. Such flexibility would be unlikely to lead to abuse because, like so many working

practices, the practice is professionally described and regulated[35], which should provide comfort.

6.29 As for *toolbox talks*, I have also concluded that there is no need for the DCO to go into such detail and consequently no need for the term to be defined within it, bearing in mind that the LPAs have to approve a detailed archaeological scheme before any stage of the authorised development may commence.

Schedule 2, Requirements: Approval of Details and Subsequent Amendments

6.30 During the examination I expressed reservations about inclusion of the words *unless otherwise agreed in writing by the relevant planning authority* in many Requirements which necessitate approval of details from the LPA DEC-007. I remain concerned because the wording implies that the applicant may be afforded an opportunity to do something different from that which the requirement contemplates without the need for a formal application to the LPA and the associated scope for public scrutiny. And that is reinforced by the fact that in the case of LBC, the LPA and the applicant (as developer) are one and the same.

6.31 The Final Draft DCO contains a greatly expanded number of requirements which employ this wording. It is possible that all relevant details approved under 12[36] requirements could be altered subsequently by an informal exchange of correspondence between the developer and the LPA. R18 reinforces these informal arrangements by application to the subsequent amendment of any requirement and consequently, there are only two requirements which are not capable of subsequently being changed informally[37].

6.32 The applicant argues that this wording has been used before in other DCOs made by SST and SSECC[38], custom and practice supporting the flexibility to vary the requirement rather than depart from it AS-006 & AS-014. I am not familiar with the circumstances pertaining or the considerations relating to other orders. But I am mindful that changes in requirements which could potentially result in material changes to the authorised development should be dealt with through the statutory code ie by making an application to the LPA to vary the requirement.

6.33 Conditions under the 1990 Act must meet the tests of Circular 11/95 and it follows that so too should requirements under the

[35] Institute for Archaeologists Standard and Guidance for an Archaeological Watching Brief
[36] Rs 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17
[37] Rs 2 & 6
[38] North Doncaster Chord, Heysham to M6 & Kentish Flats Extension DCOs

2008 Act. I do not consider that such flexibility meets two of the six tests, namely precision and reasonableness.

6.34 I realise that SST has not always shared this concern in similar circumstances where the Council was both promoter of the scheme ie the applicant and the LPA[39]; and it now appears the decision-maker was not persuaded to do so in making another DCO[40]. But circumstances alter cases and I regard it as essential that the concern be addressed in this case.

6.35 In my opinion the only way in which that could be done would be by deletion of the problematic wording and I so recommend.

Consistency in Drafting Requirements

6.36 Like a planning condition, a requirement should have three parts:

- the requirement to submit details for approval and when they should be submitted;
- the grant of approval by the local planning authority; and
- the implementation in accordance with the approval.

6.37 Some but not all Final Draft DCO requirements conform to this pattern, possibly as a result of hasty redrafting ahead of the close of the examination. Two[41] provide no timescale for submission of details. R7 (landscaping) provides no timescale for submission of landscaping details. R19 (traffic management during construction) also exhibits this defect. Both should be amended to incorporate a timescale for certainty and consistency; and I so recommend.

Final Draft and Proposed DCOs

6.38 For the avoidance of doubt, the Final Draft DCO incorporates all the revisions discussed above which are acceptable to the applicant and those where I have reported outstanding concerns. The Proposed DCO incorporates all the applicant's acceptable revisions and the remedies for my concerns in tracked changes. The Proposed DCO is in the recommended form for making

Appendix E.

DCO Conclusions

6.39 I am satisfied with the drafting style of the Final Draft DCO and with the applicant's approach to some but not all the outstanding concerns. Consequently I am proposing the following modifications to the Final Draft DCO:

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[39] Halton Borough Council – The Mersey Gateway Project decision letter (20 December 2010) paragraph 52
[40] Rail Chord North of Ipswich Goods Yard
[41] Rs 7 & 19

- Define *demolition* in Article 1 as earlier suggested;
- Delete the words *unless otherwise agreed in writing* by the relevant local planning authority from Rs4, 5, 9, 10, 11, 12, 13, 14, 15, 16, & 17;
- Redraft R18 by deleting the reference to subsequent amendments in (1) and by combining (1) and (2); and
- Add *None of the authorised development is to commence until the landscaping scheme has been approved* at the end of R7(1) and add at the end of R19(3) *None of the authorised development is to commence until the traffic management plan has been approved.*

6.40 These modifications have been incorporated within the Final Draft DCO as tracked changes and the Proposed DCO results Appendix E. Thus the DCO may be made in that form if these and other recommendations are accepted.

7 OVERALL CONCLUSIONS AND RECOMMENDATION

Conclusions

7.1 The principle of the proposed grade-separation of Junction 10a of the M1 is consistent with national planning policies and supported by the most relevant local planning policies [3.40]. Where there is a degree of conflict, or the potential for conflict, it can be suitably addressed by appropriate mitigation measures [Section 4]. The scheme would not be inappropriate development within the Green Belt [3.40] and such visual impact as the scheme may have is short-term and of little significance for openness [4.104].

7.2 The Draft DCO submitted with the application, as amended during the examination, is appropriate for implementation of the scheme subject to amendments proposed in Section 6 [6.36]. The DCO also makes provision for the compulsory acquisition of land and rights, and the creation of new rights [6.5]. These are necessary for implementation of the scheme and meet the tests set out in the s122 of the 2008 Act [5.32-33].

7.3 So far as human rights are concerned, the examination process has ensured a fair and public hearing; any interference with human rights arising from implementation of the scheme is proportionate and strikes a fair balance between the rights of the individual and the public interest; and compensation would be available in respect of any quantifiable loss [5.34].

7.4 Other consents are required and some may be required to implement the scheme, but there is every reason to suppose that they will not be granted by the EA or NE if required [1.12]. None is a prerequisite of making the DCO.

Recommendation

7.5 For the reasons set out above and in accordance with section 83 of the 2008 Act, I recommend that the M1 Junction 10a (Grade Separation) Development Consent Order 201[3] be made by the Secretary of State for Transport.

APPENDICES

APPENDIX A THE EXAMINATION

The main events during the examination occurred on the following dates:

Date	Event
15 November 2012	Preliminary Meeting (PM) held & Examination began thereafter
30 November 2012	Notification by the Examining Authority (ExA) of procedural decisions including confirmation of the examination timetable, venues, times and dates of Issue Specific (IS), Open Floor (OF) and Compulsory Acquisition (CA) Hearings, and Accompanied Site Visits (ASVs)
	Note of the PM issued
	First Written Questions issued
21 December 2012	Deadline for Statutory Bodies to notify the ExA of their wish to be considered as an Interested Party (IP)
9 January 2013	Deadline for receipt by the ExA of:
	Written Representations by IPs
	Local Impact Report (LIR) from Local Planning Authorities (LPAs)
	Responses to ExA's First Written Questions
	Notification by an IP of their wish to be heard at (a) an OF Hearing (none received) or by an Affected Person (AP) at a (b) CA Hearing (one received)
	Comments on Relevant Representations (RRs)
6 February 2013	Deadline for receipt by the ExA of:
	Comments on Written Representations (WRs)
	Comments on LIR
	Comments on Responses to Examining Authority's First Written Questions *Statements of Common Ground (SOCG)* *Responses to Comments on RRs*

	Notification of wish to cross-examine at IS or CA Hearing (one received)
13 February 2013	IS Hearing on Draft Development Consent Order (am)
	ASVs (pm)
20 February 2013	ExA's Second Written Questions issued
13 March 2013	Deadline for receipt by the ExA of:
	Responses to Second Written Questions
10 April 2013	Deadline for receipt by the ExA of:
	Comments on Responses to Second Written Questions *Initial revised proposed schedules or requirements for inclusion within the Draft DCO*
16 April 2013	ASVs (adjourned)
17 April 2013	IS Hearing on Environmental Impacts and Mitigation Proposals (am) and Alternatives, Justification, Need, Costs & Benefits (pm)
18 April 2013	IS Hearing on Draft DCO (adjourned)
19 April 2013	CA Hearing (adjourned)
26 April 2013	Deadline for receipt by the ExA of:
	Revised proposed schedules or requirements for inclusion within the Draft DCO
30 April 2013	Resumed Hearings into Alternatives, Justification, Need, Costs & Benefits, CA and Draft DCO
3 May 2013	Final Draft DCO and related material received
9 May 2013	Deadline for receipt by the ExA of:
	Comments on Final Draft DCO and any related material (none received)
13 May 2013	Deadline for receipt by the ExA of:
	Applicant's response to comments on Final Draft DCO and any related material (not required because no comments received)

13 May 2013	Examination closed

-end-

APPENDIX B EXAMINATION LIBRARY

The following documents have been used during the course of the Examination. They are grouped by category with each document having a unique reference and all documents available on the Planning Inspectorate's National Infrastructure Planning website at the Luton M1 Junction 10a – Grade Separation project page:

http://infrastructure.planningportal.gov.uk/projects/eastern/m1-junction-10a-grade-separation-luton/?ipcsection=overview

Categorisation of Documents

References	***Documents***
APP-001/062	Application Documents
PD-001/023	Project Documents
DEC-001/014	Procedural Decisions
RR-001/017	Relevant Representations
REP-001/048	Written Representations
AS-001/021	Additional Submissions
EV-001/024	Preliminary Meeting & Hearing Documents

Application Documents (APP)

Application Documentation

APP-001	Application Covering Letter
APP-002	1.1 Application Document List
APP-003	1.2 Introduction
APP-004	1.3 Application Form
APP-005	1.4 Copies of Newspaper Notices

Plans

APP-006	2.1 Land Plans
APP-007	2.2 Works Plans
APP-008	2.3 Street Plans
APP-009	2.4 Sections and Other Plans
APP-010	2.5 Environmental Context Plans

Draft Development Consent Order

APP-011	3.1 Draft Development Consent Order
APP-012	3.2 Explanatory Memorandum

Compulsory Acquisition

APP-013	4.1 Statement of Reasons
APP-014	4.2 Funding Statement
APP-015	4.3 Book of Reference

Reports

APP-016	5.1.1 Consultation Report
APP-017	5.1.2 Consultation Report Appendices – Part A
APP-018	5.1.3 Consultation Report Appendices – Part B
APP-019	5.1.4 Consultation Report Appendices – Part C
APP-020	5.1.5 Consultation Report Appendices – Part D
APP-021	5.1.6 Consultation Report Appendices – Part E
APP-022	5.1.7 Consultation Report Appendices – Part F
APP-023	5.1.8 Consultation Report Appendices – Part G
APP-024	5.1.9 Consultation Report Appendices – Part H
APP-025	5.1.10 Consultation Report Appendices – Part I
APP-026	5.1.11 Consultation Report Appendices – Part J
APP-027	5.1.12 Consultation Report Appendices – Part K
APP-028	5.8.1 Options Report
APP-029	5.8.2 Options Report – Appendices – Part 1
APP-030	5.8.3 Options Report – Appendices – Part 2
APP-031	5.8.4 Options Report – Appendices – Part 3
APP-032	5.8.5 Options Report – Appendices – Part 4
APP-033	5.8.6 Options Report – Appendices – Part 5

Environmental Statement

APP-034	6.1.1 Environmental Statement – Non Technical Summary
APP-035	6.1.2 Environmental Statement – Main Text
APP-036	6.2.1 Environmental Statement – Volume 2 – Figures – Part A
APP-037	6.2.2 Environmental Statement – Volume 2 – Figures – Part B
APP-038	6.2.3 Environmental Statement – Volume 2 – Figures – Part C

APP-039	6.2.4 Environmental Statement – Volume 2 – Figures – Part D
APP-040	6.2.5 Environmental Statement – Volume 2 – Figures – Part E
APP-041	6.2.6 Environmental Statement – Volume 2 – Figures – Part F
APP-042	6.2.7 Environmental Statement – Volume 2 – Figures – Part G
APP-043	6.2.8 Environmental Statement – Volume 2 – Figures – Part H
APP-044	6.2.9 Environmental Statement – Volume 2 – Figures – Part I
APP-045	6.3.1 Environmental Statement – Volume 3 – Appendices – Part A
APP-046	6.3.2 Environmental Statement – Volume 3 – Appendices – Part B
APP-047	6.3.3 Environmental Statement – Volume 3 – Appendices – Part C
APP-048	6.3.4 Environmental Statement – Volume 3 – Appendices – Part D
APP-049	6.3.5 Environmental Statement – Volume 3 – Appendices – Part E
APP-050	6.3.6 Environmental Statement – Volume 3 – Appendices – Part F
APP-051	6.3.7 Environmental Statement – Volume 3 – Appendices – Part G
APP-052	6.3.8 Environmental Statement – Volume 3 – Appendices – Part H
APP-053	6.3.9 Environmental Statement – Volume 3 – Appendices – Part I
APP-054	6.3.10 Environmental Statement – Volume 3 – Appendices – Part J
APP-055	6.3.11 Environmental Statement – Volume 3 – Appendices – Part K
APP-056	5.2 Flood Risk Assessment
APP-057	5.3 Environmental Protection Act Statement
APP-058	5.7 Environmental Licences Statement

Planning Statement

APP-059	5.6 Planning Statement

Other Documents

APP-060	5.4 Traffic Forecasting Report
APP-061	5.5 Transport Assessment
APP-062	7.1 Aerial Photos

Project Documents (PD)

General Project Documents

PD-001	Late Consultation Responses – East of England Development Agency
PD-002	Luton Borough Council – Corrected Plan Submission
PD-003	Section 56 Certificates of Compliance and Book of Reference Schedule of Variation

PD-004	Book of Reference – Schedule of Variation 2
PD-005	Luton Borough Council – Transboundary Screening Matrix

Comments on Draft DCO & Explanatory Memorandum

PD-006	Luton M1 Junction 10a Grade Separation Scheme comments on draft Development Consent Order & Explanatory Memorandum and related documents
PD-007	Infrastructure Planning Commission comments on Draft Development Consent Order and Explanatory Memorandum
PD-008	The Planning Inspectorate's comments on draft documents

Scoping Documents

PD-009	Scoping Opinion
PD-010	Scoping Report

Local Impact Report & Statement of Common Ground

PD-011	Local Impact Report - Central Bedfordshire Council & Luton Borough Council
PD-012	Statement of Common Ground - Central Bedfordshire Council & Luton Borough Council

Correspondence from Interested Parties

PD-013	Environment Agency – Letter to confirm no further issues
PD-014	Health and Safety Executive - Request to become an Interested Party
PD-015	Health Protection Agency - Request to become an Interested Party
PD-016	Letter from Graham Lawrence LLP – Withdrawal of objection by Legal & General Property Partners Limited
PD-017	Letter from Natural England – Response to late Written Representation
PD-018	Letter from British Railway Board – Withdrawal from Interested Party status
PD-019	Letter from Bidwells – Withdrawal of objection by Gary Speirs
PD-020	Letter from Berwin Leighton Paisner – National Grid Plc objection update
PD-021	Letter from Berwin Leighton Paisner – Withdrawal of objections by National Grid Plc
PD-022	Letter from Affinity Water – Withdrawal of Written Representation
PD-023	Letter from Bircham Dyson Bell – Update regarding position on submissions on Monday 13 May 2013

Procedural Decisions (DEC)

General Procedural Decisions

DEC-001	Acceptance Decision Letter
DEC-002	Section 55 Acceptance Checklist
DEC-003	Rule 6 Letter including Rule 4 Notice
DEC-004	Rule 8 Letter
DEC-005	Rule 13 Letter
DEC-006	Notice of Issue Specific Hearing on 13 February 2013 – Bircham Dyson Bell
DEC-007	Issue Specific Hearing and Accompanied Site Visit Agenda Letter – Including comments and questions on Draft Development Consent Order
DEC-008	Notice of further Hearings and Accompanied Site Visit letter
DEC-009	Letter to confirm venue of further Hearings
DEC-010	Notice of Issue Specific Hearing and Compulsory Acquisition Hearing on 17, 18, 19 April 2013
DEC-011	Rule 17 letter requesting further information sent on 3 April 2013
DEC-012	Hearing and Accompanied Site Visit agenda for week commencing 15 April 2013
DEC-013	Rule 17 and Rule 8 (3) letter for further deadlines
DEC-014	Rule 99 Close of Examination letter

Relevant Representations (RR)

RR-001	10016318	Elizabeth E Higgens
RR-002	10016686	Campaign to Protect Rural England
RR-003	10016689	Prologis UK Limited
RR-004	10016690	Edward Lewis on behalf of Legal & General Property Partners
RR-005	10016694	Highways Agency
RR-006	10016695	Slip End Parish Council
RR-007	10016697	Environment Agency
RR-008	10016698	Augur Group
RR-009	10016699	English Heritage
RR-010	10016700	Mike Sanders
RR-011	10016701	Central Bedfordshire Council
RR-012	10016702	National Grid plc

RR-013	10016704	Natural England
RR-014	10016705	Stacey Rawlings of Bidwells on behalf of Stockwood Park Property Holdings Ltd
RR-015	10016706	Power Court Luton Limited Partnership
RR-016	LUTO-0001	Malcolm C Howe

Comments on Relevant Representations

RR-017	8.2 Luton Borough Council

Written Representations (REP)

Adequacy of Consultation

REP-001	Adequacy of Consultation Response – Aylesbury Vale District Council
REP-002	Adequacy of Consultation Response – Bedford Borough Council
REP-003	Adequacy of Consultation Response – Central Bedfordshire Council
REP-004	Adequacy of Consultation Response – Hertfordshire County Council
REP-005	Adequacy of Consultation Response – Huntingdonshire District Council – Holding Reply
REP-006	Adequacy of Consultation Response – Huntingdonshire District Council – Hard Copy
REP-007	Adequacy of Consultation Response – Huntingdonshire District Council – Electronic Copy
REP-008	Adequacy of Consultation Response – Luton Borough Council – Hard Copy
REP-009	Adequacy of Consultation Response – Luton Borough Council – Electronic Copy

Written Representations

REP-010	Affinity Water
REP-011	Lawrence Graham LLP on behalf of Legal & General Property Partners
REP-012	Health and Safety Executive
REP-013	Bidwells on behalf of Gary Speirs
REP-014	Central Bedfordshire Council
REP-015	Mike Sanders
REP-016	National Grid
REP-017	Elizabeth E Higgens (Late Written Representation)
REP-018	Elizabeth Eldridge (Late Representation accepted by ExA as Relevant)
REP-019	Natural England (Late Written Representation)
REP-020	Natural England Land Use Planning Feedback Form (accompanying

	Late Written Representation)

Responses to Examining Authority's First Written Questions

REP-021	Thurstan Adburgham on behalf of CPRE
REP-022	Malcolm C Howe
REP-023	Elizabeth Eldridge
REP-024	English Heritage
REP-025	Bidwells on behalf of Stockwood Park Property Holdings Ltd
REP-026	Highways Agency
REP-027	8.1 Luton Borough Council
REP-028	Mike Sanders
REP-029	National Grid
REP-030	Slip End Parish Council

Comments on First Written Questions Responses, Local Impact Report & Written Representations

REP-031	8.5 Luton Borough Council comments on Local Impact Report
REP-032	8.3 Luton Borough Council comments on responses to the Examining Authority's First Written Questions
REP-033	8.4 Luton Borough Council comments on Written Representations

Examining Authority's Second Round of Written Questions

REP-034	Examining Authority's Second Round of Written Questions

Responses to Examining Authority's Second Round of Written Questions

REP-035	8.6 Luton Borough Council
REP-036	English Heritage
REP-037	Central Bedfordshire Council
REP-038	Highways Agency
REP-039	Central Bedfordshire
REP-040	Luton Borough Council as Local Planning Authority
REP-041	Environment Agency
REP-042	Health and Safety Executive
REP-043	Bidwells on behalf of Gary Speirs
REP-044	8.7 Luton Borough Council – Photomontages and Location Plan
REP-045	8.8 Luton Borough Council – Draft Code of Construction Practice

Comments on the Second Round of Written Questions Responses

REP-046	8.11 Luton Borough Council
REP-047	Luton Borough Council – Appendix 1

Response to Rule 17 Letter

REP-048	8.10 Luton Borough Council

Additional Submissions (AS)

AS-001	Centrebus Limited
AS-002	Augur Group Limited
AS-003	Wates Construction Limited
AS-004	London Luton Airport
AS-005	The Mall Luton
AS-006	8.9 Luton Borough Council – Responses to the Examining Authority's Questions on the Draft Development Consent Order
AS-007	3.1 Luton Borough Council - Responses to the Examining Authority's Questions on the draft Development Consent Order – Appendix 1
AS-008	National Grid – Protective Provisions
AS-009	Luton Borough Council – Update to Funding Statement
AS-010	8.13 Luton Borough Council – Updated Business Case Report
AS-011	8.12 Luton Borough Council – Updated Traffic Forecasting Report
AS-012	8.13 Luton Borough Council – Updated Business Case Report (Version 2 – Cover Sheet and Note)
AS-013	Luton Borough Council – Updated Business Case Report (Version 2)
AS-014	8.15 Luton Borough Council - Consolidated Note on the Draft Development Consent Order Queries & Amendments
AS-015	3.1 Luton Borough Council – Consolidated Note on the Draft Development Consent Order Queries & Amendments (Appendix 1)
AS-016	3.1 Luton Borough Council – Consolidated Note on the Draft Development Consent Order Queries & Amendments (Appendix 2)
AS-017	3.1 Luton Borough Council – Consolidated Note on the Draft Development Consent Order Queries & Amendments (Appendix 3)
AS-018	3.1 Luton Borough Council – Consolidated Note on the Draft Development Consent Order Queries & Amendments (Appendix 4)
AS-019	8.15 Luton Borough Council – Consolidated Note on the Draft Development Consent Order Queries & Amendments – Version 2
AS-020	8.19 Luton Borough Council – Full List of Examination Documents

Audio Recordings (EV)

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Hearing on 13 February 2013

EV-002	Issue Specific Hearing on draft Development Consent Order – Recording (13 February 2013)

Hearings on 17, 18 & 19 April 2013

EV-003	Issue Specific Hearing on Environmental Impacts and Mitigation Proposals – Recording - Session 1 (17 April 2013)
EV-004	Issue Specific Hearing on Environmental Impacts and Mitigation Proposals – Recording - Session 2 (17 April 2013)
EV-005	Issue Specific Hearing on Alternatives, Justification, Need, Cost & Benefits - Recording (17 April 2013)
EV-006	Issue Specific Hearing on draft Development Consent Order – Recording – Session 1 (18 April 2013)
EV-007	Issue Specific Hearing on draft Development Consent Order – Recording – Session 2 (18 April 2013)
EV-008	Compulsory Acquisition Hearing – Recording – Session 1 (19 April 2013)
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Speaking Notes from Hearings

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EV-022	8.16 Luton Borough Council – Additional Submissions arising from Hearings (17 – 19 April 2013) – Version 2
EV-023	8.16 Luton Borough Council – Additional Submissions arising from Hearings – Version 2 - Appendix 1- Outbound Traffic Data
EV-024	Agenda for Resumed Hearings (30 April 2013)

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APPENDIX C ATTENDEES at MEETINGS, HEARINGS & ACCOMPANIED SITE VISITS

Name	Organisation

15 November 2012 (am) Preliminary Meeting

Alan Gray	Examining Authority
Susannah Guest	Planning Inspectorate
Oliver Blower	Planning Inspectorate
Tom Henderson	Bircham Dyson Bell on behalf of LBC
Robbie Owen	Bircham Dyson Bell on behalf of LBC
Monika Weglarz	Bircham Dyson Bell on behalf of LBC
Bernie Roome	URS on behalf of LBC
Antony Aldridge	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)
Keith Dove	Luton Borough Council (as applicant)
Mita Katechia	Luton Borough Council (as applicant)
John Spurgeon	Central Bedfordshire Council
Dave Buck	Central Bedfordshire Council
Wendy Rousell	Luton Borough Council (as LPA)
Thurstan Adburgham	Campaign to Protect Rural England
Jason Jordan	Luton Hoo Estate
Mark Webb	Interested Party
Michael Sanders	Interested Party
Chloe Renner	Observing (Bidwells)
James Sherman	Observing (London Luton Airport)

13 February 2013 (am) Draft Development Consent Order Hearing

Alan Gray	Examining Authority
Oliver Blower	Planning Inspectorate
Daniel Hyde	Planning Inspectorate
Tom Henderson	Bircham Dyson Bell on behalf of LBC
Monika Weglarz	Bircham Dyson Bell on behalf of LBC
Bernie Roome	URS on behalf of LBC
Antony Aldridge	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)
Keith Dove	Luton Borough Council (as applicant)
Mita Katechia	Luton Borough Council (as applicant)
Wendy Rousell	Luton Borough Council (as LPA)
John Spurgeon	Central Bedfordshire Council
Jason Jordan	Luton Hoo Estate
Michael Sanders	Interested Party
Malcolm Howe	Interested Party
A Speirs	Observing (on behalf of Gary Speirs - AP)
Lesley Mahon	Observing (HA)
Wendy McKay	Observing (HA)
Maria Murioz	Observing (DCLG)
Hannah Bartram	Observing (DCLG)

13 February 2013 (pm) Accompanied Site Visits

Alan Gray	Examining Authority
Oliver Blower	Planning Inspectorate
Daniel Hyde	Planning Inspectorate
Antony Aldridge	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)
Bernie Roome	URS on behalf of LBC
Wendy Rousell	Luton Borough Council (as LPA)
John Spurgeon	Central Bedfordshire Council

Joined and left the ASV at Luton Hoo Hotel & Spa

Richard Biffen	Luton Hoo Estate Manager

Left the ASV at Newlands Farm

A Speirs	On behalf of Mr Gary Speirs (AP)

Left the ASV at Front Street, Slip End

Michael Sanders	Interested Party

16 April 2013 (am) Accompanied Site Visits (adjourned)

Alan Gray	Examining Authority
Daniel Hyde	Planning Inspectorate
Alan Nettey	Planning Inspectorate
Antony Aldridge	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)

Left the ASV at Stockwood Park Golf Centre:

Bernie Roome	URS on behalf of LBC
Ian Williamson	URS on behalf of LBC
Michael Stonnell	Campaign to Protect Rural England
Michael Sanders	Interested Party

Joined and left the ASV at Stockwood Park Golf Centre:

John Spurgeon	Central Bedfordshire Council
Wendy Rousell	Luton Borough Council (as LPA)

Joined and left the ASV at Luton Hoo Hotel & Spa:

Richard Biffen	Luton Hoo Estate Manager

17 April 2013 (am) Environmental Impacts and Mitigation Proposals Hearing

Alan Gray	Examining Authority
Daniel Hyde	Planning Inspectorate
Alan Nettey	Planning Inspectorate
Robbie Owen	Bircham Dyson Bell on behalf of LBC
Tom Henderson	Bircham Dyson Bell on behalf of LBC
Oksana Price	Bircham Dyson Bell on behalf of LBC

Bernie Roome	URS on behalf of LBC
Ian Williamson	URS on behalf of LBC
David Elliot	URS on behalf of LBC
Nigel Weir	URS on behalf of LBC
Sheila Banks	URS on behalf of LBC
Antony Aldridge	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)
Mita Katechia	Luton Borough Council (as applicant)
Wendy Rousell	Luton Borough Council (as LPA)
John Spurgeon	Central Bedfordshire Council
Hannah Firth	Central Bedfordshire and Luton Borough Councils
Michael Stonnell	Campaign to Protect Rural England
Jason Jordan	Luton Hoo Estate
Michael Sanders	Interested Party
Robert Upton	Observing (PINS)
Justine Curry	Observing (Transport for London)
Dawn Blackwell	Observing (TfL)
Neil Chester	Observing (TfL)
Ellen Mellington	Observing (TfL)
Tony Wilson	Observing (TfL)
Jason Saldanha	Observing (TfL)

17 April 2013 (pm)	***Alternatives, Justification, Need, Costs & Benefits Hearing (Adjourned)***
Alan Gray	Examining Authority
Daniel Hyde	Planning Inspectorate
Alan Nettey	Planning Inspectorate
Robbie Owen	Bircham Dyson Bell on behalf of LBC
Tom Henderson	Bircham Dyson Bell on behalf of LBC
Oksana Price	Bircham Dyson Bell on behalf of LBC
Bernie Roome	URS on behalf of LBC
David Elliot	URS on behalf of LBC
Antony Aldridge	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)
Keith Dove	Luton Borough Council (as applicant)
Mita Katechia	Luton Borough Council (as applicant)
Wendy Rousell	Luton Borough Council (as LPA)
Michael Sanders	Interested Party
Malcolm Howe	Interested Party

18 April 2013 (am)	***Draft DCO Hearing (Adjourned)***
Alan Gray	Examining Authority
Kay Sully	Planning Inspectorate
Steffan Jones	Planning Inspectorate
Robbie Owen	Bircham Dyson Bell on behalf of LBC
Tom Henderson	Bircham Dyson Bell on behalf of LBC
Oksana Price	Bircham Dyson Bell on behalf of LBC
Bernie Roome	URS on behalf of LBC

Antony Aldridge	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)
Mita Katechia	Luton Borough Council (as applicant)
Wendy Rousell	Luton Borough Council (as LPA)
John Spurgeon	Central Bedfordshire Council
Michael Sanders	Interested Party
Stacey Rawlings	Bidwells on behalf of Mr Gary Speirs

19 April 2013 (am) Compulsory Acquisition Hearing (Adjourned)

Alan Gray	Examining Authority
Kay Sully	Planning Inspectorate
Steffan Jones	Planning Inspectorate
Tom Henderson	Bircham Dyson Bell on behalf of LBC
Bernie Roome	URS on behalf of LBC
Antony Aldridge	Luton Borough Council (as applicant)
Keith Dove	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)
Mita Katechia	Luton Borough Council (as applicant)
Michael Sanders	Interested Party
Jonathan Brooke	Observing (LBC)

30 April 2013 (am) ***Alternatives, Justification, Need, Costs & Benefits, Draft DCO and Compulsory Acquisition Hearings (resumed from 17, 18 & 19 April 2013)***

Alan Gray	Examining Authority
Kay Sully	Planning Inspectorate
Robbie Owen	Bircham Dyson Bell on behalf of LBC
Tom Henderson	Bircham Dyson Bell on behalf of LBC
Oksana Price	Bircham Dyson Bell on behalf of LBC
James Cuthbert	URS on behalf of LBC
David Elliot	URS on behalf of LBC
Antony Aldridge	Luton Borough Council (as applicant)
Keith Dove	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)
Mita Katechia	Luton Borough Council (as applicant)
Wendy Rousell	Luton Borough Council (as LPA)
John Spurgeon	Central Bedfordshire Council
Malcolm Howe	Interested Party
Sue Lovelock	Observing (DCLG)
Luke Taylor	Observing (DCLG)

30 April 2013 (pm) Accompanied Site Visits (Resumed)

Alan Gray	Examining Authority
Kay Sully	Planning Inspectorate
Antony Aldridge	Luton Borough Council (as applicant)
Michael Kilroy	Luton Borough Council (as applicant)

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APPENDIX D Final Draft DCO

This appendix comprises the Final Draft DCO with all proposed amendments to the First Draft up to the close of the examination in tracked changes.

This appendix supplied separately

S T A T U T O R Y I N S T R U M E N T S

201[3] No. [ ]

INFRASTRUCTURE PLANNING

HIGHWAYS

The M1 Junction 10a (Grade Separation) Development Consent Order 201[3]

Made - - - - *201[3]*

Coming into force - - *201[3]*

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An application has been made to the Secretary of State for Transport, in accordance with the Infrastructure Planning (Applications and Prescribed Forms and Procedure) Regulations 2009(**a**), for an order under sections 37, 114, 115, 117(4), 120~~, 121~~ and 122 of the Planning Act 2008(**b**).

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**).

[The single appointed person~~ Panel~~, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

[The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised in the application.]

[The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 122 of, and paragraphs 1 to 3, 10 to 17, 24, 26, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—]

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the M1 Junction 10a (Grade Separation) Development Consent Order 201[3] and ~~shall~~ come**s** into force on [ ] 201[3].

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**d**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**e**);

"the 1980 Act" means the Highways Act 1980(**f**);

(**a**) S.I. 2009/2264.
(**b**) 2008 c. 29.
(**c**) S.I. 2010/103.
(**d**) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1961 Act which are not relevant to this Order.
(**e**) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.
(**f**) 1980 c. 66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**a**);

"the 1990 Act" means the Town and Country Planning Act 1990(**b**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**c**);

"the 2008 Act" means the Planning Act 2008(**d**);

~~"the 2009 Regulations" means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**e**);~~

"address" includes any number or address used for the purposes of electronic transmission;

"apparatus" has the same meaning as in Part 3 of the 1991 Act;

"the authorised development" means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

"the book of reference" means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in the 1980 Act;

"compulsory acquisition notice" means a notice served in accordance with section 134 of the 2008 Act;

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

"the environmental context plans" means the plans certified as the environmental context plans by the Secretary of State for the purposes of this Order;

"the environmental statement" means the document certified as the environmental statement ~~submitted under regulation 5(2)(a) of the 2009 Regulations and certified as such~~ by the Secretary of State ~~under article 36(1)(g)~~ for the purposes of this Order;

"footpath" has the same meaning as in the 1980 Act;

"highway" and "highway authority" have the same meaning as in the 1980 Act;

"the land plans" means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

"the limits of deviation" means the limits of deviation referred to in article 5;

"maintain" ~~and any of its derivatives~~ includes inspect, repair, adjust, alter, remove or ~~,~~ reconstruct ~~or replace in relation to the authorised development~~ and any derivative of "maintain" ~~shall~~is to be construed accordingly;

---

section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c .71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c .11), by section 64(1) (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c .19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.

(**a**) 1984 c. 27.

(**b**) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.

(**c**) 1991. c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(**d**) 2008 c. 29.

(**e**) S.I. 2009/2264.

"Order land" means the land shown on the land plans as within the limits of land to be acquired or used permanently and temporarily, and described in the book of reference;

"the Order limits" means the limits of deviation shown on the works plans, within which the authorised development may be carried out;

"owner", in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(**a**);

"the relevant planning authority" means Luton Borough Council in relation to land in its area and Central Bedfordshire Council in relation to land in its area, and "the relevant planning authorities" means both of them;

"the sections" means the sections and other plans certified as the sections by the Secretary of State for the purposes of this Order;

"special road" means a highway which is a special road in accordance with section 16 of the 1980 Act or by virtue of an order granting development consent;

"statutory undertaker" means a statutory undertaker for the purposes of~~any person falling within~~ section 127(8), 128(5) or 129(2) of the 2008 Act;

"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"the street plans" means the plans certified as the street plans by the Secretary of State for the purposes of the~~e~~is Order;

"tree preservation order" has the meaning given in section 198 of the 1990 Act;

"the tribunal" means the Lands Chamber of the Upper Tribunal;

"trunk road" means a highway which is a trunk road by virtue of—

(a) section 10 or 19(1) of the 1980 Act;

(b) an order or direction under section 10 of that Act;~~ or~~

(c) an order granting development consent; or

(d) any other enactment;

"undertaker" means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act and article 6;

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

"the works plans" means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development ~~shall~~are to be taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the Book of Reference are approximate.

(5) References in this Order to points identified by letters or numbers are to ~~shall~~ be construed as references to points so lettered or numbered on the street plans.

(**a**) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1.

PART 2

PRINCIPAL POWERS

Development consent etc., granted by the Order

3. Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order, provides otherwise.

Limits of Deviation

5. In carrying out the authorised development the undertaker may—

(a) deviate laterally from the lines and situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and

(b) deviate vertically from the levels of the authorised development shown on the sections—

(i) to any extent not exceeding 1.5 metres upwards; and

(ii) to any extent downwards as may be found to be necessary or convenient.

Benefit of Order

6.—(1) Subject to article 7 (consent to transfer benefit of Order), the provisions of this Order shall have effect solely for the benefit of Luton Borough Council.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

7.—(1) Subject to section 144 of the 2008 Act, the undertaker may, with the consent of the Secretary of State—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), shall include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) shall beare subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

PART 3

STREETS

Application of 1991 Act

8.—(1) Works ~~executed~~ carried out under this Order in relation to a highway which consists of or includes a carriageway ~~shall be~~are treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major highway works if—

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or

(b) they are works which, had they been ~~executed~~carried out by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts) or section 184 of that Act (vehicle crossings over footways and verges).

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned ~~shall~~are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act ~~shall~~do not apply in relation to any works ~~executed~~ carried out under the powers of this Order—

section 56 (directions as to timing);

section 56A (power to give directions as to placing of apparatus);

section 58 (restrictions following substantial road works);

section 58A (restriction on works following substantial streetworks);

section 73A (power to require undertaker to re-surface street);

section 73B (power to specify timing etc. of re-surfacing);

section 73C (materials, workmanship and standard of re-surfacing);

section 78A (contributions to costs of re-surfacing by undertaker); and

Schedule 3A (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions ~~shall~~ apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the ~~promoter~~ undertaker under the powers conferred by article 14 (temporary stopping up of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act referred to in paragraph (4) are—

section 54 (advance notice of certain works), subject to paragraph (6);

section 55 (notice of starting date of works), subject to paragraph (6);

section 57 (notice of emergency works);

section 59 (general duty of street authority to co-ordinate works);

section 60 (general duty of undertakers to co-operate);

section 68 (facilities to be afforded to street authority);

section 69 (works likely to affect other apparatus in the street);

section 75 (inspection fees);

section 76 (liability for cost of temporary traffic regulation); and

section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) ~~shall~~ have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 9 (construction and maintenance of new, altered or diverted streets) is to ~~shall~~ —

(a) affect the operation of section 87 of the 1991 Act (prospectively maintainable highways), and the undertaker ~~shall~~ is not by reason of any duty under that article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or

(b) have effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

Construction and maintenance of new, altered or diverted streets

9.—(1) Subject to paragraph (2), the streets authorised to be constructed, altered or diverted under this Order ~~shall~~are to be ~~public~~ highways maintainable at the public expense, and unless otherwise agreed with the highway authority in whose area those streets lie ~~shall~~are to be—

(a) ~~be~~ maintained by and at the expense of the ~~highway authority~~undertaker for a period of 12 months from their completion; and

(b) at the expiry of that period, by and at the expense of the highway authority, provided that the works concerned have been completed to the reasonable satisfaction of the highway authority, and in the case of Work No. 1, article 10(1) has taken effect.

(2) Where a street which is not and is not intended to be a ~~public~~ highway maintainable at the public expense is constructed, altered or diverted under this Order, the street (or part of the street as the case may be), unless otherwise agreed with the street authority, ~~shall~~is to be —

(a) ~~be~~ maintained by and at the expense of the undertaker for a period of 12 months from its completion; and

(b) at the expiry of that period by and at the expense of the street authority provided that the street has been completed to the reasonable satisfaction of the street authority.

(3) In any action against the undertaker in respect of damage resulting from its failure to maintain a street to which paragraph (2) applies, section 58 of the 1980 Act ~~shall~~ appl~~y~~ies as if that street were a highway maintainable at the public expense.

Classification of roads

10.—(1) On a date to be determined by the undertaker, and subject to the procedures in paragraph (2) being satisfied—

(a) the Watford and South of St Albans—Redbourn—Kidney Wood, Luton, Special Roads Scheme 1957 is varied as follows—

(i) for Article 1A substitute—

"The centre line of the special road is indicated in blue on the plan numbered F/D121475/IPC/SR1/001 and marked M1 Junction 10A Grade Separation Variation of Special Road Status, signed by authority of [ ] and deposited at [ ]; and

(ii) for the Schedule to that Scheme, after the "The Route of the Special Road", substitute—

"From a point on the former London-Aylesbury-Warwick-Birmingham Trunk road (A.41) near Watford in the County of Hertfordshire approximately 350 yards south-east of the centre point of the bridge carrying the said trunk road over the River Colne in a general north westerly direction to Junction 10 of the M1 Motorway at Slip End, Luton.";

(b) subject to sub-paragraph (c), the highways in respect of which special road status has been removed by virtue of sub-paragraph (a) are to~~shall~~ be trunk roads for which the Secretary of State is highway authority and are to~~shall~~ be classified as the A1081 trunk road; and

(c) the section of highway between points A and B on sheet 2 of the street plans, being from the point where the existing M1 Spur road meets London Road at Kidney Wood Roundabout for a distance of approximately 195m in a westerly direction, is to ~~shall~~ cease to be trunk road, is to ~~shall be~~ classified as the A1081, and is to ~~shall~~ become—

(i) a principal road for the purpose of any enactment or instrument which refers to highways classified as principal roads; and

(ii) a classified road for the purpose of any enactment or instrument which refers to highways classified as classified roads,

as if such classification had been made under section 12(3) of the 1980 Act.

(2) Prior to the date on which paragraph (1) is to take effect, the undertaker is to ~~shall~~—

(a) notify the Secretary of State in writing of the date on which paragraph (1) is to take effect; and

(b) publish in The London Gazette, and in one or more newspapers circulating in the vicinity of the authorised development, notification of the date on which paragraph (1) ~~shall~~ takes effect, and the general effect of that paragraph.

(3) Upon completion of the authorised development, the following sections of highway ~~shall~~are to be classified as the A1081, and ~~shall~~are to be principal roads and classified roads for the purpose of any enactment or instrument which refers to highways classified as principal roads and classified roads, as if such classification had been made under section 12(3) of the 1980 Act—

(a) Kidney Wood Eastbound Diverge Slip Road, from the end of the nosing of its taper from A1081 Airport Way (previously M1 Spur) to its junction with the give way line of Kidney Wood Northern Roundabout, a distance of approximately 241m;

(b) Kidney Wood Eastbound Merge Slip Road, from its junction with Kidney Wood Northern Roundabout to the start of the nosing of its taper onto A1081 Airport Way, a distance of approximately 187m;

(c) Kidney Wood Westbound Diverge Slip Road, from the end of its taper from A1081 Airport Way to its junction with the give way line of Kidney Wood Southern Roundabout, a distance of approximately 331m;

(d) Kidney Wood Westbound Merge Slip Road, from its junction with Kidney Wood Southern Roundabout to the start of the nosing of its taper onto A1081 Airport Way (previously M1 Spur), a distance of approximately 310m;

(e) Kidney Wood Northern Roundabout, for the extent of its circulatory carriageway;

(f) the A1081 London Road Link, from its junction with Kidney Wood Southern Roundabout to its junction with Kidney Wood Northern Roundabout, a distance of approximately 502m;

(g) Kidney Wood Southern Roundabout, for the extent of its circulatory carriageway; and

(h) the A1081 London Road (South), from its junction with the give way line of Kidney Wood Southern Roundabout to the centreline of its junction with Newlands Road, a distance of approximately 300m.

Clearways

11.—(1) This article ~~shall~~ has~~ve~~ effect upon completion of the authorised development.

(2) For paragraph 70 of Schedule 1 to the Various Trunk Roads (Prohibition of Waiting) (Clearways) Order 1963(**a**), substitute—

"Between a point 150 yards north of its junction with West Hyde Road, Kinsbourne Green and a point 181 yards south of the centre of its junction with Newlands Road, a distance of approximately 1.39 miles.".

(3) Subject to paragraph (4), no person ~~shall~~must cause or permit any vehicle to wait on any part of a road specified in Schedule 3 (clearways), other than a lay-by, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(4) Nothing in paragraph (3) ~~shall~~ appl~~y~~ies—

(a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—

(i) the removal of any obstruction to traffic;

(ii) the maintenance, improvement, reconstruction or operation of the road;

(iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any telecommunications apparatus as defined in Schedule 2 to the Telecommunications Act 1984**(a)**; or

(iv) any building operation or demolition;

(b) in relation to a vehicle being used—

(i) for police, ambulance, fire and rescue authority or traffic officer purposes;

(ii) in the service of a local authority, safety camera partnership or Vehicle and Operator Services Agency in pursuance of statutory powers or duties;

(iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(**b**); or

(iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000(**c**); and

(c) in relation to a vehicle waiting when the person in control of it is—

(i) required by law to stop;

(ii) obliged to stop in order to avoid an accident; or

(iii) prevented from proceeding by circumstances outside the person's control; or

(d) to any vehicle selling or dispensing goods to the extent that the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or disposed.

(5) Paragraphs (2) to (4) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by such an order ~~made under that Act,~~ or by any other enactment which provides for the variation or revocation of such orders.

Speed limits

12.—(1) From the date determined in accordance with article 10(1) and (2), the Schedule to the M1 Motorway (Junctions 6A to 10) (Variable Speed Limits) Regulations 2011(**d**) is amended in accordance with Part 1 of Schedule 4 (speed limits).

(2) Upon completion of the authorised development—

(a) paragraph 41 of the Schedule to the County of Bedfordshire (Principal Roads) (De-restriction) Order 1988 is revoked;

(**a**) S.I. 1963/1172
(**b**) 1984 c. 12
(**c**) 2000 c. 26
(**d**) S.I. 2011/1015

(b) the Borough of Luton (Speed Limits) Order 2011 is varied as follows—

(i) in Schedule 3, omit "London Road" from the "road" column, and from the corresponding entry in the "length subject to speed limit" column, omit "From a point 10 metres south-east of the southern boundary of No. 151 London Road to a point 8 metres north of the give-way line at Kidney Wood Roundabout"; and

(ii) in Schedule 4, replace "New Airport Way" with "A1081 Airport Way (previously described as New Airport Way", and replace the corresponding entry in the "length subject to speed limit" column with "The dual carriageway length from a point immediately below the centre of the Capability Green over-bridge to a point 150 metres south-west of the centre point on Park Street bridge together with the Capability Green eastbound merge slip road from the end of the merge nosing at its junction with the A1081 Airport Way, south-westwards for a distance of 90 metres and the Capability Green westbound diverge slip road from the start of the diverge nosing at its junction with the A1081 Airport Way to its junction with the Capability Green southern roundabout, a distance of 410 metres";

(c) no person ~~shall~~ must drive any motor vehicle at a speed exceeding 40 miles per hour in the lengths of roads identified in Part 2 of Schedule 4 to this Order; and

(d) no person must~~shall~~ drive a motor vehicle at a speed exceeding 50 miles per hour in the lengths of roads identified in Part 3 of Schedule 4 to this Order.

(3) No speed limit imposed by this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(**a**) when used in accordance with regulation 3(5) of those regulations.

(4) The speed limits imposed by this ~~Order~~article may be varied or revoked by any enactment which provides for the variation or revocation of such matters.

Permanent stopping up of streets

13.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Schedule 5 (streets to be stopped up) to the extent specified and described in column (3) of that Schedule.

(2) No street specified in columns (1) and (2) of Schedule 5 ~~shall~~is to be wholly or partly stopped up under this article unless—

(a) the new street to be constructed and substituted for it, which is specified in column (4) of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use; or

(b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) Where a street has been stopped up under this article—

(a) all rights of way over or along the street so stopped up are~~shall be~~ extinguished; and

(b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article ~~shall be~~ is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(**a**) S.I. 2011/935

(5) This article is subject to article 2~~9~~8 (apparatus and rights of statutory undertakers in stopped up streets).

Temporary stopping up of streets

14.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

(a) divert the traffic from the street; and

(b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation ~~prejudice to~~ on the scope of paragraph (1), the undertaker may use any street temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker ~~shall~~ must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without ~~prejudice to~~ limitation on the ~~generality~~scope of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 6 (temporary stopping up of streets) to the extent specified in column (3) of that Schedule.

(5) The undertaker ~~shall~~must not temporarily stop up, alter or divert—

(a) any street specified as mentioned in paragraph (4) without first consulting the street authority; and

(b) any other street, without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent ~~shall~~must not be unreasonably withheld,

except that this paragraph does~~shall~~ not apply where the undertaker is the street authority.

(6) Any person who suffers loss by the suspension of any private right of way under this article ~~shall be~~ is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b), the street authority is~~shall be~~ deemed to have granted that consent.

Access to works

15. The undertaker may, for the purposes of the authorised development—

(a) form and lay out means of access, or improve existing means of access, in the locations and of the nature specified in Schedule 7 (access to works); and

(b) with the approval of the relevant planning authority after consultation with the highway authority (where the highway authority is not the undertaker), form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

16.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for

that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under ~~pursuant to~~ paragraph (1) is to~~shall~~ be determined as if it were a dispute under section 106 of the Water Industry Act 1991(**a**) (right to communicate with public sewers).

(3) The undertaker ~~shall~~ must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but ~~shall~~must not be unreasonably withheld.

(4) The undertaker must~~shall~~ not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval ~~shall~~must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker ~~shall~~must not, in carrying out or maintaining works conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker ~~shall~~ must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) ~~This article does not authorise the entry into inland fresh waters or coastal waters of any matter whose entry or discharge into those waters is prohibited by regulation 12 of~~Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010(**b**).

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse~~s~~, used both in this article and in the Water Resources Act 1991(**c**) ~~Environmental Permitting Regulations 2010~~ have the same meaning as in that Act~~those regulations~~.

Authority to survey and investigate land

17.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

(a) survey or investigate the land;

(b) without limitation on ~~prejudice to~~ the scope of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without limitation ~~prejudice to~~on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 14 days' notice has been served on every owner and occupier of the land.

(**a**) 1991 c. 56.
(**b**) S.I. 2010/675
(**c**) 1991 c. 57

(3) Any person entering land under this article on behalf of the undertaker—

(a) muststhall, if so required, before entering the land produce written evidence of authority to do so; and

(b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are toshall be made under this article—

(a) on land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority,

but such consent shallmust not be unreasonably withheld.

(5) The undertaker mustshall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

18.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate, or is incidental, to it, or is required as replacement land.

(2) This article is subject to paragraph (3), paragraph (1) of article 19(1), paragraph (2) of article 20 (compulsory acquisition of rights) and paragraph (9) of article 25(9) (temporary use of land for carrying out the authorised development).

(3) Paragraph (1) does not apply to the land numbered 2, 2A and 2G in the book of reference and on the land plans.

Time limits for exercise of authority to acquire land compulsorily and to use land temporarily

19.—(1) After the end of the period of 5 years beginning on the day on which this Order comes into force—

(a) no notice to treat shallis to be served under Part 1 of the 1965 Act; and

(b) no declaration shall is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(**a**) as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 25 (temporary use of land for carrying out the authorised development) shall ceases at the end of the period referred to in paragraph (1), exceptsave that nothing in this paragraph shall prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

(**a**) 1981 c. 66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). There are other amendments to the 1981Act which are not relevant to this Order.

Compulsory acquisition of rights, etc.

20.—(1) Subject to paragraphs (2) and (5) the undertaker may acquire compulsorily such rights over the Order land, or impose restrictive covenants affecting the land, as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 8 (land in which only new rights etc., may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land, or the imposition of restrictive covenants affecting the land, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights) where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2) the undertaker ~~shall~~is not ~~be~~ required to acquire a greater interest in that land.

(4) Schedule 9 ~~shall~~ ha~~ve~~s effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) The power to impose restrictive covenants under ~~this Order~~paragraph (1) is exercisable only in respect of land numbered 3B and 3D in the book of reference and on the land plans.

Private rights over land

21.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order ~~shall b~~are extinguished—

(a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are~~shall be~~ extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

(a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over Order land owned by the undertaker ~~shall b~~are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order ~~shall be~~are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article ~~shall be~~is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 2~~8~~7 (statutory undertakers) applies.

(7) Paragraphs (1) to (3) ~~shall~~ have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs ~~shall~~do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is~~shall be~~ effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

22.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(**a**) ~~shall~~ applies~~y~~ as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, ~~shall~~ ha~~ve~~s effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there ~~shall be~~is substituted—

"(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority ~~shall~~ must include the particulars specified in subsection (3) in a notice which is—

(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

(b) published in a local newspaper circulating in the area in which the land is situated.".

(4) In that section, in subsection (2), for "(1)(b)" there ~~shall be~~is substituted "(1)" and after "given" there ~~shall be~~is inserted "and published".

(5) In that section, for subsections (5) and (6) there ~~shall be~~ is substituted—

"(5) For the purposes of this section, a person has a relevant interest in land if—

(**a**) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are amendments to the 1981Act which are not relevant to this Order.

(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.".

(6) In section 5 (earliest date for execution of declaration)—

(a) in subsection (1), after "publication" there ~~shall be~~is inserted "in a local newspaper circulating in the area in which the land is situated"; and

(b) subsection (2) ~~shall be~~is omitted.

(7) In section 7(1)(a) (constructive notice to treat), the words "(as modified by section 4 of the Acquisition of Land Act 1981)" ~~shall be~~are omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 ~~shall be~~are construed as references to the~~at~~ 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil or air-space only

23.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the air-space over the land referred to in article 18 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of or rights in the subsoil of or the air-space over land under paragraph (1), the undertaker ~~shall~~is not ~~be~~ required to acquire an interest in any other part of the land.

Rights under or over streets

24.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) ~~shall~~ does not apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, ~~shall~~ is~~be~~ entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation ~~shall~~is not ~~be~~ payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

25.—(1) The undertaker may, in connection with the carrying out of the authorised development but subject to article 19(1)—

(a) enter on and take temporary possession of—

(i) the land specified in columns (1) and (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and

(ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;

(b) remove any buildings and vegetation from that land;

(c) construct temporary works (including the provision of means of access) and buildings on that land; and

(d) construct any permanent works specified in relation to that land in column (3) of Schedule 10, or any other mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker ~~shall~~ must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 10; or

(b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker ~~shall~~ must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is n~~shall n~~ot ~~be~~ required to—

(a) replace a building removed under this article;

(b) restore the land on which any permanent works have been constructed under paragraph (1)(d); or

(c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development.

(5) The undertaker ~~shall~~ must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to~~shall~~ be determined under Part 1 of the 1961 Act.

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) ~~shall~~ does not prevent the undertaker giving up possession of the land.

(8) Nothing in this article ~~shall~~ affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

~~(9)~~The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker ~~shall~~ is not ~~be~~ precluded from —

~~(a)~~(9) acquiring new rights or imposing restrictive covenants over any part of ~~that land under article 20 (compulsory acquisition of rights)~~the land specified in Schedule 8.~~; or~~

~~(a)acquiring any part of the subsoil or the air-space over (or rights in the subsoil or the air-space over) that land under article 23 (acquisition of subsoil or airspace only).~~

(10) Where the undertaker takes possession of land under this article, it is ~~shall~~ not ~~be~~ required to acquire the land or any interest in it.

(11) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) ~~shall~~ applies~~y~~ to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised development

26.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the authorised development, the undertaker may—

(a) enter upon and take temporary possession of any of the Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and

(b) construct such temporary works (including the provision of means of access) and buildings on that land as may be reasonably necessary for that purpose.

(2) Paragraph (1) ~~shall~~ does not authorise the undertaker to take temporary possession of—

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker ~~shall~~ must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker ~~shall~~ must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must~~shall~~ pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, ~~shall~~ is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article ~~shall~~ affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, it is ~~shall~~ not ~~be~~ required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to the acquiring authority) ~~shall~~ app~~ly~~lies to the temporary use of land under~~pursuant to~~ this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article "the maintenance period", in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

~~**Special category land**~~

~~**27.** (1) The undertaker shall not under the powers of this Order take possession of any part of the special category land until the undertaker has acquired so much of the replacement land as is equivalent in area to the amount of the special category land that is required by the undertaker for the authorised development.~~

~~(2)The undertaker shall lay out as open space before the authorised development is completed so much of the replacement land of which possession has been taken under paragraph (1).~~

~~(3)As soon as Luton Borough Council has certified that a scheme for the provision of the replacement land referred to in paragraph (2) as open space has been implemented to its satisfaction, the replacement land shall be, subject to the same rights, trusts and incidents as attached to the special category land of which possession has been taken under paragraph (1), and the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject.~~

~~(4)In this article —~~

~~"the special category land" means the land numbered 2 in the book of reference and on the land plans and forming part of open space which may be acquired compulsorily under this Order and for which replacement land is to be provided; and~~

~~"the replacement land" means the land numbered 1E, 1F, 2D, 2E, 2F, 6, 6A, 7, 7A, 7B in the book of reference and on the land plans.~~

Statutory undertakers

~~28.~~27. —(1) Subject to paragraph (2)~~section 138 of the 2008 Act~~, the undertaker may extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

(2) Paragraph (1) ~~shall~~does not have effect in relation to apparatus in respect of which the following provisions apply—

(a) Part 3 of the 1991 Act;

(b) article 28; ~~and~~or

(c) Parts 2 ~~[~~and 3~~]~~ of Schedule 12.

Apparatus and rights of statutory undertakers in stopped up streets

~~29.~~28.—(1) Where a street is stopped up under article 13 (permanent stopping up of streets) any statutory utility whose apparatus is under, in, on, along or across the street ~~shall~~ has~~ve~~ the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 13 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker ~~shall~~must—

(a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or

(b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker ~~shall~~ must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

(a) the execution of the relocation works required in consequence of the stopping up of the street; and

(b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

(a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined ~~by arbitration~~ to be necessary by arbitration in accordance with article 37 (arbitration), then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) ~~shall~~ is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

(a) an extension of apparatus to a length greater than the length of existing apparatus ~~shall~~ is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole ~~shall~~ is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) ~~shall~~must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) ~~shall~~ do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

(a) the allowable costs of the relocation works are to~~shall~~ be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and

(b) the allowable costs ~~shall~~ are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

"apparatus" has the same meaning as in Part 3 of the 1991 Act;

"relocation works" means work ~~executed~~carried out, or apparatus provided, under paragraph (2); and

"statutory utility" means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(**a**).

Recovery of costs of new connections

~~30.~~29.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 2~~8~~7 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus ~~shall~~is be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) ~~shall~~does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 2~~8~~7, any person who is—

(a) the owner or occupier of premises the drains of which communicated with that sewer; or

(b) the owner of a private sewer which communicated with that sewer,

(**a**) 2003 c. 21. There are amendments to this Act which are not relevant to this Order.

isshall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article shalldoes not have effect in relation to apparatus to which article 2928 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

"public communications provider" has the same meaning as in section 151(1) of the Communications Act 2003; and

"public utility undertaker" has the same meaning as in the 1980 Act.

PART 6

OPERATIONS

Felling or lopping trees

31.30.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do must not causeno unnecessary damage to any tree or shrub and mustshall pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is toshall be determined under Part 1 of the 1961 Act.

Trees subject to tree preservation order

32.31.—(1) The undertaker may fell or lop any tree described in Schedule 11 (trees subject to tree preservation orders) and identified on the environmental context plans, or cut back its roots or undertake such other works described in column (3) of that Schedule if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to passengers or other persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

(a) the undertaker must shall do not cause unnecessary damage to any tree or shrub and mustshall pay compensation to any person for any loss or damage arising from such activity; and

(b) the duty imposed bycontained in section 206(1) of the 1990 Act (replacement of trees) shalldoes not apply.

(3) The authority given by paragraph (1) shall constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, ~~shall~~is to be determined under Part 1 of the 1961 Act.

PART 7

MISCELLANEOUS AND GENERAL

Operational land for purposes of the 1990 Act

~~33.~~32. Development consent granted by this Order ~~shall~~is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

~~34.~~33.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**a**) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to ~~shall~~ be made, and no fine may be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(**b**); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded) ~~shall~~ do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

~~35.~~34. Schedule 12 (protective provisions) to this Order has effect.

Certification of plans, etc.

~~36.~~35.—(1) The undertaker ~~shall~~must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

(a) the book of reference;

(b) the environmental statement;

~~(b)~~(c) the land plans;

(**a**) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.
(**b**) 1974 c.40, as amended at the date of the coming into force of this Order.

~~(c)~~(d) the works plans;

~~(d)~~(e) the street plans;

~~(e)~~(f) the sections;

~~(f)~~(g) the environmental context plans; and

~~(g)~~(h) any other plans or documents referred to in this Order,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is~~shall be~~ admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

~~37.~~36.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978**(a)** as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement ~~shall be~~is taken to be fulfilled only where—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

(d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of

(**a**) 1978 c. 30.

that notice or other document the sender ~~shall~~ must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person ~~shall~~ must give~~n~~ notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation ~~shall~~is ~~be~~ final and ~~shall~~ takes effect on a date specified by the person in the notice but that date must~~shall~~ not be less than 7 days after the date on which the notice is given.

(9) This article does~~shall not be taken to~~ exclude the employment of any method of service not expressly provided for by it.

(10) In this article "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

~~38.~~**37.** Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, the parties must endeavour to resolve all matters in dispute as soon as practicable and in the event of their failing to resolve such matters any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must ~~shall~~ be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Traffic regulation

~~39.~~**38.**—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent ~~shall~~must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

(a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;

(b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;

(c) authorise the use as a parking place of any road;

(d) make provision as to the direction or priority of vehicular traffic on any road; and

(e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The power conferred by paragraph (1) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (6) any prohibition, restriction or other provision made under paragraph (1) may have effect both before and after the expiry of that period.

(3) The undertaker ~~shall~~ must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (4).

(4) The undertaker ~~shall~~ must not exercise the powers conferred by paragraph (1) unless it has—

(a) given not less than—

(i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or

(ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated; and

(b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(5) Any prohibition, restriction or other provision made by the ~~promoter~~ undertaker under paragraph (1)~~ shall~~—

(a) has~~ve~~ effect as if duly made by, as the case may be—

(i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the road is situated, as an order under section 32 of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and

(b) is~~be~~ deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(**a**) (road traffic contraventions subject to civil enforcement).

(6) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (1) within a period of 24 months from the opening of the authorised development.

(7) Before exercising the powers of paragraph (1) the ~~promoter~~ undertaker must~~shall~~ consult such persons as it considers necessary and appropriate and must~~shall~~ take into consideration any representations made to it by any such person.

(8) Expressions used in this article and in the 1984 Act ~~shall~~ ha~~ve~~s the same meaning in this article as in that Act.

(9) The powers conferred on the undertaker by this article with respect to any road ~~shall~~ have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

Procedure in relation to approvals, etc., under Schedule 2

~~40.~~39.—(1) Where an application is made to the relevant planning authorities or either of them for any consent, agreement or approval required by a requirement under Schedule 2, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

(a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions); and

(b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

(**a**) 2004 c.18

Signed by authority of the Secretary of State for Transport

[ ]
[Designation]
[ ] 201[3] [Department]

SCHEDULES

SCHEDULE 1

Articles 2 and 3

THE AUTHORISED DEVELOPMENT

In the administrative areas of Luton Borough Council and Central Bedfordshire Council—

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, and associated development within the meaning of section 115(2) of the 2008 Act, comprising:

Work No.1 — Construction of permanent highway (centred on grid reference TL 09169 18987) (1,332m in length) commencing at the M1 Junction 10 Roundabout, running in a north-easterly direction and terminating on the A1081 Airport Way at the Capability Green Overbridge, including—

(a) widening the existing carriageway on the M1 Spur and A1081 Airport Way to a three lane dual carriageway including maintenance lay bys;

(b) construction of new dual carriageway to provide a continuous link and remove the existing M1 Junction 10a at-grade roundabout (known as Kidney Wood Roundabout);

(c) construction of an un-segregated footway cycleway between the proposed Kidney Wood Northern Roundabout and the Capability Green Junction, located in the eastbound verge;

(d) alterations to the infiltration pond to the west of the M1 Spur and north-east of Newlands Road, including the construction of a new private vehicular access from a point on the north-eastern highway boundary of Newlands Road approximately 435m to the north-west of its junction with A1081 London Road (south);

(e) provision of private pedestrian access to maintain highways equipment at: (i) a point on the south-western highway boundary of Newlands Road approximately 30m to the north-west of the underbridge crossing of the M1 Spur; (ii) a point on the south-western highway boundary of Newlands Road approximately 25m to the south-east of the underbridge crossing of the M1 Spur; (iii) a point on the north-eastern highway boundary of Newlands Road approximately 20m to the north-west of the underbridge crossing of the M1 Spur; and (iv) a point on the north-eastern highway boundary of Newlands Road approximately 30m to the south-east of the underbridge crossing of the M1 Spur;

(f) provision of average speed cameras;

(g) erection of overhead gantry signs;

(h) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and

(i) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.2 — Construction of permanent highway (1,115m in length) commencing at Newlands Roads junction with the A1081 London Road, running in a north-westerly direction to the proposed Kidney Wood Southern Roundabout, then running in north-north-westerly direction through a proposed underbridge under the M1 Spur (85m in length), then proceeding

in a north-westerly direction prior to going through a right hand curve to the proposed Kidney Wood Northern Roundabout, then proceeding in a northerly direction terminating on London Road approximately 113m south of the centre of Ludlow Avenue's junction with London Road, including—

(a) construction of new single carriageway highway;

(b) improvements to the existing highways;

(c) construction of two new roundabout junctions;

(d) construction of footways and cycleways;

(e) construction of an underbridge and associated wing walls and retaining walls;

(f) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and

(g) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.3A — Construction of permanent highway (349m in length) commencing at the proposed Kidney Wood Southern Roundabout on A1081 London Road proceeding in a northerly direction, then through a left hand curve to connect with the M1 Spur's westbound carriageway 455m north-east of M1 Junction 10 Roundabout, including—

(a) construction of a new single lane connector road with a hardshoulder;

(b) provision of average speed cameras; and

(c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.3B — Construction of permanent highway (391m in length) commencing on the A1081 Airport Way westbound carriageway 480m south-west of the Capability Green Overbridge proceeding in a south-westerly direction, then going through a left hand curve followed by a right hand curve before terminating at the proposed Kidney Wood Southern Roundabout on A1081 London Road, including—

(a) construction of new single lane connector road with a hardshoulder;

(b) provision of average speed cameras; and

(c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.4A — Construction of permanent highway (281m in length) commencing on the M1 Spur eastbound carriageway 544m north-east of the M1 Junction 10 Roundabout proceeding in a north-easterly direction then going through a left hand curve before terminating at the proposed Kidney Wood Northern Roundabout on London Road, including—

(a) construction of new two lane connector road;

(b) provision of average speed cameras; and

(c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway.

Work No.4B — Construction of permanent highway (225m in length) commencing at the proposed Kidney Wood Northern roundabout proceeding in a southerly direction then going through a left hand curve to connect with the A1081 Airport Way eastbound carriageway 448m south-west of the Capability Green Overbridge, including—

(a) construction of new single lane connector road with hardshoulder;

(b) construction of a combined un-segregated footway/cycleway;

(c) provision of average speed cameras; and

(d) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No. **5** — Reconfiguration of the existing A1081 London Road (409m in length) to provide an access to Bull Wood Cottages, Kidneywood House and Bull Wood to be referred to as Old London Road (South), commencing from the proposed A1081 London Road (South), 150m north of its junction with Newlands Road, proceeding in an easterly direction, then going through a left hand curve before continuing in a northerly direction, then terminating 81m south of the existing M1 Junction 10a roundabout, including—

(a) construction of new single lane road and junction;

(b) construction of a turning head;

(c) construction works to narrow the existing carriageway to a single track lane road with passing places;

(d) construction of two private vehicular access points from the west highway boundary of Old London Road (South) to an area of landscaping, at approximately 180m and 370m to the north of its junction with A1081 London Road (South);

(e) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and

(f) drainage works, earthworks, pavement works, kerbing and paved areas work, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction and modification of the permanent highway;

Work No. **6** — Reconfiguration of the existing London Road (to be stopped up) and part of the adjoining agricultural field into amenity land, including—

(a) construction of a new private vehicle and pedestrian access to Kidney Wood at a point on the eastern highway boundary of London Road approximately 13m to the north of its junction with Kidney Wood Northern Roundabout;

(b) construction of a turning head;

(c) construction of works to widen the existing London Road footway to form a public footpath;

(d) landscaping works;

(e) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and

(f) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, works to control access and other works associated with the provision of the amenity land;

Work No 7 — Diversion of public footpath, requiring creation of new path (373m in length) commencing 20m north-east of Newlands Road proceeding in a north-easterly direction and then in a northerly direction terminating at the proposed A1081 London Road Link, 147m south-west of the proposed Kidney Wood Northern Roundabout, including—

(a) erection of footpath gates or stiles;

(b) erection of signing; and

(c) drainage works, earthworks, signing works, fencing works, and other works associated with the creation of the public footpath;

Work No 8 — Construction of a drainage pipe between Kidney Wood Southern Roundabout and the proposed drainage ponds, including—

(a) construction of piped drainage outfall; and

(b) drainage works, earthworks, landscaping works and other works associated with the construction of a drainage pipe;

Work No 9 — Works to excavate existing old tip area down to sound ground and fill back up to original ground level with engineering fill, including—

(a) excavation to sound ground;

(b) fill to original ground levels with engineering fill;

(c) any earthworks strengthening measures as may be required; and

(d) earthworks, drainage works, fencing works, landscaping works and other works associated with this work;

Work No.10 — Construction of drainage ponds, including—

(a) construction of attenuation pond;

(b) construction of infiltration basin;

(c) construction of private vehicular access from the north-eastern highway boundary of Newlands Road, from a point approximately 235m to the north-west of its junction with A1081 London Road (South), and construction of turning head and access tracks;

(d) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and

(e) drainage works, earthworks, signing works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the drainage ponds;

Work No 11 — Works to fill old borrow pit to original ground levels, including—

(a) excavation to sound ground;

(b) fill to original ground levels with engineering fill; and

(c) earthworks, drainage works, landscaping works and other works associated with filling the old borrow pit;

Work No 12 — Works to mitigate the impact of the proposed highway works on Kidney Wood, including—

(a) trimming, pollarding and coppicing of trees;

(b) clearance of vegetation, as required to construct the works;

(c) planting of a new boundary hedge;

(d) erection of a new fence to protect the hedge; and

(e) clearance works, fencing works, landscaping works and other works associated with mitigating the impact of the authorised development on Kidney Wood;

Work No 13 — Works to mitigate the impact of the proposed highway works on Bull Wood, including—

(a) trimming, pollarding and coppicing of trees;

(b) clearance of vegetation, as required to construct the works;

(c) erection of a new boundary fence; and

(d) clearance works, fencing works, landscaping works and other works associated with mitigating the impact of the authorised development on Bull Wood; and

in connection with the construction of any of those works, further development within the Order limits consisting of—

(i) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footway, cycle track or verge; and reducing the width of the carriageway of the street;

(ii) works required for the strengthening, improvement, maintenance, or reconstruction of any street;

(iii) ramps, means of access, footpaths, cycleways, embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, wing walls, highway lighting, fencing and culverts;

(iv) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street; works to place or maintain apparatus in a street; works to alter the position of apparatus, including mains, sewers, drains and cables;

(v) works to alter the course of, or otherwise interfere with a watercourse other than a navigable watercourse;

(vi) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;

(vii) works for the benefit or protection of land affected by the authorised development; and

(viii) such other works, including contractors' compounds, working sites, storage areas, temporary fencing and works of demolition, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development.

SCHEDULE 2

Article 3

REQUIREMENTS

Interpretation

1.—(1) In this Schedule—

"contaminated land plan" means a written scheme for the treatment of contaminated land during construction;

"dust management plan" means a written scheme for the attenuation of dust during construction;

"relevant highway authority" means the highway authority responsible for the highway in question; and

~~(a)~~"stage" means a defined section (if any) of the authorised development, the extent of which has been submitted to and approved in writing by the relevant planning authority pursuant to requirement 3.~~; and~~

~~(b)~~(2) ~~r~~References in this Schedule to numbered requirements are references to the corresponding numbered paragraph of this Schedule.

Time limits

2. The authorised development ~~shall~~ must not ~~be~~ commence~~d no~~ later than the expiration of 5 years beginning with the date that this Order comes into force.

Stages of authorised development

3. Where the authorised development is to be implemented in stages, n~~N~~one of the authorised development ~~shall~~ is to commence until a written scheme setting out all the stages of the authorised development has been submitted to and approved by the relevant planning authority.

Scheme design changes and staging

4.—(1) The authorised development must be carried out in accordance with the scheme design shown on the works plans and the sections, unless otherwise agreed in writing by the relevant planning authority.

(2) No stage of the authorised development ~~shall~~ is to commence until written details of the layout, scale and external appearance of any proposed gantries relating to that stage have been submitted to and approved in writing by the relevant planning authority.

Ecology

5.—(1) None of the authorised development, including any site clearance works, ~~shall~~ is to~~be~~ commence~~d~~ until an ecological strategy relating to the Order land containing details of how the authorised development will affect areas of nature conservation interest and what mitigation, compensatory and enhancement measures, reflecting the environmental statement, need to be incorporated into the authorised development in order to protect and enhance those areas, has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development ~~shall~~ must be carried out in accordance with the approved ecological strategy, unless otherwise agreed in writing by the relevant planning authority.

Protection of retained trees and shrubs during construction

6.—(1) No stage of the authorised development ~~shall~~ is to commence until for that stage written details, reflecting the mitigation measures included in the environmental statement, have been submitted to and approved in writing by the relevant planning authority for the safeguarding of trees, shrubs and hedgerows to be retained.

(2) The approved safeguarding measures ~~shall~~ must be implemented prior to the commencement of any demolition works, removal of topsoil or commencement of building operations and retained in position until the development is completed.

(3) The safeguarded areas ~~shall~~ must be kept clear of plant, building materials, machinery and other objects and the existing soil levels not altered.

Landscaping scheme

7.—(1) ~~No stage of t~~The authorised development ~~shall commence until~~must be landscaped in accordance with a written landscaping scheme, ~~for that stage,~~reflecting the environmental statement and ~~i~~incorporating ecological enhancement, mitigation and compensatory measures, that has been submitted to and approved in writing by the relevant planning authority.

(2) The landscaping scheme ~~shall~~ must be ~~based upon~~in accordance with the ecological strategy approved ~~pursuant to~~under requirement 5, and must include details of all proposed hard and soft landscaping works for all land subject to development within the Order limits, including precise details and, where appropriate, samples relating to the following—

(a) for hard landscaping areas—

(i) proposed finished levels;

(ii) hard surfacing materials;

(iii) minor structures (e.g. street furniture, signs and lighting, to include the colouring of lighting columns);

(iv) retained historic landscape features and proposals for restoration, where relevant; and

(v) boundary treatments and all means of enclosure.

(b) for soft landscaping areas—

(i) schedules and plans showing the location of proposed planting, noting species consistent with the ecological strategy, use of any species of local provenance, planting, size and proposed numbers and densities;

(ii) written specifications, schedules, and plans showing the proposed treatment and management of retained trees, shrubs and hedgerows;

(iii) services below ground, including drainage, pipelines, power and communication cables; and

(iv) written specifications associated with plant and grass establishment, including cultivation and other operations.

(3) An implementation timetable ~~shall~~ must be provided as part of the scheme that is consistent with the provisions set out in the approved ecological strategy.

Implementation and maintenance of landscaping

8.—(1) Unless otherwise agreed in writing by the relevant planning authority, ~~A~~all landscaping works must be carried out in accordance with the landscaping scheme approved under requirement 7 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice, including the Manual Of Contract Documents For Highway Works: Volume 1 Specification For Highway Works Series 3000 (05/01): Landscape And Ecology.

(2) Any tree, shrub or hedgerow planted as part of the approved landscaping that, within the period of three years after planting, is removed, dies or becomes, in the opinion of the relevant

planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives its written consent to any variation.

(3) If it becomes obvious that the original species and type were unsuitable for whatever reason, an appropriate alternative species may be specified, subject to the written consent of the relevant planning authority.

(4) Any tree, shrub or hedgerow which is retained and safeguarded during construction in accordance with requirement 6 ~~shall~~ must thereafter be maintained, and if necessary replaced, in accordance with this requirement, unless otherwise agreed in writing by the relevant planning authority.

Drainage

9.—(1) No stage of the authorised development ~~shall~~ is to be commenced until for that stage written details of the surface and foul water drainage system reflecting the mitigation measures included in the environmental statement, including where appropriate sustainable urban drainage solutions, have been submitted to and approved in writing by the relevant planning authority.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details, unless otherwise agreed by the relevant planning authority.

Measures to protect the water environment

10.—(1) None of the authorised development ~~shall~~ is to commence until—

(a) a detailed site investigation has been carried out with respect to land within the Order limits to establish if contamination is present and to assess the degree and nature of contamination present and the action proposed to be taken to deal with any contamination that is identified; ~~and~~

(b) a risk assessment has been carried out to consider the potential for pollution of the water environment; and

(c) a water pollution prevention plan, reflecting the mitigation measures included in the environmental statement, has been submitted and approved in writing by the relevant planning authority.

(2) The method and extent of the investigation and any measures or treatment to deal with contamination that is identified as a result ~~shall~~ must reflect the mitigation measures included in the environmental statement and be approved in writing by the relevant planning authority, following consultation with the Environment Agency and Thames Water Utilities Limited.

(3) The authorised development ~~shall~~ must be carried out—

(a) in accordance with the approved water pollution prevention plan referred to in sub-paragraph (1)(c); and

(b) incorporating any such measures or treatments as are approved under sub-paragraph (2),

unless otherwise agreed in writing by the relevant planning authority.

Flood risk assessment

11.—(1) None of the authorised development ~~shall~~ is to commence until a flood risk assessment reflecting the mitigation measures included in the environmental statement has been submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency.

(2) The authorised development ~~shall~~ must be carried out in accordance with any recommendations made in the flood risk assessment, unless otherwise agreed in writing by the relevant planning authority.

Archaeology

12.—(1) No stage of the authorised development ~~shall~~ is to commence until for that stage a written scheme for the archaeological investigation of land within the Order limits has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme ~~shall~~ must ~~reflect the mitigation measures included in Chapter 5 of the environmental statement, and must~~ identify areas where field work and/or a watching brief are required, and the appropriate measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works and/or watching brief carried out on site under the scheme ~~shall~~ must be by a suitably qualified person or body approved by the relevant planning authority.

(4) Any archaeological works and/or watching brief must be carried out in accordance with the approved scheme, unless otherwise approved in writing by the relevant planning authority.

Construction traffic and access strategy

13.—(1) No stage of the authorised development ~~shall~~ is to commence until for that stage written details of construction traffic management measures and a travel plan for the contractor's workforce reflecting the mitigation measures included in the environment statement and~~,~~ including means of travel to construction sites and any parking to be provided, have been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved traffic management measures and travel plan, unless otherwise agreed by the relevant planning authority.

Construction work and construction compounds

14.—(1) No stage of the authorised development ~~shall~~ is to commence until for that stage ~~written details of —~~

(a) written details of the type and location of screen fencing for the proposed construction compounds;

(b) written details of the type, specification and location of lighting around the compound areas and along the route during the construction phase of the authorised development; ~~and~~

(c) a scheme for the attenuation of noise and vibration during construction;

(d) a dust management plan; and

~~(c)~~(e) a contaminated land plan,

in each case reflecting the mitigation measures included in the environmental statement, have been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must~~shall~~ be carried out in accordance with the approved details and plans mentioned in sub-paragraph (1), unless otherwise agreed in writing by the relevant planning authority.

Site waste management plan

15.—(1) No stage of the authorised development is to commence until a site waste management plan for that stage, reflecting the mitigation measures included in the environmental statement, has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved plan mentioned in sub-paragraph (1), unless otherwise agreed in writing by the relevant planning authority.

Code of construction practice

16.—(1) No authorised development is to commence until a code of construction practice has been submitted to and approved in writing by the relevant planning authority.

(2) The code of construction practice must reflect the mitigation measures included in the environmental statement and the requirements relating to construction of the authorised development set out in this Schedule.

(3) The code of construction practice may incorporate the plans, schemes and details required to be approved in writing by other requirements set out in this Schedule.

(4) The authorised development must be carried out in accordance with the provisions of the code of construction practice, unless otherwise agreed in writing by the relevant planning authority.

Construction environmental management plan

17.—(1) No authorised development is to commence until a construction environmental management plan has been submitted to and approved in writing by the relevant planning authority.

(2) The construction environmental management plan must be prepared in accordance with the provisions of the approved code of construction practice, and must reflect the mitigation measures included in the environmental statement.

(3) The construction environmental management plan may incorporate the plans, schemes and details required to be approved in writing by other requirements set out in this Schedule.

(4) The authorised development must be carried out in accordance with the provisions of the construction environmental management plan, unless otherwise agreed in writing by the relevant planning authority.

Amendments to approved details

18.—(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details are to be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

(2) Any amendments to the approved details referred to in sub-paragraph (1) must reflect the mitigation measures included in the environmental statement.

Traffic management during construction

19.—(1) The authorised development must be implemented in accordance with a traffic management plan submitted to and approved in writing by ~~the~~each relevant highway authority~~ies~~, after consultation with the police, other emergency services~~,~~ and any other parties considered to be relevant stakeholders by the undertaker.

(2) The traffic management plan must be designed in accordance with relevant legislation, guidance and best practice, balancing the need to minimise disruption to the travelling public, protect the public and the workforce from hazards, and facilitate the economical construction of the authorised development.

SCHEDULE 3

Article 12

CLEARWAYS

The roads specified for the purposes of article 11(3) are—

(a) M1 Spur/A1081 Airport Way dual carriageway (part of which was previously the M1 Spur) from its junction with the roundabout of Junction 10 of the M1 Motorway to Capability Green Overbridge, a distance of 1338 metres;
(b) A1081 London Road from a point 165 metres south of the centre of Newlands Road at its junction with the A1081 London Road to Kidney Wood Northern Roundabout, including Kidney Wood Southern Roundabout and Kidney Wood Northern Roundabout, a distance of 1130 metres;
(c) Kidney Wood Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with A1081 Airport Way (previously the M1 Spur) to the give way line of Kidney Wood Northern Roundabout, a distance of 286 metres;
(d) Kidney Wood Eastbound Merge Slip Road from its junction with Kidney Wood Northern Roundabout to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 224 metres;
(e) Kidney Wood Westbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to the give way line of the Kidney Wood Southern Roundabout, a distance of 395 metres;
(f) Kidney Wood Westbound Merge Slip Road from is junction with Kidney Wood Southern Roundabout to the end of the slip road nosing at its junction with A1081 Airport Way (previously the M1 spur), a distance of 350 metres;
(g) Capability Green Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with A1081 Airport Way to its junction with Capability Green Link Road, a distance of 169 metres;
(h) Capability Green Westbound Merge Slip Road from its junction with the Capability Green Southern Roundabout to the end of the slip road nosing at its junction with A1081 Airport Way, a distance of 153 metres;
(i) Capability Green Link Road from its junction with the Capability Green Northern Roundabout to its junction with the Capability Green Southern Roundabout, a distance of 191 metres; and
(j) Capability Green Southern Roundabout, for the extent of the circulatory carriageway.

SCHEDULE 4

Article 12

SPEED LIMITS

PART 1

M1 MOTORWAY

For the Schedule to the M1 Motorway (Junctions 6A to 10) (Variable Speed Limits) Regulations 2011 substitute—

"SPECIFIED ROADS

1. The specified roads are the—

(a) northbound carriageway of the M1 from marker post 33/4 to marker post 50/0;

(b) carriageways of the northbound slip roads;

(c) southbound carriageway of the M1 from marker post 50/0 to marker post 33/3; and

(d) carriageways of the southbound slip roads.

2. Any reference in this Schedule to—

(a) the letter "M" followed by a number is a reference to the motorway known by that name;

(b) the letter "A" followed by a number is a reference to the road known by that name; and

(c) a junction followed by a number is (unless the context otherwise requires) a reference to the junction of the M1 of that number.

3. In this Schedule—

"northbound slip roads" is a reference to the lengths of carriageway specified in paragraph 4;

"off-slip road" means a slip road intended for the use of traffic leaving the M1;

"on-slip road" means a slip-road intended for the use of traffic entering the M1;

"southbound slip roads" is a reference to the lengths of carriageway specified in paragraph 5; and

"zone sign" means a sign authorised by the Secretary of State under section 64 of the Road Traffic Regulation Act 1984(a) for the purpose of indicating that vehicles are entering, have entered or are leaving a specified road.

4. The northbound slip roads are as follows—

(a) the linking carriageways which connect the M25 at junction 21A with the M1 at junction 6A; these commence at the exits from the clockwise and anti-clockwise carriageways of the M25 and end at the junction with the northbound carriageway of the M1;

(b) the off-slip road which connects the northbound carriageway of the M1 with the westbound carriageway of the A414 at junction 7;

(c) the on-slip roads which connect the westbound and eastbound carriageways of the A414 at junction 8 with the northbound carriageway of the M1;

(d) the off-slip road which connects the northbound carriageway of the M1 with the A5 at junction 9;

(e) the on-slip road which connects the A5 at junction 9 with the northbound carriageway of the M1;

(f) the off-slip road which connects to the junction 10 roundabout; this commences at the junction of the off-slip road with the northbound carriageway of the M1 and ends at the entry to the Junction 10 roundabout; and

(g) the on-slip road leading to the northbound carriageway of the M1; this commences at the exit from the Junction 10 roundabout and ends at the junction of the on-slip road with the northbound carriageway of the M1.

5. The southbound slip roads are as follows—

(a) the off-slip road which connects (both directly and via the junction 10 roundabout) the southbound carriageway of the M1 with the eastbound carriageway of the Luton spur road; this commences at the junction of the off-slip road with the southbound carriageway of the M1 and ends at a point 45m to the north-west of the entry to the Junction 10 roundabout and at an equivalent point on the direct link;

(b) the on-slip road leading to the southbound carriageway of the M1 from the westbound carriageway of the Luton spur road (both directly and via the junction 10 roundabout); this commences at a point 100m to the south of the exit from the Junction 10 roundabout and at an equivalent point on the direct link and ends at the junction of the on-slip road with the southbound carriageway of the M1;

(c) the off-slip road which connects the southbound carriageway of the M1 with the A5 at junction 9;

(d) the on-slip road which connects the A5 at junction 9 with the southbound carriageway of the M1;

(e) the off-slip road which connects the southbound carriageway of the M1 with the westbound and eastbound carriageways of the A414 at junction 8;

(f) the on-slip road which connects the eastbound carriageway of the A414 at junction 7 with the southbound carriageway of the M1; and

(g) the linking carriageway which connects the M1 at junction 6A with the M25 at junction 21A; this commences at the exit from the southbound carriageway of the M1 and ends at the junctions with the clockwise and anti-clockwise carriageways of the M25.”.

PART 2

ROADS SUBJECT TO 40 MPH SPEED LIMIT

(1) *Number*	*(2)* *Description*
1	A1081 London Road — the single carriageway road from 165 metres south of the centre of its junction with Newlands Road to its junction with the Kidney Wood Southern Roundabout, a distance of 466 metres.
2	Newlands Road — the single carriageway road from its junction with the A1081 London Road to a point 10 metres north of the centre of Stockwood under-bridge, a distance of 520 metres.

PART 3

ROADS SUBJECT TO 50 MPH SPEED LIMIT

(1) *No.*	*(2)* *Description*
1	A1081 Airport Way and the M1 Spur – the dual carriageway from its junction with the roundabout of Junction 10 of the M1 Motorway to a point immediately below the centre of the Capability Green over-bridge, a distance of 1371 metres, including the circulatory carriageway of the Junction 10 roundabout, a distance of 590 metres.
2	M1 Junction 10 southbound diverge slip road from the end of the entry nosing for the segregated left turn lane to its junction with the roundabout of Junction 10 of the M1 Motorway, a distance of 45 metres, including the segregated left turn lane linking the southbound diverge and the M1 Spur eastbound carriageway.
3	M1 Junction 10 southbound merge slip road form its junction with the roundabout of Junction 10 of the M1 Motorway to the start of the segregated left turn lane exit nosing, a distance of 100 metres, including the segregated left turn lane linking the southbound merge and the M1 Spur westbound carriageway.
4	Kidney Wood Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with the M1 Spur to a point 39 metres north-east of the end of the diverge nosing, a distance of 79 metres.
5	Kidney Wood Eastbound Merge Slip Road from a point 60 metres south-west of the start of the merge nosing to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 100 metres.
6	Kidney Wood Westbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to a point 60 metres south-west of the end of the diverge nosing, a distance of 120 metres,
7	Kidney Wood Westbound Merge Slip Road from a point 74 metres north-east of the start of the merge nosing to the end of the slip road nosing at its junction with the M1 Spur, a distance of 114 metres.
8	Capability Green Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to a point 10 metres north-east of the end of the diverge nosing, a distance of 50 metres
9	Capability Green Westbound Merge Slip Road from a point 40 metres north-east of the merge nosing to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 80 metres.

SCHEDULE 5

Article 13

STREETS TO BE PERMANENTLY STOPPED UP

(1) *Area*	*(2)* *Street to be stopped up*	*(3)* *Extent of stopping up*	*(4)* *New Street to be substituted*
Luton Borough Council and Central Bedfordshire Council	A1081 London Road	Between points A and B on the street plans, sheet 3 (being from a point 10m to the south of the A1081 London Road junction with M1 Junction 10a Kidney Wood Roundabout, southwards for a distance of 80m).	Work Nos.1, 2, 3A, 3B, 4A, 4B and 5
	London Road	Between points C and D on the street plans, sheet 3 (being from the London Road junction with M1 Junction 10a Kidney Wood Roundabout, northwards for a distance of 220m), including private means of access to Kidney Wood at points J and K on those plans (being respectively 87m and 200m to the north of the junction with M1 Junction 10a Kidney Wood Roundabout).	Work Nos.1, 2, 3A, 3B, 4A, 4B, 5, 6(a) and 6(c)
Luton Borough Council	M1 Junction 10a Kidney Wood Roundabout	Between points E and F on the street plans, sheet 3 (being part of the circulatory carriageway, from a point 25m west of its junction with the centreline of London Road, eastwards for a distance of 45m)	Work Nos.1, 2, 3A, 3B, 4A, 4B and 5

(1) *Area*	*(2)* *Street to be stopped up*	*(3)* *Extent of stopping up*	*(4)* *New Street to be substituted*
	Public Footpath Ref FP43	Between points G and H on the street plans, sheet 3 (being from a point 20m from its junction with the north-eastern highway boundary of Newlands Road to its junction with the highway boundary of M1 Junction 10a Kidney Wood Roundabout).	Work No. 7
Central Bedfordshire Council	Newlands Road	At point I on the street plans, sheet 3 (being private means of access to an infiltration pond to the south-east of the M1 Spur and north-east of Newlands Road to be at a point on the north-eastern highway boundary of Newlands Road 435m to the north-west of the junction with A1081 London Road).	Work No.1(d)

SCHEDULE 6

Article 14

TEMPORARY STOPPING UP OF STREETS

(1) *Area*	*(2)* *Street to be temporarily stopped up*	*(3)* *Extent of temporary stopping up*
Luton Borough Council and Central Bedfordshire Council	M1 Junction 10 Roundabout	Night-time closures of all or part of the roundabout will be required to facilitate the safe construction of the authorised development
Central Bedfordshire Council	M1 J10 Northbound Diverge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
	M1 J10 Northbound Merge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	M1 J10 Southbound Diverge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
Central Bedfordshire Council	M1 J10 Southbound Merge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	M1 J10 Southbound Diverge Dedicated Left Turn Lane	Short term closures will be required to facilitate the safe construction of the authorised development
Central Bedfordshire Council	M1 J10 Southbound Merge Dedicated Left Turn Lane	Short term closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	M1 Spur	Night-time closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council	M1 Junction 10a Kidney Wood Roundabout	Night-time closures of all or short term closures of part of the roundabout will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	A1081 Airport Way	Night-time closures will be required to facilitate the safe construction of the authorised development

(1) *Area*	*(2)* *Street to be temporarily stopped up*	*(3)* *Extent of temporary stopping up*
	Capability Green Eastbound Diverge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
	Capability Green Westbound Merge	Night-time closures will be required to facilitate the safe construction of the authorised development
	A1081 London Road	Short term closures will be required to facilitate the safe construction of the authorised development.
	Newlands Road	Short term closures will be required to facilitate the safe construction of the authorised development.
Luton Borough Council	London Road	Short term closures will be required to facilitate the safe construction of the authorised development.
	Public Footpath FP43	Closure of the footpath for the duration of the works required to facilitate the safe construction of the authorised development
	Newlands Road	Field access to arable farmland to the north-west of the M1 Spur, north-east of Newlands Road and east of London Road, from a point on the north-eastern highway boundary of Newlands road 45m to the north-west of its underbridge crossing of the M1 Spur. To be stopped up during the duration of the works in order to allow the use of adjacent land for construction purposes

SCHEDULE 7

Article 15

ACCESS TO WORKS

(1) *Area*	*(2)* *Reference on street plans, sheet 3*	*(3)* *Description of access*
Luton Borough Council	T1	A temporary vehicular access from a point on the western highway boundary of London Road 165m to the north of its junction with the existing M1 Junction 10a Kidney Wood Roundabout. This temporary access provides access and egress for site vehicles and plant and site workers' personal vehicles to the construction compound and to the aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.
	T2	A temporary vehicular access to be provided from the north-western quadrant of the proposed Kidney Wood Northern Roundabout. This temporary access provides access and egress for site vehicles and plant and site workers' personal vehicles to and from the construction compound and to or from the aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.
	T3	A temporary vehicular access to be provided from the north-eastern highway boundary of Newlands Road, from a point 45m to the north-west of the underbridge crossing of the M1 Spur. This temporary access is located at an existing gated access to arable farmland, and provides access and egress for site vehicles and plant to or from those aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.
	T4	A temporary vehicular access to be provided from a point on the south-western highway boundary of Newlands Road 30m to the north-west of the underbridge crossing of the M1 Spur. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the north-west of the M1 Spur and to the south-west of Newlands Road. Upon completion of the works, this access is replaced with a permanent pedestrian private means of access at the same location that provides access to maintain highways equipment.

(1) *Area*	*(2)* *Reference on street plans, sheet 3*	*(3)* *Description of access*
Central Bedfordshire Council	T5	A temporary vehicular access to be provided from a point on the south-western highway boundary of Newlands Road 25m to the south-east of the underbridge crossing of the M1 Spur. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur and to the south-west of Newlands Road.
	T6	A temporary vehicular access to be provided from a point on the north-eastern highway boundary of Newlands Road 30m to the south-east of the underbridge crossing of the M1 Spur. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.
	T7	A temporary vehicular access to be provided from a point on the north-eastern highway boundary of Newlands Road 235m to the north-west of its junction with the A1081 London Road (south). This temporary access provides access and egress for site vehicles and plant and site workers' personal vehicles to the satellite construction compound and to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.
	T8	A temporary vehicular access to be provided from a point on the western highway boundary of the existing A1081 London Road 305m to the south of its junction with M1 Junction 10a Kidney Wood Roundabout. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.

(1) *Area*	*(2)* *Reference on street plans, sheet 3*	*(3)* *Description of access*
	T9	A temporary vehicular access to be provided from a point on the western highway boundary of the existing A1081 London Road 110m to the south of its junction with M1 Junction 10a Kidney Wood Roundabout. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.

SCHEDULE 8

Article 20(2)

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

(1) *Number of land shown on land plans, sheet 1*	*(2)* *Purpose for which rights over the land may be acquired*
1A	Provision of diverted public right of way.
3B	Construction, inspection and maintenance of a buried drainage pipe.
3D	Construction, inspection and maintenance of a reinforced earthworks slope.

SCHEDULE 9

Article 20(4)

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land ~~shall~~ appl~~y~~ies, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope ~~prejudice to the generality~~ of paragraph 1, the Land Compensation Act 1973(**a**) ~~shall have~~has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

(a) for the words "land is acquired or taken" there ~~shall~~ are~~be~~ substituted the words "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for the words "acquired or taken from him" there ~~shall~~ are~~be~~ substituted the words "over which the right is exercisable or the restrictive covenant enforceable".

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

(a) for the word "part" in paragraphs (a) and (b) there ~~shall be~~ are substituted the words "a right over or restrictive covenant affecting land consisting";

(b) for the word "severance" there ~~shall~~ are~~be~~ substituted the words "right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden";

(c) for the words "part proposed" there ~~shall~~are ~~be~~ substituted the words "right or restrictive covenant proposed"; and

(d) for the words "part is" there ~~shall~~are ~~be~~ substituted the words "right or restrictive covenant is".

Application of the 1965 Act

3.—(1) The 1965 Act ~~shall~~ has~~ve~~ effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

(a) the right acquired or to be acquired; or

(b) the land over which the right is or is to be exercisable.

(2) Without limitation on the scope ~~prejudice to the generality~~ of sub-paragraph (1), Part 1 of the 1965 Act ~~shall~~ applies~~y~~ in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

(**a**) 1973 c. 26.

4. For section 7 of the 1965 Act (measure of compensation) there ~~shall~~ is ~~be~~ substituted the following section—

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard ~~shall~~ is to be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.".

5. For section 8 of the 1965 Act (provisions as to divided land) there ~~shall~~ is~~be~~ substituted the following section—

"**8.**—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house ("the relevant land")—

(a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal ("the tribunal"); and

(b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—

(i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or

(ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the M1 Junction 10a (Grade Separation) Development Consent Order 201[3](**a**) ("the Order") ~~shall~~, in relation to that person, ceases to authorise the purchase of the right and be deemed to authorise the purchase of that person's interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice ~~shall~~ is~~be~~ deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to~~shall~~ be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.".

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

(**a**) S.I. 201[ ]/[ ]

~~shall~~ are~~be so~~ modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the undertaker.

7. Section 11 of the 1965 Act (powers of entry) is ~~shall be so~~ modified as to secure that, as from the date on which the undertaker has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which ~~shall~~ is~~be~~ deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act ~~shall~~ are~~be~~ modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) ~~shall~~ applies~~y~~ with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) ~~shall~~ is~~be so~~ modified so as to enable the undertaker, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 10

Article 25

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) *Location*	*(2)* *Number of land shown on land plans, sheet 1*	*(3)* *Purpose for which temporary possession may be taken*	*(4)* *Relevant part of the authorised development*
Luton Borough Council	1	To provide access to the area of the works to the north-east of Newlands Road and north-west of the M1 Spur form Newlands Road.	All works
	1A	Construction of a boundary fence and diverted public right of way.	Work No.1, Work No.2, Work No.4A & Work No. 7
	1B	Construction of a boundary fence.	Work No.1, Work No.2 & Work No.4A.
	1D	Provision of a site compound, including but not limited to site offices, welfare facilities, parking for workers' private vehicles and works vehicles, storage of plant, material and topsoil and the treatment of site-generated waste.	All works
Luton Borough Council and Central Bedfordshire Council	2B	Carrying out works to trees, construction of fencing and planting of a hedgerow.	Work No.12
Luton Borough Council	2C	Construction and use of the vehicular access to the site compound, and construction of part of a turning head.	All works
	2H	To provide access during the works and to allow the construction of new means of access.	Work No.1
	2I	To allow the realignment of London Road and the associated works to the verges, footways and earthworks.	Work~~j~~k No.2 & Work No.6

(1) *Location*	*(2)* *Number of land shown on land plans, sheet 1*	*(3)* *Purpose for which temporary possession may be taken*	*(4)* *Relevant part of the authorised development*
	2J	To allow the widening of A1081 Airport Way and the associated improvements to Capability Green junction.	Work No.1
Central Bedfordshire Council	3A	Storage of materials and works to infill existing burrow pit.	All works
	3B	Construction of drainage pipes, access, the storage of materials and works to infill existing burrow pit.	Work No. 8
	3C	Access to the area of the works to the south-east of the M1 Spur and to the north-east of Newlands Road, and the storage of materials and plant	All works
	3D	Excavation of existing tip area and works to infill to original ground levels.	Work No. 9
	3E	Use as a satellite compound for works to the south-east of the M1 Spur, including but not limited to site offices, welfare facilities, parking for workers' private vehicles and works vehicles, storage of plant, material and topsoil and the treatment of site-generated waste.	All works
	3F	Regrading of part of earth bunds that extend beyond the proposed highway boundary	Work No.1 & Work No.3A
	4B	Carrying out works to trees, and construction of fencing	Work No.1 & Work No.3B
Luton Borough Council and Central Bedfordshire Council	5A	Carrying out works to trees, and construction of fencing	Work No.1 & Work No.3B

(1) *Location*	*(2)* *Number of land shown on land plans, sheet 1*	*(3)* *Purpose for which temporary possession may be taken*	*(4)* *Relevant part of the authorised development*
	6C	To allow the widening of the M1 Spur, the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3A, Work No.3B, Work No.4A & Work No.4B
	6D	To allow the widening of the M1 Spur, the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.3A, Work No.3B, Work No.4A & Work No.4B
	6E	To allow the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3B & Work No.4B
	7C	To allow the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3A, Work No.3B, Work No.4A & Work No.4B
	7D	To allow the provision of a continuous link between the M1 Spur and A1081 Airport Way, the widening of A1081 Airport Way and the associated improvements to Capability Green junction..	Work No.1, Work No.3B & Work No.4B
	7E	To allow the widening of A1081 Airport Way and the associated improvements to Capability Green junction..	Work No.1

(1) *Location*	*(2)* *Number of land shown on land plans, sheet 1*	*(3)* *Purpose for which temporary possession may be taken*	*(4)* *Relevant part of the authorised development*
	7F	To allow the provision of the realigned A1081 London Road, the modification of A1081 London Road to form Old London Road (South) to provide access to Kidneywood House and Bull Wood Cottages, access to the works, the construction of the access to the proposed attenuation and infiltration ponds and the improvements to Newlands Road and its junction with A1081 London Road.	Work No.2, Work No.5 & Work No.10

SCHEDULE 11

Article 3~~2~~1

TREES SUBJECT TO TREE PRESERVATION ORDERS

(1) *Type of tree*	*(2)* *Reference of trees on environmental context plans*	*(3)* *Work to be carried out*
Birch, oak, ash, rowan and hornbeam.	Kidney Wood TPO shown on sheets 1 and 2	Removal, trimming, lopping and coppicing of trees within Kidney Wood TPO to be carried out to facilitate the construction of the authorised development and to ensure its future viability and stability.

SCHEDULE 12

Article 3~~4~~5

PROTECTIVE PROVISIONS

PART 1

FOR PROTECTION OF HIGHWAY AUTHORITIES

1. ~~The following provisions of this Schedule shall, u~~Unless otherwise agreed in writing between the undertaker and the highway authority concerned, the following provisions of this Schedule have effect in relation to any highway for which the undertaker is not the highway authority.

2. In this Schedule—

"highway" means a street vested in or maintainable by the highway authority; and

"plans" includes sections, drawings, specifications and particulars (including descriptions of methods of construction).

3. Wherever in this Schedule provision is made with respect to the approval or consent of the highway authority, that approval or consent ~~shall~~ must be given in writing and may be given subject to such reasonable terms and conditions as the highway authority may impose ~~in the interests of safety and in order to minimise inconvenience to persons using the highway,~~ but must~~shall~~ not be unreasonably withheld.

4. Before commencing any part of the authorised development the undertaker ~~shall~~ must submit to the highway authority for its approval in writing proper and sufficient plans and ~~shall~~ must not commence that part of the authorised development until those plans have been approved or settled by arbitration in accordance with arbitration (article 37).

5. If, within 21 days after any plans have been submitted to a highway authority under paragraph 4, it has not intimated its disapproval and the grounds of disapproval, it ~~shall~~ is to be deemed to have approved them except to the extent that the plans involve departures from Highways Agency standards.

6. In the event of any disapproval of plans by a highway authority under paragraph 4, the undertaker may re-submit the plans with modifications and, in that event, if the highway authority has not intimated its disapproval and the grounds of disapproval within 21 days of the plans being re-submitted, it ~~shall~~ is to be deemed to have approved them except to the extent that the plans involve departures from Highways Agency and local highway authority standards.

7. Except in an emergency or where reasonably necessary to secure the safety of the public, no direction or instruction ~~shall~~ is to be given by the highway authority to the contractors, servants or agents of the undertaker regarding construction of the authorised development without the prior consent in writing of the undertaker but the highway authority ~~shall~~ is not be liable for any additional costs which may be incurred as a result of the giving of instructions or directions pursuant to this paragraph.

8. To facilitate liaison with the undertaker, the highway authority concerned ~~shall~~ must provide so far as is reasonably practicable a representative to attend meetings arranged by the undertaker ~~respecting~~ about the authorised development.

9. The authorised development ~~shall~~ must be completed in accordance with the reasonable requirements of the highway authority or, in case of difference between the undertaker and the highway authority as to whether those requirements have been complied with or as to their reasonableness, in accordance with such requirements as may be approved or settled by arbitration in accordance with article 37 (arbitration).

PART 2

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application and Interpretation

1. —(1) For the protection of the statutory undertakers referred to in this part of this Schedule the following provisions ~~shall~~, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned, have effect.

(2) In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable the statutory undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(**a**), belonging to or maintained by that statutory undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a water undertaker, mains, pipes and other apparatus belonging to or maintained by the undertaker for the purposes of water supply; and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the undertaker under the Water Industry Act(**b**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure for the lodging therein of apparatus or for giving access to apparatus;

"emergency works" has the same meaning as in section 52 of the 1991 Act;

"functions" includes powers and duties;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon land;

"plans" includes sections and method statements; ~~and~~

"undertaker" means the undertaker as defined in article 2 of this Order; and

"statutory undertaker" means—

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(**c**);

(c) a water undertaker within the meaning of the Water Industry Act 1991; and,

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

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(**a**) 1989 c. 29.
(**b**) 1991 c. 56
(**c**) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

for the area of the authorised development, and in relation to any apparatus, means the statutory undertaker to whom it belongs or by whom it is maintained.

(3) Except in the case of paragraph 2, this Part of this Schedule ~~shall~~does not apply to anything done or proposed to be done in relation to or affecting any apparatus in so far as the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

(4) Article 2~~9~~8 (apparatus and rights of statutory undertakers in stopped up streets) ~~shall~~does not apply in relation to a statutory undertaker referred to in this Part of this Schedule.

(5) Paragraphs (1) and (2) of article ~~30~~29 (recovery of costs of new connections) ~~shall~~ have effect as if it referred to apparatus removed under this Part of this Schedule.

Apparatus of statutory undertakers in stopped up streets

2.—(1) Where any street is stopped up under article 13 (permanent stopping up of streets), any statutory undertaker whose apparatus is under, in, on, along or across the street ~~shall~~is to have the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up but nothing in this sub-paragraph ~~shall~~ affects any right of the undertaker or of the statutory undertaker to require the removal of that apparatus under paragraph 4 or the power of the undertaker to carry out works under paragraph 6.

(2) ~~Notwithstanding~~Regardless of the temporary stopping up or diversion of any highway under the powers of article 14 (temporary stopping up of streets) of this Order, and subject always to the power of the undertaker to make provisions for the alteration of such apparatus, the statutory undertaker ~~shall be~~is at liberty at all times and after giving reasonable notice except in the case of emergency to take all necessary access and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to inspect, repair, maintain, renew, alter, remove or use any apparatus which at the time of the temporary stopping up or diversion was in that highway.

Acquisition of Apparatus

3. Regardless of any provision in this Order or anything shown on the land plans, the undertaker ~~shall~~must not acquire under this Order any apparatus or rights or interests of the statutory undertaker to access, maintain or otherwise assert their rights in relation to such apparatus otherwise than by agreement.

Removal of apparatus

4.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus not be removed under this Part of this Schedule and any right of a statutory undertaker to use, maintain, repair, renew, alter or inspect that apparatus in that land ~~shall~~must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question, and the provisions of sub paragraph (2) to (5) ~~shall~~ apply in relation to such works.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it ~~shall~~must give to the statutory undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a statutory undertaker reasonably needs to remove any of its apparatus) the undertaker ~~shall~~must, subject to sub-paragraph (3), afford to the statutory undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the use, maintenance, repair, renewal, alteration and inspection of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are

mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the statutory undertaker in question ~~shall~~must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonably necessary to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, save that such obligation ~~shall~~does not extend to the requirement for the statutory undertaker to use its compulsory purchase powers to achieve this end.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule ~~shall~~must be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 3~~8~~7 (arbitration).

(5) The statutory undertaker in question ~~shall~~must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 3~~8~~7, and subject to the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the statutory undertaker in question, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of, the statutory undertaker.

(7) Nothing in sub-paragraph (6) ~~shall~~ authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

5.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a statutory undertaker facilities and rights for the construction, use, maintenance, renewal and inspection in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights ~~shall~~are to be granted upon such terms and conditions as may be agreed between the undertaker and the statutory undertaker in question or in default of agreement settled by arbitration in accordance with article 3~~8~~7 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus the arbitrator must—

(a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker or the traffic on the highway; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which the same are to be granted are in the opinion of the arbitrator less favourable on the whole to the statutory undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to the statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

6. —(1) Not less than 28 days before commencing the execution of any works authorised by this Order that are near to or will or may affect any apparatus the removal of which has not been required by the undertaker under paragraph 4(2), the undertaker ~~shall~~must submit to the statutory undertaker in question a plan of the works to be executed.

(2) Those works are to be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker ~~shall be~~is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) ~~shall~~must be made within 21 days after the submission to them of a plan, section and description under sub-paragraph (1).

(4) If a statutory undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 5 of this Schedule apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(2).

(5) Nothing in this paragraph ~~shall~~ precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan of those works subsequently and must comply with sub-paragraph (2) so far as reasonably practicable in the circumstances.

Expenses

7.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the statutory undertaker reasonable expenses incurred by that statutory undertaker in, or in connection with—

(a) the inspection, removal and relaying or replacing, or alteration or protection of any apparatus or the construction of any new or alternative apparatus or connections thereto which may be required in consequence of the execution of any such works as are required under this Part of this Schedule, including any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus;

(b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(c) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 3~~8~~7 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of sub-paragraph (1) ~~shall~~is to be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs ~~shall~~are to be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus ~~shall~~ is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole ~~shall~~is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) (and having regard, where relevant to sub paragraph (2)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

8. —(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of the authorised development, or any works required under this Schedule by or on behalf of the undertaker, or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or other property of a statutory undertaker or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and

(b) indemnify that statutory undertaker for any other expenses, loss, damages, claims, penalty or costs incurred by or recovered from that statutory undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) ~~shall~~ imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(3) A statutory undertaker must give the undertaker reasonable notice of any such claim or demand received under sub-paragraph (1) and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

9. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a statutory undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

10. Where in consequence of the proposed construction of any of the authorised development the undertaker or a statutory undertaker requires the removal of apparatus under paragraph 4(2) or a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 6(2), the undertaker and the statutory undertaker must use their best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and the safe and efficient operation of the statutory undertaker's undertaking.

Access

11. If, in consequence of the exercise of any powers under this Order the access to any apparatus is materially obstructed the undertaker ~~shall~~must provide such alternative means of access to such apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

PART 3

FOR THE PROTECTION OF NATIONAL GRID

Interpretation

1. —(1) In this Part of this Schedule—

"National Grid" means National Grid Gas Plc whose registered address is 1-3 Strand, London WC2N 5EH ("National Grid");

"the high pressure gas main" means the Kinsbourne Green to Dallow Road high pressure gas main; and

"plans" means all drawings designs sections specifications method statements and other documentation that are reasonably necessary to properly and sufficiently describe the work to be executed.

High pressure gas main: application of Parts 2 and 3

2.—(1) Subject to sub-paragraphs (2) and (3), this Part of this Schedule applies to the high pressure gas main in addition to Part 2.

(2) Paragraph 3 of this Part of this Schedule applies to the high pressure gas main instead of paragraph 6 of Part 2.

(3) Paragraph 3 of this Part of this Schedule (except in the case of paragraph 3(6)) has effect including in circumstances where the high pressure gas main is regulated by the provisions of Part 3 of the 1991 Act, and in those circumstances paragraphs 7 to 11 of Part 2 have effect, except as provided for in paragraph 4 of this Part.

High pressure gas main: protection

3.—(1) Not less than 42 days before commencing the execution of any works authorised by this Order which will or may be situated on, over or under the high pressure gas main, or within three metres respectively from the high pressure gas main measured in any direction, or which involve embankment works within three metres of the high pressure gas main, the undertaker ~~shall~~must submit to National Grid detailed plans describing—

(a) the exact position of those works;

(b) the level at which those works are proposed to be constructed or renewed;

(c) the manner of their construction or renewal; and

(d) the position of the high pressure gas main.

(2) The undertaker ~~shall~~must not commence the construction or renewal of any works to which sub-paragraph (1) applies until National Grid has given written approval of the plans so submitted.

(3) Any approval of National Grid under sub-paragraph (2)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (4);

(b) ~~shall~~must not be unreasonably withheld.

(4) In relation to a work to which sub-paragraph (1) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to the high pressure gas main.

(5) Works to which this paragraph applies ~~shall~~must be executed only in accordance with—

(a) the plan approved under sub-paragraph (2); and

(b) such reasonable requirements as may be made in accordance with sub-paragraph (4) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it,

and the statutory undertaker ~~shall be~~is entitled to watch and inspect the execution of those works.

(6) If in consequence of the works proposed by the undertaker National Grid reasonably requires the removal of the high pressure gas main and gives written notice to the undertaker of that requirement, paragraphs 1 to 5 of Part 2 of this Schedule ~~shall~~ apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(2) of Part 2.

(7) Nothing in this paragraph ~~shall~~ precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, instead of the plan, previously submitted, and having done so the provisions of this paragraph ~~shall~~ apply to and in respect of the new plan.

(8) The undertaker ~~shall~~is not ~~be~~ required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it ~~shall~~must give to National Grid notice as soon as is reasonably practicable and a plan, of those works subsequently and must comply with—

(a) sub-paragraph (5) so far as reasonably practicable in the circumstances; and

(b) sub-paragraph (9) at all times.

(9) At all times when carrying out any works authorised under this paragraph the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid high pressure gas pipelines and associated installations requirements for third parties T/SP/SSW27" and HSE's "HS(G)47 Avoiding danger from underground services".

Conduct of claims and demands

4.—(1) Sub-paragraph (2) applies instead of paragraph 8(3) of Part 2 of this Schedule in relation to claims and demands made against National Grid under that paragraph.

(2) National Grid must give the undertaker reasonable notice of any such claim or demand received under paragraph 8(1) of Part 2 and no settlement or compromise is to be made without first consulting the undertaker and considering his representations (such representations not to be unreasonably withheld or delayed).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Luton Borough Council (referred to in this Order as the undertaker) to make improvements to Junction 10a of the M1, including the removal of the existing Junction 10a roundabout and provision of a continuous and widened carriageway between the M1 Junction 10 and A1081 Airport Way, and new roundabouts and slip roads giving access to London Road, and to carry out all associated works. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land temporarily for this purpose. The Order also makes provision in connection with the designation and maintenance of the new section of highway.

A copy of the various plans, ~~and~~ the book of reference and other documents mentioned in this Order and certified in accordance with article 35~~6~~ of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Luton Borough Council, Town Hall, Luton LU1 2BQ.

STATUTORY INSTRUMENTS

201[3] No. [ ]

INFRASTRUCTURE PLANNING

HIGHWAYS

The M1 Junction 10a (Grade Separation) Development Consent Order 201[3]

BIRCHAM DYSON BELL LLP
50 Broadway
London Sw1H 0BL
Solicitors and Parliamentary Agents
[8764320.04~~321~~ — ~~2926~~3~~10~~.05~~46~~.13~~2~~]

APPENDIX E Proposed DCO

This appendix is the DCO in its recommended form for making, including modifications to the Final Draft in Appendix D.

This appendix supplied separately

S T A T U T O R Y I N S T R U M E N T S

201[3] No. [ ]

INFRASTRUCTURE PLANNING

HIGHWAYS

The M1 Junction 10a (Grade Separation) Development Consent Order 201[3]

Made - - - - *201[3]*

Coming into force - - *201[3]*

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An application has been made to the Secretary of State for Transport, in accordance with the Infrastructure Planning (Applications and Prescribed Forms and Procedure) Regulations 2009(**a**), for an order under sections 37, 114, 115, 117(4), 120 and 122 of the Planning Act 2008(**b**).

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**).

[The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

[The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised in the application.]

[The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 122 of, and paragraphs 1 to 3, 10 to 17, 24, 26, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—]

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the M1 Junction 10a (Grade Separation) Development Consent Order 201[3] and comes into force on [ ] 201[3].

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**d**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**e**);

"the 1980 Act" means the Highways Act 1980(**f**);

(**a**) S.I. 2009/2264.
(**b**) 2008 c. 29.
(**c**) S.I. 2010/103.
(**d**) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1961 Act which are not relevant to this Order.
(**e**) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.
(**f**) 1980 c. 66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**a**);

"the 1990 Act" means the Town and Country Planning Act 1990(**b**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**c**);

"the 2008 Act" means the Planning Act 2008(**d**);

"address" includes any number or address used for the purposes of electronic transmission;

"apparatus" has the same meaning as in Part 3 of the 1991 Act;

"the authorised development" means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

"the book of reference" means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in the 1980 Act;

"compulsory acquisition notice" means a notice served in accordance with section 134 of the 2008 Act;

"demolition" means destruction and removal of existing infrastructure, buildings and the like required to facilitate, or which are incidental to, construction of the scheme; and such works may occur on one occasion or over any period of time.

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

"the environmental context plans" means the plans certified as the environmental context plans by the Secretary of State for the purposes of this Order;

"the environmental statement" means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

"footpath" has the same meaning as in the 1980 Act;

"highway" and "highway authority" have the same meaning as in the 1980 Act;

"the land plans" means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

"the limits of deviation" means the limits of deviation referred to in article 5;

"maintain" includes inspect, repair, adjust, alter, remove or reconstruct and any derivative of "maintain" is to be construed accordingly;

"Order land" means the land shown on the land plans as within the limits of land to be acquired or used permanently and temporarily, and described in the book of reference;

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section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c .71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c .11), by section 64(1) (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c .19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.

(**a**) 1984 c. 27.

(**b**) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.

(**c**) 1991. c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(**d**) 2008 c. 29.

"the Order limits" means the limits of deviation shown on the works plans, within which the authorised development may be carried out;

"owner", in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(**a**);

"the relevant planning authority" means Luton Borough Council in relation to land in its area and Central Bedfordshire Council in relation to land in its area, and "the relevant planning authorities" means both of them;

"the sections" means the sections and other plans certified as the sections by the Secretary of State for the purposes of this Order;

"special road" means a highway which is a special road in accordance with section 16 of the 1980 Act or by virtue of an order granting development consent;

"statutory undertaker" means a statutory undertaker for the purposes of section 127(8), 128(5) or 129(2) of the 2008 Act;

"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"the street plans" means the plans certified as the street plans by the Secretary of State for the purposes of this Order;

"tree preservation order" has the meaning given in section 198 of the 1990 Act;

"the tribunal" means the Lands Chamber of the Upper Tribunal;

"trunk road" means a highway which is a trunk road by virtue of—

(a) section 10 or 19(1) of the 1980 Act;

(b) an order or direction under section 10 of that Act;

(c) an order granting development consent; or

(d) any other enactment;

"undertaker" means the person who has the benefit of this Order in accordance with section 156 of the 2008 Act and article 6;

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

"the works plans" means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are to be taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the Book of Reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the street plans.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1.

(**a**) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

PART 2

PRINCIPAL POWERS

Development consent etc., granted by the Order

3. Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

Limits of Deviation

5. In carrying out the authorised development the undertaker may—

(a) deviate laterally from the lines and situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and

(b) deviate vertically from the levels of the authorised development shown on the sections—

(i) to any extent not exceeding 1.5 metres upwards; and

(ii) to any extent downwards as may be found to be necessary or convenient.

Benefit of Order

6.—(1) Subject to article 7 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of Luton Borough Council.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

7.—(1) Subject to section 144 of the 2008 Act, the undertaker may, with the consent of the Secretary of State—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) are subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

PART 3

STREETS

Application of 1991 Act

8.—(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway are treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major highway works if—

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or

(b) they are works which, had they been carried out by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts) or section 184 of that Act (vehicle crossings over footways and verges).

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works carried out under the powers of this Order—

section 56 (directions as to timing);

section 56A (power to give directions as to placing of apparatus);

section 58 (restrictions following substantial road works);

section 58A (restriction on works following substantial streetworks);

section 73A (power to require undertaker to re-surface street);

section 73B (power to specify timing etc. of re-surfacing);

section 73C (materials, workmanship and standard of re-surfacing);

section 78A (contributions to costs of re-surfacing by undertaker); and

Schedule 3A (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 14 (temporary stopping up of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act referred to in paragraph (4) are—

section 54 (advance notice of certain works), subject to paragraph (6);

section 55 (notice of starting date of works), subject to paragraph (6);

section 57 (notice of emergency works);

section 59 (general duty of street authority to co-ordinate works);

section 60 (general duty of undertakers to co-operate);

section 68 (facilities to be afforded to street authority);

section 69 (works likely to affect other apparatus in the street);

section 75 (inspection fees);

section 76 (liability for cost of temporary traffic regulation); and

section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 9 (construction and maintenance of new, altered or diverted streets) is to—

(a) affect the operation of section 87 of the 1991 Act (prospectively maintainable highways), and the undertaker is not by reason of any duty under that article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or

(b) have effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

Construction and maintenance of new, altered or diverted streets

9.—(1) Subject to paragraph (2), the streets authorised to be constructed, altered or diverted under this Order are to be highways maintainable at the public expense, and unless otherwise agreed with the highway authority in whose area those streets lie are to be—

(a) maintained by and at the expense of the undertaker for a period of 12 months from their completion; and

(b) at the expiry of that period, by and at the expense of the highway authority, provided that the works concerned have been completed to the reasonable satisfaction of the highway authority, and in the case of Work No. 1, article 10(1) has taken effect.

(2) Where a street which is not and is not intended to be a highway maintainable at the public expense is constructed, altered or diverted under this Order, the street (or part of the street as the case may be), unless otherwise agreed with the street authority, is to be —

(a) maintained by and at the expense of the undertaker for a period of 12 months from its completion; and

(b) at the expiry of that period by and at the expense of the street authority provided that the street has been completed to the reasonable satisfaction of the street authority.

(3) In any action against the undertaker in respect of damage resulting from its failure to maintain a street to which paragraph (2) applies, section 58 of the 1980 Act applies as if that street were a highway maintainable at the public expense.

Classification of roads

10.—(1) On a date to be determined by the undertaker, and subject to the procedures in paragraph (2) being satisfied—

(a) the Watford and South of St Albans—Redbourn—Kidney Wood, Luton, Special Roads Scheme 1957 is varied as follows—

(i) for Article 1A substitute—

"The centre line of the special road is indicated in blue on the plan numbered F/D121475/IPC/SR1/001 and marked M1 Junction 10A Grade Separation Variation of Special Road Status, signed by authority of [ ] and deposited at [ ]; and

(ii) for the Schedule to that Scheme, after the "The Route of the Special Road", substitute—

"From a point on the former London-Aylesbury-Warwick-Birmingham Trunk road (A.41) near Watford in the County of Hertfordshire approximately 350 yards south-east of the centre point of the bridge carrying the said trunk road over the River Colne in a general north westerly direction to Junction 10 of the M1 Motorway at Slip End, Luton.";

(b) subject to sub-paragraph (c), the highways in respect of which special road status has been removed by virtue of sub-paragraph (a) are to be trunk roads for which the Secretary of State is highway authority and are to be classified as the A1081 trunk road; and

(c) the section of highway between points A and B on sheet 2 of the street plans, being from the point where the existing M1 Spur road meets London Road at Kidney Wood Roundabout for a distance of approximately 195m in a westerly direction, is to cease to be trunk road, is to classified as the A1081, and is to become—

(i) a principal road for the purpose of any enactment or instrument which refers to highways classified as principal roads; and

(ii) a classified road for the purpose of any enactment or instrument which refers to highways classified as classified roads,

as if such classification had been made under section 12(3) of the 1980 Act.

(2) Prior to the date on which paragraph (1) is to take effect, the undertaker is to—

(a) notify the Secretary of State in writing of the date on which paragraph (1) is to take effect; and

(b) publish in The London Gazette, and in one or more newspapers circulating in the vicinity of the authorised development, notification of the date on which paragraph (1) takes effect, and the general effect of that paragraph.

(3) Upon completion of the authorised development, the following sections of highway are to be classified as the A1081, and are to be principal roads and classified roads for the purpose of any enactment or instrument which refers to highways classified as principal roads and classified roads, as if such classification had been made under section 12(3) of the 1980 Act—

(a) Kidney Wood Eastbound Diverge Slip Road, from the end of the nosing of its taper from A1081 Airport Way (previously M1 Spur) to its junction with the give way line of Kidney Wood Northern Roundabout, a distance of approximately 241m;

(b) Kidney Wood Eastbound Merge Slip Road, from its junction with Kidney Wood Northern Roundabout to the start of the nosing of its taper onto A1081 Airport Way, a distance of approximately 187m;

(c) Kidney Wood Westbound Diverge Slip Road, from the end of its taper from A1081 Airport Way to its junction with the give way line of Kidney Wood Southern Roundabout, a distance of approximately 331m;

(d) Kidney Wood Westbound Merge Slip Road, from its junction with Kidney Wood Southern Roundabout to the start of the nosing of its taper onto A1081 Airport Way (previously M1 Spur), a distance of approximately 310m;

(e) Kidney Wood Northern Roundabout, for the extent of its circulatory carriageway;

(f) the A1081 London Road Link, from its junction with Kidney Wood Southern Roundabout to its junction with Kidney Wood Northern Roundabout, a distance of approximately 502m;

(g) Kidney Wood Southern Roundabout, for the extent of its circulatory carriageway; and

(h) the A1081 London Road (South), from its junction with the give way line of Kidney Wood Southern Roundabout to the centreline of its junction with Newlands Road, a distance of approximately 300m.

Clearways

11.—(1) This article has effect upon completion of the authorised development.

(2) For paragraph 70 of Schedule 1 to the Various Trunk Roads (Prohibition of Waiting) (Clearways) Order 1963(**a**), substitute—

(**a**) S.I. 1963/1172

"Between a point 150 yards north of its junction with West Hyde Road, Kinsbourne Green and a point 181 yards south of the centre of its junction with Newlands Road, a distance of approximately 1.39 miles.".

(3) Subject to paragraph (4), no person must cause or permit any vehicle to wait on any part of a road specified in Schedule 3 (clearways), other than a lay-by, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(4) Nothing in paragraph (3) applies—

(a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—

(i) the removal of any obstruction to traffic;

(ii) the maintenance, improvement, reconstruction or operation of the road;

(iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any telecommunications apparatus as defined in Schedule 2 to the Telecommunications Act 1984**(a)**; or

(iv) any building operation or demolition;

(b) in relation to a vehicle being used—

(i) for police, ambulance, fire and rescue authority or traffic officer purposes;

(ii) in the service of a local authority, safety camera partnership or Vehicle and Operator Services Agency in pursuance of statutory powers or duties;

(iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(**a**); or

(iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000(**b**); and

(c) in relation to a vehicle waiting when the person in control of it is—

(i) required by law to stop;

(ii) obliged to stop in order to avoid an accident; or

(iii) prevented from proceeding by circumstances outside the person's control; or

(d) to any vehicle selling or dispensing goods to the extent that the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or disposed.

(5) Paragraphs (2) to (4) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by such an order or by any other enactment which provides for the variation or revocation of such orders.

Speed limits

12.—(1) From the date determined in accordance with article 10(1) and (2), the Schedule to the M1 Motorway (Junctions 6A to 10) (Variable Speed Limits) Regulations 2011(**c**) is amended in accordance with Part 1 of Schedule 4 (speed limits).

(2) Upon completion of the authorised development—

(a) paragraph 41 of the Schedule to the County of Bedfordshire (Principal Roads) (De-restriction) Order 1988 is revoked;

(b) the Borough of Luton (Speed Limits) Order 2011 is varied as follows—

(i) in Schedule 3, omit "London Road" from the "road" column, and from the corresponding entry in the "length subject to speed limit" column, omit "From a

(**a**) 1984 c. 12
(**b**) 2000 c. 26
(**c**) S.I. 2011/1015

point 10 metres south-east of the southern boundary of No. 151 London Road to a point 8 metres north of the give-way line at Kidney Wood Roundabout"; and

(ii) in Schedule 4, replace "New Airport Way" with "A1081 Airport Way (previously described as New Airport Way", and replace the corresponding entry in the "length subject to speed limit" column with "The dual carriageway length from a point immediately below the centre of the Capability Green over-bridge to a point 150 metres south-west of the centre point on Park Street bridge together with the Capability Green eastbound merge slip road from the end of the merge nosing at its junction with the A1081 Airport Way, south-westwards for a distance of 90 metres and the Capability Green westbound diverge slip road from the start of the diverge nosing at its junction with the A1081 Airport Way to its junction with the Capability Green southern roundabout, a distance of 410 metres";

(c) no person must drive any motor vehicle at a speed exceeding 40 miles per hour in the lengths of roads identified in Part 2 of Schedule 4 to this Order; and

(d) no person must drive a motor vehicle at a speed exceeding 50 miles per hour in the lengths of roads identified in Part 3 of Schedule 4 to this Order.

(3) No speed limit imposed by this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(**a**) when used in accordance with regulation 3(5) of those regulations.

(4) The speed limits imposed by this article may be varied or revoked by any enactment which provides for the variation or revocation of such matters.

Permanent stopping up of streets

13.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Schedule 5 (streets to be stopped up) to the extent specified and described in column (3) of that Schedule.

(2) No street specified in columns (1) and (2) of Schedule 5 is to be wholly or partly stopped up under this article unless—

(a) the new street to be constructed and substituted for it, which is specified in column (4) of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use; or

(b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) Where a street has been stopped up under this article—

(a) all rights of way over or along the street so stopped up are extinguished; and

(b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article is subject to article 28 (apparatus and rights of statutory undertakers in stopped up streets).

(**a**) S.I. 2011/935

Temporary stopping up of streets

14.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

(a) divert the traffic from the street; and

(b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limitation on the scope of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 6 (temporary stopping up of streets) to the extent specified in column (3) of that Schedule.

(5) The undertaker must not temporarily stop up, alter or divert—

(a) any street specified as mentioned in paragraph (4) without first consulting the street authority; and

(b) any other street, without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld,

except that this paragraph does not apply where the undertaker is the street authority.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b), the street authority is deemed to have granted that consent.

Access to works

15. The undertaker may, for the purposes of the authorised development—

(a) form and lay out means of access, or improve existing means of access, in the locations and of the nature specified in Schedule 7 (access to works); and

(b) with the approval of the relevant planning authority after consultation with the highway authority (where the highway authority is not the undertaker), form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

16.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(**a**) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010(**b**).

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(**c**) have the same meaning as in that Act.

Authority to survey and investigate land

17.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

(a) survey or investigate the land;

(b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

(a) must, if so required, before entering the land produce written evidence of authority to do so; and

(b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(**a**) 1991 c. 56.
(**b**) S.I. 2010/675
(**c**) 1991 c. 57

(4) No trial holes are to be made under this article—

(a) on land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

18.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate or is incidental to it, or is required as replacement land.

(2) This article is subject to paragraph (3), paragraph (1) of article 19, paragraph (2) of article 20 (compulsory acquisition of rights) and paragraph (9) of article 25 (temporary use of land for carrying out the authorised development).

(3) Paragraph (1) does not apply to the land numbered 2, 2A and 2G in the book of reference and on the land plans.

Time limits for exercise of authority to acquire land compulsorily and to use land temporarily

19.—(1) After the end of the period of 5 years beginning on the day on which this Order comes into force—

(a) no notice to treat is to be served under Part 1 of the 1965 Act; and

(b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(**a**) as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 25 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights, etc.

20.—(1) Subject to paragraphs (2) and (5) the undertaker may acquire compulsorily such rights over the Order land, or impose restrictive covenants affecting the land, as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 8 (land in which only new rights etc., may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land, or the imposition of restrictive

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(**a**) 1981 c. 66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). There are other amendments to the 1981Act which are not relevant to this Order.

covenants affecting the land, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights) where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2) the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of land numbered 3B and 3D in the book of reference and on the land plans.

Private rights over land

21.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

(a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

(a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over Order land owned by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 27 (statutory undertakers) applies.

(7) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

22.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(**a**) applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, has effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there is substituted—

"(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

(b) published in a local newspaper circulating in the area in which the land is situated.".

(4) In that section, in subsection (2), for "(1)(b)" there is substituted "(1)" and after "given" there is inserted "and published".

(5) In that section, for subsections (5) and (6) there is substituted—

"(5) For the purposes of this section, a person has a relevant interest in land if—

(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.".

(6) In section 5 (earliest date for execution of declaration)—

(a) in subsection (1), after "publication" there is inserted "in a local newspaper circulating in the area in which the land is situated"; and

(b) subsection (2) is omitted.

(7) In section 7(1)(a) (constructive notice to treat), the words "(as modified by section 4 of the Acquisition of Land Act 1981)" are omitted.

(**a**) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are amendments to the 1981Act which are not relevant to this Order.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil or air-space only

23.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the air-space over the land referred to in article 18 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of or rights in the subsoil of or the air-space over land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

Rights under or over streets

24.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

25.—(1) The undertaker may, in connection with the carrying out of the authorised development but subject to article 19(1)—

(a) enter on and take temporary possession of—

(i) the land specified in columns (1) and (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and

(ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;

(b) remove any buildings and vegetation from that land;

(c) construct temporary works (including the provision of means of access) and buildings on that land; and

(d) construct any permanent works specified in relation to that land in column (3) of Schedule 10, or any other mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 10; or

(b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

(a) replace a building removed under this article;

(b) restore the land on which any permanent works have been constructed under paragraph (1)(d); or

(c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from acquiring new rights or imposing restrictive covenants over any part of the land specified in Schedule 8.

(10) Where the undertaker takes possession of land under this article, it is not required to acquire the land or any interest in it.

(11) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised development

26.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the authorised development, the undertaker may—

(a) enter upon and take temporary possession of any of the Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and

(b) construct such temporary works (including the provision of means of access) and buildings on that land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, it is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to the acquiring authority) applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article "the maintenance period", in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

27.—(1) Subject to paragraph (2), the undertaker may extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

(2) Paragraph (1) does not have effect in relation to apparatus in respect of which the following provisions apply—

(a) Part 3 of the 1991 Act;

(b) article 28; or

(c) Parts 2 and 3 of Schedule 12.

Apparatus and rights of statutory undertakers in stopped up streets

28.—(1) Where a street is stopped up under article 13 (permanent stopping up of streets) any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 13 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

(a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or

(b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

(a) the execution of the relocation works required in consequence of the stopping up of the street; and

(b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

(a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined to be necessary by arbitration in accordance with article 37 (arbitration), then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

(a) the allowable costs of the relocation works are to be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and

(b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

"apparatus" has the same meaning as in Part 3 of the 1991 Act;

"relocation works" means work carried out, or apparatus provided, under paragraph (2); and

"statutory utility" means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(**a**).

(**a**) 2003 c. 21. There are amendments to this Act which are not relevant to this Order.

Recovery of costs of new connections

29.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 27 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 27, any person who is—

(a) the owner or occupier of premises the drains of which communicated with that sewer; or

(b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 28 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

"public communications provider" has the same meaning as in section 151(1) of the Communications Act 2003; and

"public utility undertaker" has the same meaning as in the 1980 Act.

PART 6

OPERATIONS

Felling or lopping trees

30.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

Trees subject to tree preservation order

31.—(1) The undertaker may fell or lop any tree described in Schedule 11 (trees subject to tree preservation orders) and identified on the environmental context plans, cut back its roots or undertake such other works described in column (3) of that Schedule if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

(a) the undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and

(b) the duty imposed by section 206(1) of the 1990 Act (replacement of trees) does not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

PART 7

MISCELLANEOUS AND GENERAL

Operational land for purposes of the 1990 Act

32. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

33.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**a**) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(**b**); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded) do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

34. Schedule 12 (protective provisions) to this Order has effect.

(**a**) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.
(**b**) 1974 c.40, as amended at the date of the coming into force of this Order.

Certification of plans, etc.

35.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

(a) the book of reference;

(b) the environmental statement;

(c) the land plans;

(d) the works plans;

(e) the street plans;

(f) the sections;

(g) the environmental context plans; and

(h) any other plans or documents referred to in this Order,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

36.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(**a**) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled only where—

(**a**) 1978 c. 30.

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

(d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does exclude the employment of any method of service not expressly provided for by it.

(10) In this article "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

37. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, the parties must endeavour to resolve all matters in dispute as soon as practicable and in the event of their failing to resolve such matters any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Traffic regulation

38.—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

(a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;

(b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;

(c) authorise the use as a parking place of any road;

(d) make provision as to the direction or priority of vehicular traffic on any road; and

(e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The power conferred by paragraph (1) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (6) any prohibition, restriction or other provision made under paragraph (1) may have effect both before and after the expiry of that period.

(3) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (4).

(4) The undertaker must not exercise the powers conferred by paragraph (1) unless it has—

(a) given not less than—

(i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or

(ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated; and

(b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(5) Any prohibition, restriction or other provision made by the undertaker under paragraph (1)—

(a) has effect as if duly made by, as the case may be—

(i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the road is situated, as an order under section 32 of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and

(b) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(**a**) (road traffic contraventions subject to civil enforcement).

(6) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (1) within a period of 24 months from the opening of the authorised development.

(7) Before exercising the powers of paragraph (1) the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

(8) Expressions used in this article and in the 1984 Act has the same meaning in this article as in that Act.

(9) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

Procedure in relation to approvals, etc., under Schedule 2

39.—(1) Where an application is made to the relevant planning authorities or either of them for any consent, agreement or approval required by a requirement under Schedule 2, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

(a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions); and

(b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(**a**) 2004 c.18

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

Signed by authority of the Secretary of State for Transport

[ ]
[Designation]
[ ] 201[3] [Department]

SCHEDULES

SCHEDULE 1

Articles 2 and 3

THE AUTHORISED DEVELOPMENT

In the administrative areas of Luton Borough Council and Central Bedfordshire Council—

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, and associated development within the meaning of section 115(2) of the 2008 Act, comprising:

Work No.1 — Construction of permanent highway (centred on grid reference TL 09169 18987) (1,332m in length) commencing at the M1 Junction 10 Roundabout, running in a north-easterly direction and terminating on the A1081 Airport Way at the Capability Green Overbridge, including—

(a) widening the existing carriageway on the M1 Spur and A1081 Airport Way to a three lane dual carriageway including maintenance lay bys;

(b) construction of new dual carriageway to provide a continuous link and remove the existing M1 Junction 10a at-grade roundabout (known as Kidney Wood Roundabout);

(c) construction of an un-segregated footway cycleway between the proposed Kidney Wood Northern Roundabout and the Capability Green Junction, located in the eastbound verge;

(d) alterations to the infiltration pond to the west of the M1 Spur and north-east of Newlands Road, including the construction of a new private vehicular access from a point on the north-eastern highway boundary of Newlands Road approximately 435m to the north-west of its junction with A1081 London Road (south);

(e) provision of private pedestrian access to maintain highways equipment at: (i) a point on the south-western highway boundary of Newlands Road approximately 30m to the north-west of the underbridge crossing of the M1 Spur; (ii) a point on the south-western highway boundary of Newlands Road approximately 25m to the south-east of the underbridge crossing of the M1 Spur; (iii) a point on the north-eastern highway boundary of Newlands Road approximately 20m to the north-west of the underbridge crossing of the M1 Spur; and (iv) a point on the north-eastern highway boundary of Newlands Road approximately 30m to the south-east of the underbridge crossing of the M1 Spur;

(f) provision of average speed cameras;

(g) erection of overhead gantry signs;

(h) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and

(i) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.2 — Construction of permanent highway (1,115m in length) commencing at Newlands Roads junction with the A1081 London Road, running in a north-westerly direction to the proposed Kidney Wood Southern Roundabout, then running in north-north-westerly direction through a proposed underbridge under the M1 Spur (85m in length), then proceeding

in a north-westerly direction prior to going through a right hand curve to the proposed Kidney Wood Northern Roundabout, then proceeding in a northerly direction terminating on London Road approximately 113m south of the centre of Ludlow Avenue's junction with London Road, including—

(a) construction of new single carriageway highway;

(b) improvements to the existing highways;

(c) construction of two new roundabout junctions;

(d) construction of footways and cycleways;

(e) construction of an underbridge and associated wing walls and retaining walls;

(f) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and

(g) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.3A — Construction of permanent highway (349m in length) commencing at the proposed Kidney Wood Southern Roundabout on A1081 London Road proceeding in a northerly direction, then through a left hand curve to connect with the M1 Spur's westbound carriageway 455m north-east of M1 Junction 10 Roundabout, including—

(a) construction of a new single lane connector road with a hardshoulder;

(b) provision of average speed cameras; and

(c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.3B — Construction of permanent highway (391m in length) commencing on the A1081 Airport Way westbound carriageway 480m south-west of the Capability Green Overbridge proceeding in a south-westerly direction, then going through a left hand curve followed by a right hand curve before terminating at the proposed Kidney Wood Southern Roundabout on A1081 London Road, including—

(a) construction of new single lane connector road with a hardshoulder;

(b) provision of average speed cameras; and

(c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No.4A — Construction of permanent highway (281m in length) commencing on the M1 Spur eastbound carriageway 544m north-east of the M1 Junction 10 Roundabout proceeding in a north-easterly direction then going through a left hand curve before terminating at the proposed Kidney Wood Northern Roundabout on London Road, including—

(a) construction of new two lane connector road;

(b) provision of average speed cameras; and

(c) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway.

Work No.4B — Construction of permanent highway (225m in length) commencing at the proposed Kidney Wood Northern roundabout proceeding in a southerly direction then going through a left hand curve to connect with the A1081 Airport Way eastbound carriageway 448m south-west of the Capability Green Overbridge, including—

(a) construction of new single lane connector road with hardshoulder;

(b) construction of a combined un-segregated footway/cycleway;

(c) provision of average speed cameras; and

(d) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the permanent highway;

Work No. **5** — Reconfiguration of the existing A1081 London Road (409m in length) to provide an access to Bull Wood Cottages, Kidneywood House and Bull Wood to be referred to as Old London Road (South), commencing from the proposed A1081 London Road (South), 150m north of its junction with Newlands Road, proceeding in an easterly direction, then going through a left hand curve before continuing in a northerly direction, then terminating 81m south of the existing M1 Junction 10a roundabout, including—

(a) construction of new single lane road and junction;

(b) construction of a turning head;

(c) construction works to narrow the existing carriageway to a single track lane road with passing places;

(d) construction of two private vehicular access points from the west highway boundary of Old London Road (South) to an area of landscaping, at approximately 180m and 370m to the north of its junction with A1081 London Road (South);

(e) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and

(f) drainage works, earthworks, pavement works, kerbing and paved areas work, signing and road marking works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction and modification of the permanent highway;

Work No. **6** — Reconfiguration of the existing London Road (to be stopped up) and part of the adjoining agricultural field into amenity land, including—

(a) construction of a new private vehicle and pedestrian access to Kidney Wood at a point on the eastern highway boundary of London Road approximately 13m to the north of its junction with Kidney Wood Northern Roundabout;

(b) construction of a turning head;

(c) construction of works to widen the existing London Road footway to form a public footpath;

(d) landscaping works;

(e) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and

(f) drainage works, earthworks, pavement works, kerbing and paved area works, signing and road marking works, street lighting works, safety barrier works, fencing works, works to control access and other works associated with the provision of the amenity land;

Work No 7 — Diversion of public footpath, requiring creation of new path (373m in length) commencing 20m north-east of Newlands Road proceeding in a north-easterly direction and then in a northerly direction terminating at the proposed A1081 London Road Link, 147m south-west of the proposed Kidney Wood Northern Roundabout, including—

(a) erection of footpath gates or stiles;

(b) erection of signing; and

(c) drainage works, earthworks, signing works, fencing works, and other works associated with the creation of the public footpath;

Work No 8 — Construction of a drainage pipe between Kidney Wood Southern Roundabout and the proposed drainage ponds, including—

(a) construction of piped drainage outfall; and

(b) drainage works, earthworks, landscaping works and other works associated with the construction of a drainage pipe;

Work No 9 — Works to excavate existing old tip area down to sound ground and fill back up to original ground level with engineering fill, including—

(a) excavation to sound ground;

(b) fill to original ground levels with engineering fill;

(c) any earthworks strengthening measures as may be required; and

(d) earthworks, drainage works, fencing works, landscaping works and other works associated with this work;

Work No.10 — Construction of drainage ponds, including—

(a) construction of attenuation pond;

(b) construction of infiltration basin;

(c) construction of private vehicular access from the north-eastern highway boundary of Newlands Road, from a point approximately 235m to the north-west of its junction with A1081 London Road (South), and construction of turning head and access tracks;

(d) diversion and protection works to existing public utility apparatus, as required to accommodate the proposed works; and

(e) drainage works, earthworks, signing works, street lighting works, safety barrier works, fencing works, landscaping works and other works associated with the construction of the drainage ponds;

Work No 11 — Works to fill old borrow pit to original ground levels, including—

(a) excavation to sound ground;

(b) fill to original ground levels with engineering fill; and

(c) earthworks, drainage works, landscaping works and other works associated with filling the old borrow pit;

Work No 12 — Works to mitigate the impact of the proposed highway works on Kidney Wood, including—

(a) trimming, pollarding and coppicing of trees;

(b) clearance of vegetation, as required to construct the works;

(c) planting of a new boundary hedge;

(d) erection of a new fence to protect the hedge; and

(e) clearance works, fencing works, landscaping works and other works associated with mitigating the impact of the authorised development on Kidney Wood;

Work No 13 — Works to mitigate the impact of the proposed highway works on Bull Wood, including—

(a) trimming, pollarding and coppicing of trees;

(b) clearance of vegetation, as required to construct the works;

(c) erection of a new boundary fence; and

(d) clearance works, fencing works, landscaping works and other works associated with mitigating the impact of the authorised development on Bull Wood; and

in connection with the construction of any of those works, further development within the Order limits consisting of—

(i) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footway, cycle track or verge; and reducing the width of the carriageway of the street;

(ii) works required for the strengthening, improvement, maintenance, or reconstruction of any street;

(iii) ramps, means of access, footpaths, cycleways, embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, wing walls, highway lighting, fencing and culverts;

(iv) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street; works to place or maintain apparatus in a street; works to alter the position of apparatus, including mains, sewers, drains and cables;

(v) works to alter the course of, or otherwise interfere with a watercourse other than a navigable watercourse;

(vi) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;

(vii) works for the benefit or protection of land affected by the authorised development; and

(viii) such other works, including contractors' compounds, working sites, storage areas, temporary fencing and works of demolition, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development.

For the avoidance of doubt, any demolition preceding the Works shall be regarded as an integral part of the authorised development.

SCHEDULE 2

Article 3

REQUIREMENTS

Interpretation

1.—(1) In this Schedule—

"contaminated land plan" means a written scheme for the treatment of contaminated land during construction;

"dust management plan" means a written scheme for the attenuation of dust during construction;

"relevant highway authority" means the highway authority responsible for the highway in question; and

"stage" means a defined section (if any) of the authorised development, the extent of which has been submitted to and approved in writing by the relevant planning authority pursuant to requirement 3.

(2) References in this Schedule to numbered requirements are references to the corresponding numbered paragraph of this Schedule.

Time limits

2. The authorised development must not commence later than the expiration of 5 years beginning with the date that this Order comes into force.

Stages of authorised development

3. Where the authorised development is to be implemented in stages, none of the authorised development is to commence until a written scheme setting out all the stages of the authorised development has been submitted to and approved by the relevant planning authority.

Scheme design changes and staging

4.—(1) The authorised development must be carried out in accordance with the scheme design shown on the works plans and the sections~~, unless otherwise agreed in writing by the relevant planning authority~~.

(2) No stage of the authorised development is to commence until written details of the layout, scale and external appearance of any proposed gantries relating to that stage have been submitted to and approved in writing by the relevant planning authority.

Ecology

5.—(1) None of the authorised development, including any site clearance works, is to commence until an ecological strategy relating to the Order land containing details of how the authorised development will affect areas of nature conservation interest and what mitigation, compensatory and enhancement measures, reflecting the environmental statement, need to be incorporated into the authorised development in order to protect and enhance those areas, has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved ecological strategy~~, unless otherwise agreed in writing by the relevant planning authority~~.

Protection of retained trees and shrubs during construction

6.—(1) No stage of the authorised development is to commence until for that stage written details, reflecting the mitigation measures included in the environmental statement, have been submitted to and approved in writing by the relevant planning authority for the safeguarding of trees, shrubs and hedgerows to be retained.

(2) The approved safeguarding measures must be implemented prior to the commencement of any demolition works, removal of topsoil or commencement of building operations and retained in position until the development is completed.

(3) The safeguarded areas must be kept clear of plant, building materials, machinery and other objects and the existing soil levels not altered.

Landscaping scheme

7.—(1) The authorised development must be landscaped in accordance with a written landscaping scheme, reflecting the environmental statement and incorporating ecological enhancement, mitigation and compensatory measures, that has been submitted to and approved in writing by the relevant planning authority. The landscaping scheme must be approved before the authorised development commences.

(2) The landscaping scheme must be in accordance with the ecological strategy approved under requirement 5, and must include details of all proposed hard and soft landscaping works for all land subject to development within the Order limits, including precise details and, where appropriate, samples relating to the following—

(a) for hard landscaping areas—

(i) proposed finished levels;

(ii) hard surfacing materials;

(iii) minor structures (e.g. street furniture, signs and lighting, to include the colouring of lighting columns);

(iv) retained historic landscape features and proposals for restoration, where relevant; and

(v) boundary treatments and all means of enclosure.

(b) for soft landscaping areas—

(i) schedules and plans showing the location of proposed planting, noting species consistent with the ecological strategy, use of any species of local provenance, planting, size and proposed numbers and densities;

(ii) written specifications, schedules, and plans showing the proposed treatment and management of retained trees, shrubs and hedgerows;

(iii) services below ground, including drainage, pipelines, power and communication cables; and

(iv) written specifications associated with plant and grass establishment, including cultivation and other operations.

(3) An implementation timetable must be provided as part of the scheme that is consistent with the provisions set out in the approved ecological strategy.

Implementation and maintenance of landscaping

8.—(1) Unless otherwise agreed in writing by the relevant planning authority, all landscaping works must be carried out in accordance with the landscaping scheme approved under requirement 7 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice, including the Manual Of Contract Documents For Highway Works: Volume 1 Specification For Highway Works Series 3000 (05/01): Landscape And Ecology.

(2) Any tree, shrub or hedgerow planted as part of the approved landscaping that, within the period of three years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the relevant planning authority gives its written consent to any variation.

(3) If it becomes obvious that the original species and type were unsuitable for whatever reason, an appropriate alternative species may be specified, subject to the written consent of the relevant planning authority.

(4) Any tree, shrub or hedgerow which is retained and safeguarded during construction in accordance with requirement 6 must thereafter be maintained, and if necessary replaced, in accordance with this requirement, unless otherwise agreed in writing by the relevant planning authority.

Drainage

9.—(1) No stage of the authorised development is to be commenced until for that stage written details of the surface and foul water drainage system reflecting the mitigation measures included in the environmental statement, including where appropriate sustainable urban drainage solutions, have been submitted to and approved in writing by the relevant planning authority.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details~~, unless otherwise agreed by the relevant planning authority~~.

Measures to protect the water environment

10.—(1) None of the authorised development is to commence until—

(a) a detailed site investigation has been carried out with respect to land within the Order limits to establish if contamination is present and to assess the degree and nature of contamination present and the action proposed to be taken to deal with any contamination that is identified;

(b) a risk assessment has been carried out to consider the potential for pollution of the water environment; and

(c) a water pollution prevention plan, reflecting the mitigation measures included in the environmental statement, has been submitted and approved in writing by the relevant planning authority.

(2) The method and extent of the investigation and any measures or treatment to deal with contamination that is identified as a result must reflect the mitigation measures included in the environmental statement and be approved in writing by the relevant planning authority, following consultation with the Environment Agency and Thames Water Utilities Limited.

(3) The authorised development must be carried out—

(a) in accordance with the approved water pollution prevention plan referred to in sub-paragraph (1)(c); and

~~(b)~~incorporating any such measures or treatments as are approved under sub-paragraph (2)..~~,~~

(b) ~~unless otherwise agreed in writing by the relevant planning authority~~.

Flood risk assessment

11.—(1) None of the authorised development is to commence until a flood risk assessment reflecting the mitigation measures included in the environmental statement has been submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency.

(2) The authorised development must be carried out in accordance with any recommendations made in the flood risk assessment..~~, unless otherwise agreed in writing by the relevant planning authority~~.

Archaeology

12.—(1) No stage of the authorised development is to commence until for that stage a written scheme for the archaeological investigation of land within the Order limits has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must identify areas where field work and/or a watching brief are required, and the appropriate measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works and/or watching brief carried out on site under the scheme must be by a suitably qualified person or body approved by the relevant planning authority.

(4) Any archaeological works and/or watching brief must be carried out in accordance with the approved scheme~~, unless otherwise approved in writing by the relevant planning authority~~.

Construction traffic and access strategy

13.—(1) No stage of the authorised development is to commence until for that stage written details of construction traffic management measures and a travel plan for the contractor's workforce reflecting the mitigation measures included in the environment statement and including means of travel to construction sites and any parking to be provided, have been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved traffic management measures and travel plan~~, unless otherwise agreed by the relevant planning authority~~.

Construction work and construction compounds

14.—(1) No stage of the authorised development is to commence until for that stage—

(a) written details of the type and location of screen fencing for the proposed construction compounds;

(b) written details of the type, specification and location of lighting around the compound areas and along the route during the construction phase of the authorised development;

(c) a scheme for the attenuation of noise and vibration during construction;

(d) a dust management plan; and

(e) a contaminated land plan,

in each case reflecting the mitigation measures included in the environmental statement, have been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved details and plans mentioned in sub-paragraph (1)~~, unless otherwise agreed in writing by the relevant planning authority~~.

Site waste management plan

15.—(1) No stage of the authorised development is to commence until a site waste management plan for that stage, reflecting the mitigation measures included in the environmental statement, has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved plan mentioned in sub-paragraph (1)~~, unless otherwise agreed in writing by the relevant planning authority~~.

Code of construction practice

16.—(1) No authorised development is to commence until a code of construction practice has been submitted to and approved in writing by the relevant planning authority.

(2) The code of construction practice must reflect the mitigation measures included in the environmental statement and the requirements relating to construction of the authorised development set out in this Schedule.

(3) The code of construction practice may incorporate the plans, schemes and details required to be approved in writing by other requirements set out in this Schedule.

(4) The authorised development must be carried out in accordance with the provisions of the code of construction practice., ~~unless otherwise agreed in writing by the relevant planning authority~~.

Construction environmental management plan

17.—(1) No authorised development is to commence until a construction environmental management plan has been submitted to and approved in writing by the relevant planning authority.

(2) The construction environmental management plan must be prepared in accordance with the provisions of the approved code of construction practice, and must reflect the mitigation measures included in the environmental statement.

(3) The construction environmental management plan may incorporate the plans, schemes and details required to be approved in writing by other requirements set out in this Schedule.

(4) The authorised development must be carried out in accordance with the provisions of the construction environmental management plan~~, unless otherwise agreed in writing by the relevant planning authority~~.

Amendments to approved details

~~**18.** (1)~~(5) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, ~~the approved details are to be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.~~

~~(2)~~**18.** ~~A~~a~~a~~ny amendments to the approved details referred to ~~in sub-paragraph (1)~~ must reflect the mitigation measures included in the environmental statement.

Traffic management during construction

19.—(1) The authorised development must be implemented in accordance with a traffic management plan submitted to and approved in writing by each relevant highway authority, after consultation with the police, other emergency services and any other parties considered to be relevant stakeholders by the undertaker.

(2) The traffic management plan must be designed in accordance with relevant legislation, guidance and best practice, balancing the need to minimise disruption to the travelling public, protect the public and the workforce from hazards, and facilitate the economical construction of the authorised development.

(3) The plan must be approved before the authorised development commences.

SCHEDULE 3

Article 12

CLEARWAYS

The roads specified for the purposes of article 11(3) are—

(a) M1 Spur/A1081 Airport Way dual carriageway (part of which was previously the M1 Spur) from its junction with the roundabout of Junction 10 of the M1 Motorway to Capability Green Overbridge, a distance of 1338 metres;
(b) A1081 London Road from a point 165 metres south of the centre of Newlands Road at its junction with the A1081 London Road to Kidney Wood Northern Roundabout, including Kidney Wood Southern Roundabout and Kidney Wood Northern Roundabout, a distance of 1130 metres;
(c) Kidney Wood Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with A1081 Airport Way (previously the M1 Spur) to the give way line of Kidney Wood Northern Roundabout, a distance of 286 metres;
(d) Kidney Wood Eastbound Merge Slip Road from its junction with Kidney Wood Northern Roundabout to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 224 metres;
(e) Kidney Wood Westbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to the give way line of the Kidney Wood Southern Roundabout, a distance of 395 metres;
(f) Kidney Wood Westbound Merge Slip Road from is junction with Kidney Wood Southern Roundabout to the end of the slip road nosing at its junction with A1081 Airport Way (previously the M1 spur), a distance of 350 metres;
(g) Capability Green Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with A1081 Airport Way to its junction with Capability Green Link Road, a distance of 169 metres;
(h) Capability Green Westbound Merge Slip Road from its junction with the Capability Green Southern Roundabout to the end of the slip road nosing at its junction with A1081 Airport Way, a distance of 153 metres;
(i) Capability Green Link Road from its junction with the Capability Green Northern Roundabout to its junction with the Capability Green Southern Roundabout, a distance of 191 metres; and
(j) Capability Green Southern Roundabout, for the extent of the circulatory carriageway.

SCHEDULE 4

Article 12

SPEED LIMITS

PART 1

M1 MOTORWAY

For the Schedule to the M1 Motorway (Junctions 6A to 10) (Variable Speed Limits) Regulations 2011 substitute—

"SPECIFIED ROADS

1. The specified roads are the—

(a) northbound carriageway of the M1 from marker post 33/4 to marker post 50/0;

(b) carriageways of the northbound slip roads;

(c) southbound carriageway of the M1 from marker post 50/0 to marker post 33/3; and

(d) carriageways of the southbound slip roads.

2. Any reference in this Schedule to—

(a) the letter "M" followed by a number is a reference to the motorway known by that name;

(b) the letter "A" followed by a number is a reference to the road known by that name; and

(c) a junction followed by a number is (unless the context otherwise requires) a reference to the junction of the M1 of that number.

3. In this Schedule—

"northbound slip roads" is a reference to the lengths of carriageway specified in paragraph 4;

"off-slip road" means a slip road intended for the use of traffic leaving the M1;

"on-slip road" means a slip-road intended for the use of traffic entering the M1;

"southbound slip roads" is a reference to the lengths of carriageway specified in paragraph 5; and

"zone sign" means a sign authorised by the Secretary of State under section 64 of the Road Traffic Regulation Act 1984(a) for the purpose of indicating that vehicles are entering, have entered or are leaving a specified road.

4. The northbound slip roads are as follows—

(a) the linking carriageways which connect the M25 at junction 21A with the M1 at junction 6A; these commence at the exits from the clockwise and anti-clockwise carriageways of the M25 and end at the junction with the northbound carriageway of the M1;

(b) the off-slip road which connects the northbound carriageway of the M1 with the westbound carriageway of the A414 at junction 7;

(c) the on-slip roads which connect the westbound and eastbound carriageways of the A414 at junction 8 with the northbound carriageway of the M1;

(d) the off-slip road which connects the northbound carriageway of the M1 with the A5 at junction 9;

(e) the on-slip road which connects the A5 at junction 9 with the northbound carriageway of the M1;

(f) the off-slip road which connects to the junction 10 roundabout; this commences at the junction of the off-slip road with the northbound carriageway of the M1 and ends at the entry to the Junction 10 roundabout; and

(g) the on-slip road leading to the northbound carriageway of the M1; this commences at the exit from the Junction 10 roundabout and ends at the junction of the on-slip road with the northbound carriageway of the M1.

5. The southbound slip roads are as follows—

(a) the off-slip road which connects (both directly and via the junction 10 roundabout) the southbound carriageway of the M1 with the eastbound carriageway of the Luton spur road; this commences at the junction of the off-slip road with the southbound carriageway of the M1 and ends at a point 45m to the north-west of the entry to the Junction 10 roundabout and at an equivalent point on the direct link;

(b) the on-slip road leading to the southbound carriageway of the M1 from the westbound carriageway of the Luton spur road (both directly and via the junction 10 roundabout); this commences at a point 100m to the south of the exit from the Junction 10 roundabout and at an equivalent point on the direct link and ends at the junction of the on-slip road with the southbound carriageway of the M1;

(c) the off-slip road which connects the southbound carriageway of the M1 with the A5 at junction 9;

(d) the on-slip road which connects the A5 at junction 9 with the southbound carriageway of the M1;

(e) the off-slip road which connects the southbound carriageway of the M1 with the westbound and eastbound carriageways of the A414 at junction 8;

(f) the on-slip road which connects the eastbound carriageway of the A414 at junction 7 with the southbound carriageway of the M1; and

(g) the linking carriageway which connects the M1 at junction 6A with the M25 at junction 21A; this commences at the exit from the southbound carriageway of the M1 and ends at the junctions with the clockwise and anti-clockwise carriageways of the M25.”.

PART 2

ROADS SUBJECT TO 40 MPH SPEED LIMIT

(1) *Number*	*(2)* *Description*
1	A1081 London Road — the single carriageway road from 165 metres south of the centre of its junction with Newlands Road to its junction with the Kidney Wood Southern Roundabout, a distance of 466 metres.
2	Newlands Road — the single carriageway road from its junction with the A1081 London Road to a point 10 metres north of the centre of Stockwood under-bridge, a distance of 520 metres.

PART 3

ROADS SUBJECT TO 50 MPH SPEED LIMIT

(1) *No.*	*(2)* *Description*
1	A1081 Airport Way and the M1 Spur – the dual carriageway from its junction with the roundabout of Junction 10 of the M1 Motorway to a point immediately below the centre of the Capability Green over-bridge, a distance of 1371 metres, including the circulatory carriageway of the Junction 10 roundabout, a distance of 590 metres.
2	M1 Junction 10 southbound diverge slip road from the end of the entry nosing for the segregated left turn lane to its junction with the roundabout of Junction 10 of the M1 Motorway, a distance of 45 metres, including the segregated left turn lane linking the southbound diverge and the M1 Spur eastbound carriageway.
3	M1 Junction 10 southbound merge slip road form its junction with the roundabout of Junction 10 of the M1 Motorway to the start of the segregated left turn lane exit nosing, a distance of 100 metres, including the segregated left turn lane linking the southbound merge and the M1 Spur westbound carriageway.
4	Kidney Wood Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with the M1 Spur to a point 39 metres north-east of the end of the diverge nosing, a distance of 79 metres.
5	Kidney Wood Eastbound Merge Slip Road from a point 60 metres south-west of the start of the merge nosing to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 100 metres.
6	Kidney Wood Westbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to a point 60 metres south-west of the end of the diverge nosing, a distance of 120 metres,
7	Kidney Wood Westbound Merge Slip Road from a point 74 metres north-east of the start of the merge nosing to the end of the slip road nosing at its junction with the M1 Spur, a distance of 114 metres.
8	Capability Green Eastbound Diverge Slip Road from the start of the diverge nosing at its junction with the A1081 Airport Way to a point 10 metres north-east of the end of the diverge nosing, a distance of 50 metres
9	Capability Green Westbound Merge Slip Road from a point 40 metres north-east of the merge nosing to the end of the slip road nosing at its junction with the A1081 Airport Way, a distance of 80 metres.

SCHEDULE 5

Article 13

STREETS TO BE PERMANENTLY STOPPED UP

(1) *Area*	*(2)* *Street to be stopped up*	*(3)* *Extent of stopping up*	*(4)* *New Street to be substituted*
Luton Borough Council and Central Bedfordshire Council	A1081 London Road	Between points A and B on the street plans, sheet 3 (being from a point 10m to the south of the A1081 London Road junction with M1 Junction 10a Kidney Wood Roundabout, southwards for a distance of 80m).	Work Nos.1, 2, 3A, 3B, 4A, 4B and 5
	London Road	Between points C and D on the street plans, sheet 3 (being from the London Road junction with M1 Junction 10a Kidney Wood Roundabout, northwards for a distance of 220m), including private means of access to Kidney Wood at points J and K on those plans (being respectively 87m and 200m to the north of the junction with M1 Junction 10a Kidney Wood Roundabout).	Work Nos.1, 2, 3A, 3B, 4A, 4B, 5, 6(a) and 6(c)
Luton Borough Council	M1 Junction 10a Kidney Wood Roundabout	Between points E and F on the street plans, sheet 3 (being part of the circulatory carriageway, from a point 25m west of its junction with the centreline of London Road, eastwards for a distance of 45m)	Work Nos.1, 2, 3A, 3B, 4A, 4B and 5

(1) *Area*	*(2)* *Street to be stopped up*	*(3)* *Extent of stopping up*	*(4)* *New Street to be substituted*
	Public Footpath Ref FP43	Between points G and H on the street plans, sheet 3 (being from a point 20m from its junction with the north-eastern highway boundary of Newlands Road to its junction with the highway boundary of M1 Junction 10a Kidney Wood Roundabout).	Work No. 7
Central Bedfordshire Council	Newlands Road	At point I on the street plans, sheet 3 (being private means of access to an infiltration pond to the south-east of the M1 Spur and north-east of Newlands Road to be at a point on the north-eastern highway boundary of Newlands Road 435m to the north-west of the junction with A1081 London Road).	Work No.1(d)

SCHEDULE 6

Article 14

TEMPORARY STOPPING UP OF STREETS

(1) *Area*	*(2)* *Street to be temporarily stopped up*	*(3)* *Extent of temporary stopping up*
Luton Borough Council and Central Bedfordshire Council	M1 Junction 10 Roundabout	Night-time closures of all or part of the roundabout will be required to facilitate the safe construction of the authorised development
Central Bedfordshire Council	M1 J10 Northbound Diverge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
	M1 J10 Northbound Merge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	M1 J10 Southbound Diverge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
Central Bedfordshire Council	M1 J10 Southbound Merge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	M1 J10 Southbound Diverge Dedicated Left Turn Lane	Short term closures will be required to facilitate the safe construction of the authorised development
Central Bedfordshire Council	M1 J10 Southbound Merge Dedicated Left Turn Lane	Short term closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	M1 Spur	Night-time closures will be required to facilitate the safe construction of the authorised development
Luton Borough Council	M1 Junction 10a Kidney Wood Roundabout	Night-time closures of all or short term closures of part of the roundabout will be required to facilitate the safe construction of the authorised development
Luton Borough Council and Central Bedfordshire Council	A1081 Airport Way	Night-time closures will be required to facilitate the safe construction of the authorised development

(1) *Area*	*(2)* *Street to be temporarily stopped up*	*(3)* *Extent of temporary stopping up*
	Capability Green Eastbound Diverge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development
	Capability Green Westbound Merge	Night-time closures will be required to facilitate the safe construction of the authorised development
	A1081 London Road	Short term closures will be required to facilitate the safe construction of the authorised development.
	Newlands Road	Short term closures will be required to facilitate the safe construction of the authorised development.
Luton Borough Council	London Road	Short term closures will be required to facilitate the safe construction of the authorised development.
	Public Footpath FP43	Closure of the footpath for the duration of the works required to facilitate the safe construction of the authorised development
	Newlands Road	Field access to arable farmland to the north-west of the M1 Spur, north-east of Newlands Road and east of London Road, from a point on the north-eastern highway boundary of Newlands road 45m to the north-west of its underbridge crossing of the M1 Spur. To be stopped up during the duration of the works in order to allow the use of adjacent land for construction purposes

SCHEDULE 7

Article 15

ACCESS TO WORKS

(1) *Area*	*(2)* *Reference on street plans, sheet 3*	*(3)* *Description of access*
Luton Borough Council	T1	A temporary vehicular access from a point on the western highway boundary of London Road 165m to the north of its junction with the existing M1 Junction 10a Kidney Wood Roundabout. This temporary access provides access and egress for site vehicles and plant and site workers' personal vehicles to the construction compound and to the aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.
	T2	A temporary vehicular access to be provided from the north-western quadrant of the proposed Kidney Wood Northern Roundabout. This temporary access provides access and egress for site vehicles and plant and site workers' personal vehicles to and from the construction compound and to or from the aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.
	T3	A temporary vehicular access to be provided from the north-eastern highway boundary of Newlands Road, from a point 45m to the north-west of the underbridge crossing of the M1 Spur. This temporary access is located at an existing gated access to arable farmland, and provides access and egress for site vehicles and plant to or from those aspects of the construction works that are located to the north-west of the M1 Spur, to the west of London Road and to the north-east of Newlands Road.
	T4	A temporary vehicular access to be provided from a point on the south-western highway boundary of Newlands Road 30m to the north-west of the underbridge crossing of the M1 Spur. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the north-west of the M1 Spur and to the south-west of Newlands Road. Upon completion of the works, this access is replaced with a permanent pedestrian private means of access at the same location that provides access to maintain highways equipment.

(1) *Area*	*(2)* *Reference on street plans, sheet 3*	*(3)* *Description of access*
Central Bedfordshire Council	T5	A temporary vehicular access to be provided from a point on the south-western highway boundary of Newlands Road 25m to the south-east of the underbridge crossing of the M1 Spur. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur and to the south-west of Newlands Road.
	T6	A temporary vehicular access to be provided from a point on the north-eastern highway boundary of Newlands Road 30m to the south-east of the underbridge crossing of the M1 Spur. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.
	T7	A temporary vehicular access to be provided from a point on the north-eastern highway boundary of Newlands Road 235m to the north-west of its junction with the A1081 London Road (south). This temporary access provides access and egress for site vehicles and plant and site workers' personal vehicles to the satellite construction compound and to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.
	T8	A temporary vehicular access to be provided from a point on the western highway boundary of the existing A1081 London Road 305m to the south of its junction with M1 Junction 10a Kidney Wood Roundabout. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.

(1) *Area*	*(2)* *Reference on street plans, sheet 3*	*(3)* *Description of access*
	T9	A temporary vehicular access to be provided from a point on the western highway boundary of the existing A1081 London Road 110m to the south of its junction with M1 Junction 10a Kidney Wood Roundabout. This temporary access provides access and egress for site vehicles and plant to and from those aspects of the construction works that are located to the south-east of the M1 Spur, to the west of A1081 London Road and to the north-east of Newlands Road.

SCHEDULE 8

Article 20(2)

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

(1) *Number of land shown on land plans, sheet 1*	*(2)* *Purpose for which rights over the land may be acquired*
1A	Provision of diverted public right of way.
3B	Construction, inspection and maintenance of a buried drainage pipe.
3D	Construction, inspection and maintenance of a reinforced earthworks slope.

SCHEDULE 9

Article 20(4)

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land applies, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973**(a)** has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

(a) for the words "land is acquired or taken" there are substituted the words "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for the words "acquired or taken from him" there are substituted the words "over which the right is exercisable or the restrictive covenant enforceable".

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

(a) for the word "part" in paragraphs (a) and (b) there are substituted the words "a right over or restrictive covenant affecting land consisting";

(b) for the word "severance" there are substituted the words "right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden";

(c) for the words "part proposed" there are substituted the words "right or restrictive covenant proposed"; and

(d) for the words "part is" there are substituted the words "right or restrictive covenant is".

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

(a) the right acquired or to be acquired; or

(b) the land over which the right is or is to be exercisable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

(**a**) 1973 c. 26.

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard is to be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.".

5. For section 8 of the 1965 Act (provisions as to divided land) there is substituted the following section—

"**8.**—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house ("the relevant land")—

(a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal ("the tribunal"); and

(b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—

(i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or

(ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the M1 Junction 10a (Grade Separation) Development Consent Order 201[3](**a**) ("the Order"), in relation to that person, ceases to authorise the purchase of the right and be deemed to authorise the purchase of that person's interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.".

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

(**a**) S.I. 201[ ]/[ ]

are modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the undertaker.

7. Section 11 of the 1965 Act (powers of entry) is modified as to secure that, as from the date on which the undertaker has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) is modified so as to enable the undertaker, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 10

Article 25

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) *Location*	*(2)* *Number of land shown on land plans, sheet 1*	*(3)* *Purpose for which temporary possession may be taken*	*(4)* *Relevant part of the authorised development*
Luton Borough Council	1	To provide access to the area of the works to the north-east of Newlands Road and north-west of the M1 Spur form Newlands Road.	All works
	1A	Construction of a boundary fence and diverted public right of way.	Work No.1, Work No.2, Work No.4A & Work No. 7
	1B	Construction of a boundary fence.	Work No.1, Work No.2 & Work No.4A.
	1D	Provision of a site compound, including but not limited to site offices, welfare facilities, parking for workers' private vehicles and works vehicles, storage of plant, material and topsoil and the treatment of site-generated waste.	All works
Luton Borough Council and Central Bedfordshire Council	2B	Carrying out works to trees, construction of fencing and planting of a hedgerow.	Work No.12
Luton Borough Council	2C	Construction and use of the vehicular access to the site compound, and construction of part of a turning head.	All works
	2H	To provide access during the works and to allow the construction of new means of access.	Work No.1
	2I	To allow the realignment of London Road and the associated works to the verges, footways and earthworks.	Work No.2 & Work No.6

(1) *Location*	*(2)* *Number of land shown on land plans, sheet 1*	*(3)* *Purpose for which temporary possession may be taken*	*(4)* *Relevant part of the authorised development*
	2J	To allow the widening of A1081 Airport Way and the associated improvements to Capability Green junction.	Work No.1
Central Bedfordshire Council	3A	Storage of materials and works to infill existing burrow pit.	All works
	3B	Construction of drainage pipes, access, the storage of materials and works to infill existing burrow pit.	Work No. 8
	3C	Access to the area of the works to the south-east of the M1 Spur and to the north-east of Newlands Road, and the storage of materials and plant	All works
	3D	Excavation of existing tip area and works to infill to original ground levels.	Work No. 9
	3E	Use as a satellite compound for works to the south-east of the M1 Spur, including but not limited to site offices, welfare facilities, parking for workers' private vehicles and works vehicles, storage of plant, material and topsoil and the treatment of site-generated waste.	All works
	3F	Regrading of part of earth bunds that extend beyond the proposed highway boundary	Work No.1 & Work No.3A
	4B	Carrying out works to trees, and construction of fencing	Work No.1 & Work No.3B
Luton Borough Council and Central Bedfordshire Council	5A	Carrying out works to trees, and construction of fencing	Work No.1 & Work No.3B

(1) *Location*	*(2)* *Number of land shown on land plans, sheet 1*	*(3)* *Purpose for which temporary possession may be taken*	*(4)* *Relevant part of the authorised development*
	6C	To allow the widening of the M1 Spur, the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3A, Work No.3B, Work No.4A & Work No.4B
	6D	To allow the widening of the M1 Spur, the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.3A, Work No.3B, Work No.4A & Work No.4B
	6E	To allow the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3B & Work No.4B
	7C	To allow the provision of new slip roads as part of Kidney Wood junction and the provision of a continuous link between the M1 Spur and A1081 Airport Way.	Work No.1, Work No.2, Work No.3A, Work No.3B, Work No.4A & Work No.4B
	7D	To allow the provision of a continuous link between the M1 Spur and A1081 Airport Way, the widening of A1081 Airport Way and the associated improvements to Capability Green junction..	Work No.1, Work No.3B & Work No.4B
	7E	To allow the widening of A1081 Airport Way and the associated improvements to Capability Green junction..	Work No.1

(1) *Location*	*(2)* *Number of land shown on land plans, sheet 1*	*(3)* *Purpose for which temporary possession may be taken*	*(4)* *Relevant part of the authorised development*
	7F	To allow the provision of the realigned A1081 London Road, the modification of A1081 London Road to form Old London Road (South) to provide access to Kidneywood House and Bull Wood Cottages, access to the works, the construction of the access to the proposed attenuation and infiltration ponds and the improvements to Newlands Road and its junction with A1081 London Road.	Work No.2, Work No.5 & Work No.10

SCHEDULE 11

Article 31

TREES SUBJECT TO TREE PRESERVATION ORDERS

(1) *Type of tree*	*(2)* *Reference of trees on environmental context plans*	*(3)* *Work to be carried out*
Birch, oak, ash, rowan and hornbeam.	Kidney Wood TPO shown on sheets 1 and 2	Removal, trimming, lopping and coppicing of trees within Kidney Wood TPO to be carried out to facilitate the construction of the authorised development and to ensure its future viability and stability.

SCHEDULE 12

Article 34

PROTECTIVE PROVISIONS

PART 1

FOR PROTECTION OF HIGHWAY AUTHORITIES

1. Unless otherwise agreed in writing between the undertaker and the highway authority concerned, the following provisions of this Schedule have effect in relation to any highway for which the undertaker is not the highway authority.

2. In this Schedule—

"highway" means a street vested in or maintainable by the highway authority; and

"plans" includes sections, drawings, specifications and particulars (including descriptions of methods of construction).

3. Wherever in this Schedule provision is made with respect to the approval or consent of the highway authority, that approval or consent must be given in writing and may be given subject to such reasonable terms and conditions as the highway authority may impose but must not be unreasonably withheld.

4. Before commencing any part of the authorised development the undertaker must submit to the highway authority for its approval in writing proper and sufficient plans and must not commence that part of the authorised development until those plans have been approved or settled by arbitration in accordance with arbitration (article 37).

5. If, within 21 days after any plans have been submitted to a highway authority under paragraph 4, it has not intimated its disapproval and the grounds of disapproval, it is to be deemed to have approved them except to the extent that the plans involve departures from Highways Agency standards.

6. In the event of any disapproval of plans by a highway authority under paragraph 4, the undertaker may re-submit the plans with modifications and, in that event, if the highway authority has not intimated its disapproval and the grounds of disapproval within 21 days of the plans being re-submitted, it is to be deemed to have approved them except to the extent that the plans involve departures from Highways Agency and local highway authority standards.

7. Except in an emergency or where reasonably necessary to secure the safety of the public, no direction or instruction is to be given by the highway authority to the contractors, servants or agents of the undertaker regarding construction of the authorised development without the prior consent in writing of the undertaker but the highway authority is not be liable for any additional costs which may be incurred as a result of the giving of instructions or directions pursuant to this paragraph.

8. To facilitate liaison with the undertaker, the highway authority concerned must provide so far as is reasonably practicable a representative to attend meetings arranged by the undertaker about the authorised development.

9. The authorised development must be completed in accordance with the reasonable requirements of the highway authority or, in case of difference between the undertaker and the highway authority as to whether those requirements have been complied with or as to their reasonableness, in accordance with such requirements as may be approved or settled by arbitration in accordance with article 37 (arbitration).

PART 2

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application and Interpretation

1. —(1) For the protection of the statutory undertakers referred to in this part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned, have effect.

(2) In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable the statutory undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(**a**), belonging to or maintained by that statutory undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a water undertaker, mains, pipes and other apparatus belonging to or maintained by the undertaker for the purposes of water supply; and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the undertaker under the Water Industry Act(**b**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure for the lodging therein of apparatus or for giving access to apparatus;

"emergency works" has the same meaning as in section 52 of the 1991 Act;

"functions" includes powers and duties;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon land;

"plans" includes sections and method statements;

"undertaker" means the undertaker as defined in article 2 of this Order; and

"statutory undertaker" means—

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(**c**);

(c) a water undertaker within the meaning of the Water Industry Act 1991; and,

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

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(**a**) 1989 c. 29.
(**b**) 1991 c. 56
(**c**) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

for the area of the authorised development, and in relation to any apparatus, means the statutory undertaker to whom it belongs or by whom it is maintained.

(3) Except in the case of paragraph 2, this Part of this Schedule does not apply to anything done or proposed to be done in relation to or affecting any apparatus in so far as the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

(4) Article 28 (apparatus and rights of statutory undertakers in stopped up streets) does not apply in relation to a statutory undertaker referred to in this Part of this Schedule.

(5) Paragraphs (1) and (2) of article 29 (recovery of costs of new connections) have effect as if it referred to apparatus removed under this Part of this Schedule.

Apparatus of statutory undertakers in stopped up streets

2.—(1) Where any street is stopped up under article 13 (permanent stopping up of streets), any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up but nothing in this sub-paragraph affects any right of the undertaker or of the statutory undertaker to require the removal of that apparatus under paragraph 4 or the power of the undertaker to carry out works under paragraph 6.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers of article 14 (temporary stopping up of streets) of this Order, and subject always to the power of the undertaker to make provisions for the alteration of such apparatus, the statutory undertaker is at liberty at all times and after giving reasonable notice except in the case of emergency to take all necessary access and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to inspect, repair, maintain, renew, alter, remove or use any apparatus which at the time of the temporary stopping up or diversion was in that highway.

Acquisition of Apparatus

3. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire under this Order any apparatus or rights or interests of the statutory undertaker to access, maintain or otherwise assert their rights in relation to such apparatus otherwise than by agreement.

Removal of apparatus

4.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus not be removed under this Part of this Schedule and any right of a statutory undertaker to use, maintain, repair, renew, alter or inspect that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question, and the provisions of sub paragraph (2) to (5) apply in relation to such works.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the use, maintenance, repair, renewal, alteration and inspection of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are

mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonably necessary to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, save that such obligation does not extend to the requirement for the statutory undertaker to use its compulsory purchase powers to achieve this end.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(5) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 37, and subject to the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the statutory undertaker in question, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of, the statutory undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

5.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a statutory undertaker facilities and rights for the construction, use, maintenance, renewal and inspection in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the statutory undertaker in question or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus the arbitrator must—

(a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker or the traffic on the highway; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which the same are to be granted are in the opinion of the arbitrator less favourable on the whole to the statutory undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to the statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

6. —(1) Not less than 28 days before commencing the execution of any works authorised by this Order that are near to or will or may affect any apparatus the removal of which has not been required by the undertaker under paragraph 4(2), the undertaker must submit to the statutory undertaker in question a plan of the works to be executed.

(2) Those works are to be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) must be made within 21 days after the submission to them of a plan, section and description under sub-paragraph (1).

(4) If a statutory undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 5 of this Schedule apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan of those works subsequently and must comply with sub-paragraph (2) so far as reasonably practicable in the circumstances.

Expenses

7.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the statutory undertaker reasonable expenses incurred by that statutory undertaker in, or in connection with—

(a) the inspection, removal and relaying or replacing, or alteration or protection of any apparatus or the construction of any new or alternative apparatus or connections thereto which may be required in consequence of the execution of any such works as are required under this Part of this Schedule, including any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus;

(b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(c) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 37 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs are to be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) (and having regard, where relevant to sub paragraph (2)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

8. —(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of the authorised development, or any works required under this Schedule by or on behalf of the undertaker, or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or other property of a statutory undertaker or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and

(b) indemnify that statutory undertaker for any other expenses, loss, damages, claims, penalty or costs incurred by or recovered from that statutory undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(3) A statutory undertaker must give the undertaker reasonable notice of any such claim or demand received under sub-paragraph (1) and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

9. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a statutory undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

10. Where in consequence of the proposed construction of any of the authorised development the undertaker or a statutory undertaker requires the removal of apparatus under paragraph 4(2) or a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 6(2), the undertaker and the statutory undertaker must use their best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and the safe and efficient operation of the statutory undertaker's undertaking.

Access

11. If, in consequence of the exercise of any powers under this Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

PART 3

FOR THE PROTECTION OF NATIONAL GRID

Interpretation

1. —(1) In this Part of this Schedule—

"National Grid" means National Grid Gas Plc whose registered address is 1-3 Strand, London WC2N 5EH ("National Grid");

"the high pressure gas main" means the Kinsbourne Green to Dallow Road high pressure gas main; and

"plans" means all drawings designs sections specifications method statements and other documentation that are reasonably necessary to properly and sufficiently describe the work to be executed.

High pressure gas main: application of Parts 2 and 3

2.—(1) Subject to sub-paragraphs (2) and (3), this Part of this Schedule applies to the high pressure gas main in addition to Part 2.

(2) Paragraph 3 of this Part of this Schedule applies to the high pressure gas main instead of paragraph 6 of Part 2.

(3) Paragraph 3 of this Part of this Schedule (except in the case of paragraph 3(6)) has effect including in circumstances where the high pressure gas main is regulated by the provisions of Part 3 of the 1991 Act, and in those circumstances paragraphs 7 to 11 of Part 2 have effect, except as provided for in paragraph 4 of this Part.

High pressure gas main: protection

3.—(1) Not less than 42 days before commencing the execution of any works authorised by this Order which will or may be situated on, over or under the high pressure gas main, or within three metres respectively from the high pressure gas main measured in any direction, or which involve embankment works within three metres of the high pressure gas main, the undertaker must submit to National Grid detailed plans describing—

(a) the exact position of those works;

(b) the level at which those works are proposed to be constructed or renewed;

(c) the manner of their construction or renewal; and

(d) the position of the high pressure gas main.

(2) The undertaker must not commence the construction or renewal of any works to which sub-paragraph (1) applies until National Grid has given written approval of the plans so submitted.

(3) Any approval of National Grid under sub-paragraph (2)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (4);

(b) must not be unreasonably withheld.

(4) In relation to a work to which sub-paragraph (1) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to the high pressure gas main.

(5) Works to which this paragraph applies must be executed only in accordance with—

(a) the plan approved under sub-paragraph (2); and

(b) such reasonable requirements as may be made in accordance with sub-paragraph (4) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it,

and the statutory undertaker is entitled to watch and inspect the execution of those works.

(6) If in consequence of the works proposed by the undertaker National Grid reasonably requires the removal of the high pressure gas main and gives written notice to the undertaker of that requirement, paragraphs 1 to 5 of Part 2 of this Schedule apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(2) of Part 2.

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, instead of the plan, previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan, of those works subsequently and must comply with—

(a) sub-paragraph (5) so far as reasonably practicable in the circumstances; and

(b) sub-paragraph (9) at all times.

(9) At all times when carrying out any works authorised under this paragraph the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid high pressure gas pipelines and associated installations requirements for third parties T/SP/SSW27" and HSE's "HS(G)47 Avoiding danger from underground services".

Conduct of claims and demands

4.—(1) Sub-paragraph (2) applies instead of paragraph 8(3) of Part 2 of this Schedule in relation to claims and demands made against National Grid under that paragraph.

(2) National Grid must give the undertaker reasonable notice of any such claim or demand received under paragraph 8(1) of Part 2 and no settlement or compromise is to be made without first consulting the undertaker and considering his representations (such representations not to be unreasonably withheld or delayed).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Luton Borough Council (referred to in this Order as the undertaker) to make improvements to Junction 10a of the M1, including the removal of the existing Junction 10a roundabout and provision of a continuous and widened carriageway between the M1 Junction 10 and A1081 Airport Way, and new roundabouts and slip roads giving access to London Road, and to carry out all associated works. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land temporarily for this purpose. The Order also makes provision in connection with the designation and maintenance of the new section of highway.

A copy of the various plans, the book of reference and other documents mentioned in this Order and certified in accordance with article 35 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Luton Borough Council, Town Hall, Luton LU1 2BQ.

STATUTORY INSTRUMENTS

201[3] No. [ ]

INFRASTRUCTURE PLANNING

HIGHWAYS

The M1 Junction 10a (Grade Separation) Development Consent Order 201[3]

BIRCHAM DYSON BELL LLP
50 Broadway
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Solicitors and Parliamentary Agents
[8764320.04 — 3.05.13]

Appendix B.10 Application for the Proposed M54 to M6 Link Road Development Consent Order (TR010054-001200) (21 April 2022)

Department for Transport

Rosalind Wall
Co-Director Motoring and Freight
DEPARTMENT FOR TRANSPORT
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33 HORSEFERRY ROAD
LONDON
SW1P 4DR

ENQUIRIES: 07971145878
E-MAIL: TRANSPORTINFRASTRUCTURE@dft.gov.uk

Web Site: www.gov.uk/dft

21 April 2022

National Highways
Temple Quay House
2 The Square
Bristol
BS1 6HA

Dear Sirs,

PLANNING ACT 2008
APPLICATION FOR THE PROPOSED M54 to M6 LINK ROAD DEVELOPMENT CONSENT ORDER

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to say that consideration has been given to:

- the report of 21 July 2021 of the Examining Authority ("the ExA"), a Panel of two examining Inspectors consisting of Robert Jackson BA MPhil DMS MRTPI MCMI (Lead Member) and Kenneth Stone BSc (Hons) DipTP MRTPI, who conducted an examination into the application by Highways England (now known as National Highways) ("the Applicant") for the M54 to M6 Link Road Development Consent Order ("the Order") under section 37 of the Planning Act 2008 as amended ("the 2008 Act");
- late representations received by the Secretary of State following the close of the examination; and
- responses to further consultation undertaken by the Secretary of State in respect of the application.

2. The application was accepted for examination on 28 February 2020. The examination began on 21 October 2020 and was completed on 21 April 2021. The examination was conducted on the basis of written and oral submissions submitted to the ExA. Due to the ongoing pandemic the ExA was unable to hold an accompanied site visit but conducted three unaccompanied site inspections in June 2020 and March 2021.

3. The Order as applied for under the 2008 Act would grant development consent to the Applicant to provide a link road between Junction 1 on the M54, M6 North and the A460 to Cannock. The proposals would comprise the replacement of the existing M54 junction 1 with free flow slip roads between the new link road and the M54, the construction of three new roundabouts and construction of a new dual carriageway between M54 junction 1 and the M6 junction 11.

4. Published alongside this letter on the Planning Inspectorate's website is a copy of the ExA's Report of Findings, Conclusions and Recommendation to the Secretary of State ("the ExA's Report") (as amended by Errata Sheet (Ref TR0 010054)). The ExA's findings and conclusions are set out in sections 5 to 17 of the ExA's Report, and the ExA's summary findings and conclusions and recommendation are set out in section 18.

Summary of the ExA's Recommendation

5. The principal issues considered during the Examination on which the ExA reached conclusions on the case for development consent are set out in the ExA's Report under the following headings:

- Legal and Policy Context;
- Planning Issues
- Air Quality;
- Biodiversity, Ecology and Natural Environment;
- Cultural Heritage including Archaeology;
- Green Belt;
- Landscape and Visual Effects;
- Noise and Vibration;
- Socio-Economic Effects;
- Traffic and Transport;
- Water Environment;
- Habitats Regulations Assessment;
- The case for Development Consent
- Compulsory Acquisition and Related Matters; and
- Draft Development Consent Order and Related Matters

6. The ExA recommended that the Secretary of State should make the Order in the form recommended at Appendix D of the Report.

Summary of the Secretary of State's Decision

7. **The Secretary of State has considered the ExA's Report and has decided under section 114(1)(a) of the 2008 Act to grant development consent**. This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 31(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 Regulations").

Secretary of State's Consideration

8. The Secretary of State has considered the ExA's Report, the further representations received after the close of the examination, responses to consultation, and all other material considerations. The Secretary of State's consideration of these matters is set out in the following paragraphs. Where not stated in this letter the Secretary of State can be taken to agree with the ExA's findings, conclusions and recommendations, as set out in the ExA's Report and the reasons given for the Secretary of State's decision are those given by the

ExA in support of the conclusions and recommendations. All "ER" references are to the specified paragraph in the ExA's Report. Paragraph numbers in the ExA's Report are quoted in the form "ER x.xx.xx" as appropriate.

Legal and Policy Context

9. Given that the application requires development consent, section 104(2) of the 2008 Act has effect in relation to the development to which the application relates. In determining this application, the Secretary of State must therefore have regard to any relevant National Policy Statement ("NPS"), and any Local Impact Report ("LIR") submitted, any matters prescribed in relation to development of the description to which the application relates, and any other matters the Secretary of State considers to be both important and relevant to the decision (ER 3.1.2). Under section 104(3) of the 2008 Act the Secretary of State must decide this application in accordance with any relevant NPS which in this case is the National Networks National Policy Statement ("NNNPS"), subject to any of the exceptions in section 104(4) to (8) of the 2008 Act applying. The Secretary of State does not consider any of these exceptions apply on the facts of this case.

10. The LIRs and the relevant development the Secretary of State has had regard to are described in ER 3.9 and 3.10. The Secretary of State also notes the ExA's assessment set out in ER 3.3, 3.4, 3.5, 3.6, 3.7 and 3.8 of UK Regulations derived from European law, other relevant legal provisions, previous DCOs, transboundary effects, other relevant policy statements and the National Planning Policy Framework ("the Framework"), and agrees these are matters to be considered in deciding this application. The Secretary of State notes that the UK Regulations derived from European law set out in ER 3.3 remain in place despite the UK having left the EU on 31 January 2020 and despite transition arrangements ending on 31 December 2020. These are therefore still relevant to this application.

Need for the Development

11. Paragraph 2.2 of the NNNPS sets out a critical need to improve national networks and address road congestion. The Secretary of State agrees with the ExA that the proposed Development would make an important contribution to the improvement and enhancement of the existing strategic road network, meeting one of the key objectives of the NNNPS and local planning policy. The need and benefits include relieving traffic congestion on the A460, A449 and A5 and providing more reliable journey times, keeping the right traffic on the right roads and improving safety by separating local community traffic from long distance and business traffic, reducing volumes of through-traffic in villages, improving local community access and supporting local economic growth for Telford, Shrewsbury, Wolverhampton, Cannock and Tamworth by improving traffic flow and enhancing access to east-west and north-south routes (ER 15.4.13). The Secretary of State notes the ExA's view that significant economic benefits would result from the Proposed Development, along with other benefits in terms of overall improvements for air quality.

Planning Issues

12. The Secretary of State notes there was substantial local support for the principle of the development. However, the Secretary of State notes objections were raised to the detail of the proposal but the local community did not raise objections to the precise line of the link road. There were specific concerns from South Staffordshire Council ("SSC") and

Hilton, Featherstone & Brinsford and Shareshill Parish Councils ("the Parish Councils") that the Preferred Alignment decision was incorrect and that the easterly alignment would have less of an effect on local communities (ER 4.1.1 and 4.1.2).

13. The Secretary of State notes that in accordance with paragraph 4.26 of the NPSNN, the Applicant included within the ES an outline of the main alternatives studied and provided an indication of the main reasons for the preferred route, taking into account the environmental effects. He further notes that in accordance with paragraph 4.27 of the NSPNN, that the ExA are satisfied that the project has been subject to a full options appraisal in achieving its status within the Road Investment Strategy, and that proportionate option consideration of alternatives would have been undertaken as part of the investment decision making process. The Secretary of State further notes that in considering whether the proposed alignment is acceptable, taking into account all considerations as set out in s104 of the 2008 Act, the ExA reached their conclusion in Chapter 15 of their Report, having assessed all the individual planning issues and reaching a balanced conclusion (ER 4.6.19 to 4.6.21).

14. In a Ministerial Statement issued on 22 July 2021 the Secretary of State for Transport advised that a review of the NPSNN will begin later in 2021, to be completed no later than Spring 2023. While the review is undertaken, the NPS remains relevant government policy and has effect for the purposes of the Planning Act 2008. The NPS will, therefore, continue to provide a proper basis on which the Planning Inspectorate can examine, and the Secretary of State can make decisions on, applications for development consent.

15. The Secretary of State notes that the Proposed Development is development for which an Environmental Impact Assessment ("EIA") is required as recorded in Section 1.5 of the ExA Report and the documents which comprise the Environmental Statement ("ES") and the various addenda to that are set out in the Examination Library set out in Appendix B of the ExA Report.

Air Quality

16. The Secretary of State notes the ExA's assessment of the Policy frameworks relating to Air Quality set out in ER 5.2, the case for the Applicant set out in 5.3 and the position of interested parties in ER 5.5.

17. The Secretary of State notes there were no robust or technical objections or concerns raised in respect of the effect of the proposed development on air quality. The Parish Councils and SSC raised issues related to the alignment of the mainline of the link road ("the mainline") and the preferred route, expressing concern that its proximity to residential properties around Dark Lane would result in a deteriorating environment for local residents including in respect of air quality. They did not however provide any evidence or data to support these assertions and SSC confirmed that their Environmental Health department did not raise any objections to the Proposed Development (ER 5.7.1).

18. The Secretary of State notes the Applicant's air quality assessment concludes that there are no properties with adverse changes in air quality (small, medium or large) above the air quality values and there is no adverse effect on air quality for compliance links. Whilst the assessment does identify locations where the air quality position would be worse than in the Do Minimum ("DM") situation the increase in concentrations of pollutants would

be imperceptible or a small change as a result of the Proposed Development and would be below limit values or objectives (ER 5.7.2).

19. The Secretary of State notes that overall, the ExA were satisfied the Proposed Development would not result in significant adverse effects on air quality. He notes there are areas which would have increases in pollutant levels but that these would not perceptibly worsen concentrations in those areas already above any objective and would not result in concentrations exceeding objective levels or relevant statutory air quality thresholds. The ExA concluded that across the study area there would be a net benefit for air quality for sensitive receptors. The Secretary of State notes the ExA's view that the Proposed Development therefore is in compliance with paragraphs 5.9 and 5.10 of the NPSNN (ER 5.7.7, 15.3.10).

20. During construction there would be the potential for dust to affect air quality, with particular impacts on residential receptors in relatively close proximity to the works (ER 5.7.9). However, the ExA concluded that this could be appropriately mitigated and that there would be no other significant air quality effects resulting from construction of the Proposed Development (ER 15.3.9). The Secretary of State is content this this mitigation has been secured through the Order.

21. The Secretary of State notes that the ExA were satisfied that the Proposed Development would not result in unacceptable air quality impacts, it would meet the tests in the NPSNN and would not result in a significant effect or deterioration of air quality and would not adversely affect an Air Quality Management Area or any nature conservation sites and would not conflict with local policies (ER 5.7.10). The Secretary of State agrees with this conclusion.

Carbon emissions

Background

22. Section 104(3) of the 2008 Act states that the Secretary of State must decide an application for a national network Nationally Significant Infrastructure Project in accordance with the NPSNN except to the extent that one or more of subsections 104 (4) to (8) of the 2008 Act apply. These include not only where the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits, but where the Secretary of State is satisfied that deciding the application in accordance with the NPSNN would: lead to the UK being in breach of any of its international obligations; lead to him being in breach of any duty imposed on him by or under any enactment; be unlawful by virtue of any enactment (ER 3.1.3). The UK's international obligations include the Paris Agreement, which was ratified by the UK Government in 2016, after the NPSNN was designated in 2014. This is translated in the UK by way of the carbon budgets set under the Climate Change Act 2008.

23. In June 2019 the Government announced a new carbon reduction 'Net Zero target' for 2050 which was given effect by the Climate Change Act 2008 (2050 Target Amendment Order 2019). This is a legally binding target for the Government to cut carbon emissions to net zero, against the 1990 baseline by 2050 (ER 5.2.15). The Climate Change Act requires five-yearly carbon budgets to be set 12 years in advance so as to meet the 2050 target. Six carbon budgets have been adopted. The time periods covering the fourth, fifth and sixth

budget are 2023-2027, 2028-2032 and 2033-2037 respectively. Achieving net zero will require future greenhouse gas emissions to be aligned with these and any future new or revised carbon budgets that may be set out by Government to achieve the target of net zero carbon by 2050.

24. The ExA set out that the NPSNN advises that traffic-related emissions are expected to continue to fall, and that there are therefore only very limited circumstances in which a highway proposal will lead to material adverse change in carbon emissions, on a scale that would bear on the achievement of the statutory carbon budget. The Secretary of State considers that this part of the ExA's report relates particularly to paragraph 3.8 and 5.17 of the NPSNN Paragraph 3.8 sets out that the impact of road development on aggregate levels of emissions is likely to be very small and that the impacts of road development need to be seen against significant projected reductions in carbon emissions as a result of current and future policies to meet the Government's legally binding carbon budgets. Paragraph 5.17 sets out that it is very unlikely that the impact of a road project will, in isolation, affect the ability of Government to meet its carbon reduction plan targets. The Secretary of State notes the ExA's view that this Proposed Development is not of sufficient scale to have such an effect (ER 5.7.11).

25. The Secretary of State notes that the ExA has considered the Government's carbon budgets which at the start of the Examination included the third (2018-2022), fourth (2023-2027) and fifth (2028-2032). The ExA highlighted that Greenhouse Gas ("GHG") emissions (measured as carbon dioxide equivalent and referred to as "carbon emissions") for the Proposed Development in net terms between the Do-something ("DS") and Do minimum ("DM") scenarios as set out by the Applicant in its ES would result in a total increase of 206,860tCO_2e. Splitting these between construction (81,890tCO_2e) and operation (121,730tCO_2e) and across the relevant carbon budgets, given that the construction of the Proposed Development was then expected to take place in 2021-2024 and opening in 2024, the ExA set out that the Proposed Development would contribute to 0.0013% of the UK's carbon budget for the third carbon budget period. The Proposed Development's carbon emissions would equate to 0.0048% of the UK's carbon budget for the fourth carbon budget period and 0.0043% of the UK's carbon budget for the fifth carbon budget period (ER 5.7.12).

26. The Secretary of State notes that during the Examination, whilst the sixth carbon budget was not available, the ExA asked the Applicant about the recommendations for the sixth budget as set out in the Committee on Climate Change's ("the CCC") Sixth Carbon Budget report of 9 December 2020. This set out recommendations for the 2033 to 2037 period and recommended a net reduction of 78% between 1990 and 2035, representing the bringing forward of the previous 80% target by nearly 15 years. The Secretary of State notes that the ExA asked the Applicant to make an assessment against this proposed change in carbon emissions from the development in respect of the third, fourth and fifth carbon budgets, and to comment on what effect, if any, that this might have on the Government's ability to meet any revised target set by Parliament. The Applicant responded by stating as the third, fourth and fifth carbon budgets would remain the same following publication of the sixth carbon budget, the percentage contribution from the Proposed Development remains the same for these periods despite the Government's more ambitious carbon reduction target. When compared against the sixth carbon budget as set out in the CCC report (and which was later confirmed by the Carbon Budget Order 2021) the Applicant identified that GHG emissions from the Proposed Development represent

0.0079% of that budget, which is a higher contribution than for the previous budgets, but which the Applicant considered was still well below a threshold of 1% of a given carbon budget. Therefore, the Applicant considered that their conclusion that *"the GHG impact of the Proposed Development would not have a material impact on carbon reduction targets as set by the UK government"* remained applicable (ER 5.7.13).

27. The Secretary of State notes that there were no substantive issues or concerns raised by any party with regard to the Applicant's assessment of the effects or broader implications in respect of carbon emissions (ER 5.7.15). The ExA considered that given the Applicant's comments regarding the CCC's Sixth Carbon Budget report and its advised budget allocations, there was unlikely to be a significant effect but advised that the Secretary of State may wish to consider the impact of carbon equivalent emissions for the operational phase of the Proposed Development in relation to the relevant carbon budget now that it is available and the cumulative impact of emissions for the NPSNN in the context of the revised net carbon target and other projects and programmes namely RIS1/RIS2 (ER 5.7.16). The ExA also advised that the Secretary of State may also wish to consider the impact of the sixth carbon budget and the 'Decarbonising Transport: a better, greener Britain' ("the Transport Decarbonisation Plan") (ER 5.7.14).

28. The Secretary of State therefore requested additional information from the Applicant with regard to the Proposed Development's compliance with the sixth carbon budget and the direct, indirect and cumulative likely significant effects of the Proposed Development with other existing and/or approved projects on climate.

Sixth Carbon Budget

29. With regard to the Proposed Development's compliance with the sixth carbon budget, the Applicant responded on 23 August 2021 to the Secretary of State's request, setting out that the Proposed Development would contribute 0.0082% of the sixth carbon budget. The Applicant however noted that this assessment is conservative and likely to be an overestimate as the projected uptake of new electric vehicles is higher than the projections used in the national projections included in the version of Defra's Emissions Factor Toolkit that was available at the time and used to provide the assessment. The Applicant also referenced DfT's Transport Decarbonisation Plan published in July 2021 as outlining a number of commitments by the Government to remove all emissions from road transport to achieve the net zero target by 2050 which they argued would have a direct impact on road user emissions and was also not captured in their assessment. The Applicant also highlighted that in July 2021, the then Highways England published its own 2030/2040/2050 Net Zero highways plan that included a commitment to ensure its maintenance and construction activities become net zero by 2040 and road user emissions on the strategic road network become net zero by 2050.

30. The Secretary of State notes that the Applicant concluded in its letter of 23 August 2021 that the then predicted maximum impact on any carbon budget (including the sixth carbon budget) would be 0.0082% and that this would not have a material effect on the Government's ability to comply with carbon budgets. In response to the Secretary of State's follow up request of 22 December 2021 for additional information relating to the cumulative effects of the scheme on climate, the Applicant provided updated figures on the impact of the scheme on each of the carbon budgets using the newly available Emissions Factor Toolkit v11 which took account of the higher predicted uptake rates of electric vehicles. The

Applicant also presented the results of its sensitivity test to reflect the policies in the Transport Decarbonisation Plan. The Secretary of State notes that the figures set out in the Applicant's latest assessment show that the Proposed Development's contribution to any carbon budget will be a maximum of 0.0061%. The Secretary of State notes that this figure is a lower impact on each of the carbon budgets than that considered by the ExA except in relation to the third carbon budget where the impact is now assessed as being slightly higher than that considered by the ExA (0.0352Mt CO_2e in contrast to 0.0334mt CO_2e).

31. The Secretary of State considers that the majority of operational emissions related to the scheme result from vehicle usage and that the Transport Decarbonisation Plan includes a range of non-planning policies which will help to reduce carbon emissions over the transport network as a whole over time (including polices to decarbonise vehicles and radically reduce vehicle emissions) and help to ensure that carbon reduction commitments are met. Beyond transport, Government's wider policies around net zero such as 'The Net Zero Strategy: Build Back Greener' ("Net Zero Strategy"), published by Government in October 2021 sets out policies and proposals for decarbonising all sectors of the UK economy to meet the net zero target by 2050. It is against this background that the Secretary of State has considered the Proposed Development. The Secretary of State notes the Applicant's most recent assessment of the Proposed Development's impact on the carbon budgets takes account of the Transport Decarbonisation Plan and that no other party has questioned this assessment.

32. The Secretary of State acknowledges the importance of climate change at the local, national and international level and the contribution GHGs make to this. Section 6.2 of the latest IEMA guidance "Assessing Greenhouse Gas Emissions and Evaluating their Significance" ("the IEMA Guidance") notes that "*The 2050 target (and interim budgets set to date) are, according to the CCC, compatible with the required magnitude and rate of GHG emissions reductions required in the UK to meet the goals of the Paris Agreement, thereby limiting severe adverse effects"*. This guidance also sets out that, "*Carbon budgets allow for continuing economic activity, including projects in the built environment, in a controlled manner".*

33. The ExA refers to a significance threshold of 1% of a given carbon budget used by the Applicant (ER 5.7.13). The Secretary of State considers that there is no set significance threshold for carbon. The latest IEMA guidance at section 6.1 refers back to three overarching principles in its original 2010 guidance that it considered to be particularly relevant in considering significance: GHG emissions from all projects will contribute to climate change, the largest interrelated cumulative environmental effect; the consequences of a changing climate have the potential to lead to significant environmental effects on all EIA topics; and that GHG emissions have a combined environmental effect that is approaching a scientifically defined environmental limit and as such any GHG emission or reductions in these might be considered significant. The latest IEMA guidance states that it builds on those principles noting: when evaluating significance, all new GHG emissions contribute to a negative environmental impact, but some projects will replace existing development or baseline activity that has a higher GHG profile and the significance of a project's emissions should therefore be based on its net impact over its lifetime, which may be positive, negative or negligible; where GHG emissions cannot be avoided, the goal of the EIA process should be to reduce the project's residual emissions at all stages; where GHG emissions remain significant, but cannot be further reduced, approaches to compensate the project's remaining emissions should be considered.

34. The IEMA guidance considers that the crux of significance is not whether a project emits GHG emissions, nor even the magnitude of GHG emissions alone, but whether it contributes to reducing GHG emissions relative to a comparable baseline consistent with a trajectory towards net zero by 2050 (section 6.2). The IEMA guidance addresses significance principles and criteria in section 6.3 and Figure 5 and advises (amongst other things) that: a project that follows a 'business-as-usual' or 'do minimum' approach and is not compatible with the UK's net zero trajectory, or accepted aligned practice or area-based transition targets, results in significant adverse effects; a project that is compatible with the budgeted science-based 1.5 degree Celsius trajectory (in terms of rate of emissions reduction) and which complies with up-to-date policy and 'good practice' reduction measures to achieve that has a minor adverse effect that is not significant - such a project may have residual emissions but it is doing enough to align with and contribute to the relevant transition scenario to keep the UK on track towards net zero by 2050 with at least a 78% reduction by 2035 and thereby potentially avoiding significant adverse effects; and a project that achieves emissions mitigation that goes substantially beyond the reduction trajectory, or substantially beyond existing and emerging policy compatible with that trajectory, and has minimal residual emissions, is considered to have negligible effect that is not significant and such a project is playing a part in achieving the rate of transition required by nationally set policy commitments.

35. The Secretary of State notes that the scheme will result in an increase in carbon emissions but that the view reached by the ExA is that it will not be so significant that it would materially impact on the ability of Government to meet its carbon reduction targets (ER 15.3.11). The Secretary of State does not consider that net zero means consent cannot be granted for development that will increase carbon emissions. The Secretary of State considers that, as set out in paragraph 5.18 of the NPSNN, it is necessary to continue to evaluate whether (amongst other things) the increase in carbon emissions resulting from the Proposed Development would have a material impact on the ability of Government to meet its carbon reduction targets. As set out above, the carbon budgets should meet the goals of the Paris Agreement meaning a proposal which is compatible with the 2050 target and interim carbon budgets is consistent with the approach to addressing the severe adverse effects of climate change. The Secretary of State considers this aligns with the approach to significance set out in the most recent IEMA Guidance. The Secretary of State considers that the approach set out in the NPSNN continues to be relevant in light of international obligations and domestic obligations related to reducing carbon emissions that have come into force since the NPSNN was designated. The Secretary of State notes that the carbon budgets are economy-wide and not just targets in relation to transport. The scheme's contribution to overall carbon levels is very low and the Secretary of State agrees with the ExA that its contribution will not have a material impact on the ability of Government to meet its legally binding carbon reduction targets.

36. In relation to mitigation, the Secretary of State notes that, with regard to construction the Applicant's ES sets out that these impacts will be mitigated through the CEMP. Emissions relating to the operational phase, other than vehicle usage, will be reduced where possible through measures such as the use of energy efficient lighting (see section 14.8 of Chapter 14 of the ES). The Secretary of State is content that these measures will help to reduce carbon emissions where this is possible and that such measures are secured by requirements in the DCO.

37. With regard to the Paris Agreement, the UK announced its Nationally Determined Contribution ("NDC") in December 2020. NDCs are commitments made by the Parties (including the UK) under the Paris Agreement. Each Party's NDC shows how it intends to reduce its greenhouse gas emissions to meet the temperature goal of the Paris Agreement. The UK's NDC commits it to reduce net GHG emissions by at least 68% by 2030 compared to 1990. This represents an increase of ambition on the fifth carbon budget, which covers the period 2028-2032. The Net Zero Strategy: Build Back Greener, published by Government in October 2021, sets out how the UK will therefore need to overachieve on the fifth carbon budget to meet its international climate targets and stay on track for the sixth carbon budget. This strategy sets out the action Government will take to keep the UK on track for meeting the UK's carbon budgets and 2030 NDC and establishes the UK's longer-term pathway towards net zero by 2050. The Secretary of State is content that consenting the Proposed Development will not impact on the delivery of this strategy and will not lead to a breach of the UK's international obligations in relation to the Paris Agreement or any domestic enactments or duties.

38. Overall, the Secretary of State considers that: over time the net carbon emissions resulting from the operation of the scheme will decrease as measures to reduce emissions from vehicle usage are delivered; the magnitude of the increase in carbon emissions resulting from the Proposed Development is below 0.01% of any carbon budget and therefore small; and there are policies in place to ensure these carbon budgets are met, such as the Transport Decarbonation Plan and NH's own Net Zero Highway Plan published in July 2021. The Secretary of State is satisfied that the scheme is compatible with these policies and that the small increase in emissions that will result from the scheme can be managed within Government's overall strategy for meeting net zero. The Secretary of State considers that there are appropriate mitigation measures secured in the DCO to ensure carbon emissions are kept as low as possible and that the scheme will not materially impact the Government's ability to meet its net zero targets.

Assessment of Cumulative Impact of GHG emissions

39. The Secretary of State sought additional information from the Applicant on 9 August 2021 on the cumulative impact of GHG emissions. Following the Applicant's response of 23 August 2022, the Secretary of State made a further request for information relating to this matter on 22 December 2022. The Applicant responded to this on 26 January 2022.

40. The Secretary of State notes the Applicant's responses set out that the assessment of cumulative impacts of the scheme on climate was undertaken in line with DMRB guidance. The Applicant sets out that an assessment of GHG emissions (assessed as carbon dioxide equivalent emissions and referred to here as carbon emissions) with regard to construction and operational effects of the Proposed Development is included in Chapter 14 (Climate) of the ES. The information contained in Chapter 14 sets out that the assessment of carbon emissions from the Proposed Development was separated into emissions during construction and emissions during operation. With regard to construction, the carbon assessment includes an assessment of construction activities, embodied carbon in raw materials, transportation of materials to site and land use change. The assessment relating to the operation of the scheme includes emissions from motorised users and maintenance.

41. The Secretary of State also notes that as stated in the Applicant's response of 23 August 2021, the Applicant's ES sets out that the study area adopted for the carbon

emissions assessment covers all direct carbon emissions (those arising from construction and operational activities undertaken within the Proposed Development's boundary) and indirect carbon emissions (those associated with construction materials and the transportation of materials and waste). The spatial extent of this assessment comprises the area of construction works falling within the Proposed Development's boundary and with regard to operational carbon emissions, the study area includes both direct emissions arising from energy use within the Proposed Development's boundary as well as emissions from road users on the road network within and beyond the Proposed Development's boundary, as set out in the Proposed Development's traffic model contained in the Transport Assessment Report.

42. The Secretary of State notes that the Applicant's response of 26 January 2022 set out that the traffic model used to support the scheme assessment is inherently cumulative with regard to operational carbon emissions. This is because traffic models include data on the emissions resulting from the Proposed Development and the adjoining Strategic Road Network and the local road network as well as other schemes promoted by the Applicant in the vicinity of the scheme that have a high certainty of being progressed. The Applicant also sets out that this was informed by discussion with the local planning authority and took account of national Government regional growth rates.

43. With regard to operational carbon, the Applicant's approach to assessing the impact on carbon emissions is to consider the changes in carbon emissions resulting from the Proposed Development by comparing changes in the road traffic on the Strategic Road Network and local road network between the 'without scheme scenario' and the 'with scheme scenario', with the former providing the baseline for assessment. The Applicant considers that this takes into account the Proposed Development and all other developments likely to have an influence on the Proposed Development and on the area the Proposed Development is likely to influence. The Applicant considers that as both the with and without scheme scenario includes all likely developments and traffic growth factors it is inherently cumulative.

44. The Secretary of State notes that the ExA suggested that a cumulative assessment should be undertaken in relation to the RIS (ER 5.7.16). The Secretary of State also notes that the Applicant has sought to rely on R (Transport Action Network) v Secretary of State for Transport and Highways England (2021) EWHC 2095 in their response of 23 August 2021 to the effect that the total amount of GHG emissions from the schemes listed in RIS2 is de minimis in the context of appropriate comparators for assessing the effect on climate change. However, the Secretary of State notes the context of that case and the Court's conclusion that a RIS is essentially a high level strategy document, rather than an environmental-decision making document which was required to be supported by an environmental assessment of the type required for the Proposed Development.

45. The Secretary of State considers that as there is no single prescribed approach to assessing the cumulative impacts of carbon emissions, there are a number of ways such an assessment can acceptably be undertaken and that this does not necessarily need to be done at RIS level. Furthermore, the Secretary of State considers that whilst an assessment at RIS level would provide a cumulative assessment of the RIS schemes that are planned or being delivered and the combined emissions from the RIS2 schemes are considered to be de minimis, it would not capture development in the surrounding area to the Proposed Development that could also have an impact. The Secretary of State also

notes that the impact and effect of carbon emissions on climate change, unlike other EIA topics, is not limited to a specific geographical boundary and that the approach that needs to be taken to assess the cumulative impact of carbon emissions is different than for other EIA topics. Noting this and that there is no defined distance for assessing the impact of carbon emissions, the Secretary of State considers that the Applicant's approach to assessing the impact of the Proposed Development on carbon is acceptable as it takes into account the Proposed Development and all other developments likely to have an influence on the Proposed Development and on the area the Proposed Development is likely to influence. The Secretary of State considers that the assessment is proportionate and reasonable in relation to the information the Applicant would have access to to enable the impacts of carbon to be understood and accounted for in the decision-making process. The Secretary of State considers that the Applicant's approach overall, to both the assessments of the Proposed Development's impact on carbon emissions and its cumulative impact is adequate, as journeys will not begin and end within the Proposed Development's boundary.

46. With regard to assessing the cumulative impact of the emissions on climate and the scale used in this assessment, the Applicant has set out that carbon budgets (which as set out above aim to limit the significant effects of climate change) are only set out at a national scale and that these are themselves cumulative as they are a sum of carbon emissions for a range of sectors. The Applicant considered that it was unable to produce a baseline at a local or regional scale and that there was therefore no reasonable basis upon which it can assess the effects of carbon emissions for anything other than at the national level. The Secretary of State accepts that the only statutory carbon targets are those at a national level and notes that neither the Applicant nor any other party has suggested that there are non-statutory carbon targets at any other level that may need to be considered.

47. As well as being a requirement of the NPSNN, the Secretary of State considers that assessing a scheme against the carbon budgets is an acceptable cumulative benchmark for the assessment for EIA purposes with regard to both construction and operation. This is because carbon budgets account for the cumulative emissions from a number of sectors and it is therefore appropriate to consider how the carbon emissions of the Proposed Development compare against this.

48. Overall, the Secretary of State considers that the information provided by the Applicant with regard to the impact of the scheme on carbon emissions (including the cumulative effects of carbon emissions from the scheme with other existing and/or approved projects in relation to construction and operation) is sufficient to assess the effect of the development on climate matters and represents the information that the Applicant can reasonably be required to compile having regard to current knowledge.

49. With regard to the cumulative impact on climate adaptation, the Applicant noted that the "In-combination climate change impact assessment" included in the ES did not identify the potential for significant combined impacts of future climate change and the scheme on identified receptors in the surrounding environment.

50. In its response of 23 August 2021, the Applicant supplemented this assessment with an additional assessment to consider whether other strategic transport infrastructure beyond the boundary of the scheme, which may, when subject to climate impacts, have consequences that exacerbate likely significant effects. The Applicant concluded that the assessment demonstrated that the Proposed Development will improve the resilience of

the Strategic Road Network to the effects of climate change. The Secretary of State notes that this was not disputed by any party.

51. Overall, the Applicant set out in its response of 23 August 2021 that the cumulative effects of the scheme in relation to climate vulnerability were assessed as part of their original ES as set out above, and there would be no significant cumulative climate vulnerability effects associated with the scheme. The Secretary of State accepts this conclusion.

Conclusion

52. The Secretary of State is satisfied that both the assessment in the ES and the Applicant's responses to the Secretary of State's consultation questions relating to climate have been drafted by competent experts. The Secretary of State considers that the information provided by the Applicant in response to its consultations is 'any other information' for the purposes of the EIA Regulations as it, builds on previously provided information, and that parties have been given sufficient opportunity to comment on this. The Secretary of State is content that the Applicant has adequately assessed the likely significant effects of the Proposed Development on climate and its cumulative impacts on climate taking account of both construction and operation as required by the 2017 Regulations and this information has been taken into consideration when assessing whether development consent should be granted.

53. The Secretary of State is aware that all emissions contribute to climate change. Whilst the Proposed Development will result in an increase in carbon emissions, as set out above, the Secretary of State considers that the Proposed Development is consistent with existing and emerging policy requirements to achieve the UK's trajectory towards net zero. The Secretary of State therefore considers the Proposed Development's effect on climate change would be minor adverse and not significant and this assessment aligns with the IEMA guidance. The Secretary of State is satisfied that that the scheme complies with the NPSNN, will not lead to a breach of any international obligations that result from the Paris Agreement or Government's own polices and legislation relating to net zero.

54. Given that the scheme will increase carbon emissions, it is given negative weight in the planning balance. However, the Secretary of State considers that weight also needs to be given to the Transport Decarbonisation Plan that will mean operational emissions reduce over time and that in relation to climate change adaption the Proposed Development attracts positive weight in the planning balance.

Biodiversity, Ecology and the Natural Environment

55. The Secretary of State notes the policy framework relating to biodiversity, ecology and the natural environment as set out in ER 6.2, the Applicant's case set out in ER 6.3 and the position of Interested Parties set out in ER 6.5.

56. The Secretary of State notes that the ExA having reviewed the ES, is satisfied that the Applicant has undertaken a thorough and rigorous characterisation of the natural environment and geological assets affected by the Proposed Development, both directly and indirectly (ER 6.7.1).

57. The ExA considered that in the absence of any evidence to the contrary, there would be no significant adverse effects on nationally designated sites (in this case Sites of Special Scientific Interest) (ER 6.7.3, and 15.3.14). The Secretary of State notes that there would however be adverse effects on locally designated wildlife sites, the Lower Pool Site of Biological Importance/Local Wildlife Site ("SBI/LWS") and the Brookfield Farm, Shareshill LWS and SBI with regard to direct and indirect effects. This would be from the physical loss of habitat and from on-going operational effects because of the location of the Proposed Development (ER 6.7.4). These effects could not be mitigated but the ExA were satisfied that they would be compensated for at an appropriate level (ER 6.8.1 and ER 15.3.14).

58. The Secretary of State notes that there are two areas of ancient woodland within the site, Whitegreaves Wood and Brookfields farm (ER 6.3.30). Following changes to the application there would no longer be any direct loss of ancient woodland but as some of the development would be within 15m of the ancient woodland, the ExA stated that it would be reasonable to assume that this ancient woodland would effectively be lost due to effects on the rooting systems and increases in air pollution (ER 6.7.8). The ExA noted that such indirect effects cannot be avoided and consent for the Proposed Development should not therefore be granted unless the need for and benefits of the Proposed Development outweigh the loss (ER 15.3.16). The Secretary of State is satisfied that the potential impact on ancient woodland is outweighed by the overall benefits of the scheme. The Secretary of State notes that as an irreplaceable resource the loss of ancient woodland cannot be mitigated but is satisfied that the Applicant has sought to provide compensation near to the two ancient woodland locations, in a ratio of 7:1 which is agreed with Natural England ("NE") (ER 6.7.9).

59. The Secretary of State notes discussion took place around the location of the compensatory habitat for bats and that whilst the Applicant maintained that there would be no significant effect on bats from the location of the mitigation habitat on the west side of the mainline, the ExA concluded that the significance of the adverse effects would be greater (ER 6.7.24 and 6.7.29). The ExA, utilising the Applicant's own level of impact descriptive criteria as set out in Table 8.3 of Chapter 8 of their ES, concluded that there would be effects of moderate adverse significance on bats. The Secretary of State notes again that consent should be refused unless the benefits of the Proposed Development outweigh the harm (ER 15.3.16). The Secretary of State agrees with the ExA's assessment of harm but is satisfied that this is outweighed by the overall benefits of the scheme set out in paragraph 121 (ER 15.4.10).

60. The Secretary of State notes that concern was raised that the precautionary approach that had been followed by the Applicant with regard to Great Crested Newts ("GCN") had led to there being more mitigation provided as part of the Proposed Development than was necessary, particularly with regard to the number of ecological ponds (ER 6.7.33). The Secretary of State notes that the October changes (changes to the application accepted in October 2020) included a more robust assessment of GCN populations taking account of surveys undertaken in 2020. The ExA noted that although a 500m zone to consider the effect on GCN represents a cautious approach, an appropriate precautionary approach has been taken by the Applicant with appropriate mitigation provided (ER 6.7.34 and 15.3.14).

61. The Secretary of State is content that there would no unacceptable effects on other habitats and protected species (ER 6.8.1). The ExA have concluded that following

completion of the Proposed Development there would be a significant positive effect as a result of the development on biodiversity as a whole as evidenced by the offsetting matrix. Taking all relevant documents and policies into account, the Secretary of State agrees with the ExA's conclusions as set out in ER 6.8.1 and is content with the ExA's consideration that the effect would be beneficial and should be given moderate weight and would accord with the United Nations Environmental Programme Convention on Biological Diversity of 1992. The Secretary of State has had regard to that Convention in accordance with regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010 (ER 6.7.39 and 6.7.40).

Cultural Heritage including Archaeology

62. The Secretary of State notes the case for the Applicant on this matter as set out in ER 7.3 and for other Interested Parties in ER 7.2 and 7.5.The Secretary of State notes that the baseline conditions and identification of heritage assets within the study area are set out in the ES and that the Applicant identified a list of designated and non-designated heritage assets in Appendix 6.1 of the ES with the ES Chapter setting out a detailed description of the assets, including their significance (ER 7.7.1). The ExA considered that information provided in the ES is sufficiently comprehensive to take account of the significance of heritage assets and to understand the impacts of the Proposed Development on significance (ER 15.3.17). The Secretary of State has no reason to disagree with this.

Hilton Park

63. The Secretary of State's notes that the area of greatest dispute was around the Hilton Park, its assessed significance, the impact of the Proposed Development on Hilton Park and the potential effects of the proposed mitigation. The ExA noted that the conclusions drawn in respect of these matters and in terms of Hilton Park overall, flow into matters related to the significance and effect of the Proposed Development on certain designated built assets. These designated built heritage assets are located within the Park and it forms their setting and the conclusions in respect of Hilton Park therefore have implications in terms of those heritage assets' significance and the effect of the Proposed Development thereon (ER 7.7.4). The Secretary of State notes the ExA's view that Hilton Park is not a Registered Park and Garden, and it is not therefore a designated heritage asset in the context of paragraph 5.123 of the NPSNN but that they concluded, based on SSC's definition, that it is reasonable to conclude that Hilton Park can be considered to be a non-designated heritage asset in the context of paragraph 5.125 of the NPSNN (ER 7.7.5).

64. The Secretary of State notes that the Applicant ascribes a medium value to the Park, but that this was questioned by Allow, due to the association with Repton, a late 18th Century landscape gardener. The Secretary of State notes the ExA's consideration of this and conclusion that they are satisfied that the Applicant has ascribed a reasonable value to the asset on the basis of the current information and condition of the Park, its designations and historic associations (ER 7.7.12).

65. The Secretary of State notes that the park has already been subject to development which has affected its significance. The ExA set out that this must be considered in the understanding of its current significance (ER 7.7.10). The ExA acknowledge that the

Proposed Development would result in the introduction of further development within the historic park and would result in the removal, alteration and severance of important elements that contribute to the significance of the historic park (ER 7.7.13).

66. The Secretary of State notes that it was argued that the Applicant had failed to properly consider the additional impact of their proposed mitigation works and that an alternative location for this was suggested (ER 7.7.14-7.7.18). The Secretary of State is content that the Applicant considered different options for delivering this mitigation and its impact and that the Historic Buildings and Monuments Commission for England accepted that there would be harm resultant from the Proposed Development, including from the additional planting, but considered the proposed planting to the west of the mainline was the least intrusive on the historic parkland setting (ER 7.7.16).

67. The Secretary of State notes the Park has already been affected by previous development and overall, the ExA concluded that the effect on the Park, a historic landscape that is a non-designated heritage asset, would, in ES terms be a moderate level of significance and that this would translate into a less than substantial harm in planning terms (ER 7.7.18). The Secretary of State agrees with this assessment.

68. The Secretary of State also notes and agrees with the ExA's conclusion that with regard to designated assets, the Proposed Development would also result in less than substantial harm to the following: Hilton Hall (Grade I), The Conservatory (Grade I), The Coach House and Stable Block (Grade II), The Gate Piers (Grade II) and the Portobello Tower (Grade II) through harm to Hilton Park which contributes to their setting and therefore their significance (ER 7.8.2, ER 15.3.18). The Secretary of State notes that the ExA have not identified any instances where, during construction or operation, the Proposed Development is likely to result in substantial harm to or loss of significance of any designated heritage asset (ER 15.3.20).

69. The Secretary of State notes the ExA concluded that on the Applicant's assessment there is sufficient evidence for the Secretary of State to conclude on archaeological remains as set out in NPSNN paragraphs 5.128 and 5.129. The Secretary of State agrees with the ExA that the evidence demonstrates that there would be no significant effect on archaeological remains with the only effects being those identified in respect of non-designated assets including crop marks and ditches but that this would be of limited or negligible effect (ER 7.7.33, ER 15.3.21).

70. The Secretary of State notes that during the Examination Mr Williams raised concerns that the Applicant had not properly considered and investigated the potential for Kettle Hole's and Holocene deposits (ER 7.5.11). Overall, the ExA was satisfied that there are no documented cases of Kettle Holes in the vicinity of the Proposed Development and application site (ER 7.7.41). The Secretary of State agrees with the ExA's conclusions that there is no substantial evidence to conclude that the Proposed Development would result in damage or destruction of Kettle Holes within the Order limits (ER 7.8.2, ER 15.3.21).

Conclusion

71. The Secretary of State agrees with the ExA's assessment that the need for and the benefits of the Proposed Development would outweigh, in each case, the harm that was identified in relation to designated heritage assets. He also agrees with the ExA that harm

to undesignated heritage assets, including the harm to archaeological assets, would be outweighed by the public benefits of the Proposed Development (ER 15.4.1).

72. The Secretary of State is satisfied with the ExA's view that an appropriate balance has been struck with regard to the provision of tree planting to the west of the mainline in the vicinity of Hilton Hall and the potential effect in terms of the effect on bats (ER 15.4.2). Taking account of the public benefits, the Secretary of State is satisfied with the ExA's conclusion that there is clear and convincing justification for the harm that would result, both individually and collectively, upon designated and undesignated heritage assets. The Secretary of State is satisfied that matters concerning the historic environment would accord with the relevant policy provisions of the NPSNN (ER 15.4.3).

Green Belt

73. The Secretary of States notes the case for the Applicant on this matter as set out in ER 8.3 and for other interested parties in ER 8.4. The Secretary of State notes that paragraph 5.164 of the NPSNN confirms that for the purposes and protection of the Green Belt reference should be made to the Framework (ER 8.2.1). The Framework is therefore an important consideration. The Applicant has identified that the site lies within the West Midlands Green Belt and this is confirmed by SSC and is identified in its Core Strategy (ER 8.6.1).

74. Paragraph 5.178 of the NPSNN notes that national network projects located in the Green Belt may be inappropriate development and that inappropriate development is by definition harmful to the Green Belt and that there is a presumption against it except in very special circumstances. The Secretary of State notes the ExA's conclusions that the Proposed Development would amount to inappropriate development in the Green Belt and would not be covered by any of the exceptions that are set out in paragraphs 145 and 146 of the Framework (ER 8.6.2 to 8.6.4 and ER 15.3.22). The Secretary of State notes that the ExA have also concluded that the Proposed Development will result in harm to the openness of the Green Belt, in terms of both its spatial and visual qualities, and would pose a conflict with one of the five purposes for including land within the Green Belt, as set out in paragraph 144 of the Framework (ER 8.6.21), namely assisting in safeguarding the countryside from encroachment (ER 8.7.2).

75. Like the ExA, the Secretary of State attaches substantial weight to this harm. The ExA noted that there will be a need to assess whether there are the very special circumstances referred to in paragraph 5.178 of NPSNN to justify the inappropriate development. The very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations (ER 8.7.1, ER 15.4.5). The Secretary of State notes the ExA's analysis of this matter set out at ER 15.4.4-15.4.11 and like the ExA gives significant weight to the benefits of the scheme set out at in ER 15.4.8 which include delivery of Government policy and programmes, benefits from a decrease in congestion and improved journey times, the conformity with local Development Policy and allocations for delivery of transport infrastructure and the economic and social benefits from improved connectivity and improved reliability of journeys.

76. The Secretary of State, like the ExA is also satisfied that alternatives have been considered to achieve connection between the M54 and M6 that could have less impact on

the Green Belt but that all would fall within the Green Belt and that slight movements of the junction would also not reduce its impact (ER 8.3.9 and ER 15.4.8). The ExA noted that several of the structures that would impact on the Green Belt openness would replace existing structures that already impact the Green Belt's openness to varying degrees (ER 15.4.9). The Secretary of State agrees with the ExA that the potential harm to the Green Belt, and any other harm, would be clearly outweighed by the other considerations set out above in paragraph 75 and that they amount to very special circumstances (ER 15.4.10). The Secretary of State is therefore satisfied that very special circumstances exist to justify the approval of inappropriate development in the Green Belt and that the Proposed Development would accord with the Green Belt policy set out in paragraph 5.178 of the NPSNN and the Framework (ER15.4.8 to 15.4.10).

Landscape and Visual Effects

77. The Secretary of State notes the ExA's assessment of the Policy frameworks relating to Landscape and Visual Effects set out in ER 9.2, the case for the Applicants set out in ER 9.3 and the position of interested parties in ER 9.5.

78. The Secretary of State notes that the ExA concluded that it is reasonable to identify the overall landscape value in the locality of the Proposed Development as low (ER 9.7.6 and ER15.3.24). The Secretary of State notes that concerns were raised about the impact of the scheme on views from residential properties but that the ExA were satisfied that replacement tree planting and mitigation measures for screening purposes were necessary, reasonable and appropriate (ER 9.7.7-9.7.18 and 15.3.28). The Secretary of State has no reason to disagree with this.

79. The Secretary of State notes the Parish Councils and SSC raised concerns about the appearance of an existing corrugated fence that runs along the south side of Dark Lane and that the Proposed Development should take the opportunity to replace the fence with a more attractive means of enclosure. The Secretary of State notes that following discussions between the various parties and the landowner, Allow, it was agreed that a new fence would be provided and that this is confirmed in the Statement of Common Ground ("SoCG") between the Applicant and Allow. The ExA were satisfied and agreed that the proposed fencing would be a visual improvement to the exiting corrugated fencing (ER 9.7.15-9.7.18).

80. With regard to impacts on the landscape, the Secretary of State notes that the ExA concluded that as a significant infrastructure project it will have an impact and effect on the landscape but given the nature of the overall low value of the landscape, the greatest effect will be during construction which would rise to a moderate effect. He further notes that during operation, with the increasing maturity of the landscaping, the effect on landscape overall would be neutral to slightly adverse. The Secretary of State has no reason to disagree with this conclusion. Further, the Secretary of State is satisfied that the ExA consider that the Applicant has produced a design that has sought to minimise the adverse effect on the landscape to mitigate, as far as reasonable, the effects and that the Proposed Development accords with the aims of NPSNN paragraph 5.149 (ER 9.7.25).

81. With regard to visual impacts, the ExA concluded that the Proposed Development would be a significant element of engineered highway infrastructure in a primarily rural location and would therefore have harmful visual effects but that it incorporates appropriate

mitigation to reduce the overall effects. The ExA also considered that during construction the visual effects would be greater but reduced over time as construction completed and the landscape proposals matured (ER 9.7.31).

82. The Secretary of State notes that overall the ExA's concluded that due to the nature of the Proposed Development it would not be possible to avoid harm altogether to the landscape or visual receptors. The Secretary of State accepts this conclusion and agrees with the ExA that the Proposed Development incorporates suitable design and mitigation which is secured in the Order and therefore accords with the stated aim of paragraph 5.149 of the NPSNN (ER 9.7.32).

Noise and Vibration

83. The Secretary of State has had regard to the ExA's consideration of Policy - the framework on noise and vibration set out in the NPSNN, the Noise Policy Statement for England, the Framework and PPG, the Local Plan and the World Health Organisation Guidelines (ER 10.2), the case for the Applicant in ER 10.3 and the case for other Interested Parties in ER 10.5.

84. The Secretary of State notes that the Parish Councils raised concerns that the line of the Proposed Development is not their preferred route given its proximity and its potential noise and air quality effects on residents in Dark Lane and Park Road but gave no analysis or scientific assessment of the potential effect of the Proposed Development in this regard. They simply assert that they would wish to have such effects minimised (ER 10.7.1-10.7.2).

85. The Secretary of State notes one objector accepted the Proposed Development will not increase the noise impact on properties along the A449 but is concerned that the Proposed development did not take the opportunity to address the pre-existing situation in a more fundamental way, including consideration of de-trunking the A449. The Secretary of State agrees with the ExA that the Proposed Development achieves its objectives and the concerns raised with regard to de-trunking are outside the scope of the Proposed Development (ER 10.7.3).

<u>Construction</u>

86. The Secretary of State notes there is the potential for combined significant effects from construction noise and vibration during the construction works at receptors located in close proximity to the works along the section of A460 which would be modified by the Proposed Development, at the eastern end of Dark Lane, along Hilton Lane and at Brookfield Farm (ER 10.7.20).

87. The Secretary of State notes that with regard to construction, overall the ExA accepts that there will be significant adverse effects on various receptors in close proximity to the works associated with the Proposed Development. In many instances these will be for short periods of time with the exception of the relatively intense period around the three-week closure and works associated with the junction 1 works on the M54. The ExA considered that the Construction Environmental Management Plan ("CEMP") provides for appropriate means to mitigate and reduce as far as possible the adverse effects noting it requires effective communication and liaison with the local community. Given the nature and scale of the proposed works, the Secretary of State agrees with the ExA that the levels

of effects, whilst significant, have been minimised as far as possible and measures put in place to seek to mitigate the effects. These are secured through requirement 4 and the proposed CEMP (ER 10.7.21).

Operational effects

88. The Secretary of State notes that the Applicant divides these effects into short-term and long-term changes. The short-term change being the change between the DS and DM scenarios for the year of opening 2024 and the long-term changes being the difference between the DM scenario at 2024 and the traffic noise levels with the Proposed Development in operation in 2039 (ER 10.7.22).

89. The Secretary of State notes that the ExA agreed with the Applicant's conclusion in the ES that five residential buildings on Hilton Lane west of the Proposed development and one residential building at Brookfield Farm are identified as experiencing significant adverse effects from operational traffic. He further notes that thirty-seven residential buildings close to the existing A460 bypassed by the Proposed Development and 11 residential properties along Old Stafford Road (outside the calculation area) are identified as experiencing a significant beneficial effect. The effect on the other properties within the calculation area experience effects which are identified as not significant. The Secretary of State has no reason to disagree with this (ER 10.7.25 to 10.7.34).

90. Overall, the Secretary of State notes that he ExA considered that the Applicant's approach to noise and vibration assessment is generally acceptable in line with the NPSNN (ER 10.8.1 and ER 15.3.30). The Secretary of State acknowledges that the Proposed Development would not totally avoid significant adverse impacts on health and quality of life from noise. The Secretary of State agrees with the ExA that there would be some remaining significant effects, but that these would primarily relate to construction activity, would mostly be for short durations and that the mitigation measures proposed and secured in the Order would reduce these effects. The Proposed Development would mitigate and minimise other adverse impacts on health and quality of life from noise relating to the Proposed Development and would contribute to improvements to health and quality of life through the effective management and control of noise, where possible (ER 10.7.38). The Secretary of State agrees with the ExA's conclusions set out in ER 10.8.1 and ER 10.8.2 that the Proposed Development would overall meet the aims of the NPSNN and the significant adverse effects on a small number of properties, given the limited duration, should be afforded moderate negative weighting in the overall planning balance.

Socio-Economic Effects

91. The Secretary of State notes that the NPSNN promotes the delivery of environmental and social benefits as part of new schemes and requires any adverse impacts to be mitigated in line with the principles set out in the Framework and the Government's planning guidance (ER 11.2.1). The Secretary of State also notes the Applicant's case set out in ER 11.3 and the case for Interested Parties set out in ER 11.5.

Employment and social facilities

92. The Secretary of State notes the ExA's view that it is clear that the Proposed Development would have a direct detrimental effect on employment in the area from the

loss of the fishing lakes, the use of land for car boot sales, and from the reduction in land use for agriculture but quantifying it was not clear (ER 11.7.1). The ExA however concluded that the direct loss of employment opportunities on the application site would be more than offset by the enhancement of business opportunities from the improved connectivity to the area. (ER 11.9.1 and ER 15.3.37).

Best and Most Versatile Agricultural (BMV) Land

93. The Secretary of State notes there would be a loss of agricultural land described as the Best and Most Versatile ("BMV"). The Secretary of State notes the concerns raise by NE (ER 11.7.14-11.7.19) but that the ExA concluded that requirement 4 in the Order requires the Applicant to consult with NE in respect of a matter relevant to its function. As the effect on BMV land is relevant to NE's function, the ExA are satisfied that the detailed design of the Proposed Development could allow for less harm than is currently identified through discussions between the Applicant and NE. The Secretary of State agrees with the ExA's conclusion that the loss of BMV land should be given moderate weight against the Proposed Development, and that this would be of greater significance than identified by the Applicant (ER 11.7.19-11.7.20).

Mineral reserves

94. The Secretary of State notes that the Proposed Development passes through a Mineral Safeguard Area (ER 11.3.34). Paragraph 204 of the Framework makes clear that policies should encourage the prior extraction of such minerals, where practical and environmentally feasible, if it is necessary for non-mineral development to take place (ER 11.2.6). The Secretary of State notes that the ExA accepted the evidence of the Applicant that the prior extraction on the mainline would delay the Proposed Development and there may be environmental objections. The Secretary of State agrees with the ExA that the non-prior use of minerals in this Minerals Safeguarding Area is neutral in the consideration of the Proposed Development as the land affected would be used for environmental mitigation and drainage ponds which would not sterilise development of the area in the future, should it be necessary (ER 11.7.21-11.7.23 and ER 15.3.39).

Future development potential

95. The Secretary of State notes that there are objections relating to two areas of land, to the south of M6 junction 11 and to the north and west of M54 junction 1, with regard to whether the design of the Proposed Development would prevent future development. The Secretary of State notes that the provision of the Proposed Development would clearly have an effect on whether land could be developed, but the ExA concluded this predominantly relates to compensation and was not a matter for the Examination (ER 11.7.24-11.7.26).

97. The Secretary of State notes that Nurton, in particular, is seeking a reassurance that NH would not object to a proposal for a further bridge across the main line but that NH are not willing to give such an assurance. The Secretary of State agrees with the ExA's consideration that NH's approach is appropriate in that the law, policy and guidance may all change by the time that any proposal was brought forward and to give any assurance may fetter discretion at that time (ER 11.7.27).

98 Overall, the Secretary of State agrees that the positive economic and social benefits of the Proposed Development weigh in favour of the Order being made (ER 15.3.40).

Traffic and Transport

99. The Secretary of State notes the ExA's assessment of the Policy frameworks relating to Traffic and Transport set out in ER 12.2, the case for the Applicant set out in ER 12.3 and the position of Interested Parties in ER 12.5.

General

100. The ExA set out that there was effectively no opposition to the principle of the Proposed Development from any participants in the Examination and that the ExA considered that the current A460 is unsuited for its current purpose of linking traffic between Wolverhampton, Telford and Shrewsbury and the north. It was noted that that the mix of local and longer distance traffic puts pedestrians and other vulnerable road users in close proximity to traffic and that there is a high proportion of HGVs using the route that this adds to risks (ER 12.7.1). It is noted that one objector did not consider the Proposed Development to be bold enough in scope in terms of reducing the impact of traffic on local communities (ER 12.7.4) but the Secretary of State notes and agrees with the ExA that in general terms, the Proposed Development would meet its objectives (IR 12.7.16).

Weight restriction on Cannock Road

101. The Secretary of State notes that local community representatives considered that there should be weight restrictions on some roads post-development (ER 12.7.21). Whilst some were not controversial, effectively redefining the areas of existing restrictions in the vicinity of the application site, the Secretary of State notes the discussion around whether a weight restriction would be justified on Cannock Road. He notes that the Applicant considered such a restriction was not necessary as traffic on Cannock Road would be reduced by approximately 88% following the Proposed Development (ER 12.7.21 and 12.7.22). M6 Diesel was also against the proposal principally for socio-economic reasons and the potential effect on its business (ER 12.5.34). Both argued that SCC should use its powers to bring such a restriction forward once the Proposed Development opens if it considered it necessary (ER 12.5.38).

102. While the M6 Diesel site would be by-passed by the link road, alternative provision at the motorway service area at Hilton Park between M6 junctions 10A and 11 is also by-passed. The Secretary of State notes that although the Applicant considers that the site is not a "destination in its own right' the ExA consider that the nature of the facility is that it is and would be just that. This is because effectively the vast majority of the HGV traffic post-development on Cannock Road south of M6 Diesel would be travelling to or from the M6 Diesel site in Saredon (ER 12.7.21 to 12.7.24).

103. The Secretary of State notes that while there would be an increase in distance for traffic travelling via the M6 Diesel site from M6 junction 11 to M54 junction 1 and vice versa compared with having to return to M6 junction 11 were a weight restriction on Cannock Road to be imposed, he agrees with the ExA's consideration that this increase would not be excessive (ER 12.7.25).

104. The Secretary of State also notes that the Applicant considers that the imposition of a weight restriction could result in HGV traffic driving to the outer limits of the restriction and not being able to turn. However, the Secretary of State notes that the ExA consider that with appropriate advance signage this would be unlikely to happen and that traffic travelling from the south would be able to continue west along The Avenue, which does not have an existing weight restriction, and from the north would be able to turn through the M6 Diesel site. Whilst the Applicant also considered that Weight Restrictions would be challenging to enforce and were unlikely to be supported by the Police, the ExA said that enforcement would be no different from any other weight restriction, of which there are already existing examples in the area, and that they had no evidence that the Police would object to such a proposal (ER 12.7.26 and ER 12.7.27). The ExA concluded that the benefits to the local community of further significantly reducing HGV traffic south of the M6 Diesel site in terms of safety, convenience, noise reduction and air quality improvements, and reductions in severance to local communities is such that a weight restriction is appropriate. The Secretary of State agrees with this and accepts the changes to the Order to this effect (ER 12.7.25).

Signage relating to M6 Diesel

105. The Secretary of State notes that M6 Diesel (Saredon Filling station) considered that signage to it should be installed on the M6 junction 11 so as to avoid confusion with the gyratory and consequential potential highway risks (ER 12.5.39). The Applicant considered that M6 Diesel is not a motorway truckstop or service area and cannot be signed from the mainline of either motorway. The ExA noted that M6 Diesel was not requesting this, only on the gyratory and considered that providing signage on the M6 junction 11 gyratory would result in more convenience for all users of the gyratory, and if included within the overall signage design would not lead to visual clutter or harm. The Secretary of State agrees with this conclusion and the ExA's associated amendments to the Order (ER 12.7.30-12.7.31).

Other matters

106. The Secretary of State notes that SCC requested that Shareshill layby located to the south of Hilton Lane on the east side of Cannock Road be closed. The Secretary of State notes the changes to Cannock Road (including the weight restriction discussed above) would be likely to result in less traffic passing the layby and that it is therefore less likely to be used as a parking area. The Secretary of State agrees with the ExA's view that there is no need as part of the Proposed Development to close the layby and its closure is not needed to meet the objective of the Proposed Development (ER 12.7.33-12.7.35).

107. With regard to Non Motorised User ("NMU") Routes, the Secretary of State notes the original NMU route north/south through M54 junction 1 (12.3.35-42) and that some parties wished to see enhancements to the NMU routes between Featherstone and the south of M54 junction 1. He further notes that the ExA agree with them that the original arrangements requiring pedestrians, in particular, to travel effectively in the 'wrong direction' would be counter intuitive to most users who would therefore be more likely to utilise vehicles. The ExA highlighted that while a direct link would reduce the distances to be travelled, such a route needs to have the appearance of being safe for any users and also convenient. The alternative bridge and underpass routes that the Applicant investigated are considered not to be appropriate for these reasons. The Secretary of State agrees with the ExA's consideration that the ultimate solution proposed by the Applicant of

a pedestrian route to the Featherstone west roundabout from, effectively, opposite the junction of The Avenue with Cannock Road, would be an effective compromise and would appropriately mitigate the effects of the Proposed Development on pedestrians in this area (ER 12.7.36-12.7.39). The Secretary of State notes the other matters relating to NMUs set out in 12.7.40-12.7.51 and agrees with the ExA that no other changes are required to the NMU routes to make the Proposed Development acceptable (ER 12.8.1).

108. The Secretary of State notes that M6 Diesel has expressed concern about traffic being able to easily exit its site, as it would have to turn right across the flow of traffic which at present can cause delays both to those exiting the site and on the A460 when HGVs slowly exit. However, with the significant reduction in traffic on Cannock Road, the ExA considered that this would not be a problem post-development, as conflicts would infrequently occur. The Secretary of State has no reason to disagree with this. The Secretary of State also agrees with the ExA that the Environmental Mitigation Plans, together with appropriate consultation mechanisms in the Order and the Outline Environmental Management Plan, would ensure that undesirable fly-parking and fly-tipping would be unlikely to take place. (ER12.7.50-12.7.51).

Conclusions

109. Taking all the relevant documents and policies into account, the Secretary of State agrees with the ExA's conclusions as set out in ER 12.8.1. The Secretary of State also agrees that the Proposed Development would deliver a significant benefit to the strategic road network of which significant weight is attached (ER 15.3.41) and that taking all matters in to consideration, traffic and transportation matters weigh substantially in favour of the Order being made (ER 15.3.46).

Water Environment

110. The Secretary of State notes the ExA's assessment of the Policy frameworks relating to Water Environment set out in ER 13.2, the case for the Applicant set out in ER 13.3 and the position of Interested Parties in ER 13.5.

General approach and analysis

111. The Secretary of State notes that overall, the ExA, are satisfied with the general approach, baseline and analysis of the Flood Risk Assessment ("FRA"), drainage strategy, potential for contamination and Water Framework Directive Assessment. There have been no substantive matters left unresolved between the Applicant and main Interested Parties in this regard. The Lead Local Flood Authority ("LLFA") and the Environment Agency ("EA") confirm, in their respective SoCG's with the Applicant, that outstanding issues were resolved (ER 13.7.1).

112 The Secretary of State notes the discussion around the flood risk associated with works impacting Watercourse 2, Lower Pool and Watercourse 5 (ER 13.7.2-13.7.16) and that risks will be minimised and mitigated through the Order and that the Proposed Development would meet the appropriate tests in the NSPNN with regard to flood risk (ER 13.8.1).

113. The Secretary of State notes that although the majority of the Proposed Development site is within Flood Zone 1 the Proposed Development alignment passes through Flood Zone 2 and Flood Zone 3 areas. The NPSNN paragraph 5.105 advises that if there is no reasonable available sites in these Flood Zones then national networks infrastructure projects can be located in Flood Zone 3, subject to the Exception Test. In this case the project is for a linear infrastructure connecting two points. The majority of the Proposed Development is across Flood Zone 1 but includes Flood Zone 2 and 3 areas. The ExA noted that these include areas located close to junction 11 of the M6 and which cannot be avoided by the Proposed Development. The Proposed Development is therefore acceptable in the context of the Sequential Test if it meets the Exception Test (ER 13.7.17).

114. The Secretary of State notes that the information presented within the FRA further demonstrates that mitigation measures have been incorporated into the design to ensure that the new road will be at a low risk of flooding and would be safe for the lifetime of the development. Given the limited effect on flood risk, this risk is significantly outweighed by the sustainability benefits to the community that would result from the Proposed Development. The Secretary of State agrees with the ExA that on this basis the Proposed Development would meet the two elements of the Exception Test as set out in paragraph 5.108 of the NPSNN (ER 13.7.18-13.7.19).

Water Framework Directive ("WFD")

115. The Secretary of State notes that in the context of the application the Applicant has assessed seven water courses that are part of the catchment of two water bodies designated under the WFD, the River Penk from Source to Saredon Brook and Saredon Brook from Source to River Penk (ER 13.7.27).

116. The Secretary of State notes that the EA and the LLFA are satisfied with the WFD assessment and that the Proposed Development would be WFD compliant. The Secretary of State agrees with the ExA that he has no evidence before him to reach a different conclusion and is therefore satisfied that the Proposed Development would be WFD compliant (ER 13.7.29-13.7.31) and would not result in a significant detriment to the overall condition and value of the potentially affected water bodies (ER 13.8.1).

Habitats Regulations Assessment

117. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"), the Secretary of State (as the Competent Authority) is required to consider whether the scheme would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European Site (ER 14.1.4). The Development is not directly connected with or necessary to the management of any European Site considered within the Applicant's assessment (ER 14.3.2). The Secretary of State must therefore undertake an Appropriate Assessment if likely significant effects on the conservation objectives of a European Site, either alone or in combination with other plans or projects, cannot be ruled out (ER 14.4.1). In the light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in combination with other plans and projects, adversely affect the integrity of such a European Site, unless there are no feasible alternatives or imperative reasons for overriding public interest apply.

118. The Secretary of State notes that the Applicant provided a HRA No Significant Effects Report ("NSER") as part of the application which was subsequently updated (ER 14.3.1). The Secretary of State notes that the NSER identified two European sites as being relevant considerations in terms of the Habitats Regulations, which are located 5.9km east and 6.5km north of the Proposed Development, and that these were screened into the assessment on the basis that they were susceptible to changes in air quality:

- The Cannock Chase Special Area of Conservation ("SAC"); and
- The Cannock Extension Canal SAC (ER 14.3.5).

119. In its Relevant Representation, NE stated that satisfactory information had been submitted to allow them to advise the Secretary of State that the Proposed Development would have no likely significant effects ("LSE") on the Cannock Chase SAC but raised concerns in relation to the Cannock Extension Canal SAC and indirect impacts on air quality resulting from the Proposed Development (ER 14.4.9-14.4.10). The Secretary of State notes that discussion took place between NE and the Applicant and further information was provided and that it was confirmed by NE at Deadline 4 that they agreed with the Applicant's conclusion that there would not be any LSE on the Cannock Extension Canal SAC. This was confirmed in the final SoCG submitted by the Applicant at Deadline 8 (ER 14.4.24-14.4.25).

120. The Secretary of State notes that the ExA concluded that the correct European sites and qualifying features had been identified for the purposes of the assessment (ER 14.4.5). The Secretary of State also notes that the ExA having given careful consideration to all relevant evidence and tested the position on HRA questions, said that they are satisfied that there are no likely significant effects of the Proposed Development on any European sites or their qualifying features (ER 14.4.26). The Secretary of State agrees with the ExA's view that there is no need to undertake an Appropriate Assessment (ER 14.6.1).

Overall Conclusions

121. As set out above at paragraph 109, the Secretary of State agrees with the ExA that the Proposed Development would make an important contribution to the improvement and enhancement of the existing strategic road network, meeting one of the key objectives of the NPSNN. As set out above and highlighted by the ExA, significant economic benefits would result from the Proposed Development, along with other benefits in terms of overall improvements for air quality. Like the ExA, the Secretary of State attaches very significant weight to the benefits of the Proposed Development and compliance with a key policy objective of the NPSNN (ER 15.4.13).

122. The Secretary of State notes the ExA's conclusions that subject to consideration of the effect on the Sixth Carbon Budget, the Carbon Budget Order 2021, the 'Decarbonising Transport: a better, greener Britain', and the cumulative effects of carbon emissions, there is a convincing case for development consent to be granted (ER 15.4. 22). The Secretary of State's consideration of all these matters are set out above. The Secretary of State is satisfied that taking all matters into consideration, carbon emission matters are not a reason for refusing the Order.

123. The Secretary of State notes the ExA's overall conclusions on the impacts of the Proposed Development at ER 15.4.17-15.4.18 and agrees with the ExA that although some

harmful impacts are likely to result, these are considered to be within the scope of the relevant policy provisions in the NNNPS (ER 15.4.20). The Secretary of State is also, like the ExA, satisfied that the Applicant has taken a reasonable and proportionate approach in seeking to minimise harm arising from the Proposed Development both during the construction and operational phases (ER 15.4.15). The ExA concluded and the Secretary of State agrees that the benefits of the Proposed Development, particularly in terms of addressing existing congestion, improving safety and promoting economic benefits for the region, would outweigh the impacts the ExA identified in relation to the construction and operation of the Proposed Development. Consequently, the potential harm is substantially outweighed by the benefits of the Proposed Development in meeting the law and Government policy as set out in section 104 of the 2008 Act and the NPSNN (ER 15.4.21). The Secretary of State's consideration of all these matters are set out above. The Secretary of State agrees that taking all relevant matters into consideration, there is a convincing case for Development Consent.

Compulsory Acquisition ("CA") and Related Matters

124. Section 122 of the 2008 Act enables a DCO to include powers of compulsory acquisition of land. Section 122(2) requires that the land to be compulsorily acquired must be required for the development to which the development consent relates, is required to facilitate or be incidental to that development, or land which is to be given in exchange for the Order land. Section 122(3) of the 2008 Act requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. Section 123 of the 2008 Act requires that one of three procedural conditions must be met, namely: (i) the application for the order included a request for CA of the land to be authorised, (ii) all persons with an interest in the land consent to the inclusion of the provision, or (iii) the prescribed procedure has been followed in relation to the land. In addition, a number of general considerations from the former Department of Communities and Local Government ("DCLG") CA guidance need to be addressed (ER 16.5.1-16.5.4).

125. The Secretary of State notes the ExA's consideration of the powers sought by the Applicant for the CA and Temporary Possession ("TP") of land and the imposition of Permanent Rights over land in Chapter 16 of its Report.

126. The Secretary of State notes that the ExA addressed the situation of ten individual objections outstanding at the end of the Examination in ER 16.8.3-16.8.87. The Secretary of State notes that a SOCG was signed with Allow Limited and Ian Simkin and Adrian Simkin but matters remain unresolved in respect of whether CA and TP of land is justified (ER 16.8.3 and 16.8.32). The Secretary of State also notes that there are unsigned SoCG's between Barry Jones and Valerie Jones, Elizabeth Stella Whitehouse and Stella Arblaster, Michael John Alfred Byard, Nigel Simkin and Paul Simkin, William Bibbey and Nurton Development (Hilton) Limited and their objections remain unresolved. In relation to the objection from Danielle Leigh Killingworth the Secretary of State notes that at the close of Examination, the ExA noted that the Applicant was continuing to discuss matters with the objector. The Secretary of State notes in respect of all cases relating to individual objections, that the ExA are of the view that there is a compelling case in the public interest for the CA, TP with Permanent Rights or TP of the plots of land in question and that it is justified to enable implementation of the Proposed Development. The ExA also concludes that the tests and conditions set out in section 122 and section 123 of the 2008 Act would be met (ER 16.11.1). The Secretary of State agrees with that view.

127. The Secretary of State notes the ExA's conclusion that were development consent to be granted, the ExA would be satisfied that there would be a need to acquire the rights and interests in the CA land, and on that basis the Proposed Development would comply with section 122(1) and (2) of the 2008 Act (ER 16.9.3). The ExA was satisfied that the Applicant has sought to acquire land by negotiation, and has modified the Proposed Development by way of material and non-material changes to reduce the extent of the land for which it seeks CA or TP in accordance with paragraph 8 of the DCLG Guidance (ER 16.9.4). The ExA also concluded that there is adequate funding in place to ensure delivery of the Proposed Development (ER 16.9.6). The Secretary of State agrees with those conclusions.

128. With regard to Special Category Land, the Secretary of State notes that the National Trust has agreed in a land agreement with the Applicant and confirmed in a Planning Obligation under section 106 of the Town and Country Planning Act 1990 that it is content for its land to be utilised for compensation planting (ER 16.8.64). The Secretary of State also notes that plot 3/7b belonging to the National Trust is included in the application site (ER 16.2.20), but that no objection has been made by the National Trust meaning s130(2) of the 2008 Act does not apply (ER 16.8.65). The Secretary of State notes the ExA's consideration of plot 1/2, which is owned by a Statutory Undertaker, Severn Trent Water Limited and which would be impacted by the Proposed Development but that the ExA consider that this would not affect Severn Trent's statutory function. The ExA were therefore satisfied that it could be acquired and not replaced without the serious detriment to the carrying out of the undertaking (ER 16.8.66) and the Secretary of State has no reason to disagree with this.

129. The Secretary of State notes that there are no Crown interests in land which is subject to CA (ER 16.2.13).

130. In respect of Human Rights considerations, the Secretary of State notes that the Applicant acknowledges that the Order engages a number of the articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR") but submits that such interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest (ER 16.10.1). The Secretary of State notes the ExA's considerations that in each case while rights would be interfered with, that interference would be proportionate and justified in the public interest, and that the CA and TP with Permanent Rights and TP would be compatible with the Human Rights Act and the ECHR (ER 16.10.5).

131. The Secretary of State has had regard to the benefits of the Development and is satisfied that with regard to the request for CA, Permanent Rights and TP powers there is a compelling case in the public interest and the CA powers sought would accord with section 122(2) and (3) of the 2008 Act (ER 16.11.1).

Protective Provisions

132. The Secretary of State notes that during the Examination Representations were made over the form of Protective Provisions to be contained in Schedule 9 to the preferred Order and these are addressed in Chapter 17 of the Report. The Representations were from Cadent Gas Limited, South Staffordshire Water Plc, Severn Trent Water Limited and

Western Power Distribution. The Secretary of State notes that agreement was reached between South Staffordshire Water and the Applicant on 23 April 2021 which enabled them to withdraw their Representation. The Secretary of State consulted the Applicant and Cadent Gas Limited, Severn Trent Water and Western Power on 9 August 2021 seeking an update on agreement of the Protective Provisions. The Applicant confirmed in their response of 23 August 2021 that agreements had been reached with all three Parties. On the 21 September 2021 the Secretary of State consulted those parties seeking confirmation that agreements had been reached. The Secretary of State notes that Severn Trent Water confirmed in their letter of 10 August that an agreement had been reached and their representations were withdrawn. Cadent Gas Limited confirmed in their letter of 6 September that agreement had been reached and they were withdrawing their representations and Western Power Distribution confirmed in their letter of 1 October that agreement had been reached and they were withdrawing their objections.

Late Representations (outside formal consultation)

133. Since the close of the Examination the Secretary of State has received a number of late representations, all of which are published on the Planning Inspectorate's website alongside this letter.

134. The Secretary of State does not consider that anything in the correspondence constitutes new evidence, or raises a new issue, which needs to be referred to interested parties before he proceeds to a decision. It does not cause him to take a different view on the matters before him than he would otherwise have taken based on the ExA's report.

General Considerations

Equality Act 2010

135. The Secretary of State has had regard to the public-sector equality duty and the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic or persons who do not (section 149(1) of the Equality Act 2010) (ER 11.8.1).

136. The Secretary of State notes that the ExA agrees with the Applicant that due to the nature of the project there would be no positive or negative effects for those with protected characteristics of sex, religion or belief, race, sexual orientation, gender reassignment, pregnancy and maternity, and marriage and civil partnership. The Secretary of State also notes that the ExA agree with the Applicant that the Proposed Development would have a positive effect on those with the protected characteristics of age and disability for the reasons set out in ER 11.8.3-11.8.4 and agrees with this conclusion.

137. Overall, the Secretary of State does not consider that a decision to grant development consent would have significant differential impacts on any of the protected characteristics referred to in section 149(7) of the Equality Act 2010. On that basis there is no breach of the public sector equality duty (ER 18.2.12).

Natural Environment and Rural Communities Act 2006

138. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 ("the 2006 Act") must have regard to the purpose of conserving biodiversity and, in particular to the United Nations Environmental Programme on Biological Diversity of 1992, when granting development consent.

139. Secretary of State notes that the ExA has had regard to the 2006 Act and the biodiversity duty in the relevant sections of the Report (ER 3.4.6). In reaching a decision to grant development consent, the Secretary of State has had due regard to conserving biodiversity.

The Secretary of State's overall conclusions and decision

140. For all the reasons set out in this letter, the Secretary of State has decided to grant development consent, subject to the changes in the Order mentioned above. The Secretary of State is satisfied that none of these changes constitutes a material change and is therefore satisfied that it is within the powers of section 114 of the 2008 Act for the Secretary of State to make the Order as now proposed.

Modifications

141. The Secretary of State has made the following modifications to the Order:

- article 2 (interpretation) – the definition of 'electronic transmission' has been amended to reflect the position taken by the Secretary of State;
- article 2 (interpretation) – the definition of the 'Secretary of State' has been removed as this is an unnecessary definition;
- article 2 (interpretation) – the definition of 'undertaker' has been amended to reflect 'National Highways Limited';
- article 6 (limits of deviation) – the text in the tailpiece of that provision has been amended regarding the wording of the environmental effects;
- article 8(4)(b) and (c) (consent to transfer benefit of Order) – the Secretary of State has understood that the intention is for either Severn Trent Water Ltd and South Staffordshire Plc (or both) to obtain the powers to undertake Work No. 69(1);
- article 9 (application of the 1991 Act) – paragraph (8) has been removed. The Secretary of State notes that this provision appears to be unprecedented. While reference to precedents have been set out in the explanatory memorandum none of them have a provision that is the equivalent to paragraph (8). The explanatory memorandum details that the provision removes the need for a permit to be obtained for the works authorised by the Order. It is further sets out that given the scale of the works proposed by the Order that it is appropriate for those works to be regulated by the specific authorisation in the Order. However the Secretary of State is aware that many of the highways applications for a development consent order have a corresponding scale of works and it is unclear to the Secretary of State why this Order should be distinguished from the Orders which have not felt the need to include a provision that is the equivalent to paragraph (8);
- article 10 (construction and maintenance of new, altered or diverted streets and other structures) – paragraph (6) has been removed. The Secretary of State is unclear why this provision is needed. The explanatory memorandum sets out an explanation in relation to paragraph 3(b). However it seems to the Secretary of State that paragraphs (1) to (3) clearly set out the responsibilities for maintenance

and when those responsibilities are to start and on that basis the Secretary of State does not regard the inclusion of this paragraph as being necessary;

- article 11 (classification of roads etc.) – paragraph (8) has been reworked. The Secretary of State notes that this provision appears to seek to create a new traffic regulation order but without making reference to the Road Traffic Regulation Act 1984. It is under this Act that road traffic regulation orders on local highways are usually made. Speed limits on local highways (other than on restricted roads) are usually set by speed limit orders made under section 84 of that Act. This has resulted in the table in Part 7 of Schedule 7 also being reworked;
- article 23 (compulsory acquisition of rights and imposition of restrictive covenants) – paragraph (6) has been removed. The Secretary of State notes that this provision is unprecedented. The explanation provided in the explanatory memorandum is that this provision is to ensure the undertaker's powers to create rights extends to the power to create rights for the benefit of third parties such as statutory undertakers. This is to ensure that statutory undertakers continue to have appropriate rights of maintenance for their apparatus where that apparatus has been diverted into alternative third party land. The explanatory memorandum cites precedents for article 23 but those precedents do not include a provision equivalent to paragraph (6). The Secretary of State is not sufficiently satisfied by the provided explanation on the need for such a provision.
- Schedule 3 – The table in Part 7 has been amended to take account of the amendments made to article 11(8). The Examining Authority inserted Part 8 to make provision for the weight limit on Cannock Road. The Examining Authority noted that as a result of this change, the Classification of Roads Plans will need to be amended as Point 4.37 is shown but Point 5/8 will need to be added.

Challenges to decision

142. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

143. The Secretary of State's decision on the application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the 2017 Regulations.

Yours faithfully

Rosalind Wall

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the statement of reasons (decision letter) is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The decision documents are being published on the Planning Inspectorate website at the following address:
https://infrastructure.planninginspectorate.gov.uk/projects/west-midlands/m54-to-m6-link-road/

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655)

Appendix B.11 M54 to M6 Link Road (TR010054-001200) – Extracts from Examiners' Report (21 July 2021)

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

M54 to M6 Link Road

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for
Transport

Examining Authority

Robert Jackson BA MPhil DMS MRTPI MCMI (Lead Member)

Kenneth Stone BSc (Hons) DipTP MRTPI

21 July 2021

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OVERVIEW

File Ref: TR010054

The application, dated 30 January 2020, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 31 January 2020.

The Applicant is Highways England.

The application was accepted for Examination on 28 February 2020.

The Examination of the application began on 21 October 2020 and was completed on 21 April 2021.

The development proposed comprises a link road between the M54 and M6, providing a link between Junction 1 of the M54, M6 North and the A460 to Cannock.

Summary of Recommendation:

The Examining Authority recommends that, subject to the Secretary of State satisfying themselves on the point set out in paragraph 18.4.1, the Secretary of State should make the Order in the form attached.

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The Planning Inspectorate

ERRATA SHEET – M54 to M6 Link Road - Ref TR010054

Examining authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport, dated 21 July 2021

Corrections agreed by the Examining Authority prior to a decision being made

Page No.	Paragraph	Error	Correction
3	1.4.5	Incorrect word in penultimate line.	Replace "efficacy" with "efficiency".
15	1.9.2	Incorrect word in final sentence.	Replace "SoS" with "Secretary of State for Transport".
19	2.1.6	Missing word in line 10.	Insert the word "listed" after "Grade II".
21	2.2.11	Missing word in line 9.	Insert the word "and" after the second use of the word "M54".
22	2.2.20	Missing comma in first sentence.	Insert a comma after the word "Avenue".
49	4.6.19	Missing word in line 3.	Insert the word "the" after the word "for".
51	4.8.4	Extra word in line 3.	Remove the second "that".
65	5.5.2	Extra word in line 2	Remove the word "and".
67	5.5.11	Incorrect word in line 2	Replace the word "on" with "in".
68	5.7.1	Missing word in line 5	Insert the word "a" after in.
148	8.3.35	Missing space in line 2	Add space between "and" and "144".
169	9.7.3	Incorrect word in line 2	Replace the word "where" with "were".
169	9.7.4	Missing word in first line.	Insert the word "to" after the second use of the word "was".
187	10.3.33	Missing word in line 5.	Insert the word "would" after the word "slip".
245	12.7.29	Rephrase to aid clarity.	Replace "a to be bypassed service area" with "a service area that is to be bypassed"

1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

1.1.1. The application for a link road between the M54 and M6, providing a link between Junction 1 of the M54, M6 North and the A460 to Cannock (the Proposed Development) (TR010054) was submitted by Highways England (the Applicant) to the Planning Inspectorate on 31 January 2020 under section (s) 31 of the Planning Act 2008 (as amended) (PA2008) and accepted for Examination under s55 of the PA 2008 on 28 February 2020 [PD-003].

1.1.2. The Proposed Development comprises:

- Replacement of the existing M54 junction 1 with free flow slip roads between the new link road and the M54 and construction of three new roundabouts to maintain connectivity with the existing local road network.
- Construction of a new dual carriageway between M54 junction 1 and the M6 junction 11. The alignment of the carriageway would be located to the east of the existing A460 and the villages of Featherstone, Hilton and Shareshill and west of Hilton Hall.
- The stopping up of Dark Lane between the final property and the junction with Hilton Lane.
- The realignment of Hilton Lane on a bridge over the mainline of the link road on a similar alignment.
- Provision of an accommodation bridge and access track across the mainline of the link road to retain access to severed land to the east of the link road.
- Enlargement of the M6 junction 11 signalised roundabout to accommodate a connection to the new link road and realign existing connections with the A460 and M6. Two replacement bridges would be required over the M6 to provide an increase in capacity from two lanes to four lanes of traffic on the roundabout. This work would raise the height of the junction by approximately 1.5 metres (m).

1.1.3. The site of the Proposed Development is shown in the Location Plan [AS-006] and Land Plans, final updated versions of which were received at Deadline (D) 6 [REP6-004]. The site as amended (see below) lies mostly within the administrative county of Staffordshire, and the district of South Staffordshire, although a small part is within the unitary authority area of the City of Wolverhampton Council (CWC) and is wholly in England.

1.1.4. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) for the Ministry of Housing, Communities and Local Government (MHCLG) in its decision to accept the application for Examination in accordance with s55 of the PA2008 [PD-003].

1.1.5. On this basis, the Planning Inspectorate agreed with the Applicant's view stated in the application form [APP-003] that the Proposed Development

is an NSIP as it is wholly in England, Highways England (HE), a strategic highways company, will be the highway authority and the area of development is approximately 199.3 hectares[1] (ha) (greater than 12.5ha) and the speed limit for any class of vehicle is 50 miles per hour (mph) or greater and so requires development consent in accordance with s31 of the PA2008. The Proposed Development therefore meets the definition of an NSIP set out in s14(1)(h) and s22(1), (2), and (3) of the PA2008.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 4 June 2020, Robert Jackson and Kenneth Stone were appointed as the Examining Authority (ExA) for the application under s64 and s65 of the PA2008 [PD-004].

1.3. THE PERSONS INVOLVED IN THE EXAMINATION

1.3.1. The persons involved in the Examination were:

- persons who were entitled to be Interested Parties (IPs) because they had made a Relevant Representation (RR) or were a Statutory Party who requested to become an IP;
- Affected Persons (APs) who were affected by a Compulsory Acquisition (CA) and/or Temporary Possession (TP) proposal made as part of the application and objected to it at any stage in the Examination; and
- Other Persons, who were invited to participate in the Examination by the ExA because they were either affected by it in some other relevant way or because they had particular expertise or evidence that the ExA considered to be necessary to inform the Examination.

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

1.4.1. The Examination began on 21 October 2020 and concluded on 21 April 2021.

1.4.2. The principal components of and events around the Examination are summarised below. A fuller description, timescales and dates can be found in Appendix A. This is the final version of the timetable as it evolved to take account of events which occurred during the Examination.

Matters prior to the Preliminary Meeting

1.4.3. On 29 May 2020 the Applicant wrote to the Case Team [AS-004] in response to the s51 advice sent out after the application had been accepted [PD-001]. The Applicant indicated that it wished to amend the application by removing two areas of land in the administrative area covered by Shropshire Council and seek to resolve a number of errata and make updates to address consultee concerns. To avoid duplication,

[1] Taken by summing the areas set out in Table 2 of the Agricultural Land Classification and Soil Resources [APP-192].

the evolution of the extent of the Proposed Development is set out in Sections 2.2 and 2.3 of this report.

1.4.4. Due to the COVID-19 pandemic there was a greater than normal period of time between the acceptance of the application and the Preliminary Meeting (PM). The ExA was conscious of the need to try to ensure the Examination was completed as soon as possible, in line with the Secretary of State (SoS) for Ministry of Housing, Communities and Local Government's (MHCLG) Written Ministerial Statement of 13 May 2020.

1.4.5. To this end, on 20 July 2020 the ExA wrote to all IPs and Statutory Parties to ask views as to whether the Examination could be held 'virtually' rather than using a traditional face-to-face format (the 'Progress Note') [PD-005] and set out 'Frequently Asked Questions' [PD-006]. The letter also set out an Initial Assessment of the Principal Issues [PD-007], a preliminary list of Statements of Common Ground (SoCGs) [PD-008] and a list of tasks to assist the efficacy of the Examination [PD-009]

1.4.6. At the same time, the ExA set out its Written Questions and Requests for Information [PD-010] (often referred to as 'First written questions'), although a date for responses was not set as this would need to be discussed at the PM.

1.4.7. On 28 July 2020 the Applicant wrote to the ExA indicating that it wished to make a number of changes to the Proposed Development [AS-043] and asking for the ExA's advice on this matter. The ExA wrote back on 12 August 2020 [PD-011] giving general advice.

The Preliminary Meeting

1.4.8. In light of responses to its letter of 20 July 2020, the ExA concluded that, the PM and, at least initially, hearings could be held on-line via the medium of Microsoft Teams. To that end, on 20 August 2020, the ExA wrote to all IPs, Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) (The Rule 6 Letter) inviting them to the PM [PD-012].

1.4.9. In case any party was unable to readily participate in a 'virtual' PM it was decided that the PM would be held in two parts. Following the Part 1 Meeting, the recording of that would then be posted on the relevant website. This would allow any party to make Written Representations (WR), which the ExA could then take into account in finalising the Examination arrangements, or ask to attend the Part 2 meeting virtually.

1.4.10. The letter outlined:

- the arrangements and agenda for the PM;
- the main issues for the Examination;
- the draft Examination Timetable;
- notification of an Open Floor Hearing (OFH) to be held early in the Examination;
- availability of RRs and application documents; and

- the ExA's Procedural Decisions.

1.4.11. The PM took place in two parts on 1 and 20 October 2020 as virtual events. Video recordings [EV-004, EV-005, and EV-008] and a note of the meeting [EV-010] were published on the Planning Inspectorate National Infrastructure website[2].

1.4.12. The ExA's Procedural Decisions and the Examination Timetable took full account of matters raised at the PM. These were provided in the Rule 8 Letter [PD-014], dated 22 October 2020.

Key Procedural Decisions

1.4.13. The Procedural Decisions set out in the Rule 8 Letter related to matters that were confined to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development. Furthermore, these were generally complied with by the Applicant and relevant IPs. The decisions can be viewed in the Rule 8 Letter [PD-014] and so there is no need to reiterate them here.

1.4.14. As described below, to accommodate amendments put forward by the Applicant and changes based on public health restrictions in light of the COVID-19 pandemic, the ExA made a number of changes to the Examination Timetable following the issuing of the Rule 8 Letter [PD-014]. These are set out in a number of Procedural Decisions [PD-018, PD-020, PD-021, PD-022, and PD-024]. The Final Examination Timetable is set out in Appendix A of this report.

Site Inspections

1.4.15. Site Inspections are held in PA2008 Examinations to ensure that the ExA has an adequate understanding of the Proposed Development within its site and surroundings and its physical and spatial effects. However, due to the COVID-19 pandemic, it was not possible to hold these fully in line with the previously held convention for NSIPs.

1.4.16. Where the matters for inspection can be viewed from the public domain and there are no other considerations such as personal safety or the need for the identification of relevant features or processes, an Unaccompanied Site Inspection (USI) is held. However, where an inspection must be made on land requiring consent to access, there are safety or other technical considerations and/ or there are requests made to accompany an inspection, an Accompanied Site Inspection (ASI) is held.

1.4.17. The ExA was able to hold an USI in June 2020. Initially, it was proposed to hold an ASI in December 2020, and participants were asked to make suggestions for where they would like the ExA to view the site. However, as the public health situation changed the ASI was initially postponed by a Procedural Decision dated 19 November 2020 [PD-021] to February

[2] https://infrastructure.planninginspectorate.gov.uk/projects/west-midlands/m54-to-m6-link-road

2021. In early 2021, it became clear that an ASI was not going to be possible in a conventional format so the ExA took a Procedural Decision, communicated by letter dated 18 January 2021 [PD-020], to cancel the ASI and look to alternatives.

1.4.18. In the letter of 18 January 2021 [PD-020], while emphasising its desire to visit the site, we considered that contingency arrangements needed to be explored. We suggested both an Unmanned Aerial Vehicle (often referred to as a 'drone') and "360° photography". We also set out the locations that we wished to visit and thus have photographs taken, but asked participants if there were other locations we should visit.

1.4.19. The Applicant explained that an Unmanned Aerial Vehicle was not possible due to safety concerns [REP5A-001] but indicated that 360° photography would be possible. Other representations [REP5A-002] and [REP5A-003] on the use of photography emphasised a preference for physical site inspections, and requested that video photography took place at a particular location.

1.4.20. As the public health situation improved, the ExA concluded that it was able to undertake a Site Inspection, but on the basis of access being facilitated by the landowners, and there would be no interaction.

1.4.21. However, by undertaking the Site Inspection in this format, meant that parties would not have been able to point out particular matters in the same way as they would have been able to at a conventional ASI. Therefore, we decided to retain submission of the 360° and video photography to allow IPs to highlight particular features that they wanted us to note. This was communicated to parties in a Procedural Decision on 23 February 2021 [PD-024].

1.4.22. The video and 360° photography were submitted by the Applicant at D6A and can be viewed at [REP6A-001 and REP6A-002], with the 360° photography seen more effectively through a website https://app.holobuilder.com/app/?p=f9280e39-443f-4521-9b18-7e7ab56d2f61&m=player&s=1615457203663&d=2i50[3]. This website also includes an inset identifying the locations where the photographs were taken.

1.4.23. The ExA held the following USIs:

- USI1, 16 June 2020 [EV-001];
- USI2, 16 March 2021 [EV-024];
- USI3, 17 March 2021 [EV-024].

[3] There was a misunderstanding as to how the 360° photography could be best displayed. Consequently, the ExA explained both via the project website and a Rule 9 letter [PD-028] that comments could be made at D8 as well as previously. Further, it transpired that email circulation of this letter was delayed, so the ExA made a further Procedural Decision to permit any further comments at D9 [PD-029].

A site note providing a procedural record of each USI can be found in the Examination Library (EL) under the above references.

1.4.24. We have had regard to the information and impressions obtained during our site inspections in all relevant sections of this report.

Hearing Processes

1.4.25. Hearings are held in PA2008 Examinations in two main circumstances:

- To respond to specific requests from persons who have a right to be heard - in summary terms:
  - where persons affected by CA and/ or TP proposals object and request to be heard at a Compulsory Acquisition Hearing (CAH); and/ or
  - where IPs request to be heard at an OFH.
- To address matters where the ExA considers that a hearing is necessary to inquire orally into matters under examination, typically because they are complex, there is an element of contention or disagreement, or the application of relevant law or policy is not clear.

1.4.26. We held a number of hearings to ensure the thorough examination of the issues raised by the application. As set out above, all were undertaken virtually through the medium of Microsoft Teams.

1.4.27. Subject matter Issue Specific Hearings (ISH) under s91 of PA2008 were held on:

- ISH1, 8 December 2020, Biodiversity and Cultural Heritage [EV-011]; and
- ISH2, 8 December 2020, Traffic and Transport. [EV-012].

1.4.28. An ISH under s91 of the PA2008 was held on the draft Development Consent Order (dDCO) on:

- ISH3, 9 December 2020, [EV-013]

1.4.29. A CAH was held under s92 of the PA2008 on:

- CAH1, 10 December 2020 [EV-014].

1.4.30. All persons affected by CA and/ or TP proposals were provided with an opportunity to be heard. The ExA also used these hearings to examine the Applicants case for CA and TP in the round.

1.4.31. An OFH was held under s93 of the PA2008 on 21 October 2020 [EV-006]. All IPs were provided with an opportunity to be heard on any important and relevant subject matter that they wished to raise.

1.4.32. The following table sets out a summary of all the hearings, dates they were held and relevant EL references.

Table 1: Hearing References, Date and EL References

Hearing Ref	Date Held	EL Reference
OFH1	21 October 2020	Agenda: [EV-006] Recording: [EV-009]
ISH1	8 December 2020	Agenda: [EV-011] Recordings: [EV-015 and EV-016]
ISH2	8 December 2020	Agenda: [EV-012] Recordings: [EV-017 and EV-018]
ISH3	9 December 2020	Agenda: [EV-013] Recordings: [EV-019 and EV-020]
CAH1	10 December 2020	Agenda: [EV-014] Recordings [EV-021 and EV-022]:

1.4.33. Hearing Action Points were also prepared following each ISH and CAH and were issued as a single document [EV-023].

Written Processes

1.4.34. Examination under the PA2008 is primarily a written process, in which the ExA has regard to written material forming the application and arising from the Examination. All of this material is recorded in the EL (Appendix B of this report) and published online. Individual document references to the EL in this report are enclosed in square brackets [] and hyperlinked to the original document held online. For this reason, this Report does not contain extensive summaries of all documents and representations, although full regard has been had to them in the ExA's conclusions. The ExA has considered all important and relevant matters arising from them.

1.4.35. During the course of the Examination the Applicant submitted a significant number of revised documents both as 'clean' documents and as 'tracked change' versions showing alterations from the previous version. Unless explicitly referred to otherwise this report will refer to 'clean' versions (and their associated EL references) for simplicity.

1.4.36. Key written sources are set out further below.

Relevant Representations

1.4.37. Forty-three RRs were received by the Planning Inspectorate [RR-001 to RR-043[4]]. This total includes those submitted within a second period to accommodate the error made by the Applicant as to the original notification that the application had been accepted (see paragraphs 1.6.4 and 1.6.5).

1.4.38. All makers of RRs received the Rule 6 Letter and were provided with an opportunity to become involved in the Examination as IPs. All RRs have been fully considered by the ExA. The issues that they raise are considered in Chapters 5 to 17 of this Report.

Written Representations and Other Examination Documents

1.4.39. The Applicant and IPs and Other Persons were provided with opportunities to:

- make WRs (D1);
- comment on WRs made by the Applicant and other IPs (D3, D3A, D4, D5, D6, D7, D8 and D9);
- summarise their oral submissions at hearings in writing (D4);
- make other written submissions requested or accepted by the ExA; and
- comment on documents issued for consultation by the ExA including:
    - A commentary on the dDCO [PD-025] published on 26 February 2021 by D7 and
    - A Report on the Implications for European Sites (RIES) [PD-026] published on 26 February 2021 by D7.

1.4.40. All WRs and other Examination documents have been fully considered by the ExA. The issues that they raise are considered in Chapters 5 to 17 of this Report.

Local Impact Reports

1.4.41. A Local Impact Report (LIR) is a report made by a relevant local authority giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area) that has been invited and submitted to the ExA under s60 of the PA2008.

1.4.42. LIRs have been received by the ExA from the following relevant local authorities:

- Staffordshire County Council (SCC) [REP1-007]; and
- South Staffordshire Council (SSC) [REP1-097].

1.4.43. The LIRs have been taken fully into account by the ExA in all relevant Chapters of this Report.

[4] All the Relevant Representations can be found online at https://infrastructure.planninginspectorate.gov.uk/projects/west-midlands/m54-to-m6-link-road/?ipcsection=relreps

Statements of Common Ground

1.4.44. A SoCG is a statement agreed between the Applicant and one or more IPs, recording matters that are agreed and not agreed between them.

1.4.45. By the end of the Examination, the following bodies had concluded and signed SoCGs with the Applicant:

- SCC [REP7-027];
- SSC [REP7-028];
- CWC [REP7-029];
- Shropshire Council [REP8-010];
- Environment Agency (EA) [REP8-027];
- Natural England (NE) [REP8-028];
- Historic England (given the acronym HBMCE[5]) [REP7-030];
- Hilton, Featherstone & Brinsford and Shareshill Parish Councils (collectively as 'the Parish Councils') [REP7-031];
- Allow Ltd (Allow) [REP8-011];
- Robert Rowe [REP8-013];
- Mark and Tracey Commins [REP7-032];
- Ian Simkin and Adrian Simkin [REP8-017];
- Nurton Developments (Hilton) Limited (Nurton) [REP8-019];
- The National Trust for Places of Historic Interest or Natural Beauty (the National Trust) [REP6-035];
- Zayo [REP4-024];
- M6 Diesel, [REP8-025];
- Four Ashes Limited [REP8-026];
- St Francis Group [REP6-037]; and
- Staffordshire Wildlife Trust (SWT) [REP7-034].

1.4.46. The Applicant also submitted a number of draft SoCGs, the latest versions of which are as set out below. The ExA considers that these documents are of little weight in themselves, but are useful in setting out the Applicant's position in respect of the objections raised.

- William Bibbey [REP8-012];
- Nigel Simkin and Paul Simkin [REP8-014];
- Michael Byard [REP8-015];
- Barry Jones and Valerie Jones [REP8-016];
- Elizabeth Whitehouse and Stella Arblaster [REP8-018];
- Openreach Ltd [REP7-033];
- Cadent Gas Limited (Cadent) [REP8-020];
- Severn Trent Water Limited [REP8-021];
- South Staffordshire Water plc [REP8-022];
- Western Power Distribution [REP8-023]; and
- Vodafone Ltd [REP8-024].

[5] To distinguish it from "HE" for Highways England. The acronym is from Historic England's official title of the "Historic Buildings and Monuments Commission for England".

1.4.47. The SoCGs (other than unsigned or incomplete ones referred to above) have been taken fully into account by the ExA in all relevant chapters of this report.

Written Questions

1.4.48. The ExA asked three rounds of Written Questions.

- First written questions (ExQ1) [PD-010] were referred to in and published at the same time as the Progress Note letter of 20 July 2020 [PD-005];
- Second written questions (ExQ2) [PD-017] were issued on 4 December 2020; and
- Third written questions (ExQ3) [PD-023] were issued on 29 January 2021.

1.4.49. The following requests for further information and comments under Rule 17 of the EPR were issued on:

- 20 July 2020 [PD-005] Progress Note (see paragraph 1.4.5);
- 29 October 2020 [PD-015] to ask the Applicant to consider publicity relating to the acceptance of the material change;
- 19 March 2021 [PD-027]:
  - to ask the Applicant, SCC, South Staffordshire Water plc and Cadent questions about potential protective provisions within the dDCO;
  - to write to the Applicant and the National Trust requesting information relating to Whitgreaves[6] Wood; and
  - to write to the Applicant following correspondence [AS-134] relating to a pedestrian route between Cannock Road and the proposed Featherstone West roundabout; and
- 13 April 2021 [PD-030], to ask the Applicant and National Trust to consider submitting a Planning Obligation in relation to Whitgreaves Wood. This is discussed below.

1.4.50. All responses to the ExAs Written Questions have been fully considered and taken into account in all relevant chapters of this report.

Requests to Join and Leave the Examination

1.4.51. The following persons who were not already IPs requested that the ExA should enable them to join the Examination after the PM:

- Pramesh Chandra wrote [AS-122] to express objection with one of the changes that had been accepted into the Examination. In the original

[6] In some of the documentation “Whitgreaves” has been spelt with an apostrophe as “Whitgreave’s”. The former spelling has been used in this report on the basis that that is used by the National Trust, see [REP1-014], as the landowners of this area. The area is also sometimes referred to as “Oxden Leasow wood”. For reasons of simplicity it will be generally referred to as “Whitgreaves Wood” only.

submission the proposal was to re-route the Shareshill 5 footpath alongside Hilton Lane, but this was then removed so that this footpath would continue on its current alignment. Pramesh Chandra objected to this, wishing to see the alignment relocated as originally proposed. This is considered in Chapter 11 below. As Pramesh Chandra's objection was as a result of the Proposed Change the ExA concluded that they should be considered as an 'Other Person'.

1.4.52. During the Examination, as a consequence of discussions between itself and the Applicant, National Grid Electricity Transmission Plc wrote [OD-012] to the ExA to inform it had *"… now reached an agreement with the promoter in relation to the Protective Provisions included on the face of the Order and other commercial arrangements between the parties"* and therefore withdrew its RR [RR-014].

1.5. THE GUIDE TO THE APPLICATION

1.5.1. When the application was submitted the Applicant included a document entitled "Guide to the Documents to be Certified" [APP-005]. This was updated throughout the Pre-Examination and Examination period and was retitled "Guide to the Application" (the Guide).

1.5.2. This document describes its purpose as "… *to help the Examining Authority (ExA) and interested parties understand the documents submitted as part of the application. The Guide identifies the latest version of any document that has been submitted as part of the Examination and indicates those documents which are to be certified. The Guide contains a full record of documents submitted to the Planning Inspectorate by the Applicant, including application documents that are not proposed to be certified and additional documents submitted after acceptance of the application in February 2020"* (paragraph 1.1.2 of [REP8-003]).

1.5.3. After the initial submission the Guide was submitted in both "clean" and "tracked change" versions. There were 13 versions of the Guide submitted up to the close of the Examination. Table 2 sets out the version number, dates of the submission and Examination event, along with the EL numbers of the clean and tracked change versions.

Table 2: History of "The Guide to the Application"

Version	Date	Event	Clean version reference	Tracked change version reference
P02	January 2020	Application	[APP-005]	

Version	Date	Event	Clean version reference	Tracked change version reference
P04	May 2020	DCO Application Revision	[AS-005]	
P05	July 2020	DCO Application Revision	[AS-044]	
P06	October 2020	Update due to the Scheme Changes October 2020	[AS-063]	[AS-064]
P07	November 2020	D1 Update	[REP1-067]	[REP1-061]
P08	November 2020	D2 Update	[REP2-003]	[REP2-002]
P09	November 2020	D3 Update	[REP3-003]	[REP3-002]
P10	December 2020	Update to submit with Land Plan Correction	[AS-132]	[AS-130]
P11	January 2021	Update for D4	[REP4-002]	[REP4-003]
P12	January 2021	Update for D5	[REP5-002]	[REP5-003]
P13	February 2021	Update for D6	[REP6-002]	[REP6-003]
P14	March 2021	Update for D7	[REP7-003]	[REP7-002]
P15	April 2021	Update for D8	[REP8-003]	[REP8-002]

1.6. ENVIRONMENTAL IMPACT ASSESSMENT

1.6.1. The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required (EIA development).

1.6.2. On 11 January 2019, the Planning Inspectorate received on behalf of the SoS a scoping request[7] under Regulation 10 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended) (the EIA Regulations) in order to request an opinion about the scope of the ES to be prepared (a Scoping Opinion). The Applicant notified the SoS under Regulation 8(1)(b) of the EIA Regulations that it proposed to provide an ES in respect of the Project.

1.6.3. On 21 February 2019 the Planning Inspectorate provided a Scoping Opinion [APP-160]. Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development. The application was accompanied by an ES [APP-040 to APP-211] and includes a Non-Technical Summary.

1.6.4. The Applicant wrote to the Planning Inspectorate on 2 June 2020 to confirm that certificates confirming that s56 and s59 of PA2008 and Regulation 16 of the EIA Regulations had been complied with [OD-004]. This letter notes:

- due to the COVID-19 pandemic deposit locations where the application documents could have been inspected were closed, and alternative arrangements were undertaken; and
- due to an administrative error, not all those who should have been notified of the acceptance of the application were so notified. Consequently, further notification had to take place.

1.6.5. As a result of this omission, the ExA allowed for a further period for the making of RRs which expired on 6 July 2020.

1.6.6. In light of the s51 letter issued at the time of the acceptance of the application [PD-001], the Applicant wrote to the Case Team on 29 May 2020 [AS-004]. This letter sought to make a number of changes to the application which are discussed in section 2.3 of this report. It also submitted a number of documents to deal with errata which had been identified in the ES as well other matters [AS-024 to AS-034].

1.6.7. In light of changes to the Design Manual for Roads and Bridges (DMRB) which occurred at the end of 2019 the Applicant submitted a number of documents containing revisions to the ES in July 2020 [AS-045 to AS-059].

1.6.8. At the same time as submitting the formal request for scheme changes under cover of its letter dated 9 October 2020 [AS-062], which is also

[7] This has not been given an EL reference but can be found at https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010054/TR010054-000025-54M6-Scoping%20Report.pdf

discussed in section 2.3 of this report, the Applicant amended the ES to take account of these including a revised Non-Technical Summary [AS-082 to AS-109]. Following the Procedural Decision to accept these changes [PD-015], the Applicant undertook further publicity and confirmed that no responses had been received [REP6-001].

1.6.9. Consideration is given to the adequacy of the ES and matters arising from it in Chapters 4 to 13 of this Report.

1.7. HABITATS REGULATIONS ASSESSMENT

1.7.1. The Proposed Development is development for which a Habitats Regulations Assessment (HRA) Report has been provided [APP-216], which was updated [AS-035] following changes to the form of the Application, although the Applicant maintains that the Proposed Development would not have any significant effects.

1.7.2. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Chapter 14 of this Report.

1.8. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.8.1. By the end of the Examination, the Applicant had entered into a formal agreement with the National Trust (Appendix 2.3.4 of [REP4-033]) relating to land at Whitgreaves Wood. This was appended to a Planning Obligation by way of Unilateral Undertaking under s106 of the Town and Country Planning Act 1990 (as amended) to SSC dated 20 April 2021 which was submitted on that date [OD-011].

1.8.2. This undertaking has been taken fully into account by the ExA in all relevant chapters of this report.

1.9. OTHER CONSENTS

1.9.1. The application documentation and questions during this Examination have identified the following consents that the Proposed Development has obtained or must obtain, in addition to Development Consent under PA2008.

- Badger Licence (Protection of Badgers Act 1992, s10);
- Protected Species Licences (Wildlife and Countryside Act 1981, s16) for great crested newts and bats;
- Environmental Permits for capture and movement of fish (Keeping and Introduction of Fish (England and River Esk Catchment Area) Regulations 2015);
- Land Drainage consent for works in, under or over, any relevant watercourses (Land Drainage Act 1991, s23);
- Permit(s) from the EA to discharge surface/ground waters (Environmental Permitting (England and Wales) Regulations 2016);
- Water abstraction licence (if there is a need to remove more than 20 cubic metres (m^3) /day) (Water Resources Act 1991 (as amended

by the Water Act 2003), Environment Act 1995, The Water Resources (Abstraction and Impounding) Regulations 2006);
- Diversion of watercourses/ dewatering of ponds (Water Resources Act 1991);
- Exemptions for operations such as U1 (import of waste for use in construction) and T15 (crushing of aerosols to minimise hazardous waste) (if exemption limits can be met) (Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2016);
- Mobile plant licences for crushing operations or site permits if not using a subcontractor with their own mobile licences (Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2016);
- CL:aire Materials Management Plan (CL:AIRE (2011) Definition of Waste: Development Industry Code of Practice (v.2) (DoWCoP));
- Trade effluent consent (e.g. for welfare facilities) (Water Industry Act 1991);
- Environmental Permit for waste operations (Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2016);
- Section 61 consent for noise and vibration during the construction stage if requested by the Local Authority (Control of Pollution Act 1974); and
- Consent/ licence for the felling of trees (The Forestry Act 1967).

1.9.2. In relation to the outstanding consents recorded above, the ExA has considered the available information bearing on these and, without prejudice to the exercise of discretion by future decision-makers, has concluded that there are no apparent impediments to the implementation of the Proposed Development, should the SoS grant the application.

1.9.3. Appendix A of the Consents and Agreements Position Statement [REP6-011] includes the Applicant's latest position on each of these Consents and Agreements.

1.9.4. The Applicant has included three 'letters of no impediment' relating to licences in respect of badgers (dated 13 December 2019), great crested newts (dated 20 January 2020) and bats (dated 14 January 2020) written by NE. These can be found in Appendix B of the Consents and Agreements Position Statement [REP6-011].

1.9.5. The letter of no impediment in respect of great crested newts was issued prior to the further surveys undertaken in 2020 (see Chapter 8 of the ES [AS-083]). Following discussion at ISH1 the Applicant agreed to make a further draft European Protected Species licence application which it did in January 2021. NE issued a further letter of no impediment in respect of this updated draft application on 11 March 2021 and this was submitted at Deadline 9 [REP9-004].

1.10. STRUCTURE OF THIS REPORT

1.10.1. The structure of this report is as follows:

- Chapter 1 introduces the reader to the application, the processes used to carry out the Examination and make this report.
- Chapter 2 describes the site and its surrounds, the Proposed Development, its planning history and that of related projects.
- Chapter 3 records the legal and policy context for the SoS' decision.
- Chapter 4 sets out the planning issues that arose from the application and during the Examination and introduces the main contentious issues.
- Chapter 5 considers Air Quality.
- Chapter 6 considers Biodiversity, Ecology and the Natural Environment.
- Chapter 7 considers Cultural Heritage, including archaeology.
- Chapter 8 considers the Green Belt.
- Chapter 9 considers Landscape and Visual effects.
- Chapter 10 considers Noise and Vibration.
- Chapter 11 considers Socio-Economic Effects.
- Chapter 12 considers Traffic and Transport.
- Chapter 13 considers the Water Environment.
- Chapter 14 considers effects on European Sites and HRA.
- Chapter 15 sets out the balance of planning considerations arising from Chapters 4 to 13, in the light of the factual, legal and policy information in Chapters 1 to 3.
- Chapter 16 sets out the ExA's examination of CA and TP proposals.
- Chapter 17 considers the implications of the matters arising from the preceding chapters for the DCO.
- Chapter 18 summarises all relevant considerations and sets out our recommendation to the SoS.

1.10.2. This report is supported by the following Appendices:

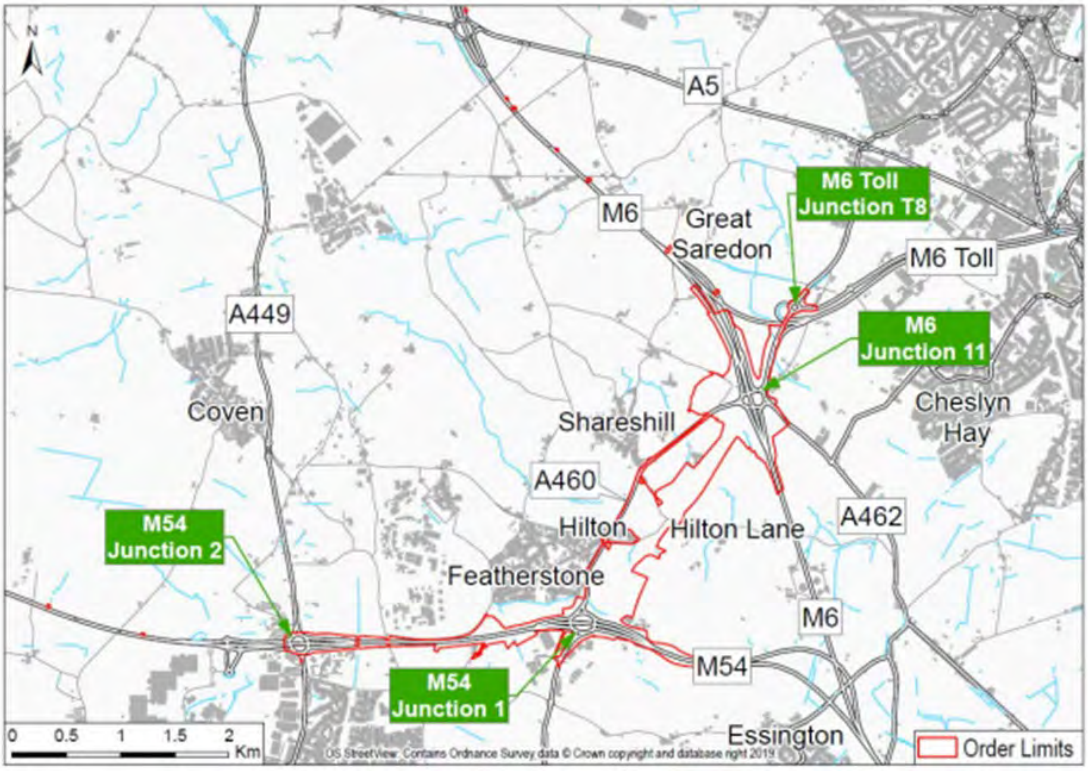
- Appendix A – The Examination.
- Appendix B – The Examination Library.
- Appendix C – List of Abbreviations.
- Appendix D – The Recommended DCO

2. THE SITE AND THE PROPOSAL

2.1. THE PROPOSED DEVELOPMENT SITE AND SETTING

2.1.1. The Proposed Development would provide for a new link road between the M54, junction 1, and the M6, junction 11, and would be located to the east of the existing A460. It involves land in the administrative areas of Staffordshire County Council (SCC), South Staffordshire Council (SSC) and City of Wolverhampton Council (CWC). The location of the Proposed Development with the Development Consent Order (DCO) boundaries is shown in Figure 1 below, and the land take is shown in detail in the Land Plans [REP6-004]. Where appropriate this will be referred to as the 'application site'. The site as originally submitted also included part of the M54 up to junction 2 and isolated locations to the east along the M54 and to the North along the M6 to provide for signage works.

Figure 1: Location Plan[8]

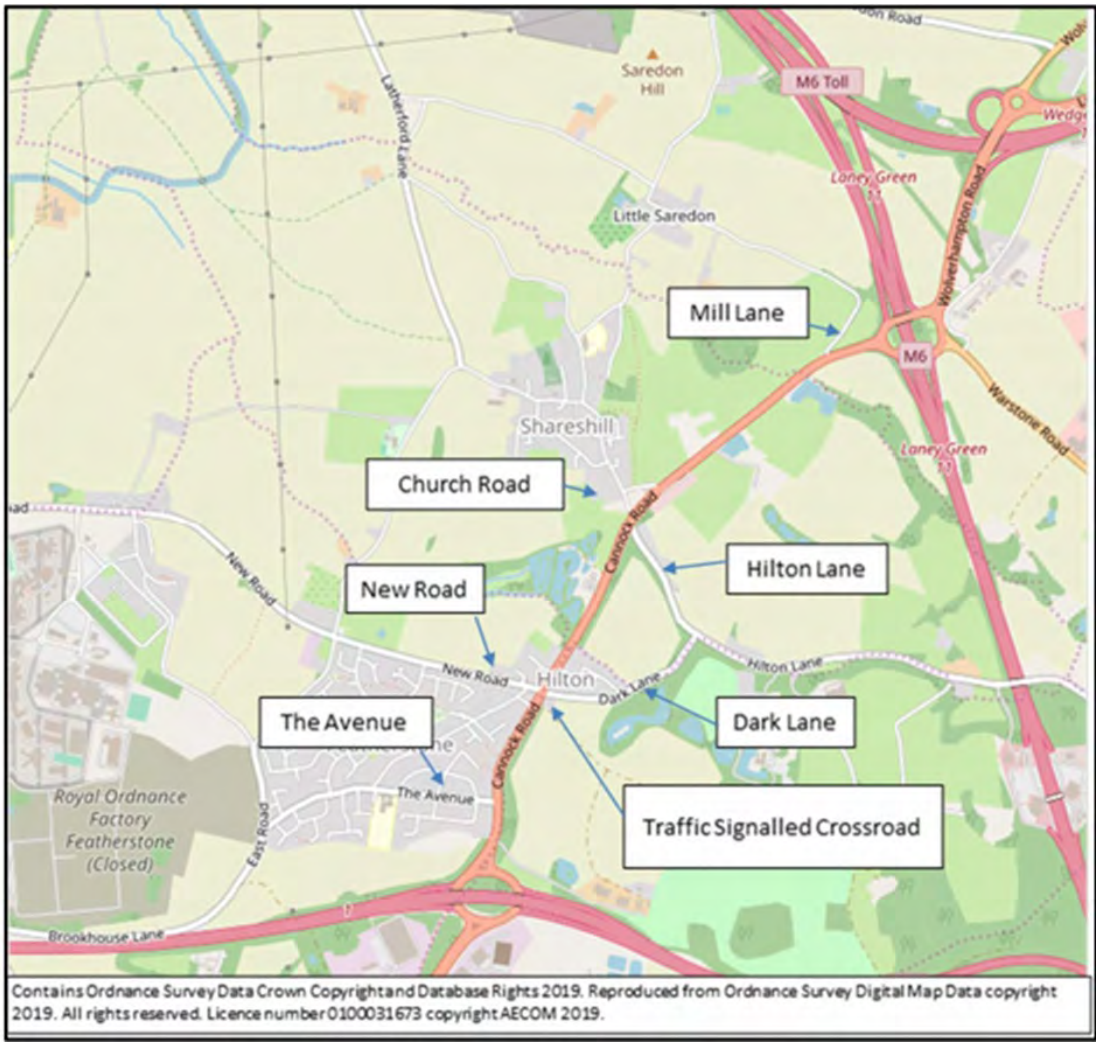


2.1.2. The area is semi-rural in character with a number of small villages set within countryside. These include Featherstone, close to junction 1 of the M54; Hilton and Shareshill, to the west of the A460; and the hamlet of Little Saredon to the northwest, close to junction 11 of the M6. The general landform in the locality is of undulating countryside consisting of agricultural fields and scattered woodland. The site also includes an area of historic parkland, associated with Hilton Hall. The main settlements in the wider area include the city of Wolverhampton, located to the south of the M54, and Cannock, located to the northwest of the site beyond the

[8] Source: Figure 4.1 Statement of Reasons [REP7-015]

M6. Figure 2 sets out a more detailed plan of the area between M54 junction 1 and M6 junction 11. The site is located within the South Staffordshire portion of the West Midlands Green Belt.

Figure 2: Detailed Location Plan[9]



2.1.3. The site area includes the M54 junctions 2 and 1, and the motorway between the junctions. Small areas to the north and south of the M54 are included to be used for ancillary works, including Whitgreaves Wood to allow for environmental improvements to woodland, around junction 2, for new or replacement signage, and around Brookhouse Lane for an attenuation pond.

2.1.4. The first main junction off the A460 in Featherstone is with The Avenue approximately 270 metres (m) to the north of the gyratory. The main development in the settlement of Featherstone is predominantly contained to the western side of the A460 up to its junction with New Road/ Dark Lane, some 450m further to the north. A small residential

[9] Source: Figure 2.4 Transport Assessment Report [REP3-036]

area is located to the eastern side of the A460 between Dark Lane, the A460 and Park Road, a small cul-de-sac accessed off Dark Lane.

2.1.5. From the M54 junction 1 gyratory the main line of the new link road would be aligned on a northeasterly direction for approximately 2.5 kilometres (km) to junction 11 of the M6. This would be through a predominantly rural setting. The main carriageway would be located to the east of the A460. Between the A460 and the new link road alignments there would be open fields, the residential area on Dark Lane and Park Road, some residential properties on Hilton Lane and some commercial enterprises, including M6 Diesel and Brookfields Leisure Centre and Brookfields Farm.

2.1.6. The Proposed Development passes through an area identified in the South Staffordshire Local Plan as an Historic Landscape Area (HLA), but it is not a Registered Park and Garden. The parkland is associated with Hilton Hall and associated buildings. Hilton Hall and the nearby conservatory are each Grade I listed and would be to the east of the Proposed Development. Other designated heritage assets in the vicinity include a listed coach house and stable block, north east of Hilton Hall; Gate Piers, some 200m south of Hilton Hall; and the Portobello Tower, a folly in a poor state of repair located approximately 550m south of the Hall, close to the M54, all of which are Grade II. The HLA also includes a number of veteran trees in isolated locations in open fields; it is a relatively extensive area identified on the proposals map of the Local Plan in a diagrammatic form (identified in the Environmental Statement (ES) in Figure 6.1 [APP-072] and Figure 6.3 [APP-074]) and covers an area up to around Hilton Lane, down to around the M54 and across to the A460 as well as land further to the east.

2.1.7. The main carriageway would cut through an area of woodland referred to as The Shrubbery and which includes the Lower Pool which is locally designated as a Site of Biological Importance (SBI). North of Hilton Lane Brookfields Farm also contains an SBI in an area of wet woodland and part of this is also identified as ancient woodland. From there the Proposed Development would pass across open countryside to where it would join the M6 at a reconstructed junction 11.

2.1.8. M6 Diesel is a local business providing a fuel stop predominantly for commercial heavy goods vehicles. It is located on the east side of the A460 approximately 870m to the southwest of junction 11 of the M6. Brookfields Farm and the surroundings includes a number of activities including ponds for fishing, equestrian activities, keeping of horses and agricultural activities.

2.2. THE APPLICATION AS MADE

2.2.1. The Applicant submitted an application under s37 of the Planning Act 2008 as amended (PA2008) for an Order granting development consent for what was described as the “M54 to M6 Link Road” (the Proposed Development). [APP-001] provides an introduction to the Proposed Development, [APP-002] provides the covering letter and s55 check list

and [APP-003] the application form. The Applicant is appointed and licensed by the Secretary of State for Transport (SoST) as the strategic highway company for England. It is responsible for operating, maintaining and improving England's motorway and trunk road network on behalf of the SoST.

2.2.2. The primary objectives of the Proposed Development are identified by the Applicant in 'The Case for the Scheme' [AS-037] as:

- Relieve traffic congestion on the A460, A449 and A5, to provide more reliable journey times.
- Keep the right traffic on the right roads and improve safety by separating local community traffic from long distance and business traffic.
- Reduce volumes of through-traffic in villages, improving local community access.
- Support local economic growth for Telford, Shrewsbury, Wolverhampton, Cannock and Tamworth by improving traffic flow and enhancing access to east-west and north-south routes.

2.2.3. Chapter 2 of the ES [APP-041] provides a detailed description of the Proposed Development which is summarised below.

2.2.4. The Applicant notes that there is no strategic route from the M54 to the M6 northbound or the M6 Toll. It also notes that there is no strategic route between the M6 southbound and the M54 westbound. Traffic wishing to make these movements has to leave the motorway network and use the regional/local road network including the A449, A5 and A460. The signed route between the M54 westbound and the M6 northbound is via two trunk roads: the A449 and the A5 travelling between the M54 junction 2 and the M6 junction 12. The existing A460 Cannock Road between the M54 junction 1 and the M6 junction 11 is single carriageway.

2.2.5. The Applicant states the A460 was not designed for the amount and type of traffic currently using it, resulting in delays. The Applicant's overarching need is that the existing road network is not adequate to cope with the high volumes of traffic, often consisting of heavy goods vehicles (HGVs). There is therefore a need to deliver a link road to address the current levels of congestion and its impact on local residents and motorists. The Applicant also notes that investment in additional capacity will support local economic growth for Telford, Shrewsbury, Wolverhampton, Cannock and Tamworth by improving traffic flow and enhanced east-west and north-south routes.

2.2.6. In high level terms the Proposed Development comprises:

- Replacement of the existing M54 junction 1 with free flow slip roads between the new link road and the M54 and construction of three new roundabouts to maintain connectivity with the existing local road network.
- Construction of a new dual carriageway between M54 junction 1 and the M6 junction 11. The alignment of the carriageway would be

located to the east of the existing A460 and the villages of Featherstone, Hilton and Shareshill and west of Hilton Hall.
- The stopping up of Dark Lane between the final property heading north and the junction with Hilton Lane.
- The reprovision of Hilton Lane on a bridge over the mainline of the link road on a similar alignment.
- Provision of an accommodation bridge and access track across the mainline of the link road to retain access to severed land to the east of the link road.
- Enlargement of the M6 junction 11 signalised roundabout to accommodate a connection to the new link road and realign existing connections with the A460 and M6. Two replacement bridges would be required over the M6 to provide an increase in capacity from two lanes to four lanes of traffic on the roundabout. This work would raise the height of the junction by approximately 1.5m.

2.2.7. The General Arrangement Scheme Layout Plans [APP-010], Works Plans [APP-009], and Engineering section Drawings [APP-015] identified the key components and features of the Proposed Development as well as further design information as submitted when the application was made.

2.2.8. The following paragraphs describe the road alignment and principal elements of the Proposed Development in greater detail, moving from south to north.

M54 junction 1

2.2.9. The existing eastbound diverge at M54 junction 1 would be upgraded from its current single lane drop arrangement to a ghost island (separation of the slip road and mainline using chevrons) lane drop arrangement. The existing westbound merge slip road at the M54 junction 1 would be upgraded from a single lane gain, to a ghost island merge with two diverging lanes. The slip roads at M54 junction 1 would also be realigned slightly.

2.2.10. The existing M54 junction 1 roundabout would be removed, and the junction rebuilt in a new arrangement. The total footprint of the proposed M54 junction 1 arrangement would be approximately 13 hectares (ha).

2.2.11. The new junction arrangement would provide for free flow links from the eastbound carriageway of the M54 to the northbound carriageway of the link road and from the southbound carriageway of the link road to the M54 westbound. The free flow links would pass underneath the new junction 1 arrangement (Featherstone bridge). The southbound free flow link would then pass underneath the existing M54 (which is on an embankment at this location) at approximately existing ground level to merge with the westbound carriageway of the M54. The free flow links through M54 junction 1 would be an extension of the M54 therefore would be subject to motorway regulations with a speed limit of 70 miles per hour (mph). The motorway regulations end at the point where the slip road from the western roundabout joins the carriageway in the northbound direction and where the slip road to the eastern roundabout leaves the carriageway in the southbound direction. Beyond this point the

Proposed Development would be constructed to a dual carriageway standard.

2.2.12. In order to maintain local connections, the new junction would also consist of three smaller roundabouts, one to the south of the M54 carriageway (southern roundabout) and two to the north of the M54 carriageway in a dumbbell arrangement to the east (eastern roundabout) and west (western roundabout – the smaller of these two) of the new link road. The existing access to the A460 (north) from M54 junction 1 would be closed.

2.2.13. The southern roundabout would provide access to and from the westbound carriageway of the M54 and the A460 (south). The southern roundabout would be at approximately existing ground level.

2.2.14. A new short section of dual carriageway approximately 370m in length would provide a link between the southern roundabout and the eastern roundabout which would cross under the M54.

2.2.15. The eastern roundabout would provide access to the eastbound carriageway of the M54 and would be accessible from the southbound carriageway of the Proposed Development. Two access roads would be provided off the eastern roundabout to maintain access to Tower House Farm and Hilton Park which are approximately 100m and 400m in length respectively. The eastern roundabout would be approximately 3.9m above existing ground level. The new entry slip road to the M54 eastbound would result in the loss of a pond at Tower House Farm.

2.2.16. The eastern roundabout would also be connected to the western roundabout by a short section of dual carriageway approximately 90m in length which would cross over the mainline on Featherstone bridge.

2.2.17. The western roundabout would provide access to and from the existing A460 (north) for local traffic. This roundabout would also provide access to the northbound carriageway of the mainline and would be accessible from the eastbound carriageway of the M54. The western roundabout would be approximately 6.2m above existing ground level.

2.2.18. The speed limit of the connecting dual carriageway links between the roundabouts would be 40mph.

The existing A460 (between M54 junction 1 and M6 junction 11)

2.2.19. The existing A460 would be realigned to connect into the western roundabout of the new M54 junction 1. The realigned A460 would be gradually raised on an embankment to tie into the western roundabout of the M54 junction 1 at approximately 6.2m above existing ground level. A new priority T-junction would be provided between the existing A460 and the realigned A460 to maintain access to the M54 to M6 Link Road

2.2.20. North of the junction with The Avenue two new entry and egress points would be provided for the petrol station and local businesses along the existing A460 affected by the realignment of the road.

2.2.21. The speed limit of the realigned existing A460 at M54 junction 1 would be 30mph.

The mainline

2.2.22. The mainline would be a dual carriageway road approximately 2.5km (1.6 miles) in length, with a direct free flow link to the M54 and entry and exit slip roads to the M54 junction 1. The new road would have a 70mph speed limit.

2.2.23. The mainline would pass through M54 junction 1 in a cutting, passing under Featherstone bridge with a headroom clearance of 5.3m. The mainline would extend northwards from the M54 junction 1 across greenfield land which is located to the east of Featherstone and Hilton. The mainline of the Proposed Development would pass to the west of Hilton Hall through part of Lower Pool (a large ornamental pool) and Lower Pool SBI. The Proposed Development would be roughly at existing ground level as it passes to the east of Dark Lane. The distance between the edge of the new carriageway (back of verge) and the closest property (façade) on Dark Lane is approximately 46m. Dark Lane would be stopped up between just beyond the most northern property along Dark Lane and its existing junction with Hilton Lane. In order to maintain connectivity for walkers and cyclists a new bridleway connection is proposed between the point at which Dark Lane is stopped up and Hilton Lane.

2.2.24. Continuing north, the Proposed Development would cross under the existing Hilton Lane at approximately 6.0m below existing ground level. A section of Hilton Lane would be rebuilt on a new bridge (Hilton Lane overbridge) over the mainline to maintain access. Approximately 500m of Hilton Lane would be reconstructed to build the new bridge on a similar alignment to the existing road (within the limits of deviation). The carriageway of the road would be raised by approximately 1.7m in height at the highest point of the bridge. The speed limit of Hilton Lane would be reduced from the national speed limit to 30mph to address safety issues and limit the amount of land take required with a steeper vertical alignment, reducing tree loss and, according to the Applicant, may provide some reduction in noise impacts.

2.2.25. The mainline of the Proposed Development would then continue to the east of Brookfield Farm resulting in the total loss of one pond and partial loss of a second pond, before continuing north. Due to the undulating nature of the existing ground in this location the mainline transitions from cutting at Hilton Lane, to a short section of embankment to the south of Brookfield Farm with a height of approximately 3.5m then immediately back to cutting to the east of Brookfield Farm with a depth of approximately 5.5m.

2.2.26. An accommodation bridge wide enough to carry a single lane access track for farm vehicles would be provided to the south of Brookfield Farm across the mainline of the Proposed Development. This accommodation bridge is required to retain access to severed land to the east and maintain a Public Right of Way (PRoW) over the Proposed Development.

The accommodation bridge would be approximately up to 4.0m above existing ground level at its highest point.

2.2.27. South of the M6 junction 11 the Proposed Development would start to rise on an embankment to link into the junction, passing over Latherford Brook and through Brookfield Farm SBI. At this point the northbound and southbound carriageway start to diverge away from one another to connect into M6 junction 11. At the highest point the Proposed Development would be approximately 8.5m above existing ground level which is around Latherford Brook.

M6 junction 11

2.2.28. Junction alterations are proposed at M6 junction 11. These improvements would consist of an enlargement of the M6 junction 11 roundabout to provide additional capacity and accommodate a connection to the new link road. Two new structures would be required over the M6 which would increase the capacity of the junction, increasing the number of lanes of traffic from two to four. The structures would be designed to be built off-line to the north and south of the existing structures to avoid undue disruption during the construction period. The existing structures would be demolished once the new junction arrangement is operational. Alterations to Junction 11 of the M6 would raise the roundabout level by approximately 1.5m in height to approximately 5.5m above ground level.

2.2.29. The connection to the existing A460 (south) from the M6 junction 11 would be realigned to the west to accommodate the mainline of the Proposed Development. New entry and exit slip roads to and from the M6 would be constructed offline to maintain access to the junction where possible during construction. The A460 (north) would be widened northbound and southbound. The southbound carriageway would be widened from two to three lanes to connect into the new junction. The northbound carriageway would be widened to three lanes to exit the roundabout, this would taper down to two lanes before passing over the M6 Toll. The A462 would also be aligned locally to tie into the roundabout. Minor alterations to the access and egress to Wolverhampton Road are required as part of the realignment of the existing A460 and A462.

Limits of deviation

2.2.30. The assessments in the ES are based on the design having regard to the maximum area of land anticipated as likely to be required taking account of the proposed limits of deviation (LoD) for the Proposed Development. The environmental conclusions regarding likely significant effects as presented within the ES have also taken the LoD into account.

2.2.31. In general it is stated that the vertical LoD for the Proposed Development is 0.5m and the new carriageway would not deviate horizontally by more than 3.0m. In relation to particular items: surface water outfalls would not deviate by more than 20m; and the Hilton Park access road, Tower House access road and Mill Lane tie-in would not deviate horizontally more than 10m and vertically by 0.5m. It is also noted that noise

barriers as proposed in ES Chapter 11: Noise and Vibration [APP-050] paragraphs 11.8.16 and 11.8.17 ES would not deviate by more than plus or minus 1 m and also sets out limits of deviation for utilities diversions to provide for flexibility.

2.3. THE APPLICATION AS EXAMINED

2.3.1. Prior to the opening of the Examination, in response to the Inspectorate's section (s) 51 advice [PD-001] following acceptance of the application, the Applicant responded [AS-004] to a number of issues raised and requested a change to the application. The change sought was for the removal of a small area of the Order Limits along the M54, included to replace an existing road sign. Following further signage review it was concluded that changes to the sign would no longer be required. The Examining Authority (ExA) confirmed in its letter dated 20 July 2020 [PD-005] that the change was accepted as a non-material change to the application.

October 2020 Proposed Changes

2.3.2. By e-mail, dated 28 July 2020, the Applicant submitted a document entitled 'Notification of proposed scheme changes' [AS-043], in which the Applicant sought the ExA's advice on the procedural implications of proposed changes and the need, scale and nature of consultation to be carried out. The ExA's advice was provided in a letter dated 12 August 2020 [PD-011]. A formal request for a change to the application was made by letter dated 9 October 2020 [AS-062] and which enclosed a number of documents including a document entitled 'Formal request for scheme changes' [AS-117].

2.3.3. The request identified seven changes to the Proposed Development which are summarised below.

Change 1: Realignment of the eastbound slip road from the M54 at Junction 1 towards Featherstone

2.3.4. This change proposed a minor realignment of the eastbound exit slip road from the M54 to Featherstone, reducing the length of the slip road to the dumb-bell junction. This would bring the road closer to the junction and reduce the overall size of the junction.

2.3.5. The Applicant indicated that this change arose as a result of continued design refinement which has identified improvements to the Proposed Development that would reduce environmental impacts.

Change 2: Reduction in the footprint of the link road

2.3.6. This proposed change would reduce the overall width of the link road by reducing the width of the central reserve from 4.5m to 3m along the length of the new link road and reducing the width of the verge area by putting the surface water channel in the verge rather than adjacent to it. There would be no reduction to the width of traffic lanes or hard strips.

2.3.7. This change would reduce the width of the road by 4.2m over its entire length, between 3.2m and 4.4m over a length of approximately 200m for the northbound slip, and between 4.1m and 7.0m over 500m for the southbound slip.

2.3.8. The Applicant indicated that this means that the footprint of the Proposed Development would be reduced, reducing the impact on the private access that runs to the east of Featherstone junction (from the eastern roundabout northwards). In consequence of the change, it was also proposed to move the position of Work No. 21 to tie into the existing track, reducing the impact on the landowner. This change would move the alignment of Work No. 21 outside of the LoD.

2.3.9. This change would also reduce the impact of the Proposed Development on Lower Pool SBI. However, as habitat loss at Lower Pool SBI is increased by other changes, predominantly clearance around utility pipelines (see Change 7), this change would not result in an overall reduction of habitat loss at the SBI compared to the originally submitted application. The Applicant identified that there was an incorrect statement in the consultation documents stating that 1ha less land would be affected at Lower Pool SBI. In the updated ES chapter on Biodiversity [AS-083] submitted with the formal change request, it was confirmed that the Proposed Development would comprise the permanent loss of 2.04ha of woodland and 0.46ha of standing water in the Lower Pool SBI.

Change 3: Amendment of vertical alignment of Link Road approach to M6 junction 11

2.3.10. This change would reduce the height of the approach to M6 junction 11 by approximately 0.7m where the road passes through an area of woodland near Latherford Brook. This change would increase the gradient of the approach to the junction. However, the gradient would be within the recommended design for dual carriageway standard, with a maximum 2% gradient at the stop line to reduce the risk of vehicle roll-back. This also included a minor change to the diversion route of Saredon 8 PRoW as a result of changes to the embankment.

Change 4: M54 junction 1 change to bridge structure

2.3.11. The Applicant explained that to provide free-flow links between the M54 and the new link road, the Proposed Development included construction of a new bridge to carry the roads through the redesigned M54 junction 1. The original Proposed Development would have taken a period of approximately two years to build the bridge in sections at its final location. This would need complex and long-term traffic management for this period on the M54, over several phases, including contraflows, narrow lanes and lane closures as well as several overnight closures with night-time working. The proposed change would utilise a construction solution negating the need for two years of traffic management. It would involve constructing the bridge as two simpler structures in a nearby site compound to the northeast of the junction and moving them into position when ready. To do this safely, the change would require the closure of the M54 over junction 1 and some of the slip roads for up to three

weeks. Building the bridge as two simpler structures would also enable the movement of the road alignment by 20m, which would reduce the size of junction 1.

2.3.12. Whilst the Applicant acknowledged that there would be more disruption from the short-term closure, it would be of significantly shorter duration than previously proposed.

2.3.13. The planned diversion route during the junction closure would involve traffic leaving the M54 at junction 2, travelling north on the A449, then east on the A5 and south along the M6. A plan showing the Applicant's initial view of how the closure might operate and the diversion route was provided on page 8 of the Consultation Brochure (included at Appendix C of document 8.7 Consultation Statement – proposed Changes Appendices Part 1 (B and C) [AS-119]. However, in line with comments received from local highway authorities and Parish Councils, the Applicant would like to retain flexibility over the closure approach so it can be developed in more detail in consultation with key stakeholders. Therefore, the plan of the closure should be treated as indicative at this stage.

2.3.14. Finally, this proposed change would result in construction activities taking place in new locations. In particular, activities associated with the construction of the structures would be within a casting yard to the northeast of M54 junction 1 not previously used for this purpose.

Change 5: Relocation of Hilton Lane Overbridge and change to Public Right of Way

2.3.15. Near Hilton Lane, the new link road would be below existing ground level and Hilton Lane will cross the link road via a new bridge. Following further work to review the construction methods, it is proposed to build the Hilton Lane bridge to the north of its current proposed location. This change would enable the retention of more of the existing route of the PRoW Shareshill 5, across nearby land rather than routing it alongside the link road as was originally proposed in the application.

2.3.16. The original application proposed moving Hilton Lane approximately 2m to the south, so a 2m wide footway could be provided as an alternative route to the PRoW, which would have been cut-off by the new link.

2.3.17. The proposed change would keep the PRoW so it follows more of the existing route; it would then divert south towards Hilton Lane, across the new bridge, then re-route north to tie into its existing alignment to the west of the new link, where users would continue westwards and link into Hilton Lane.

Change 6: Change to Alignment to Reduce the Impact on Tower House Farm

2.3.18. This change proposed to alter the alignment of the slip road between the M54 junction 1 eastern dumbbell roundabout and the M54 eastbound to the west of the position shown in the original application. This change was aimed to address concerns raised by the landowner at Tower House

Farm that the Proposed Development would adversely impact access to that site.

Change 7: Changes to the Environmental Masterplan

2.3.19. The Applicant proposed changes to the Environmental Masterplan for the Proposed Development to:

- Reduce the mitigation required for great crested newts.
- Reduce the size of construction compounds.
- Identify opportunities for further ecological enhancements.
- Increase vegetation clearance around utility corridors.
- Incorporate additional minor amendments to the masterplan.
- Adjust the Environmental Masterplan to account for the cumulative impact of changes 1-6.

2.3.20. The Examination began on the day following the conclusion of the Preliminary Meeting, 21 October 2020. By its letter dated 29 October 2020 [PD-015], the ExA made the Procedural Decision that cumulatively the changes would represent a material change due to the number and extent of the proposed changes, including the changes of significant effects identified in the Environmental Statement (ES) Addendum and the change in construction time. However, it was further concluded that they were not so substantial nor had the Proposed Development been changed in substance from that which was originally applied for. The proposed changes were therefore accepted into the Examination. Albeit non-statutory consultation had been undertaken the ExA also amended the Examination timetable to allow for comments to be received in relation to the changes and for the Applicant to respond. Collectively, where appropriate, this report will refer to these changes as the 'October changes'.

December 2020 Proposed Changes

2.3.21. On 17 December 2020 the Applicant wrote to the ExA [AS-125] to formally request a change to sheet 6 of the Land Plans, in relation to a matter that had been discussed at the Compulsory Acquisition Hearing 1 (CAH1) on 10 December 2020. The amended Land Plans (Ver P04) [AS-127] identified the original plot 6/25 reduced in size and identified for Temporary Possession (TP) and a new plot 6/38 identified for Compulsory Acquisition (CA). This was an inconsistency from previous changes where the Land Plans had not been updated and identified plot 6/25 wholly for TP. The ExA accepted the changes to the Land Plans in a Procedural decision dated 7 January 2021 [PD-019].

2.3.22. The ExA noted that in the original application plot 6/25 was identified for CA and then was amended to TP. In the December 2020 changes the proposal to identify plot 6/38 for CA represented "additional land" and as such engaged the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 as amended (the CA Regulations). The ExA accepted that the Changes to the Land Plans were in effect a correction to align the Land Plans with the other Development Consent Order Plans and that the relevant Affected Persons were aware.

2.3.23. The Applicant confirmed that the additionally affected persons had agreed to the changes and therefore the ExA in its letter dated 18 January 2021 [PD-020] confirmed that there was no requirement to undertake additional procedures under Regulation 4 of the CA Regulations. This change will be referred in this report as the 'December change'.

March 2021 Proposed Changes

2.3.24. Finally, in relation to changes to the Proposed Development, the Applicant sought advice on changes to provide a new short cut pedestrian route between Cannock Road and the Featherstone Junction west roundabout at M54 junction 1 [AS-134], following recommended amendments to the draft Development Consent Order (dDCO) by the ExA [PD-025]. The ExA's advice was included in its letter dated 19 March 2021 [PD-027], where it agreed to the suggested change and requested the Applicant include the change with its Deadline (D) 7 submissions. In the covering letter for the D7 submissions dated 26 March 2021 [REP7-001] the Applicant confirmed the incorporation of the additional footpath link as shown on the Streets Rights of Way and Access Plan [REP7-006], an additional work item added to the Works Plans [REP7-004] and dDCO (Work No. 91).

2.3.25. In its cover letter [REP7-001] the Applicant also identified a number of minor changes that had been made to the Proposed Development to reflect requests from the ExA or third parties. The ExA responded to this identification of changes in its Procedural Decision dated 31 March 2021 [PD-028]. In totality the changes were noted as:

- Proposed Footpath between Cannock Road to Featherstone West roundabout (Work 91).
- Re-design of Cannock Road/The Avenue junction so as to change priority.
- Re-design of area in front of the petrol station and local businesses on Cannock Road (Work 90 to replace former Works 18 and 19).
- Addition of 40mph speed limit on Hilton Lane to east of the existing proposed 30 mph speed limit.
- Formal inclusion of tree removal plans as examination documents in their own right.
- New fence and hedge on south side of Dark Lane (part of Work 80).

2.3.26. The ExA confirmed that the changes would represent minor design changes and that they were accepted as non-material changes to the application. Where appropriate, these changes will be referred to as the 'March changes'.

2.4. RELEVANT PLANNING HISTORY

2.4.1. This is the first formal proposal for a link road between M54 junction 1 and M6 junction 11 which has reached application stage.

2.4.2. Paragraph 5.165 of the National Policy Statement for National Networks (NPSNN) states *"... the applicant should identify existing and proposed*

land uses near the Scheme, any effects of replacing an existing development or use of the site with the proposed project or preventing a development or use on a neighbouring site from continuing". The NPSNN states *"applicants should also assess any effects of precluding a new development or use proposed in the development plan and that the assessment should be proportionate"*.

2.4.3. The Applicant undertook a planning history search of the application site. The details are set out in Section 7 of the 'Case for the Scheme' [AS-037]. As the area is mainly rural, proposals generally are for domestic extensions, agricultural works and there have been a number of applications under S192 of the Town and Country Planning Act 1990 (as amended) for Certificates of lawful development or use relating to sport fishing in pools.

2.4.4. Within the Examination documentation there is reference to various fields being used for car boot sales. The Applicant hypothesizes that, in the absence of any information identified from a planning history search these are carried out under Permitted Development Rights for temporary uses of land under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) which allows for the holding of a market for up to 14 days in any calendar year. We consider that this is a reasonable hypothesis.

3. LEGAL AND POLICY CONTEXT

3.1. THE PLANNING ACT 2008

3.1.1. The development is highway-related development falling within section (s) 22 of the Planning Act 2008 (as amended) (PA2008), consequently the National Policy Statement for National Networks (NPSNN) has effect, and s104 of the PA2008 is engaged.

3.1.2. Section 104(2) of PA2008 sets out the matters to which the Secretary of State (SoS) must have regard in deciding an application to which it relates. In summary, the matters set out, as relevant to this application, include:

- any relevant National Policy Statements (NPSs);
- any Local Impact Report (LIR);
- any matters prescribed in relation to development of the description to which the application relates; and
- any other matters the SoS considers are both important and relevant to the decision.

3.1.3. Section 104(3) of PA2008 requires that the SoS must decide an application for development consent in accordance with any relevant NPS, except to the extent that the SoS is satisfied that:

- doing so would lead to the United Kingdom (UK) being in breach of any of its international obligations;
- doing so would lead to the SoS being in breach of any duty imposed on him by or under any enactment;
- doing so would be unlawful by virtue of or under any enactment;
- the adverse impact of the proposed development would outweigh its benefits; or
- any condition prescribed for deciding an application otherwise than with an NPS is met.

3.2. NATIONAL POLICY STATEMENT

3.2.1. The NPSNN has been designated as the NPS for roads for which the Secretary of State for Transport (SoST) is the highway authority and remains in force. It is relevant to this application because the Proposed Development comprises the construction and alteration of a highway where the speed limit of any class of vehicle is expected to be 50 miles per hour (mph) or greater, the area of development exceeds 12.5 hectares (ha), is wholly within England, and Highways England is the highway authority. The Proposed Development is therefore a Nationally Significant Infrastructure Project (NSIP), and the NPSNN provides the primary basis for decisions by the SoST.

3.2.2. The NPSNN states that the need for development of the national networks, and the Government's policy for addressing that need, must be seen in the context of the Government's wider policies on economic performance, environment, safety, technology, sustainable transport and accessibility, as well as journey reliability and the experience of road/rail

users. The Government has therefore concluded that at a strategic level there is a compelling need for the development of the National Road Network.

3.2.3. The NPSNN provides guidance and imposes requirements on matters such as good scheme design, as well as the treatment of environmental impacts. It also provides planning guidance for such projects and is the basis for the examination by the Examining Authority (ExA) and decisions by the SoST. It covers a range of topics and these matters are addressed in detail in Chapters 5 to 14 of this report

3.3. UK REGULATIONS DERIVING FROM EUROPEAN LAW

3.3.1. The UK left the European Union (EU) as a member state on 31 January 2020 with the transition period concluding on 31 December 2020. EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day.

3.3.2. This report has been prepared on the basis of the retained law and references in it to European terms such as 'Habitats' have also generally been retained for consistency with the Examination documents. However, where terminology has changed, for example 'national sites network' rather than 'Natura 2000 network', the amended terminology will be utilised.

3.3.3. Since there may be changes in legislation between the writing of this report and the SoS's decision, it will be for the SoS to satisfy themselves as to the position on retained law and obligations at the point of decision.

The Habitats Regulations

3.3.4. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) transposed the Habitats Directive (Council Directive 92/43/EEC) and Birds Directive (Council Directive 2009/147/EC) into English and Welsh domestic legislation.

3.3.5. The Habitats Regulations are built around two pillars, a network of protected sites (the national sites network) and a system of species protection. This protects over 1000 animals and plant species and over 200 habitats types (for example: species types of forests; meadow; wetland etc) which are of international importance. It requires designation of such areas as Special Areas of Conservation (SACs).

3.3.6. The Habitats Regulations is also a comprehensive scheme of protection for all wild bird species naturally occurring in England and Wales and places great emphasis on the protection of habitats for endangered as well as migratory species. The most suitable territories for these species are classified as Special Protection Areas (SPAs) and along with SACs are an integral part of the national sites network.

3.3.7. The Convention on Wetlands of International Importance (Ramsar Convention) protects wetlands of international importance especially as waterfowl habitat.

3.3.8. The relevance of these Regulations to the Proposed Development is addressed in Chapter 14 of this report.

The Water Environment Regulations

3.3.9. The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (as amended) (The Water Environment Regulations) transposed the Water Framework Directive (Council Directive 2000/60/EC) (the WFD) in to English and Welsh domestic legislation.

3.3.10. The Water Environment Regulations includes objectives such as preventing and reducing pollution, environmental protection, improving aquatic ecosystems and mitigating the effects of floods. It provides for the production of river basin management plans to provide for the sustainable management of rivers.

3.3.11. This is relevant for the Proposed Development in that there are seven watercourses which are associated with the Saredon Brook or River Penk waterbodies of the Humber River Basin District Management Plan. The groundwater in the area is classified as part of the Staffordshire Trent Valley – Permo Triassic Sandstone WFD groundwater body and the Staffordshire Trent Valley – Mercia Mudstone East and Coal Measures WFD groundwater body. This is discussed further in Chapter 13 of this report.

The Air Quality Regulations

3.3.12. The Air Quality Standards Regulations 2010 (as amended) (The Air Quality Regulations) transposed the Ambient Air Quality and Cleaner Air for Europe Directive (Directive 2008/50/EC) into, principally, English domestic legislation, although some provisions have UK extent.

3.3.13. The Air Quality Regulations sets limit values (LVs) for compliance and establishes control actions where the LV are exceeded for ambient air quality with respect to sulphur dioxide (SO_2), nitrogen dioxide (NO_2) and mono-nitrogen oxides (NOx), particulate matter (PM_{10}[10] and $PM_{2.5}$[11]), lead, benzene and carbon monoxide (CO).

The UK Air Quality Strategy

3.3.14. The Air Quality Strategy for England, Scotland, Wales and Northern Ireland (the UK Air Quality Strategy) sets out air quality objectives and policy options to further improve air quality in the UK into the long term. As well as direct benefits to public health, these options are intended to

[10] Where the particulate matter is 10 micrometres or less in diameter
[11] Where the particulate matter is 2.5 micrometres or less in diameter

provide important benefits to quality of life and help to protect the environment.

3.3.15. Individual plans are prepared beneath this framework to provide more detailed actions to address LV exceedances for individual pollutants. In turn, these plans set the framework for action in specific local settings where LV exceedances are found, including the designation of Clean Air Zones and more localised Air Quality Management Areas (AQMAs), where Air Quality Management Plans are prepared by local authorities.

3.3.16. The Clean Air Strategy 2019 was published by the Department for Environment Food and Rural Affairs (Defra). It sets out how all sources of air pollution would be tackled, and action plans undertaken at the local authority areas continue to be produced in accordance with the plan.

3.3.17. There are no AQMAs within the application site. However, there are a number of AQMAs located within 200m of the Affected Road Network[12] (ARN). These are set out in Table 5.5 of Chapter 5 of the Environmental Statement (ES) [APP-044]. This issue will be discussed further in Chapter 5.

3.4. OTHER LEGAL PROVISIONS

United Nations Environmental Programme Convention on Biological Diversity 1992

3.4.1. The UK Government ratified the United Nations Environmental Programme (UNEP) Convention on Biological Diversity 1992 (the Biodiversity Convention) in June 1994. Responsibility for the UK contribution to the convention lies with Defra who promote the integration of biodiversity into policies, projects and programmes within the Government and beyond.

3.4.2. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010 (as amended) (the Decisions Regulations), the Biodiversity Convention has been taken into account in consideration of the likely impacts of the Proposed Development and appropriate objectives and mechanisms for mitigation and compensation. The UK Environmental Impact Assessment (EIA) and Transboundary Assessment process, which is referred to below, is established to satisfy, with regard to impacts on biodiversity, the Requirements of Article 4 of the Biodiversity Convention (Impact Assessment and Minimising Adverse Impacts).

3.4.3. This is of relevance to the biodiversity and ecological considerations and the landscape and visual impacts which are discussed in Chapters 6 and 7 of this report.

[12] This is defined in Table 12.1 to the 'Introduction to the Application' [APP-001] as *"Parts of the road network which are identified as likely to be affected by changes in air quality as a result of a development project"*.

The Wildlife and Countryside Act 1981

3.4.4. The Wildlife and Countryside Act 1981 (WCA) is the primary legislation which protects animals, plants and certain habitats in the UK. It provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs). In England the sites are identified for their flora, fauna, geological or physiographical interest by Natural England (NE). The WCA contains measures for the protection and management of SSSIs.

3.4.5. The WCA is relevant to the application in view of the sites and species identified in the ES, principally Chapter 8, Biodiversity [AS-083]. Relevant considerations are discussed in Chapter 6 of this report.

Natural Environment and Rural Communities Act 2006

3.4.6. The Natural Environment and Rural Communities Act 2006 (NERCA) makes provisions for bodies concerned with the natural environment and rural communities in connection with wildlife sites and SSSIs. It includes a duty that every public body must, in exercising its functions, have regard so far as it is consistent with the proper exercise of those functions, to the conservation of biodiversity (the biodiversity duty). In complying with the biodiversity duty regard must be had to the Biodiversity Convention. NERCA also requires that the SoS must publish a list of the living organisms and types of habitat which in the SoS's opinion are of principle importance for conserving biodiversity. The ExA has had regard to the NERCA and biodiversity duty in all relevant sections of this report.

3.4.7. The effects on landscape and visual receptors, as well as the effects on rights of way and the ease of movement for Non Motorised Users (NMUs) are considered in Chapters 7 and 11 of this report.

The Protection of Badgers Act 1992

3.4.8. The Protection of Badgers Act 1992 proscribes offences relating to badgers, including interfering with badger setts, together with exceptions and licences and enforcement and penalties. The implications of the Proposed Development for badgers are provided in ES Chapter 8 [AS-083] and the Confidential Badger Technical Report [APP-224] which has been withheld from publication on the Inspectorate's National Infrastructure website. The implications of the Protection of Badgers Act are discussed in Chapter 6 of this report.

The Hedgerow Regulations 1997

3.4.9. The Hedgerow Regulations 1997 (as amended) protect 'important' hedgerows with licencing and enforcement and penalties. The effect of the Proposed Development on hedgerows is discussed in ES Chapter 8 [AS-083] with a Hedgerow Technical Report being provided [AS-105]. The implications of the Proposed Development on hedgerows is discussed at Chapter 6 of this report.

Human Rights Act 1998

3.4.10. The Compulsory Acquisition (CA) and Temporary Possession (TP) of land can engage various relevant Articles under the Human Rights Act 1998. The implications are considered in Chapter 16 of this report.

The Equalities Act 2010

3.4.11. The Equalities Act 2010 established a duty, the Public Sector Equality Duty (the PSED), to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share the protected characteristics and persons who do not. The PSED is applicable to the Applicant as a public body, the ExA in the conduct of this Examination and reporting, and to the SoST in decision making.

3.4.12. The application was accompanied by an Equality Impact Assessment [REP3-034] and the implications of the Proposed Development for the PSED are considered at Chapter 11 of this report.

Climate Change Act 2008

3.4.13. The Climate Change Act 2008 establishes statutory climate change projections and carbon budgets. Where relevant these have been taken into account in Chapter 5 of this report.

3.4.14. Following the implementation of the Climate Change Act 2008 (2050 Target Amendment) Order 2019 it is the duty of the SoS to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline.

The Infrastructure Planning (Decisions) Regulations 2010

3.4.15. The Infrastructure Planning (Decisions) Regulations 2010 (the Decision Regulations) prescribe a list of matters to which the SoS under s103 of the PA2008 must have regard to when taking decisions on applications for NSIPs.

3.4.16. Regulation 3 of the Decisions Regulations requires, when deciding an application which affects a listed building or its setting, the decision-maker must have regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.

3.4.17. Regulation 7 of the Decisions Regulations requires the SoS to have regard to the United Nations Environmental Programme Convention on Biodiversity of 1992 when making their decision on an application for development consent.

3.5. MADE DEVELOPMENT CONSENT ORDERS

3.5.1. The Applicant and Cadent Gas Limited (Cadent) made reference to a number of precedents in made Orders and related approvals. References were made in the final version of the Explanatory Memorandum [REP7-013] and in submissions relating to the Protective Provisions in favour of Cadent.

3.5.2. The following made Orders were specifically referred to and have been taken into account:

- A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014;
- A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016;
- M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016;
- A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016;
- M20 Junction 10a Development Consent Order 2017;
- A19/A184 Testo's Junction Alteration Development Consent Order 2018;
- A585 Windy Harbour to Skippool Highway Development Consent Order 2020;
- M42 Junction 6 Development Consent Order 2020;
- A303 Sparkford to Ilchester Dualling Development Consent Order 2021;
- A1 Birtley to Coal House Development Consent Order 2021; and
- A38 Derby Junctions Development Consent Order 2021[13].

3.5.3. The Applicant has also referred to alterations to drafting as a result of changes contained in the Housing and Planning Act 2016 relating to CA as were used in the High Speed Rail (London – West Midlands) Act 2017.

3.6. TRANSBOUNDARY EFFECTS

3.6.1. A transboundary screening under Regulation 32 of the EIA Regulations as originally enacted was undertaken on behalf of the SoS for the Ministry of Housing, Communities and Local Government (MHCLG) on 26 April 2019 [OD-002]. Rescreening, taking account of any changes since that earlier screening, was undertaken on 27 March 2020 [OD-007]

3.6.2. Following the end of the transition period following the leaving of the EU by the UK, the relevant legislation has changed, but the effect has not materially altered.

3.6.3. The Regulation 32 duty is an ongoing duty, and on that basis, the ExA has considered whether any facts have emerged to change the screening conclusions, up to the point of the closure of the Examination. No

[13] We are aware that the High Court has quashed this decision.

mechanisms whereby any conceivable transboundary effects could occur emerged.

3.6.4. The SoS's duty under Regulation 32 of the 2017 EIA Regulations continues throughout the application process.

3.7. OTHER RELEVANT POLICY STATEMENTS

Noise Policy Statement for England

3.7.1. The Noise Policy Statement for England (NPSE) seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. It applies to all forms of noise including environmental noise, neighbour noise and neighbourhood noise.

3.7.2. The Government's Noise Policy Vision is to promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development.

National Infrastructure Strategy

3.7.3. The National Infrastructure Strategy notes that infrastructure underpins the economy. Transport, digital, energy and utility networks are vital for jobs, businesses and economic growth. But they also have a profound impact on people's daily lives. Investment in strategic roads is particularly identified.

Road Investment Strategy 2 (2020 – 2025)

3.7.4. The Road Investment Strategy 2 (RIS2) was published in March 2020, following the lodging of the application. It sets a long-term strategic vision for the strategic road network with the funding needed to plan ahead.

3.7.5. Under RIS2 the M54-M6 Link Road is shown as "Committed for [Road Period] 2" which covers the financial years 2020/21 to 2024/25.

3.8. THE NATIONAL PLANNING POLICY FRAMEWORK AND PLANNING PRACTICE GUIDANCE

3.8.1. The National Planning Policy Framework (the Framework) and its accompanying Planning Practice Guidance (PPG) set out the Government's planning policies for England and how these are expected to be applied. It provides a framework within which locally-prepared plans for housing and other development can be produced. The Framework makes clear that it does not contain specific policies for NSIPs. These are determined in accordance with the decision-making framework in the PA2008 and relevant national policy statements for major infrastructure, as well as any other matters that are relevant (which may include the Framework).

3.8.2. The NPSNN (paragraphs 1.17 to 1.20) describe the relationship between the Framework and the NPSNN. Together these paragraphs confirm that

the overall strategic aims of the Framework and the NPSNN are consistent, however, the two have differing but equally important roles to play. It states that the Framework is likely to be an important and relevant consideration in decisions on NSIPs, but only to the extent that it is relevant to that project.

3.8.3. The NPSNN was published in December 2014 and was consistent with the Framework 2012. The Framework was revised in July 2018, in February 2019 and July 2021. The NPSNN does not reflect these changes. The last of these changes was published on the day before this report was submitted. This means that we were unable to consider them. Thus if the SoST concludes that any changes in this version are particularly relevant to the determination of this application then it will necessarily be up to the SoST as to how they are considered. Notwithstanding this, where relevant the July 2018 and February 2019 changes have been considered within the relevant Chapters of this Report. Paragraph references to the Framework within this report are to the February 2019 version. In any event, the primary policy statement against which the application is to be judged is the NPSNN.

3.8.4. The PPG provides additional information to assist in the operation of the planning system. Insofar as the categories therein are relevant to the Proposed Development, they will be material. However, they should have less weight than either the NPSNN or the Framework.

3.9. LOCAL IMPACT REPORTS

3.9.1. LIRs have been submitted from the following relevant local authorities:

- Staffordshire County Council (SCC), [REP1-007].
- South Staffordshire Council (SSC), [REP1-097].

3.9.2. Where relevant considerations arising from the LIR are identified they are dealt with in the specific Chapter or Section of this report.

3.10. THE DEVELOPMENT PLAN

3.10.1. The development plan, as identified by the SCC and SSC, are:

- The South Staffordshire Local Plan Core Strategy[14] (Core Strategy);
- Local Plan Site Allocations document (SAD)[15];
- The Staffordshire and Stoke-on-Trent Joint Waste Local Plan (2010 – 2026)[16]; and
- The Minerals Local Plan for Staffordshire (2015 – 2030)[17];

[14] Adopted 11 December 2012
[15] Adopted 11 September 2018
[16] Adopted by Staffordshire County Council on 15 March 2013 and by Stoke-on-Trent City Council on 21 March 2013
[17] Adopted 16 February 2017

3.10.2. In respect of the Joint Waste Local Plan the two authorities resolved in 2019 that there is no need to revise that plan.

3.10.3. The Core Strategy and the SAD are currently being reviewed by SSC and has reached Regulation 18 stage[18]. SSC consulted on Issues and Options in October 2018 and then a Preferred Spatial Strategy in October 2019. According to the SSC's Local Development Scheme[19] it is due to publish its Preferred Options in Summer 2021.

3.11. DESIGN MANUAL FOR ROADS AND BRIDGES

3.11.1. The Design Manual for Roads and Bridges (DMRB) contains information about current standards relating to the design, assessment and operation of motorway and all-purpose trunk roads in the United Kingdom.

[18] Pursuant to the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended)

[19] https://www.sstaffs.gov.uk/doc/181628/name/LDS%20June%202020%20Final%20for%20Website.pdf/

4. THE PLANNING ISSUES

4.1. MAIN ISSUES IN THE EXAMINATION

4.1.1. In overall terms, there was substantial local support for the principle of the development. There were objections to the detail of the proposal, particularly as to whether the proposed mitigation was excessive and appropriately located and thus whether Compulsory Acquisition (CA) and Temporary Possession (TP) were justified. There were no over-arching representations suggesting that the Proposed Development was fundamentally inappropriate in policy terms or that development consent should be refused.

4.1.2. The local community did, however, raise objections to the precise line of the link road. Concern was expressed by South Staffordshire Council (SSC) and the Parish Councils that the Preferred Alignment decision was incorrect and that a more easterly alignment would have less of an effect on local communities.

4.1.3. There are two points from this. Firstly, the Environmental Impact Assessment (EIA) should consider appropriate alternative routings, this is considered below in this chapter under the Consideration of Alternatives. Secondly, once an application for development consent has been submitted it is not for the decision-maker to second guess the Applicant's decision as to the route, but rather assess the application as submitted (including any amendments) in line with law, policy and guidance and come to a conclusion. It may be that the submitted approach does not meet those tests and therefore the development consent would be withheld.

4.1.4. Our initial assessment of principal issues for the Examination, as required by section (s) 88 of the Planning Act 2008 as amended (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure Rules) 2010 was made within 21 days of the day after receipt of the s58 certificate of compliance [OD-003], [OD-004] and [OD-005] under the PA2008 provided by the Applicant and published as Annex B to the Progress Note [PD-007]. The issues identified in that initial assessment were:

- Air Quality;
- Biodiversity, Ecology and Natural Environment;
- Cultural Heritage;
- Green Belt;
- Landscape and Visual;
- Noise and Vibration;
- Traffic and Transport;
- Water Environment;
- Socio-Economic Effects;
- Draft Development Consent Order (dDCO); and
- CA and/ or TP /Rights over land.

4.1.5. The initial assessment of principal issues included a number of sub-headings setting out areas in more detail. These were discussed at the

Preliminary Meeting (PM) and are set out in the Examining Authority's (ExAs) note of the PM [EV-010]. On the basis that the topics set out above were a general list and not exhaustive the parties at the PM considered it generally appropriate.

4.1.6. We have considered the principal issues that it identified in the Rule 6 letter as well as the additional matters raised by Interested Parties (IPs) in the PM. Our detailed findings and conclusions on all the relevant and important matters are set out in Chapters 5 to 13 of this report, except for matters relating to Habitats Regulations Assessment, CA and the dDCO, which are respectively contained in Chapters 14, 16 and 17. All representations, even if not explicitly mentioned, have been fully considered in reaching the conclusions set out.

4.1.7. A number of issues were raised in Written Representations (WRs), nearly all of which fell within the categories of issues identified in the ExA's initial assessment of principal issues, with traffic and transport (including effect on non-motorised users, and on local communities), effects on heritage assets and their settings and biodiversity being the most frequently mentioned matters.

4.1.8. In his Relevant Representation (RR) Daniel Williams [RR-032] considered that the effects of the application had not been considered widely enough and that to meet the scheme objectives additional measures were needed outside the application site. This issue is principally considered in Chapter 12 of this report dealing with Traffic and Transport.

4.1.9. We have taken into account the matters raised in its consideration of the Applicant's Case for the Scheme as updated following the main changes [AS-037].

4.1.10. Relevant Representations (RRs) and WRs, along with documents submitted throughout the Examination, made clear that various Affected Persons (AP) were of the view that mitigation proposals, particularly for replacement tree planting were excessive, and that they could and should be located alternatively. The Applicant expressed the view that the proposal should be considered as a whole. The Applicant accepted that some mitigation could be located in other locations and might be more effective/have less of an effect on one interest but was of the view that these alternative locations would have greater adverse effects on other interests.

4.1.11. The ExA's approach has been to consider each issue individually and then to draw up a Planning Balance in Chapter 15 of this report. This then feeds into the overall conclusion and whether the CA/TP is justified, and whether the Development Consent Order (DCO) should be made, whether in the form submitted or with alterations.

4.2. ISSUES ARISING IN LOCAL IMPACT REPORTS

4.2.1. Two Local Impact Reports (LIRs) were submitted by Staffordshire County Council (SCC) [REP1-007] and SSC [REP1-097] at Deadline (D) 1.

4.2.2. The principal issues raised in the LIRs coincided with the ExA's initial assessment of principal issues, although expressed in different terms, and are:

- Air Quality;
- Biodiversity and Ecology;
- Flood Risk;
- Green Belt;
- Highways and Transport;
- Historic Environment;
- Landscape and Visual Amenity;
- Minerals and Waste;
- Noise; and
- Public Rights of Way.

4.2.3. We have had full regard to the matters identified in the LIRs and these were further explored and considered during the course of the Examination.

4.2.4. Chapters 5 to 14 of this report comprises our detailed consideration of each of the subject matters identified above in relation to the proposed development. Our findings and conclusions are based on the relevant legal and policy framework, plus consideration of issues arising from the LIRs, written submissions and those made orally at the Hearings, as required by s104 PA2008.

4.2.5. Conformity with the National Policy Statement for National Networks (the NPSNN) and other material policy is assessed in the relevant chapters of this Report.

4.3. DESIGN MANUAL FOR ROADS AND BRIDGES UPDATES

4.3.1. As noted in paragraph 3.11.1 Design Manual for Roads and Bridges (DMRB) is the recognised standard guidance for design, assessment and operation of trunk roads in the United Kingdom. Updated methodologies for the environmental assessment of road schemes as outlined in the DMRB were published between July and November 2019. The Applicant notes in its document 'DMRB Updates and the Impact on the DCO Application' [AS-059] paragraphs 1.2.3 and 1.3.4 that despite the timing of the updated DMRB the majority of the assessments reported in the Environmental Statement (ES) were undertaken using the latest methodology. However due to the complexity of the new DMRB standards for air quality and noise and vibration assessment, which were published on 28 November 2019, the Applicant confirmed in this document it was not possible to update the assessment to take into consideration the latest methodology prior to submission of the DCO

application, without incurring a substantial delay to the Proposed Development.

4.3.2. In order to test whether the results of the air quality and noise and vibration assessment (as reported in the ES) would alter when assessed using the new DMRB standards (LA 105 and LA 111), the Applicant undertook sensitivity tests, and where appropriate further assessment. The Applicant provided a report 'DMRB Updates and the Impact on the DCO Application - Amended following DMRB update' [AS-059] to summarise the results of that work and report where changes to those assessments would result in alterations to other aspects of the ES and DCO application. The ExA accepted this into the Examination along with the relevant updated chapters and these have formed the basis of our reporting, assessment and conclusions.

4.3.3. An update to the DMRB in respect of LA106 Cultural Heritage was published in January 2020. However, that revision updated references only from the original document (Revision 0) being published in September 2019 and on which the methodology and assessment was based. There are therefore no consequences for the assessment in that chapter. We are therefore satisfied that the application has been assessed utilising latest guidance.

4.4. EFFECTS OF COVID-19 PANDEMIC

4.4.1. The application was submitted prior to the COVID-19 pandemic and the associated effects. As all of the surveys, with the exception of some additional ecological and archaeological surveys, and analysis were undertaken without that having any influence on the submission it properly captures the situation at the date of the application.

4.4.2. It would be conjecture as to when traffic levels would return to pre-pandemic levels or what, if any, other implications there may be from the pandemic, such as levels of working from home. No party to the Examination suggested that the pandemic made a material difference to any aspect of the consideration of the Proposed Development.

4.4.3. By omitting any consideration of the pandemic, we consider the Examination provides a reasonable and, more importantly, equitable understanding of the situation.

4.5. ACCURACY OF SUBMISSION

4.5.1. In his representation at Deadline 2 [REP2-014] Daniel Williams queried the use of the "Do not scale" proviso on the Applicant's Plans and the caveat from the Applicant's contractor that the drawings had only been prepared for specific purposes.

4.5.2. The Applicant at D8 [REP8-029] notes:

> *"The PDF drawings provided as part of the Examination are illustrative of the Scheme for the purpose required to convey information to relevant parties and the Examining Authority. If*

printed at the correct scale, measurements can be taken from the drawing which would provide an approximation of the dimension but, as stated previously, should not be used for setting out, construction or quantity take off. The disclaimer is intended that, if a measurement is critical to the application, these will be provided separately, hence why drawings also carry the disclaimer that they should be read in conjunction with all other drawings".

4.5.3. Any drawing will only be accurate to the extent that the base survey information is accurate and how precise is the information supplied on that drawing. At a scale of 1:2500 for example (that of the Works Plans [REP7-004]) a 1 millimetre drawn line would represent 2.5 metres wide on the ground. Any element on the ground would be more precise than that. Article 6 of the preferred DCO [REP8-005] also sets out specific limits of deviation.

4.5.4. Further, through the mechanism of Requirement 3 in the preferred DCO [REP8-005][20] there is a Requirement that, if approved, "the authorised development must be designed in detail" for further approval. Even then normal construction practice allows for "Building Tolerance" as matters are undertaken on the ground. We are therefore satisfied that the proviso and caveat do not preclude the use of the submitted information to allow the proper consideration of the application and, if permitted, the construction of the Proposed Development.

4.5.5. Should the Applicant not construct any permitted development in accordance with the approved details then SSC, as local planning authority, has enforcement powers under the PA2008.

4.6. CONSIDERATION OF ALTERNATIVES

4.6.1. Paragraphs 4.26 and 4.27 of the NPSNN deal with the assessment of alternatives. Paragraph 4.26 states the following: *"The EIA Directive requires projects with significant environmental effects to include an outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant's choice, taking into account the environmental effects*."

4.6.2. Paragraph 4.27 of the NPSNN states: *"All projects should be subject to an options appraisal …… Where projects have been subject to full options appraisal in achieving their status within Road or Rail Investment Strategies …, option testing need not be considered by the Examining Authority or the decision maker. For national road and rail schemes, proportionate option consideration of alternatives will have been undertaken as part of the investment decision making process. It is not necessary for the Examining Authority and the decision maker to reconsider this process, but they should be satisfied that this assessment has been undertaken."*

[20] Set out in Schedule 2 of the preferred DCO

The Case for the Applicant on alternatives

4.6.3. Chapter 3 of the ES 'Assessment of Alternatives' [APP-042] sets out the Applicant's description of the main alternatives studied and the Applicant's reasoning for selecting the chosen option.

4.6.4. The history of the Proposed Development and consultation undertaken to support that is set out in various documents submitted with the application. These include:

- Introduction to the Application [APP-001];
- The Consultation Report [APP-024];
- Introduction [APP-040];
- Assessment of Alternatives [APP-042];
- Case for the Scheme and National Policy Statement Accordance Table [AS-037]; and
- The Transport Assessment Report [REP3-036].

4.6.5. The need for a new link road between the M54 and the M6/M6 Toll Road was identified in the West Midlands Area Multi Modal Study in 2001 to provide a strategic network link between the M54 and the M6 northbound. The scheme was supported going forward at various times with conceptual options for the new link presented at public information exhibitions held in July 2006.

4.6.6. Between 2009 and 2014 several options were developed, and the Government confirmed its intention to fund the scheme, subject to finalisation of options and agreement on developer contributions, in both the 2013 spending announcement and the National Infrastructure Plan published in December 2013. In January 2014 the scheme was reviewed and progressed with the intention of identifying a preferred route.

4.6.7. In December 2014 the Government published the first Road Investment Strategy: for the 2015/16 – 2019/20 Road Period (RIS1) and in which it formally committed to the delivery of the scheme. It was identified as a scheme committed subject to other contributions and described as 'M54 to M6/M6 Toll link road – adding a north-facing access between the M54 and the M6 and M6 Toll around junctions 10A and 11'.

4.6.8. Between December 2014 and January 2015 Highways England (HE) undertook non-statutory consultation based on three route options.

- Option A providing a new road between M54 junction 1 and M6 junction 11, covering approximately 1.5 miles (2.5 kilometres (km)).
- Option B providing a new road between M54 junction 1 and the M6 and M6 Toll covering approximately 2.2 miles (3.5km).
- Option C widening the M54 from junction 1 to the M6, providing extra capacity through an additional lane in each direction, with new slip roads constructed at M6 junction 10a to provide links to and from the M6 north.

4.6.9. Options A and B followed similar routes, and both accommodated an eastern and western variant.

4.6.10. The Applicant considers that there was no clear decision made on a preferred route based on the consultation as feedback contrasted with HE's technical appraisals. On this basis Options B and C were shortlisted and further technical work was carried out to improve the designs in terms of their environmental and traffic performance. Three modified options evolved Option B (West) amending the vertical alignment of the scheme and additional mitigation measures in the vicinity of Hilton Hall to reduce the impact on the setting of the Listed Buildings. Broadly in the same corridor as Option C two alternatives were developed to the east of Hilton Hall in the area between the M54 and M6; these were identified as Option C (West) and Option C (East).

4.6.11. These options were considered to have different impacts to the ones previously consulted on and therefore a second non-statutory consultation was undertaken between September and October 2017 to seek views on the modified options.

4.6.12. Following consideration of the consultation responses and further survey and assessment a modified Option B (West) was identified as the preferred route. However, this route had originally contained a link to the M6 Toll junction T8 and which was subject to other developer contributions. The level of contributions was not enough to meet the costs of the free flow link. After the non-statutory consultation, the connection was tested with a direct connection to the M6 junction 11. The resulting solution improved the value for money delivered by the scheme, without additional significant environmental effects. An amended modified Option B (West) was therefore announced as the preferred route by the Secretary of State for Transport (the SoST) on 26 September 2018. The preferred route announced was therefore a direct line of approximately 2.5km (1.6 miles) to the east of Featherstone and Shareshill and to the east of the A460. It would pass to the west of Hilton Hall but it did not however include details of the nature of the junction connections at M54 junction 1 or M6 junction 11 as these were still to be fully developed.

4.6.13. The scheme proposals were further developed following the confirmation of the preferred route and in advance of the statutory consultation. Following further engagement with various relevant parties including local and parish councils and affected landowners.

- the design development and engagement undertaken in the lead-up to statutory consultation led to the following further changes to the design of amended modified Option B (West);
- development of the layout of M6 junction 11 to ensure the existing A460 retains a connection at junction 11;
- realignment of the road as it passes Dark Lane to move it approximately 25 metres (m) to the east taking it further away from residential properties (in response to concerns raised by local residents and parish councils);
- refinement of the design at Hilton Lane to reduce changes to the existing road layout and impacts on woodland (The Shrubbery) which contributes to the historic landscape character of Hilton Park;

- changes to the design of M54 junction 1 to avoid the direct loss of ancient woodland at Whitgreaves Wood (which also provides screening for Moseley Old Hall), the loss of a tree belt which screens Featherstone from the M54 and allows retention of the existing noise barrier;
- a change to the alignment to minimise the loss of land around Brookfield Farm and impact on the fishing ponds; and
- introduction of landscaping to minimise visibility of the scheme.

4.6.14. The statutory consultation was undertaken between 24 May and 5 July 2019. It was based on a scheme that identified a link road of approximately 2.5km (1.6 miles) in length between junction 1 of the M54 and junction 11 of the M6. A new junction arrangement would be developed at junction 1 of the M54 that would provide direct links to and from the M54 and maintain the connections to the local road network. There would be a realignment of the main line between Dark Lane and Hilton Hall and a minor realignment of Hilton Lane over the new link road. Also, a new junction would be provided at junction 11 M6 with junction capacity improvements and changes to Mill Lane.

4.6.15. As a result of the statutory consultation further changes were made to the scheme. These included the retention of the connection between Mill Lane and the A460 which had been proposed to be closed. The A460 between Dark Lane and the M6 junction 11 was included within the Order Limits to allow for its de-classification. Amendments were made to the accommodation bridge near Brookfield Farm to increase the traffic width of the structure and an access track altered to facilitate access by larger agricultural vehicles. Also, changes had been made to the mitigation planting to be more in keeping with the landscape character in the Hilton Park Historic Landscape area.

4.6.16. Two further supplementary non-statutory consultations were undertaken concurrently between November and December 2019 as there were further amendments to the draft Order Limits. As a result of these and further statutory consultations following due diligence assessment and identification of additional parties further minor amendments were made to the scheme. These included:

- relocating the attenuation pond to the northwest of M54 junction 1;
- inclusion of additional land in the Order Limits to enable access to Whitgreaves Wood Ancient Woodland works;
- addition of an access track for Tower House Farm and a reduction in the land take from the farm;
- reduction in the permanent land take associated with access to the Mann and Hummell site south of M54 junction 1;
- a change to the footway and cycle access across M6 junction 11;
- a change to the curvature of the road so less land was needed in the verge to the west of the link between Dark Lane and Featherstone junction west roundabout; and
- additional land was included to facilitate utility diversion in respect of a high pressure gas main.

4.6.17. As noted above the application was submitted on 31 January 2020 and accepted for Examination on 28 February 2020 (see paragraph 1.1.1). Subsequent to these the Government laid the Road Investment Strategy 2: 2020-2025 (RIS2) before Parliament on 11 March 2020. The Proposed Development is identified as a scheme with committed funding for the second Road Period (RP2) (covering the financial years 2020/21 to 2024/25) at C16 and is identified as 'M54-M6 Link Road – adding a north-facing access between the M54 and the M6 around junction 10a and 11'.

Issues arising during the Examination on alternatives

4.6.18. There was little opposition to the principle of the Proposed Development from any participant to the Examination (see Chapter 12 of this report). However, a number of IPs, in particular SSC [REP1-097], the Parish Councils [RR-011] and [REP7-031], Rt Hon Gavin Williamson MP [RR-039] and [REP1-070] and Councillor Robert Cope [RR-025] all queried whether the proposed site of the mainline was in the most appropriate location. All were concerned about the effect on the living conditions of the occupiers of properties in Dark Lane and Park Road, particularly from noise. SSC, the Parish Councils and Councillor Cope considered that the road should be located further to the east; predominantly on a different alignment either closer to or to the east of Hilton Hall.

ExA's Conclusion on alternatives

4.6.19. In accordance with paragraph 4.26 of the NPSNN, the Applicant has included within the ES an outline of the main alternatives studied and provided an indication of the main reasons for choice of the preferred route, taking into account the environmental effects.

4.6.20. In accordance with paragraph 4.27 of the NPSNN, we are satisfied that this project has been subject to a full options appraisal in achieving its status within the Road Investment Strategy, and that proportionate option consideration of alternatives would have been undertaken as part of the investment decision making process.

4.6.21. However, that does not mean that the proposed alignment as expressed in the Proposed Development is necessarily acceptable, taking into account all considerations as set out in s104 of the PA2008. That conclusion can only be reached having assessed all the individual planning issues and coming to a balanced conclusion. That the we do in Chapter 15.

4.7. ENVIRONMENTAL IMPACT ASSESSMENT

4.7.1. As recorded in Section 1.5 of this Report, and for the reasons set out there the Proposed Development is EIA development. The documents which comprise the ES and the various addenda to that are set out in the Examination Library set out at Appendix B of this Report. It also records

the environmental management documents proposed to be used by the Applicant, secured through the DCO, to secure the construction and operation of the Proposed Development within the worst-case parameters (the Rochdale envelope) assessed in the ES.

4.7.2. At the same time as submitting the changes to the application, accepted into the Examination in October 2020 [AS-062], the Applicant submitted a number of documents as amendments and addenda to the originally submitted ES. These principally dealt with changes to the assessment of Biodiversity and Noise and Vibration.

4.7.3. In accepting the Changes into the Examination [PD-015] we asked the Applicant to consider what publicity might be appropriate. In response, the Applicant set out its position [REP2-001]. In summary, it indicated that it had already undertaken publicity in August and September 2020 and the Examination Timetable allowed for comments to be made by Deadline 3A (1 December 2020). However, it additionally published notices in newspapers and on site and allowing for comments to be made. The Applicant confirmed in a letter dated 12 February 2021 [REP6-001] that no responses were received to this later publicity.

4.7.4. The final extent of the EIA as submitted can be identified in the Guide to the Application [OD-009] and, although the decision is for the SoST, the ExA considers that taken as a whole this would provide the SoST with a reasoned conclusion on the significant effects of the Proposed Development (see Regulation 21 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended)).

4.8. HABITATS REGULATIONS ASSESMENT

4.8.1. The application was accompanied by a Report [APP-216] entitled *"Habitats Regulations Assessment – No Significant Effects Report"*. This identified an area of search and identified that the nearest national networks site is the Cannock Extension Canal Special Area of Conservation (SAC) some 5.9km to the east of the application site. The Cannock Chase SAC is approximately 6.5km to the north. The nearest Ramsar site is the Midland Meres & Mosses Phases 1 and 2 which are more than 20km from the application site. Although there were seven SACs within 30km of the application site none of these list bats as a qualifying feature.

4.8.2. The report also considered national network sites which may be affected by nitrogen loads and potential increases in this within proximity of the Affected Road Network (ARN). However, the report considered that as neither site, the Cannock Chase SAC and Cannock Extension Canal SAC, was within 200m of the ARN there would be no anticipated effect on air quality.

4.8.3. The Applicant submitted a draft Statement of Common Ground (SoCG) with Natural England (NE) [APP-221]. While NE was satisfied in respect of all other national network sites, it was not satisfied that there would

be no effects on the Cannock Extension Canal SAC due to hydrological linkages between that site and locations within 200m of the ARN.

4.8.4. A final signed SoCG between the Applicant and NE was submitted at D8 [REP8-028]. The SoCG confirmed that in light of the Applicant's response to NE's RR [RR-037][21] and WR [REP1-012] it was agreed that that the Proposed Development would not result in significant effects on national network sites.

4.8.5. We issued a Report on the Implications for European sites (RIES) [PD-026] on 26 February 2021. This is discussed further in Chapter 14 of this report. Consequently, the consideration and conclusions on Habitats Regulations Assessment (HRA) are dealt with in that Chapter.

[21] Following submission of the RR Natural England noted an error with regard to this document relating to the Cannock Extension Canal SSSI and submitted a revised version; this was accepted at the discretion of the ExA [AS-002].

5. FINDINGS AND CONCLUSIONS IN RELATION TO AIR QUALITY

5.1. INTRODUCTION

5.1.1. This chapter considers the effect of the Proposed Development on air quality matters. In particular it deals with:

- Nitrogen Dioxide (NO_2), Nitrogen Oxide (NOx) and particulate emissions; and
- Construction emissions with a bearing on air quality including dust.

5.1.2. This chapter of the report will also consider carbon emissions on the basis that, while it does not affect air quality of itself, it is appropriate to include that element in this part of the report.

5.2. POLICY

5.2.1. The National Policy Statement for National Networks (NPSNN) paragraphs 5.3 to 5.15 deal with air quality and paragraphs 5.16 to 5.19 deal with carbon emissions. Paragraphs 5.81 to 5.89 deal with dust, odour, artificial light, smoke and steam.

Air Quality

National Policy Statement of National Networks

5.2.2. Paragraph 5.3 of the National Policy Statement of National Networks (the NPSNN) sets out *"increases in pollutants during construction or operation phases can result in the worsening of local air quality"*, and *"increased emissions can contribute to adverse impacts on human health, on protected species and habitats"*.

5.2.3. Paragraph 5.7 of the NPSNN indicates that the Environmental Statement (ES) should describe existing air quality levels, forecasts of air quality at the time of opening, assuming that the Proposed Development is not built and taking account of the impact of the Proposed Development, and *"… should describe any significant air quality effects, their mitigation and any residual effects, differentiating between the construction and operational phases, taking account of road traffic generated by the project"*.

5.2.4. For decision making, paragraph 5.10 of the NPSNN indicates that the Secretary of State (SoS) *"… should consider air quality impacts over the wider area likely to be affected as well as in the near vicinity of the scheme"*. Account must be taken of air quality thresholds in domestic and European derived legislation.

5.2.5. Paragraph 5.12 of the NPSNN states the SoS *"… must give air quality considerations substantial weight where, after taking into account mitigation, a project would lead to a significant air quality impact in*

relation to EIA and/or where they lead to a deterioration in air quality in a zone/agglomeration".

National Planning Policy Framework

5.2.6. Paragraph 170 of the National Planning Policy Framework (the Framework) advises *"Planning policies and decisions should contribute to and enhance the natural and local environment by: … e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans"*

5.2.7. The Framework emphasizes in paragraph 181 that planning decisions should sustain and contribute towards compliance with relevant limit values (LVs) or national objectives for pollutants, taking into account the presence of Air Quality Management Areas (AQMAs) and Clean Air Zones, and the cumulative impacts from individual sites in local areas.

Local Plan

5.2.8. The South Staffordshire Local Plan Core Strategy (the Core Strategy) contains Core Policy 2, Protecting and Enhancing the Natural and Historic Environment, and Core Policy 11, Sustainable Transport to meet strategic objectives.

5.2.9. Core Policy 2 includes Policies EQ1 to 4. Core Policy 2 amongst other matters indicates that *"development or initiatives will generally be supported which … d) protect and improve water and air quality". Policy EQ1 states "Permission will be granted for development (alone or in combination) which would not cause significant harm to sites and/or habitats of nature conservation, geological or geomorphological value, including ancient woodlands and hedgerows, together with species that are protected or under threat"*. In respect of locally designated sites it further advises that *"Locally important sites are also identified [e.g. Sites of Biological Importance (SBIs), Regionally Important Geological Sites (RIGs), Local Nature Reserves (LNRs)] and will be protected and enhanced"*.

5.2.10. Core Policy 11 includes the advice that *"Development proposals will, either individually or collectively, have to make appropriate provision for … improving air quality and reducing the impact of travel upon the environment, in particular reducing carbon emissions that contribute to climate change".* Core Policy 11 further advises that *"The following national and regional transport infrastructure schemes may be delivered in the plan period: …M54/M6/M6 Toll Link Road"*.

Air Quality Plan

5.2.11. The Air Quality Plan for NO_2 in the United Kingdom (UK) sets out to tackle roadside NO_2 concentrations within statutory limits within the

shortest possible time. South Staffordshire Council (SSC) is not named among those local authorities who are to undertake a limit assessment to consider the best options to achieve compliance with this limit value. However, the Air Quality Plan is relevant in that the Proposed Development should not contradict with its main aim which is to achieve compliance with the NO_2 limit values in the shortest time possible.

Carbon Emissions

NNNPS

5.2.12. The NPSNN notes in paragraph 5.16 that *"the impact of road development on aggregate levels of emissions is likely to be very small"*. The ES should describe an assessment of any likely significant climate factors and, for road projects, should provide evidence of the carbon impact of the project and an assessment against Government carbon budgets.

5.2.13. For decision making paragraph 5.18 of the NPSNN indicates the Government's overarching carbon reduction strategy *"includes a range of non-planning policies which will, subject to a very unlikely event occurring, ensure that any carbon increases from road development do not compromise overall carbon reduction commitments. Therefore, any increase in carbon emissions is not a reason to refuse development consent unless the increase in carbon emissions resulting from the proposed scheme are so significant that it would have a material impact on the ability of the Government to meet its carbon reduction targets"*.

5.2.14. Paragraph 5.19 of the NPSNN notes that evidence of appropriate mitigation measures in both design and construction should be presented. The SoS *"will consider the effectiveness of such measures in order to ensure, in relation to design and construction, the carbon footprint is not unnecessarily high"*.

Carbon Budget

5.2.15. The Climate Change Act 2008 (2050 Target Amendment) Order 2019 has come into effect. This has raised the legally binding framework to cut greenhouse gases from 80% to 100% of the 'net UK carbon account' (the amount of net United Kingdom (UK) emissions of targeted greenhouse gases for a period adjusted by the amount of carbon units credited or debited to the account) for the year 2050. The duty is now to ensure that the net UK carbon account is lower than the '1990 baseline'.

5.2.16. Achieving this will require future greenhouse gas emissions to be aligned with any future new or revised carbon budgets that may be set out by Government to achieve the target of net zero carbon by 2050.

5.2.17. The Government announced its Sixth Carbon Budget (the greenhouse gases emitted over a 5-year period from 2033-2037) towards the very end of the Examination. The Carbon Budget Order 2021 was made on 23 June 2021 and came into force the following day. This set a carbon budget for the 2033-2037 budgetary period is 965,000,000 tonnes of

carbon dioxide equivalent. This requires the cutting emissions by 78% by 2035 compared to 1990 levels, this will bring the UK to more than three-quarters of the way to net zero by 2050. Given the timing of this announcement this budget has not been assessed and considered in this Examination and the SoST may wish to satisfy themself of its implications for the Proposed Development. The Proposed Development has been considered on the basis of the previous Carbon Budget to reduce emissions in 2030 by at least 68% compared to 1990 levels.

5.2.18. Furthermore, the SoST published 'Decarbonising transport: a better, greener Britain' on 14 July 2021 as part of the government response to the Sixth Carbon Budget. As this was after the close of the examination it has not formed part of the reasoning for the recommendation. Consequently, the SoST may wish to consider the impact of the proposals in it.

5.3. THE CASE FOR THE APPLICANT

Air Quality

5.3.1. Chapter 5 of the ES [APP-044] deals with air quality. It is supported by four appendices setting out Methodology [APP-165], Monitoring Data [APP-166], Results Tables [APP-167] and Construction Air Quality Mitigation [APP-168]. There are also four relevant figures identified in the Examination Library (EL).

General Approach

5.3.2. The Applicant states that the assessment follows the guidance set out in the Design Manual for Roads and Bridges (DMRB) and associated Interim Advice Notes (IAN) and includes a construction phase dust assessment and assessment of additional construction traffic, as well as local operational air quality for public exposure and European and nationally designated habitat sites. The assessment also includes a compliance risk assessment, Department for Transport (DfT) Web based Transport Analysis Guidance (WebTAG) plan level assessment and regional assessment of pollutant emissions. The Applicant identified key documents that the assessment has been carried out in accordance with and these include:

- DMRB, Volume 11, Section 3, Part 1 'Air Quality' (HA207/07) (Ref 5.1);
- IANs:
    - IAN170/12: Updated air quality advice on the assessment of future NOx and NO_2 projections for users of DMRB Volume 11, Section 3, Part 1 Air Quality;
    - IAN174/130: Updated advice for evaluating significant local air quality effects for users of DMRB Volume 11, Section 3, Part 1 Air Quality;
    - IAN175/13: Updated advice on risk assessment related to compliance with the European Union (EU) Directive on ambient air quality and on the production of proposed scheme Air Quality

Action Plans for users of DMRB Volume 11, Section 3, Part 1 Air Quality;
    - IAN185/15: Updated traffic, air quality and noise advice on the assessment of link speeds and generation of vehicle data into 'speed-bands' for users of DMRB Volume 11, Section 3, Part 1 Air Quality and Section 3, Part 7 Noise; and
- Defra Local Air Quality Management Technical Guidance LAQM.TG(16).

5.3.3. The assessment is undertaken in respect of the construction and operational phases and addresses NOx, NO_2, dust and particulate matter of 10 or 2.5 micrometres or less in diameter (PM_{10}, and $PM_{2.5}$) particles. The Applicant identifies sensitive receptors which it identifies as locations where members of the public may be exposed to or affected by air quality impacts, predominantly residential properties, but can include schools, and internationally or nationally designated ecosystems.

5.3.4. The Applicant sets out the relevant air quality standards and objectives set by the EU and transposed into UK law by the Air Quality Standards Regulations 2010 and those implementing the UK National Air Quality Strategy (AQS). The air quality objective for the protection of vegetation from NOx is based on the work of the United Nations Economic Commission for Europe and World Health Organisation.

5.3.5. The Applicant stated that the local air quality assessment is focussed on the immediate area along and around the Proposed Development and the wider Affected Road Network (ARN) and that the construction assessment is based on best available information. In terms of construction whilst it is likely the construction will be undertaken in phases, including traffic management interventions, the construction dust assessment assumes a single phase as does the construction vehicle movement emissions based on when movements are most frequent. The road traffic emissions are considered on the basis of the point of full opening where there is a single year of opening.

5.3.6. The study area defined by the Applicant used a 200 metres (m) area around the sections of road likely to be affected by the Proposed Development during construction. The routes the Proposed Development would impact are the ARN identified through changes in traffic data between the Do-Something (DS) and Do-Minimum (DM) positions and the criteria in the DMRB.

5.3.7. The Applicant stated that there are no AQMAs within the application site but identifies eight within 200m of the ARN of which the closest is in Wolverhampton and which is within 400m of the application site. SSC AQMA No.1 is also identified as 'soon to be revoked'. This was clarified in the Applicant's responses to First Written Questions (ExQ1) [REP1-036] where the Applicant confirmed South Staffordshire AQMA No.1 (Woodbank, Penkridge) has now been revoked. South Staffordshire's 2019 Air Quality Annual Status Report (ASR) states that this AQMA was revoked in early 2019 due to *"prolonged data gathering demonstrating levels comfortably below [the] objective"*.

5.3.8. In terms of existing monitoring by local authorities, that data collected shows two exceedances of the annual mean objective value of NO_2 across the listed sites within the study area. The Applicant also notes that monitored concentrations can be considered at risk of exceedance of the annual mean objective value for NO_2, where concentrations are within 10% of the objective value, and it identifies four other locations where this occurs.

5.3.9. The Applicant concludes on this basis that:

- national assessments have demonstrated that there is no risk of carbon monoxide, 1,3-butadiene, benzene, lead and sulphur dioxide concentrations exceeding the relevant UK AQS objectives due to emissions from traffic anywhere in the UK. These pollutants have not been considered further as they are very unlikely to be present at levels which would represent potential significant impacts due to the Proposed Development;
- for particulate matter (PM_{10} and $PM_{2.5}$), none of the local authorities within which there is any of the ARN have identified a current risk of annual or daily exceedances; and
- for the hourly mean NO_2 UK AQS objective, none of the local authorities within which there are any of the ARN have identified a current risk of exceedance, so the hourly mean for this pollutant is not considered as part of the air quality assessment in terms of having potential for significant impacts due to the Proposed Development.

5.3.10. On this basis, changes to the annual mean NO_2 concentrations represent the focus of the air quality assessment for public exposure (i.e. residential properties) whilst predicted changes to the concentrations of PM_{10} and $PM_{2.5}$ are also reported consistent with the Planning Inspectorate's Scoping Opinion. The change in annual mean NOx and NO_2 concentrations and rates of nitrogen deposition affecting sensitive ecosystems are also addressed.

5.3.11. The Applicant also used data from its own diffusion tubes located within 200m of the ARN to represent sensitive receptors close to motorways. Of the 66 collection points the data showed no exceedances or risks of exceedances of the annual mean objective value of NO_2.

5.3.12. In terms of EU LVs 12 of the 128 Defra links present within the ARN are predicted to exceed the LVs based on 2017 roadside concentrations but none are predicted to exceed the LVs based on 2024 (year of opening) concentrations. Background pollutant concentration estimates from Defra are predicted to decrease year on year due in large part to improving vehicle exhaust emission standards over time. The decrease is most notable in the annual mean concentrations of NO_2 reported.

5.3.13. The Applicant identified eight designated ecological sites in the air quality study area which contain features which are sensitive to air pollutants. Site relevant critical loads (CLs), background nitrogen deposition rates and NOx concentrations within these designated sites are presented and indicate that CLs for nitrogen deposition are currently exceeded by the

background contribution alone at designated sites in the air quality study area. However, the critical level for NOx for the protection of vegetation (30microgramme (µg)/ cubic metres (m^3)) is not exceeded at any sites.

5.3.14. The Applicant identifies that the Proposed Development has the potential to affect air quality (positively or negatively), both during construction and operation, in the following ways:

- there could be increased emissions of dust during construction of the Proposed Development from dust-raising activities on site;
- there could be emissions associated with non-road mobile machinery (NRMM) undertaking construction works;
- air quality could be affected by changes in traffic flows during construction, as a result of temporary traffic management measures and/or additional vehicles travelling to and from the construction site transporting materials, plant and labour;
- once operational, by changes in vehicle activity (flows, speeds and composition) as a result of the Proposed Development; and
- air quality could be affected by any changes in the distances between sources of emissions and air quality sensitive receptors.

5.3.15. In terms of mitigation the Applicant stated that the final details of any monitoring will be consulted upon between the contractor and SSC and these details will be outlined in the final Construction Environmental Management Plan (CEMP), with outline information included in the Outline Environmental Management Plan (OEMP) as will be mitigation measures.

Assessment of likely significant effects

5.3.16. In terms of dust during construction the Applicant identifies the specific activities that are most likely to generate dust and which would have receptors within 200m of them as follows:

- earthworks, particularly those associated with lowering of grade, affecting residential properties on Dark Lane, Park Road and Hilton Lane in Hilton and at Brookfield Farm, Shareshill;
- construction work across the length of the Proposed Development, affecting properties on A460 Cannock Road, Featherstone, and Dark Lane, Park Road and Hilton Lane, Hilton;
- haul routes potentially affecting residential properties on Cannock Road, Featherstone, and Dark Lane and Hilton Lane, Hilton; and
- material stockpiles, including those at the two construction compounds, affecting residential properties on A460 Cannock Road and isolated properties near Shareshill and Little Saredon.

<u>Dust Assessment</u>

5.3.17. The Applicant considered that, in addition to standard mitigation measures, site specific mitigation measures may be necessary to avoid significant temporary effects on air quality for these activities and locations. They identify that these measures are outlined in the OEMP and concluded that adoption of such measures would minimise the risk of

significant adverse dust effects, such that no likely significant air quality effects would be expected. This is also considered true of mobile or stationary plant.

Local air quality assessment

5.3.18. In terms of construction the Applicant states that the annual mean concentrations of NO_2 are predicted to be below the 40µg/m^3 annual mean NO_2 objective at all human health receptors within the construction phase study area, in the 2024 DS scenario. The highest concentrations are around 38µg/m^3 at locations adjacent to the A460 Cannock Road, as construction vehicles converge to and from the construction site compounds. Of the sensitive receptors for human health that were modelled to consider construction phase effects, the Applicant notes that most are predicted to experience an imperceptible change in annual mean NO_2 concentrations (±≤0.4µg/m^3). The Applicant identified that there would be a worsening of +0.5µg/m^3 of the NO_2 annual mean concentration experienced at two residential receptors close to the junction of A460, New Road and Dark Lane. As such the Applicant concluded that the construction of the Proposed Development would not perceptibly worsen NO_2 concentrations that are already above the air quality objective, nor does it create any new exceedances. Neither does it perceptibly improve NO_2 concentrations above the air quality objective or remove an existing exceedance of the objective.

5.3.19. In terms of annual mean concentrations of PM_{10} and $PM_{2.5}$ the Applicant predicts these to be below the air quality objective values for all receptors considered in the construction phase study area, in the construction phase DS scenario. PM_{10} concentrations peak at around 17µg/m^3 at locations adjacent to the A460 Cannock Road, and $PM_{2.5}$ peaks at around 11µg/m^3 at locations adjacent to the M6 at Junction 11A. The maximum number of days exceeding the 24-hour PM_{10} objective at any receptor is one day. The Applicant therefore concludes that the construction of the Proposed Development would not perceptibly worsen PM_{10} concentrations that are already above the objective, nor does it create any new exceedances. Neither would the Proposed Development perceptibly improve PM_{10} concentrations above the air quality objective or remove an existing exceedance of the objective.

5.3.20. Moving to operational effects, the Applicant predicts annual mean concentrations of NO_2 to be above the 40µg/m^3 annual mean NO_2 objective at six receptors in the 2024 DS scenario. These receptors are all located within 50m of the M6 - two on Lichfield Road at Willenhall and four on Darlaston Road in Walsall.

5.3.21. Of the sensitive receptors for human health that were modelled and are predicted to be within the 40µg/m^3 annual mean NO_2 objective, the Applicant notes more than half (275 out of 521) are predicted to experience an imperceptible change in annual mean NO_2 concentrations (±≤0.4µg/m^3).

5.3.22. Of the remaining the Applicant identified that there would be an improvement at 137 receptors and a worsening at 112 receptors, and that there would be no worsening of more than 4µg/m^3 of the NO_2 annual mean concentrations at any sensitive receptors.

5.3.23. Of the locations predicted to be at the highest concentration level, although this would be below the air quality objective, the Applicant expects two to experience a worsening as a result of the Proposed Development, due to increasing traffic flow on adjacent roads. These include receptors located close to the A449, on the approach to junction 2 of the M54, which are predicted to experience a medium increase (+2.1µg/m^3). This is due to the increase in traffic flow on the M54 east of junction 2. The Applicant also points out that other receptors where the highest concentrations below the objective have been predicted are to experience an improvement as a result of the Proposed Development in operation, due to a decrease in Heavy Duty Vehicles (HDV) flow or traffic flow on adjacent roads.

5.3.24. The Applicant summarised this position as that the impact of the Proposed Development would be imperceptible on the most sensitive areas of the study area, where annual mean concentrations of NO_2 are elevated in excess of or close to the air quality objective in the Do-Minimum (DM) scenario. At locations where the Proposed Development would have its greatest impacts, the DS concentrations are well below the air quality objective values. As such, the operation of the Proposed Development would not perceptibly worsen NO_2 concentrations that are already above the air quality objective, nor does it create any new exceedances. Neither does it perceptibly improve any NO_2 concentrations above the air quality objective or remove an existing exceedance of the objective.

5.3.25. Turning to PM_{10} and $PM_{2.5}$ concentrations during operation the Applicant predicts the annual mean concentrations of PM_{10} to be below the 40µg/m^3 objective value at all sensitive receptors for human health that were modelled within the study area, both with and without the Proposed Development in the opening year of 2024. The maximum concentration with the Proposed Development in operation is 24.9µg/m^3. Additionally, all receptors within the study area are predicted to be below the objective for the number of days exceedance of the 24-hour PM_{10} objective, both with and without the Proposed Development. For PM_{10}, the vast majority (515 out of 527) of sensitive receptors for human health that were modelled within the study area are predicted to experience an imperceptible change in annual mean concentrations (±≤0.4µg/m^3) with the Proposed Development in operation. This, according to the Applicant, is because PM_{10} is less sensitive to changes in traffic movements and speed than NO_2.

5.3.26. In summary, the Applicant concludes the most sensitive areas of the study area, where annual mean concentrations of PM_{10} are highest, are well below that air quality objective and the impact of the Proposed Development would be imperceptible. At locations where the Proposed Development has its greatest impacts, the DS concentrations would be

well below the air quality objective values. As such, the operation of the Proposed Development would not perceptibly worsen PM_{10} concentrations that are already above the objective, nor does it create any new exceedances. Neither does it perceptibly improve PM_{10} concentrations above the air quality objective or remove an existing exceedance of the objective.

5.3.27. The Applicant noted that the maximum $PM_{2.5}$ background concentration in the opening year of 10.7µg/m^3. The maximum road PM_{10} contribution (of which $PM_{2.5}$ is a fraction) is 9.3µg/m^3 with the Proposed Development in operation. Therefore, total concentrations of $PM_{2.5}$ are also anticipated to be well below the objective value of 25µg/m^3 at all receptors within the study area. Significant air quality effects are therefore not predicted for $PM_{2.5}$.

5.3.28. In terms of local air quality impacts on designated ecosystems the Applicant predicts a maximum increase of +5.3µg/m^3 in annual mean NO_x concentrations at the Stowe Pool and Walk Mill Clay Pit Site of Special Scientific Interest (SSSI) due to the operation of the Proposed Development in 2024, as a result of increased traffic flows on the A460 and the M6 Toll. A smaller increase in annual mean NOx is predicted for some sections of the Chasewater and the Southern Staffordshire Coalfield Heaths SSSI, again due to increased traffic flow on the M6 Toll. An improvement in annual mean NOx is predicted to occur at sections of Four Ashes Pit SSSI, of Station Drive and Belvide Reservoir SSSI, on the A5, west of the A449. Impacts on nutrient nitrogen deposition are predicted to be negligible at all sites.

5.3.29. The significance of the predicted changes in NOx and nitrogen deposition for these designated habitats is considered in Chapter 8 of the ES: Biodiversity [APP-047] and is addressed further in Chapters 6 and 14 below. In summary no likely significant air quality effects are anticipated from the changes in air quality predicted.

5.3.30. The Applicant confirmed a WebTAG appraisal had been carried out in respect of $PM_{2.5}$ and NO_2 exposure.

5.3.31. The results of the WebTAG appraisal for the opening year show that the score for $PM_{2.5}$ is negative, meaning a reduction in overall levels of exposure to that pollutant and, therefore, providing a net benefit. The occupiers of and visitors to 11,662 properties are predicted to experience an improvement in concentrations, 1,583 properties are predicted to experience no change and 8,079 a deterioration. The WebTAG appraisal for the design year (2039) shows that for $PM_{2.5}$ there is again a net benefit (shown by a negative score). The occupiers of and visitors to 14,042 properties are predicted to experience an improvement in concentrations, 1,475 properties are predicted to experience no change and 7,736 a deterioration.

5.3.32. The results of the WebTAG appraisal for the opening year show that the score for NO_2 is negative, meaning a reduction in overall levels of exposure to that pollutant and, therefore, providing a net benefit. A total

of 13,058 properties are predicted to experience an improvement in concentrations, 367 properties are predicted to experience no change and 7,899 a deterioration. The results of the WebTAG appraisal for the design year (2039) show that for NO_2 there is again a net benefit with a negative score. A total of 15,387 properties are predicted to experience an improvement in concentrations, 64 properties are predicted to experience no change and 7,802 a deterioration.

5.3.33. The Applicant's regional assessment outlines the results of the regional air quality assessment for the opening year (2024) and design year (2039) for Carbon Dioxide (CO_2), NOx, PM_{10} and $PM_{2.5}$.

5.3.34. The Applicant stated the results indicate that reduced emissions of NOx, PM_{10} and $PM_{2.5}$ are anticipated between the present or baseline situation and the opening year without the Proposed Development (see Table 5.16 of Chapter 5 of the ES [APP-044]). These reductions are due to projected improvements in vehicle emissions over time. A small increase is predicted in CO_2, as the increase in traffic expected over time is not outweighed by expected improvements in CO_2 emissions.

5.3.35. Increases in emissions of NOx, within the 2024 ARN, and CO_2, within the full traffic data dataset, are anticipated by the Applicant in the opening year in the DS situation compared to the DM situation. This is primarily because of the increased traffic flows predicted with the operation of the Proposed Development and increases in vehicle kilometres travelled. A very small decrease in PM_{10} is anticipated along with no change in $PM_{2.5}$ emissions where the increase in vehicle kilometres travelled is offset by changes in fleet composition, with the average percentage of HDVs across the ARN reducing from 8.5% without the Proposed Development to 7.7% with the Proposed Development.

5.3.36. The Applicant noted that in comparison to national CO_2 emissions targets, increases in CO_2 from the whole of the strategic road building schemes, as noted in the NPSNN, anticipated over the next 10 to 15 years are considered to be small and the increases associated with the Proposed Development are part of that small increase.

5.3.37. The Applicant anticipates increases in emissions of NOx, within the 2039 ARN, and CO_2, within the full traffic dataset, in the design year in the DS situation compared to DM situation. This is primarily due to the increased traffic flows predicted with the operation of the Proposed Development and increases in vehicle kilometres travelled. A very small decrease in PM_{10} is anticipated along with an equally small increase in $PM_{2.5}$ emissions where the increase in vehicle kilometres travelled is offset by changes in fleet composition, with the average percentage of HDVs across the ARN reducing from 7.7% without the Proposed Development to 7.0% with the Proposed Development.

5.3.38. In terms of the significance of effect the Applicant concludes that there are no locations where receptors are predicted to experience a perceptible increase in annual mean NO_2 concentrations that would cause a new exceedance of the NO_2 annual mean air quality objective or

worsen an existing exceedance of the objective. Moreover, no locations are affected by potentially significant changes in PM_{10} or $PM_{2.5}$ and all receptors are predicted to be below the relevant objective values for these pollutants.

5.3.39. Overall, the Applicant concluded, as there are no properties with adverse changes in air quality (small, medium or large) above the objective and there is no adverse effect on air quality for compliance links or European and nationally designated habitat sites, an overall evaluation of 'not significant' has been assigned to the effects of the Proposed Development on traffic emissions in both the construction and operational phases.

Carbon Emissions

5.3.40. ES Chapter 14 Climate in the ES [APP-053] deals with climate impacts associated with the construction and operation of the Proposed Development. This chapter of the report deals with carbon emissions. The assessment within the ES includes consideration of the effect on the climate of greenhouse gas (GHG) emissions arising from the Proposed Development.

5.3.41. The baseline conditions for the GHG impact assessment were determined using modelled volumes of traffic currently on the existing road network, and its predicted future use (accounting for increases in traffic and associated congestion) through to year 2083 (assuming a Proposed Development lifetime of 60 years). The assessment considers the construction and operation of the Proposed Development.

5.3.42. GHG emissions outputs from Highways England's (HE) Carbon Tool have been reported as tonnes of carbon dioxide equivalent (tCO_2e) and have considered the following gases:

- carbon dioxide (CO_2);
- methane (CH_4);
- nitrous oxide (N_2O);
- sulphur hexafluoride (SF_6);
- hydrofluorocarbons (HFCs); and
- perfluorocarbons (PFCs).

5.3.43. GHG calculations performed without the use of the HE Carbon Tool also consider nitrogen trifluoride (NF_3), which was added to the list of six Kyoto Protocol GHGs in 2018.

5.3.44. GHG emissions from the end of life stage (decommissioning) of the Proposed Development have been scoped out of the assessment due to the anticipated operational life of the Proposed Development. The replacement of particular elements of the Proposed Development is included as part of the maintenance lifecycle stage of the GHG assessment.

5.3.45. The study area adopted for the GHG impact assessment covers all direct GHG emissions (those arising from construction and operational activities

undertaken within the application site) and indirect GHG emissions (those associated with construction materials and the transportation of materials and waste). The boundary is based on the traffic model contained in the Transport Assessment Report (TAR).

5.3.46. In terms of potential impacts the Applicant identifies potential likely impacts during construction and operation of the Proposed Development.

5.3.47. A construction emissions benchmark has been created based on various other HE schemes, normalised by road length, which gives a range of 19,090tCO_2e to 35,900tCO_2e per kilometre (km) of road. Construction emissions associated with the Proposed Development fall slightly towards the lower end of the scale, at 23,400tCO_2e per km of road.

5.3.48. In the year of opening, the Applicant predicts GHG emissions would be approximately 13,800tCO_2e higher than the DM scenario, whilst for the design year (2039), GHG emissions with the Proposed Development would be approximately 14,990tCO_2e higher than the DM scenario. The increase in emissions, according to the Applicant, is due to the increase in vehicle kilometres travelled as a result of the Proposed Development.

5.3.49. The operational GHG emissions reported herein are, according to the Applicant, a worst-case scenario and are likely to be mitigated by existing plans and initiatives to decarbonise the grid and electrify road transport.

5.3.50. At the time the application was prepared the UK Government had passed into law the following carbon budgets up to 2032:

- Third Carbon Budget (2018 to 2022) 2,544 metric tonnes of carbon dioxide equivalent (MtCO_2e).
- Fourth Carbon Budget (2023 to 2027) 1,950MtCO_2e.
- Fifth Carbon Budget (2028 to 2032) 1,725MtCO_2e.

5.3.51. The Applicant does not expect that the near-term carbon budgets will be significantly different to those currently published. The Applicant notes construction of the Proposed Development is a short-term activity that runs from 2021 to 2024. Emissions from construction therefore fall within the nearer term third carbon budget. Emissions from the operation of the Proposed Development will fall into the third, fourth, fifth and subsequent future budgets once set through to 2050.

5.3.52. The Applicant states the assessment has established that during the period when carbon emissions from the Proposed Development would be at their highest level (short- and near-term construction activity and the first year of operation), the Proposed Development would only contribute 0.0013% of the UK's carbon budget for the Third Carbon Budget period. The Proposed Development's carbon emissions would equate to 0.0048% of the UK's carbon budget for the Fourth Carbon Budget period and 0.0043% of the UK's carbon budget for the Fifth Carbon Budget period. The Applicant stated these figures are based on a precautionary assessment which does not take into account or rely upon the further

decarbonisation of the UK electricity system or the ongoing move to lower carbon fuels for vehicles.

5.3.53. The Applicant draws attention to the NPSNN which states that it is very unlikely that the impacts of a road project would, in isolation, affect the ability of the government to meet its carbon reduction plans. The Applicant considers emissions arising as a result of the Proposed Development represent less than 0.01% of total emissions in any five-year carbon budget during which they arise. In this context, the Applicant concludes that the GHG impacts of the Proposed Development would not have a material impact on carbon reduction targets as set by the UK government.

5.4. REQUIREMENTS (R)

5.4.1. Draft Development Consent Order (dDCO) Requirement (R) 4 seeks to secure a CEMP in accordance with the OEMP [REP7-025], which must be followed during construction. Following completion, a Handover Environmental Management Plan (HEMP) would be developed to ensure proper maintenance. This includes aspects related to mitigation measures for dust.

5.5. THE POSITION OF THE INTERESTED PARTIES (IPs)

SSC

5.5.1. In the Council's Local Impact Report (LIR) [REP1-097] SSC state that the assessment submitted indicates that air quality standards are unlikely to be breached in Dark Lane, although air quality levels are likely to deteriorate due to the proximity of the proposed road, and for that reason there is concern. The Council goes on to indicate that the Applicant states there would be no significant effect on air quality during the construction and operational stages. While SSC has no comments or evidence to the contrary, SSC would like to see working practices put in place that prevent/ reduce construction noise and dust presented within a CEMP to be consulted on and agreed prior to any commencement of construction.

5.5.2. The Applicant and SSC also entered into a Statement of Common Ground (SoCG) [REP7-028] and in which the parties agree that the ES appropriately assesses the effect of the Proposed Development on air quality and SSC has no objections to the methodology or the findings.

5.5.3. In relation to Dark Lane the parties agree that the assessment presented in the ES shows that the annual mean NO_2 concentrations are far below the air quality objective values. In particular, the DM annual mean NO_2 concentration predicted on Dark Lane at the receptor closest to the Proposed Development is 17.2µg/m^3, with a DS concentration of 19.9µg/m^3; this equates to an impact of +2.7µg/m^3. The objective limit is 40µg/m^3, so the levels are less than half of the objective levels.

5.5.4. The Parties also agree in the SoCG that whilst there is a deterioration (albeit a small one and far below objective levels) close to the Proposed

Development, there are much larger improvements elsewhere on Dark Lane as a result of the reduced traffic along the A460 and the closure of Dark Lane north of the last property. The DM annual mean NO_2 concentration predicted on Dark Lane. at the receptor closest to Cannock Road (A460) is 28.3µg/m^3, with a DS concentration of 19.6µg/m^3; this equates to an impact of -8.7µg/m^3. The parties agree that the air quality assessment is robust and agree with the findings above.

5.5.5. The parties do have one point of disagreement, where SSC state it remains of the view that the alignment should have been placed further east to further reduce the air quality impact at properties where a deterioration would be experienced with the link road in place. The Applicant is of the view that the alignment at Dark Lane is the best alignment for the Proposed Development, with the lowest environmental impacts.

5.5.6. The parties also agreed that dDCO R4 and the CEMP and OEMP would address the issue raised in the LIR regarding working practices and consultation.

Hilton, Featherstone & Brinsford and Shareshill Parish Council

5.5.7. Hilton Parish Council in its Relevant Representation (RR) [RR-011] included a comment that the Proposed Development was very close to existing domestic dwellings leading to noise, air & light pollution and vibration from the volume of traffic. Featherstone & Shareshill Parish Council's representative in their RR [RR-025] included concerns about the noise pollution and air quality levels affecting the nearest properties in proximity which are only a short distance from the link road.

5.5.8. There is a SoCG [REP7-031] signed between the Applicant and the relevant Parish Councils where it is recorded that the proximity of the route houses on Dark Lane is of particular concern albeit the Parish Councils understand the explanation for the preferred route. It is not their preferred route. In respect of air quality and noise it is recorded that the Parish Councils agree the information requested on air quality and noise has been provided to enable understanding of the impacts. However, they remain concerned about the impacts and reserve the right to reassess post-opening.

Public Health England

5.5.9. Public Health England provided a RR [RR-009] at the start of the Examination and in which it stated that on the basis of the documentation as reviewed, notwithstanding our comments, *"we can confirm that we have chosen NOT to register an interest with the Planning Inspectorate on this occasion"*..

5.5.10. In respect of Air Quality issues it stated: *"we are reassured that earlier comments raised by us on 2nd July 2020 relating to air quality and*

hydrogeology have been sufficiently addressed. We have no further comments to make with respect to health and wellbeing."

Natural England

5.5.11. In its RR [RR-037] Natural England (NE) identified a number of issues and areas on which its remit connected with the Proposed Development. In respect of matters related to air quality there were two headline points. Firstly, 'Cannock Extension Canal' Special Area of Conservation (SAC) – further discussion was needed between NE and the Applicant regarding air quality impacts before NE could advise the SoS that the proposal will have no likely significant effects upon this European Site. Secondly, 'Cannock Extension Canal', 'Stowe Pool & Walkmill Claypit' SSSI and 'Chasewater and the Southern Staffordshire Coalfield Heaths' SSSI – NE confirmed it would continue its dialogue with the Applicant to verify the ES conclusions regarding air quality impacts and to establish the potential need for and scope of mitigation. Primarily the issues focused around in-combination effects and the approval of projects that would add further to pollution levels where the relevant European site is already regarded as 'ecologically failing' due to existing ('background') levels of nitrogen related pollution.

5.5.12. Whilst these represented an opening position further discussions between the Applicant and NE continued, and a signed SoCG [REP8-028] recorded the areas of agreement and disagreement between the parties. This resulted in the Applicant's comments on these matters being recorded as agreed. The agreed comments stated:

"With regard to the Stowe Pool & Walk Mill Claypit SSSI, paragraph 8.9.128 of the ES states that "The implementation of the Scheme would result in an increase in Nitrogen deposition of up to 0.3 kg N/ha/yr within the SSSI". The maximum change in Ndep is +0.3 kg N/ha/yr (up to 10 m from the ARN) (+0.2 kg N/ha/yr/ up to 40 m from the ARN).

For freshwater bodies and fresh watercourses there are no robust assessment thresholds for critical loads available on [the Air Pollution Information System] APIS (Ref 8.51) and most freshwater bodies are phosphate-limited (i.e. phosphorus is the naturally scarce nutrient that controls eutrophication, rather than nitrogen which is naturally relatively abundant in most lowland freshwater systems). As the predominant habitat type is listed as standing open water and canals (Ref 8.51), the change has been assessed against the higher end of critical load range for this habitat type (10 kg N/ha/yr) as the lower end of the range is intended for oligotrophic lakes with little agricultural input that are often limited by nitrogen. Up to 40 m from the ARN, the site will be subject to an increase in nitrogen deposition of 2-3%. However, the change in nitrogen deposition is less than 0.4 kg N/ha/yr. The site comprises predominantly open water which is already exposed to traffic emissions. Given the size of the water body, mixing and dilution of the deposited nitrogen would be expected, minimising any effects. Therefore, it is not considered likely that the white-clawed crayfish population would be affected.

Therefore, in summary, no change to the qualifying features of Stowe Pool and Walk Mill Clay Pit SSSI would be anticipated which is an effect of neutral significance.

The Air Pollution Information System (APIS) website states that for the whiteclawed crayfish interest features of Stowe Pool & Walk Mill Claypit SSSI no critical load has been assigned. This is because the majority of lowland open freshwater bodies are phosphorus limited (i.e. phosphorus is the principal nutrient limiting eutrophication) rather than nitrogen limited. Phosphorus does not come from vehicle exhaust emissions. Moreover, in the absence of any appropriate nitrogen critical load, no modelling assessment can be undertaken. As detailed in paragraph 8.9.127 of the ES [AS-025/6.1], an increase in NOx or nitrogen deposition does not necessarily equate to a significant effect that requires mitigating.

With regard to the Chasewater and the Southern Staffordshire Coalfield Heaths SSSI there are six units within 200m of the ARN (Units 7, 8, 9, 13, 14 and 15). There is no change in nitrogen deposition for units 7, 9, 13 and 15 (or a change of less than 0.1kg N/ha/yr). Nitrogen deposition would only increase (i.e. an increase of 0.1 kg N/ha/yr or greater) in two of the Chasewater and the Southern Staffordshire Coalfield Heaths SSSI units (Unit 8 and Unit 14), and this increase is less than 1% of the critical load for dwarf shrub heath and fen, marsh and swamp (respectively). In line with DMRB LA 105, this is not considered to result in a significant effect on the SSSI and therefore no mitigation measures are proposed. Note that the assessment of impacts [on] these statutory ecological sites from nitrogen deposition is inherently cumulative. The traffic data used in the air quality assessment takes into account traffic flows associated with 'reasonably foreseeable' developments."

5.5.13. NE's concerns related to possible air quality impacts on designated sites which are discussed in full in Chapter 14 of this report dealing with Habitats Regulation Assessment (HRA). The conclusion there is that the proposed development, either on its own or in combination with other plans or projects, is unlikely to have a significant effect on those sites.

5.6. PLANNING ISSUES

5.6.1. The main issue in respect of air quality is whether the Proposed Development would result in unacceptable air quality effects; and in relation to carbon emissions whether the estimates are reliable, or would the carbon emissions be so significant as to have a material impact on the ability of Government to meet its carbon reduction targets.

5.7. ExA CONSIDERATIONS

Air Quality

5.7.1. There has been no robust or technical objections or concerns raised in respect of the effect on air quality. The Parish Councils and SSC raise issues related to the alignment of the mainline and the preferred route, expressing concern that its proximity to residential properties around Dark Lane would result in deteriorating environment for local residents

including in respect of air quality. They do not however provide any evidence or data to support these assertions and SSC confirmed that their Environmental Health department did not raise any objections to the Proposed Development.

5.7.2. The Applicant's air quality assessment concludes that there are no properties with adverse changes in air quality (small, medium or large) above the objective and there is no adverse effect on air quality for compliance links. Whilst the assessment does identify locations where the air quality position would be worse than in the DM situation the increase in concentrations of pollutants would be imperceptible or a small change as a result of the Proposed Development and would be below limit values or objectives.

5.7.3. The locations where concentrations of pollutants are highest was identified as around the M6 junction, but the Proposed Development was shown to have an imperceptible increase in the NO_2 levels.

5.7.4. In broad terms the WebTAG assessment shows that in the year of opening the score for NO_2 is negative, meaning a reduction in overall levels of exposure to that pollutant and, therefore, providing a net benefit. A total of 13,058 properties are predicted to experience an improvement in concentrations, 367 properties are predicted to experience no change and 7,899 a deterioration. The results of the WebTAG appraisal for the design year (2039) show that for NO_2 there is again a net benefit with a negative score. A total of 15,387 properties are predicted to experience an improvement in concentrations, 64 properties are predicted to experience no change and 7,802 a deterioration.

5.7.5. The WebTAG appraisal for the opening year also shows that the score for $PM_{2.5}$ is negative, meaning a reduction in overall levels of exposure to that pollutant and, therefore, providing a net benefit. A total of 11,662 properties are predicted to experience an improvement in concentrations, 1,583 properties are predicted to experience no change and 8,079 a deterioration. The WebTAG appraisal for the design year (2039) show that for $PM_{2.5}$ there is again a net benefit (shown by a negative score). A total of 14,042 properties are predicted to experience an improvement in concentrations, 1,475 properties are predicted to experience no change and 7,736 a deterioration.

5.7.6. There are locations such as around Featherstone on the approach to the M54 junction and on the southern section of the A460 and at Shareshill on the approach to the M6 junction on the A460 where pollutant concentrations are reduced by large or small to medium decreases.

5.7.7. Overall, we are satisfied the Proposed Development would not result in significant adverse effects on air quality. Whilst there are areas which would have increases in pollutant levels these would not perceptibly worsen concentrations in those areas already above any objective and would not create any new exceedances. Across the study area there would be a net benefit for air quality for sensitive receptors.

5.7.8. The issue with regard to the effect of NOx concentrations and nitrogen deposition was resolved during the Examination between the Applicant and NE such that it was concluded that the Proposed Development would not have a significant effect on European sites or nationally designated nature conservation sites. This is more fully addressed in the HRA Chapter 14 below.

5.7.9. During construction there would be the potential for dust to affect air quality, with particular impacts on residential receptors in relatively close proximity to the works. However, with the implementation of appropriate management regimes including best practice methods, as outlined in the assessment, which would be secured by the CEMP, which must be in accordance with the OEMP, and dDCO R4, this could be mitigated to an acceptable level. SSC and the Parish Councils sought assurances around consultation and accepted that this was a reasonable position. These are also secured through the OEMP and Register of Environmental Actions and Commitments (REAC).

5.7.10. Air quality was addressed in the ES and no significant issues were raised regarding the assessment; it was addressed in SSC's LIR and was considered during the Examination. On the basis of the evidence before the Examination we are satisfied that the Proposed Development would not result in unacceptable air quality impacts, it would meet the tests in the NPSNN and would not result in a significant effect or deterioration of air quality and would not adversely affect an AQMA or nature conservation site. The Proposed Development would therefore also not conflict with Core Policy 2, Policy EQ1 or Core Policy 11 in the Core Strategy.

Carbon emissions

5.7.11. The NPSNN advises that traffic related emissions are expected to continue to fall, there are therefore only very limited circumstances in which a highway proposal will lead to material adverse change in CO_2 emissions, on a scale that would bear on the achievement of the statutory carbon budget. This Proposed Development is not of sufficient scale to have such an effect. Its immediate carbon impact has been taken into account within the Benefit Cost Ratio and the Proposed Development is considered to be in accordance with the NPSNN.

5.7.12. The Government has set carbon budgets which at the start of the Examination included the Third (2018-2022), Fourth (2023-2027) and Fifth (2028-32). The GHG emissions for the Proposed Development in net terms between the DS and DM scenarios would result in a total increase of 206,860tCO_2e. Splitting these between Construction (81,890tCO_2e) and operation (121,730tCO_2e) and across the relevant Carbon Budget, given that the construction would take place in 2021-2024 and opening would be in 2024, the Proposed Development would contribute to 0.0013% of the UK's carbon budget for the third carbon budget period. The Proposed Development's carbon emissions would equate to 0.0048% of the UK's carbon budget for the fourth carbon budget period and 0.0043% of the UK's carbon budget for the Fifth Carbon Budget period.

5.7.13. The Committee on Climate Change (the CCC) published its Sixth Carbon Budget Report on 9 December 2020, with recommendations for the 2033 to 2037 period. The CCC recommended a net reduction of 78% between 1990 and 2035, therefore the bringing forward of the previous 80% target by nearly 15 years. We asked the Applicant in ExQ3.12.1 [PD-023] if the Applicant could make an assessment of the change in greenhouse gas emissions from the development in respect of the Third, Fourth and Fifth Carbon Budgets, and comment on what effect, if any, that this might have on the Government's ability to meet any revised target set by Parliament. The Applicant responded by stating as the Third, Fourth and Fifth Carbon Budgets have remained the same following publication of the Sixth Carbon Budget, the percentage contribution from the Proposed Development remains the same for these periods despite the Government's more ambitious carbon reduction target. When compared against the Sixth Carbon Budget (1,000 $MtCO_2e$), GHG emissions from the Proposed Development represent 0.0079%, which is higher than for the previous budgets, but still well below the significance threshold of 1% of a given carbon budget. Therefore, the Applicant's conclusion that *"the GHG impact of the Proposed Development would not have a material impact on carbon reduction targets as set by the UK government"* remains applicable following publication of the Sixth Carbon Budget Report in line with the Government's more ambitious carbon reduction targets [REP6-039].

5.7.14. The SoST will be aware that a Sixth Carbon Budget (2033-2037) has recently been announced but this occurred too late in the Examination to enable consideration of its effect. This has now been brought into legal effect through the Carbon Budget Order 2021. The SoST may therefore wish to satisfy themselves as to whether this and/ or 'Decarbonising transport: a better, greener Britain' have any implications for the consideration of the Proposed Development.

5.7.15. There were no substantive issues or concerns raised by any party with regard to the Applicant's assessment of the effects or broader implications in respect of Carbon emissions.

5.7.16. In the context of the effect of the Proposed Development given the Applicant's comments regarding the committee reports advised budget allocations there is unlikely to be a significant effect. But the SoST may wish to consider the impact of the CO_2 equivalent emissions for the operational phase in relation to the relevant carbon budget now that it is available and the cumulative impact of emissions for the NPSNN in the context of the revised net carbon target and other projects and programmes, namely RIS1/RIS2.

5.8. CONCLUSIONS

5.8.1. Taking the relevant documents and policies into account we conclude as follows:

- The construction phase has the potential for adverse effects to arise from dust but these can be appropriately mitigated and the mitigation is secured through dDCO R4 which provides that the CEMP must be substantially in accordance with the OEMP and reflect the mitigation measures set out within the REAC . There are no other significant air quality effects resulting from the construction of the Proposed Development.
- There would be a net benefit of the Proposed Development to air quality receptors within the study area. Whilst there would be some locations where there would be increases in pollutant levels these increases would be imperceptible or small and would not result in concentrations exceeding air quality objective levels.
- The Proposed Development is estimated to cause a net increase (DS-DM) of 206,860tCO_2e which split across the prevailing carbon budgets would contribute to 0.0013% of the Third Carbon Budget period, 0.0048% of the Fourth Carbon Budget period and 0.0043% of The Fifth Carbon Budget period.
- The SoST may wish to satisfy themselves as to the impact of the publication of the Sixth Carbon Budget, which was announced at the end of the Examination period, the Carbon Budget Order 2021 and consider the impact of the CO_2 equivalent emissions for the operational phase in relation to the relevant carbon budget now that it is available and the cumulative impact of emissions for the NPSNN in the context of the revised net carbon target and other projects and programmes, namely RIS1/RIS2.
- The SoST may wish to also consider the impact of 'Decarbonising transport: a better, greener Britain' as part of the government response to the Sixth Carbon Budget.

6. FINDINGS AND CONCLUSIONS IN RELATION TO BIODIVERSITY, ECOLOGY AND THE NATURAL ENVIRONMENT

6.1. INTRODUCTION

6.1.1. This chapter considers the effect of the Proposed Development on biodiversity, ecology and the natural environment. In particular it deals with:

- International/ national (Sites of Special Scientific Interest (SSSIs)) and local protected habitats, including designated Sites of Biological Importance (SBIs);
- Ancient woodland and protected trees (including veteran trees);
- Protected species; and
- Geological significance

6.1.2. Matters relating to Habitats Regulations Assessment (HRA) are set out in Chapter 14.

6.2. POLICY AND LEGAL CONTEXT

The National Policy Statement for National Networks

6.2.1. The National Policy Statement for National Networks (NPSNN) at paragraph 5.25 indicates *"… as a general principle, and subject to the specific policies below, development should avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives"*. The Applicant *"… may also wish to make use of biodiversity offsetting in devising compensation proposals to counteract any impacts on biodiversity which cannot be avoided or mitigated. Where significant harm cannot be avoided or mitigated, as a last resort, appropriate compensation measures should be sought"*.

6.2.2. In taking decisions, paragraph 5.26 of the NPSNN indicates the Secretary of State (SoS) *"… should ensure that appropriate weight is attached to designated sites of international, national and local importance, protected species, habitats and other species of principal importance for the conservation of biodiversity, and to biodiversity and geological interests within the wider environment"*.

6.2.3. Specifically, in relation to ancient woodlands and veteran trees, paragraph 5.32 of the NPSNN states the SoS *"… should not grant development consent for any development that would result in the loss or deterioration of irreplaceable habitats including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the national need for and benefits of the development, in that location, clearly outweigh the loss. … Where such trees would be affected by*

development proposals, the applicant should set out proposals for their conservation or, where their loss is unavoidable, the reasons for this".

6.2.4. As far as mitigation is concerned paragraph 5.36 of the NPSNN indicates *"… applicants should include appropriate mitigation measures as an integral part of their proposed development"*.

6.2.5. Paragraph 5.168 of the NPSNN indicates that applicants should ensure that they have considered the risk posed by land contamination and how it is proposed to address this.

The National Planning Policy Framework and Planning Practice Guidance

6.2.6. The National Planning Policy Framework (the Framework) emphasizes (paragraph 170) that sites of ecological or geological value and soils should be protected and enhanced by, amongst other matters, net gains for biodiversity. Paragraph 175 of the Framework notes that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or as a last resort compensated then planning permission should be refused. Similarly, development outside a SSSI which is likely to have an adverse effect on it should not normally be permitted, unless the benefits of the development in the location clearly outweigh both its likely impact on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs.

6.2.7. Paragraph 175 of the Framework goes on to state that development resulting in the loss of veteran trees should be refused unless there are wholly exceptional reasons and a suitable compensation strategy exists. Footnote 58 gives examples of wholly exceptional circumstances including Nationally Significant Infrastructure Projects (NSIPs) where the public benefit would clearly outweigh the loss or deterioration of habitat.

6.2.8. The Planning Practice Guidance (the PPG) explains[22] biodiversity net gain as delivering measurable improvements by creating or enhancing habitats. The PPG also indicates[23] the Department for Environment, Food and Rural Affairs (Defra) biodiversity metric can be used to demonstrate whether or not biodiversity net gain will be achieved[24]. The PPG also

[22] Reference ID: 8-022-20190721
[23] Reference ID: 8-025-20190721
[24] Natural England (NE) published its Biodiversity Metric 3.0 on 7 July 2021 following the close of the examination. However, we note that the relevant page of NE's website (http://nepubprod.appspot.com/publication/6049804846366720) states *"Users of the previous Biodiversity Metric 2.0 should continue to use that metric (unless requested to do otherwise by their client or consenting body) for the duration of the project it is being used for as they may find that the biodiversity unit values metric 2.0 generates will differ from those generated by Biodiversity Metric 3.0"*. We consider that the use of Biodiversity Metric 2.0 for the consideration of this Proposed Development would be appropriate as NE are satisfied it can continue

states[25] *"… it is good practice to establish a detailed management plan to ensure appropriate management of the habitat in the long term"*.

LOCAL PLAN

6.2.9. The South Staffordshire Local Plan Core Strategy (the Core Strategy) contains policies to protect the natural environment. In particular Policy EQ1 indicates that permission will be granted for development that would not cause significant harm to sites and/or habitats of nature conservation, geological or geomorphological value, including ancient woodlands and hedgerows. This Policy refers to international, national and local sites, including in the last case referencing SBIs, and concludes by stating *that "… wherever possible, development proposals should build in biodiversity by incorporating ecologically sensitive design and features for biodiversity within the development scheme"*.

6.3. THE APPLICANT'S CASE

Introduction

6.3.1. The most relevant elements of the application in relation to biodiversity and ecology are:

- Chapter 8 of the Environmental Statement (ES) Biodiversity [AS-083], - and its associated Appendices and Figures;
- Chapter 9 of the ES Geology and Soils [APP-048],– and its associated Appendices and Figures; and
- Outline Environmental Management Plan (OEMP) [REP7-026].

6.3.2. In each case the assessment of effects follows the methodology set out in the Design Manual for Roads and Bridges (DMRB), and in the case of biodiversity also uses the Guidelines for Ecological Impact Assessment in the United Kingdom (UK) and Ireland (the 'CIEEM guidelines'). The Applicant considers that the baseline is unlikely to change materially between the surveys and either the start or finish of construction.

6.3.3. Because of the potential for effects of pollution on Sites of Biological Importance (SBIs), there has been consideration of air quality effects, which are discussed in more detail in Chapter 5 of this report.

BIODIVERSITY

General Approach

6.3.4. The general approach is set out in the ES. It involves defining the Zone of Influence (ZoI) of the Proposed Development, undertaking desk and field based assessments, determining the nature conservation importance, assessing the effects on those elements of nature

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to be used in existing projects. Should the Secretary of State for Transport consider that the Biodiversity Metric 3.0 should be used then this may require further consultation.

[25] Reference ID: 8-027-20190721

conservation importance, designing avoidance, mitigation and compensatory measures, and identifying opportunities for biodiversity enhancements.

6.3.5. The Applicant acknowledges that the Proposed Development would result in direct habitat loss, and consequent fragmentations of populations and habitats, disturbance, habitat degradation and species mortality during construction. Once operational the Applicant acknowledges that there would be direct impacts on species fragmentation, habitat degradation and disturbance.

6.3.6. The following sets out the Applicant's analysis of the habitats and species present, what the effects would be, and the mitigation proposed. Where appropriate this is described in relation to the individual habitat or species, but when it would be more generic, it is described at the end of the relevant section.

6.3.7. Mitigation and compensation would be secured through the OEMP, and thus the Construction Environmental Management Plan (the CEMP) which would be approved pursuant to Requirement 4 of the draft Development Consent Order (the dDCO).

Habitats

International sites

6.3.8. No statutory international nature conservation designations lie within 2 kilometre (km) of the application site. In addition, none of the sites identified within 30km of the application site are designated for bats, and none are located within 200 metre (m) of the Affected Road Network (the ARN). However, there was a discussion between the Applicant and Natural England (NE) as to whether, due to hydrological connectivity to sites within 200m of the ARN, there was a potential effect on the Cannock Canal Extension Special Area of Conservation (SAC). This SAC is located some 6km to the east of the application site. This is discussed in Chapter 14 of this report.

Nationally designated sites

6.3.9. There are four SSSIs within 2km of the Proposed Development or within 200m of the ARN. Those within 2km of the application site are shown at [APP-112]. The four SSSIs are:

- Stowe Pool and Walk Mill Clay Pit SSSI – some 1.5km northeast of the application Site – designated for its populations of white-clawed crayfish;
- Four Ashes Pit SSSI – approximately 4.1km northwest of the application site, but approximately 7m from the ARN – designated for its geological interest;
- Chasewater and the Southern Staffordshire Coalfield Heaths SSSI – approximately 7.5km northwest of the application site, but approximately 38m from the ARN – designated as wet and dry

lowland heath, with oligotrophic standing open water and support for scarce vascular plant species; and
- Belvide Reservoir SSSI – approximately 9.5km northwest of the application site, but approximately 1m from the ARN – designated as a wintering site for shoveler (*Anas clypeata)* and which also supports other important bird populations.

6.3.10. The Applicant maintains that there would be no change to nationally designated sites resulting from the Proposed Development during construction and consequently the effects on these sites would be of neutral significance.

6.3.11. During operation the only potential adverse effects arise from nitrogen deposition from air pollution. As the Four Ashes Pit SSSI is designated for its geological interest the Applicant maintains the Proposed Development would have no effects on this SSSI. The Applicant considers that the implementation of the Proposed Development would result in a reduction in nitrogen deposition at the Belvide Reservoir SSSI but at imperceptible levels leading to a neutral significance.

6.3.12. In relation to Stowe Pool and Walk Mill Clay Pit SSSI the Applicant maintains that while there would be a small increase in nitrogen deposition due to the nature of the site, including its size leading to mixing, there would be no change to the qualifying features. Consequently, it maintains there would be effects of neutral significance on this habitat.

6.3.13. The habitat of the Chasewater and the Southern Staffordshire Coalfield Heaths SSSI consists of a number of individual units, with different effects anticipated. Overall, the Applicant maintains that the effects would not be significant from NOx concentrations or nitrogen deposition.

Statutory local nature conservation sites

6.3.14. Two Local Nature Reserves (LNRs) have been identified as potentially affected by the Proposed Development. These are shown at [APP-112]:

- Wyrley and Essington Canal LNR– approximately 1.4km east of the application site - designated for a variety of wildlife habitats, including open water, dry canal bed, wet grassland, scrub and woodland which supports bird and invertebrate species, some of which are included on the Staffordshire Biodiversity Action Plan; and
- Rough Wood Chase LNR – located approximately 5km to the southeast of the application site but within 200m of the ARN – designated as the largest oak woodland in Walsall and as it supports protected species.

6.3.15. The Applicant maintains that there would be no change to statutory local nature conservation sites resulting from the Proposed Development, either during construction or in operation, and consequently the effects would be of neutral significance on statutory local nature conservation sites.

Non-statutory nature conservation sites

6.3.16. The Applicant identified two non-statutory nature conservation sites within the application site, and eighteen within 2km of the application site. Full details are set out in Table 8.9 in Chapter 8 of the ES [AS-083]. In addition, 62 locally designated sites have been identified within 200m of the ARN.

6.3.17. The two sites within the application site are:

- Lower Pool SBI and Local Wildlife Site (LWS), designated as a large ornamental pool with both emergent and floating vegetation; and
- Brookfield Farm (northeast of), Shareshill SBI and LWS, designated as an area of wet woodland comprising alder and willow carr that is drying out in some areas of the site. Part of the site has been classified as ancient woodland.

6.3.18. Lower Pool SBI is of county importance and Brookfield Farm SBI is of county importance with the ancient woodland element being of national importance.

6.3.19. For the reasons set out in Table 8.9 in Chapter 8 of the ES [AS-083] the Applicant scoped out the remaining non-statutory nature conservation sites from consideration.

Lower Pool LWS and SBI

6.3.20. The Applicant acknowledged that the Proposed Development would result in the direct, irreversible loss of woodland and standing water. This would represent the permanent loss of 2.04ha of woodland and 0.46ha of standing water comprising some 39.6% of the LWS and SBI boundary.

6.3.21. The Applicant maintains that despite the LWS and SBI designations, the area is characterised as broadleaved/mixed plantation with a variable species-poor ground layer, which is absent in places, and the standing water comprises an ornamental fishing lake shaded by surrounding woodland. The Applicant considers it unsuitable to support great crested newts (GCNs) and no field signs for water vole or otter were recorded. Notwithstanding this, the Applicant acknowledged that it is an important ecological feature, and the loss would have an adverse impact on ecological function and the integrity of habitats.

6.3.22. The Applicant therefore proposes compensation in the form of 6.29 hectare (ha) of habitat, consisting of 4.84 ha of woodland planting and 0.57ha of standing water surrounded by 0.78ha of grassland. These, it is stated (paragraph 8.9.12 of Chapter 8 of the ES [AS-083]), *"… would be connected to the retained LWS and SBI habitats by species rich grassland proposed on the road embankments, tree and hedgerow planting at the base on the embankments and hedgerow planting along Hilton Lane. Furthermore, a diversion of Watercourse 3 under the Scheme and an associated mammal tunnel will provide additional connectivity. This ratio of habitat compensation to loss is considered appropriate given the importance of the LWS and the length of time it takes new woodland*

planting to establish." This compensation habitat would thereafter be managed.

6.3.23. Given the length of time that it would take for the proposed habitats to be established and function well, the Applicant considers that the construction effects of the Proposed Development would be a moderate adverse impact on the LWS (effects of slight significance) in the medium term (10 - 30 years), reducing to an effect of neutral significance in the long term (beyond 30 years) once habitats are established.

6.3.24. Operationally, the Applicant maintained that applications of rock salt to the carriageway for winter maintenance would be at relevant standards and would become diluted. Any spray would be within 5m of the boundary and effects would not be anticipated.

Brookfield Farm, Shareshill LWS and SBI

6.3.25. Approximately 0.71ha of woodland comprising 15% of the LWS would be lost, although following the accepted October changes to the application none would be ancient woodland. However, as works would be within 15m of ancient woodland NE guidance would mean that that it would be considered lost; this would amount to 0.029ha. This is discussed below in paragraphs 6.3.30 to 6.3.42.

6.3.26. As the Proposed Development would cross Latherford Brook with a 10m wide span approximately 30m in length, there would be some 71m of channel affected during construction. Latherford Brook supports both otter and water vole and the effects on those species are considered in paragraphs 6.3.97 to 6.3.102.

6.3.27. To compensate for the loss of woodland habitat, excluding ancient woodland, 2.54ha of additional woodland habitat is proposed surrounding the LWS and SBI to the east and connected to the SBI to the west of the Proposed Development as well as 0.39ha of standing water immediately to the south. The Applicant maintains that as the channel would be retained in the medium to long term and there would be no permanent loss of brook habitat, the majority of the LWS/SBI would be retained, and given the length of time it would take for the proposed habitats to function, the Proposed Development would have a moderate negative adverse impact on the LWS/SBI, resulting in an effect of slight significance in the medium term (10 - 30 years), reducing to an effect of neutral significance in the long term (beyond 30 years), once habitats are fully established.

6.3.28. Given that the LWS/SBI supports habitats that rely on the water supply, through mitigation measures delivered through the OEMP/CEMP, the Applicant maintains that the magnitude of impact of pollution or hydrological change upon all other non-statutory sites would be negligible, resulting in an effect of neutral significance.

6.3.29. In operation the Applicant anticipates the same effects as on the Lower Pool LWS and SBI from salt deposition but acknowledged that there would be effects from nitrogen deposition. In terms of the SBI, excluding

the ancient woodland, the Applicant maintains that through the additional woodland habitat and additional standing water, this would only be likely to result in a minor adverse impact of neutral significance.

Ancient Woodland and Veteran Trees

6.3.30. There are two areas of ancient woodland within the application site, and both are within 200m of the ARN. These are at Whitgreaves Wood (also known as Oxden Leasow) and Brookfields Farm. As Ancient Woodland is an irreplaceable habitat any loss cannot be mitigated.

6.3.31. Whitgreaves Wood is a broadleaved semi-natural woodland supporting nine plant species indicative of ancient woodland. Whitgreaves Wood is in the ownership and management of the National Trust. The National Trust has confirmed [REP1-014] that of the land within its control in the application site shown on the Land Plans [REP6-004] Plot 3/7b (the main car park for Moseley Old Hall) is held inalienably, and Plots 3/7a, 3/7c and 4/2 are currently alienable. Plots 3/7a and 4/2 comprise Whitgreaves Wood (Oxden Leasow Ancient Semi-Natural Woodland) together with a section of woodland planted early in the current century and the eastern edge of a field; Plot 3/7c comprises the overflow car park of Moseley Old Hall.

6.3.32. Brookfields Farm is a broadleaved semi-natural woodland belt with a diverse age structure and well-developed understorey and ground layer. Normal NE guidance is that any development within 15m of ancient woodland would have a detrimental effect; the Applicant has not sought to show any other approach is applicable.

6.3.33. There are six other areas identified as ancient and semi-natural woodland within 2km of the application site and six additional ancient woodland sites were identified as part of the air quality assessment; while all of these latter six are within 200m of the ARN they are further than 2km from the application site.

6.3.34. There would be no direct loss of ancient woodland at Whitgreaves Wood, but construction work would take place within 15m therefore 0.32ha is assumed as lost, from disturbance, including light and noise.

6.3.35. To compensate for the effects at Whitgreaves Wood the Applicant has agreed a mechanism whereby the woodland would be improved. This would be compensated for at a ratio of 7:1, as agreed with NE (see page 21 of the Statement of Common Ground (SoCG) between the Applicant and NE [REP8-028]). The mechanism may include matters such as selective thinning and associated activities, with the National Trust maintaining the land in its improved state. This is secured through a Land Agreement and Planning Obligation [OD-011] which has been completed in counterpart.

6.3.36. In respect of Brookfields Farm, the Proposed Development would be within 15m of an ancient woodland (within Brookfield Farm LWS and SBI). the Applicant has therefore assumed that 0.029ha would be lost due to compaction of tree roots and soil. The location of the land

identified for these compensation measures is illustrated on the Environmental Masterplan on Figures 2.1 to 2.2 [REP7-017] and [REP7-018]. This would be followed up with conservation-led management of both ancient woodlands.

6.3.37. The Applicant acknowledged that ancient woodland with its long history and complexity of habitat cannot be replicated, and certainly not within 15 years. Even if the measures incorporated into the Proposed Development were implemented, taken together, the Applicant accepts the losses of ancient woodland from these two areas at the construction stage would represent a reduction in the overall extent of this irreplaceable habitat. This would result in a major adverse impact, which is an effect of large significance.

6.3.38. During the operational phase, the Applicant noted that ancient woodland within 200m of the ARN may be subject to impacts through increased nitrogen deposition as a result of changes to traffic flows. The Applicant maintains this would not result in loss of the woodland but could lead to changes in species composition within the affected woodland. The Applicant therefore proposes that where this is the case, compensatory replacement woodland habitat would be provided at a ratio of 1:1 by area, but as ancient woodland is irreplaceable this would be a moderate adverse impact resulting in an effect of moderate significance.

6.3.39. Due to the proximity of the mainline to the ancient woodland at Brookfields Farm, once the Proposed Development was operational, there would be effects from nitrogen deposition. This would be compensated for in the replacement planting described above. However, as ancient woodland is irreplaceable this, the Applicant asserts, would result in a moderate adverse impact resulting in an effect of moderate significance.

6.3.40. For the other semi-natural ancient woodlands within 200m of the ARN the Applicant maintains that there would be no operational impact.

6.3.41. There are six veteran trees within the application site (T137, T211, T214, T221, T226 (prominent) and T227) with the locations shown in Appendix 7.1: Arboricultural Impact Assessment [APP-174]. An additional 12 veteran trees were identified within 200m of the ARN but are outside the application site. Further detail on these veteran trees is provided in [AS-059]. As none of these trees would be directly affected the Applicant considers that the construction effects of the Proposed Development would be of neutral significance.

6.3.42. However, in the operational phase, there would be an increase in nitrogen deposition, but this would be only significant for a single veteran tree (T137) and only above neutral for one other (T221). Due to the nature of ancient trees any effects, the Applicant states, would be subtle and thus only have an effect of slight significance.

Hedgerows and Other Trees

6.3.43. An assessment was undertaken of hedgerows to identify those which may be classified as ‘ancient hedgerows’; being those which were in

existence before the Enclosure Acts of the eighteenth and nineteenth centuries. These are important as they support the greatest diversity of plants and animals. Based on map analysis the Applicant identified a single hedgerow as potentially ancient. This is on the northeastern side of Latherford Brook. Confirmation from mapping analysis could not be undertaken due to there being no maps which pre-dated 1840.

6.3.44. A second hedgerow was identified as potentially ancient immediately north of Hilton Lane. However, the Applicant concluded that due to the lack of mapping evidence and its poor species profile it was not an ancient hedgerow.

6.3.45. There are numerous other trees within the application site, including trees covered by Tree Preservation Orders. While these trees are of import for biodiversity and ecology, the main effects are considered in Chapter 9 of this report relating to Landscape and Visual Effects.

6.3.46. Protection measures, as set out in British Standard BS5837:2012[26], would be provided for retained trees and hedgerows.

6.3.47. The Proposed Development would result in the loss of approximately 3.4km of hedgerows (not including the ancient hedgerow identified above). This would be replaced by some 7.2km of native, species-rich hedgerow. Given this difference in length the Applicant considers the new provision would be of minor beneficial impact, resulting in an effect of slight significance.

Habitats of Principal Importance (HPIs)

6.3.48. The Applicant identified multiple blocks of woodland as HPIs within the desk study area. These are shown on Figure 8.5 [APP-115] and they are considered to be of local ecological importance. These areas are primarily associated with the statutorily designated sites and roadside vegetation.

Mitigation and compensation measures

6.3.49. Apart from the specific measures identified for ancient woodland and the retained trees and hedgerows as set out above, the Applicant's general approach to mitigation is set out in paragraph 8.8.4 of Chapter 8 of the ES [AS-083]. During the construction phase this would consist of the introduction of pollution prevention control measures, principally related to potential water pollution and construction dust and noise, and through management of invasive species, habitat creation, and enhancements to watercourses, particularly Watercourse 5 (Latherford Brook).

6.3.50. This habitat creation would consist of soft landscaping targeting creation of priority habitats, the replacement of species-poor semi-improved grassland with species-rich grassland, the use of felled trees as ecological

[26] Trees in Relation to design, demolition and construction – Recommendations.

features, and the provision of eight new ecology ponds. These are all shown on the Environmental Masterplan [REP7-016 to REP7-022].

6.3.51. Once operational, the Applicant sees the effects of the Proposed Development being mitigated by the management of operational run-off in accordance with the Road Drainage Strategy [APP-201].

6.3.52. Table 8.18 of Chapter 8 of the ES [AS-083] sets out habitat losses and gains. Of particular note in relation to the objections set out below, is the loss of 16.73ha of broadleaved plantation and mixed plantation woodland. The majority of this is associated with roadside planting along the existing M54, M6[27] and A460 and is less than 30 years old. This loss of this woodland would be mitigated for through the creation of 15.3ha of native woodland within the application site. Overall, the Applicant sees this loss and alternative provision as of neutral significance.

6.3.53. Furthermore, the Proposed Development would result in the loss of 25.45ha of improved and amenity grassland, and 2.50ha of poor semi-improved grassland. This loss of grassland would be mitigated through the creation of 38.20ha of species-rich grassland primarily along the new road verges, within roundabouts and to replace some adjacent arable habitats. Given the species-rich grassland would be subject to management, the Applicant maintains that once established, the new grassland would be of minor beneficial impact which is of slight significance.

6.3.54. The various waterbodies would be replaced by eight ponds and marginal wetland habitat. These are in addition to the drainage proposals. As they would be subject to management, the Applicant maintains that once established the new waterbodies would be of minor beneficial impact which is of slight significance.

6.3.55. In relation to running water habitats, 323m would be lost to culverts to be replaced by 408m of watercourse habitat. Although not a primary function (to drain land) the ditches would provide ecological benefit as a secondary function. Furthermore, the Applicant points out that enhancements to retained watercourses would also be undertaken. Overall, the Applicant considers that once established there would be a negligible impact, which is an effect of neutral significance.

Species

6.3.56. Field studies were undertaken between 2018 and 2020, including after the submission of the application. The details of these are set out in paragraph 8.3.9 of Chapter 8 of the ES [AS-083]. Those relating to badgers and barn owls were submitted on a confidential basis, but notwithstanding this we have taken them into account. The summaries identified in this Report derive from the public versions of the ES.

[27] Paragraph 8.9.33 of Chapter 8 of the ES [AS-083] refers to the M60; we consider this to be a typographic error.

Badgers

6.3.57. Badger surveys did not identify any setts within the application site. But within the study area there were two main setts formed of two separate clans. They were identified as of local ecological importance.

6.3.58. During the construction phase, one outlier sett would need to be removed with impacts on foraging habitat. NE licensing would be required, and NE has issued a letter of no impediment (Annex B to [REP1-012]). The landscape design is stated as to allow for appropriate planting to be incorporated to account for where losses of badger foraging resources have occurred.

6.3.59. Three mammal tunnels and guide fencing under the link road element of the Proposed Development are proposed to allow badgers and other animals to safely cross the road. As a consequence of this, the Applicant considers that residual effects on badgers would be negligible and of neutral significance at both the construction and operational stages.

Barn owl

6.3.60. While records indicate 22 barn owl records within 5km of the application site in the last 10 years, only one was within the application site at the western extremity where the M54 meets the A449 and away from the main body of works.

6.3.61. In addition, studies were undertaken to identify potential habitat features which are broadly suited to barn owls. As identified in paragraphs 8.6.21 to 8.6.23 of Chapter 8 of the ES [AS-083] not all the buildings and trees could be surveyed. However, the Applicant concluded that due to the isolated nature of the Proposed Development, as a result of the surrounding major road network, combined with low quantity of suitable habitat, there is little opportunity for barn owl to utilise the application site for foraging or dispersal. Consequently, barn owl interest was assessed as being of no more than local importance.

6.3.62. The Applicant maintains that to reduce potential collision risks to barn owls during the operational phase fencing and landscaping would be introduced. Overall given the precautions set out, the Applicant considers that residual effects on barn owls during construction are negligible and of neutral significance.

6.3.63. Operationally, the Applicant considers that the planting, fencing and noise barriers (where appropriate) would encourage barn owls to increase their flight height to reduce the risk of road traffic collision. Noise effects of the operational development are not considered to affect roosting birds in the vicinity so, overall, the Proposed Development is considered to have a neutral effect on barn owls.

Bats

6.3.64. Desk studies identified the presence of at least six different bat species. All accessible trees were subject to preliminary bat roost assessment and

208 trees were identified as having low, moderate or high potential to support roosting bats. From this, 128 trees were identified for aerial inspection, but due to lack of access and suitability/safety to climb only 92 were surveyed.

6.3.65. Two roosts were identified within the application site, for noctule bat and a likely *Pipestrelle* sp., both within the Lower Pool SBI site. Notwithstanding this, given the known occurrence of summer bat roosts within trees and the species known in the area, the Applicant took a precautionary approach with the assumption of additional day roosts in tree roosts.

6.3.66. Of the 29 structures identified as requiring assessment for bat roosting potential, access was possible for 17 structures. Roosts were identified in seven buildings, all outside the application site. These were all day roosts of individual or low numbers of individual non-breeding bats and are thus, asserts the Applicant, of no more than local importance.

6.3.67. At a meeting at one of the buildings not formally surveyed some 29m to the east of the application site the surveyors identified an accumulation of droppings on an external windowsill and heard audible socialising by bats. From this it was assumed that the building in question supports a brown long-eared bat *Plecotus auritus* maternity roost. For the reasons set out in paragraphs 8.6.40 to 8.6.41 of Chapter 8 of the ES [AS-083] the Applicant considers this maternity roost to be of local importance.

6.3.68. Transect activity surveys were undertaken and identified a minimum of seven bat species. Activity was centred around woodland edge, aquatic habitat (ponds and lakes and watercourses – particularly Watercourse 5 (Latherford Brook)) and along hedgerow/tree lines, with noctules also recorded utilising open fields.

6.3.69. Static detector location surveys identified a minimum of ten species across the application site. Again, activity was associated with the wet mature woodland at Shareshill SBI in proximity to Watercourse 5 (Latherford Brook) and woodland and aquatic habitat at Lower Pool SBI. Specifically, static locations at Watercourse 5 (Latherford Brook), and within Lower Pool SBI were the areas of highest activity.

6.3.70. Crossing point surveys indicated that none of the points identified significant commuting routes for large numbers of bats. Specific surveys identified no definitive or likely important commuting routes. According to the Applicant this therefore indicated that the area was being used for foraging rather than as a linear feature for movement.

6.3.71. Table 8.14 of Chapter 8 of the ES [AS-083] identifies the community and foraging values as either being of county or local importance. Taking all these factors into account the Applicant identifies that the assemblance of bats utilising the study area as being of local importance.

6.3.72. To compensate for habitat losses during the construction phase, the landscape design includes the creation of habitats of value to foraging and commuting bats, using recommended plant species within Highways

England guidance in LA 118 of the DMRB. Linear habitat features, including hedgerows, would be incorporated into the landscape design (Environmental Masterplan [REP7-016 to REP7-022]) to mitigate for habitats lost and ensure ecological connectivity within and across the application site, and into the wider landscape.

6.3.73. Measures would be implemented during the construction phase to minimise impacts on foraging and commuting bats. This includes keeping lighting to a minimum by limited night-time working and reducing lighting within habitats of value to bats. The site compounds would be occupied at all times for the security of the plant, equipment, and materials within it. As such, the compounds would be lit as required during hours of darkness. Lighting would be directional and positioned to minimise light spill.

6.3.74. Construction would result in the loss of two known bat roosts and additional assumed day roosts and potential hibernation roosts within trees within the application site. Analysis of noise events in proximity to bat roosts has also been undertaken and could be some 19 decibels (dB) above current ambient levels. However the Applicant considers that noise events would be unlikely to result in significant effects such as abandonment of roosts.

6.3.75. Following a 'shadow' licence application to it by the Applicant NE has issued a letter of no impediment (Annex B to [REP1-012]) relying on the application as originally submitted. This includes mitigation for the effects, pre-construction surveys to confirm roost status and installation of bat boxes on retained trees.

6.3.76. The Applicant considers that bat activity in the area is low to moderate, with most activity by common and widespread species, although a range of species is present. Due to the existing fragmentation of habitats in the area the Applicant acknowledges bats are susceptible to further fragmentation.

6.3.77. The Applicant accepted that the Proposed Development would result in the loss of some habitats that have higher levels of bat activity, including woodland and wetland associated with Lower Pool LWS and SBI, woodland edge and riparian habitats associated with Latherford Brook, but considers them localised.

6.3.78. Construction work itself would be likely to be short-lived when in proximity to bat habitats and could be timed to minimise effects.

6.3.79. Bat boxes would be provided at a ratio of 3:1 for roosts lost in line with any NE licence, and therefore the Applicant believes that the conservation status of the local bat population would be maintained.

6.3.80. Further, the Applicant noted that there would be creation of standing water, species rich grassland and woodland habitat. This would be connected around the margins of the Proposed Development and into the wider landscape. With the majority of the new habitat to the west of the link road, there would be, so the Applicant considers, *"... linear habitat to*

encourage crossing of the Scheme across two bridge locations at Hilton Lane and the accommodation bridge to the north. These are in locations where the road is in cutting (the Scheme will pass below Hilton Lane at 6m below current ground level and the new bridge is to be 1.7m above existing ground level giving a difference of 7.7m – the accommodation bridge will be 4m above ground level) therefore avoiding potential collision risk associated with this crossing" (paragraph 9.8.81 of Chapter 8 of the ES [AS-083]). Furthermore, the Applicant maintained that there is potential for connection to the west of the A460 to link to habitats in that location.

6.3.81. At Latherford Brook, the Applicant noted that the Proposed Development *"… rises to 8.5 m above existing ground level on a clearspan bridge located over the brook and as such bats would continue to be able to move between retained and newly created foraging habitats to the west and east of the Scheme associated with the brook"* (paragraph 8.9.81 of Chapter 8 of the ES [AS-083]).

6.3.82. Taking all the above together the Applicant considers that there would be a negligible impact on bats during the construction period.

6.3.83. During the operational phase, the Applicant identifies the main impacts as direct mortality and reduction in habitat quality due to artificial light. The former could occur through the severance of flight lines or where bats may cross the highway when following new linear features.

6.3.84. Different species tend to fly at different heights and the Applicant maintains that the absence of lighting along the main length of the Proposed Development would ensure lesser adverse effects, although the junctions would be lit as at present. The Applicant asserts that careful design of the landscaping at known bat activity hot spots and flyways has been undertaken. The landscaping for the area in question is shown on Sheet 3 of the Environmental Masterplan [REP7-020].

6.3.85. The Applicant considers that as *"a good proportion of the Scheme is in a cutting"* (paragraph 8.9.158 of Chapter 8 of the ES [AS-083]), the risk of accidental mortality would be reduced. The Applicant maintains that crossing point surveys do not indicate significant flight lines would be severed. Two survey locations were undertaken (B and E) and E would not be severed. The majority of activity at location B was by foraging pipistrelles rather than any indication of significant flight lines.

6.3.86. The Applicant maintains that the linear habitat guiding bats to the crossings of the mainline at Hilton Lane and at the Brookfield Farm accommodation bridge would avoid collision risk to the species most commonly recorded. Accidental mortality would be unlikely to adversely impact the conservation status of local bat population so that the magnitude of impact on all bat species would be negligible leading to a minor adverse effect that is not significant.

Breeding birds

6.3.87. Records indicate 86 protected or notable bird species within 2km of the Application site in the last ten years. Paragraph 8.6.53 of Chapter 8 of the ES [AS-083] summarises their importance and full details are set out in Annex A to ES Appendix 8.8 [APP-180].

6.3.88. During surveys undertaken in 2018 and 2019 57 species were recorded, and of these 32 had breeding territories and a further 13 probably or possibly breeding territories. The Applicant maintains that as no species of high priority were found in the survey area and it does not support a breeding assemblage that collectively exceeds the indices of representative habitats the area is of local ecological importance for breeding birds.

6.3.89. Mitigation would consist of avoiding vegetation clearance during the breeding season, but where that was not possible ecological checks would be undertaken. Measures would be put in place to deter breeding before it takes place.

6.3.90. The Applicant accepts that direct loss of breeding habitat used by farmland birds is unavoidable if the Proposed Development were to be constructed. Consequently the breeding territories of one dunnock, five skylark, two song thrush and one lapwing, as notable bird species, would be lost and the losses of farmland, hedgerow and scrub habitat would have an adverse impact on individual species that are present in greater numbers.

6.3.91. The Applicant believes that during construction uncovered topsoil mounds and temporarily fallow areas of farmland within the application site would provide opportunities for nesting and foraging birds, which would reduce the magnitude of the impact of habitat loss upon individual species.

6.3.92. Subject to appropriate timings in the year, and the avoidance of harm/ disturbance to active nests, the Applicant believes that the impact of direct mortality to all breeding bird species during construction would be negligible, resulting in an effect of neutral significance.

6.3.93. Operationally, the Applicant acknowledges that some birds are at a higher risk as they fly at low heights. However, it maintains that with the new hedgerows and shelter belts around the LWS/ SBIs and as a good proportion of the link road would be in cutting, this would reduce the risk of direct mortality. Further, appropriate lighting design would minimise light spill on to adjacent habitats. Consequently, the Applicant considers that operation of the Proposed Development would have a negligible impact resulting in a neutral effect on the breeding assemblages.

Wintering birds

6.3.94. Records indicate 59 bird species in the area, and of these 23 were recorded during the surveys as meeting at least one of a range of criteria

relating to conservation importance. Full details are set out in paragraph 8.6.61 of Chapter 8 of the ES [AS-083].

6.3.95. In light of this the Applicant considers the remaining bird assemblage is considered to be typical for the habitat types present within and adjacent to the study area. It also considers the nature conservation value of the breeding bird assemblage on site to be of no greater than local ecological importance with respect to species associated with scrub, hedgerow, pond and farmland habitats.

6.3.96. The Applicant maintains that in operation there would be similar effects on wintering birds as those on breeding birds and thus the operation of the Proposed Development would also have a neutral effect.

Otter and water vole

6.3.97. Records did not identify the presence of either otter or water vole on the application site. However, the 2019 presence/ absence surveys identified both otter and water vole present within Watercourse 5 (Latherford Brook), together with one potential otter holt. Although this holt is within the application site, it would be over 200m from the footprint of the built development and thus would not be physically affected. Details of the locations are set out in Figure 8.27 [APP-131] to the ES.

6.3.98. Based on these survey findings, and as otters are a common species in the county, the Applicant considers that the otter population which may be affected by the Proposed Development are of county importance.

6.3.99. Similarly, based on survey findings, the Applicant considers that the water vole population which may be affected is of county importance.

6.3.100. Pre-construction surveys would be undertaken and, if necessary, NE licensing procedures followed. Precautionary vegetation clearance would take place and foraging habitat has been incorporated into the Proposed Development.

6.3.101. During the operation of the Proposed Development, the Applicant maintains that the three mammal tunnels and the span of the bridge over Watercourse 5 (Latherford Brook) would ensure otters and other animals would be able to cross the mainline of the Proposed Development.

6.3.102. Should water voles be discovered during construction preparation works, the new ecology pond on the western side of the application site could be used as a receptor area. The temporary loss of habitat suitable for foraging and shelter is unlikely to have a significant impact on otter due to the large home range of the species. Consequently, the Applicant considers that the impacts on otter and water vole would be negligible.

Great crested newt

6.3.103. Records indicate great crested newts (GCN) in nine different locations within 2km of the Application site boundary. Surveys were undertaken in

2019 and 2020, with the latter aiming to fill gaps in former survey data. Notwithstanding the 2020 surveys 13 potential waterbodies remained un-surveyed due to landowner permission issues.

6.3.104. The 2019 survey data identified positive eDNA results in three waterbodies and, utilising the precautionary principle in respect of those waterbodies which could not be surveyed, the Applicant assumed that in total there were seven GCN metapopulations each of medium size. Each of these metapopulations is considered to be of county ecological importance.

6.3.105. A short time into the Examination the Applicant submitted a letter of no impediment from NE in relation to GCN licencing requirements (Annex B of [REP1-012]). The 2020 surveys confirmed absence of GCNs so mitigation for the assumed GCN populations was no longer required, reducing the mitigation the Applicant considered was necessary.

6.3.106. NE originally confirmed that it did not need to issue a revised letter of no impediment but following discussions at Issue Specific Hearing 1 (ISH1), the Applicant agreed to make a revised 'shadow' application for such a letter. NE confirmed in a revised letter dated 11 March 2021 [REP9-004] that on the basis of the amended proposals it sees no impediment to a licence being issued.

6.3.107. The amended proposals would be related to each of the metapopulations, with surveys which would be updated pre-construction. Ecology ponds would be created as would be species-rich grassland, hedgerow and GCN hibernacula. The details of these are set out in the Environmental Masterplan [REP7-016 to REP7-022] and the OEMP [REP7-026].

6.3.108. Table 8.20 of Chapter 8 of the ES [AS-083] sets out the GCN impact assessment based on the seven[28] evidenced or assumed metapopulations. The Applicant explains that if the Development Consent Order (DCO) is granted, then further survey work would be undertaken, particularly to those ponds where access has not been possible to date, before a formal licence application to NE.

6.3.109. As part of the design of the environmental mitigation the Applicant contends that high value GCN habitat, including species rich grassland, woodland habitat, and hedgerows and the seven new ecology ponds would provide a higher proportion of optimal habitats. This could increase the carrying capacity for GCNs and allow for the expansion of existing metapopulations. The Applicant maintains that due to the proximity of the proposed mitigation ponds to the existing populations and lack of barriers to movement, that the populations would not be affected in the operational phase of the Proposed Development.

[28] Paragraphs 8.9.100 and 8.9.101 of Chapter 8 of the ES [AS-083] give different figures for the number of metapopulations (seven and eight respectively). Table 8.20 sets out the details of the metapopulations, of which there are seven. It is therefore concluded that this is the correct number.

6.3.110. In light of all this, including the conditions that would be imposed in any NE licence, the Applicant maintains that the effect on GCNs would be negligible.

Terrestrial invertebrates

6.3.111. There is no record of notable terrestrial invertebrates within 2km of the application site.

6.3.112. Surveys were undertaken at 17 sites which were judged to be the best available potential terrestrial invertebrate habitats, and several rare/ scarce and specialist species were recorded. Given these survey results, which are set out in ES Appendix 8.13 [APP-185], the Applicant concluded that these were of local ecological importance. But to provide mitigation, new woodland, wetland and species-rich grassland habitats, along with retaining and providing dead wood habitats, would be created. In light of this the Applicant considers that the impacts on terrestrial invertebrates during construction would be negligible, resulting in an effect of neutral significance.

6.3.113. Operational effects would be unquantifiable but given the addition of the Proposed Development to the existing road network any additional effects are considered by the Applicant to be negligible.

Aquatic invertebrates, fish and aquatic macrophytes

6.3.114. As well as the five watercourses, there are a number of fishing ponds within the application site which are stocked with coarse fish, at Tower House, Brookfields Farm and Lower Pool. There are socio-economic interests in relation to this which are discussed in Chapter 11 of this report on Socio-Economics.

6.3.115. Surveys indicate that the notable species of brown trout and bullhead are present in Watercourses 2, 3 and 5, and there are also a range of common fish. As a result, these watercourses are considered to be of local importance for fish, with the remaining watercourses and ponds of negligible importance.

6.3.116. In relation to macroinvertebrates, surveys show the varying waterbodies are of varying qualities, including high quality. No evidence of white-clawed crayfish was found in any of the ponds or watercourses. As the waterbodies within the application site have been shown to support common and widespread species of no more than local value, they are considered by the Applicant to be of no more than local importance for aquatic invertebrates.

6.3.117. Turning to aquatic macrophyte, surveys indicated that they were typical for fishing ponds, and the Applicant considers that although the macrophyte assemblage enriches the biodiversity of the ponds and watercourses, it is considered of negligible value in the national context.

6.3.118. The Proposed Development includes a highway drainage system in addition to the ecological ponds[29] referred to as mitigation for the effect on GCN populations. Furthermore, the Applicant is proposing that ditch habitat would be created to compensate for the loss of riparian habitats to culverts and all features would develop into ecological habitats of benefit to aquatic macroinvertebrates. Fish translocation would be undertaken on ponds being lost, where necessary.

6.3.119. The Proposed Development would result in the loss of Tower House Pool (Pond 23), Brookfield Farm Pond 1 (Pond 57), five unnamed ponds (25, 26, 29, 65 and 73) and the partial loss of Lower Pool (Pond 28) and Brookfield Farm Pond 2 (Pond 56), as well as loss of 323m of watercourse (218m of Watercourse 2, 55m of Watercourse 3 and 50m of Watercourse 4) and assumed temporary loss of up to 71m of Watercourse 5 (Latherford Brook).

6.3.120. Construction activities, including the provision of culverts, would require in-channel works and, the Applicant accepts, could lead to direct mortality and loss, and the partial loss of both Lower Pool and Brookfield Farm Pond could lead to a reduction in water quality and increased sediments adversely affecting populations. It, however, contends that habitat loss is localised, and that design mitigations could be introduced, for example the span of the bridge over the Latherford Brook would result in a stream that could flow naturally.

6.3.121. Taking all this together the Applicant considers that the impact upon the local fish, macroinvertebrates and aquatic macrophytes during the construction period would be negligible resulting in an effect of neutral significance. Once operational the Applicant maintains that the proposed drainage system would ensure that any residual effects would be negligible and of neutral significance.

Other Fauna/Flora

6.3.122. Due to the proximity of major roads and scattered development in the area of the application site and its immediate surroundings, the Applicant considers that the area is not of particular importance for brown hare. However, the woodland blocks and hedgerow network do offer suitable habitats for hedgehog. Due to the local roads the Applicant considers any population to be of local importance. The GCN surveys reported both toads and smooth newts in the area.

6.3.123. The Applicant takes the view that provided best practice methods are followed, as secured in the OEMP, the risk to other fauna species would

[29] The last bullet point in paragraph 8.8.5 of Chapter 8 of the ES [AS-083] refers to 12 ecology ponds. This is considered a typographic error, since, following the 2020 GCN surveys as described in paragraph 6.3.103, the number of ecology ponds was reduced in the amended plans submitted in October 2020. The amended number proposed is eight, reduced from 12 when the application was originally submitted, and is assumed that the figure reported in paragraph 8.8.5 should be eight.

be minimised, and consequently any impacts during construction and in operation would be negligible.

Controlled weeds

6.3.124. Japanese knotweed and Himalayan balsam have been identified within the application site, and there is rhododendron in the understorey in the woodland in the Lower Pool SBI and Canadian waterweed in the Lower Pool waterbody. Montbretia was identified in Chubb Pond. Given these species are invasive and non-native the Applicant does not consider them to be of ecological importance.

Biodiversity metric

6.3.125. When the application was originally submitted, the Applicant included a Biodiversity metric using a modification of the method published by Defra in its Biodiversity Offsetting Pilots Technical Paper: the metric for the biodiversity offsetting pilot in England published in 2012 [APP-176].

6.3.126. In the First Written Questions (FWQ), ExQ1.3.8 [PD-010], we asked why the more recent Defra Biodiversity Metric 2.0 had not been used, and a series of questions about the results of the originally submitted version.

6.3.127. The Applicant submitted a study based on the Defra Biodiversity Metric 2.0 which was then revised with the October 2020 application changes [AS-103], where the full details can be found. This indicates that the Proposed Development would result in a Biodiversity Net Gain of 2.21% (17.32 units) of area based habitats, 26.27% (8.20 units) in linear habitats and 2.23% (0.33 units) of river habitats.

6.3.128. As these fall within the range -5 % to +5 % for river and area based habitats (woodland, grassland etc.) the Applicant considers that this can be classed as no net loss in accordance with Table 11.9 of CIRIA C776a Good practice principles for development, and can be classed as achieving a net gain in linear (hedgerow) habitats.

Geology

6.3.129. The British Geological Survey (BGS) mapping indicates that the Chester Formation (Sandstone and Conglomerate Interbedded) of the Sherwood Sandstone Group bedrock geology underlies the majority of the application site. There are no designated sites within the study area (the application site and a buffer of 250m) but it is located within a Nitrate Vulnerable Zone.

6.3.130. Superficial deposits in the form of Devensian Till - Diamicton are shown on BGS mapping. Variations include a strip of alluvium associated with Watercourse 2 which runs north-east to south-west across the A460 and M6. Glacial till was encountered throughout the application site, with the exception of the area near the River Penk tributary.

6.3.131. Made ground is present around M54 junction 1 and is likely to be colliery spoil associated with the former Hilton Colliery. It is also present at M6

junction 11 and, the Applicant maintains, is also likely to be associated with the infilled ponds in the area.

6.3.132. A human health assessment was undertaken [APP-187 to APP-191]. The soil samples did not identify any exceedances of metal or inorganic determinants when compared against the corresponding generic assessment criteria (GAC) for human health value for a commercial and industrial end use. However, single marginal exceedances of the GAC were recorded for Benzo(a)pyrene, Dibenz(a,h)anthracene and Benzo(b)fluoranthene in a sample of made ground obtained at a depth of 3m below ground level in BH29 situated on the M6 junction 11 roundabout. Due to the marginal nature of these exceedances the Applicant considers these soil results indicate that the various strata exhibit a negligible risk to human health.

6.3.133. In respect of groundwater, the Applicant notes that the majority of the application site is not within a Source Protection Zone (SPZ). However, SPZ3 crosses the application site north to south at M54 junction 2. The Inner Protection Zone is approximately 2.8km west of the application site. There are three recorded groundwater abstractions within 500m of the application site. One lies approximately 400m south-east of M6 junction 11, for spray irrigation. The second is approximately 240m south of M54 junction 1 for process water. The third is approximately 425m south of the M54 east of junction 1 for spray irrigation. An unlicensed potable water supply abstraction (Latherford Farm) lies approximately 300m north of the application site.

6.3.134. Groundwater strike data was taken and water levels within borehole installations have been monitored. Controlled Waters and Ground gas risk assessments have been completed, the former concluding that there was very low risk to receptors, but there were some higher risks of the latter.

6.3.135. The OEMP sets out various mitigation measures to enable compliance with relevant standards and legislation; this would be developed into a CEMP. A Materials Management Plan would be implemented, and the disposal of soil waste, contaminated or otherwise, would be minimised.

6.3.136. It should be noted that the Applicant is proposing the use of a borrow pit to assist in the construction. This would be located in plots 5/2 and 5/25 as shown on the Land Plans [REP6-004] and is shown in Figure 2.9 to the ES [AS-093].

6.3.137. The Applicant maintains that no designated important geological exposures have been identified within 250m of the application site. As the sensitivity of the geology is very low the level of impact would be negligible during construction and operation.

6.3.138. In relation to contaminated land, with the measures set out in the OEMP, the Applicant considers that the impact on construction workers would be minor adverse resulting from close contact with soils. Due to the potential for ground gas mitigation measures in the OEMP are required to

minimise the effect on construction workers. During operation, which would mean during maintenance, the same effects would apply, which would be a slight adverse effect.

6.3.139. The effect of contamination on surface water and groundwater is considered in Chapter 13 of this report.

6.4. REQUIREMENTS (R)

6.4.1. R4 of the preferred DCO seeks to secure a CEMP in accordance with the OEMP [REP7-026] which must then be followed throughout the construction phase. Following completion this would be converted into a Handover Environmental Management Plan (HEMP) to ensure proper maintenance thereafter. This specifically requires a biosecurity management plan, a Landscape and Ecology Management Plan (LEMP), a Soil Management Strategy (including a Soil Management Plan and Soil Handling Strategy) and an Asbestos Management Plan.

6.4.2. R7 would require the pre-construction surveys for European and nationally protected species, and appropriate procedures should such species be present or there being a reasonable likelihood of that species being present. These procedures include consultation with NE.

6.5. THE POSITION OF INTERESTED PARTIES (IPs)

Natural England

6.5.1. NE and the Applicant have completed a signed SoCG [REP8-028], which sets out the areas agreed and not agreed and the reasoning thereof. In respect of biodiversity the parties are in agreement.

6.5.2. Furthermore, NE has issued letters of no impediment in respect of licensing requirements which would be necessary if a DCO were to be issued. These relate to badgers, bats and GCNs (Annex B to [REP1-012]). A second letter of no impediment relating to GCNs was issued on 11 March 2021 [REP9-004] on the basis of the amended proposals at the end of the Examination.

6.5.3. Of particular relevance to the points raised by other participants NE is content that the Environmental Statement appropriately assesses the effects of the Proposed Development on protected species, including bats, and that impacts would be managed through adherence to mitigation measures detailed in the OEMP.

6.5.4. NE and the Applicant were not in agreement over the effect on Best and Most Versatile (BMV) land, however as this is primarily a Socio-Economic matter, this is considered in Chapter 11 of this report.

Environment Agency

6.5.5. The EA and the Applicant have completed a signed SoCG [REP8-027] with all matters agreed. The only biodiversity matter relates to the use of

the metric, which was updated during the Examination to the Defra 2.0 Metric.

6.5.6. In respect of geology, the EA was content with the measures proposed in respect of potentially contaminated land.

Staffordshire County Council (SCC)

6.5.7. The SoCG between the Applicant and SCC [REP7-027] records agreement on all biodiversity issues.

6.5.8. The Local Impact Report (LIR) produced by SCC [REP1-007] sets out the Council's position at the time of its preparation. Of particular note is that the Council considers that as many ponds in south Staffordshire are stocked, they are poor in invertebrates, and water quality is often initially poor as watercourses rise in urban areas.

6.5.9. In respect of geology SCC noted that the mineral safeguarding assessment identifies that between 0.4 metric tonnes (Mt) to 1.0Mt of sand and gravel is affected by the Proposed Development and requested that be considered.

South Staffordshire Council (SSC)

6.5.10. The SoCG between the Applicant and SSC [REP7-028] records agreement on all biodiversity issues.

6.5.11. The LIR produced by SSC [REP1-097] noted that it normally commissions *"… the County Councils [sic] Ecologist for comments on planning matters and applications. In this case however given the County Ecologist is commenting on the DCO on behalf of the County, we support their response and ask that section of LIR is noted and as stated earlier read in conjunction"*.

Staffordshire Wildlife Trust (SWT)

6.5.12. The SoCG between the Applicant and SWT [REP7-034] records agreement on all biodiversity issues. There are no areas of disagreement between the parties.

6.5.13. SWT emphasized in its RR [RR-042] its view that there should be no net loss for biodiversity and preferably a net gain, and originally sought the use of the Defra 2.0 Biodiversity metric. This was discussed with the Applicant and, as set out above, this metric was submitted. There was also clarification following discussions between the Applicant and SWT which resolved the matters set out in SWT's RR [RR-042] to SWT's satisfaction.

6.5.14. In its RR, SWT [RR-042] raised a concern that there was a remnant of Whitgreaves Wood on the north side of the M54 which has not been investigated, which because it was within 15m of the ARN could be adversely affected by the Proposed Development.

6.5.15. The Applicant agreed to consult with SWT when a draft version of the LEMP is available so that it could make comments and included that provision within the draft OEMP [REP7-026]; see provisions MW-LAN1 and MW-BIO11 of the Register of Environmental Actions and Commitments (the REAC) in Table 3.3 of the draft OEMP. Through preferred DCO R4 this would then be secured into the CEMP and, eventually, the HEMP.

National Trust

6.5.16. There is a signed SoCG between the Applicant and the National Trust [REP6-035].

6.5.17. In respect of biodiversity, all matters are agreed, and this records the legal agreement by the National Trust for the use of part of Whitgreaves Wood for compensation planting for the effects of the Proposed Development on ancient woodland at the 7:1 ratio proposed by the Applicant. This is also secured in a Planning Obligation [OD-011].

Allow Limited (Allow)

6.5.18. Allow took an active role in the Examination and participated in the Preliminary Meeting (PM) and ISH1 which considered biodiversity. There is a signed SoCG between the Applicant and Allow [REP8-011] that records the areas of agreement and disagreement. This report will concentrate on those areas where there is disagreement. Objections to CA and TP will be dealt with in Chapter 16 of this report, but since some of this flows from areas of disagreement on biodiversity issues those will be considered in this chapter of this report.

6.5.19. The biggest areas of dispute relate to:

- the quantum of *"Other habitats (non-woodland) within 5m of woodland lost"*;
- the location and effectiveness of SBI mitigation for bats;
- the location and effectiveness of SBI mitigation for GCNs; and
- the optimum location for mitigation planting to reduce the impact on Lower Pool SBI from an ecological perspective.

6.5.20. During the Examination process there was considerable discussion between the Applicant and Allow as to the quantum of woodland mitigation required. There were discussions between the parties as to how this should be calculated, particularly the nature of the mapping exercise undertaken. This resulted in the Applicant amending its position.

6.5.21. At the end of the Examination the main dispute on this topic related to whether a 5m 'buffer' should be utilised in a similar way as NE utilises a 15m buffer to ancient woodland. The Applicant utilised this approach to ensure effects do not occur in the woodland itself. The parties agreed that the area in question represents some 2.88ha; see page 23 of the SoCG [REP8-011].

6.5.22. In its Statement of Final Position [REP9-005] Allow indicates that it considers the extent of the environmental mitigation to be excessive. It points out (paragraph 8) that the mitigation proposes 6.28ha to mitigate the loss of 2.57ha at Lower Pool.

6.5.23. In respect of the location and effectiveness of SBI mitigation for bats this relates to the location of the mitigation land. As can be seen in the Environmental Masterplan - Overview [REP7-016], the majority of the habitat mitigation is to the west of the mainline of the Proposed Development while the habitats and species are currently located to the east. This, Allow asserts, would increase fragmentation, and result in increases in mortality from the crossing of the mainline, particularly by bats.

6.5.24. Allow put forward that the Applicant did not sufficiently consider appropriate options (paragraph 1.12 of Allow's Written Representation (WR) [REP1-091]), and suggested to better mitigate against the effects identified, that mitigation should be provided on land within Allow's control to the east of the mainline but outside the application site. This is shown in the four options set out on page 9 of the Applicant's 'Assessment of Alternative Locations for Mitigation in Plot 5/2' [REP4-036] and also in a more nuanced approach in the last page of [REP4-045]. This principally relates to the field outside the Application site to the north of Hilton Hall, between it and Hilton Lane where there are two veteran trees. Allow maintains that this would be an ecologically more suitable site since it would better link to the Lower Pool SBI where the principal habitat for bats is located.

6.5.25. In respect of GCNs Allow were initially of the view that the Applicant's proposals over-provided for GCN mitigation as the Applicant had assumed GCN populations where the surveys had not been undertaken. By the end of the Examination this matter had been effectively resolved through consideration of the results of the GCN surveys undertaken in 2020.

Nurton Developments (Hilton) Ltd (Nurton)

6.5.26. There is a signed SoCG between the Applicant and Nurton [REP8-019] which records the areas of agreement and disagreement between the parties. The land in which Nurton has a Category 2 interest is shown at Appendix A of this document. This records two topics of disagreement in respect of this issue relating to:

- the GCN survey methodology and results; and
- information relating to the location and design of ponds.

6.5.27. The RR from Nurton [RR-038] and a clarification Additional Submission [AS-003] were submitted prior to the October application changes. This criticised the survey methodology, particularly in relation to the use of assumed populations when surveys had not taken place. They also criticised the location of the proposed mitigation ponds as the ponds would result in a future constraint on development which Nurton wished to promote.

6.5.28. The 2020 GCN surveys reduced the need for ecological ponds, but notwithstanding this, this did not change the number of ponds on the land in which Nurton has an interest.

6.5.29. In relation to the location and design of the ponds Nurton is of the view that the design uses generic designs rather than bespoke, and that properly designed alternatives should have been considered.

I and A Simkin

6.5.30. There is a signed SoCG between the Applicant and Messrs Simkin [REP8-017] which records the areas of agreement between the parties.

6.5.31. In relation to ecological mitigation the objections of I and A Simkin set out in their RR [RR-033] and WR [REP1-020] were mostly resolved by the October application changes. There continues a dispute set out in the WR that plots 6/29 and 6/30 as shown on the Land Plans [REP6-004] are not necessary for mitigation as they are some distance from the main works, being located to the east of the section of the A460 between M6 junction 11 and M6 (Toll) junction T8.

R E Rowe

6.5.32. There is a signed SoCG between the Applicant and R E Rowe [REP8-013] which records the areas of agreement and disagreement between the parties.

6.5.33. From an ecological perspective R E Rowe offered land to the east of the application site (in the area around Tower House Farm) for ecological mitigation. The Applicant rejected this on the basis that the offer was made after the design of the Proposed Development had been fixed and lay outside the application site.

N and P Simkin

6.5.34. There is an unsigned SoCG between the Applicant and N and P Simkin [REP8-013], which predominantly represents the Applicant's response to the Messrs Simkin's RR [RR-033]. In ecological terms, this RR considers that the Applicant has utilised excessive ecological mitigation affecting the land ownership.

B and V Jones

6.5.35. There is an unsigned SoCG between the Applicant and B and V Jones [REP8-016], which predominantly represents the Applicant's response to the RRs [RR-020, RR-021 and RR-035].

6.5.36. The principal ecological objection is whether the land at Brookfields Farm should properly be considered to be ancient woodland, as it has not been designated as such by NE. They also object to the quantum of land taken for ecological mitigation.

E Whitehouse and S Arblaster

6.5.37. There is an unsigned SoCG between the Applicant and E Whitehouse and S Arblaster [REP8-018], which predominantly represents the Applicant's response to the RR [RR-016 and RR-036].

6.5.38. The principal ecological objection is whether the quantum of land taken for ecological mitigation is justified, particularly as a 500m distance for GCN surveys was used when normally only 250m is utilised. They are also concerned as to whether the ancient woodland at Brookfields Farm should be classified as such.

6.6. PLANNING ISSUES

6.6.1. The above section sets out the biodiversity and geological issues raised by IPs during the Examination particularly in RRs and WRs, which were discussed in the relevant ISH1. In summary the main issues in dispute are:

- whether the effects of the Proposed Development have been appropriately assessed;
- the extent of the effects on ancient woodland and the compensation secured;
- whether there would be greater effects on bats than those assessed;
- whether the quantum of environmental mitigation is appropriate; and
- whether the location of the environmental mitigation is satisfactory and appropriate.

6.7. ExA CONSIDERATIONS

General Approach and analysis

6.7.1. Having reviewed the ES, we are satisfied that the Applicant has undertaken a thorough and rigorous characterisation of the natural environment and geological assets affected by the Proposed Development, both directly and indirectly. The significance of those assets and the significance of effects upon them have been consistently assessed and mitigation measures designed where necessary, although we do have some specific comments which are set out below such that we consider that the Applicant has underestimated some effects.

Habitats sites

6.7.2. The effect on internationally designated sites is dealt with in Chapter 14 of this report.

6.7.3. In the absence of any evidence to the contrary it is considered that there would be no significant adverse effects, either direct or indirect, on Stowe Pool and Walk Mill Clay Pit SSSI, Four Ashes Pit SSSI, Chasewater and the Southern Staffordshire Coalfield Heaths SSSI and Belvide Reservoir SSSI, or on the Wyrley and Essington Canal LNR and Rough Wood Chase LNR.

6.7.4. It is not in dispute that there would be adverse effects on both the Lower Pool SBI/LWS and the Brookfield Farm, Shareshill LWS and SBI. These are local designations. These would be direct and indirect effects from the physical loss of habitat and from on-going operational effects. Because of the location, excluding consideration of ancient woodland, these effects could not be mitigated for and therefore would need to be compensated for. It should also be noted that as paragraph 5.31 of the NPSNN makes clear such a local designation of itself should not be used to refuse development consent.

6.7.5. The direct effects on these local sites would also have an adverse effect on protected species. Paragraph 5.35 of the NPSNN makes clear that consent should be refused where harm to habitats or species and their habitats would result, unless the benefits of the Proposed Development (including need) clearly outweigh that harm. In respect of its effects on biodiversity the Proposed Development would be contrary to Policy EQ1 of the Core Strategy.

Ancient Woodland

6.7.6. In respect of ancient woodland, it is clear that NE's inventory of ancient woodland only includes that over 2ha in size. In any event, that an area of woodland has not been identified by NE does not preclude it being appropriately identified as such if there is sufficient evidence to that effect.

6.7.7. The area of purported ancient woodland at Brookfields Farm is less than 2ha in size, and there is evidence from historic mapping and survey data that this area is ancient woodland by age (see paragraph 5.1.8 of ES Appendix 8.4 Designated Sites and Habitats [APP-178]). NE agrees with this analysis. There is no evidence to show that the woodland in question has not been in existence continually since the earliest mapping. We are therefore satisfied that this area does represent ancient woodland.

6.7.8. As set out above, paragraph 5.32 of the NPSNN states that the loss of ancient woodland should not be permitted unless the national need for and benefits of the development, in that location, clearly outweigh the loss. Through the October application changes there would no longer be direct loss, but as some of the physical development would be within 15m of the ancient woodland it is reasonable to assume that this ancient woodland would effectively be lost through effects on the rooting systems and increases in air pollution.

6.7.9. As an irreplaceable resource the loss of ancient woodland cannot be mitigated. However, the Applicant has sought to provide compensation near to the two locations, Brookfields Farm and Whitgreaves Wood, in a ratio of 7:1 (provided to lost in terms of area) agreed with NE.

6.7.10. That land provided at Brookfields Farm would be the subject of CA and thus would allow for the long-term management of the compensation habitat to be secured.

6.7.11. That at Whitgreaves Wood is only subject to TP while the works are undertaken. This land is owned by the National Trust. Thereafter, the Applicant and the National Trust have entered into a land agreement that the National Trust will maintain the enhanced land.

6.7.12. We queried whether this would be sufficient to reduce the risk that the existing woodland would not be enhanced as the objectives of the National Trust are only to preserve (see ExQ3.3.1 [PD-023]) and only one of the four parcels is held inalienably. The Applicant, in its response [REP6-039] noted that the National Trust would properly maintain the land.

6.7.13. We wrote on 19 March 2021 [PD-027] to the Applicant and the National Trust:

> *"While the ExA notes that the National Trust intends to put the remaining land forward so that it would be held on an inalienable basis this is currently not the case. Therefore, there is a risk that that all the works to enhance the woodland would not be secured in perpetuity.*
>
> *"It is for an Applicant to decide in what form it puts forward an application and accompanying documents, but the ExA must advise that without a Planning Obligation pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) that the risk exists and that this would have to be reported to the Secretary of State."*

6.7.14. In response to this, the Applicant and National Trust submitted a draft Planning Obligation by way of Unilateral Undertaking to SSC at Deadline 8 [REP8-030] and a final version, completed on 20 April 2021, was submitted before the Examination closed [OD-011].

6.7.15. The Planning Obligation requires the National Trust to ensure the land is maintained until the three parcels are declared to be inalienable. Once declared inalienable, special arrangements are required before it could be used otherwise. In light of this we are satisfied that this ensures the proper maintenance of Whitgreaves Wood for an appropriate period.

6.7.16. A map regression exercise was undertaken in respect of the land to the north side of the M54 opposite Moseley Old Hall [REP4-037] which confirmed that this area should be considered to be ancient woodland. Approximately 0.1ha of this would be affected by nitrogen deposition as it would be within 15m of the ARN. The Applicant considered that the measures secured with the National Trust would be sufficient to compensate any effects.

6.7.17. In the SoCG with the SWT [REP7-034], the Applicant notes (page 29) that the landowner of this remnant is not supportive of the Proposed Development and has been unwilling to engage with the Applicant. The Applicant therefore considers that it is very unlikely that the landowner will enter into a voluntary agreement over the management of this area.

The Applicant does indicate it will approach the landowner to see if works could be undertaken outside the application process.

6.7.18. The formal management of this remnant would clearly be beneficial. However, there are no works secured within this process and consequently it should be considered that part of the ancient woodland would be 'lost' through the effects of development in proximity. Notwithstanding this, the compensation works already secured on the woodland to the south of the M54 would be sufficient to deal with this matter.

Woodland mitigation

6.7.19. Turning to the quantum of mitigation, the dispute relates to whether it is appropriate to allow for a nominal loss of existing woodland where development is within 5m of the woodland. It was agreed at ISH1 that this was a novel approach but the ecologist from Allow accepted that it was not unreasonable.

6.7.20. Whether there is construction or additional traffic within proximity to an existing woodland, it is reasonable to assume that there would be an effect. While some root areas may be constrained by existing built development, utilising a precautionary approach is considered appropriate since there will conversely be locations where root systems may extend further, and in any event the air pollution effects are likely to be within this area.

6.7.21. The nature of this type of mitigation is that whilst it is based on experience, it can only be a best estimate of what is necessary. The precautionary principle requires, if anything, more mitigation than may be absolutely necessary in order to avoid unmitigated effects.

6.7.22. The SoCG between the Applicant and SCC records (page 78 of [REP7-027]):

> *"SCC and HE consider provision of woodland mitigation as shown in the Environmental Masterplan [AS-086 to AS-092/6.2] to be the minimum required to mitigate the impacts of the Scheme. Further reduction would not sufficiently mitigate the impacts of the scheme on woodland habitats and SCC would object to the removal of further areas of mitigation planting from the Scheme."*

6.7.23. Taking the above together, we consider the quantity of woodland mitigation to be the minimum to ensure the effects of the Proposed Development are mitigated.

Bats

6.7.24. Dealing with the question of the location of the compensatory habitat, the Applicant maintains that there would be no significant effect on bats from the location of the mitigation habitat on the west side of the mainline. This is because it states that a significant proportion of the link road would be in a cutting and thus bats would be unlikely to suffer from

collision mortality as they would be above vehicles. However, at Lower Pool the mainline would be slightly above the existing ground level. This is shown in Section B-B of the engineering sections [REP4-004] and can also be seen on the longitudinal section for the mainline between chainages 2+070 and 2+510. The gap between the two cuttings is a distance of over 400m and thus is of a significant length.

6.7.25. The Lower Pool area is an area of medium to high bat activity (see sheet 1 of ES Figure 8.18: Bat Baseline - Transect Activity Survey Results (2018 and 2019) [APP-122]), and there is low tree roosting potential (see page 1 of ES Figure 8.17: Bat Baseline - Confirmed Bat Roosts and Arial Tree Inspection Survey Results (2018 and 2019) [APP-121]). Consequently it is described as a 'core area of habitat of most importance to foraging bats' (paragraph 6.2.1, Appendix 8.7 to the ES [APP-179]).

6.7.26. Plate 5.8 and Table 5.8 of Appendix 8.7 of the ES [APP-179] set out the height of passes at each crossing point, with the locations of the crossing points shown at Figure 8.15 of the ES [APP-119]. Crossing point D is the most pertinent in this regard with Crossing point C also relevant. Crossing point D indicates that 78% of passes were at 5m or above (although on a small survey). This would be sufficient to avoid collisions with the vast majority of vehicles on the mainline.

6.7.27. The Applicant's approach is that bats would travel from their roosts in the Lower Pool SBI area up the west side of the proposed mitigation planting to the east of the mainline, 'hop over' the mainline in the vicinity of the Hilton Lane bridge, and then travel into the mitigation habitat to the west side of the mainline, and undertake the same journey in reverse.

6.7.28. We consider that the Applicant's assessment of the effects on bats is overly optimistic. If the mitigation were to be on the west side of the mainline, we consider that bats, having found the habitat, are more likely to cross through a direct route across the mainline of the link road, rather than flying around via the Hilton Lane bridge. The Hilton Lane bridge is set within species rich grassland on either side to the south rather than woodland to provide a linkage and would not constitute a 'green bridge'. There would thus be a considerable distance for bats to fly in the open at the bridge. For those species flying at lower levels flights across the mainline is likely to result in an increased risk of mortality.

6.7.29. We therefore conclude that the significance of the adverse effects would be greater than that put forward by the Applicant. In assessing the degree of this harm, we have noted the importance of bats as a protected species and that Lower Pool is a core area of activity in this locality.

6.7.30. Utilising the Applicant's own level of impact descriptive criteria as set out in Table 8.3 of Chapter 8 of the ES [AS-083.] we therefore conclude that the proposal would result in permanent irreversible damage to a biodiversity resource but the extent, magnitude, frequency, and/ or timing of the impact would not affect the integrity or key characteristics of the resource. This would therefore be a minor adverse level of impact/

change. Moving to Table 8.4, as bats are protected at the international level, this would result in an effect of moderate or large significance. Because there would continue to be existing woodland to the east of the mainline, we take the view that this would be of moderate significance.

6.7.31. In simple terms, if the mitigation habitat were to be located to the east of the mainline of the link road it would be likely to be more effective than to the west as bats would not need to cross the mainline. This alternative was not fully considered in the original application or the amended ES following the October changes. However, this was considered by the Applicant in its 'Assessment of Alternative Locations for Mitigation in Plot 5/2' [REP4-036] and Allow commented on this [REP5-008]. While we have differed in the conclusions drawn, we are satisfied that this analysis was appropriately undertaken.

6.7.32. Consideration and balancing of the effects of potential mitigation for bats, as a protected species, against the need to protect the openness of the area to the east of the mainline which contributes to the significance of the setting of Hilton Hall and the Conservatory and the Historic Park (as set out in chapter 7 below) will be undertaken in chapter 15.

GCNs

6.7.33. At an early stage in the Examination a number of IPs raised objection on the basis that they considered that the 500m zone around the application site for consideration of the effects on GCNs was too widely drawn, and the 250m normally recommended by NE was appropriate. Because of the precautionary approach which had been followed, it was asserted by objectors, this had led to there being more mitigation than was necessary, particularly in the number of ecological ponds.

6.7.34. This was discussed at ISH1, but at the same time the October application changes included a more robust assessment of GCN populations that may be affected as they included the results of the 2020 surveys. Although the 500m margin represents an abundance of caution, given the 2020 surveys, we are satisfied that the effect on GCN populations have been adequately addressed, particularly taking into account the letter of no impediment [REP9-004] from NE issued in the light of the 2020 surveys. We consider we are able to give considerable weight to the advice of NE as the government's relevant advisor.

6.7.35. As regards the location of the mitigation ponds, we consider that they would be appropriate from an ecological perspective. The effects on this on future development will be considered in Chapter 11 of this report.

Other habitats and species and associated consents

6.7.36. As set out above in Chapter 6, paragraph 6.5.2 of this report NE has issued 'Letters of No Impediment' in respect of three necessary licences that would be required should the DCO be granted. These relate to badgers, bats and GCNs. In light of this we are satisfied that there is a reasonable prospect of the necessary licences being granted.

6.7.37. Paragraph 1.9.1 of this report sets out the other consents that would be required. A number of these relate to the Water Environment which is considered in more detail in Chapter 13. These consents would ensure that any changes in the water environment and thus effects on biodiversity, particularly species such as otters and water voles, would be such that they would not have an adverse effect.

6.7.38. We are also satisfied that through the provisions of the REAC set out in the OEMP [REP7-026], secured through R4 of the DCO [REP8-005], would ensure that effects on other habitats and species would be acceptable. Consequently, in line with paragraph 5.35 of the NPSNN the effects on other habitats and species beyond those specifically discussed in this chapter would not represent an impediment to the grant of a DCO.

Biodiversity metric

6.7.39. Following completion of the Proposed Development there would be a significant positive effect as a result of the development on biodiversity as a whole as evidenced by the offsetting matrix. We have had regard to the advice on Metric 3.0, as referenced in the footnote to 6.2.8 above, that Metric 2.0 is still valid for existing projects, in reaching this conclusion. This would accord with the latest guidance in the PPG. It is noted that SSC is satisfied with the approach and results. Taken overall we consider the effect would be beneficial and should be given moderate weight.

6.7.40. In light of this the Proposed Development would accord with the United Nations Environmental Programme Convention on Biological Diversity of 1992 and thus also accord with Regulation 7 of the Decisions Regulations.

Geology

6.7.41. Given the distance to any sites of geological conservation importance there would be no effects on such sites.

6.7.42. The Applicant has set out the use of part of the site as a borrow pit during the construction period. We queried (ExQ1.9.7 of [PD-010]) the suitability of this given that paragraph 13.9.37 of Chapter 13 of the ES [APP-052] indicates that no ground investigation had been carried out. There was thus no information as whether this land was suitable and was not contaminated.

6.7.43. The Applicant in response [REP1-036] considered that it was likely to be of the same composition as soils in the surrounding area, and thus likely to be suitable for the intended purpose. Further, due to its recent use (agricultural/car boot sales) it was unlikely to be contaminated. We have no evidence to dispute these conclusions. Allow's concerns over CA and TP are dealt with in Chapter 16 of this report.

6.8. CONCLUSIONS

6.8.1. Taking all relevant documents and policies into account, the ExA concludes as follows:

- There would be no significant adverse effects on nationally designated sites (SSSIs).
- There would be indirect effects on ancient woodland that could not be avoided, therefore development consent should not be granted unless the need for and benefits of the Proposed Development, in that location, clearly outweighs the loss. This balance will be considered in Chapter 15 of this report.
- There would be direct and indirect loss of locally designated wildlife sites, which would be compensated for within the Proposed Development to an appropriate level.
- There would be effects of moderate adverse significance on bats. Again, development consent should be refused unless the benefits of the development (including need) clearly outweigh the harm. This balance will be considered in Chapter 15.
- An appropriate precautionary approach has been taken by the Applicant as regards GCNs, with appropriate mitigation provided.
- Moderate weight should be given to the net gains for biodiversity as evidenced in the Biodiversity matrix.
- There would be no unacceptable effects on other habitats and protected species.
- There would be no significant geological effects.

7. FINDINGS AND CONCLUSIONS IN RELATION TO CULTURAL HERITAGE, INCLUDING ARCHAEOLOGY

7.1. INTRODUCTION

7.1.1. This chapter considers the effect of the Proposed Development on cultural heritage, archaeology and includes issues related to paleoenvironmental matters. In particular it deals with:

- Designated heritage assets including listed buildings;
- Non designated heritage assets, including local plan designated landscapes;
- Archaeological remains; and
- Paleoenvironmental remains, and in particular Kettle Holes.

7.2. POLICY

National Policy Statement for National Networks

7.2.1. Paragraph 5.121 in the National Policy Statement for National Networks (the NPSNN) states that *"The historic environment includes all aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, and landscaped and planted or managed flora."*

7.2.2. Paragraph 5.122 goes on to state *that "Heritage assets may be buildings, monuments, sites, places, areas or landscapes. The sum of the heritage interests that a heritage asset holds is referred to as its significance. Significance derives not only from a heritage asset's physical presence, but also from its setting"*. Footnote 96 relates to setting and notes *"Setting of a heritage asset is the surroundings in which it is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements which make a positive or negative contribution to the significance of an asset may affect the ability to appreciate that significance or may be neutral."*

7.2.3. Paragraphs 5.126 and 5.127 provide advice on the Applicant's assessment, with the later paragraph noting that the level of detail should be proportionate to the asset's importance and no more than is sufficient to understand the potential impact of the proposal on the asset's significance. It goes on to state *"… where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, the applicant should include an appropriate desk-based assessment and, where necessary, a field evaluation."*

7.2.4. NPSNN paragraphs 5.128 to 5.142 identify the historic environment decision-making considerations to be taken into account by the Secretary of State (SoS) and advice on recording of assets.

7.2.5. Paragraph 5.130 states *"… the SoS should take into account the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings and the positive contribution that their conservation can make to sustainable communities – including their economic vitality. The SoS should also take into account the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment"*.

7.2.6. Paragraph 5.131 states that when considering the impact of a proposed development on the significance of a designated heritage asset, the SoS should give great weight to the asset's conservation. The more important the asset, the greater the weight should be. It continues to state *"… significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Given that heritage assets are irreplaceable, harm or loss affecting any designated heritage asset should require clear and convincing justification. Substantial harm to or loss of a Grade II Listed Building or a Grade II Registered Park or Garden should be exceptional. Substantial harm to or loss of designated assets of the highest significance, including World Heritage Sites, Scheduled Monuments, Grade I and II* Listed Buildings, Registered Battlefields, and Grade I and II* Registered Parks and Gardens should be wholly exceptional"*.

7.2.7. Paragraph 5.132 states *"… any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the greater the harm to the significance of the heritage asset, the greater the justification that will be needed for any loss"*.

7.2.8. Paragraphs 5.133 and 5.134 deal with the approaches that should be undertaken depending on the level of harm. The former paragraph states *"… where substantial harm or total loss of significance of a designated heritage asset, the SoS should refuse consent unless it can be demonstrated that the substantial harm or loss of significance is necessary in order to deliver substantial public benefits that outweigh that loss or harm", or four specific criteria collectively apply. The latter paragraph states "where the proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use"*.

7.2.9. Paragraph 5.142 states "… *where there is a high probability that a development site may include as yet undiscovered heritage assets with archaeological interest, the Secretary of State should consider requirements to ensure that appropriate procedures are in place for the identification and treatment of such assets discovered during construction."*

National Planning Policy Framework and Planning Practice Guidance

7.2.10. As noted above (section 3.8), the National Planning Policy Framework (the Framework) is likely to be an important and relevant consideration in decisions on Nationally Significant Infrastructure Projects (NSIPs), but only to the extent that they are relevant to that project. The accompanying PPG provides advice on the application of the Framework and will also therefore be material, albeit not with the same weight as the policy set out in the Framework.

7.2.11. The Framework sets out broadly similar policies, to the NPSNN, for the conservation of the historic environment in section 16 'Conserving and enhancing the historic environment'. Paragraph 184 advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so they can be enjoyed for their contribution to the quality of life of existing and future generations.

7.2.12. The Framework also deals with non-designated heritage assets, at paragraph 197, and states *"The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset."*

7.2.13. The Glossary to the Framework defines significance for heritage policy as *"The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting"*.

7.2.14. The Planning Practice Guidance (the PPG) states[30] *"Whether a proposal causes substantial harm will be a judgment for the decision taker, having regard to the circumstances of the case and the policy in the … Framework. In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest."*

7.2.15. As these matters relate to the consideration on significance, the Examining Authority (ExA) considers that these are an appropriate way in which to consider the heritage aspects of the Proposed Development.

Local Plan

7.2.16. The South Staffordshire Local Plan Core Strategy (the Core Strategy) includes a number of policies at different levels that seek to protect environmental quality. These include, within the overarching strategic

[30] Reference ID: 18a-018-20190723

objectives, Strategic Objective 5 which seeks to protect, conserve and enhance the historic environment and heritage assets and ensure that the character and appearance of the District's Conservation Areas are sustained and enhanced through management plans and high quality design.

7.2.17. Within the strategic objectives for environmental quality is Core Policy 2, entitled 'Protecting and Enhancing the Natural and Historic Environment'. This policy advises, amongst other matters, that the council will support development that protects, conserves or enhances the districts heritage assets, with particular support given to improving the historic environment where it is identified as at risk. The policy further advises that proposals should be consistent with the Framework and supplementary planning documents.

7.2.18. Policies EQ3 and EQ4 are of particular relevance. Policy EQ3 deals with the conservation, preservation and protection of heritage assets. It sets out various means by which this will be achieved including maintaining records of known heritage assets, encouraging measures to secure the maintenance management and reuse of heritage assets, ensuring applications have a proportionate assessment of the significance of the asset and the Council will consider the significance and setting of all proposed works to heritage assets and that the Council may require historical research and archaeological recording to be undertaken. The policy notes that heritage assets include Listed Buildings (and those on a local list), Registered Parks and Gardens (and other historic landscapes), Conservation areas, and Scheduled Monuments identified on the Policies Map.

7.2.19. Policy EQ4 is entitled 'Protecting and enhancing the Character and Appearance of the Landscape'. The relevant paragraph within the policy states *"Proposals should retain and strengthen the components of landscape character and local distinctiveness, with particular attention to the detailing of any proposal and its relationship with existing buildings, features and vegetation. Proposals within the Historic Landscape Areas (HLA) defined on the Policies Map should have special regard to the desirability of conserving and enhancing the historic landscape character, important landscape features and the setting of the HLA. The County Council's Landscape Character Assessment and Historic Landscape Characterisation will provide an informed framework for the decision making process."*

7.3. THE CASE FOR THE APPLICANT

7.3.1. Chapter 6 of the Environmental Statement (ES) [APP-045], including the associated figures and appendices, assesses the potential cultural heritage impacts of the Proposed Development using the methodology set out in Design Manual for Roads and Bridges (DMRB) Volume 11,

Section 3, Part 2 Cultural Heritage (LA 106)[31]. During the examination additional documentation was submitted in respect of matters raised by Interested Parties (IPs) or to fulfill requirements within the existing process of evaluation. These included a Written Scheme of Investigation for Archaeological Trial Trenching Evaluation [REP4-032], an Assessment of Alternative Locations for Mitigation in Plot 5/2 [REP4-036] and a Report on Archaeological Trial Trenching Evaluation [REP7-035]. The final version of the Outline Environmental Management Plan (the OEMP) [REP7-026] also includes relevant matters.

7.3.2. The general approach is set out in Chapter 6 of the ES and includes the consideration of the potential for the Proposed Development to impact on Monuments, groups of buildings and sites as defined in DMRB LA 106 Cultural Heritage Assessment. These include elements or structures of an archaeological nature, groups of separate or connected buildings and material remains resulting from the works of humans or the combined works of nature and humans, including archaeological sites.

7.3.3. A study area of 1 kilometre (km) was identified and agreed with the County Archaeologist at Staffordshire County Council (SCC), which includes all land to be temporarily and permanently acquired within the Order Limits. (See paragraph 6.5.3 in Chapter 6 of the ES [APP-065]).

7.3.4. A list of designated and non-designated heritage assets is provided in Appendix 6.1 of the ES [APP-169] with section 6.6 of the ES Chapter setting out a detailed description of each of the assets. The Applicant's desk-based review identified some 59 non-designated archaeological assets, a total of two Grade I, three Grade II*, and 21 Grade II listed buildings and 13 historic buildings and structures, including seven locally listed buildings or structures. No World Heritage Sites, Scheduled Monuments, Registered Battlefields, Registered Parks and Gardens or Conservation Areas were identified by the Applicant within the study area.

7.3.5. The Applicant identifies the potential impacts resulting from the Proposed Development in terms of construction, both temporary and permanent, and operational. The construction impacts include activity associated with construction plant and equipment, siting of construction compounds (including associated noise and lighting), increased volumes of traffic on the local road network. In terms of permanent construction impacts these would involve physical impacts on known archaeological assets, physical impacts on historic landscapes, disturbance of previously unrecorded archaeological deposits and impacts on archaeological remains, historic buildings and historic landscapes associated with the introduction of physical form affecting the setting of the assets.

[31] DMRB LA106 Cultural heritage assessment was updated in January 2020 the revision updated references only with the original document (Revision 0) being published in September 2019 and on which the methodology is based. There are therefore no consequences for the assessment.

7.3.6. Operational impacts identified by the Applicant include changes to traffic movements, changes to road noise and the operation of road lighting at junctions. All of these may affect the setting of the heritage assets.

7.3.7. Having identified the known heritage assets within the study area, the ES considers the likely significant effects resultant from the Proposed Development in respect of archaeology, historic buildings and the historic landscape in terms of both construction and operational effects.

Archaeology

7.3.8. The Applicant considers that there would be no construction impacts on designated archaeological sites, but potential effects would occur on some non-designated archaeological sites.

7.3.9. The line of the Streetway and Wordsley Green Turnpike Road is a postmedieval highway first recorded in 1761. The road is now known as the A460 Cannock Road. The applicant identifies its archaeological and historic significance in its ability to provide information on the connections between places in this landscape. The Applicant considered it to be of no more than negligible value as any buried remains relating to it will likely have been lost during later modernisation. As the Proposed Development would result in only some limited physical impact, the significance of effect on the asset would, according to the Applicant, be slight adverse at most.

7.3.10. The Applicant identifies a number of crop marks recorded from aerial photographs at two locations (Northeast of junction 11 of the M6, (see Figure 6.1 Known Heritage Assets [APP-072] A22 and A23) interpretated as field boundaries and well defined ditch enclosures. They have archaeological and historic significance as they provide information on agricultural process and land management and potential early settlement. The Applicant considers the assets value to be negligible but given that they are located within the application site construction would have a major adverse effect on them leading to an overall slight adverse significance of effect.

7.3.11. A further cropmark complex containing pits and other features of unknown date in a field immediately west of the M6 to the north of junction 11 (see Figure 6.1 A36 [APP-072]). The value of the asset is identified as information regarding historic land use and potential early settlement and industrial processes. The Applicant ascribes a value of no more than negligible which may be destroyed as the southern half of the site falls within the application site. Overall, the Applicant concludes the significance of effect would therefore be slight adverse at most.

7.3.12. In terms of unrecorded archaeology the ES assessment identified a potential for archaeological deposits to be present particularly dating from the prehistoric and Roman periods. The Applicant, whilst concluding the value or nature of such deposits is unknown, considered that it is likely they would be of low or medium value as they would contribute to current understanding. Further works were undertaken in line with a

Written Scheme of Investigation for trial trenching which was submitted into the Examination [REP4-032]. A report on the Archaeological Trial Trenching Evaluation [REP7-035] was also provided. The conclusions of this report were that no archaeological remains were discovered in the 139 trenches that were excavated. The report concluded that the trial trenching did not reveal any archaeological remains within the application site, therefore demonstrating a lack of archaeological evidence for activity other than post-medieval and modern agricultural practices. The report concluded by recommending no further work.

7.3.13. In terms of operational impacts the Applicant considers that any assets directly affected by the Proposed Development would have been removed and that therefore there would be no physical impacts or impacts to the setting of such assets arising from the operation of the Proposed Development.

Historic Buildings

7.3.14. The Applicant sets out a list of those historic buildings that are potentially affected by the Proposed Development identifying the significance of the asset and the likely effects that could result from the Proposed Development. These are summarised in the following paragraphs.

Hilton Hall

7.3.15. Hilton Hall has historic interest as an early 18th century country house for a prominent family. It illustrates aspects of social and economic life in the 18th and 19th centuries and has associative value with the Vernon family and the architect Richard Trubshaw. Architectural and artistic interest derives from the appreciation of the Baroque style of the Hall, its materials, design and architectural features.

7.3.16. Hilton Hall is Grade I listed and is therefore of high value. The setting of Hilton Hall is defined by its location within a landscape park, Hilton Park, which evolved from open parkland and a deer park. The park includes water features, woodland, belts of trees, individual trees and grassland as well as number of subsidiary buildings that were built to complement Hilton Hall. These are also located within the parkland and include the Coach house and stable block (Grade II); the Conservatory (Grade I); the Gatepiers (Grade II); and the Portobello Tower (Grade II). These buildings and the surrounding parkland contribute to the setting of Hilton Hall and illustrate the historic development of the estate. The park is important due to its associations with Repton and it continues to contribute to the significance of Hilton Hall and associated buildings and structures.

7.3.17. The Applicant states the Proposed Development would introduce an additional modern infrastructure element in the setting of Hilton Hall, but it would be mostly screened from the Hall with only a few glimpses during the winter months. The retained, extant woodland around the Lower Pool, as well as proposed trees and hedges, would continue to provide screening to the Proposed Development in views from the Hall. There is no lighting on the mainline of the road but some lighting around

junction 1 of the M54 would potentially be visible from the second floor of the Hall. The Proposed Development and lighting and signage would not in the Applicant's assessment be visible in any views from the ground and first floors of the Hall.

7.3.18. The Proposed Development would result in noticeable changes to the setting of the Hall which the Applicant categorises as a minor adverse magnitude of impact. Given the high value of the asset this would translate to a slight adverse significance of effect as the historic and architectural interest would still be appreciated. The Applicant notes in Framework terms this would represent less than substantial harm.

7.3.19. The Applicant also identifies some temporary adverse effects are anticipated associated with construction including the presence and movement of construction traffic, an area of soil storage, construction noise etc. There would be some temporary impact on the ability to understand and appreciate the asset during the construction activities and these effects are assessed as less than substantial harm to the significance of this asset. These temporary impacts would cease to exist once the Proposed Development is completed.

The Conservatory

7.3.20. The Conservatory is Grade I listed and of high value, The Applicant identifies it has historic significance as an early 19th century conservatory with a domed roof. One of the most significant developments in the design of conservatories was the invention of the glazed roof. The Conservatory at Hilton illustrates the early use of the glass roof in conservatories; therefore, it is of high historic interest. The Applicant also notes that architectural interest is derived from the appreciation of its Regency style and its unusual ornamental design.

7.3.21. According to the Applicant, Hilton Park defines the setting of the Conservatory, and the Conservatory contributes to the setting of Hilton Hall and the Proposed Development would not affect the relationship of the Conservatory with Hilton Hall. The Conservatory would be screened from the Proposed Development by existing trees and planting around it. However, the Proposed Development would result in change to the setting of the Conservatory through the introduction of a modern infrastructure element within its parkland setting. Construction effects resulting from increase in noise levels and the movement of construction equipment and other construction works could temporarily detract from the setting of the asset.

7.3.22. The Applicant considers construction would have a negligible adverse magnitude of impact on this asset of high value which would result in a significance of effect of slight adverse. The setting would change in a way that would hardly affect the ability to appreciate the asset according to the Applicant so that construction of the Proposed Development would result in less than substantial harm to the significance of this asset.

Gatepiers

7.3.23. The Applicant assessed the Gatepiers to have historic interest as they illustrate the early phase of development of the Hall and the Park and they have architectural and artistic interest derived from their design and materials. Their setting is within Hilton Park, they mark the historic entrance to the Park and a road leading to the Hall and have group value with Hilton Hall and other buildings in the Park. They are Grade II listed. The relationship with the Hall would not be affected by the Proposed Development therefore the Applicant considers there would be no change to the significance of the asset.

Portobello Tower

7.3.24. The Applicant considers the tower has historic interest as a commemorative tower of an important historic event. Historic interest is also derived from the association of the tower with the Vernon family and the architect, Richard Trubshaw. Architectural interest derives from the design of the tower and its positioning within the park to act as a folly and contribute to views from both the Hall and within the park. The setting of the tower is defined by its location within the park and its relationship with Hilton Hall. It is Grade II listed.

7.3.25. The Applicant notes the tower is currently derelict, in a poor condition and inaccessible. Therefore, the upper storeys of the tower could not be accessed in order to inform this assessment. However, the Applicant assumes that some panoramic views from the asset would be affected. The Portobello Tower would continue to contribute to views from within the Park and views of the Park, mainly from the south.

7.3.26. The historic interest of the tower would not be affected by the construction of the Proposed Development and it would continue to act as a folly and contribute to views within and towards the Park. The impacts would be limited and no more than negligible with a neutral significance of effect given the medium value of the Asset. This, according to the Applicant, would result in less than substantial harm to the significance of the Portobello tower.

Coach House and Stable block

7.3.27. The Coach House and stable block have historic interest as early 19th century farm buildings that were constructed to support the main house (Hilton Hall). Architectural and artistic interest is derived from the appreciation of the formal layout of the buildings and their style and materials. Architectural features and details, such as the clock tower and cupola, and the rusticated entrance contribute to the architectural interest of this group. They are Grade II listed.

7.3.28. The Proposed Development would not change the relationship with the Hall but would introduce a feature into the setting of the asset. The Applicant concludes that as the Coach House and stable block would continue to be experienced and appreciated within the remaining area of the park, and their significance would not be permanently affected by

construction of the Proposed Development, the significance of effect would be neutral. As some harm arises, it is considered in Framework terms this would be less than substantial.

Moseley Old Hall

7.3.29. Moseley Old Hall has historic interest as it illustrates a late 16th century house of a wealthy individual that was refaced in brick in the 19th century to reflect the changing fashion of buildings at the time. The Old Hall is Grade II* listed and therefore of high value. Architectural interest derives from the appreciation of the Georgian remodelling of the exterior of the building with earlier elements including the tall chimneys that could survive from the original phase of the building or the 18th century when a renovation was undertaken. The Old Hall has historic interest that derives from its association with Charles II as it provided a hiding place for the future king, following his defeat at the Battle of Worcester in 1651.

7.3.30. Moseley Old Hall is located within extensive grounds, including an ancient woodland parcel (Whitgreaves Wood also known as Oxdon Leasow wood) to the northeast of the Hall. The Old Hall and grounds are owned and managed by the National Trust. The construction of the M54 to the north has eroded this extensive rural setting.

7.3.31. The Proposed Development would be located to the northeast of the Hall. A small part of Whitgreaves Wood, to the south of the existing M54 and west of the A460 would be subject to temporary works to enable biodiversity enhancements as part of the Proposed Development, no other works would be undertaken within the boundary of the woodland.

7.3.32. The Applicant considers that the majority of the construction works, including signage and lighting, in proximity to Moseley Old Hall and the associated ancient woodland, would be concentrated on the existing road network and would mostly consist of replacing existing infrastructure. Due to the location of the Proposed Development adjacent to and including the existing infrastructure, the Applicant considers the Proposed Development would result in no change to the significance of this asset.

Moseley Old Hall Cottage

7.3.33. The Cottage has historic interest as a 16th century cottage that was substantially altered in the 18th century. It is also associated with the Moseley Old Hall and the Whitgreave family. Architectural interest derives from the surviving timber frame construction as well as the 19th century alterations. The Applicant considers there would be no impact on this asset as a result of the Proposed Development as it would not affect the setting of this asset, which coincides with the setting of Moseley Old Hall.

Moseley Hall and associated buildings

7.3.34. Moseley Hall has historic interest as an early 18th century house, associated with the Whitgreave family. Architectural and artistic interest derives from the appreciation of the early Georgian style and surviving architectural details. The listed buildings that surround the Hall also have

historic interest as they illustrate early 18th century buildings and structures that were built to support the Hall. Their significance is defined by their relationship with Moseley Hall. The Applicant considers the Proposed Development would not affect the setting of this asset nor its significance.

7.3.35. In terms of operational effects none of the designated built heritage assets are anticipated to experience a change in traffic noise of 3 decibels (dB) or more with the highest increase experienced at Hilton Hall and the Conservatory, at around 2dB. The Applicant considers the increase in traffic noise level associated with the operation of the Proposed Development would not be significant. The main line of the link road would not be lit but there would be lighting on the junctions and slip roads at either end. The Applicant considers that lighting overspill would be reduced from the current levels by the use of light emitting diodes (LEDs) and that the proposed lighting strategy would not affect the significance of the heritage assets within the study area, during the operation of the Proposed Development. Vehicles using the Proposed Development would not be visible from buildings within the Park, with the exception of the Portobello Tower which already experiences views towards existing motorways and roads. Other built heritage assets, which would experience views of activity on the Proposed Development, already experience views of roads and are located in built up areas so that their significance would therefore not be affected by any such effects.

Historic Landscape

Hilton Park

7.3.36. The Applicant describes the significance of the park as a landscape park thought to be established in the mid-late 18th century around the early 18th century Hilton Hall, a Grade I listed country house. Hilton Park is not designated as a Registered Park and Garden but is locally designated by SSC in their Core Strategy and encompasses five listed buildings, as described above. It has historic interest as it illustrates a mid to late 18th century parkland that was designed to form the setting of a country house. It is associated with prominent families in the area, including the Vernon family and the renowned landscape gardener, Humphry Repton. The Park has archaeological interest that derives from early activity on the site and a medieval manor that was surrounded by a moat, the remains of which are still extant. Architectural interest derives from the design of the park, including planted trees and woodland that survive as well as the ornamental pools to the west of the Hall, especially the Lower Pool and the one to the north of the Conservatory. Portobello Tower contributes to views within the Park, from Hilton Hall and across the parkland, as, apart from its commemorative value, it was also constructed as a folly. The Conservatory was constructed as an ornamental feature within the Park and in order to accommodate exotic plants but also to contribute to views from the hall. Although parts of the designed landscape have been altered or lost, especially in the area around the Hall, the surviving trees and plantations illustrate Repton's original landscape designs. The Park was designed as part of the

Picturesque movement, characterised by informal plantations and picturesque views.

7.3.37. The Applicant acknowledges that the Proposed Development would have a direct impact on Hilton Park and describes it in the following terms. *"The Scheme would start at the M54 junction 1 to the south and would continue until it meets Hilton Lane to the north, through the western part of the park. The Scheme would affect the western boundary of this asset, which would be severed from the rest of the park to the east. As the Scheme runs northwards through the park, it would be located close to the alignment of Dark Lane, running parallel along the western boundary of the park. This would include the Severn Trent diversion that would run along the eastern edge of the proposed carriageway. As a result, key elements of the park, including the Lower Belt, The Shrubbery, the Lower Pool and surrounding woodland would be affected. This would affect the understanding and appreciation of the development of Hilton Hall and associated parkland. These are elements that illustrate the historic development of the park. However, although they would be affected by the Scheme, they would not be lost completely. The remaining woodland around the Lower Pool would be retained along with the open parkland between the Hall and the Shrubbery. The remaining trees would continue to provide screening to the Scheme from the eastern part of the park, as well as from Hilton Hall and its associated buildings and structures."* (See [REP7-016] which puts the scheme in context including environmental mitigation.)

7.3.38. The Applicant categorises the impact as moderate adverse as key elements of the landscape would be lost and the parkland modified. As the remaining part of the parkland would continue to be understood and appreciated it would continue to provide an attractive setting for Hilton Hall and the other listed buildings. Overall, the Applicant identifies the significance of effect as moderate adverse. The Applicant refers to the Framework and considers the harm to be less than substantial for the asset's significance.

7.3.39. Again, the Applicant identifies temporary adverse effects during construction associated with the presence and movement of plant and equipment, and the erection of a site compound, as well as construction noise. These effects would be slight adverse and less than substantial in Framework terms and be temporary during the construction phase only.

7.3.40. In terms of operational effects on the landscape any impacts during its operation would be limited by the extent to which road noise, lighting or visible traffic movements would influence the character and perception of the historic landscape. The Applicant concludes that while the change in traffic noise level would vary across Hilton Park the change in noise level would not be significant for the majority of the Park, including the listed buildings for which the park provides the setting. The magnitude of change varies with distance from the Proposed Development; with the areas of the park directly adjacent to the Proposed Development experiencing an increase in traffic noise greater than +5dB and the area to the east of Hilton Hall, adjacent to the M6, predicted to experience no

change. The areas that would experience the greatest increase in noise levels are covered in thick woodland that currently forms part of The Shrubbery and are not publicly accessible.

7.3.41. In response to issues raised by Allow Limited (Allow) the Applicant also undertook further work to assess alternative locations for mitigation works proposed on plot 5/2[32], west of the mainline of the carriageway. A report was submitted [REP4-036] which considered various alternative strategies and locations for woodland planting around the Lower Pool area. The Applicant concluded that the proposed woodland mitigation on plot 5/2 was the most appropriate location. This would ensure any harm to the heritage assets was minimised and, whilst the mitigation may have an effect which would be less than substantial harm on the significance of Hilton Park and the setting of Hilton Hall and other listed buildings, this was, in effect, the least worst option and had the least harmful heritage effect when balanced with other considerations.

7.3.42. In terms of lighting, lighting at the M54 junction 1 would have a similar or lesser effect, at night than at present, from within the park due to the column heights not increasing and use of LED lamps, and would not affect the significance of this asset. Heavy Goods Vehicles (HGVs) and cars that use the Proposed Development would not be visible from within Hilton Park, with the exception of the areas in very close proximity to the new M54 junction 1 where some visual intrusion might be experienced as a result of glimpses through trees and vegetation in winter. Due to the Proposed Development resulting in some limited effect on the appreciation of the significance of the asset, the significance of effect on the asset is considered, by the Applicant to be slight adverse.

7.3.43. The following two tables summarise the predicted effects in terms of construction and operational effects.

Table 3: Summary of construction effects on cultural heritage assets[33]

Asset ID	Description	Heritage Value	Magnitude of impact	Significance of residual effect
A59	Wordsley Green Turnpike Road	Negligible	Minor Adverse	Slight adverse (not significant)
A22	Cropmarks	Negligible	Major adverse	Slight adverse (not significant)
A23	Cropmark	Negligible	Major adverse	Slight adverse (not significant)
A36	Cropmark complex	Negligible	Moderate adverse	Slight adverse (not significant)
B2	Hilton Hall	High	Minor Adverse	Slight adverse (not significant)
B4	The Conservatory	High	Negligible adverse	Slight adverse (not significant)

[32] As shown on the Land Plans [REP6-004]
[33] Table 6.4: Summary of construction effects on cultural heritage assets pg 6-40 ES [APP-045]

Asset ID	Description	Heritage Value	Magnitude of impact	Significance of residual effect
B3	Gatepiers	Medium	No change	Neutral (not significant)
B23	Portobello Tower	Medium	Minor Adverse	Slight adverse (not significant)
B22	Coach house and stable block	Medium	Negligible adverse	Neutral (not significant)
B1	Moseley Old Hall	High	No change	Neutral (not significant)
B14	Moseley Old Hall cottage	Medium	No change	Neutral (not significant)
B15-B19	Moseley Hall and associated buildings	Medium	No change	Neutral (not significant)
A40	Hilton Park	Medium	Moderate adverse	Moderate adverse (significant)

Table 4: Summary of operation effects on cultural heritage assets[34]

Asset ID	Description	Heritage Value	Magnitude of impact	Significance of residual effect
B2	Hilton Hall	High	No change	Neutral (not significant)
B4	The Conservatory	High	No change	Neutral (not significant)
B3	Gatepiers	Medium	No change	Neutral (not significant)
B23	Portobello Tower	Medium	No change	Neutral (not significant)
B22	Coach house and stable block	Medium	No change	Neutral (not significant)
B1	Moseley Old Hall	High	No change	Neutral (not significant)
B14	Moseley Old Hall cottage	Medium	No change	Neutral (not significant)
B15-19	Moseley hall and associated buildings	Medium	No change	Neutral (not significant)
A40	Hilton Park	Medium	No change	Slight adverse (not significant)

7.4. REQUIREMENTS (R)

7.4.1. R4 of the draft Development Consent Order (dDCO) seeks to secure a Construction Environmental Management Plan (CEMP) in accordance with the OEMP [REP7-026] which must then be followed throughout the

[34] Table 6.5 Summary of operation effects on cultural heritage assets pages 6 - 43 ES [APP-045] The table include asset ID's for Moseley Old Hall Cottage as B1 and Moseley Hall and Associated buildings as B14. These are incorrect and the corrected asset ID has been inserted in the table in the report to avoid confusion.

construction phase. Following completion this would be converted into a Handover Environmental Management Plan (HEMP) to ensure proper maintenance thereafter. This specifically requires an Archaeological Management Plan and an Archaeological Mitigation Strategy.

7.4.2. R9 requires the submission of a Written Scheme of Investigation of areas of archaeological interest and requires the development to be carried out in accordance with any such scheme. It further requires the reporting, publication and deposition of any reports. The Requirement also includes provisions to address actions if any remains not previously identified are revealed when carrying out the development.

7.4.3. The Requirements also make reference to the Register of Environmental Actions and Commitments (REAC) which includes actions or commitments in respect of various environmental matters which include cultural heritage matters.

7.5. THE POSITION OF THE IPs

Historic England (Historic Buildings and Monuments Commission for England) (HBMCE)

7.5.1. HBCME and the Applicant have completed a signed Statement of Common Ground (SoCG) [REP7-030], which sets out the areas agreed and not agreed and the reasoning thereof. In respect of areas of disagreement these related to enhancement measures which related to Portobello Tower, and the level of harm ascribed to the effects on the Conservatory and Hilton Hall, albeit it is agreed that these would be less than substantial.

7.5.2. HBCME in its responses to questions in the ExA's Third Written Questions (ExQ3) [REP6-045] also provides separate advice and consideration of the alternative mitigation planting to that on Plot 5/2 for planting to the east of the main line of the new road.

Staffordshire County Council (SCC)

7.5.3. There is a signed completed SoCG between SCC and the Applicant [REP7-027] which records agreement on all Cultural Heritage issues including methodology and assumptions, baseline conditions, mitigation (including in respect of archaeology) and impacts and effects. The SoCG was signed in advance of the receipt of the Applicant's Report on Archaeological Trial Trenching Evaluation [REP7-035].

7.5.4. The Local Impact Report (LIR) produced by SCC [REP1-007] sets out the Council's position addressing archaeological remains, historic landscape and the built environment. In summary the County Archaeologist noted that there would be impacts to buried remains within the application site, both to known sites recorded on the Staffordshire Historic Environment Record/ identified as part of pre-DCO application assessment, or to previously unrecorded remains identified during the construction process. The County Archaeologist notes that it should be recognised that, given

the geology of the application site there is some potential for archaeoenvironmental deposits to be encountered. The County Archaeologist further concludes that, the northern part of the site and the surrounding landscape is largely agricultural in nature, whilst the southern part forms part of Hilton Park, the landscape garden surrounding Hilton Hall. The Proposed Development would alter the character of the western portion of Hilton Park, including some loss to key landscape features. However, this would not constitute an appreciable loss to the character of wider historic landscape. In respect of the built environment the LIR notes that SCC defer to SSC and HBMCE on these matters.

South Staffordshire Council (SSC)

7.5.5. The signed and completed SoCG between the Applicant and SSC [REP7-028] records that there is agreement between the parties on all Cultural Heritage issues. The effects on designated heritage assets is agreed and it notes that the County Archaeologist leads on matters to do with archaeology and therefore SSC makes no comments. It also addresses matters related to the Portobello Tower, Mile Wall and Plot 5/2.

7.5.6. The LIR produced by SSC [REP1-097] sets out the Council's position on the Historic built environment and concludes no conservation objections are raised to the Proposed Development and confirms that with regards to archaeological matters, *"the County's Archaeologist leads on this matter and we therefore have no comments to make"*.

Hilton, Featherstone & Brinsford and Shareshill Parish Councils

7.5.7. A completed SoCG [REP7-031] between the Applicant and the Parish Councils of Hilton, Featherstone & Brinsford and Shareshill sets out the position of these Parish Councils in respect of various matters. Agreed matters include the re-use of materials from Mile Wall and not agreed matters include issues related to Portobello Tower, the Councils suggesting the Tower could be appropriate for Designated Funds[35].

National Trust

7.5.8. A signed and completed SoCG between the Applicant and the National Trust [REP6-035] confirms the parties agree on the Baseline conditions for the Cultural Heritage Assessment and that the National Trust is content with the assessment of impacts on Moseley Old Hall and the associated buildings, this includes the effects on setting.

[35] Designated Funds' are managed Highways England ring-fenced funding that cover four funding areas: users and communities, environment and well-being, innovation and modernisation, and safety and congestion. Applications can be made by Highways England Teams and external organisations.

Allow

7.5.9. Allow took an active role in the Examination and participated in the Issue Specific Hearing 1 (ISH1) which considered Cultural Heritage. There is a signed SoCG between the Applicant and Allow [REP8-011] which records the areas of agreement and disagreement between the parties. In support of its position in respect of the effect of the Proposed Development on the Historic parkland and additional listed buildings within the parkland and any archaeological interests Allow submitted a document entitled 'Review of Land acquisition at Hilton Park' [REP1-092] which further sets out their position. At the end of the Examination Allow maintained its objections which are summarised in its Statement of Final Position [REP9-005]. Allow's objections include matters in relation to Compulsory Acquisition (CA) and Temporary Possession (TP), these are addressed in Chapter 16; this Chapter however does consider matters of disagreement in respect of Cultural Heritage issues the conclusion of which may then have a bearing on the conclusions in respect of CA and TP.

7.5.10. Allow's concerns relate to the quantum and location of the mitigation required. This is also addressed in Chapter 6 in respect of Biodiversity as there is some degree of cross over between the points raised. Allow is concerned that the Applicant did not sufficiently engage with and consider alternative mitigation locations, or whether the quantum of mitigation proposed was excessive. Allow has proposed that the mitigation would be better placed east of the main line of the link road rather than to the west of it as currently proposed and requiring the CA of Plot 5/2. The Applicant's Assessment of Alternative Locations for Mitigation in Plot 5/2 [REP4-036] was produced in response to these issues and which puts forward four alternative locations. Allow responded and critiqued this assessment in [REP5-007]. Allow has put forward an alternative option which it considers would better meet the balance between the impact on the historic landscape (which it notes would be less than substantial) and the effects on biodiversity and is provided in its response to the ExA's third written questions [REP6-048].

D Williams

7.5.11. Mr Williams has engaged with the Examination through written representations. He submitted Relevant Representations (RRs) [RR-032] at the start of the Examination which raised issues related to traffic matters and the effects that flow therefrom. Mr Williams made a number of submissions at various deadlines throughout the Examination, including [REP2-014], [REP5-013] and [REP7-040], and his final comments are included in his Deadline (D) 9 submissions [REP9-007] wherein he sets out his previous questions raised with the Applicant, their response and his response to those comments. This provides a reasonable summary of the issues he has raised. In respect of Cultural Heritage matters, Mr Williams raises concerns in relation to Kettle Holes[36]

[36] A Kettle Hole is a depression or hole in an outwash plain formed by retreating glaciers where a detached mass of glacial ice became wholly or partially buried.

and Holocene[37] deposits and is concerned that the Applicant has not fully explored the sediment/paleo proxy sequences within and adjacent to the Order Lands. Mr Williams view is that there is circumstantial evidence that Kettle Holes exist within or immediately adjacent to the Application site is overwhelming and the Applicant's response is woefully inadequate.

7.6. PLANNING ISSUES

7.6.1. The outstanding areas of dispute in respect of Cultural Heritage issues are used to identify the main issues which we have considered, and which are:

- the effects of the Proposed Development on the Historic landscape at Hilton Park, including the effect resultant from any scheme mitigation.
- the effects of the Proposed Development on designated built heritage assets, including the effect resultant from any scheme mitigation.
- whether the Applicant has adequately and appropriately assessed the impacts of the Proposed Development on any archaeological interests.
- whether the Applicant has adequately and appropriately assessed the impacts of the Proposed Development on any Kettle Holes.
- the impact of the Proposed Development on non-designated built heritage assets.

7.7. ExA CONSIDERATIONS

General approach and analysis

7.7.1. The baseline conditions and identification of heritage assets within the study area are set out in the ES. The Applicant identified a list of designated and non-designated heritage assets in Appendix 6.1 of the ES [APP-169] with the ES Chapter setting out a detailed description of each of the assets, including its significance. The Applicant's desk-based review identified some 59 non-designated archaeological assets, a total of two Grade I, three Grade II*, and 21 Grade II listed buildings and 13 historic buildings and structures, including seven locally listed buildings or structures. No World Heritage Sites, Scheduled Monuments, Registered Battlefields, Registered Parks and Gardens or Conservation Areas were identified by the Applicant within the study area. There were no concerns raised by IPs that any heritage assets had not been identified and SSC in response to First Written Questions ExQ1.6.3 [REP1-098] confirmed that they were satisfied that this represented a comprehensive list of all heritage assets. The ExA is satisfied that the Applicant has therefore undertaken an assessment based on the relevant heritage assets potentially affected by the Proposed Development.

7.7.2. The significance of those assets is set out within the ES. There were no substantial areas of dispute raised in respect of the description of significance with the exception of matters in relation to Hilton Park and

[37] The Holocene is the name given to the last 11,700 years of the Earth's history — the time since the end of the last major glacial epoch, or "ice age." In general, the Holocene has been a relatively warm period in between ice ages.

the associated contribution to significance of it in terms of setting in respect of certain Listed Buildings which is discussed below. Other than where specifically commented on below we accept the Applicant's assessment of significance and this is therefore used in considering the impact of the proposed development in accordance with paragraphs 5.127, 5.128 and 5.129 of the NPSNN.

7.7.3. Other than those heritage assets that are addressed below the we are satisfied with the Applicant's assessment and conclude that the Proposed Development would not result in harm to the significance of those other heritage assets identified within the study area given the nature of the asset, its stated significance, the separation from and relationship with the Proposed Development and the nature of the surroundings within which they are located.

7.7.4. Whilst not the heritage asset of greatest value, the area of greatest dispute related to Hilton Park, in terms of its assessed significance, the impact of the Proposed Development and the potential effects of alternative mitigation proposals. Conclusions drawn in respect of these matters and in terms of Hilton Park overall flow into matters related to the significance and effect of the Proposed Development on certain designated built heritage assets. These designated built heritage assets are located within the Park and it forms their setting and the conclusions in respect of Hilton Park therefore have implications in terms of those heritage assets' significance and the effect of the Proposed Development thereon; it is therefore dealt with first.

Historic Landscape Hilton Park

7.7.5. Hilton Park is not a Registered Park and Garden, it is not therefore a designated heritage asset in the context of paragraph 5.123 of the NPSNN. Hilton Park is identified in the Core Strategy as an Historic Landscape Area as identified in Policy EQ4 and identified on the proposals map. Policy EQ3 also defines heritage assets to include 'Registered Parks and Gardens (and other historic landscapes)' and therefore Hilton Park could be argued to fall within that definition. Given the Council's definition it is reasonable to conclude that Hilton Park can be considered to be a non-designated heritage asset in the context of paragraph 5.125 of the NPSNN. Similarly so in the context of paragraph 197 of the Framework.

7.7.6. All parties acknowledge that Hilton Park is a parkland that was designed to form the setting of a country house, Hilton Hall. The Applicant acknowledges an association with the renowned late 18th century landscape gardener Humphry Repton. But this association is insufficiently researched according to Allow and its report entitled 'Review of Land Acquisition at Hilton Park' [REP1-092]. This leads to concerns that insufficient weight has been given to the association with Repton and therefore the potential significance of the Park. Allow provides additional mapping, including an 1816 map by Robert Dawson, which is provided at figure 1 of the report [REP1-086], which illustrates the Park with

significant features including various tree belts woodland planting ornamental lakes and individual parkland trees set in open parkland.

7.7.7. The map illustrates a significant progression from the estate map of 1796 [APP-078] and would suggest that the Park was laid out in the period between 1796 and 1816, including many of its important features including Lower Pool. This would be somewhat earlier than suggested by the Applicant, who refer to the tithe map of 1842 [APP-079] as the first time the Lower Pool is depicted. Of particular concern are the northern and western boundaries of the Park; to the west there are perimeter tree belts and shelter tree belts. At the northwest corner a shelter belt referred to as The Shrubbery is located adjacent to Park Road and Hilton Lane. The 1816 map also shows the first alignment of what is now Park Road suggesting it was part of the Park redesign.

7.7.8. The importance of the dating relates to Repton (1752 – 1818) and the time when he would have been active. The Allow report [REP1-092] also notes that in 'Peacock's Polite Repository or Pocket Companion' of 1796 there is an image of Hilton Hall, and that the illustrations were by Repton indicating that he would have visited it in or around that time to produce the image.

7.7.9. Certainly, many of the features within the Park layout are features and elements that would be associated with Repton's approach to landscape and there is no real dispute that there is an association. As the Applicant points out, there is no documentary evidence to provide illustrations or proposals for the layout, such as in the form of a Repton Red Book, but the changes to the Park did appear to take place around the time of Repton's association with the Vernon family, who owned Hilton Hall, and he appears to have visited in an appropriate time frame. On this basis there is a reasonable prospect of his influence and that does influence the significance attributable to the Park. However, the Applicant does not dispute the association and has had regard to it.

7.7.10. The Park is not unaffected by previous development. There has been significant disruption to the form layout and features resultant from the M54 motorway and the winning of minerals to the south. There has been further development to the east with the M6 severing parts of the Park and the Hilton Services being developed in the Park. As such, the Park already has had development which has affected its significance, and this must be considered in the understanding of its current significance.

7.7.11. We are of the view that as Hilton Park is not a Registered Park or Garden it is not a designated heritage asset; it is a locally designated historic landscape, and it is a historic landscape developed along the picturesque landscape principals with an association to a renowned landscape gardener. It therefore has significance as an illustration of a late 18th century parkland that was designed to form the setting of a country house and that significance is increased by the likely association with Repton.

7.7.12. The Applicant ascribes a medium value to the value of the Park, but this is questioned by Allow due to the association with Repton. However, whilst that has importance in the consideration of its significance, no clear documentary designs or sketches provide unequivocal evidence of his involvement in the evolution and laying out of the Park. Also, other factors including the current condition of the Park and the effects of previous development, as referred to above, must be taken into account. Overall, we are satisfied that the Applicant has ascribed a reasonable value to the asset on the basis of the current information and condition of the Park, its designations and historic associations.

7.7.13. The Proposed Development would run from the M54 junction 1 northwards parallel with the western boundary of the Park, basically demarked by the A460, up to the junction 11 of the M6. This would take the main line of the road through The Shrubbery and the Lower Pool and across Hilton Lane, the northern boundary of the Park. The Proposed Development would result in the introduction of further development within the historic park and severance of elements of the Park. In particular, the new arrangement at junction 1 would intrude into undeveloped fields at the south of the Park. The mainline of the road would traverse through the Park, cross the line of the original entrance to the Hall and would cut through and result in the removal of part of The Shrubbery and part of Lower Pool, both historic and important features of this section of the Park. The Proposed Development would sever the perimeter tree belt on the eastern side of the A460 from the Park and would result in the stopping up of and removal of part of Park Road, part of the historic layout of the Park. In this regard we acknowledge that the Proposed Development would result in the removal, alteration and severance of important elements that contribute to the significance of the historic park.

7.7.14. Added to the direct impacts associated with the construction of the Proposed Development Allow further contends that the Applicant has failed to properly consider the additional impact of their proposed mitigation works. In particular they point to environmental mitigation works proposed for plots 5/2 and 4/20c where the Applicant is proposing woodland planting and additional ponds and grassland planting. Allow contends that the planting on the west side of the mainline in the vicinity of The Shrubbery and perimeter tree belts would integrate these features in a larger woodland block and reduce the perception of the original design. Allow were concerned that insufficient consideration had been given to the effects on important parkland features.

7.7.15. The Applicant has considered potential alternative planting in this location in its document 'Assessment of Alternative Locations for Mitigation in Plot 5/2' [REP4-036]. The Applicant considered four alternative mitigation proposals in the context of Allow's suggestion that the mitigation should be located to the east of the mainline of the road. In part this was to address ecological matters and that is addressed in Chapter 6 and there is a balance to be struck between ecological and heritage issues (and also landscape and visual effects) and that is addressed in the overall planning balance in Chapter 15. Here the main

consideration is the effect on the significance of the heritage assets. Allow also put forward its own suggestion [REP6-048] in response to the ExA's set of ExQ3.

7.7.16. Overall the conclusion drawn by the Applicant was that option 1, which was that proposed on the west side, had the least harmful effect on the historic landscape and its importance to the significance of the Grade I listed Hilton Hall and Grade I listed Conservatory (see further discussion below). The other options provided progressively greater planting in the open parkland between Hilton Hall and the Shrubbery and thereby reduced the open setting for the Hall and Conservatory. Allow's proposal sought to split the planting and reduce some of the encroachment towards the Hall. The SoCG between the Applicant and HBCME [REP7-030] and further comments from HBCME [REP6-045] in response to ExQ3 provided HBCME's considered position in respect of the woodland planting. The SoCG makes it clear that HBCME would see that planting to the east of the mainline would be significantly more harmful than planting to the west of the mainline. The loss of and reduction in open parkland within the immediate setting of Hilton Hall would be particularly harmful. It would result in the loss of the episodic and choreographed views between Lower Pool and the Hall and sever The Shrubbery and Lower Pool from the parkland and Hall to the east. Whilst HBCME accepts that there would be harm resultant from the Proposed Development, including from the additional planting, the proposed planting to the west of the mainline was the least intrusive on the historic parkland setting. In response to Allow's suggestion, whilst HBCME accepted this was less intrusive and harmful than some of the alternatives put forward by the Applicant, in its assessment of alternatives, it was still more harmful than the proposed mitigation planting west of the mainline which forms the application proposal.

7.7.17. HBCME also in the SoCG retracted its use of the phrase *"locally substantial"* in the context of harm to the Lower Pool and The Shrubbery as it acknowledged this could cause confusion with the phraseology in the NPSNN and the Framework. Allow had sought to suggest that this phraseology was important in that context. In effect HBCME clarified that there were different impacts on different features and elements within the park resultant from the development and that the areas of the Lower Pool and The Shrubbery would be one of the most affected. Overall HBCME concludes that the overall effect on the historic landscape of Hilton park would be less than substantial.

7.7.18. We are strongly guided by the advice of HBCME and its expert opinion. It is accepted that the Proposed Development would result in harm to this heritage asset. It is accepted that this harm would be less than substantial harm. It is accepted that the harm would vary to different features within the Park and that the Lower Pool and The Shrubbery would be among the most affected and that these are important features in the Park. However, it is also accepted that the Park already has been affected by previous development and that the level of value of significance to the Park is reasonably concluded to be medium value. Overall, therefore, we conclude that the effect on the Park would in ES

terms be a moderate level of significance and that this would translate into a less than substantial harm in planning terms. Given these conclusions the proposal would also conflict with the Local Plan, in particular with the aims of Core Strategy Policies EQ3 and EQ4.

Designated Heritage Assets

Hilton Hall

7.7.19. Hilton Hall is Grade I listed and is therefore an asset of the highest significance. This is recognised by the Applicant who ascribes a high value in its assessment. The significance derives from its historic value as an illustration of social and economic life in the 18th century. The Hall is attributed to Richard Trubshaw and therefore has associative value with a leading Architect and was the house of the Vernon family again providing associative value. Architectural and artistic interest derives from the baroque style of the Hall, its materials, design and architectural features. Later extensions have been added which respect the main building and which provide evidence of the development of the property. None of these aspects of the main significance of the asset are challenged by any of the IPs and indeed none of the fabric or structure of the building would be directly impacted by the Proposed Development.

7.7.20. The setting of the Hall, however, also contributes to its significance and the setting is defined by the historic landscape park, Hilton Park, discussed above. The Park also includes a number of other listed buildings which given their relationship to and location add to the significance of the Hall. These include the Conservatory, a Grade I listed building set to the west of the Hall; the Coach House and stable block, a Grade II group of buildings to the west of the Hall; a pair of Gatepiers, Grade II listed, to the south of the Hall; and a folly, the Portobello Tower, a Grade II listed building, again to the south of the Hall, beyond the Gatepiers.

7.7.21. These buildings set within the historic parkland contribute to the setting of Hilton Hall, illustrating the estate development and reflective of the economic and social standing of the Vernon family. They contribute to the significance of Hilton Hall. As discussed above the Proposed Development will result in harm to Hilton Park, there will therefore be harm to the significance of Hilton Hall. The harm to the Park would affect features close to the Hall including the Lower Pool and The Shrubbery which are designed features to be seen from the Hall. The Proposed Development would have construction impacts resultant from noise and activity, albeit this would be for limited periods and would not persist beyond the completion of the scheme. This is considered in Chapter 10 of this report. There would also be some impact resultant from soil storage areas. Overall, however, the greatest impact would result in the harms to the Park described above in the context of severance and destruction of features and elements of the Park. There is some dispute as to whether the road would be visible from the Hall but there are no lighting columns or elevated structures along this section of the road and, if views where available, these would be limited and glimpsed at worst. These, however, are concluded to be less than substantial and as they are only a

contributor to the significance of the Hall they would be no more than a less than substantial harm to the significance of the Hall. Whilst the Hall is an asset of the highest value as a Grade I listed building, its principal elements of its significance would not be harmed and the overall significance of the effect ascribed by the Applicant as slight adverse is considered reasonable. Translated to NPSNN and Framework terms this would be less than substantial harm.

The Conservatory

7.7.22. The Conservatory is a Grade I listed building and therefore a designated heritage asset of the highest value. This is acknowledged by the Applicant. Its significance is described by the Applicant as deriving from its ornamental architectural design and use of a glass roof. It illustrates the early use of the glass roof in conservatories and therefore has historic interest. The significance of the conservatory also derives from its relationship with the Hall and its setting within the parkland setting.

7.7.23. The Proposed Development would not directly affect the structure of the Conservatory or its relationship with the Hall. These important elements of the significance would therefore not be affected. The Conservatory is set within a wooded area and therefore there would be limited direct views available from it towards the mainline of the road. The Proposed Development however does introduce a modern infrastructure element within the parkland setting which results in a change to its setting. There are some minor construction noise level increases and movement of construction traffic and equipment which would temporarily detract from the setting. Overall, the Applicant's slight adverse significance of effect is concluded to be reasonable. In NPSNN and Framework terms this would equate to less than substantial harm.

Gatepiers

7.7.24. The Gatepiers are Grade II listed buildings they illustrate the development of the estate and demark an original entrance route. They have architectural and artistic value in their design and materials. They have group value with the Hall and other assets within the parkland setting which forms part of their setting and contributes to their significance. The relationship with the Hall is not affected by the alignment of the Proposed Development and the significance of the piers is therefore not directly affected, which therefore has a neutral effect on their significance.

Portobello Tower

7.7.25. The Portobello Tower is a commemorative tower of an important historical event with associations with the Vernon family. The Tower also has architectural interest from its design and positioning within the Park as a folly contributing to views from the Hall and within the Park. Its setting is defined by the Park and its relationship with the Hall. Portobello Tower is set in open parkland and would be seen in views from within the Park and from the south. The Proposed Development would reduce the open nature of the parkland to the south and therefore reduce the open

aspect within which the Tower is viewed. The more developed and higher junction 1 of the M54 would intrude into the landscape within which the Tower is visible and within which it is appreciated. The Tower is in a poor state of repair and the public does not have access to it but views of it would remain. Overall, the significance of the Tower would still be appreciated in the context of the historic park and the relationship with the Hall. For these reasons overall, the significance of the effect on the Tower would be slight adverse. This would represent less than substantial harm in the context of the NPSNN and Framework.

7.7.26. In the context of the Portobello Tower there were requests from the Parish Councils and from SSC regarding the potential for works to repair or maintain the Tower. The Applicant noted that the Tower was outside the application site and therefore was not within the works programme. It was suggested by the Parish Councils and others that the Tower could be appropriate for 'designated funds'. The Applicant confirmed they, as a Highways England Team, had made a bid to the Designated Fund to undertake a condition survey and produce a heritage appraisal. Unfortunately, this was unsuccessful as there was no owner contribution, no public access to the Tower and the public benefits of the restoration of the Tower would have limited public benefits. The Tower is outside the Order Limits, the effect of the Proposed Development on the setting of the heritage asset has been taken into account in our consideration but the Proposed Development would have no direct impact on the asset and direct works to it would not be a necessary requirement.

Coach House and Stable Block

7.7.27. The Coach House and Stable block are Grade II listed buildings. Their significance derives from their historic interest as 19th century farm buildings constructed to support the Hall. They have architectural and artistic value resultant from the layout style and materials. Again, their setting is defined by their location within Hilton Park and their proximity to and relationship with Hilton Hall.

7.7.28. The Proposed Development would be to the west side of the Hall towards the western boundary of the Park. These assets are located on the east side of the Hall. The Proposed Development would not affect the fabric of the buildings or their layout or their relationship with Hilton Hall, the principal contributors to their significance. However, the Park would be affected and therefore there would be a change to their wider setting within which they would be experienced and therefore there would be an effect on their significance. This would be limited as the buildings would be screened and any construction effects of limited effect and duration. On this basis we conclude that the neutral significance of effect attributed to these assets by the Applicant whilst reasonable does not fully account for the setting which would be harmed and therefore even if limited there would still be harm to their significance. This would equate to a less than substantial harm in NPSNN and Framework terms.

Moseley Old Hall, Moseley Old Hall Cottage and Moseley Hall and associated buildings

7.7.29. The Applicant undertook an assessment of these heritage assets identifying their significance, including the contribution of their setting and the effects of the Proposed Development. There were no substantive issues raised by IPs with regard to this assessment or the conclusions reached by the Applicant. In this regard the Applicant concluded that the Proposed Development would not affect the buildings or the setting of Moseley Old Hall, Mosely Old Hall Cottage and Moseley Hall and associated buildings and, consequently, there would be a neutral significance of effect on each of these assets. The ExA has received no evidence on which to dispute these findings and therefore concludes that the findings and assessment are reasonable. The buildings and their settings would therefore be preserved.

Archaeology

7.7.30. Chapter 6 of the ES [APP-045] includes an assessment of Archaeology including an assessment of baseline conditions, an identification of the potential for remains and an assessment of the potential effects. The Applicant concluded in the ES that there would be no impacts on designated archaeological sites as a result of construction but identified some non-designated assets that could be affected. These related to the alignment of the Streetway and Wordsely Green Turnpike Road, now known as the A460 Cannock Road. However, given more recent modernisations its value in terms of buried remains is negligible. Moreover, the Proposed Development would only have a limited effect; the effect would at most be slight adverse, according to the Applicant. The Applicant also identified a number of crop mark and ditch evidence but, again, these are seen as having negligible value with slight adverse effects.

7.7.31. There was little challenge to these conclusions and SCC in its LIR and responses to Examining Authority's First Written Question (ExQ1) was reasonably content with the approach of the Applicant.

7.7.32. The greatest concerns were raised by Allow with regard to the investigation regarding unknown buried remains and in particular the lack of Trial Trenching. The ES had suggested that further works would be undertaken during the detailed design of the scheme and that it was not required for the submission of the application, but that further work would be undertaken early in the process. The Applicant submitted a Written Scheme of Investigation for archaeological trial trenching evaluation (WSI) [REP4-032] at D4 and this was agreed with the County archaeologist. At D7 the Applicant submitted a signed SoCG with SCC which accepted the approach and confirmed there was not an expectation for significant finds. As a separate submission but also accepted at D7 the Applicant submitted a report on Trial Trenching [REP7-035]. This confirmed that some 139 trial trenches were excavated across the site. The report reported that the trenching did not reveal any archaeological remains within the site. It concluded this demonstrated a

lack of archaeological evidence for activity other than post-medieval and modern agricultural practices and no further work was recommended.

7.7.33. The report confirmed the expectations of the experts. There were two Deadlines subsequent to the submission of this report and none of the IPs took the opportunity to raise any further issues on the matter. On this basis we conclude that the Applicant has complied with the advice in NPSNN paragraph 5.127 on the Applicant's assessment and that there is sufficient evidence for the Secretary of State for Transport (SoST) to conclude on archaeological remains as set out in paragraphs 5.128 and 5.129. We are satisfied that the evidence demonstrates that there would be no significant effect on archaeological remains with the only effects being those identified above in respect of non-designated assets and would be of limited or negligible effect.

7.7.34. R9 includes a requirement to undertake investigations in accordance with a written scheme of investigation and to undertake certain actions dependant on the outcome. These parts of that Requirement are, given the submission of these later documents, overtaken by events and no longer required. Given the wider locality and the potential for archaeology it is concluded it would be reasonable to retain those parts of R9 which deal with remains that are found during construction in case any such finds do occur. R4 also requires various matters and there is reference to the OEMP and REAC there are elements within these which provide mitigation for archaeological and heritage matters that are still necessary and so these matters should be retained.

Other matters

Kettle Holes

7.7.35. During the Examination Mr Williams raised concerns that the Applicant had not properly considered and investigated the potential for Kettle Hole and Holocene deposits. His D9 submissions [REP9-007] repeated his responses to the Applicant's responses to previous questions he had raised and concluded that the circumstantial evidence that Kettle Holes exist within or immediately adjacent to the application site is overwhelming. Mr Williams takes the view that the robustness of the Applicant's due diligence in explaining what each potential Kettle Hole feature is and what it may or may not contain is woefully inadequate.

7.7.36. The Applicant is firmly of the view that there is no evidence that Kettle Holes exist across the site. There is no documented evidence to support such a claim and no previous records of any such features in the vicinity of the site. They identify Historic Mapping records and previous geotechnical borehole records to support those conclusions.

7.7.37. Potential paleo-environmental records would be appropriately considered as archaeological records and potentially therefore heritage assets. The NPSNN advises that the Applicant should describe the significance of any heritage asset affected. The level of detail should be proportionate to the assets importance and no more than is sufficient to understand the potential impact on their significance (paragraph 5.127). It is further

stated that where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, the applicant should include an appropriate desk-based assessment, and where necessary, a field evaluation.

7.7.38. The Proposed Development within the application site is a relatively narrow corridor running from junction 1 of the M54 to junction 11 of the M6. Around the junctions of the motorway network significant ground works will previously have been undertaken such that it is highly unlikely any significant archaeological interest would remain. The southern section of the mainline of the road up to Hilton Lane is part of an Historic Landscape. Much of this landscape and features within it have been created for landscape effect, being ornamental pools, shelter belts small areas of woodland, etc. Many of these are the features that are identified as potential Kettle Holes. Given the evidence available from the analysis of historical maps and previous mineral workings in the area it is our view that the balance of probabilities lies with these features not being Kettle Holes but man-made features. There is no strong scientific documentary evidence to conflict with this conclusion and whilst Mr Williams robustly advocates that strong circumstantial evidence supports his contention that there are potential Kettle Holes, it is precisely that, circumstantial. Mr Williams does not identify specific features which are Kettle Holes but identifies an area and a series of potential features suggesting it is incumbent on the Applicant to discount every feature in the area. This is not a proportionate response to the issue given the lack of supporting evidence and the fact much of the concerns are based on assertion.

7.7.39. In the area north of Hilton Lane towards the M6 junction 11 there are a number of man-made fishing lakes; again, this can be seen from analysis of the historic maps. The Applicant identifies some alluvial deposits in the alignment of Latherford Brook to the north, but, again, there is no evidence of Kettle Hole or other environments where paleo-environmental deposits may be located.

7.7.40. The Applicant refers to geotechnical ground investigations, boreholes and other samples that have been considered in reaching its conclusions and identified the source material. Mr Williams is concerned that this is assertion and the detailed analysis is not before the Examination on which to arrive at such conclusions.

7.7.41. Overall, we are satisfied with the level of information before us in respect of these issues, including the assurances of the Applicant, the historic mapping, aerial photographs, archaeological investigations, including the Trial Trenching, to arrive at its conclusions. We are satisfied that there are no documented cases of Kettle Holes in the vicinity of the Proposed Development and application site, there is little supported evidence to identify Kettle Holes within the application site and on the alignment of the Proposed Development. On the balance of probability we conclude that there are no Kettle Holes within the application site and that the potential features are likely to be man-made ornamental lakes, mineral workings or other such features.

7.7.42. In any case the majority of the features identified by Mr Williams as potential Kettle Holes are outside the application site and would not be directly impacted or disturbed by the Proposed Development. Given the advice in terms of a proportionate response to investigations it is considered the Applicant has sufficiently addressed the issue and no significant effects would arise.

Mile Wall

7.7.43. The Parish Councils identified Mile Wall as a feature of local interest and requested the Applicant seek to retain and re-use the material from the wall after demolition. In the SoCG with the Parish Councils it is recorded that the Applicant recognises the importance of Mile Wall to the Parish Councils and that the Applicant will work with the Parish Councils to examine options. The Applicant included at Appendix B of the SoCG [REP7-031] a draft reinstatement proposal and committed to continuing discussions. The SoCG records that the Parish Councils agree that the reinstatement the Applicant as proposed is acceptable. The OEMP [REP7-026] secures the reconstruction of the Mile Wall at table 3.4, D-L5 which states *"The stone wall adjacent to the southbound carriageway of the existing A460, 'Mile Wall', will be dismantled and reconstructed along the realigned section of the existing A460."*

7.7.44. Hilton Park is a non-designated heritage asset. The NPSNN advises (paragraph 5.125) the SoS should also consider the impacts on other non-designated heritage assets on the basis of clear evidence that the assets have a significance that merit consideration in that process, even though those assets are of lesser value than designated heritage assets. The Framework, paragraph 197, also advises that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, the Framework advises that a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

7.7.45. In terms of the designated heritage assets where harm has been identified the harm has been categorised as less than substantial. The NPSNN at paragraph 5.134 and the Framework at Paragraph 196 require that where the proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. Similarly, Regulation 3 of the Decision Regulations requires the decision-maker to have regard to the desirability of preserving a listed building or its setting where its setting is affected by an application.

7.7.46. The conclusions on the effect on heritage assets in terms of overall decision making is addressed in the overall planning balance in Chapter 15 where, as part of those conclusions, these heritage balances are addressed.

7.8. CONCLUSIONS

7.8.1. We have considered the effect of the Proposed Development on designated and non-designated heritage assets including archaeology and paleo-environmental issues as well as considering other local features of interest. We have concluded that there would be less than substantial harm to a number of designated heritage assets and to non-designated heritage assets and that these conclusions will feed into the overall assessment and planning conclusions at Chapter 15 of this report. This will include consideration and balance of the need to protect the openness of the area to the east of the mainline which contributes to the significance of the setting of Hilton Hall and the Conservatory and the Historic Park against the effects of potential mitigation for bats, as a protected species, and on which our conclusions are set out in Chapter 6 above.

7.8.2. Great weight should be given to any heritage asset's conservation, with the more important the asset the greater the weight, in accordance with paragraph 5.131 of the NPSNN and paragraph 193 of the Framework, and great weight and importance should be given to any harm to a heritage asset in the overall balance in line with Regulation 3 of the Decisions Regulations and this is done in Chapter 15 below. In the context of this Chapter and the issues related to cultural heritage, taking all relevant documents and policies into account, we conclude as follows:

- The Proposed Development would result in less than substantial harm to the following designated heritage assets: Hilton Hall (Grade I), The Conservatory (Grade I), The Coach House and Stable Block (Grade II), The Gate Piers (Grade II) and the Portobello Tower (Grade II) through harm to Hilton Park which contributes to their setting and therefore their significance.
- The Proposed Development would result in less than substantial harm to Hilton Park, a historic landscape that is a non-designated heritage asset.
- The Proposed Development would result in some limited damage to undesignated archaeological assets including crop marks, ditches and other features but overall, the effect would be limited and not significant.
- There is no substantial evidence to conclude that the Proposed Development would result in damage or destruction of Kettle Holes within the Order Limits.
- The Proposed Development would provide for the re-use of materials salvaged from the Mile Wall, a feature of local interest.

8. FINDINGS AND CONCLUSIONS IN RELATION TO THE GREEN BELT

8.1. INTRODUCTION

8.1.1. It is not in dispute that the Proposed Development and Order Limits are located within the Green Belt. This Chapter therefore deals with the effects of the Proposed Development on the Green Belt. In particular it deals with:

- Whether the Proposed Development is Inappropriate Development in the Green Belt.
- The effect of the Proposed Development on the Openness of the Green Belt.
- Whether the Proposed Development conflicts with the five purposes[38] of the Green Belt.
- Whether the Proposed Development conflicts with the fundamental aim of Green Belt policy and their essential characteristics of openness and permanence[39].

8.2. POLICY

National Policy Statement for National Networks

8.2.1. Paragraph 5.164 of the National Policy Statement for National Networks (the NPSNN) identifies the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to identify the essential characteristics of Green Belts are their openness and their permanence. The paragraph also identifies that further information on the purposes and protection of Green belt is in the Framework.

8.2.2. Paragraph 5.170 of the NPSNN, dealing with the Applicant's Assessment, notes there is a general presumption against inappropriate development in the Green Belt and that such development should not be approved except in very special circumstances. It advises that Applicants should therefore determine whether their proposal, or any part of it, is within established Green belt and, if so, whether their proposal may be considered inappropriate development within the meaning of Green Belt policy.

8.2.3. Paragraph 5.171 of the NPSNN notes that linear infrastructure, linking an area near a Green Belt with other locations will often have to pass through Green Belt land. The identification of a policy need for linear infrastructure will take account of the fact that there will be an impact on the Green Belt and as far as possible, of the need to contribute to the achievement of the objectives for the use of land in Green Belts.

[38] As referenced in paragraph 5.164 of the NPSNN and set out in paragraph 134 of the Framework.
[39] As identified in paragraphs 5.164 of the NPSNN and 133 of the Framework.

8.2.4. In advising on decision making the NPSNN at paragraph 5.178 states that when located in the Green Belt national network infrastructure projects may comprise inappropriate development. It notes that inappropriate development, which is referenced to the Framework, is by definition harmful to the Green Belt and there is a presumption against it except in very special circumstances. It further advises the Secretary of State (SoS) will need to assess whether there are very special circumstances to justify inappropriate development and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In considering any application for such development it advises that the SoS will give substantial weight to the harm to the Green Belt, in view of the presumption against inappropriate development.

National Planning Policy Framework

8.2.5. Section 13 of the National Planning Policy Framework (the Framework) sets out government policy on protecting Green Belt land. Paragraph 133 identifies the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. Paragraph 134 sets out the five purposes Green Belt serves:

a. To check the unrestricted sprawl of large built up areas;
b. To prevent neighbouring towns merging into one another;
c. To assist in safeguarding the countryside from encroachment;
d. To preserve the setting and special character of historic towns; and
e. To assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

8.2.6. Paragraphs 143 to 147 deal with proposals affecting the Green Belt with paragraph 143 advising that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

8.2.7. Paragraph 144 advises that local planning authorities should ensure that substantial weight is given to any harm to the Green Belt and that ‘very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

8.2.8. Paragraph 145 advises that new buildings are inappropriate in the Green Belt and provides a list of exceptions to this but given that the Proposed Development does not involve new buildings this is not relevant in this case. Paragraph 146 does advise that certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:

a. mineral extraction;
b. engineering operations;

c. local transport infrastructure which can demonstrate a requirement for a Green Belt location;
d. the re-use of buildings provided that the buildings are of a permanent and substantial construction;
e. material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds and;
f. development brought forward under a Community Right to Build Order or Neighbourhood Development Order.

8.2.9. Paragraph 147 deals with renewable energy projects which is not relevant to this case.

Local Plan

8.2.10. The South Staffordshire Local Plan Core Strategy (the Core Strategy) includes a spatial strategy which contains two strategic objectives. Firstly, Strategic Objective 1 is to protect and maintain the Green Belt and open countryside in order to sustain the distinctive character of South Staffordshire. And secondly Strategic Objective 2 is to retain and reinforce the current pattern of villages across South Staffordshire and in particular protect and retain the important strategic gaps between existing settlements in order to prevent the coalescence of settlements. It is highlighted that 80% of South Staffordshire lies within the West Midlands Green Belt boundary with the remaining defined as open countryside.

8.2.11. Contributing to the wider Spatial Strategy are National Policy 1: The presumption in favour of sustainable development; Core Policy 1: The Spatial Strategy and Policy GB1: Development in the Green Belt. National Policy 1 reflects the presumption in favour of sustainable development as originally identified in the 2012 Framework with which the Core Strategy was consistent. Core Policy 1 sets out the detail of the Spatial Strategy and in respect of the Green Belt and open countryside it states: The South Staffordshire portion of the West Midlands Green Belt as defined on the Policies Map, will be protected from inappropriate development and proposals will be considered in the light of other local planning policies and the policy restrictions relating to Green Belt in the Framework, however the Council will consider favourably sustainable development which accords with the Spatial Strategy.

8.2.12. It goes on to state: *"The general extent of the Green Belt and the area defined as Open Countryside will be protected and maintained for the Plan period but some land will need to be released from the Green Belt and Open Countryside in some locations at the Main and Local Service Villages to deliver the proposed development strategy and enable the sustainable growth of these villages. A partial review of Green Belt boundaries and a review of Major Developed Sites in the Green Belt will be carried out through the Site Allocations DPD"*.

8.2.13. The Local Plan Site Allocations Document (SAD) at Chapter 10 notes that the Core Strategy is clear that protecting the Green Belt is a high priority for the Council. It confirms that a partial review of South Staffordshire's

Green Belt has been carried out looking at land surrounding villages and at the four freestanding Strategic Employment Sites. The SAD establishes new development boundaries and removes two previous Major Development Sites from the Green Belt. Policy SAD6: Green Belt, open countryside and development boundary amendments sets out areas that are removed from the Green Belt or open countryside or alterations made to development boundaries. These changes were reflected in the Site Allocations Policies Maps

8.3. THE CASE FOR THE APPLICANT

8.3.1. The Applicant's case is set out in the Case for the Scheme and NPSNN Accordance Table [APP-220] and the responses to the Examining Authority's (ExA's) Written Questions EXQ1.1.1 - 1.1.5 [REP1-036], EXQ2.1.1 [REP4-033] and EXQ3.1.1 [REP6-039].

Green Belt Policy

8.3.2. The Applicant highlights that the Proposed Development is located within the West Midlands Green Belt and goes on to reference paragraphs 5.164, 5.171 and 5.178 of the NPSNN with regard to the fundamental aim and essential characteristics and advice regarding national networks in the Green Belt.

8.3.3. The Applicant states that the Proposed Development has therefore been evaluated against NPSNN paragraphs 5.164 and 5.178, with reference to the Framework where appropriate. This assessment considers:

- whether the Proposed Development conflicts with the essential characteristics and purposes of the Green Belt and the extent of harm to the Green Belt;
- whether the Proposed Development constitutes inappropriate development in the Green Belt;
- whether there are Very Special Circumstances (VSC) that support development within a Green Belt location; and
- whether the VSC outweigh any potential harm to the Green Belt after substantial weight has been attributed to that harm.

8.3.4. The Applicant quotes SSCS Core Policy 1 as set out above. The Applicant states this policy echoes the Framework in terms of protecting the Green Belt from inappropriate development and sets the context for Green Belt releases necessary for SSC to deliver their employment and housing targets.

8.3.5. SSCS Policy GB1 'Development in the Green Belt' is also noted and states that development in the Green Belt that is acceptable within the terms of national planning policy set out in the Framework will normally be permitted where the proposed development is for one of four types of purpose, including "… *the carrying out of engineering or other operations, or the making of a material change of use of land, where the works or use proposed would have no material effect on the openness of the Green Belt, or the fulfilment of its purposes.*"

8.3.6. The Applicant notes the policy is silent on developments that do not fall into these categories and when considered alongside Core Policy 1, suggests the implication is that development would be restricted outside these categories. In suggesting that development within the Green Belt would need to meet the Framework policy and fall into one of the above categories, the Applicant's view is that the policy would be more restrictive than the Framework. This allows for developments to have an impact on openness and still gain consent in VSC. The Applicant contends that given the policy predates both the NPSNN and the Framework and provides a policy that could be interpreted as more restrictive than either, it considers that it should have limited weight in decision making on this Development Consent Order (DCO) application (and is not a relevant and important matter).

Harm to the Green Belt

8.3.7. The Applicant states harm to the Green Belt is caused where there is a conflict with the essential characteristics of the Green Belt or the purposes of including land in the Green Belt.

Essential Characteristics: Openness and Permanence

8.3.8. The Applicant notes the Framework defines the essential characteristics of the Green Belt as being its openness and permanence, that the meaning of the term 'openness' is not formally defined in policy and is in large part a matter for planning judgement and that openness has a visual and a spatial dimension.

8.3.9. The Applicant goes on to assess the impact of the Proposed Development on openness and considers the area of the Proposed Development between junctions 2 and 1 of the M54 will have no material impact on the openness of the Green Belt given that the majority of works are within the existing highway boundary or comprise development of an attenuation pond, which is low lying, and comprises a pond and access to the pond. At M54 junction 1 there will be works to enlarge the junction resulting in 'loss' of the Green Belt, but these areas are small and heavily influenced by the convergence of the two motorways, limiting any additional impact on openness caused by the Proposed Development. The Applicant refers to the different options for the layout of junction 1 as described in Chapter 3 of the Environmental Statement (ES) [APP-042]. The Applicant contends the options presented show that there were no options considered that provided free-flow links at junction 1 with a lesser impact on the Green Belt. This is because the location is limited by the location of the existing junction and there are limited opportunities for junctions with a lesser land take. The areas to the northeast and northwest of the junction are in the Green Belt and the areas to the southeast and southwest are only outside the Green Belt because they are allocated for employment uses. Therefore, the Applicant concludes, slight movements of the junction would also not reduce its impact on the Green Belt.

8.3.10. The new link road section of the Proposed Development between the M54 junction 1 and the M6 junction 11 passes through largely open countryside in the Green Belt. This, according to the Applicant, is the case for all possible options and alignments for the Proposed Development given the location of the existing junctions.

8.3.11. The Applicant sets out that the visual impact on openness has been reduced in the design by:

- placing the link in cutting where possible, including under Hilton Lane to the east of Brookfield Farm, limiting the visibility of the Proposed Development from the surrounding area;
- moving the alignment further to the east compared to the Preferred Route Alignment to route the new link through the woodland and Lower Pool, where the road and the noise barrier will be largely screened from both sides by existing and replanted woodland;
- not installing lighting columns on the majority of the link to minimise the impact of vertical lighting columns and light pollution; and
- limiting the height of new junctions where possible.

8.3.12. Therefore, according to the Applicant, whilst the Proposed Development would have an effect on the visual dimension of openness, the harm has been limited wherever possible within the confines of the Proposed Development's objectives. Proposed woodland planting would also affect the openness of the Green Belt and landscaping has been carefully designed with this in mind. No woodland planting is proposed on the eastern side of Lower Pool to retain the openness of the historic parkland area of the Green Belt. Instead, landscaping has been designed in the optimum locations to promote screening, enhance landscape character and deliver biodiversity mitigation. Where woodland planting is proposed, it is considered that the environmental benefits of the planting outweigh the impact to the openness of the Green Belt in that location.

8.3.13. In terms of the spatial dimension of the Green Belt, the Applicant contends the area covered by the new link itself will be 'lost' in that it will no longer be open countryside. The 'harm' to the spatial dimension of openness is limited by the selection of a route that minimises the distance between the two junctions and by the fact that much of the development is very low lying, so has limited impact on three-dimensional space. In particular, the area of Green Belt lost for construction of the new link road is less than more convoluted routes following the existing M6 motorway corridor.

8.3.14. On permanence, the Applicant accepts the Proposed Development would result in the permanent loss of Green Belt where the new highway infrastructure is constructed, but notes it incorporates plans to return all land used for temporary purposes to its previous condition or incorporate changes that improve its performance for biodiversity or landscape purposes.

Purposes of the Green Belt

8.3.15. The Applicant quotes Framework paragraph 134 and sets out the five purposes of the Green Belt.

8.3.16. The Applicant considers that the Proposed Development would not enable or encourage the sprawl of large built up areas, does not include new built development such as housing, employment or industrial land uses and does not provide any new access points directly into sites in the Green Belt to facilitate new built development. The Applicant also notes the Proposed Development would not remove any sites from the Green Belt so would not change the policy context for any future development in close proximity to the link, which would still be judged against the requirements of Green Belt policy.

8.3.17. The Proposed Development would not encourage towns to merge into each other, according to the Applicant, as it presents a linear development largely through the countryside, rather than new built form reducing the gap between settlements. The Applicant, however, does accept there would be encroachment into the countryside insofar as it would be development within it, but contends it would not result in the outward spread of development into the countryside, but rather be a new linear corridor, providing a connection between two motorways.

8.3.18. The Applicant states the Proposed Development would also not have an effect on historic towns as it is not located in the vicinity of any historic towns and would not affect any Conservation Areas.

8.3.19. The Applicant also contends the Proposed Development would not conflict with the purpose of urban regeneration and encouraging recycling of brownfield land as there is no alternative location for this development that would be on brownfield sites. It is noted however that it could support recycling of brownfield land at Royal Ordnance Factory (ROF) Featherstone and potentially encourage urban regeneration by improving the attractiveness of sites in neighbouring urban areas through improved transport links.

8.3.20. Overall, the Applicant's view is that the Proposed Development would not conflict with four of the defined purposes of Green Belt; but would conflict with purpose c) (to assist in safeguarding the countryside by encroachment) by virtue of the majority of the development being in open countryside in the Green Belt.

Inappropriate Development

8.3.21. The Applicant notes the NPSNN refers the reader to the Framework for the definition of inappropriate development and that paragraph 146 of the Framework sets out six categories of development that are not inappropriate in the Green Belt. The Framework states:

"Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it… b) engineering operations; c)

local transport infrastructure which can demonstrate a requirement for a Green Belt location…".

8.3.22. The Applicant states that highway schemes are generally considered to be engineering operations and the impact on openness and the purposes of the Green Belt have been minimised wherever possible. However, the construction of the new link road across the Green Belt and the traffic along that route would not fully 'preserve its openness' so would not fall into this category. Moreover, given that the Proposed Development comprises a new link road on the Strategic Highway Network and is, by definition, an NSIP, it is the Applicant's position that it would also not be considered 'local transport infrastructure', although it would have significant local benefits.

8.3.23. Therefore, the Applicant considers that the Proposed Development is likely to be considered as 'inappropriate development' in the Green Belt as defined in the Framework. As recognised in NPSNN paragraphs 5.171 and 5.178, it is often necessary for linear national networks projects to require a Green Belt location and for projects to be considered inappropriate development.

8.3.24. The ExA sought clarification in respect of the interpretation of whether the Proposed Development fell into paragraph 146 of the Framework and the extent of works that may affect openness. Responses to these can be found in the Applicant's responses to the ExQ1, ExQ2 and ExQ3 as referenced above.

8.3.25. In Response to ExQ1.1.1 [REP4-036] the Applicant considers that the Proposed Development would represent inappropriate development in the Green Belt, as stated in the Case for the Scheme (CftS) [AS-037] paragraph 9.1.12 which states: *"The Scheme would be inappropriate development as it would affect the openness of the Green Belt"*. The Applicant continues: *"The NPSNN refers the reader to the Framework for the definition of inappropriate development. The Framework paragraph 146 sets out six categories of development that are not inappropriate in the Green Belt* 'provided they preserve its openness and do not conflict with the purposes of including land within it.' *Regardless of the applicability of these exceptions, the Scheme would not preserve the openness of the Green Belt so none of the exceptions apply. As recognised in paragraph 8.6.22 of the CftS, the Scheme would also conflict with purpose c) of the Green Belt 'to assist in safeguarding the countryside from encroachment'. Given that none of the exceptions apply to the proposed development, the Applicant considers the Scheme to be 'inappropriate' in the Green Belt."*

8.3.26. The Applicant's case is further supplemented by its response to Allow Limited's (Allow's) response to ExQ1.1.4 [REP2-009].

8.3.27. The Applicant argues environmental mitigation is essential to the delivery of the Proposed Development and an integral part of the project. The very special circumstances set out for the project as a whole in paragraphs 8.6.26 to 8.6.28 of the CftS [AS-037]therefore apply to the essential mitigation as part of the Proposed Development.

8.3.28. The Applicant continues:

"Considering the compliance of the environmental mitigation with Green Belt policy in isolation from the rest of the development is an unusual approach, but has nevertheless been explored here to respond to the point raised.

"The location, amount and design of environmental mitigation is set out in [REP1-057]. The Applicant notes this document explains why ecological mitigation is best located in close proximity to the habitats/ species being affected. Given that the wider area is in the Green Belt, any proximal location to the link road would also need to be in the Green Belt and a Green Belt location is therefore required for the environmental mitigation.

"Whilst woodland planting to the south of Hilton Lane and the west of the new link road would obstruct views and affect the 'open' quality of the landscape, the Applicant considers that any conflict between the mitigation planting and Green Belt policy would be extremely limited.

"The [Framework] (paragraph 133) states that 'The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open'. The applicants view is that Woodland planting is not urban sprawl and the permanent provision of planting in this area could safeguard this area of the Green Belt from urban sprawl in the future. The planting is therefore considered to support the fundamental aim of the Green Belt rather than conflict with it.

"The [Framework] goes on to state that the 'essential characteristics of Green Belts are their openness and their permanence'. And openness in this context is generally taken to mean the absence of built development. The Applicant refers to R (Lee Valley Regional Park Authority) v Epping Forest District Council *[2016] EWCA Civ 404; [2016] Env LR 30 Lindblom LJ said 'The concept of 'openness' here means the state of being free from built development, the absence of buildings - as distinct from the absence of visual impact'. Woodland planting would not constitute built development and as discussed above, may protect the permanence of the Green Belt rather than conflict with it. The mitigation planting would also not conflict with any of the five purposes of the Green Belt as set out in paragraph 134 of the NPPF. The planting itself is not considered to conflict with Green Belt policy or cause harm to the Green Belt.*

"Finally, the woodland planting would not be 'inappropriate development'. Therefore, there would be no need to demonstrate that 'very special circumstances' apply for this element of the Scheme if considered in isolation.

8.3.29. In summary, the Applicant's position is that:

- Whilst woodland planting would be less visually open than an open field, this does not mean that the planting would 'harm' the openness of the Green Belt.
- The woodland planting would not adversely affect the permanence of the Green Belt.

- The planting would not conflict with any of the five purposes of the Green Belt.

8.3.30. Overall, the planting would not 'harm' the Green Belt and the Applicant therefore disagrees that it should be 'provided outside the Green Belt if possible'.

8.3.31. The Applicant is of the view there is no need to demonstrate VSC for the woodland planting given that it is not inappropriate development. However, even if it were required, the very special circumstances are set out in the CftS [AS-037] and the need for mitigation in the Environmental Mitigation Approach document [REP1-057].

8.3.32. In terms of the current use, the Applicant agrees that the land owned by Allow is not damaged or derelict and the Applicant has not taken that position. The impact of car boot sales on the openness of the Green Belt will be limited by their temporary nature. However, the presence of vehicles on the site, stalls and movement of vehicles around the site would not have a positive effect on the Green Belt. The Applicant disagrees that the mitigation planting would lead to more harm to openness of the Green Belt as a whole than the current use.

8.3.33. Further clarification was provided in relation to paragraph 146 in response to ExQ3.1.1 [REP6-039]. Here, the Applicant is of the view that the project is not covered by this exception. The Applicant indicates that paragraph 145 c) uses the term 'local' transport infrastructure so suggesting that there are forms of 'non-local' transport infrastructure that would not be included in the definition. The question therefore is to what extent the Proposed Development could be defined as 'local'. The M54 to M6 link road will be part of the strategic highway network being delivered and maintained by Highways England (HE).

"The project is therefore not part of the defined 'local' highway network or being developed by a 'local' highways authority.

"The link will provide a strategic link between the M54 junction 1 and the M6 junction 11, which are two motorways, designed to carry long distance, strategic traffic. Two of the Scheme objectives are to relieve traffic congestion of the A460, A449 and A5 and keep the right traffic on the right roads by separating local community traffic from long distance and business traffic. The Scheme is therefore designed primarily to cater for long-distance traffic. The Scheme is therefore also not aiming to cater for vehicles making local journeys.

"The Scheme will lead to local benefits, including economic benefits to the area, relieving traffic on the local network and facilitating delivery of local projects, however, in our view this is not sufficient to argue that the project constitutes local transport infrastructure."

8.3.34. In respect of clarification of Signage the Applicant in its responses to ExQ2.1.1 [REP4-033] confirmed the size scale and height of the intended signage.

Very Special Circumstances (VSC)

8.3.35. The Applicant draws attention to NPSNN paragraph 5.78 and the Framework paragraphs 143 and144 which state that inappropriate development is by definition harmful to the Green Belt and there is a presumption against it except in VSC. The same paragraphs go on to state that VSC will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

8.3.36. The Applicant states the VSC for the Proposed Development which outweigh any harm to the Green Belt include:

- the need for the new link road: The NPSNN (paragraph 2.2) is clear that there is a critical need to improve national networks to address road congestion and provide safe, expeditious and resilient networks that better supports social and economic activity. The need for the M54 to M6 Link Road project is set out in numerous national and local policies and plans, including the RIS1, Highways England Strategic Business Plan (HESBP), Highways England Delivery Plan (HEDP), West Midlands Area Multi Modal Study, Midland Connect's Our Routes to Growth, The West Midlands Strategic Transport Plan 2026, West Midlands Freight Strategy, South Staffordshire District Integrated Transport Strategy (ITS) and the South Staffordshire Core Strategy and Site Allocations Document;
- the benefits of the Proposed Development: the Proposed Development would support the integration and improvement of part of the Strategic Road Network (SRN), whilst supporting economic growth in and around Staffordshire. It would support delivery and efficient operation of employment sites along the M54 corridor and surrounding areas such as i54, ROF Featherstone, Hilton Cross and Hilton Main. The Proposed Development would deliver significant benefits in respect of relieving of traffic congestion on local routes including the A449, A5 and A460; and
- the lack of alternatives with a lesser impact on the Green Belt: the Green Belt designation covers a wide area to the north, east, south and west of the Scheme. The purpose of the Proposed Development is to provide a link for strategic traffic travelling between the M54 junction 1 and the M6 junction 11. The location of the Proposed Development is therefore dictated by the location of these junctions and all possible routes for the new link road would pass through the Green Belt. The need to reduce the impact on the Green Belt has been considered throughout optioneering and Scheme design, resulting in a Proposed Development that minimises harm to the Green Belt where possible.

8.3.37. Given the location of the M54 junction 1 and M6 junction 11, the Applicant contends it would not be possible to deliver a new link using land that is outside of the Green Belt. There are no alternative options to deliver the Proposed Development in a non-Green Belt location and there is a demonstrable need for the Proposed Development. The need for the

Proposed Development and lack of alternatives represent VSC strongly in favour of the Scheme.

Other Harm

8.3.38. The Applicant is of the view the Proposed Development has been developed iteratively in consultation with local people and key stakeholders and has been informed by the Environmental Impact Assessment (EIA) process. As a result, 'other harm' has been limited as far as possible with measures to reduce the impacts and mitigate and compensate for impacts that cannot be designed out. Further detail on environmental effects and mitigation measures incorporated to reduce them is provided throughout the CftS.

Planning Balance

8.3.39. Overall, the Applicant's position is that whilst the Proposed Development would affect the key essential characteristics of the Green Belt and one of its purposes, this would be the case for any scheme providing a new link between the M54 and the M6, and impacts have been limited wherever possible in the design. Whilst there is an impact on openness and permanence, and it would entail encroachment into the Green Belt by virtue of being within it, the harm is limited by:

- the low lying nature of the Proposed Development including minimising lighting and using cuttings;
- a sensitive landscaping design;
- the route of the Proposed Development; and
- the fact that by the nature of the development, it will not encourage further development in the Green Belt. Indeed, the Proposed Development may encourage urban regeneration and use of brownfield land, for example at ROF Featherstone.

8.3.40. The Applicant concludes the VSC presented in the Case for the Scheme are significant and clearly outweigh the harm to the Green Belt, when this harm is attributed substantial weight, and all other harm. Therefore, according to the Applicant, the Proposed Development complies with policy on the Green Belt presented in the NPSNN and the Framework.

8.4. THE POSITION OF INTERESTED PARTIES (IPs)

South Staffordshire Council (SSC)

8.4.1. SSC draw attention to the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. SSC also highlight that paragraph 146 of the Framework states local transport infrastructure which can demonstrate a requirement for Green Belt location is not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.

Loss of Green Belt openness

8.4.2. SSC identifies the Green Belt serves five purposes, which they list, and note that it is important to consider which of these purposes (set out in

Framework Chapter 13 paragraph 134) are engaged by the Proposed Development.

8.4.3. SSC consider that the Proposed Development area is not located on the built-up edge of the West Midlands conurbation; and neither, by being a linear highway route is it the type of development that would typically merge built up areas together. SSC notes the road would lie north of Wolverhampton, about 0.5 mile east of Featherstone and about one mile south of the village of Shareshill. The application site would occupy agricultural land for the majority of its length between the long established transport routes being the A460 and M6; the site is contained within strategic roads boundaries that comprise the M6 Motorway and A460/M6 Toll Junction 8 Roundabout (to the north), the A460 (to the west), the M6 (to the east) and the M54 (to the south). Other associated works would site immediately adjacent to existing slip roads.

8.4.4. SSC considers the Proposed Development would create some encroachment into the countryside and therefore this Green Belt purpose is without doubt fully engaged in the consideration of the Proposed Development. That said, SSC also consider that there are no historic towns within the local environs of M54/M6 Link Road site therefore this Green Belt purpose is clearly not engaged. Neither would the proposal assist in Urban Regeneration. SSC conclude that the Proposed Development therefore conflicts with purpose c) safeguarding of the countryside from encroachment and is therefore deemed as inappropriate development.

8.4.5. SSC notes that paragraph 133 of the Framework confirms that the essential characteristics of Green Belts are their openness and permanence. SSC comment that advice published by the Ministry of Housing, Communities and Local Government (MHCLG) in July 2019[40] states that the following factors should be taken into account when considering the potential impact of development on the openness of the Green Belt:

- openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume;
- the duration of the development, and its remendability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and
- the degree of activity likely to be generated, such as traffic generation.

8.4.6. SSC is of the view that whilst the Proposed Development would involve wide scale excavation/construction works along with traffic movements across hectares of agricultural land that is currently open and (in essence) free of built development, the road itself would remain low level (albeit associated infrastructure such as lighting, gantries and barriers,

[40] Although SSC does not reference the source, this is from Reference ID: 64-001-20190722 of the Planning Practice Guidance (PPG).

etc.) and would therefore retain some feeling of openness between the nearby areas and existing roads. SSC notes that whilst there would be some closer proximity visual impacts, planned biodiversity off setting and new planting is proposed to soften and reduce such impacts. Furthermore SSC confirmed in response to ExQ1.1.4 [REP1-098] that, over time when established, where woodland planting is proposed, the environmental benefits of the planting outweigh the impact to the openness of the Green Belt in that location, as argued by the Applicant. However, for the above reasons, SSC concluded having assessed its limited spatial and visual effects the proposal would still represent inappropriate development in the Green Belt and should not be approved except in very special circumstances (Framework 2019 paragraph 143).

8.4.7. SSC notes that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations (Framework 2019 paragraph 144 and NPSNN paragraph 5.178).

Harm to Green Belt

8.4.8. SSC concludes harm to Green Belt interests arises from inappropriateness, some loss of openness, and harm to individual Green Belt purposes. The specific purpose that suffers harm in the case of the Proposed Development is that of safeguarding the countryside from encroachment. Each of these components of Green Belt harm – inappropriateness, loss of openness and encroachment – attracts substantial weight in the 'planning balance' of this planning decision.

Allow Limited

8.4.9. Allow's case in respect of the impact on the Green Belt is set out in its Written Representation [REP1-091], response to ExQ1.1.4 [REP1-090] and its Final SoCG [REP8-011].

8.4.10. Allow's land interests fall within the Green Belt. Allow contend there has been no proper assessment of the impact of: (a) the Proposed Development on the Green Belt; and (b) the laying out of proposed woodland planting on plots 5/2 and 4/20c as set out in the Land Plans [REP6-004] and in particular the impact of the visual openness to the Green Belt.

Green Belt

8.4.11. Allow contends the Applicant is required to demonstrate the very special circumstances applying to the Proposed Development which outweigh the loss of openness and therefore the significant harm to the Green Belt. It is Allow's case that the special circumstances which could apply to the new road do not also automatically apply to the environmental mitigation land, which should be provided outside the Green Belt if possible.

8.4.12. Allow maintains *"The Applicant does not demonstrate the case for 'Very Special Circumstances'. The fundamental aim of Green Belt policy is to keep the Green Belt permanently open given that the essential characteristics of Green Belts are their openness and their permanence. Instead of retaining a Green Belt that already provides beneficial uses for outdoor recreation (car boots and fishing) and does not need visual enhancement, the Applicant seeks to decimate this existing Green Belt that is well managed and maintained by Allow and has been for over 65 years. The land is not damaged or derelict. Further the changes to the Green Belt are not required for the purposes of the Applicant's scheme they are required (by way of compulsory purchase) entirely in respect mitigation in circumstances where the Applicant's analysis of its proposed mitigation is entirely flawed resulting in the Applicant applying for compulsory purchase powers excessively."*

8.4.13. Allow are of the view *"… the extent of the proposed woodland mitigation planting will significantly impact upon the openness of the Green Belt across the area of the scheme due to the area being significantly greater than that area actually taken by the scheme"*.

8.4.14. Allow's case in respect of the impact on the Green Belt is further expanded in their response to ExQ1.1.4 [REP1-090]

8.4.15. Allow acknowledges there would be ecological benefits associated with new woodland planting. However, Allow considers it is likely to be many years until these are realised. In addition, *"… the benefits associated with new woodland planting need to be maximised by ensuring the most appropriate locations are identified for planting. Given that some of the woodland planting would appear to be isolated from other areas of retained woodland, this should be reviewed in order to optimise ecological benefits. The scheme is taking areas of long establish woodland with mixed habitats which, in parts, are situated alongside pools; these cannot be replaced by new planting in a location which is disjointed and divided from the remaining habitats by the road scheme*.

"A total of 3.26ha (as updated 21.08.20) of Allow Ltd.'s land is proposed to be taken by the scheme works and a further 8.24ha (as updated 21.08.20) of additional land for environmental mitigation, the majority of which is for new planting".

8.4.16. Allow considers that this is excessive in terms of replacing those trees lost in the locality, being several times the area taken.

8.4.17. Allow are of the view that a disproportionate area of the replacement planting is proposed to be on Allow's land compared to other parts of the Proposed Development.

8.4.18. It is Allow's opinion *"… the assessment of woodland taken for works across the scheme has been incorrectly assessed and therefore the area required for mitigation is flawed and overstated. Plans provided by the Applicant to Allow Ltd, which informed the mitigation requirement calculations, illustrate excessive estimates which are clearly not currently*

woodland on the ground. These include significant areas of mown grass verges, gorse scrub and brambles. Following our own mapping exercise, it is our assessment that a figure of approximately half the suggested area is a more accurate assessment of the woodland present on the ground. … The extent of the proposed woodland planting will therefore significantly impact upon the openness of the Green Belt across the area of the scheme due to the area being significantly greater than that area actually taken by the scheme.

"Widespread planting is not beneficial for the landscape and the proposals will significantly impact upon and change the character of the landscape. An open grassland field of 10.69 ha, (26.42 ac) surrounded by a tree belt which formed part of the original Hilton Park design is proposed to be taken for blanket tree planting. The area of mitigation planting has been reduced by approximately 3.87ha in the revision in August 2020, where the North West corner has been removed from the proposal. The amended proposal will still reduce the openness of the landscape around the Dark Lane, Hilton Lane and A460 junction. But more importantly the historical tree belt, which forms one of many of the original tree belts which were landscaped around the perimeter of the Hilton Park Estate will be lost forever as it becomes obscured in the proposed adjoining new planting – a significant detriment to the local landscape. The rectangle now removed from the proposal does little to reduce the impact upon the historic landscape".

Nurton Developments (Hilton) Limited (Nurton)

8.4.19. Nurton is of the view that the Proposed Development will impact upon the openness of the Green Belt and this will not be mitigated fully by the proposed landscape proposals.

8.5. PLANNING ISSUES

8.5.1. Given that there is no dispute that the application site lies within the Green Belt the main issues in respect of this matter relate to Green Belt policy. The Applicant also accepts that the Proposed Development would be inappropriate development, albeit it is argued it is justified by very special circumstances.

8.5.2. There remains some dispute around the level of effect and on what basis the Proposed Development represents inappropriate development. The first point to confirm is therefore whether the Proposed Development represents inappropriate development in the Green Belt. In this case given the nature of the development the impact of the Proposed Development on the openness of the Green Belt is an important factor in the consideration of whether it represents inappropriate development; as are whether it conflicts with the five purposes of the Green Belt and whether it conflicts with the fundamental aim of Green Belt policy and their essential characteristics of openness and permanence.

8.5.3. The following section considers whether and what Green Belt harm results from the Proposed Development and the weight to be ascribed to

that. It does not deal with the 'Green Belt balance' where any harm to the Green Belt by reason of inappropriateness, and any other harm, is considered against other considerations to conclude whether they clearly outweigh that harm and whether very special circumstances exist. That balance is struck in the overall planning balance Chapter 15 where conclusions on all the other chapters and effects can be drawn together to identify those other harms, where they arise, and the other considerations.

8.6. ExA CONSIDERATIONS

8.6.1. The NPSNN confirms that for further information on the purposes and protection of the Green Belt reference should be made to the Framework (paragraph 5.164). The Framework is therefore an important consideration. The Applicant has identified the site lies within the West Midlands Green Belt and this is confirmed by SSC and is identified in the Core Strategy. The Applicant has also accepted that the Proposed Development would be inappropriate development within the meaning of Green Belt policy. This is consistent with the advice in paragraph 5.170 of the NPSNN.

8.6.2. Paragraph 5.178 of the NPSNN notes that national network projects located in the Green Belt may be inappropriate development and that inappropriate development is by definition harmful to the Green Belt and that there is a presumption against it except in very special circumstances. By way of a footnote inappropriate development is defined by reference to the definition in the Framework. It also advises that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, the 'Green Belt balance'. It is also advised that substantial weight will be attached to the harm to the Green Belt.

8.6.3. The Framework at paragraphs 145 and 146 by identification of certain forms of development and the identification of exceptions. Paragraph 145 advises that the construction of new buildings should be regarded as inappropriate with a list of exceptions. As the Proposed Development does not involve the erection of new buildings these are not relevant in this case.

8.6.4. Paragraph 146 of the Framework advises that other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. Five forms of development are listed but only b) engineering operations and c) local transport infrastructure which can demonstrate a requirement for a Green Belt location are relevant in this case.

8.6.5. The Proposed Development is for a road scheme that could be described as transport infrastructure. However, the scheme as promoted is to upgrade part of the motorway network, improving linkages and seeking to get the right traffic on the right roads. In this case that means

primarily traffic moving from the M54 to the M6 and vice versa. This has an overall goal of improving the strategic road network. The Proposed Development has been accepted as a Nationally Significant Infrastructure Project, hence the current application. The Applicant accepts these points and also concludes that the exception made for "local transport infrastructure" would not apply to this scheme. For these reasons we are satisfied that the Proposed Development would not fall within this exception.

8.6.6. The Proposed Development would be an engineering operation. However, to fall within the other forms of development exceptions set out in paragraph 146 of the Framework the development needs to preserve the openness of the Green Belt and not conflict with the purposes of including land within it.

Effect on Openness

8.6.7. The Court of Appeal in *Turner*[41]confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect. The Supreme Court[42] endorsed *Turner* to the effect that the word openness is open textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. The Supreme Court also highlighted that openness was the counterpart of urban sprawl and that it does not imply freedom from any form of development. Furthermore, it confirmed that matters relevant to openness in any particular case are a matter of planning judgement, not planning law.

8.6.8. The Proposed Development would provide for an amended junction 1 of the M54. This junction would increase the area of coverage of the junction providing for three linked roundabouts to provide access to the local road network and free flow lanes between the main carriageway of the main line to the M54. The increased area of coverage would be into fields and open spaces adjacent to the existing junction. The new junction would result in substantial engineering works including embankments, bridges, balancing ponds as well as new carriageway. Between junction 1 of the M54 and junction 11 of the M6 the mainline of the new link road would involve new carriage way, engineered cutting and embankments, bridges to accommodate Hilton Lane, an accommodation bridge and realigned access track amongst other features and a new bridge to cross Latherford Brook. At junction 11 of the M6 the junction would be enlarged with the carriageway works being on new embankments, new bridges created to accommodate the larger junction. The Applicant has also confirmed the likely size and dimensions of signage and gantries that would be required. All of the works are located within the Green Belt, all would be development and have an effect.

[41] *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466
[42] *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council* (Appellant) [2020] UKSC 3

8.6.9. In the context of the effect on openness from a spatial perspective the Proposed Development would result in development in the Green Belt. Areas of the Green Belt would be permanently lost under the engineered structures, road surfaces etc. There would be development and not an absence of development and as such we conclude there would be significant harm to the spatial qualities of the openness of the Green Belt.

8.6.10. In terms of the visual aspect of openness there would be numerous features which resulted in enclosure and the appearance of development in the Green Belt. Much of the Proposed Development would be low lying but much of it is also to be constructed on embanked features, there are bridges, gantries and other structures all that would be visible and detract from the openness of the Green Belt. The question of the effect on the appearance and visual amenity of the locality is a separate consideration and this is addressed in the Landscape and visual effects in Chapter 9. On this basis we conclude there would be moderate harm to the visual aspects of openness.

8.6.11. The proposals include mitigation in the form of woodland planting. This will reduce the visibility and assist in integrating the development in the landscape but a full assessment of the effects of this is undertaken in Chapter 9. It is raised here as Allow were concerned that the proposed mitigation and woodland planting in particular had a further impact on the openness of the Green Belt and that such harm should be taken into consideration. However, openness relates to the absence of development. Woodland planting is not development and its location does not conflict with the openness of the Green Belt. Openness in Green Belt policy is about development, or its absence. Whilst this has a visual and spatial component this does not necessarily mean that anything that obstructs views in the Green Belt conflicts with its openness. That is more a matter for consideration in the context of landscape character and visual effects.

8.6.12. We conclude that the Proposed Development would result in harm to the openness of the Green Belt in both visual and spatial terms.

Purposes of including land in the Green Belt

8.6.13. The Framework at paragraph 134 sets out the five purposes that the Green Belt serves. These are set out in paragraph 8.2.5.

8.6.14. The Proposed Development does not result in built development but is a linear infrastructure link. It does not result in the addition of new buildings and other elements that would contribute to the unrestricted sprawl of a large built-up area. It does not result in the increase of any of the towns and villages in the locality such that they would be closer to each other and narrow any significant gap that may otherwise assist in preventing towns merging into one another. As such we are satisfied that it does not conflict with the first two purposes of Green Belt.

8.6.15. The Proposed Development is primarily through open countryside, agricultural fields between two existing motorways. As such it would

result in the encroachment of development into the countryside. Therefore, we conclude that it conflicts with the third Green Belt purpose of safeguarding the countryside from encroachment.

8.6.16. There are no historic towns in the locality of the Proposed Development. Cultural heritage is addressed in Chapter 7 but, for these purposes, there is no conflict with the fourth purpose of the Green Belt.

8.6.17. The fifth and final purpose of Green Belts is to seek to assist urban regeneration, by encouraging the recycling of derelict and other urban land. This is achieved through constraining development opportunities in edge of urban locations to seek to encourage the development of brownfield land within the confines of the urban area. The Proposed Development does not facilitate the development of sites outside the urban area and does not seek to identify new development opportunities. The Applicant suggests that by fulfilling the schemes objectives and improving travel times, reducing inconvenience and improving linkages this could have consequences for the redevelopment of existing urban sites. However this is not a direct consequence of the Proposed Development and any benefit would be indirect. What is evident to us, however, is that the Proposed Development would not conflict with this purpose of the Green Belt.

8.6.18. We conclude that the Proposed Development would conflict with one of the purposes of including land within the Green Belt, namely assisting in safeguarding the countryside from encroachment.

Inappropriate development

8.6.19. The Proposed Development is an engineering operation potentially falling within paragraph 146c of the Framework. However, paragraph 8.6.4 above sets out that to be considered not inappropriate such development would need to preserve the openness of the Green Belt and not conflict with the purposes of including land within it. In the preceding paragraphs it has been concluded that the proposal would harm both the spatial and visual qualities of the openness of the Green belt and that it would conflict with one of the five purposes of including land within it. On this basis the Proposed Development would not fall within any of the exceptions in paragraph 146.

8.6.20. The Proposed Development would amount to development in the Green Belt and would not be covered by any of the exceptions that are set out in paragraphs 145 and 146 of the Framework. As such it is concluded that the Proposed Development is inappropriate development in the Green Belt.

8.6.21. Given the advice in the NPSNN at paragraph 5.178 and the Framework at paragraph 143 inappropriate development is by definition harmful to the Green Belt. We have also concluded that there is harm to the openness of the Green Belt, in terms of both its spatial and visual qualities, and that there is conflict with one of the five purposes for including land within it. Furthermore, paragraph 5.178 of the NPSNN and paragraph

144 of the Framework make clear that substantial weight must be afforded to any harm to the Green Belt.

8.6.22. Inappropriate development should not be approved except in very special circumstances and those circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. This balance is undertaken in the Planning Balance in Chapter 15 below.

8.7. CONCLUSIONS

8.7.1. In terms of Green Belt policy the Proposed Development would be inappropriate development and result in harm to the Green Belt. Inappropriate development in the Green Belt should not be approved except in very special circumstances. The harm to the Green Belt should be given substantial weight when undertaking the Green Belt balance and the necessary very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. That balance is undertaken in Chapter 15 below.

8.7.2. The conclusions in terms of Green Belt and the harm that needs to be taken into account, and given substantial weight, in that balance are:

- The Proposed Development represents inappropriate development in the Green Belt and is not covered by any of the exceptions in paragraphs 145 and 146 of the Framework.
- The Proposed Development would result in significant harm to the spatial and moderate harm to the visual qualities of the openness of the Green Belt.
- The Proposed Development would conflict with one of the five purposes of including land within the Green Belt, namely to assist in safeguarding the countryside from encroachment.
- The Proposed Development would therefore conflict with the fundamental aim of Green Belt Policy to prevent urban sprawl by keeping land permanently open; and their essential characteristics which are openness and permanence.

9. FINDINGS AND CONCLUSIONS IN RELATION TO LANDSCAPE AND VISUAL EFFECTS

9.1. INTRODUCTION

9.1.1. This chapter deals with the effects of the Proposed Development on the landscape and its visual effects. In particular it deals with:

- The effect on landscape character.
- The effect on visual receptors.

9.2. POLICY

National Policy Statement for National Networks

9.2.1. Paragraphs 5.143 to 5.161 of the National Policy Statement for the National Networks (the NPSNN) identify the landscape and visual impacts decision-making considerations for the Secretary of State (SoS) to take into account.

9.2.2. Paragraph 5.149 of the NPSNN notes *"landscape effects depend on the nature of the existing landscape likely to be affected and the nature of the effect likely to occur"*. It continues *"having regard to siting, operational and other relevant constraints, the aim should be to avoid or minimise harm to the landscape, providing reasonable mitigation where possible and appropriate"*.

9.2.3. The application site lies outside any nationally designated landscapes and is sufficiently distant not to have any effect on such. Similarly, there was nothing in front of the Examination to indicate that this landscape was highly valued locally or protected by a local designation. Except insofar as Hilton Park is identified as an Historic Landscape Area in the Core Strategy. This is primarily dealt with in the Cultural Heritage Chapter 7 above, but is noted here. The NPSNN advises at paragraph 5.156 *"Where a local development document in England has policies based on landscape character assessment, these should be given particular consideration. However, local landscape designations should not be used in themselves as reasons to refuse consent, as this may unduly restrict acceptable development."*

9.2.4. Paragraph 5.157 of the NPSNN states in taking decisions, the SoS *"should consider whether the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to avoid adverse effects on landscape or to minimise harm to the landscape, including by reasonable mitigation"*.

9.2.5. As regards visual impact paragraph 5.158 of the NPSNN indicates the SoS *"will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the development"*.

9.2.6. Paragraphs 5.159 to 5.161 of the NPSNN deal with mitigation. It is particularly noted in the first of those paragraphs *"reducing the scale of a project or making changes to its operation can help to avoid or mitigate the visual and landscape effects of a proposed project. However, reducing the scale or otherwise amending the design or changing the operation of a proposed development may result in a significant operational constraint and reduction in function"*

9.2.7. Further, as paragraph 1.60 of the NPSNN states *"adverse landscape and visual effects may be minimised through appropriate siting of infrastructure, design (including choice of materials), and landscaping schemes, depending on the size and type of the proposed project. Materials and designs for infrastructure should always be given careful consideration"*.

National Planning Policy Framework

9.2.8. The National Planning Policy Framework (the Framework), in paragraph 170, indicates that planning decisions should contribute to and enhance the natural and local environment by, inter alia, recognising the intrinsic character and beauty of the countryside. Paragraph 127 seeks decisions that create places that are safe with a high standard of amenity for existing and future users.

Local Plan

9.2.9. The South Staffordshire Local Plan Core Strategy (the Core Strategy) includes Policy EQ4: 'Protecting and enhancing the character and appearance of the landscape'. The policy requires that the intrinsic rural character and local distinctiveness of the South Staffordshire landscape should be maintained and where possible enhanced. Amongst other matters it advises new development should take account of the characteristics and sensitivity of the landscape and its surroundings; Proposals within the Historic Landscape Areas (HLA) defined on the Policies Map *"… should have special regard to the desirability of conserving and enhancing the historic landscape character"*. It also refers to the County Council's Landscape Character Assessment and Historic Landscape Characterisation to provide an informed framework for the decision-making process.

9.3. THE CASE FOR THE APPLICANT

9.3.1. Chapter 7 of the Environmental statement (ES) [APP-046] assesses the potential landscape and visual impacts associated with the construction and operation of the Proposed Development. According to the ES it has been produced in accordance with the Design Manual for Roads and Bridges (DMRB) LA 107 Landscape and Visual and the Landscape Institute/ the Institute of Environmental Management and Assessment (IEMA). The assessment has also had regard to the Guidelines for Landscape and Visual Impact Assessment (Third Edition) (GLVIA3).

General approach

9.3.2. A study area was identified, and baseline conditions established through desktop studies, the creation of a Zone of Theoretical Visibility (ZTV) and fieldwork, including on site verification. The Applicant reviewed Natural England's (NE's) National Character Areas (NCAs) for the locality and local landscape character assessments including Planning for Change Supplementary Planning Guidance (SPG) (1996-2011) published by Staffordshire County Council (SCC) to provide guidance on landscape character type within the county.

9.3.3. The Applicant identifies that the study area encompasses NCA 67: Cannock Chase and Cank Wood and NCA 66: Mid Severn Sandstone Plateau. The Applicant considers it is unlikely that the Proposed Development would have any significant effects on the character of these NCAs. This is because the key characteristics are regional, and localised highway development would be unlikely to result in a significant effect over the entire NCA. The Applicant provides a high-level overview but concludes there would be no significant effect and does not consider the matter further.

9.3.4. At the local level the landscape of Staffordshire has been refined into 22 Landscape Character Types (LCTs) and the Applicant identifies the Proposed Development is located within two LCTs: Settled Plateau Farmland Slopes and Settled Heathlands, which are shown on Figure 7.3 of the ES [APP-086].

9.3.5. The sensitivity of the landscape and visual assets are considered. The Landscape value is assessed having regard to the GLVIA3 factors and susceptibility to change is used to measure the ability of the landscape to accommodate the Proposed Development without undue consequences for the maintenance of the baseline conditions. The combination of these factors leads to a conclusion on the landscapes sensitivity to change. Similarly, in respect of views, value is assessed as is the susceptibility of visual receptors to changes in the view and visual amenity in the context of the activity they are engaged.

9.3.6. The ES sets out the basis on which these assessments are made and the magnitude of the impact and the significance of effect with regard to descriptors

9.3.7. The study area is created from a notional buffer of 1 kilometre (km) and the ZTV to create a proportionate study area boundary. This has taken account of various elements included within the development including lighting columns vehicle types that would use the Proposed Development and signage.

9.3.8. The Applicant provides a general description of the site context and landscape characteristics at paragraphs 7.6.13 to 7.6.20 of Chapter 7 of the ES [APP-046] before moving on to consider the value of the Landscape.

9.3.9. The Applicant notes that there are no international or national designations of landscape quality or value within the study area. The Applicant refers to Hilton Park, within the south of the study area, which constitutes a HLA as designated by South Staffordshire Council (SSC) and is subject to additional protection through the Adopted Core Strategy. There are no other local landscape designations within the study area. The Applicant also notes that much of the study area is designated as Green Belt but notes this has value related primarily to openness between settlements rather than an indication of landscape quality.

9.3.10. Overall, the Applicant concludes that the land within the application site is generally representative of the surrounding land use, largely comprising agricultural land, with parkland and highways infrastructure also present. Based on the factors contributing to landscape value, the Applicant is of the view the land within the application site is assessed as being of low landscape value through the lack of scenic quality, rarity, conservation interest and perceptual aspects. The Applicant goes on to conclude that the study area itself is assessed as being of overall low landscape value. The character is typical of the modified and human-influenced landscape of the Black Country, with few rare elements or conservational interests, and the presence of multiple detractors.

9.3.11. In terms of visual baseline conditions the ZTV indicated visibility was relatively extensive to the north and west but is relatively contained to the south and east. The Applicant concludes the Proposed Development would be visible from residential locations with close range views expected from properties in Dark Lane, Park Road, Hilton Lane, Brookfield Farm and Tower House Farm. The Applicant also identifies a number of Public Rights of Way (PRoWs) from where the Proposed Development would be visible, mostly in Shareshill and Sarendon, and these are shown on Figure 7.4 of the ES [APP-087]. The Applicant also identifies that the Proposed Development would be visible from roads around the Proposed Development and in particular highlights the M54, the A460 Cannock Road, Dark Lane, Hilton Lane and the M6. The Applicant has identified 20 representative viewpoints which are displayed in Figures 7.5A to 7.25C [APP-088 – APP-108] in the ES. A description of each view and their ascribed value is provided in Table 7.8 of the ES. VP04, 05, 10 and 12 were of very low value, VP01, 02, 03, 06, 07, 09, 11, 18 and 20 were low, VP08, 13, 14, 15, 17 and 19 were medium and VP16A and 16B were high value. The medium value views were primarily related to the rural setting but described relatively ordinary. The high value views were related to the historic landscape and rural setting around Hilton Hall.

9.3.12. The Applicant has identified the potential impacts from construction on landscape character as being:

- the presence of construction plant and material stockpiles etc. which would have a temporary adverse impact on landscape character and increase perceptions of construction/industrial activity;

- removal of vegetation to accommodate the Proposed Development, which would alter the landscape character through removing characteristic features; and
- the presence of earthworks and excavations, particularly in areas with limited landform variation, which would alter the landscape character.

9.3.13. In terms of the impact on visual receptors during construction the Applicant considers these are likely to include:

- site clearance, particularly clearance of trees and other vegetation around the Hilton Park and Dark Lane areas;
- formation of construction compounds adjacent to A460 Cannock Road to the south of Dark Lane, and adjacent to the M6 junction 11; localised demolition works, including the existing M54 junction 1;
- the stockpiling of materials and general earthworks operations – in particular those required to construct the embankments and cuttings;
- installation of signage equipment, traffic control measures, perimeter fencing, hoardings and overhead gantries;
- the movement of construction traffic, plant and machinery (e.g. cranes);
- lighting of any night-time construction works; and
- the erection of scaffolding and presence of tall structures.

9.3.14. In terms of operational effects the Applicant identifies the effects on landscape character as:

- the introduction of the link road between M54 junction 1 and M6 junction 11. Although partially positioned within an earthwork cutting, it would affect the semi-rural landscape character (through its presence, as well as the loss of vegetation to facilitate it). The alignment would also encroach within the historic parkland surrounding the Grade I listed Hilton Hall;
- alterations to the existing field patterns and surrounding vegetation framework and modifications to existing landform; and
- generally increased perceptions of highways and highway infrastructure within the landscape character.

9.3.15. In terms of visual receptors operational effects are identified as likely to include:

- the introduction of the link road between M54 junction 1 and M6 junction 11. Although partially positioned within an earthwork cutting, it would be an extensive new feature in available views afforded to local residents within Featherstone, Hilton and Shareshill and users of the PRoW network;
- the introduction of the new junction replacing the existing roundabout interchange at M54 junction 1. This would reduce the awareness of the existing road within the adjacent settlement of Featherstone due to the road footprint moving away from the village edge;
- the introduction of the dumbbell roundabout taking traffic between Featherstone and the new link road;
- the realignment of the M6 junction 11 and its associated slip roads, which would extend the current awareness of the existing motorway

corridor from locations where it presently exerts an influence, particularly in views afforded to users of the PRoW network and local roads;
- the stopping up of Dark Lane near to the junction with Park Road;
- modifications to the form and alignment of Hilton Lane;
- the introduction of taller, more frequent and visually conspicuous highway infrastructure such as lighting and gantries; and
- the introduction of an accommodation overbridge to take the Shareshill 1 Bridleway over the mainline.

9.3.16. The Applicant sets out various design mitigation and enhancement measures in the Proposed Development. This includes the design of the Proposed Development to avoid and minimise effects as well as essential mitigation to reduce, remediate or compensate likely significant effects. In construction terms these are included in the Outline Environmental Management Plan (OEMP) which would be developed into a Construction Environmental Management Plan (CEMP) which would include a range of best practice measures. During operation the environmental mitigation measures illustrated on the Environmental Masterplans are aimed at reducing the magnitude of impacts. The landscape mitigation includes a planting strategy and the details of the Environmental Mitigation is provided on Figures 2.1 to 2.7 of the ES (the updated versions are [REP7-016 – REP7-022]). A Handover Environmental Management Plan (HEMP) would be produced by the appointed contractor and would include specific requirements concerning the long term maintenance of all landscaping incorporated into the Proposed Development.

Summary of significant effects

9.3.17. The Applicant concludes that the NCA within the study area, NCA 67: Cannock Chase and Cank Wood and NCA 66: Mid Severn Sandstone Plateau are of regional scale and incorporate such varied landscape components that any changes in the scale at the Proposed Development level would not be significant on the overall character. As no significant effects are anticipated, consideration of the effects at the NCA level is not discussed further as part of the LVIA. They further conclude that direct effects would be confined to the Settled Plateau Farmland Slopes LCT and Settled Heathlands LCT and therefore the landscape effects on these are those considered.

9.3.18. In terms of visual receptors the Applicant considers that the Proposed Development would be screened from viewpoints (VP) 01, 03, 05, 06, 07, 09, 12 and 18 by distance, built form, infrastructure, landform or vegetation and VP 16A, 16B and 17 are addressed in Chapter 6 of the ES on Cultural Heritage therefore these viewpoints are not considered further in the assessment.

9.3.19. The Applicant's assessment found that the Proposed Development would have the following significant effects during the construction phase

Landscape effects (construction):

- Settled Plateau Farmlands LCT -Moderate adverse;
- Settled Heathlands LCT – Slight adverse.

Visual effects (construction):

- VP2 View from A460 Cannock Road, Featherstone – Large adverse;
- VP4 View from houses at Laney Green – Slight adverse
- VP8 View from field gate along Great Saredon Road – Moderate adverse
- VP10 View from A460 Cannock Road, opposite Brookfield Farm – Slight adverse
- VP11 View from PRoW east of Brookfield Farm – Large adverse
- VP13 View from PRoW north of Hilton Lane – Very large adverse
- VP14 View from Houses on Dark Lane and Park Road – Very large adverse
- VP15 View from Hilton Lane – Large adverse
- VP19 View from Whitgreaves Wood – Moderate adverse
- VP20 View from Houses on Dark Lane – Slight adverse.

9.3.20. The effects during the operational phase of the Proposed Development were assessed by the Applicant as follows:

Landscape effects (Operational):

- Settled Plateau Farmlands LCT -Slight adverse at both year 1 and year 15;
- Settled Heathlands LCT – Slight adverse at year 1 and neutral at year 15.

Visual effects (Operational):

- VP2 View from A460 Cannock Road, Featherstone – Large adverse at year 1 and moderate adverse at year 15;
- VP4 View from houses at Laney Green – Slight adverse at both year 1 and year 15;
- VP8 View from field gate along Great Saredon Road – Moderate adverse at year 1 decreasing to slight adverse at year 15;
- VP10 View from A460 Cannock Road, opposite Brookfield Farm – Slight adverse at both year 1 and year 15;
- VP11 View from PRoW east of Brookfield Farm – Large adverse at year 1 reducing to moderate adverse at year 15;
- VP13 View from PRoW north of Hilton Lane – Very large adverse at year 1 reducing to large adverse at year 15;
- VP14 View from Houses on Dark Lane and Park Road – Very large adverse at year 1 reducing to moderate adverse at year 15;
- VP15 View from Hilton Lane – Moderate adverse at year 1 reducing to slight adverse at year 15;
- VP19 View from Whitgreaves Wood – Slight adverse at year 1 reducing to neutral at year 15; and
- VP20 View from Houses on Dark Lane – Slight adverse at year 1 improving to Slight beneficial at year 15.

9.3.21. Overall, the Applicant's assessment found that, by year 15, there would be a slight adverse or neutral effect on the LCTs and five of the assessed viewpoints with a slight beneficial effect on one viewpoint. There would, however, be a moderate to large adverse effect on four of the representative viewpoints. As the landscape proposals mature the landscape and visual effects would reduce such that, by year 15, the Applicant considers that there would only be significant effects on four of the representative viewpoints with there being no significant effects on the landscape character or six of the assessed representative viewpoints.

9.4. REQUIREMENTS (R)

9.4.1. R4 requires a CEMP, substantially in accordance with the OEMP, to be submitted and approved and the construction of the development to be carried out in accordance with it. It further requires a HEMP to be developed by the end of the construction commissioning and handover of the Proposed Development. The CEMP amongst other matters has to include a Landscape and Ecology Management Plan and Arboricultural Mitigation Strategy. The HEMP must include information for the future maintenance and long term commitments to aftercare related to the environmental features and mitigation measures.

9.4.2. R5 requires the submission and approval of a landscaping scheme which must reflect the mitigation measures set out in the Register of Environmental Actions and Commitments (REAC) and must be based on the illustrative environmental masterplan. Replacement planting must be provided of any planting that is removed, dies or is seriously damaged or diseased within 5 years.

9.4.3. R10 requires any permanent or temporary fencing to be constructed in accordance with the OEMP.

9.5. THE POSITION OF THE INTERESTED PARTIES (IPs)

SCC

9.5.1. The SCC Local Impact report (LIR) [REP1-007] notes that in relation to the impact on landscape the County refer to and support the position of SSC.

9.5.2. The signed Statement of Common Ground (SoCG) between the Applicant and SCC [REP7-027] records that SCC is content that the methodology and content of Chapter 7 of the ES provide an accurate assessment of landscape and visual impacts of the proposed highway works. Comments on the effect on Hilton Park and views from Hilton Hall are accepted as dealt with in Chapter 6 on cultural heritage. SCC also agree that following the addition of VP18 the viewpoints are agreed between the parties. The SoCG also records that SCC agree that the creation of heathland vegetation around junction 11 of the M6 was not feasible due to unsuitable soil conditions.

9.5.3. SCC had commented that the impact of junction lighting and views of signage gantries should be considered in more detail and incorporated

into the visual appraisal. Night-time views and impact on tranquillity and dark skies should also be considered.

9.5.4. The Applicant's response was that night-time viewpoints were agreed at a meeting in February 2019. The survey team visited much of the study area at night to understand the baseline lighting levels. Where lighting and signage associated with the Proposed Development would potentially be visible, this is discussed within the chapter. Tranquillity is also discussed within the ES (7.6.20) and illustrated on Figure 7.27 [APP-110]. This was agreed in the SoCG.

SSC

9.5.5. The LIR provided by SSC [REP1-097] notes that the Proposed Development lies within a triangle of land formed by the existing highway network and these transport and infrastructure elements, including the M6, M54 and the A460 Cannock Road, influence the area. The Council also highlight that the area includes Hilton Park, an HLA, but there are no other local landscape designations.

9.5.6. The Council are of the view that potential changes to landscape character and visual amenity would be apparent. However, with regard to some of the landscape character impacts, some would occur in areas deemed to be of low value i.e. adjacent to those travelling along the A460 experiencing relatively urban views, alongside some field/woodland that sit in close proximity to existing highway infrastructure. That said the Council considers the Proposed Development has been designed, as far as possible, to avoid and minimise impacts and effects on the landscape and visual environment. The Council identifies several mitigation measures that have been identified to reduce, remediate or compensate likely significant adverse environmental effects including some remodelling and woodland tree and shrub planting to help filter views.

9.5.7. The Council notes that detailed landscape design would be undertaken at a later stage and the mitigation design would be further detailed and refined at this stage. The Council draw attention to the fact it appears the existing green unsightly fence south east of Dark Lane would otherwise remain, therefore it welcomes the replacement of this fence with a more visually pleasing boundary treatment as part of the application.

9.5.8. There is a signed SoCG between the Applicant and SSC [REP7-028] in respect of issues related to landscape and visual effects. All matters are recorded as agreed between the parties. The Applicant and SSC agree that viewpoint locations are appropriate, that transport and infrastructure elements influence the area, particularly at its northern and southern boundaries and that landscape value is considered to be low across numerous viewpoints.

9.5.9. SCC had identified areas for early planting which the Applicant has agreed to consider but other factors may make early planting challenging or not possible.

9.5.10. SSC and the Applicant agree that the optimum solution for fencing along Dark Lane would be a fence that is secure but more attractive, with parties agreeing that the fence type provided in Appendix C (to the SoCG [REP7-028]) would be acceptable. The parties also agree that a hedge should be provided on the opposite side of the fence from Dark Lane to provide biodiversity benefits and further improve visual appearance. The parties agree that this hedgerow will be provided where it is possible and beneficial to do so.

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9.5.11. A signed SoCG [REP7-031] between the Applicant and Parish Councils highlights those areas of agreement and disagreement between the parties. Insofar those matters that affect landscape and visual effects the SoCG records the parties are in agreement. With regard to specific matters on visual impacts the SoCG records that design changes submitted in October did not change the conclusions of the ES that the proposed band of trees to the south of Dark Lane provides the main screening and has not been removed from the Proposed Development.

9.5.12. In respect of the fence at Dark Lane the Parish Councils had identified a desire for this to be replaced. The Applicant confirms it has agreed to replace the fence with a design similar to that presented in Appendix C to the SoCG. The parties agreed this would be an acceptable solution and, where it is possible to do so, a hedge would be planted behind the fence to provide biodiversity and visual screening benefits. This was also agreed in the SoCG.

9.5.13. The SoCG notes that in [RR-025] it was stated by Councillor Robert Cope that more woodland was needed along the perimeter of the link road in order to mitigate the noise and visual effects from the link road on Shareshill. The Applicant notes in respect of the visual effects that the view from Sarendon Hill (VP08) was the subject of a photomontage. This demonstrates that strategic planting around M6 junction 11 has been re-instated to replicate a similar effect as at present. In between M6 junction 11 and Hilton Lane the combination of the Proposed Development being in a cutting, proposed hedgerow planting and woodland planting would reduce the visibility of the road. The Applicant was of the view it was not necessary to include additional woodland planting. The Parish Council's confirmed they were happy with the mitigation in this area and this is agreed in the SoCG.

Other IP's

9.5.14. A number of the other IP's raised concerns over the extent of land required for environmental mitigation including woodland planting. However these issues were primarily directed towards the amount of land take in terms of acquisition or possession or in terms of the necessity to deal with the ecological impacts of the development. They did not directly raise issues related to landscape or visual effects. Issues in respect of

Ecology and Compulsory Acquisition (CA) and Temporary Possession (TP) are dealt with elsewhere (Chapters 6 and 16 respectively).

9.6. PLANNING ISSUES

9.6.1. In respect of landscape and visual effects the outstanding areas of dispute and those matters that were the subject of matters that needed to be addressed are:

- The value ascribed to the existing landscape as the baseline against which to make the assessment of effects.
- Whether additional tree planting and screening is required to protect views for residents, particularly in Shareshill.
- Consideration of the existing fence along the south side of Dark Lane.

9.6.2. It is also appropriate to look at the effect of the Proposed Development on landscape and visual effects since, although they are not in dispute, some of the effects are identified as significant in terms of the ES assessment and should therefore be properly considered and taken into account and a judgement reached on their acceptability.

9.7. EXAMINING AUTHORITY (ExA) CONSIDERATIONS

Value of Landscape

9.7.1. The Applicant considers that the land within the application site is overall of low landscape value. This feeds into its assessment of the sensitivity of the landscape which is a function of landscape susceptibility to change and value. This then is taken into account in assessing the significance of effect when combined with the magnitude of impact. In our first written questions ExQ1.7.6 [PD-010] sought views on whether the Local Authorities and other IPs were content with this categorization.

9.7.2. The Applicant based its assessment on various factors as set out in Table 7.7 of the ES. These factors are derived from GLVIA3 and, as the Applicant notes, in effect adopted in DMRB. The factors are Landscape quality/condition, scenic quality, rarity, representativeness, conservation interest, recreational value, perceptual aspects and associations. The Applicant scored these against a scale from negligible to very high as set out in Table 7.2, with descriptors provided for each value.

9.7.3. Overall, there were no significant concerns raised by IPs that landscape condition, scenic quality, rarity and perceptual impacts where not low. This was generally attributable to the nature of the landscape, the lack of significance designations and the heavy influence of other transport infrastructure features including the M54, M6 and A460. Similarly, there was little dispute that representativeness, recreational value and associations where of medium value.

9.7.4. Where there was concern expressed was the Applicant's categorisation of the conservation interests across the site. The Applicant identified this as low, which in the descriptor would be non-designated or designated areas of local recognition or areas of little sense of place. The Applicant

comments that there are a handful of listed buildings within the study area, including two Grade I listed buildings in Hilton Park, as well as clusters of listed buildings in Shareshill, Little Saredon, at Moseley Old Hall and the newer Moseley Hall. A Historic Landscape Area is also present at Hilton Park. There are no other designations of conservational interest located within the study area.

9.7.5. However, in our view this does not appear to give sufficient weight to these features. There are two Grade I listed buildings along with a number of other associated listed buildings within an historic park. Whilst the Park may not be designated in national terms it has protection in the Core Strategy. This area covers a significant proportion of the landscape in the south of the study area. Although the area to the north has limited historical features, the Applicant appears to underplay the contribution that Hilton Park and the listed buildings contribute to the landscape character of the area. On the basis of the Applicant's descriptors it is our view that the conservation interest would be more appropriately identified as of medium value and this reflects the conclusions reached in respect of cultural heritage. This would only raise one of the eight factors up a level.

9.7.6. Overall, this analysis would mean that four of the eight criteria would be low and four would be medium. There is therefore an element of judgement and weighting that needs to be undertaken in concluding how the overall value of the landscape within the study area would be best described. Whilst the conservation interest should be given greater value than is ascribed to it by the Applicant, this is not over the whole of the study area, with low condition, scenic quality, perceptual aspects and rarity it is representative of a landscape that is of reasonably low value. When taking account of the detractors and that the triangle of land within which the Proposed Development is located, between motorways and a main road, we conclude that it is reasonable to identify the overall landscape value of the locality within which the Proposed Development would be located as low.

Tree Planting Screening

9.7.7. The Parish Councils and the Applicant have entered into a SoCG [REP6-024]. In RR [RR-025 and RR-011], on behalf of Featherstone and Shareshill and Hilton Parish Council, concerns were expressed about the adequacy of screening of the development for local residents. In particular, concerns were raised with regard to the mainline of the road north of Hilton Lane as it rises to junction 11 of the M6 and around junction 11 and also around the Dark Lane area.

9.7.8. In respect of Dark Lane the Parish Councils were concerned that the properties would have a total change of view. The Parish Councils were concerned about a loss of amenity, on the basis that the properties current view the historic woodland park of Hilton Hall, its trees, birds and nature [RR-011]. The Applicant has explained that there is a proposed band of trees to the south of Dark Lane that provides the main screening and this would not be removed as a result of the October 2020

application changes. The Applicant accepts that views from the junction with Dark Lane and Park Road looking northeast towards the Proposed Development (VP14) would include temporary and short term construction activity during the construction phases. However, by Year 1 of operation, the Applicant states views towards the Proposed Development would be mainly screened by the proposed noise barrier across much of the view. The Applicant has also explained that landscape mitigation planting has been proposed at this location, filtering views and partially screening them by Year 15 of operation. Furthermore it notes that the views from residential properties on Dark Lane looking south (VP20) are anticipated to experience a slight beneficial effect by Year 15 of operation with the proposed planting restricting views from the upper floors of residential properties towards the Proposed Development. We are satisfied these are an accurate reflection of the Proposed Development, including its mitigation, and are illustrated on the Environmental Masterplans, in particular sheet 3 of 5 [REP7-020].

9.7.9. The Parish Councils in the SoCG accepts the Applicant's explanation and we conclude this is a reasonable representation of the proposed mitigation and would provide for reasonable screening of this section of the Proposed Development

9.7.10. In respect of the area of the mainline north of Hilton Lane this includes the bridge over Hilton Lane, the accommodation bridge to facilitate access for Brookfield Farm and the line of the road. The road is partly in a cutting before approaching M6 junction 11 when it rises on embankment to join into the redesigned junction. With much of the road in cutting and with that element rising to the junction in a location where there is already significant highway infrastructure the nature of change is less intrusive.

9.7.11. The Parish Councils and RRs state that more woodland is needed along the western perimeter of the link road from Hilton Lane rising up to M6 junction 11 on the western side in order to mitigate the noise and visual effect from the link road up on the village of Shareshill. The Environmental Masterplan (Sheets 1 and 2) [REP7-018 and REP7-019] identify woodland planting for screening purposes, integration into the landscape and ecological reasons. The planting in this area would be the subject of detailed design but the masterplan is secured through the OEMP and implementation through the CEMP and maintenance through the HEMP.

9.7.12. The Applicant notes that the view from Saredon Hill (VP08) was the subject of a photomontage to show the proposed landscape mitigation (Figures 7.12C [APP-095]). The Applicant notes that on this figure it is possible to see that the strategic planting around M6 junction 11 has been reinstated to replicate a similar effect to that at present. In between M6 junction 11 and Hilton Lane, the Applicant considers that as there is already a strip of woodland planting proposed to the west of the link road, south of junction 11, it was not considered necessary to include additional woodland beyond that proposed, a decision in line with the Staffordshire Landscape Character Assessment for the Settled Plateau

Farmlands LCT, which states that: *"Large-scale woodlands should be designed to interlock and still allow views through the landscape whilst screening urban edges, power lines, quarries and busy roads"*. (see SoCG between Applicant and Parish Councils in respect of Environmental Mitigation [REP7-031]).

9.7.13. On the basis of this review the Parish Councils confirmed they were happy with the mitigation in this area. This is recorded as agreed in the SoCG.

9.7.14. We consider that there is necessary and reasonable screening of the Proposed Development at this location given its design features and the nature of the landscape in the area. It is concluded that the proposed mitigation measures identified on the Environmental Masterplan would be necessary and reasonable and secure a well-integrated scheme in the context of the nature of the Proposed Development, the wider landscape and the existing detractors in that wider landscape.

Dark Lane fence

9.7.15. The Parish Councils and SSC raised concerns about the appearance of a corrugated iron fence that runs along the south side of Dark Lane. These are reflected in Relevant Representations (RR) [RR-011 and RR-025], SSC's LIR [REP1-097] and the SoCGs [REP7-031 and REP7-028] agreed between the Applicant and these parties.

9.7.16. Concerns were expressed regarding the unattractive nature of the fence and that the Proposed Development should take the opportunity to replace this fence with a more attractive means of enclosure. The Applicant noted that the fence was not within the existing highway boundary and belonged to the adjoining landowner.

9.7.17. Following discussions between the various parties and the landowner, Allow Limited (Allow), it was agreed that a new fence would be provided. This is confirmed in the SoCG between the Applicant and Allow [REP8-011] and in the Applicant's responses to comments raised [REP8-029]. An example of the type of fencing was attached to the SoCG's and this pictured a green weld mesh metal fence design with a hedge planted on the inside of the fence line, away from the highway.

9.7.18. We are satisfied that the proposed fencing would be a visual improvement to the existing corrugated fencing once the hedge has established. The 15-year VP20 would be improved and the immediate surroundings along this section of Dark Lane would be enhanced. The proposed boundary treatment is secured through the OEMP and the Applicant has further identified it as a specified work in Schedule 1 – Authorised Development in the final draft Development Consent Order (dDCO) [REP8-005], as Work No. 80 which includes *'Replacement of existing fence along Dark Lane'*.

Landscape effects

9.7.19. In terms of landscape effects we agree with the Applicant that changes to the NCA at the Proposed Development level would not be significant on the overall national character areas. Given their scale and variety of landscape, the scale of the Proposed Development is not such that it would have a significant effect.

9.7.20. At the local level the landscape character areas that would be affected by the Proposed Development are the Settled Plateau Farmland Slopes and the Settled Heathlands LCTs as there would be direct effects given the Proposed Developments location within and adjacent to them. We agree that other Landscape Character Areas or LCTs are unlikely to experience indirect effects.

9.7.21. In terms of the Settled Plateau Farmlands LCT, it is overall of a low value, albeit that there is moderate sensitivity to change due to the susceptibility of the townscape. Construction activity would take place over a period of around two and a half years with machinery, earthworks, demolition, site compounds and removal of some landscape features including trees and woodland areas etc. The construction activity would be along the length of the Proposed Development although intensity may vary over time. Overall, there would be an effect on the landscape; it is likely this would be more significant in some areas than others but, overall, given the value of the landscape, the view of the Applicant that this would be a moderate adverse effect is reasonable.

9.7.22. In the context of the operational phase at year 1 this would amount to a slight adverse effect given the sensitivity of the existing landscape and existing components of highway infrastructure in the locality. As time progresses, landscaping, trees and shrubs would assist in integrating the Proposed Development. However, the sensitivity of the landscape would remain and while the effects would be reduced, they would not be removed. Overall, the landscape effects would reduce to a slight adverse effect from that of the construction phase.

9.7.23. In terms of the Settled Heathlands LCT the construction activities would be similar to those for the Settled Plateau Farmlands LCT. However, the impacts would only affect localised pockets of the LCT near Shareshill and Featherstone. Again, the duration of effect would be relatively limited, and given the low value of the area and the minor magnitude of change, the overall effect of construction would be slight adverse.

9.7.24. During operation given that the Proposed Development would only affect two small sections of the LCT and indirectly affect its eastern edge these affects are assessed as negligible given the existing highway infrastructure elements in these locations. Overall, at year 1, this would result in a slight adverse effect which would reduce to neutral by year 15 given the landscaping would have matured and integrated the Proposed Development into the wider landscape.

9.7.25. There was no significant dispute in the context of the broad assessment of the effects on landscape. Obviously as a significant infrastructure project it will have an impact and effect but given the nature of the overall low value of the landscape, the greatest effect will be during construction which would rise to a moderate effect. During operation, with the increasing maturity of the landscaping, the effect on landscape overall would be neutral to slight adverse. In the context of a Proposed Development of this nature the Applicant has produced a design that has sought to minimise the adverse effects on the landscape and has introduced landscaping to mitigate, as far as reasonable, the effects. In this regard the Proposed Development accords with the aims of NPSNN paragraph 5.149.

Visual effects

9.7.26. The Applicant identified some twenty representative viewpoints (albeit VP16 was then split into two, 16A and 16B resulting in twenty-one overall) from where to assess the effects of the Proposed Development. These were agreed with SCC and SSC as noted in the SoCGs with these Councils. Of the twenty-one representative views eleven were discounted from further assessment in terms of visual effects. Eight of those due to factors related to distance, existing built form, existing infrastructure, general landform and vegetation reducing views. The other three related to viewpoints within the Hilton Park historic park and therefore were addressed in the cultural heritage appraisal.

9.7.27. There were no substantive issues raised by any of the IPs with regard to the exclusion of these viewpoints from the assessment in the ES. We, on the basis of the information before us, including the VP images, site visits and representations from IPs, are satisfied that these views were reasonably excluded from requiring further assessment.

9.7.28. Whilst there were issues raised by various IPs concerning the visual impact of the Proposed Development on particular locations, Dark Lane, areas north of Hilton Lane, around Featherstone, there were no substantive issues raised with the Applicant's assessment of the likely significant effects in the ES. The nature of the concerns were expressed in general terms and in the context of seeking to ensure that there was adequate mitigation to reduce or filter views as much as possible.

9.7.29. Of the remaining ten representative viewpoints assessed, by Year 15, five of the viewpoints only suffered a slight adverse or neutral effect due to maturing landscaping. Whilst this had been moderate adverse at construction for two viewpoints it had reduced with the improving situation due to the landscaping mitigation. One of the viewpoints, VP20 the houses in Dark Lane is assessed as having a slight beneficial effect. This predominantly arises from the mitigation tree planting and the screening with the fence replacement discussed above. Overall, these effects are not significant in terms of the ES assessment.

9.7.30. The viewpoints with the greatest harmful effects were viewpoints VP2, VP11, VP13 and VP 14. VP2 relates to a view from the A460 at

Featherstone would result in views of the roads providing access to the redesigned junction 1 of the M54, the mainline of the road and the removal of trees. The construction impact would be significant, assessed as large adverse, as would the Proposed Development at Year 1. Whilst landscaping would assist in integrating the Proposed Development somewhat there would be a significant additional highway infrastructure feature visible in the area and which would represent a moderate adverse effect on visual receptors. VPs 11, 13 and 14 are at the houses at Dark Lane and Park Road, and the PRoW north of Hilton Lane and the PRoW east of Brookfield Farm. This is where recreational walkers, highway users and these residents would be most likely to experience the Proposed Development and understand its visual effects. The Proposed Development is assessed as having a large or very large adverse effect during construction and that this would reduce, by Year 15, to a moderate adverse effect in VP11 and VP14 but still be large adverse at Year 15 in VP13, the PRoW north of Hilton Lane.

9.7.31. These general assessments of the significant effect on visual receptors are accepted and are representative of the overall visual effects of the Proposed Development. The Proposed Development would be a significant element of engineered highway infrastructure being developed in a primarily rural location. It would therefore have harmful visual effects. That being said the design of the Proposed Development has incorporated embedded mitigation in terms of route, engineering options (use of cuttings) etc. and incorporates appropriate mitigation to reduce the overall effects. Whilst during construction the visual effects would be much greater, these are reduced over time with the removal of construction activity and the maturing landscape proposals.

9.7.32. We conclude that due to the nature of the Proposed Development it would not be possible to avoid harm altogether to either the landscape or visual receptors. The Proposed Development has incorporated suitable design and mitigation which is secured through the OEMP, CEMP and the HEMP, for after care. As such the Proposed Development meets the stated aim of paragraph 5.149 of the NPSNN which is to avoid or minimise harm to the landscape, providing reasonable mitigation where possible and appropriate. The proposal would also therefore accord with Core Strategy policy EQ4.

9.8. CONCLUSIONS

9.8.1. The general considerations in respect of landscape and visual effects are based on the relevant documents and policies and are set out above and lead to our concluding that:

- The Proposed Development would result in harm to the landscape character of the area, albeit this would at most amount to slight adverse. Mitigation would be secured which will reduce the overall effect to this level by Year 15 and this is secured through the dDCO in particular R4 and R5 related to environmental management plans and landscaping.

- The Proposed Development would result in harmful visual effects for highway users and local residents of the area. This would amount to a moderate adverse effect in VP11 and VP14 and a large adverse at Year 15 in VP13 and the PRoW north of Hilton Lane. Mitigation has been secured which will reduce the overall effect to these levels by Year 15 and this would be secured through the dDCO in particular R4 and R5 related to environmental management plans and landscaping.
- Given the overall nature of the landscape and visual effects in the context of the Proposed Development and the general area it would not be possible to avoid harm to either the landscape or visual receptors and the Proposed Development incorporates reasonable mitigation measures.
- We consider that the Proposed Development would therefore be in accordance with paragraph 5.149 of the NPSNN, but notwithstanding that it would be harmful to the landscape and visual receptors, given the nature and scale of that harm, the ExA considers that this should be given limited weight in the overall balance.
- We consider that the overall value of the landscape is low and that it is reasonable to judge the effects against this baseline.
- We conclude that the proposed tree planting and mitigation measures identified in the Environmental Masterplan for screening are necessary, reasonable and appropriate.
- We agree that the replacement of the Dark Lane fence would result in a minor beneficial effect for the residents of Dark Lane and should be supported.

10. FINDINGS AND CONCLUSIONS IN RELATION TO NOISE AND VIBRATION

10.1. INTRODUCTION

10.1.1. This chapter deals with the effects of the Proposed Development on receptors from noise and vibration. In particular it deals with:

- The Applicant's noise assessment;
- Construction and operational effects of noise; and
- Construction and operational vibration effects.

10.2. POLICY

National Policy Statement for National Networks

10.2.1. Paragraph 4.8.1 of National Policy Statement for National Networks (the NPSNN) states that: *"… where the proposed project has likely significant environmental impacts that would have an effect on human beings, any environmental statement should identify and set out the assessment of any likely significant adverse health impacts."*

10.2.2. The NPSNN identifies in paragraph 5.186 the potential consequences of excessive noise in terms of its potential effects *"… on the quality of human life and health (e.g. owing to annoyance or sleep disturbance), use and enjoyment of areas of value (such as quiet places) and areas with high landscape quality"*. It confirms that Government policy is set out in the Noise Policy Statement for England (NPSE). In line with current legislation, references to "noise" in the NPSNN also apply to the impacts of vibration".

10.2.3. In relation to decision making paragraph 5.193 of the NPSNN states: *"Due regard must have been given to the relevant sections of the Noise Policy Statement for England, National Planning Policy Framework and the Government's associated planning guidance on noise."*

10.2.4. The NPSNN at paragraph 5.189 sets out the factors that should be included in a noise assessment. These include:

- identification of noise sensitive premises and noise sensitive areas that may be affected;
- the characteristics of the existing noise environment;
- a prediction on how the noise environment will change with the proposed development in the short and long term and at particular times of the day and night;
- the potential noise impact elsewhere that is directly associated with the development, such as changes in road and rail traffic movements elsewhere on the national networks, should be considered as appropriate; and
- measures to be employed in mitigating the effects of noise.

10.2.5. The NPSNN, at paragraph 5.194, advises that proposals should seek to optimise the layout *"to minimise noise emissions and, where possible,*

the use of landscaping, bunds or noise barriers should be used to reduce noise transmission". It also requires projects to *"consider the need for the mitigation of impacts elsewhere on the road and rail networks that have been identified as arising from the development, according to Government policy"*.

10.2.6. Paragraph 5.197 of the NPSNN states that the Examining Authority (ExA) and Secretary of State (SoS) should consider mitigation measures and may wish to impose measures in addition to those which form part of the project application, together with requirements to ensure delivery of all mitigation measures. Paragraph 5.198 requires such measures to be proportionate and reasonable.

10.2.7. It is noted, at paragraph 5.199 of the NPSNN, that for most national network projects the relevant Noise Insulation Regulations will apply, which place a duty on and provide powers to the relevant authority to offer noise mitigation through improved sound insulation to dwellings, with associated ventilation to deal with both construction and operational noise.

10.2.8. Paragraph 5.195 of the NPSNN states the SoS should not grant development consent unless satisfied that the proposals will avoid significant adverse impacts on health and quality of life, mitigate and minimise other adverse impacts on health and quality of life, as well as contribute to improvements to health and quality of life through the effective management and control of noise, where possible.

10.2.9. Paragraph 5.199 refers to noise mitigation through increased dwelling insulation and ventilation measures pursuant to the Noise Insulation Regulations and says that an indication of the likely eligibility for compensation should be included in the assessment. It notes that *"… in extreme cases, the Applicant may consider it appropriate to provide noise mitigation through the compulsory acquisition of affected properties in order to gain consent for what might otherwise be unacceptable development."*

10.2.10. Paragraph 5.200 requires consideration of opportunities to address the noise issues associated with Noise Important Areas.

Noise Policy Statement for England

10.2.11. The Noise Policy Statement for England (the NPSE) states that the Government's overall vision for noise is to promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development.

10.2.12. It sets out three aims. These are:

- avoid significant adverse impacts on health and quality of life;
- mitigate and minimise adverse impacts on health and quality of life; and
- where possible contribute to the improvement of health and quality of life

10.2.13. The NPSE recognises that noise exposure can impact on quality of life. It refers to emerging evidence that long-term exposure to some types of transport noise can additionally cause an increased risk of direct health effects. It states that the Government intends to keep research on the health effects of long-term exposure to noise under review.

10.2.14. The NPSE refers to the World Health Organisation (WHO) concepts for establishing noise effects – the No Observed Effect Level (NOEL) and the Lowest Observed Adverse Effect Level (LOAEL). The former is the level below which there is no detectable effect on health and quality of life due to the noise, whilst LOAEL is the level above which adverse effects on health and quality of life can be detected.

10.2.15. The NPSE adds the concept of Significant Observed Adverse Effect Level (SOAEL). This is the level above which significant adverse effects on health and quality of life occur.

10.2.16. Paragraph 2.22 of the Explanatory Note to the NPSE states "*It is not possible to have a single objective noise based measure that defines SOAEL that is applicable to all sources of noise in all situations. Consequently, the SOAEL is likely to be different for different noise sources, for different receptors and at different times. It is acknowledged that further research is required to increase our understanding of what may constitute a significant adverse impact on health and quality of life from noise. However not having specific SOAEL values in the NPSE provides the necessary policy flexibility until further evidence and suitable guidance is available.*"

10.2.17. Paragraph 2.23 of the NPSE advises that the first aim of the NPSE states that significant adverse effects on health and quality of life should be avoided while also taking into account the guiding principles of sustainable development (paragraph 1.8).

10.2.18. The second aim of the NPSE, as advised at paragraph 2.24 of the NPSE, refers to the situation where the impact lies somewhere between LOAEL and the SOAEL. It requires that all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life while also taking into account the guiding principles of sustainable development (paragraph 1.8).

10.2.19. Whilst paragraph 2.25 of the NPSE advises the third aim seeks, where possible, positively to improve health and quality of life through the proactive management of noise while also taking into account the guiding principles of sustainable development, recognising that there will be opportunities for such measures to be taken and that they will deliver potential benefits to society. The protection of quiet places and quiet times as well as the enhancement of the acoustic environment will assist with delivering this aim.

National Planning Policy Framework and Planning Practice Guidance

10.2.20. The National Planning Policy Framework (the Framework), in paragraph 170, notes that new and existing development should be prevented from contributing to, being put an unacceptable risk from, or being adversely affected by unacceptable levels of noise pollution. Paragraph 180 states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health. In doing so decisions *"… should mitigate and reduce to a minimum, potential adverse impacts resulting from new development, and avoid noise giving rise to significant adverse impacts on health and quality of life"*, referencing the NPSE.

10.2.21. The Planning Practice Guidance (the PPG) provides further guidance in relation to the Government's approach to noise. It confirms that decision-making needs to take account of the acoustic environment and in doing so consider whether or not a significant adverse effect or an adverse effect is occurring or likely to occur, and whether a good standard of amenity can be achieved. It identifies various factors that may influence the acoustic environment.

10.2.22. It states that some types and levels of noise will cause a greater adverse effect at night than if they occur during the day; this is because people tend to be more sensitive to noise at night as they are trying to sleep. It also lists a number of factors that should be taken into account when considering the noise impacts of a proposed development, including whether any adverse internal effects can be completely removed by closing windows. It explains that where existing noise sensitive locations already experienced high noise levels, a development that is expected to cause even a small increase in the overall noise level may result in a significant adverse effect occurring even though little or no change in behaviour would be likely to occur.

10.2.23. It advises that where external amenity spaces are an intrinsic part of the overall design the acoustic environment of those spaces should be considered so that they can be enjoyed as intended.

Local Plan

10.2.24. At the local level the South Staffordshire Local Plan Core Strategy (the Core Strategy) contains policy EQ9: Protecting residential amenity. It advises all development proposals should take into account the amenity of any nearby residents, particularly with regard to privacy, security, noise and disturbance, pollution (including light pollution), odours and daylight. It goes on to state development likely to generate harmful noise levels will be directed to appropriate locations away from known noise sensitive locations and noise sensitive habitats unless measures to suppress noise can be provided for the life of the development. It also advises development must not unacceptably affect the amenity of residents or occupants.

WHO Guidelines for Community Noise 1999 (WHO Guidelines for Community Noise 1999 (CNG) Table 4.1)

10.2.25. The World Health Organisation (WHO) Guidelines for Community Noise 1999 (the CNG) provides guidance on suitable internal and external noise levels, for steady sound in and around residential properties. It recommends:

- 30 decibels (dB) equivalent continuous sound pressure level (L_{Aeq})in bedrooms, with <45dB L_{Amax}, over 8 hrs at night;
- 35dB L_{Aeq} in living rooms over 16 hours in the day;
- 50 to 55dB L_{Aeq} in gardens/outdoor living areas over 16 hours in the day; and
- 45dB L_{Aeq} outside bedrooms with an open window over 8 hours at night.

WHO Night-Time Noise Guidelines for Europe 2009 (WHO Night-time Noise Guidelines for Europe 2009 (NNG) Table 5.4)

10.2.26. The WHO Night-Time Noise Guidelines for Europe 2009 (the NNG) provides additional guidance on night-time noise and recommends noise levels based on effects on health. Adverse effects are observed at 40-50dB, particularly among vulnerable groups. NNG describes levels above 55dB as "*increasingly dangerous for public health*".

WHO Environmental Noise Guidelines for the European Region (ENG) 2018

10.2.27. The WHO Environmental Noise Guidelines for the European Region (the ENG) updates and supersedes the CNG in so far as it relates to road traffic noise and complements the NNG. The guidelines are source specific and apply a 1dB increment scheme, whereas the CNG and NNG formulated or presented recommendations in 5dB steps.

10.2.28. They provide information on the exposure–response relationships between exposure to environmental noise from different noise sources and the proportion of people affected by certain health outcomes, as well as interventions that are considered efficient in reducing exposure to environmental noise and related health outcomes. The recommendations rely on the critical health outcomes.

10.2.29. ENG sets out the recommendations in terms of traffic noise. These are summarised in Section 3.1 as follows:

"For average noise exposure, the GDG35 (strongly recommends reducing noise levels produced by road traffic below 53 dB L_{den}, as road traffic noise above this level is associated with adverse health effects.

"For night noise exposure, the GDG strongly recommends reducing noise levels produced by road traffic during night time below 45 dB L_{night}, as road traffic noise above this level is associated with adverse effects on sleep.

"To reduce health effects, the GDG strongly recommends that policymakers implement suitable measures to reduce noise exposure from road traffic in the population exposed to levels above the guideline values for average and night noise exposure. For specific interventions, the GDG recommends reducing noise both at the source and on the route between the source and the affected population by changes in infrastructure."

10.2.30. The ENG explains the rationale for the recommendations, including the impacts on health and potential interventions.

10.3. THE CASE FOR THE APPLICANT

10.3.1. Chapter 11 in the Environmental Statement (ES) addresses Noise and Vibration. The originally submitted Chapter [APP-050] was updated with an amended Chapter [AS-085] when the Applicant submitted its October 2020 Proposed Changes. Change 4 was a change to the Bridge structure at junction 1 of the M54. The change, which was accepted into the Examination, identified a closure of the M54 for up to three weeks with consequent traffic management and re-routing. The Chapter was updated to take account of these changes in terms of construction, construction traffic and any necessary likely diversions. The case for the Applicant set out below is based around the amended Chapter.

10.3.2. The original chapter was supported by a number of appendices and figures which were also updated as necessary. In this regard all figures 11.1 to 11.5 [AS-095, AS-096, AS-097, AS-098 and AS-099] where adjusted, as well as those appendices dealing with construction issues 11.3 [AS-107] and 11.4 [AS-109].

General Approach

10.3.3. The Applicant confirms Chapter 11 assesses the potential noise and vibration impacts associated with the construction of the Proposed Development and the traffic noise impacts associated with the operation of it, following the methodology set out in the Design Manual for Roads and Bridges (DMRB) LA 111 Noise and Vibration.

10.3.4. The assessment takes account of the update to the DMRB released in November 2019 which the original was prepared in advance of. A base line noise monitoring survey was agreed with South Staffordshire Council (SSC) and the results have been used to validate the traffic noise prediction modelling. Future Do-Minimum (DM) conditions have been determined at all identified potentially sensitive receptors based on predicted traffic noise levels in the absence of the Proposed Development. Sensitive receptors are taken as residential properties, educational buildings, medical buildings, community facilities (such as places of worship), designated sites (Areas of Outstanding Natural Beauty, National Parks, Special Areas of Conservation (SACs), Special Protection Areas (SPAs), Sites of Special Scientific Interest (SSSIs) and Scheduled Monuments), and Public Rights of Way (PRoWs) as well as other locations identified in the NPSNN.

10.3.5. In terms of construction representative locations for potentially sensitive receptors were identified. Final details of construction are not available therefore estimated construction noise levels were based on information provided relating to the number and type of plant likely to be required for each construction activity, typical 'on' times for each item of plant, the likely location and extent of each activity, working times and which months the activity is likely to occur in. Thresholds for SOAEL and LOAEL were set related to existing ambient noise level.

10.3.6. In terms of construction traffic noise these were estimated using the model developed for the operational noise and is based on the busiest period for construction traffic. The proposed three-week closure of the M54 mainline at junction 1 to facilitate the replacement of the bridge would result in traffic diverting onto alternative routes, including the sign posted diversion via the A449 and A5. Therefore, the potential traffic noise impact during the three-week closure was also assessed.

10.3.7. In terms of construction vibration, works comprise piling, and works using vibratory rollers (earthworks, road construction (pavement), pilling platform construction and road strengthening). LOAEL and SOAEL vibration thresholds were also set having regard to human annoyance. The Applicant states that building damage is likely to occur at levels far higher than annoyance levels. Therefore, if works are controlled to those relating to annoyance the Applicant considers that it is unlikely buildings would be damaged during construction.

10.3.8. The Applicant identified noise from traffic is generated by both vehicle engines and the interaction of tyres with the road. The Applicant adopts the Calculation of Road Traffic Noise (CRTN) index to assess traffic noise, $L_{A10,18h}$. Night-time traffic noise levels use the parameter $L_{night,outside}$.

10.3.9. Predicted daytime and night-time traffic noise levels at noise sensitive receptors within the 600 metre (m) noise calculation area have been generated by the Applicant using noise modelling software. Predictions have been carried out for the opening year (OY) and future year (FY) (15 years after opening) for the DM and Do-Something (DS) scenarios. Again, LOAEL and SOAEL have been identified for road traffic noise for all sensitive receptors.

10.3.10. A preliminary indication of any properties likely to qualify under the Noise Insulation Regulations was provided in the assessment provided by the Applicant. A full assessment would be completed once the detailed design of the Proposed Development is finalised and in accordance with the timescales set out in the Regulations.

Study area

10.3.11. The study area for the quantitative assessment of construction phase noise and vibration impacts focuses on 22 potentially sensitive receptors, which includes those closest to the construction works. Receptors have been chosen based on their potential sensitivity (as defined in DMRB and as discussed with SSC) and receptor proximity to the various works. As

detailed in DMRB it is standard practice to consider noise impacts from construction up to a distance of approximately 300m from the works and vibration impacts from construction works up to a maximum distance of approximately 100m from the works, as no impacts would be anticipated beyond these distances.

10.3.12. The study area for the operational phase consists of an area within 600m of the Proposed Development and the existing A460 route to be bypassed, plus the area within 50m of all surrounding existing roads that are predicted to be subject to a change in traffic noise level as a result of the Proposed Development of:

- 1.0dB or more in the short-term (DM OY to DS OY); or
- 3.0dB or more in the long-term (DM OY to DS 15 years after Proposed Development opening), subject to a minimum change of 1.0dB between the DM and DS 15 years after Proposed Development opening.

10.3.13. The Applicant estimates a total of 2,272 residential buildings are located within the study area, of which 1,605 are within the 600m calculation area, and 667 are within 50m of affected routes outside the 600m calculation area.

Baseline conditions

10.3.14. The 600m area includes agricultural and built up areas including Featherstone, Shareshill and Hilton which include concentrations of residential and non-residential receptors. There are also PRoWs within the calculation area.

10.3.15. There are no parks or designated areas, no international or national designated areas or no quiet places in the study area

10.3.16. There are three Noise Important Areas in the calculation area:

- 7364: Wolverhampton Road (Highways England (HE));
- 11490: A460 (Staffordshire County Council (SCC)); and
- 7365: M54 (HE).

Figure 11.1 [AS-095] identifies the potentially sensitive receptors in the calculation area and the designated Noise Important Areas.

10.3.17. The Applicant notes there is an existing noise barrier at junction 1 of the M54 which is assumed to be retained with the Proposed Development, though some slight adjustment would be required.

10.3.18. In terms of mitigation measures the Applicant identifies the following noise barriers are proposed:

- 4.0m high reflective noise barrier on the west side of the mainline as it passes close to Dark Lane, which provides an insertion loss[43] of up to 9dB at the top floor of the properties.
- 1.5m high reflective noise barrier on the east side of the existing A460 north of M6 junction 11 in the vicinity of properties on Wolverhampton Road, which provides an insertion loss of up to 2dB at the top floor.
- 3.0m high reflective noise barrier on the west side of the mainline as it passes close to Brookfield Farm, which provides an insertion loss of up to 6dB at The Bungalow.
- 1.5m high reflective noise barrier on the north side of the M54 eastbound off slip on top of the existing earth bund and the proposed eastern extension of this earth bund incorporated into the design, continuing as a 3.0m high reflective noise barrier east of the proposed earth bund, extending to the new western dumbbell roundabout. This provides an insertion loss of up to 2dB at the top floor of receptors in Featherstone.

10.3.19. Thin surfacing is proposed in the Proposed Development with the exception of approaches to the Motorway junctions where high friction surfacing would be applied. The Applicant identifies the existing and expected thin surfacing on existing roads in the area primarily related to the motorways and A449.

10.3.20. A baseline noise survey was completed in March 2019 and used to validate the prediction model with noise levels, according to the Applicant, matching well the upper range of measured levels.

10.3.21. The Applicant has identified the future DM conditions at start of construction and opening year to give representative baselines.

Assessment of likely significant effects (LSE)

10.3.22. The Applicant states predicted monthly noise levels at each selected representative receptor during the construction phase are shown in Appendix 11.3 [AS-097]. Receptor locations are marked on Figure 11.1 [AS-095]. The maximum predicted construction noise level, and whether the construction levels are predicted to be at or above the LOAEL and/or SOAEL, is summarised in Table 11.12 in the ES [AS-085].

10.3.23. Of the 22 selected construction noise assessment locations the Applicant points out:

- During the daytime period in one or more months, 16 are predicted to experience construction noise levels which are at or above the LOAEL, of which six would also be at or above the SOAEL.

[43] A measure of the effectiveness of noise control devices such as silencers, enclosures and barriers. The insertion loss of a device is the difference, in dB, between the noise level with and without the device present

- For the evening/weekend period, six receptors are predicted to be at or above the LOAEL, of which three would also be at or above the SOAEL.
- For the night-time period, 14 receptors are predicted to be at or above the LOAEL, of which 11 would also be at or above the SOAEL.

10.3.24. The Applicant identified significant adverse construction noise effects at the closest receptors to the construction works in the vicinity of the tie in to the existing A460, the M54 junction 1 works, Dark Lane/Park Road, Hilton Lane and Brookfield Farm. However, it is noted that with the exception of the 24/7 works during the three week closure of the M54 at junction 1, all the other evening and night-time potentially significant effects relate to works which are anticipated to take only a small number of evenings/nights, considerably less than the duration criteria. At all of the other selected receptors the magnitude of the construction noise impacts is minor or negligible, and therefore do not constitute a significant effect.

10.3.25. The Applicant explains that once specific details of the construction works are available, the potential to reduce the magnitude of construction noise impacts, for example, through the use of localised site hoardings, would be determined through the requirements in the Construction Environmental Management Plan (CEMP).

10.3.26. The Applicant has identified the activities with the potential to generate vibration during the Proposed Development construction are works using vibratory rollers (earthworks and road construction (pavement)) installation and removal of sheet piles using a vibratory piling rig; and use of a rotary bored piling rig during bridge and retaining wall construction.

10.3.27. Overall, the Applicant concludes that there is the potential for combined significant effects from construction noise and vibration during the construction works at receptors located in close proximity to the works along the section of A460 which would be modified by the Proposed Development, at the eastern end of Dark Lane, along Hilton Lane and at Brookfield Farm.

10.3.28. In terms of construction traffic, which is compared to the 2024 DM scenario, the results indicate that the vast majority of identified potentially noise sensitive receptors are anticipated to experience no more than a negligible increase in traffic noise due to construction traffic. Five properties at the western end of Hilton Lane, are anticipated to experience a minor increase (maximum increase +1.2dB) during the busiest period of the works to build the new Hilton Lane bridge, and assuming the worst case option of all construction traffic using the western end of Hilton Lane to both access and exit the bridge works. Outside of the three-week closure of the M54 at junction 1, significant adverse effects due to night-time road closures are not anticipated.

10.3.29. The Applicant concludes that in terms of the three week period required at the M54 junction 1 for the bridge installation no significant traffic noise increases are anticipated on the signed diversion along the A449 and A5

due to the current relatively high volumes of traffic on these roads. Significant increases in traffic noise during the three-week closure are concentrated on much more minor roads with existing low traffic flows. On such roads absolute traffic flows are still low with the addition of re-routing traffic, however, the percentage increase in flow is large enough to result in significant increases in traffic noise levels.

10.3.30. Moving to operational effects the Applicant highlights that in the daytime in the opening year of 2024, 76% of residential buildings within the 600m calculation area are anticipated to experience a negligible (0.1 - 0.9dB) increase in traffic noise levels due to the Proposed Development. A further 3% are anticipated to experience a minor (1.0 - 2.9dB) increase in traffic noise levels. The overall trend in the study area, according to the Applicant, is for a slight increase in traffic flows, and therefore traffic noise, as the operation of the Proposed Development resolves the existing congestion on the A460, attracting traffic to the area. Four residential properties (0.2 - 0.4%) are anticipated to experience a moderate increase in traffic noise levels on the worst affected façade.

10.3.31. The Applicant identifies one of these properties is The Bungalow at Brookfield Farm, where the worst affected façades facing the Proposed Development are predicted to experience a moderate increase. Mitigation in the form of a 3.0m noise barrier is included in the design at this location which would reduce the magnitude of the impact from major to moderate. The five other properties which undergo a moderate increase are located to the west of the Proposed Development on Hilton Lane. The Applicant categorises this as a significant adverse effect at these properties.

10.3.32. The Applicant notes that mitigation is incorporated into the design of the Proposed Development in this location through placing the mainline in a cutting approximately 6m deep and through the reduction in speed limit on this section of Hilton Lane.

10.3.33. No change or a reduction in traffic noise levels is anticipated by the Applicant at 21% of residential buildings within the 600m calculation area. With the mitigation measures in place, the majority of properties in Featherstone would experience a negligible change in traffic noise. The proposed noise barriers along the M54 eastbound off slip ensure no properties in Featherstone would experience more than a negligible increase in traffic noise.

10.3.34. The Applicant highlights that with a noise barrier in place along the Proposed Development in proximity to Dark Lane the worst case increases in traffic noise at Dark Lane and Park Road would be reduced from major (without barrier) to minor (with barrier). The Applicant further notes that to the east of the Proposed Development the small number of individual properties off Hilton Lane, in the vicinity of Hilton Hall, would be anticipated to experience a minor or negligible increase in traffic noise in the opening year at the worst affected façade. The

majority of properties in Shareshill experience a negligible change in traffic noise due to the Proposed Development.

10.3.35. The Applicant has assessed that the Noise Important Area 11490 on the existing A460, which would be bypassed by the Proposed Development, would experience a reduction in traffic noise. Noise Important Area 7364 to the east of the A460, north of M6 junction 11, would, according to the Applicant, experience an increase in noise due to the increase in traffic on the A460 (north of junction 11). However, a noise barrier and thin surfacing system would be included as part of the Proposed Development to reduce the magnitude of the worst-case impact at nearby properties, which ranges from minor decrease to negligible increase. Noise Important Area 7365 on the M54 to the west of the Proposed Development would experience a negligible increase in the opening year due to the general trend to attract traffic to the Proposed Development.

10.3.36. At night the same general trend is observed as for the day, with the majority of receptors experiencing negligible, minor or no change in traffic noise levels.

10.3.37. A number of PRoWs are located in the study area, users of which would experience a range of impacts. The Applicant concludes that given the linear nature of PRoWs, the range of noise impacts along them, the absolute traffic noise levels, and the transient usage of a PRoW, a material change in the experience of using the PRoWs as a whole, which could affect people's health or quality of life, would not be anticipated and no significant adverse or beneficial effects on the users of PRoWs have been identified.

10.3.38. The Applicant identifies that in the long-term (2024 DM to 2039 DS) the same general pattern of traffic noise level change is observed as in the short-term. The majority of increases and decreases at residential properties in the long-term daytime are negligible or minor (not significant). At night all residential buildings are predicted to experience a negligible, minor or no change in traffic noise.

10.3.39. The Applicant states a preliminary consideration of properties which may qualify for noise insulation works under the Noise Insulation Regulations has identified one residential building as potentially qualifying. A complete Noise Insulation Regulations assessment would be completed at a later stage of the project when the detailed design of the Proposed Development is finalised and in accordance with the timescales set out in the Regulations.

10.3.40. The Applicant has assessed the results of the noise assessment against policy using the aims set out in paragraph 5.195 of the NSPNN. In terms of construction, the Applicant concludes that with the implementation of the mitigation measures outlined in the CEMP and in the context of sustainable development, given the temporary nature of the construction phase, the aims of the NPSNN would be met during the construction of the Proposed Development.

10.3.41. The Applicant anticipates an overall reduction in the number of buildings above the SOAEL due to the Proposed Development. The majority of the remaining residential buildings in the study area, according to the Applicant, would be between the LOAEL and the SOAEL during the daytime. At night all the remaining residential buildings would be between the LOAEL and the SOAEL, both with and without the Proposed Development, as the night-time LOAEL is set at a low level.

10.3.42. The Applicant anticipates the Proposed Development would reduce traffic noise levels from above the SOAEL (in either or both DM scenarios[44]) to below the SOAEL (in both DS scenarios) at 64 residential buildings. A total of 13 residential buildings are anticipated to experience an increase in traffic noise which takes them from below the SOAEL (in both DM scenarios) to above the SOAEL (in either or both DS scenarios). The Applicant notes that 131 residential buildings are above the SOAEL both with and without the Proposed Development in operation, therefore the exceedance of the SOAEL is not due to the Proposed Development. On this basis the Applicant considers that the first NPSNN aim to avoid exceedances of the SOAEL as a result of the Proposed Development, within the context of sustainable development, has been met. The Applicant further concludes that with the inclusion of the identified mitigation measures as detailed in Section 11.8 of the ES, within the context of sustainable development, at receptors between the LOAEL and the SOAEL, the Proposed Development meets the requirements of the second NPSNN aim.

10.3.43. The third NPSNN aim is to 'improve where possible'. The Applicant highlights that the large reduction in traffic on the existing A460 and the closure of Dark Lane as a through route, provide noise improvements in some areas. The Applicant contends that these improvements are not fully reflected within the DMRB analysis. This is because it takes a worst-case approach focussed on the worst affected façade of each property. The Applicant notes many of these properties experience a smaller reduction on other façades, at the side or rear, but are not all are classed as experiencing a significant beneficial effect in the DMRB analysis. On this basis, it is considered that the third NPSNN aim has been met.

10.4. REQUIREMENTS (R)

10.4.1. R4 requires a CEMP to be submitted and approved substantially in accordance with the Outline Environmental Management Plan (OEMP) [REP7-026] and which reflects the mitigation measures set out in the Register of Environmental Actions and Commitments (REAC). The Requirement includes adherence to working hours of 07:00–19:00 Mondays to Fridays and 08:00–16:00 on Saturday with no working on Sundays and bank or public holidays. There are exceptions identified, and one of which allows for 24 hours a day 7 days a week working to carry out the works at the M54 junction 1 for a period of up to 3 weeks whilst the motorway is closed.

[44] In both the Opening Year (2024) and the Future Year (2039).

10.5. THE POSITION OF THE INTERESTED PARTIES (IPs)

SSC

10.5.1. In its Local Impact Report (LIR) [REP1-097] SSC identifies paragraph 5.195 as the key policy in the NPSNN in relation to noise. They further note that the Proposed Development will impact on local residents during construction and operation. The Council states the ES identifies residential properties are concentrated in built up areas and along Dark Lane, Park Road, Hilton Lane and Brookfield Farm, and that non-residential sensitive receptors are also identified. The Council also notes the ES confirms there will be significant adverse construction noise and vibration effects for receptors in the vicinity of Dark Lane, along Hilton Lane (east and west of the Proposed Development) and at Brookfield Farm.

10.5.2. SSC understands that further consultation will take place at a later date regarding detailed plans for construction; SSC welcomes such and will seek to ensure that cumulative impacts of the construction of other local schemes are included, and that roads outside of the planning area are taken into account, including the A460 south of the Proposed Development into Westcroft, and north of the M6 towards Cheslyn Hay. SSC also invites Highways England (HE) to explore future opportunities to improve local amenity for local people, particularly pedestrian safety in the communities closest to the construction activity. For example, implementing a pedestrian crossing in Westcroft, a cycle path from the north and improving footpath conditions and signage in Featherstone.

10.5.3. In relation to Dark Lane specifically, SSC notes that noise during construction would be large in terms of change which would pose a significant adverse effect; however, this would be for a short/temporary period. Following completion and during operation the Council note the change in traffic noise level is not anticipated to adversely affect the existing noise levels. With regards to those properties in closer proximity to the link road SSC identified the proposed mitigation measures. SSC confirm, having consulted with its Environmental Health Team, that no reasons for objection are raised.

10.5.4. The Applicant and SSC have also completed and signed a Statement of Common Ground (SoCG) [REP7-028] in which, in relation to noise, all matters are agreed. The SoCG records that SSC is content with the baseline monitoring and that the ES appropriately assesses the effect of the Proposed Development on noise and vibration and that impacts would be managed through adherence to mitigation measures detailed in the OEMP. The SoCG further records that SSC agrees that the mitigation measures proposed are appropriate and that there is no objection to the proposed Development on noise grounds, having consulted SSC's Environmental Health officer.

10.5.5. The SoCG records changes to the Proposed Development as a result of the changes to the DMRB assessment and that these are reported in version 2 of the noise and vibration Chapter. It records the height of the

noise barrier at Dark Lane was increased from 3m to 4m, and the barrier at Brookfield Farm from 2.5m to 3m. These are agreed by SSC.

Hilton, Featherstone & Brinsford and Shareshill Parish Councils

10.5.6. In the Relevant Representation (RR) from the Featherstone and Shareshill representative [RR-025] it is commented that the section of the proposed link road that goes nearest to the residents of Dark Lane would be better placed further east. This would improve their living conditions and amenity. It is further stated that there are concerns about the noise pollution and air quality levels affecting the nearest properties in proximity which would only be a short distance from the link road. It is suggested that more woodland is needed along the perimeter of the link road between Hilton Lane rising up to junction 11 on the western side in order to mitigate the noise and visual effect from the link road upon the village of Shareshill.

10.5.7. Hilton Parish Council in its RR [RR-011] is concerned that the Proposed Development is very close to existing domestic dwellings which will result in noise, air and light pollution and vibration from the volume of traffic which will result in a loss of amenity.

10.5.8. The Applicant and the Parish Councils have signed and completed a SoCG [REP7-031] which identifies the areas where the parties agree and disagree. In this it is recorded that the Councils' support the need for the Proposed Development but disagree with the chosen route. In relation to noise the proximity of the road to Dark Lane is raised and whether this could be moved further east given concerns about noise and air quality. Although the progression of the route and to the decision on the preferred route is understood the Councils confirm this is not their preferred route. This is therefore recorded as not agreed between the parties.

Public Health England

10.5.9. Public Health England provided a RR [RR-009] at the start of the Examination in which it stated *"… on the basis of the documentation as reviewed, notwithstanding our comments, we can confirm that we have chosen NOT to register an interest with the Planning Inspectorate on this occasion. Please do not hesitate to contact us if you have any questions or concerns"*.

10.5.10. With regard to noise specifically it stated: "*We acknowledge that whilst the Environmental Statement (ES) has identified some residual public health impacts with respect to noise, a detailed explanation is provided as to why further mitigation was not deemed feasible. We welcome the detailed discussions on how the Scheme design has aimed to minimise noise exposure, how it achieves the three aims in the Noise Policy Statement for England (Chapter 11 para. 11.9.62 - 11.9.83), and the focus on noise mitigation at source (para. 11.8.1). We note that the Applicant has chosen not to present a quantification of the health effects*

attributable to noise in the Population and Human Health chapter. We are satisfied that the wider determinants of health have been adequately assessed, using a suitable methodology."

Rt Hon Gavin Williamson CBE MP

10.5.11. Rt Hon Gavin Williamson MP provided a RR [RR-039] and Written Representation (WR) [REP1-070] in which he broadly welcomed the Proposed Development but in which he outlined concerns from residents in his constituency and which included matters related to noise. These were expressed in general terms and stated account should be taken of residents' and the Parish Councils' concerns about the proximity of the road to dwellings, and to ensure information was provided on noise pollution which will have a negative effect on properties in the Parishes of Featherstone, Shareshill and Hilton. He was also aware concerns had been expressed about the effectiveness of proposed noise mitigation measures.

Allow Limited (Allow)

10.5.12. Allow provided a WR at Deadline (D) 1 [REP1-091] in which, amongst other matters, concerns relating to the noise impact of the Proposed Development were raised. Allow was concerned that additional sound mitigation should be provided, including sound boarding along the roadside, for the protection of The Shrubbery, which would be retained by Allow, and the surrounding cottages and Hall. Allow noted that the Proposed Development would cause the felling of a further approximately 0.337 hectares (ha) of established woodland on the eastern side of the road. This would significantly reducing the buffer of woodland which may have otherwise served to reduce the impact of noise and light pollution on the adjoining residences and pools. No corresponding sound mitigation appears to have been proposed to address this, according to Allow. Allow further notes that The Shrubbery would only be 250m from the proposed link road, The Bungalow and Gardeners Cottage only 310m, and 1 & 2 North Lodge would only be 410m away from the link road and that, in its view, there therefore needs to be noise barrier screening in order to prevent noise and disruption once the road is in use and also during the construction phase.

10.5.13. Allow and the Applicant signed a completed SoCG [REP8-011] which records the areas of agreement and disagreement between them. In relation to noise it is recorded that Allow commented there would be an increase in the area of woodland at Lower Pool felled and that noise attenuation measures are requested to address the impact upon the residences at Hilton Park due to the increased felling of the Shrubbery. In response, it is recorded the Applicant pointed out low noise surfacing was proposed along the length of the Proposed Development. The Applicant further noted that to the west of The Shrubbery (residential unit) the road is in a cutting which provides an effective barrier to minimise traffic noise. The Applicant also pointed out that the benefits of trees in noise reduction are limited and an additional barrier above the cutting would be very limited. The Applicant refers to its noise assessment which predicts

a minor (1 to less than 3dB) increase in traffic noise on the western and southern side of The Shrubbery and a negligible (less than 1dB) change on the northern and eastern sides of the property. The Applicant therefore states a significant adverse operational traffic noise effect is not anticipated at the property. Furthermore, the Applicant responded to say based on the anticipated noise impact, the mitigation included in the Proposed Development and the limited benefit of an additional barrier at the top of the cutting, no further mitigation measures are proposed in this location.

10.5.14. The SoCG records that the parties agree these comments and responses.

D Williams

10.5.15. Mr Williams fully engaged with the Examination primarily on matters related to Traffic and Transportation. These matters are addressed in Chapter 12 below. His submissions are set out in full in his representations [RR-032], [REP2-014], [REP5-013], [REP7-040] and [REP9-007], and the following represents the ExA's general understanding of this in relation to noise issues which principally relate to the corridor of the A449 between M54 junction 2 and the A5 at Gailey, on which Mr Williams home is located.

10.5.16. In his initial representations Mr Williams points out that the Transport Assessment Report (TAR) advocates that on the 'A449 Stafford Road – South of Standeford' vehicle derived nuisance noise will drop by 0.7dB in the long term to 69.5dB during the daytime. Mr Williams further asserts it is reasonable to assume that sound pollution levels from traffic on the A449 will be fractionally less harmful if the link road being proposed is built. Nonetheless that assumption begs the question what more can be done to increase the effectiveness of the proposed link road to get it from 70dB plus to sub 55dB? In his view, if the A449 settlements are left with a reduced level that is still greater than 70dB, the Proposed Development will have failed to achieve two of its four primary objectives.

10.5.17. Mr Williams comments that the vast majority of vehicles using the A449 do so as it is the signed route between the M54 eastbound and the M6 northbound (and M6 southbound to M54 westbound). Mr Williams is of the view the Proposed Development has the potential to significantly remedy the existing and future levels of acoustic harm experienced by sensitive A449 residential receptors by putting the right traffic on the right roads to improve residential wellbeing. It could do this by separating local community traffic from long distance and business traffic and reducing volumes of through traffic. Fundamentally, Mr Williams questions the Applicant's traffic model and hence its associated inferred noise assessment. He also queries the Applicant's understanding of the sensitive receptors on the A449.

10.5.18. Mr Williams states his point of dispute is why is the A449 and its communities not worthy of the same degree of relief as the A460 communities just because they are perceived to be spatially distant from the proposed operational development? The stated purpose of the

Proposed Development is not to create a Shareshill bypass; it is to create a motorway link road to transition from the ad hoc linkages that have formed in the absence of a dedicated link road over the past four decades. Mr Williams is of the view the 72-73dB $L_{A10\ 18hour}$ is significantly harmful to the 50 no. residential receptors that reside within the 600m stretch of the A449 to the immediate north of J2-M54 and that the 72-73dB $L_{A10\ 18hour}$ levels could be reduced significantly if the Proposed Development were to do more to transfer A449 vehicular usage onto the proposed link road.

10.6. PLANNING ISSUES

10.6.1. Chapter 11 of the ES relating to noise and vibration was updated following changes to the Proposed Development. The changes were accepted into the Examination [PD-015] along with the updated ES chapter [AS-085] amongst a number of other supporting documents. One of the more significant changes involved changes to the construction method and bridge design at junction 1 of the M54. This would involve the closure of the M54 for a period up to three weeks but reduces the overall construction and necessary traffic management for the Proposed Development. This would result in a significant change to the assessment of effects in respect of construction effects and was fully addressed in the updated noise and vibration Chapter.

10.6.2. The issues explored during the Examination sought to address the noise and vibration effects during construction including those associated with the changes to the M54 junction 1 and the noise and vibration effects during operation. In particular the effects in respect of specific receptors or locations were raised by a number of IPs and which included:

- properties at the end of Dark Lane, for construction and operational effects;
- properties on Hilton Lane related to the construction of Hilton Lane Bridge and following closure of Dark Lane;
- Brookfield Farm, and the construction effects related to the mainline and the accommodation bridge;
- The Shrubbery and other dwellings in the vicinity in terms of construction and operational effects; and
- properties located off junction 2 of the M54 on the A449.

10.7. ExA CONSIDERATIONS

General approach and analysis

10.7.1. In relation to noise and vibration SSC is content with the baseline monitoring and that the ES appropriately assesses the effect of the Proposed Development on noise and vibration. The Council confirms that there are no objections from its Environmental Health department. There are no significant or technical analysis submitted by any IP that provides for a rational or robust challenge to the figures and data put forward by the Applicant. The noise modelling is verified by the baseline monitoring and demonstrates an appropriate and reasonable degree of confidence in respect of the outputs from the model.

10.7.2. The Parish Councils raise concerns that the line of the Proposed Development is not their preferred route given its proximity and potential noise and air quality effects on residents in Dark Lane and Park Road. However, they give no analysis or scientific assessment of the potential effect of the Proposed Development in this regard and simply assert that they would wish to have such effects minimised. The Applicant has undertaken a detailed noise assessment that demonstrates the effects on sensitive receptors, and this provides for a reasonable basis to arrive at such conclusions. The final conclusion on the acceptability of the route of the Proposed Development will be undertaken in the conclusions chapter as this is based on a number of factors including noise, but also including other matters such as cultural heritage and biodiversity issues.

10.7.3. Mr Williams has raised concerns with regard to the extent of the TAR submitted by the Applicant and, as he expresses it, therefore the associated noise assessment. Mr Williams accepts that the Proposed Development will not increase the noise impact on properties along the A449 but is concerned that the Proposed Development did not take the opportunity to address the pre-existing situation in a more fundamental way, including consideration of de-trunking the A449. These matters are addressed in Chapter 12 on Traffic and Transport. In effect our conclusion in that respect is that the Proposed Development meets its objectives although this may not be as bold as Mr Williams would have wanted. There would be reduced levels of traffic along the A449 and there would be no increase in effect as a result of the Proposed Development. Paragraph 4.31 of the NPSNN advises that a good design should meet the principal objectives of the scheme by eliminating or substantially mitigating the identified problems by improving operational conditions and simultaneously minimising adverse impacts. It further advises that it should also mitigate any existing adverse impacts wherever possible. The objectives of the Proposed Development are to keep the right traffic on the right roads, address issues on the A460 and reduce traffic on the A449; the Proposed Development achieves these. The concerns expressed by Mr Williams are outside the scope of the Proposed Development. It is not part of the Examination to assess the strategic road network and the issue of de-trunking is a matter for consideration at another time, as concluded in Chapter 12 below. It is our view that the Proposed Development therefore is in line with the advice in paragraph 4.31.

10.7.4. The Applicant has sought to set, by reference to the existing ambient noise levels and with appropriate reference to the WHO CNG and NNG guidelines, SOAEL and LOAEL related to both construction and operational noise. Similarly, criteria for establishing the effect of vibration levels are set related to annoyance levels and potential damage effects.

10.7.5. On the basis of the above considerations and the matters raised by IPs, we conclude that the baseline monitoring and general approach to the assessment of effects is generally acceptable, and that there is no robust or technical evidence to conclude that these are inappropriate.

Construction Effects

10.7.6. The implementation of the Proposed Development would result in the construction of a major piece of highway infrastructure that would involve site clearance, earthworks, retaining wall construction, bridge construction, bridge demolition and road construction (pavement) works. These activities along with the associated construction traffic would have an effect on sensitive receptors in the locality. Temporary construction vibration effects are associated with earthworks and road construction (pavement) works using vibratory rollers as well as piling at the new bridges and at retaining walls.

10.7.7. In respect of noise effects the Applicant sets out the maximum predicted construction noise levels and the relationship with the LOAEL and SOAEL; these are set out in Table 11. 2 of the ES [AS-085]. These have not been challenged by any party. Of the 22 selected assessment locations 16 are predicted to experience noise levels above the LOAEL, of which six would be at or above the SOAEL during the day time and 14 receptors are predicted to be at or above the LOAEL, 11 of which would be above the SOAEL in the night time period.

10.7.8. The following considers those areas where issues were specifically raised during the Examination:

M54 junction 1

10.7.9. The proposed construction method around the M54 junction 1 includes 24/7 operation for a period of up to three weeks. We accept that there would be significant adverse effects resultant from these activities with the Applicant identifying four representative locations in and around Featherstone where the noise levels would be at or above the SOAEL level for either the day-time or night-time levels, and by as much as 4dB above the level. This is primarily related to preparatory works and actual works in and around the three-week period. There are a further five locations including around Dark Lane, Park Road and Hilton Lane where levels would be above the SOAEL due to the proximity to the borrow pit and haul road when activity for the junction works at junction 1 would be going on and the borrow pit will be operational 24/7 in this period.

Dark Lane

10.7.10. At the receptor in Dark Lane and that at Park Road we agree that daytime levels would be at or just above the SOAEL as anticipated by the Applicant, primarily related to earth works associated with the Proposed Development. Evening and night time levels are anticipated above the SOAEL primarily related to the junction 1 works and are limited to the three-week period of the 24/7 operations given the close proximity to the borrow pit and haul road.

Hilton Lane

10.7.11. In and around Hilton Lane four receptors are identified. The Applicant anticipates day time levels at or above the SOAEL due to earth works associated with the realigned Hilton Lane and new bridge and works to

the live carriageway for the tie-in of Hilton Lane, we have no evidence to suggest this would not be the case and accept this conclusion. It is suggested this will only take a small number of evenings/nights. These receptors are significantly affected by the 24/7 operations for the three week period of the junction 1 works given their close proximity to the haul road and borrow pit.

The Shrubbery

10.7.12. The Shrubbery is located close to Dark Lane and Hilton Lane receptors. The construction effects are generally likely to be of the same order. These are not specifically highlighted by the Applicant in its assessment, but the noise data and mapping would support the position that likely significant effects would be of the same order as those related to the receptors identified in Dark Lane and Hilton Lane.

Brookfield Farm

10.7.13. At Brookfield Farm the anticipated levels are identified as at or above the SOAEL during various stages of the proposed works. Given that these are related to vegetation clearance, earth works for the mainline and accommodation bridge and access track and surfacing of the access track in close proximity to this receptor, this appears reasonable.

Construction Traffic

10.7.14. In terms of construction traffic effects, the Applicant notes that the same noise model for operational effects has been used. The Applicant identifies additional traffic associated with the construction phase and re-routing of traffic associated with the three-week closure associated with the junction 1 works as the main impacts. In our view the results indicate that the vast majority of identified potentially noise sensitive receptors are likely to experience no more than a negligible increase in traffic noise due to construction traffic. Five properties at the western end of Hilton Lane, are anticipated to experience a minor increase (maximum increase +1.2dB) during the busiest period of the works in this area to build the new Hilton Lane bridge, and assuming the worst case option of all construction traffic using the western end of Hilton Lane to both access and exit the bridge works. Outside of the three week closure of the M54 at junction 1, no night-time road closures are currently anticipated with the exception of short periods to set up traffic management and safety barriers, tie in the Proposed Development to the existing road network, the demolition of existing bridge decks at M6 junction 11 and installation of the new bridge decks at the junction.

10.7.15. Significant effects are anticipated during the three-week closure of the M54 at various locations including Featherstone, Calfs Heath, Shareshill, Hilton Lane, the A449 on the northern edge of Wolverhampton and the southern end of Underhill Lane. Moderate to major increases in traffic are also anticipated on the B4484 in Wolverhampton and on part of the A464 northwest of Wolverhampton. No significant traffic noise increases are anticipated on the signed diversion along the A449 and A5 due to the current relatively high volumes of traffic on these roads. Significant

increases in traffic noise during the three-week closure of the M54 at junction 1 are concentrated on much more minor roads with existing low traffic flows. We have been provided no evidence that would lead to a different conclusion on these matters.

Vibration

10.7.16. In terms of vibration effects a similar range of locations has been considered. The Applicant has identified that for humans construction vibration is likely to become perceptible at a vibration level of Peak Particle Velocity (PPV) of 0.3 (millimetre per second) (mms^{-1}) and this is set as the LOAEL. The SOAEL is set at $1mms^{-1}$ PPV, being the level at which construction vibration can be tolerated with prior warning. We have no evidence before us to suggest that these thresholds are inappropriate.

10.7.17. The Applicant predicts that approximately 58 residential buildings are located within 50m of works using a large vibratory roller – these being located along the section of A460 which is modified by the Proposed Development, at the eastern end of Dark Lane, along Hilton Lane and at Brookfield Farm. The Applicant further predicts that approximately 34 residential buildings are located within 20m of works using a medium sized twin drum vibratory roller – these being located along the section of A460 which is modified by the Proposed Development and at Brookfield Farm. The Applicant also identifies approximately two residential buildings located within 20m of works using a medium sized towed roller – these being located at the section of A460 which is modified by the Proposed Development and at Brookfield Farm. All of these receptors are also within 50m of the works using a larger vibratory roller. The magnitude of the potential vibration annoyance impact is moderate at the majority of these identified receptors. Major vibration annoyance impacts are possible at a total of two properties located at the tie-in of the existing A460 to the Proposed Development in Featherstone. We agree that potential significant construction vibration annoyance effects are, therefore, likely at approximately 58 residential buildings, as identified by the Applicant.

10.7.18. Vibration impacts due to rotary bored piling at new bridges and retaining walls are not anticipated by the Applicant to result in significant adverse effects. Piling using a vibratory piling rig would be required to install and/or remove sheet piles during construction of the Shareshill bridge (over Watercourse 5) and to demolish the eastern structure on the existing M54 junction 1 bridge. Given the distance to sensitive receptors vibration impacts due to vibratory piling are not likely to result in significant adverse effects.

General construction effects

10.7.19. In terms of general construction works the Applicant has, it says, adopted a conservative approach and assumed that all the effects identified above the SOAEL will be in excess of the duration criteria and therefore all result in significant adverse construction noise effects. This is, in our view, a reasonable approach. However, the Applicant does

conclude that with the exception of the three-week period for the construction of the M54 junction 1 all the other evening and night time potentially significant effects are of relatively short duration. Full details of construction are as yet not known as the contractor has not been appointed. R4 requires the submission of a CEMP in line with the OEMP and which includes the REAC. There are various commitments within these documents around further noise monitoring, the use of temporary noise barriers and the engagement of the community through a community relations manager. The CEMP would include relevant noise criteria and a range of Best Practical Means to mitigate noise impacts. This includes working hours temporary, temporary re-housing, review of construction programme, provision of acoustic enclosures and fencing etc. These have not been factored into the assessment and the Applicant notes that BS5228[45] advises that such barriers can provide a reduction of 5dB -10 dB for plant screening.

10.7.20. Overall therefore, there is the potential for combined significant effects from construction noise and vibration during the construction works at receptors located in close proximity to the works along the section of A460 which would be modified by the Proposed Development, at the eastern end of Dark Lane, along Hilton Lane and at Brookfield Farm.

10.7.21. We accept that there will be significant adverse effects on various receptors in close proximity to the works associated with the Proposed Development. In many instances these will be for short periods of time with the exception of the relatively intense period around the three-week closure and works associated with the junction 1 works on the M54. The CEMP provides for appropriate means to mitigate and reduce as far as possible the adverse effects and requires effective communication and liaison with the local community. Given the nature and scale of the proposed works, the levels of effects, whilst significant, have been minimised as far as possible and measures put in place to seek to mitigate the effects. These are secured through R4 and the proposed CEMP.

Operational effects

10.7.22. The Applicant divides these effects into short term and long-term changes. The short-term change being the change between the DS and DM scenarios for the year of opening 2024. With the long-term changes being the difference between the DM scenario at 2024 and the traffic noise levels with the Proposed Development in operation in 2039. The assessment is based on the number of sensitive receptors affected within various noise level bands.

10.7.23. Table 11.13 in the ES [AS-085] summarises the short term change in predicted traffic noise levels in 2024 between the DM and the DS.

[45] BS 5228:2009+A1:2014 Code of Practice for Noise and Vibration Control on Construction and Open Sites

10.7.24. In the day time in the year of opening approximately 76% of buildings within the calculation area will experience a negligible increase in traffic noise as a result of the overall trend in the study area for a slight increase in traffic flows as congestion on the A460 is resolved.

10.7.25. There are a number of properties where a moderate increase in traffic noise is predicted by the Applicant including at the Bungalow at Brookfield Farm where a noise barrier would reduce the effect from a major impact. Five other properties, located to the west of the Proposed Development on Hilton Lane, would undergo a moderate increase. These impacts are identified by the Applicant as significant adverse effects. Of the five properties in this area predicted to experience a significant adverse effect, at three the effect would be due to the increase in traffic flow on Hilton Lane, at one property the increase would be due to noise from the Proposed Development, and at the final property the increase would be due to a combination of the two. We agree with these assessments. Mitigation is incorporated into the design in this location through locating the mainline in a cutting approximately 6m deep and the reduction in speed limit from 60 miles per hour (mph) to 30mph on this section of Hilton Lane.

10.7.26. The Applicant predicts that with a noise barrier in place along the Proposed Development in proximity to Dark Lane the worst case increases in traffic noise at Dark Lane and Park Road would be reduced from major (without barrier) to minor (with barrier), we have nothing before us to suggest that this is not correct. The Applicant also draws attention to façades which face directly onto Dark Lane which would experience a reduction in traffic noise due to the large reduction in traffic on Dark Lane as it would become a cul-de-sac with the Proposed Development in place.

10.7.27. To the east of the Proposed Development a small number of individual properties off Hilton Lane, in the vicinity of Hilton Hall, would likely experience a minor or negligible increase in traffic noise in the opening year at the worst affected façade.

10.7.28. The Applicant has also considered the effect on Noise Important Areas and concluded that the Noise Important Area 11490 on the existing A460, which would be bypassed by the Proposed Development, would experience a reduction in traffic noise. Noise Important Area 7364 to the east of the A460, north of M6 junction 11, would experience an increase due to the increase in traffic on the A460 (north of junction 11). However, a noise barrier and thin surfacing system are included as part of the Proposed Development to reduce the magnitude of the worst-case impact at nearby properties, which ranges from minor decrease to negligible increase. Noise Important Area 7365 on the M54 to the west of the application site would experience a negligible increase in the opening year due to the general trend to attract traffic to the Proposed Development when operational.

10.7.29. The Applicant predicts that at night the same general trend would be observed as for the day, with the majority of receptors experiencing negligible, minor or no change in traffic noise levels.

10.7.30. There are also a number of PRoWs in the study area that the Applicant has considered. Saredon 8 footpath is relocated slightly to follow the edge of the Proposed Development at the approach to M6 junction 11; due to its proximity to the mainline of the Proposed Development at the base of the embankment it generally experiences a moderate increase in traffic noise. Similarly, Shareshill 3 footpath and 4 footpath run roughly parallel to the Proposed Development to the east and both experience a range of impacts from minor to major increases at the northern end close to the Proposed Development.

10.7.31. The Applicant describes that Shareshill 1 bridleway and 5 footpath both cross the route of the Proposed Development and therefore would be relocated along the Brookfield Farm accommodation bridge and the realigned Hilton Lane respectively. The magnitude of the change in traffic noise along Shareshill 1 bridleway is predicted by the Applicant to range from major decrease, close to the existing A460, to major increase where it would cross the Proposed Development. The range of impact along Shareshill 5 footpath predicted by the Applicant is from negligible increase at the eastern end to major increase where it would cross the Proposed Development. There is nothing to suggest that these predictions are not reasonable.

10.7.32. Users of the other PRoWs in the study are predicted to experience a negligible to minor effect. Given the linear nature of PRoWs, the range of noise impacts along them, the absolute traffic noise levels, and the transient usage of a PRoW, we conclude that a material change in the experience of using the PRoWs as a whole, which could affect people's health or quality of life, is not anticipated and no significant adverse or beneficial effects on PRoWs have been identified.

10.7.33. Moving to long term effects, Table 11.14 in the ES [AS-085] summarises the long term change in predicted traffic level noise. The Applicant predicts that the same general pattern of traffic noise level change is observed in the long term as in the short-term as described above. The majority of increases and decreases at residential properties in the long-term daytime are negligible or minor (not significant). Three moderate decreases in traffic noise are located on the existing A460 bypassed by the Proposed Development. At night, all residential buildings are predicted by the Applicant to experience a negligible, minor or no change in traffic noise.

10.7.34. In summary, in relation to operational effects, five residential buildings on Hilton Lane west of the Proposed Development and one residential building at Brookfield Farm are identified as experiencing significant adverse effects from operational traffic. Thirty-seven residential buildings close to the existing A460 bypassed by the Proposed Development and 11 residential properties along Old Stafford Road (outside the calculation area) are identified as experiencing a significant beneficial effect. The

effect on the other properties within the calculation area experience effects which are identified as not significant. We agree with these conclusions.

10.7.35. The NPSNN advises the SoS should not grant development consent unless the proposals meet with three aims which are, broadly, a) to avoid, b) to mitigate and minimise and c) contribute to improvements, to health and quality of life. There is the potential for significant temporary adverse noise and vibration effects to remain. Similarly, there are significant adverse effects that are predicted to remain for a small number of properties from operational activity.

10.7.36. With the CEMP secured through R4 in line with the OEMP and the measures outlined in the REAC, mitigation measures are in place for constructional activities. Once the main contractor is in place the use of Best Practical Means and the various available measures including temporary hoardings and noise barriers and working practices could assist in reducing such effects further. The appointment of a community relations manager and effective consultation with the local community would assist in seeking to further mitigate and inform the local community of activities as they are proposed.

10.7.37. The Proposed Development also incorporates a number of embedded measures and design elements which seek to mitigate the effects including the provision of large sections of the mainline of the carriageway in cutting, the use of a low noise surface material, lower traffic speeds along Hilton Lane, etc. These measures, associated with the provision of noise barriers at Dark Lane, Brookfield Farm, the A460 at junction 11 of the M6 and around the north side of the M54, would assist in mitigating and reducing the effects as much as practical.

10.7.38. In this regard the Proposed Development would not totally avoid significant adverse impacts on health and quality of life from noise as a result of the new development. There would be some remaining significant effects, but these would primarily relate to construction activity and would mostly be for short durations. The mitigation measures proposed would reduce these effects. The Proposed Development would therefore mitigate and minimise other adverse impacts on health and quality of life from noise from the new development and would contribute to improvements to health and quality of life through the effective management and control of noise, where possible. We therefore conclude the Proposed Development would therefore overall meet the aims of paragraph 5.195 of the NPSNN, would be in line with the NPSE and would not conflict with Policy EQ9 in the Core Strategy.

10.8. CONCLUSIONS

10.8.1. Taking all the relevant documents and policies into account we conclude as follows:

- The Applicant's approach to noise and vibration assessment is generally acceptable and in line with the NPSNN.
- The Proposed Development would result in construction and operational noise and vibration effects that would result in significant adverse environmental effects on a number of sensitive receptors.
- The proposed embedded and other mitigation secured through R4 and the CEMP would reduce and mitigate further some of the significant effects.
- Given the nature and scale of the Proposed Development, the short term nature of the significant effects and the mitigation, overall, the effects of noise and vibration are minimised.
- The Proposed Development contributes to improvements to a number of receptors and there is further potential through the secured mitigation measures to improve this situation.
- Overall, the significant affects above SOAEL are minimised and effective mitigation is proposed such that the Proposed Development meets the aims and aspirations of the NPSNN in respect of the aims and objectives of the Proposed Development.

10.8.2. We consider that the increase in noise and vibration levels has been considered, minimised and mitigated as far as possible. On this basis whilst there are some outstanding significant adverse effects on a small number of properties, given the limited duration, this should be afforded moderate negative weight in the overall planning balance.

11. FINDINGS AND CONCLUSIONS IN RELATION TO SOCIO-ECONOMIC EFFECTS

11.1. INTRODUCTION

11.1.1. This chapter considers the economic and social benefits of the Proposed Development, including the effects on local businesses and communities.

11.2. POLICY

National Policy Statement for National Networks

11.2.1. The National Policy Statement for National Networks (the NPSNN) promotes the delivery of environmental and social benefits as part of new schemes. It requires any adverse impacts to be mitigated in line with the principles set out in the Framework and the Government's planning guidance (paragraph 3.3).

11.2.2. It also states *"… severance can be a problem in some locations. Where appropriate applicants should seek to deliver improvements that reduce community severance and improve accessibility"* (paragraph 3.22).

11.2.3. Paragraphs 4.3 and 4.4 of the NPSNN explain that the potential benefits of any proposed development, including the facilitation of economic development, will be taken into account as part of the overall balance. It advises that environmental, safety, social and economic benefits and adverse impacts, should be considered at national, regional and local levels.

11.2.4. Paragraph 5.168 of the NPSNN indicates applicants should take into account the economic and other benefits of the best and most versatile (BMV) agricultural land. Where significant development of agricultural land is demonstrated to be necessary, applicants should seek to use areas of poorer quality land in preference to that of a higher quality.

National Planning Policy Framework

11.2.5. The National Planning Policy Framework (the Framework) requires significant weight to be afforded to the need *"… to support economic growth and productivity, taking into account both local business needs and wider opportunities for development"* (paragraph 80).

11.2.6. Paragraph 204 of the Framework makes clear that policies should safeguard mineral resources by defining Mineral Safeguarding Areas. It indicates that policies should ensure that known locations of specific minerals resources of local and national importance are not sterilised by non-mineral development. This paragraph also encourages the prior extraction of minerals where practical and environmentally feasible, if it is necessary for non-mineral development to take place.

Local Plan

11.2.7. The South Staffordshire Local Plan Core Strategy (the Core Strategy) Core Policy 7 supports measures to sustain and develop the local economy of South Staffordshire, whilst Core Policy 9 supports the social and economic needs of rural communities within the District.

11.2.8. Core Policy 13 of the Core Strategy supports initiatives that promote the safety of people, both in their own homes and in the community. In particular, the design of all developments must take account of the need to reduce the opportunities for crime and fear of crime. Policy CS1 advises on ways this may be achieved.

11.2.9. Appendix 2 to the Minerals Local Plan for Staffordshire (the Minerals Local Plan) lists mineral infrastructure sites in Staffordshire. Included within this list is Hilton Park for sand and gravel which has a cessation date of 2042.

11.2.10. Within the Policies and Proposals Map for the Minerals Local Plan the majority of the Application site is shown as a "Mineral Safeguarding Areas (All minerals except coal & fireclays)". Under Policy 3 such an area will be safeguarded against needless sterilisation by non-mineral development. Within such an area non-mineral development should not be permitted unless it has been demonstrated that the development is:

- temporary and does not permanently sterilise the mineral; or
- the material planning benefits would outweigh the benefits of the underlying or adjacent mineral; or
- it is not practical or environmentally acceptable in the foreseeable future to extract the mineral.

11.2.11. Where important minerals exist in a Mineral Safeguarding Area and the above criteria have not been met, the mineral should be extracted prior to the development being implemented unless it falls within a list of exemptions; the Proposed Development does not fall within that list.

11.3. THE CASE FOR THE APPLICANT

Introduction

11.3.1. The most relevant elements of the application in relation to socio-economic effects are:

- Chapter 3 – Assessment of Alternatives [APP-042];
- Chapter 9 – Geology and Soils [APP-048];
- Chapter 10 – Material Assets and Waste [APP-049]
- Chapter 12 – Population and Human Health [APP-051]; and
- The Case for the Scheme and National Policy Statement Accordance Table [AS-037].

11.3.2. Included in the objectives for the Proposed Development as identified in the Case for the Scheme [AS-037] is one *to "… support local economic growth for Telford, Shrewsbury, Wolverhampton, Cannock and Tamworth*

by improving traffic flow and enhancing access to east-west and north-south routes".

The effect on local populations

11.3.3. The Applicant notes that no land would be required from residential properties nor would any residential properties be demolished.

11.3.4. The closure of Dark Lane north of the last property would mean that those traveling to and from the dwellings in Dark Lane and Park Road would be required to travel further if they were seeking to go north or east. However, the Applicant maintains that as a result of less traffic on Cannock Road there would be an improved access to the wider highways network so that the effects would be slightly beneficial.

11.3.5. As well as businesses at Tower Hill Farm there are three dwellings which would have their access closed and a new access created. Further, around six properties on Cannock Road in Featherstone would have their driveways altered to tie into the new road alignments in that area. The Applicant acknowledges that this would be a short term adverse effect during construction but neutral once operational.

11.3.6. No community land would be affected, the Applicant asserts, but during construction there would be increases in traffic to and from the construction compounds, but these adverse effects would be minor, particularly in relation to severance.

11.3.7. During operation, the Applicant notes that there would be a reduction in severance for the communities on the two sides of Cannock Road, and for a lesser extent at Laney Green to the north of M6 junction 11. Additionally, by providing a better link between major settlements the Proposed Development would improve connectivity to community facilities in Cheslyn Hay, Cannock and Wolverhampton.

Economic Effects

11.3.8. The Applicant has set out what it sees as the economic aspects of the assessment. These include the cost to construct the Proposed Development along with tax revenues generated once the Proposed Development becomes operational. The economic assessment also takes into consideration the environmental aspects of the Proposed Development and seeks to quantify them by monetising them in a positive or negative manner. These are set out in Table 6.1 of Chapter 12 of the Environmental Statement (ES) [APP-051].

11.3.9. The main economic benefits of the Proposed Development are seen by the Applicant relate to transport economic efficacy improvements, road safety improvements and indirect taxation revenue increase. It considers that there would be environmental benefits, principally in air quality terms, but acknowledges that there would be 'costs' as a result of increased traffic noise and greenhouse gases. The main taxation benefit relates to fuel duty as a result of increased mileage and thus use of fuel.

11.3.10. In terms of non-monetised benefits the Applicant considers the main benefit to be reliability based on a reduction in congestion. It also acknowledges wider economic benefits in the surrounding area, but as these are less certain are not included in the monetised cost/benefit table.

11.3.11. The Applicant has identified four allocations for development in the Local Plan in the vicinity which may be affected by the Proposed Development. They are:

- i54 South Staffordshire – a 130 hectare (ha) site to the south west of M54 junction 2;
- Royal Ordnance Factory Featherstone (ROF Featherstone) – a 36ha site to the west of Featherstone village and north of the M54 between junctions 1 and 2;
- Hilton Cross Business Park – a 18ha site to the southwest of M54 junction 1 (a very small part of this site is included in the application site); and
- Four Ashes – a 72ha site located to the east of the A449, approximately 3.5 kilometres (km) from M6 junction 11.

11.3.12. The Applicant also refers to the West Midlands Interchange scheme that was granted a Development Consent Order (DCO) in May 2020.

Existing businesses in the Application site and its immediate vicinity

11.3.13. The Applicant notes that there are a number of businesses or allocated land within the application site. These are set out in paragraph 12.6.11 of the ES [APP-051] and include:

- Moseley Old Hall, a National Trust property, south of the M54;
- Hilton Cross Business Park allocated as a strategic development site by SSC (Ref 12.19) located directly southwest of the M54 junction 1;
- Dave's American Motorhome Service, northeast of M54 junction 1, at Tower House Farm;
- Fishing pond, at Tower House Farm;
- Fishing ponds, at Lower Pool and the ponds west of Hilton Hall;
- Car boot sales held at a number of locations in proximity to the Proposed Development including two locations within the application site; and
- Fishing ponds southeast of Brookfield Farm.

11.3.14. The Applicant acknowledges there are a number of other businesses within the vicinity, including:

- Shops and similar businesses in Featherstone;
- A coach hire business on Hilton Lane;
- Hilton Hall offices is used as such and as a wedding venue;
- Various businesses at Brookfield Farm; and
- M6 Diesel filling station.

11.3.15. The Applicant considers that the works to improve the woodland near Moseley Old Hall will be neutral in overall effect in social and economic terms.

11.3.16. The loss of the very small area on the edge of the Hilton Cross Business Park would, according to the Applicant, have a negligible effect on the site leading to a slight adverse effect which is not significant.

11.3.17. In relation to the businesses at Tower Hill Farm the Applicant considers that while the revised access arrangements may require some minor reorganisation this would not affect the viability of the business. While the fishing pond at this site would be lost, this could be re-provided, but for the purposes of the assessment the Applicant assumes that the loss would be total. Both these effects are seen as slight adverse which, according to the Applicant, is not significant.

11.3.18. The effects on the businesses in Featherstone and for the coach hire business on Hilton Lane would be temporary while the works are undertaken. Thus, the Applicant states, the slight adverse effects would not be significant.

11.3.19. In relation to the fishing ponds at Hilton Hall, one would be permanently lost as the section remaining would be acquired by the Applicant. The Applicant has assumed that the two other ponds in this area would continue so that the effect on the overall business would be permanent slight adverse.

11.3.20. At Brookfield Farm the Proposed Development would result in the loss of a single pond and the partial loss of another, both of which are used for recreational fishing. While the Proposed Development would have a major adverse temporary affect, the receptor is of low sensitivity and, thus, the Applicant considers that any effect would not be significant.

11.3.21. Two separate fields are used for car boot sales for up to 14 days per year[46] in Mill Lane, Saredon and Dark Lane, Featherstone. These two fields would be permanently lost. The Applicant asserts that the car boot operation utilises a number of other fields in the vicinity in Essington,

[46] In the absence of any evidence to the contrary, which we would have expected to have been recorded in the planning history of the site as set out in Section 7 of the 'The Case for the Scheme' [AS-037], we assume that the 14 day limit is through the utilisation of Permitted Development rights under Part 4 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

We appreciate that under Regulation 20 of the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 land may be used as a market for an additional 14 days, but this is time limited until 31 December 2021 (see Regulation 4 of the Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020). In light of this, for the purpose of consideration of the effects of the Proposed Development, we consider that the 14 day limit should be used as the relevant measure.

Cannock and behind M6 Diesel, Shareshill which would be unaffected by the Proposed Development. The Applicant has assumed that the operation does not provide permanent employment and that, as a secondary use of land, alternatives are likely in the area. The Applicant therefore considers that the loss of this land would result in a minor adverse impact on a receptor of low sensitivity value resulting in a slight adverse effect, which is not significant.

11.3.22. When operational M6 Diesel and similar enterprises along Cannock Road will be affected by the loss of 'passing trade'. The Applicant considers that measures such as satellite navigation systems would allow users to find the facility. The Applicant accepts that there would be an effect, considers it to be minor adverse and thus would not be significant.

Agricultural Land

11.3.23. Nine landowners of agricultural land would be affected by the Proposed Development. A plan showing the holdings in the application site is given at [APP-150] and a table setting these out is given at Table 12.6 of Chapter 12 of the ES [APP-051]. Tables 12.9 and 12.10 give the Applicant's assessment of temporary construction effects and permanent effects respectively.

11.3.24. The Applicant appreciates that for Farm Holding 6 there would be large adverse effects, and for Farm Holding 8 large adverse effects permanently. The Applicant notes that some 78ha of agricultural land would be lost but considers that, as the majority of the land is farmed remotely on a contract basis, there would be few consequences for the ongoing viability and operations of the agricultural occupiers. One holding would be required for the Proposed Development in its entirely.

11.3.25. The Agricultural Land Classification (ALC) data from post 1988 is only available for the area north of Hilton Lane. This indicates that the majority of the area is classified Grade 2 (very good) agricultural land. There are small areas north of Hilton Lane classified as Grade 3a (good) and 3b (moderate) agricultural land. The area located to the northeast of the A462 is classified as Grade 3a (good) agricultural land.

11.3.26. The Natural England (NE) Provisional Land ALC for the land south of Hilton Lane and from junction 1 to junction 2 of the M54 is Grade 3 (approximately 91ha, good to moderate).

11.3.27. Surveys were undertaken in 2019 of the area and the results are given at [APP-192]. Annex A diagrammatically sets out the results, and Table 2 sets out of the areas of Grade 2, 3a and 3b land. Of the 80.5ha of agricultural land within the application site, 52.8ha (66%) is Grade 2, 19.3ha (24%) is Grade 3a and 8.4ha (10%) is Grade 3b.

11.3.28. The Applicant has compared this with the proportions of ALC in the Channock Chase and Cank Wood National Character Area. This shows that the proportion of BMV Land is higher than for the NCA, the area surrounding the application site (between the M6, M54 and A460) is predominantly BMV, with over 90% of the land in Grades 2 and 3a.

11.3.29. As set out in paragraph 9.9.5 of Chapter 9 of the ES [APP-048] the Proposed Development would result in the loss of BMV[47]. This is shown in Table 5: Loss of BMV Agricultural Land.

Table 5: Loss of BMV Agricultural Land

Grade of Land	Permanent Loss (ha)	Temporary Loss (ha)
2	41.8	11.0
3a	14.5	4.7
3b	7.3	1.2
TOTAL	63.6	16.9

11.3.30. Of this approximately 7.7ha of BMV land would be permanently sealed with the remaining area required to deliver environmental mitigation which would therefore no longer be available for agricultural use. Table 9.14 of Chapter 9 of the ES [APP-048] sets out how the land would be utilised post development.

11.3.31. At Lower Pool Site of Biological Importance (SBI) and Brookfield Farm SBI there would be a permanent loss of 0.01ha and temporary loss of 0.05ha of soil which support local wildlife sites. The Applicant considers that this would be a minor adverse effect due to the small area of soils that would be lost.

11.3.32. In relation to the restoration of BMV land the Applicant is proposing in the Outline Environmental Management Plan (OEMP) [REP7-026] in References MW-GEO7 and MW-GEO9 that topsoil would be stripped during construction, and generally this would be replaced for those areas which would be returned to agriculture but *"this is dependent on the [final] use of the land"*. Through the Statement of Common Ground (SoCG) with NE [REP8-028] it is clear that for those areas which would be used for species rich grassland the Applicant is not suggesting replacement due to time and resource necessary to deplete the nutrient levels in the soil for its future use.

[47] Paragraph 9.9.5 of Chapter 9 of the ES [APP-048] indicates the permanent loss of 15.5ha of Grade 3a land. However, Table 9.13 immediately following that gives a figure of 14.5ha. Later in paragraph 9.9.5 it is stated that there would be the loss of 56.3ha of BMV land; this is the sum of 41.8ha of Grade 2 land and 14.5ha of Grade 3a land. Consequently, we have worked on the assumption that some 14.5ha of Grade 3a would be permanently lost through the Proposed Development.

11.3.33. The Applicant considers that the Proposed Development would result in a very large adverse effect for Grade 2 soils, and moderate adverse effect for both Grade 3a and Grade 3b.

Minerals

11.3.34. The Applicant notes that the Proposed Development passes through a Mineral Safeguard Area for bedrock and superficial sand and gravel and also crosses safeguarded mineral infrastructure at Hilton Park Quarry[48]. It has considered the effects in a 'Minerals Safeguarding Report' (Appendix 10.1 to the ES [APP-193]).

11.3.35. The Applicant indicates that the Proposed Development does not cross active, permitted or allocated extensions to mineral sites. There is, however, insufficient information on the quantity, the quality and the value of the bedrock sand and gravel resource, but the Applicant considers that the material planning benefits of the Proposed Development would clearly outweigh the loss of any resource.

11.3.36. The Applicant also asserts that prior extraction would significantly delay the commencement and completion of the Proposed Development for which there is an identified need, and the analysis for the current application has identified a number of environmental constraints if prior extraction of the mineral resource was undertaken. Given this, the Applicant considers that the prior extraction of sand and gravel or brick clay may neither be practicable or environmentally acceptable.

11.3.37. Hilton Park Quarry, east of the Proposed Development, is a non-operational mineral infrastructure site but with permitted reserves. Discussions between the Applicant, the owner and Staffordshire County Council (SCC) have taken place regarding a replacement access off a new roundabout/junction so that operations at the Hilton Park site would not be prohibited by the Proposed Development should the Hilton Park site become operational in the future.

11.3.38. It should be noted that the Applicant intends to utilise one area of the site, shown at [APP 065], as a 'borrow pit'. This would be restored at the completion of the Proposed Development and afterwards the area used for woodland mitigation.

Future potential developments

11.3.39. SSC is carrying out a review of the Local Plan. The Applicant notes that the Spatial Housing Strategy does not show any areas of search for a proposed urban extension or new settlement within the Application site or the settlements of Featherstone, Shareshill or Essington in the surrounding area. An Infrastructure Delivery Plan was published in 2019 to set out the infrastructure required to deliver growth within the District.

[48] The location of Hilton Park Quarry can be seen in Figure 1 (Minerals Safeguarding Areas) to Appendix 10.1 of the ES 'Minerals Safeguarding Report' [APP-193].

In this Delivery Plan it is recognised that a new M54 to M6 link road will help address congestion on the A460, which is currently at capacity.

11.3.40. Two significant sites have been put forward for potential development either forming part of the application site or in very close proximity. These are the site promoted by Nurton Developments (Hilton) Limited (Nurton) (the extent is shown in the map at Appendix A to the SoCG between the Applicant and Nurton [REP8-019]) and to the north and west of M54 junction 1 by Persimmon Homes (shown in Figure 7.3 of The Case for the Scheme [AS-037]).

Human Health

11.3.41. The individual effects on human health are considered above. This section deals with more intangible elements. In this regard the Applicant considers that the Proposed Development would not result in any significant effects during construction, as there would be no effect on access to healthcare, open space, travel, work and training, and social cohesion.

11.3.42. Once operational, the Applicant considers that the Proposed Development would support local economic growth and access to training by improving connectivity and reliability.

Equality Impact Assessment

11.3.43. The Applicant submitted an Equality Impact Assessment (EqIA) with the application [APP-214], which was updated at Deadline (D) 3 [REP3-034] to deal with typographic errors in the original.

11.3.44. The EqIA found neutral effects for those with the following protected characteristics:

- sex;
- religion or belief;
- race;
- sexual orientation;
- gender reassignment;
- pregnancy and maternity; and
- marriage and civil partnership.

11.3.45. This was based on the Applicant's conclusion that the effects of the Proposed Development would not affect people with these characteristics differently from any other group.

11.3.46. The EqIA, however, found positive effects on those with the following protected characteristics:

- Age; and
- Disability.

11.3.47. The reasoning for the former was that the local population has a lower proportion of those aged 60 or more than the national average, and thus the economic benefits would derive more to those who are of working

age. In respect of the latter, the EqIA bases its conclusion that the reduction in traffic on the local roads will improve accessibility for people with mental and physical disabilities.

11.4. REQUIREMENTS (R)

11.4.1. R4 of the draft Development Consent Order (dDCO) [REP8-005] would ensure that the CEMP would include a Soil Management Strategy (including a Soil Management Plan and Soil Handling Strategy) to ensure that topsoil associated with agricultural land is appropriately dealt with.

11.5. THE POSITION OF INTERESTED PARTIES (IPs)

Staffordshire County Council (SCC)

11.5.1. In respect of the issues raised in this Chapter, SCC notes in its LIR [REP1-007] the Proposed Development would affect a minerals safeguarding area for sand and gravel as well as for clay resources and a mineral infrastructure site at Hilton Park Quarry.

11.5.2. It notes that there would be additional demand on the provision of aggregates, but it would be difficult to assess the impact on current reserves.

South Staffordshire Council (SSC)

11.5.3. SSC recognises in its LIR [REP1-097] that the Proposed Development will deliver economic benefits at a local, regional and national level. SSC also accepts that on a larger than local scale benefits will arise from the link road due to reductions in congestion and air quality impacts associated with the existing A460 and surrounding roads. SSC considers the Proposed Development would generate other significant economic benefits through manufacturing, business administration, plant hire, long term servicing and employment.

Telford and Wrekin Council

11.5.4. Telford and Wrekin Council support the Proposed Development [RR-043] on the basis that it will make the area more attractive for inward investment.

Natural England (NE)

11.5.5. NE's objections on socio-economic grounds [RR-037] relate to the significance, or otherwise, of the effect on agricultural land, particularly as a high proportion is BMV land.

11.5.6. NE is concerned that topsoil stripping and non-replacement would deplete the BMV resource in the area.

Nurton Developments (Hilton) Ltd (Nurton)

11.5.7. Nurton are promoting the area shown in Appendix A of the SoCG between the Applicant and Nurton [REP8-019] for development as part of the Local Plan review.

11.5.8. Nurton's main objections from a socio-economic aspect are that it:

- considers that the proposal could affect the quantum of employment land available for future use in the area;
- has sought assurance from the Applicant that Highways England (HE) would not object to, either the accommodation bridge proposed could be enhanced or that a second bridge could be accommodated within the overall design of the Proposed Development to allow access across the two sides of the land which would be divided by the Proposed Development; and
- the location of one of the proposed ecological mitigation ponds could affect future use of the land.

Allow Limited (Allow)

11.5.9. Allow have landholdings in the area to the south of Hilton Lane. There is an SoCG between the Applicant and Allow [REP8-011].

11.5.10. Allow's main objections from a socio-economic aspect are:

- the effect on agricultural land holdings;
- the remaining car boot field would be too small and have to close leading to loss of economic activity;
- the effect on an equestrian business off Hilton Lane.

R Rowe

11.5.11. R Rowe owns land to the north of M54 junction 1 and to the west of M6 junction 11 south of Mill Lane. The southern of these two areas includes the access to Tower Hill Farm with the employment there and access to Hilton Park Quarry.

11.5.12. In the SoCG between the Applicant and Mr Rowe [REP8-013] the parties agreed all matters in respect of socio-economic matters, including appropriate access arrangements to the two southern areas, to secure employment and the future extraction of minerals should they be required.

M and T Commins

11.5.13. Mr and Ms Commins own the land within the application site to the east of Brookfield Farm. The SoCG between them and the Applicant [REP7-032] record objections relating to the effects on the remaining fishing ponds in this vicinity and that a bridge across the link road could be facilitated in line with the objections from Allow set out in paragraph 11.5.9. However, all matters are agreed with the Applicant.

I and A Simkin

11.5.14. I and A Simkin own land to the east of M6 junction 11 both north and south of the junction. Their socio-economic objections relate to the loss of agricultural land but accept if the Proposed Development were to go ahead particular attention needs to be given to ensure the re-provision of accesses and water supply. These matters are all agreed with the Applicant in the SoCG between the parties [REP8-017].

N and P Simkin

11.5.15. P Simkin [RR-027] considers that the Proposed Development will have a *"catastrophic"* effect on his landholdings to the east of Brookfields Farm. A further RR [RR-034] on Messrs N and P Simkin's behalf considers that the ecological mitigation is excessive resulting in a loss of economic activity, including fishing and clay pigeon businesses.

11.5.16. The draft SoGC between Messrs N and P Simkin and the Applicant [REP8-014] records that Messrs Simkin believe that the remaining small sections of agricultural land cannot be farmed effectively. In this regard Messrs Simkin consider that the accommodation bridge would be of insufficient width.

11.5.17. There are also unresolved objections relating to access for agricultural purposes from the A460 via Brookfield Farm and at Latherford Brook. As this land is subject to an option with Nurton, they also agree with Nurton's objections.

St Francis Group

11.5.18. St Francis Group is redeveloping the ROF Featherstone site. It considers [RR-029] that the Proposed Development would increase the attractiveness of that site. This site is allocated in the local plan as a key employment development site to deliver a significant level of jobs in an employment cluster with the i54 site. St Francis Group confirm that the ROF Featherstone site is not 'dependent' on the Proposed Development.

Other IPs

11.5.19. A number of other IPs, including Arrow County Supplies [RR-001] and Ms R Shepherd [RR-041] give support to the Proposed Development on the basis that it will enhance employment in the area.

11.5.20. Persimmon Homes Limited [RR-028] has an interest in land to the northwest of M54 junction 1. It does not object to the principle of the Proposed Development but has concerns that it may affect the land it is promoting for residential development.

11.6. PLANNING ISSUES

11.6.1. The above sections set out the socio-economic issues raised by IPs during the Examination, particularly in RRs and Written Representations (WRs), although they were also the subject of questions raised by us.

11.6.2. In general terms, there was little objection to the overall proposition of the Applicant that the Proposed Development would give rise to benefits. However, there are a number of areas where individual IPs considered that the Applicant had not taken sufficient account of objections and concerns. The main issues in dispute are:

- the effect on employment and social facilities; and
- the effect on BMV land, including the measures for post-development restoration and agricultural use;
- whether pre-development exploitation of mineral reserves should be undertaken;
- whether the proposal makes appropriate provision for future development potential in the area.

11.6.3. We will also use this chapter to set out our conclusions in relation to the Public Sector Equality Duty.

11.7. ExA CONSIDERATIONS

Employment and social facilities

11.7.1. It is clear that the Proposed Development would have a direct detrimental effect on employment in the area from the loss of the fishing lakes, the use of land for car boot sales, and from the reduction in land used for agriculture. Quantifying this is however not clear.

11.7.2. In the ExA's First Written Questions (ExQ1) ExQ1.12.11 [PD-010] we asked IPs, and in particular Messrs Rowe, Simkin and Commins and Allow, about direct effects on employment in the area.

11.7.3. Only Allow responded [REP1-090], noting that the three fishing pools at Hilton Park were fished by syndicates of 110, 150 and 30 members. The Top Pool is maintained by retired members, the Middle Pool by a groundsman but no information on maintenance was provided relating to Lower Pool, which would be lost.

11.7.4. When operating Allow maintains that the car boot sales employs *"at least 10 local people with 6 permanent employees and more part time"* and provides pitches for between 300 and 400 sellers, including trade and catering stands, and 2500 to 4000 visiting cars. Allow estimated that 8.5 full-time equivalent staff would be affected by the Proposed Development (response to the ExA's Second Written Questions (ExQ2) ExQ2.12.2 [PD-017] given at [REP4-045]). In response to the ExA's Third Written Questions (ExQ3) ExQ3.12.2 [PD-023] as to the number of jobs which would be lost, Allow indicated at [REP6-048] that this was *"difficult to quantify"* due to the *"multi-faceted business"*.

11.7.5. Allow did however estimate that two full-time equivalent jobs would be lost in respect of the car boot sales and suggested the loss of 0.5 full-time equivalent for the fishery manager at Lower Pool. Allow also maintained that the Proposed Development would curtail future employment opportunities.

11.7.6. The loss of the Lower Pool fishing pond, along with a second at Brookfield Farm, would result in the loss of social facilities for participants and employment for those maintaining the ponds. The reduction in car boot sales sites would also result in the loss of employment and a social facility for those who visit. However, as this site is only used for 14 days a year this loss is not considered to be significant and thus we only give this limited weight.

11.7.7. The equestrian business to the east of Hilton Hall would not be directly affected by the Proposed Development, although future opportunities for the reinstatement of a cross-country course would be prevented. While this would prevent the expansion of the equestrian enterprise, such an expansion would necessarily utilise land which is currently being used for another purpose. We therefore conclude that any overall effect would be limited.

11.7.8. We are also conscious of our recommendation that a weight limit be placed on Cannock Road may affect the operation of M6 Diesel. With the introduction of signage at M6 junction 11 and as there are no other similar facilities that would be made more attractive by the Proposed Development, we conclude that, overall, the effect on socio-economic factors of this would be neutral.

11.7.9. There would also be the loss of agricultural land from production. This is a different consideration from any effects on BMV land which are considered below. There would also be the fragmentation of holdings, although, as explored below, the accommodation bridge would be of an appropriate size. We note that while some IPs consider that the land would be more difficult to farm this has not been demonstrated beyond a generalised concern and, therefore, we give this element little weight. However, as there would be the loss of over 63ha of agricultural land this is of moderate weight against the Proposed Development.

11.7.10. Both Nurton and Mr and Ms Commins are seeking a wider accommodation bridge across the mainline so as to facilitate the use of agricultural machinery on both sides. In this regard we consider that the bridge as so designed would be of sufficient width for both agricultural equipment and users of the bridleway and therefore would be of sufficient width to mitigate the effects of the Proposed Development.

11.7.11. Set against these losses is the more intangible enhancement of business opportunities from the improved connectivity in the area, particularly at the areas which have been allocated for development such as i54, Hilton Cross Business Park, and ROF Featherstone. While none of these developments are dependent on the Proposed Development taking place, the Proposed Development would enhance that provision. Due to the lack of dependency we give the Proposed Development moderate beneficial weight. This more than outweighs the direct losses on site.

Best and Most Versatile Agricultural(BMV) Land

11.7.12. There are two elements to this issue, relating to the loss of BMV land itself, and to the standard of restoration.

11.7.13. Paragraph 5.176 of the NPSNN says that little weight should be given to the loss of agricultural land in grades 3b, 4 and 5, which does indicate that greater weight should be given to the loss of higher grade land.

11.7.14. The Applicant has taken the view that over the quantum of BMV land in the National Character Area the loss of 56.3ha of BMV land is not significant. NE is of the view that significance should be judged against the national breakdown of such land. It sets out in [REP1-012] that this is 42% of the agricultural land in England.

11.7.15. Table 2 of the Agricultural Land Classification and Soil Resources document [APP-192] indicates that there is a total of 80.5ha of agricultural land within the Application site which means that approximately 70% of the agricultural land is BMV land.

11.7.16. However, it is also clear from the evidence in the same document that the land in the immediate surrounding area is predominantly BMV land and to deliver a link between M54 junction 1 and M6 junction 11 would inevitably lead to the loss of BMV land. It would therefore be difficult, if not impossible, to utilise only areas of poorer quality land; the preference in paragraph 5.168 of the NPSNN.

11.7.17. The second part relates to the standard of restoration. The Proposed Development would not restore stripped topsoil to those areas where higher quality land would not be conducive to the proposed environmental mitigation, particularly species rich grassland. NE objects to this and notes its publications, referenced in the SoCG between the Applicant and NE [REP8-028] that both advise against topsoil removal.

11.7.18. While it is clear that topsoil would need to be stripped off large parts of the site while construction was taking place, for example for the borrow pit, construction compounds and other areas, we consider that there may be further opportunities for re-use of stripped topsoils in areas where such restoration would not hinder the appropriate environmental mitigation.

11.7.19. We note that R4 in the preferred DCO [REP8-005] does require the undertaker to consult with NE in respect of a matter relevant to its function. As it is clear the effect on BMV land is relevant to NE's function, we are satisfied that the detailed design of the Proposed Development could allow for less harm than is currently identified through discussions between the undertaker and NE.

11.7.20. Taking all of the above into account, we conclude that the loss of BMV land should be given moderate weight against the Proposed Development, and that this would be of greater significance than identified by the Applicant.

Mineral reserves

11.7.21. The area is subject to mineral reserves which could be utilised for this development and others elsewhere. There are no policies in the NPSNN on whether there should be pre-working. However, paragraph 204 of the Framework makes clear that policies should encourage the prior extraction, where practical and environmentally feasible, if it is necessary for non-mineral development to take place.

11.7.22. In this regard we accept the evidence of the Applicant that the prior extraction on the mainline would delay the Proposed Development and there may be environmental objections. We also note that the minerals in the proposed borrow pit would be effectively used and this mitigates the non-utilisation elsewhere to some extent.

11.7.23. Overall, we consider that the non-prior use of minerals in this Minerals Safeguarding Area is neutral in the consideration of the Proposed Development.

Future development potential

11.7.24. There are objections to two areas of land, to the south of M6 junction 11 and to the north and west of M54 junction 1, and whether the design of the Proposed Development would prevent future development.

11.7.25. It must be remembered that the consideration does not relate to whether the land should be developed, rather whether the design would prevent future development.

11.7.26. The provision of the Proposed Development would clearly have an effect on whether land could be developed. However, this predominantly relates to compensation and is not a matter for this Examination (see s106 PA2008).

11.7.27. Nurton, in particular, is seeking a reassurance the HE would not object to a proposal for a further bridge across the main line; HE is not willing to give such an assurance. We consider that this approach is appropriate in that the law, policy and guidance may all change by the time that any proposal was brought forward and to give an assurance may fetter discretion at that time.

11.7.28. In relation to the ponds, there are two in proximity to the objector's land. One to the west of the mainline would be a drainage pond. Given the location of the mainline, topography and the relevant catchments options for the location are limited; we consider the Proposed Development would be appropriate. In respect of the pond on the east of the mainline, as this would be in close proximity to the Brookfields Farm SBI, which is designated for being wet woodland, it is considered that this would optimise its function for biological mitigation.

11.7.29. In relation to the land to the north and west of M54 junction 1 the mitigation works, particularly the drainage pond, are appropriately

located at a low point, as would be the diversion of the high pressure gas main.

11.7.30. Taken together it is considered that the locations of the Proposed Development including its environmental mitigation would not unduly fetter development of the area should it come forward in due course and is neutral in the balance.

11.8. PUBLIC SECTOR EQUALITY DUTY (PSED)

11.8.1. As set out above (paragraph 3.4.11) the PSED is designed to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share the protected characteristics and persons who do not.

11.8.2. The PSED is for the decision-maker, in this case the Secretary of State for Transport (the SoST). However, to assist the SoST in making their determination we make the following comments.

11.8.3. We consider that the EqIA provides a reasonable approach to this issue. We agree with the Applicant that due to the nature of the project there would be no positive or negative effects for those with protected characteristics of sex, religion or belief, race, sexual orientation, gender reassignment, pregnancy and maternity, and marriage and civil partnership.

11.8.4. We also agree with the Applicant that the Proposed Development would have a positive effect on those with the protected characteristics of age and disability for the reasons set out.

11.9. CONCLUSIONS ON SOCIO-ECONOMICS

11.9.1. Taking all relevant documents and policies into account, we conclude as follows:

- The proposal would result in direct loss of employment opportunities on the application site, but these effects would be more than off-set by the enhancement of business opportunities from the improved connectivity in the area.
- The loss of social facilities in the fishing ponds and car boot sale site should be given limited weight.
- The loss of BMV land should be given moderate weight.
- The non-prior use of minerals in this Minerals Safeguarding Area is neutral in the consideration of the Proposed Development.
- The locations of the environmental mitigation and drainage ponds would not unduly fetter development of the area should it come forward in due course and thus is neutral in the balance.
- Consideration of the PSED is for the SoS, but we agree with the Applicant's assessment.

12. FINDINGS AND CONCLUSIONS IN RELATION TO TRAFFIC AND TRANSPORT

12.1. INTRODUCTION

12.1.1. This chapter considers the traffic and transport issues in relation to the Proposed Development.

12.1.2. To seek to avoid confusion over nomenclature, when describing the existing A460 between the Featherstone west roundabout and M6 junction 11 post-development this will be referred to as “Cannock Road”, which is what this section of the A460 is known as locally at present.

12.2. POLICY

National Policy Statement for National Networks

12.2.1. The National Policy Statement for National Networks (the NPSNN) sets out the Government’s vision and strategic objectives for National Networks. These include networks which support and improve journey quality, reliability and safety; as well as join up communities and link them to each other.

12.2.2. Paragraph 2.2 of the NPSNN *notes “… there is a critical need to improve the national networks to address road congestion and crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth. Improvements may also be required to address the impact of the national networks on quality of life and environmental factors”*.

12.2.3. Traffic congestion is noted as constraining the economy and impacts negatively the quality of life by, among other matters, leading to a marked deterioration in the experience for road users, frustration and stress and can cause environmental problems with problems of blight and intrusion for people nearby particularly where traffic is routed through small communities (paragraph 2.16).

12.2.4. Paragraph 3.17 of the NPSNN is clear that the Government expects applicants to identify opportunities to invest in infrastructure in locations where the national road network severs communities and acts as a barrier to cycling and walking, by correcting historic problems and retro-fitting the latest solutions.

12.2.5. Paragraphs 5.211 and 5.212 of the NPSNN both note that due consideration should be given to impacts on local transport networks and on policies in local plans.

12.2.6. Applicants should seek to deliver improvements that reduce community severance and improve accessibility and provide evidence that they have

used reasonable endeavours to address any existing severance issues that act as a barrier to NMUs. The NPSNN states *"Where development would worsen accessibility such impacts should be mitigated so far as reasonably possible. There is a very strong expectation that impacts on accessibility for non-motorised users should be mitigated"* (paragraph 5.216).

National Planning Policy Framework

12.2.7. The policies within the National Planning Policy Framework (the Framework) generally reflect the policies within the NPSNN, in so far as they encourage a high-quality environment for pedestrians, easy connections for cyclists and seek to facilitate social interaction between communities.

Local Plan

12.2.8. The South Staffordshire Local Plan Core Strategy (the Core Strategy) has a section on Sustainable Transport (Core Policy 11). The M54/M6 Link Road proposal is specifically mentioned in Core Policy 11 as a national and regional transport infrastructure scheme to be delivered in the plan period, although this refers to the link extending to the M6 (Toll). Improvements to transport and accessibility are also set out in the Core Strategy's Strategic Objective 13.

12.3. THE CASE FOR THE APPLICANT

Introduction

12.3.1. The background to the Proposed Development is described in the Applicant's Case for the Scheme and NPSNN Accordance Table (the Case for the Scheme) [AS-037].

12.3.2. The objectives for the Proposed Development are set out in the Case for the Scheme [AS-037]. They are set out to be:

- Relieve traffic congestion on the A460, A449 and A5 and provide more reliable journey times.
- Keep the right traffic on the right roads and improve safety by separating local community traffic from long distance and business traffic.
- Reduce volumes of through-traffic in villages, improving local community access.
- Support local economic growth for Telford, Shrewsbury, Wolverhampton, Cannock and Tamworth by improving traffic flow and enhancing access to east-west and north-south routes.

12.3.3. The Applicant considers that the Proposed Development would provide a number of benefits to road users, businesses, the local community and tourists. These include:

- Economic benefits relating to transport economic efficiency improvements, road safety improvements and Indirect Taxation Revenue (ITR) increase;
- More reliable and faster trips compared to the existing capacity provision on the A460, A5 and A449;
- Local air quality benefits; and
- Reliability benefits from reductions in congestion and incidents.

General Approach

12.3.4. Traffic and Transport issues are not addressed in a specific Chapter within the Environmental Statement (ES). The Applicant has addressed them within the ES in:

- Chapter 2 – The Scheme [APP-041];
- Chapter 3 – Assessment of Alternatives [APP-042];
- Chapter 12 – Population and Human Health [APP-051];
- Chapter 15 – Assessment of Cumulative Effects [APP-054];
- ES Non-Technical Summary [APP-211];
- Case for the Scheme [APP-220];
- Transport Assessment Report [REP3-036];
- Heavy Goods Vehicle (HGV) Flows on Existing A460 [REP3-039]; and
- Walking, Cycling and Horse-riding Routes at Junctions Technical Note [REP4-035].

12.3.5. In addition, there are numerous documents where the Applicant responded to our Written Questions and Rule 17 letters or made comments on representations made by statutory and interested parties which also set out their approach and provided additional information.

Policy

12.3.6. The Applicant submits that the Proposed Development accords with the NPSNN, including the Government's vision and strategic objectives for the national networks. The Applicant's assessment of how the Proposed Development complies with the NPSNN objectives, including its technical assessment requirements, is provided in Appendix A of the Case for the Scheme [AS-037].

12.3.7. Similarly, the Applicant submits that the Proposed Development would also comply with local policies, and a compliance table is set out in Appendix B of the Case for the Scheme [AS-037] including, specifically, Core Policy 11 of the Core Strategy.

12.3.8. The Applicant has confirmed that the Proposed Development falls within Road Investment Strategy 2: 2020 – 2025 (RIS2) (response to ExQ1.0.1 at [REP1-036]) as a Committed Scheme, and within both the Highways England Strategic Business Plan and Highways England Delivery Plan.

12.3.9. The Applicant also considers that the Proposed Development would be in accordance with a number of other documents including the West Midlands Area Multi Modal Study, Midlands Connect 'Our Routes to Growth', 'Movement for Growth: The West Midlands Strategic Transport

Plan 2026' and the West Midlands Freight Strategy. It should be noted, however, that some of these documents refer to the M54/M6/M6 Toll Link Road, which was the original intention for the proposed application[49].

12.3.10. At the more local level the Applicant maintains the proposal would comply with the South Staffordshire: District Integrated Transport Strategy where Staffordshire County Council (SCC) notes that congestion on the A460 is exacerbated by the fact that it carries high levels of traffic travelling between the M6 North, M54 and M6 Toll. The Applicant notes that the A449 and A5 are also congested routes suffering from journey time delays.

Effect on roads in the vicinity

12.3.11. The Applicant maintains that the Proposed Development will separate local and strategic traffic and would reduce traffic along the existing A460 by 88%, with a reduction in vehicle numbers from 26,800 to 3,020 per day in the opening year. The Proposed Development is also predicted to reduce traffic by 39% along the A449 and 26% along the A5 between the A449 and M6 junction 12.

12.3.12. The southern section of the A460 from the M54 junction 1 to the existing entrance to Tower House Farm would be stopped up. The section between the northern extent of the stopping up past the junction with The Avenue to where it would meet the new joining road to the Featherstone West roundabout would be reclassified as an Unclassified Road. The new joining road and the remainder of the Cannock Road to its junction with M6 junction 11 would be reclassified as a C-class Road. The proposed classification of roads is shown on the Classification of Roads Plans [REP7-008].

12.3.13. As originally proposed the speed limit on the western end of Hilton Lane to its junction with Cannock Road would be reduced to 30 miles per hour (mph). Following discussions between the Applicant and SCC it was agreed that this would be preceded by a section some 629 metres (m) long where the speed limit would be reduced to 40mph from the national speed limit. The majority of this 40mph section falls outside the application site. This would be secured in Article 11(8) and Part 7 of Schedule 3 to the preferred Development Consent Order (DCO) [REP8-005] and is shown on Sheet 5 of the Traffic Regulation Measures [REP7-007].

12.3.14. We questioned (ExA's First Written Questions (ExQ1) ExQ1.5.44 of [PD-010] and ExA's Third Written Questions (ExQ3) ExQ3.10.3 of [PD-023]) whether the priority on the junction of Cannock Road and The Avenue should remain as at present. Currently this is a 'Give Way' at the eastern exit from The Avenue, and traffic travelling south and turning

[49] Originally free-flowing links to the M6 Toll were envisaged but this element was removed as contributions from development where not sufficient (see section 3.5 of the Case for the Scheme [AS-037]).

right into The Avenue would have to give way to traffic from the south[50]. As a result of the Proposed Development the section of Cannock Road to the south of The Avenue would be a short cul-de-sac serving approximately ten dwellings. The Applicant and SCC agreed that the priority of this junction would be changed so that the main carriageway would be through the junction between Cannock Road and The Avenue and this forms part of the final Proposed Development.

12.3.15. The following sections deal with the Applicant's case in respect of matters specifically raised by interested or statutory parties.

Journey time changes/Capacity

Approach

12.3.16. To analyse the effects of the Proposed Development on the road network the Applicant utilised the approach set out in the Transport Assessment Report (TAR) [REP3-036]. This is based on the Midland Regional Highway Model (MRTM) which was commissioned by Highways England (HE) and is stated as having been continuously maintained and improved since 2016. This data was input into the SATURN[51] software and validated in accordance with the Department for Transport's (DfT's) Transport Analysis Guidance (TAG).

12.3.17. The Applicant notes that delays on the current A460 may lead to journey choices over a considerable area, particularly as it currently forms part of the Strategic Road Network (the SRN). Consequently, the MRTM model was extended to cover other parts of Great Britain. Figure 3.1 of the TAR [REP3-036] shows the simulation area (in black) and the buffer area (in red) on the SRN. The simulation links in the local area are shown in Figure 3.2 of the TAR [REP3-036].

12.3.18. Traffic Counts, Journey Time Surveys and 'Origin – Destination' data was also explored using data from HE and SCC and previous traffic models. Automatic Traffic Counter (ATC) surveys were undertaken in June 2017 and Manual Classified Counts (MCC) in June 2017 and September 2018. Details of the locations and dates are set out in the TAR [REP3-036].

12.3.19. The Applicant then described five different routes to the north and west of the application site and two to the east. These are shown in Figures 3.6 and 3.7 of the TAR [REP3-036] and are shown in Figure 3 and Figure 4 of this report. 'Origin – Destination' matrices were taken from the MRTM model combined with observed traffic data from the local area surveyed in 2017.

[50] There is currently a 'yellow box' junction.
[51] Simulation and Assignment of Traffic to Urban Road Networks developed by the Institute of Transport Studies, University of Leeds.

Figure 3: Journey Time Survey Routes Assessed – North/West of the Applications site[52]

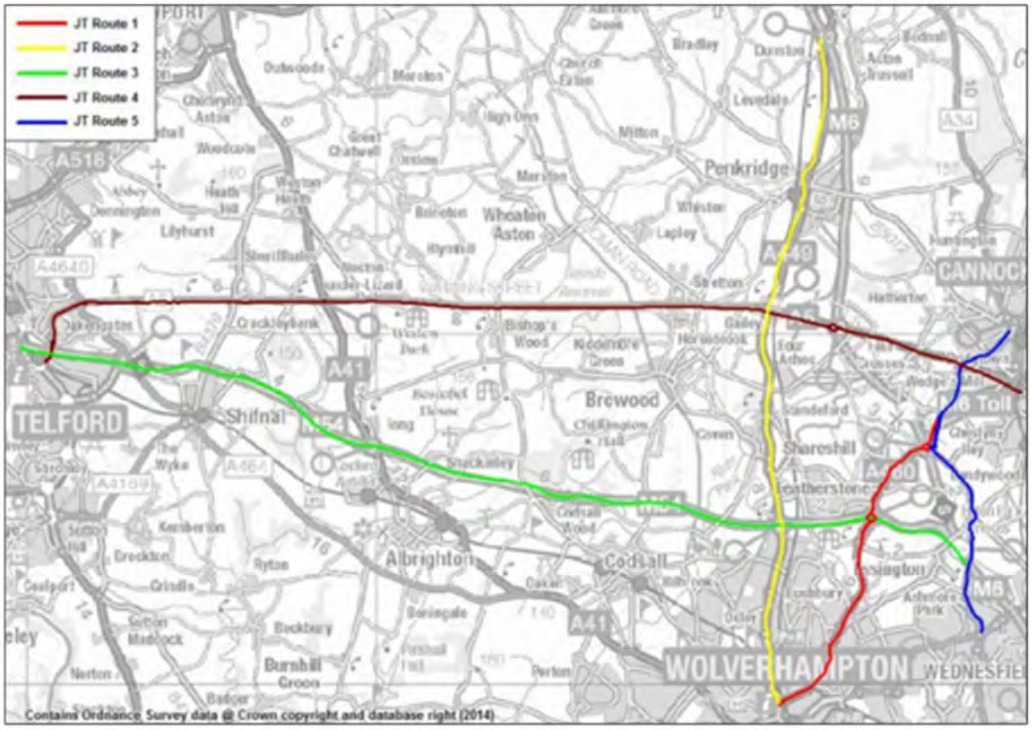
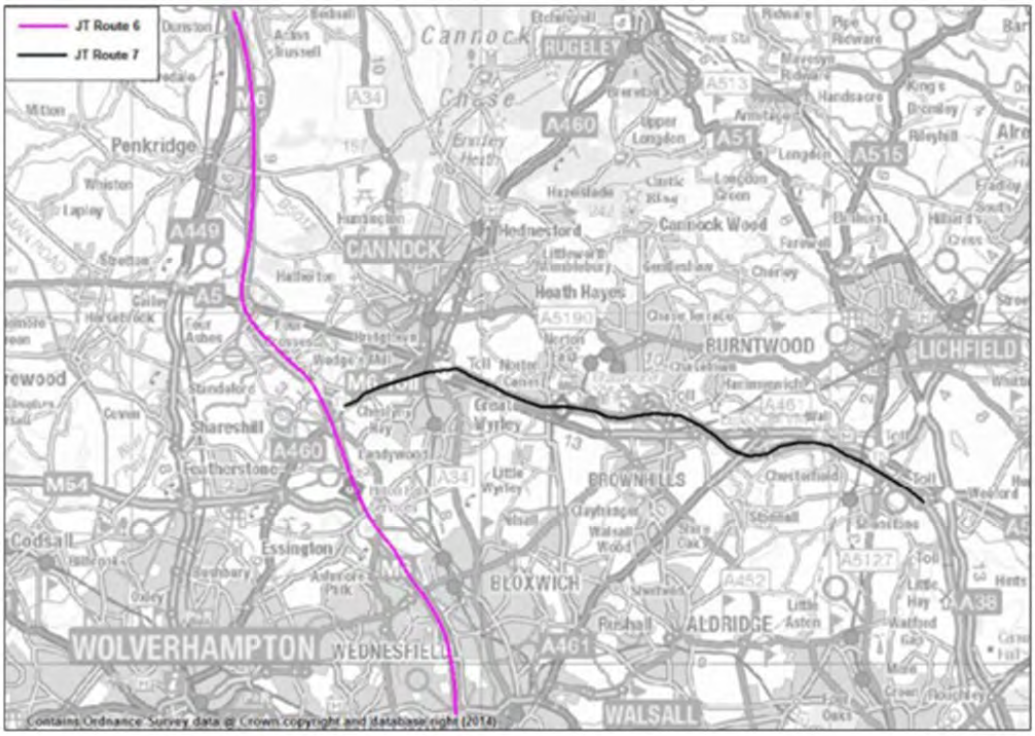


Figure 4: Journey Time Survey Routes Assessed – East of the Application site[53]



[52] Source: Figure 3.6 of TAR [REP3-036]
[53] Source: Figure 3.7 of TAR [REP3-036]

All of the above fed into the Baseline model.

12.3.20. To assess the effects of the Proposed Development the Applicant looked at two 'future year scenarios', based on 'Do-Minimum' (DM), with traffic growth included but only transport interventions that were considered more than likely to be implemented included, and 'Do-Something' (DS) with the Proposed Development included. In both cases Opening Year (2024), Intermediate Year (2031) and Design Year (2039) were assessed. The TAR sets out what traffic growth is expected and the reasoning for this.

Assessment

12.3.21. For Cannock Road the DM assessment is that a two-way flow in 2039 would be 29,400 vehicles per day (vpd), which would reduce to 3,350 vpd in the DS scenario. Of this, for HGVs on a 12-hour (07:00 to 19:00) weekday the Base Model indicates 3,097 movements (see Table 4.3 of the TAR [REP3-036]). The Applicant's model for 2024 for the same 12-hour period gives 181 two-way HGV movements.

12.3.22. The Applicant reports the observed two-way HGV flow on the A460 to the south of the 'M6 Diesel' fuel filling station business that was observed to turn into/out of this site is 375 HGV two-way per day. The Applicant has not utilised the M6 Diesel as a 'destination in its own right' because *"users of such sites tend to be making pass-by trips on their journey between other origins and destinations"* (paragraph 4.6.4 of the TAR [REP3-036]).

12.3.23. In respect of Peak Hour Flows, when congestion is most likely, the Applicant anticipates that the Proposed Development would remove between 60% (at M54 junction 1) and 90% (at M6 junction 11) of the peak hour flow on Cannock Road and between 15% and 47% of the peak hour flows on the A449/A5 route (source: Table 4.5 of the TAR [REP3-036]).

12.3.24. The Applicant has undertaken an analysis of the network and various junctions in the area and concludes that existing junctions would not have sufficient capacity for future levels of traffic demand.

12.3.25. With the Proposed Development included, the two main junctions, M54 junction 1 and M6 junction 11, would both operate within capacity in 2039, although the M6 junction 11 would be at a Degree of Saturation (DoS) of 90%; above this per-centage is the level at which queues would increase.

12.3.26. The Applicant undertook an analysis of the routes described in paragraph 12.3.19 as to the effect of the Proposed Development in 2024, 2031 and 2039, which are set out in Tables 4.10 to 4.17 of the TAR [REP3-036]. In summary the Applicant considers that the most significant journey time changes would occur in the three AM Peak hours and the PM1 (16:00 to 17:00 hours) and PM2 (17:00 to 18:00 hours). The routes which experience the largest reductions in the DS scenario are Route 1 (A460 (Stafford Street) to M6 Toll junction T8) (North Bound), Route 4 (from

Hollinswood Roundabout to Churchbridge Roundabout) (East Bound and West Bound) and Route 5 (from the A462 and A4124 Roundabout to the A4601/A34 Junction) (North Bound).

12.3.27. Route 1 includes Cannock Road and was utilised in the predicted times in the DS Scenario. As most drivers utilising this route from one end to the other would be likely to use the new link road were it to be constructed we requested (ExQ3.10.6 [PD-023]) the timings for Route 1 be re-run for the same end points, but by travelling along the new link road rather than via Cannock Road.

12.3.28. This was done at Deadline (D) 6 [REP6-039] and the results can be found at Appendix 3.10.6. This shows the time differences in the DS scenario, which would predominantly be savings. The Applicant also points out the differences in distances that would be travelled along the route due to the Proposed Development. These are shown in Table 6.

Table 6: Journey Distances for 'Route 1' in kilometres[54]

	DN & DM	DS via Cannock Road	DS via Cannock Road less DM	DS via new link	DS via new link less DM
Northbound	10.3	10.6	+0.3	10.5	+0.2
Southbound	10.5	10.9	+0.4	10.1	-0.4

12.3.29. Table 4.18 of the TAR [REP3-036] also undertook an analysis of an East/West route from M54 junction 2 to Catshill in Brownhills, located on the A452 to the south of the A5(T) and M6 Toll Road, and at the west end of the A4124. These also show time reduction[55] as a result of the Proposed Development.

Road Safety

12.3.30. The Applicant has undertaken an assessment of the effects on road safety utilising accident data from the area (shown in Figure 5.1 of the TAR [REP3-036]), and over the whole area anticipates that there would be a reduction in 330 personal injury collisions (3.8% based on the DM

[54] Source: Table at end of Appendix 3.10.6 in [REP6-039]

[55] In ExQ1.10.10 [PD-010] the ExA queried why these time savings were as positives while time savings in Tables 4.10 to 4.17 of the TAR were negatives. The Applicant explained [REP1-036] that *"The timings in Table 4.18 are presented as DM-DS whereas in Tables 4.10-4.17 they are presented as DS-DM. This is because the East-West journey time savings as a result of implementation of the M54 to M6 Link scheme, discussed in section 4.10 (with values shown in Table 4.18) are a measure of the objectives of the Scheme. By contrast, the journey times discussed in section 4.9 (with values shown in Tables 4.10 to 4.18) are measuring the secondary impacts of the Scheme on perpendicular and complimentary routes*".

Scenario), 10 less fatalities (7.8%), 83 less serious casualties (7.4%) and 372 less slight casualties (3.3%).

Weight Restriction on existing A460

12.3.31. SCC [REP1-005], South Staffordshire Council (SSC) [REP1-097], Hilton, Featherstone & Brinsford and Shareshill Parish Councils (the Parish Councils) [REP7-031] and Councillor Robert Cope [REP1-077] and [REP5-012] all requested a weight restriction on Cannock Road. This was not proposed by the Applicant and the reasons why such a request has been made will be set out below. The Applicant considers that it would not be necessary as the amount of HGV traffic along this section following the Proposed Development would be some 279 two-way trips when compared to the 3,114 HGVs per day in the existing Base Year Scenario.

12.3.32. On that basis the Applicant maintains that the Proposed Development without a weight restriction would achieve the objectives of the scheme as the volume of traffic and HGV traffic would be significantly reduced. The Applicant is therefore satisfied that would not be necessary to provide a weight restriction and is therefore not proposed as part of the Proposed Development (see 'Response to SCC's Written Representations (WR) from the Applicant, issue 3, 4, 5a and 5b' at [REP3-037] and [REP3-039] 'HGV Flows on Existing A460').

12.3.33. In the alternative, the Applicant suggests that, should the Proposed Development be consented and open, if SCC considers that a weight restriction is appropriate then it could utilise other powers to bring that into effect (this is referred to as a 'Monitor and Manage' approach below).

NMU Routes

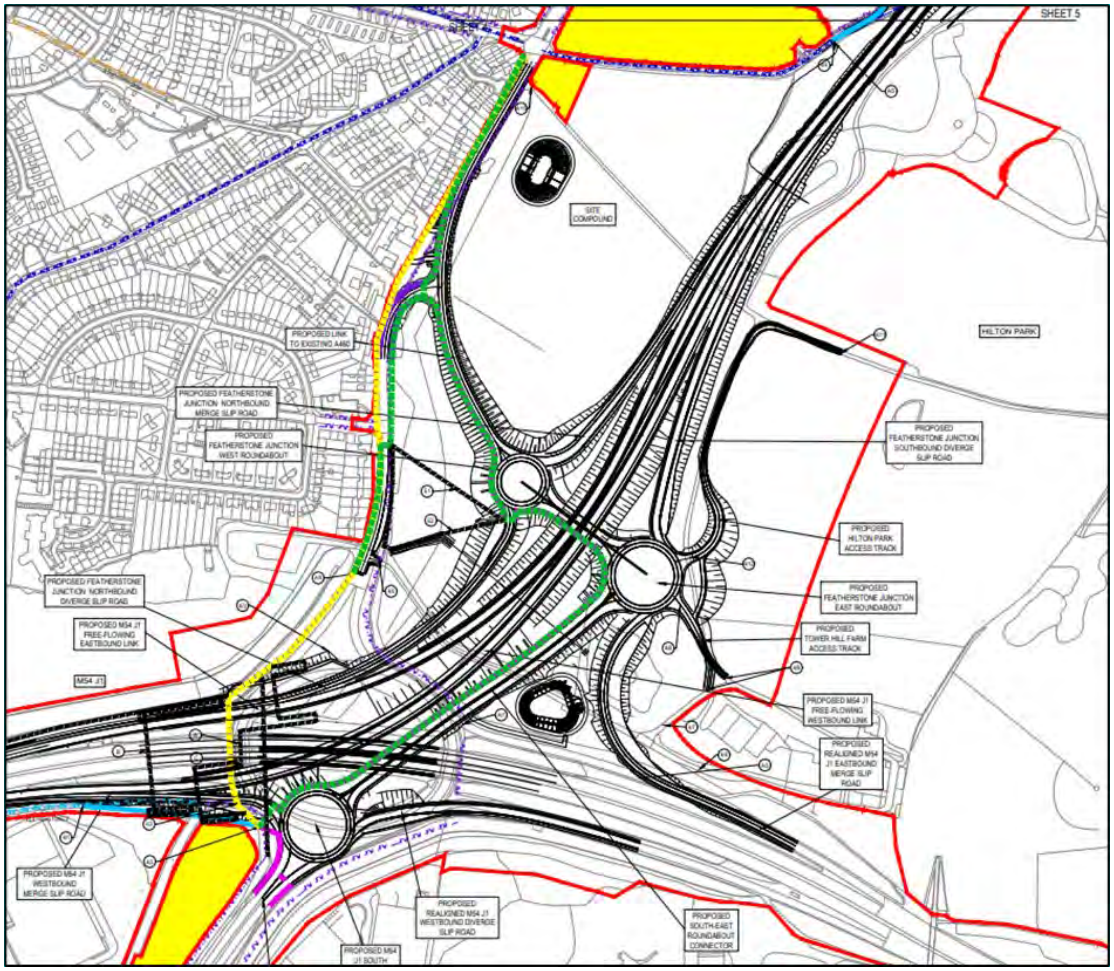
12.3.34. There are a number of NMU routes across and through the application site, although most Public Rights of Way (PRoW) are located north of Hilton Lane. These are shown on the Streets, Rights of Way and Access Plan [REP7-006]. The Applicant identified seven locations where there were particular issues:

M54 junction 1

12.3.35. As the application was originally submitted the route around M54 junction 1 is described by the Applicant in paragraph 2.1.2 of the Walking, Cycling and Horse-riding Routes at Junctions Technical Note [REP4-035]. This is shown as the green dashed route in Figure 5[56].

[56] For reference the current NMU route through the junction is shown as a yellow hatched line.

Figure 5: Proposed NMU route north/south through M54 junction 1[57]



12.3.36. From a central point of the junction of The Avenue with Cannock Road to the end of the diverted route at the southern end south of M54 junction 1 this would increase the current distance for NMUs of 500m to 1040m.

12.3.37. The Applicant set out in its 'Walking, Cycling and Horse-riding Routes at Junctions Technical Note' [REP4-035] alternatives of bridges or underpasses they explored but explained why they were not adopted and the proposed route was the best option. This was due to a combination of the height necessary for bridges, their visual intrusion and their length courtesy of the need to provide ramps so that they would be accessible to all users. In addition, bridges and long underpasses are linked to antisocial behaviour due to their isolated nature and are not considered by the Applicant pleasant to use.

12.3.38. The Applicant also explored two potential routes through the woodland between Cannock Road and the Featherstone Road junction (shown as Options E1 and E2 on the plan referred to in paragraph 12.3.36). These

[57] Source: Drawing entitled "NMU Diversions Route Lengths Calculations M54 Junction 1 in Appendix A of [REP4-035].

would reduce the distance travelled to 750m and 840m[58] respectively. Option E1 was initially discounted due to the impact on existing woodland as was the remote nature of Option E2 with its inherent risk of antisocial behaviour (paragraph 2.4.3 of [REP4-035]).

12.3.39. In ExQ3.10.8 [PD-023] we requested the Applicant explore the possibility of creating a route along the line of the existing access to Tower House Farm from Cannock Road to Featherstone west roundabout as this route physically exists, albeit for another purpose, and therefore would not have an adverse effect on woodland. In response to this [REP6-039], the Applicant suggested this third route (Option E3) would only reduce the distance travelled to 950m.

12.3.40. However, as we concluded that route as originally applied for would worsen accessibility for non-motorised users, contrary to paragraph 5.216 of the NPSNN, in the ExA's Consultation dDCO [PD-025] we requested the Applicant include a proposed footpath and cycleway along the line of Option E2 into the dDCO to mitigate the effects as far as reasonably possible.

12.3.41. In an Email dated 16 March 2021 [AS-134] the Applicant undertook further analysis of this route, particularly in the light of the need to create embankments. However, the Applicant also indicated that it had revisited the route of Option E1 (the shortest and most direct option) and concluded that subject to some minor revisions it would be possible as a pedestrian only route. Using measures set out in the OEMP this would result in minimum tree loss. The Applicant did, however, conclude that due to the gradients and level landing areas (for wheelchair and pushchair users) that this route would not be suitable for cyclists as it would encourage high speeds with a level of discomfort for cycle users and could lead to potential conflicts between cyclists and pedestrians

12.3.42. This was included as an additional work (Work 91) in the preferred DCO [REP8-005] and in the final Works Plans [REP7-004] and the Street, Rights of Way and Access Plans [REP7-006], and Statement of Reasons [REP7-015]. This is the final route considered in this report.

Dark Lane

12.3.43. Dark Lane would be stopped up north of the most northerly property. The Applicant proposed a new bridleway north of the stopping up point to run to the west but parallel to the link road at existing ground level up to the junction with Hilton Lane. It would then cross to the east side of the Hilton Lane Bridge to link to the current northern end of Dark Lane.

Hilton Lane

12.3.44. Currently there is no footway to the edge of Hilton Lane to the east of the most easterly property at the western end of Hilton Lane. The Proposed Development would involve the creation of a footway on the proposed

[58] This dimension was corrected from 1040m in [REP4-035] in the response to ExQ3.10.8 in [REP6-039].

Hilton Lane Bridge. The Applicant proposes that this would mitigate any impact on pedestrians and vulnerable users.

Shareshill 5 Footpath

12.3.45. Originally the Proposed Development would have involved the re-routing of Shareshill 5 footpath, travelling west, from where the cutting to the link road would cross the line of the footpath, along the top of the cutting, to Hilton Lane. It would then have followed a new alignment on the northern side of Hilton Lane to the existing western terminus of the footway at Hilton Lane.

12.3.46. Under the October application changes, having crossed the new Hilton Lane Bridge, the proposed alignment would travel north on the top of the western side of the cutting to re-join the current alignment. The Applicant indicated (paragraph 2.6.4 of the Formal Request for Scheme Changes [AS-117]) that this was as part of the relocation of the Hilton Lane Bridge some 20m north of its current alignment, and, insofar as is relevant for this footpath, would avoid the need for a temporary diversion and would retain more of the existing route.

Brookfield Farm

12.3.47. Shareshill 1 bridleway would be blocked, travelling east, between the point it emerges past buildings at Brookfield Farm to its junction with Shareshill 3 footpath. The Proposed Development would involve it being diverted parallel to the mainline, across the new Brookfield Farm overbridge, and then on a northern alignment alongside the eastern edge of the mainline and to Shareshill 3 footpath. This is shown on Sheet 5 of the Streets, Rights of Way and Access Plans [REP7-006]. This would add an extra 605m to the journey. The Applicant acknowledges that this is a major increase in journey length but considers that the effect would only be slight adverse due to the low number of recorded users (see paragraph 12.9.37 of Chapter 12 of the ES [APP-051]).

South of M6 junction 11

12.3.48. The proposal would involve the diversion of the length of Saredon 8 footpath and Saredon 1R/2214 so that the proposed footpath would link to M6 junction 11 resulting in a reduction in travel distance of 18m (see paragraph 12.9.39 of Chapter 12 of the ES [APP-051]). This would involve the provision of a ramp.

Whole corridor

12.3.49. The Applicant has assessed whether the Proposed Development would result in severance between populations and trip attractors, principally community facilities, but also employment sites such as Hilton Hall. The Applicant identifies the removal of traffic from the existing A460 as a moderate benefit of the Proposed Development (see paragraph 1.29.59 of Chapter 12 of the ES [APP-051]).

Public Transport

12.3.50. There are no rail facilities in the immediate vicinity of the application site; the nearest station being Landywood, on the Rugeley to Birmingham line, some 3 kilometres (km) to the east. However, there are bus routes to both Cannock and Wolverhampton stations that follow the existing A460.

12.3.51. As some bus services travel through either or both motorway junctions there is potential for effects from the Proposed Development. One route, Route 70, would require a modified path, and a new bus stop would be located opposite The Avenue. While there would be a longer travel distance, the Applicant maintains that the bus service would be likely to be able to more easily pull in to the road from bus stop laybys due to their being less traffic on Cannock Road and therefore the Proposed Development would result in a more reliable service (see section 7 of the TAR [REP3-036], particularly paragraph 7.2.8).

Construction Period

12.3.52. The Applicant acknowledges that during the construction period of 30 months there would be disruption and inconvenience to road users. To mitigate the effects the Applicant has proposed an 'Outline Traffic Management Plan' [REP8-007]. As a result of the October application changes, the most significant element would be the re-construction of M54 junction 1 which would involve the full closure of the M54 between M6 junction 10A and M54 junction 2 for a period of three weeks. Diversion eastbound would be from M54 junction 2, north along the A449 to the A5, east along the A5 to join the M6 at junction 12, and south to the end of the diversion at M6 junction 10A.

12.4. REQUIREMENTS (R)

12.4.1. R4 of the preferred DCO seeks to secure a Construction Environment Management Plan (CEMP) in accordance with the Outline Environment Management Plan (OEMP) [REP7-026] which must then be followed throughout the construction phase. Following completion this would be converted into a Handover Environmental Management Plan (HEMP) to ensure proper maintenance thereafter. This specifically requires a Traffic Management Plan (including a Site Access Plan, Site Travel Plan and Construction Workforce Travel Plan).

12.5. THE POSITION OF INTERESTED PARTIES (IPs)

Staffordshire County Council (SCC)

12.5.1. SCC strongly supports the new link road (paragraph 6.1 of the Local Impact Report (LIR) [REP1-007]) as it will take pressure off the strategic and local highway network, both in the immediate vicinity, but also potentially wider afield. SCC supports the retention of Cannock Road to enable connectivity to local communities and access to properties.

12.5.2. SCC sets out a number of transport issues that the Proposed Development would mitigate on the Cannock Road including:

- better access from side roads particularly avoiding delays in making right hand turn manoeuvres;
- improved safety for pedestrians and cyclists due to less traffic, particularly HGVs which currently leads to severance either side of the A460;
- resolving excessive vehicle speeds;
- reduction in congestion, particularly M54 junction 1 and M6 junction 11 and the approach from the south for the latter;
- anti-social use of existing laybys; and
- egress issues from M6 Diesel, with exiting vehicles blocking the carriageway as they attempt to cross.

12.5.3. SCC's concerns relate to:

- HGVs on Cannock Road;
- Shareshill layby;
- Various junctions outside the application site; and
- The effect on NMUs.

HGVs on Cannock Road

12.5.4. HGVs would continue to use Cannock Road, particularly to use the M6 Diesel site. Consequently SCC argues a 7.5 tonne gross laden weight (except for access and similar exceptions) should be imposed on the following roads:

- A460 Cannock Road – from a point approximately 8m south of its junction with Church Road in a southerly direction to a point approximately 2m north of its junction with New Road, Featherstone. A total distance of approximately 705m;
- Dark Lane – entire length;
- Hilton Lane – entire length; and
- Old Warstone Road – from Hilton Lane to its junction with Warstone Road A462.

12.5.5. This is required, SCC asserts, to enable the Proposed Development to meet its objectives, and that the monitor and manage approach advocated by the Applicant *"would be an inefficient response and potentially would require retrospective changes to signage implemented during the construction of the link road"* (SCC Written Representations [REP1-005]). This would combine with existing 7.5 tonne weight restrictions in the area (see SCC's D4 submission [REP4-042]), to provide a comprehensive approach for the area.

12.5.6. The weight restriction would also assist in ensuring, in the event that the link road was closed, that HGV traffic would not travel through the by-passed communities.

Shareshill Layby

12.5.7. There is an existing layby on the east side of the A460 within the application site a short distance south of the junction with Hilton Lane. This is used by HGV drivers for 'parking up'. SCC considers that this should be closed, it is currently subject to a 1-hour parking restriction, to

remove a destination for HGV drivers and that the resultant highway could be utilised for future pedestrian/cycle improvements.

Various junctions outside the application site.

12.5.8. SCC has noted the Applicant had identified a number of junctions where additional traffic would increase. SCC therefore requests that the Applicant undertakes junction capacity assessments to understand if the existing and proposed junction layouts could accommodate the additional traffic induced by the Proposed Development. These are at:

- A41/Wrottesley Park Road/Heath House Lane junction, Perton;
- A5 west of Tamworth;
- A4601 and A460 between A5 and M6 junction 11;
- Churchbridge Interchange (A460 Lodge Lane Link, Cannock and A460 West of Cannock); and
- Hilton Lane.

NMU

12.5.9. SCC was concerned about the extended distances that were originally proposed for those travelling between Featherstone and the employment sites to the south of M54 junction 1. However, by the end of the Examination it agreed that *"E1 is the optimum route give it is shorter, in closer proximity to the Avenue junction and minimises woodland loss"* (SoCG between the Applicant and SCC [REP7-027]).

12.5.10. There are a number of bridleways which are currently effectively cul-de-sacs in that there is no further bridleway for users to connect to. Examples being Shareshill 1 and Saredon 13 (north of the M6 junction 11). SCC would like to see existing footpaths upgraded to enhance provision (paragraph 9.4 of LIR [REP1-007]).

12.5.11. SCC agrees to the additional footpath between Cannock Road and Featherstone west roundabout (Work 91 in the preferred DCO [REP8-005]).

City of Wolverhampton Council (CWC)

12.5.12. CWC in its Relevant Representation (RR) [RR-018] considers the Proposed Development would make a significant contribution in terms of relieving traffic pressure around M54 junction 2 and improving access opportunities for existing and future development sites. Access to the M6 North would be significantly improved from the Wolverhampton area. The proposal would assist in keeping the right traffic on the right roads, improving safety, and supporting the continued regeneration and economic growth in the City of Wolverhampton, by improving journey time reliability and connectivity.

12.5.13. CWC requested to be included as a stakeholder in the Traffic Management Plan.

South Staffordshire Council (SSC)

12.5.14. In its LIR SSC [REP1-097] SSC confirmed it supports the Proposed Development in order to relieve congestion, improve journey time reliability and support economic growth.

12.5.15. SSC has liaised with SCC as lead specialist on highways and transport, and like SCC has concerns that the proposal would result in many HGVs continuing to use Cannock Road. SSC therefore supports the proposal for the 7.5 tonne weight limit.

12.5.16. SSC is also concerned about the stopping up of roads, Dark Lane and the southern end of Cannock Road, on the basis that this may encourage the likelihood of fly-tipping. SSC would therefore ask for appropriate measures, possibly a gate, to prevent such fly-tipping, along with planting to improve and soften closure views.

12.5.17. SSC supports Councillor Cope's proposals for enhanced links between Featherstone and the employment areas to the south of M54 junction 1 which it considers would be preferable to the footpath between Cannock Road and Featherstone west roundabout.

Parish Councils

12.5.18. In respect of highway matters, the Parish Councils wish to discourage the use of Cannock Road, particularly if the link road was closed (Statement of Common Ground (SoCG) with the Applicant [REP7-031]). The Parish Councils raise concerns about the lack of a weight limit on Cannock Road, and the non-closure of the Shareshill layby with this being specifically set out by Hilton Parish Council in its RR [RR-011].

12.5.19. The Parish Councils also regret the loss of the free-flowing link to M6 (Toll) junction T8 on the basis that would lead to an undesirable amount of traffic on the A460 between that junction and M6 junction 11.

12.5.20. The Parish Councils would also like to see a direct footway/cycle link to the strategic employment site at Hilton Cross to the south of M54 junction 11.

The Rt Hon Gavin Williamson CBE MP

12.5.21. Mr Williamson, as MP for South Staffordshire, agrees that the link road is needed [RR-039]. He is concerned that the West Midlands Interchange (WMI) and HGV control measures also need to be taken into account.

12.5.22. In his WR [REP1-070] he raises the following issues for particular attention:

- Access to PRoWs, and the potential for a 'green bridge'.
- Weight restriction on A460
- Cumulative effects with the WMI development.

Councillor Robert Cope

12.5.23. Councillor Robert Cope [REP1-077] and [REP5-012] has expressed a desire to ensure that the shortest possible direct route for NMUs be secured between Featherstone and the existing employment areas to the south of M54 junction 1.

12.5.24. He notes that the West Midlands Combined Authority is planning active travel cycle routes across the West Midlands with one of the routes on the indicative map ending at the Wolverhampton boundary on the A460 to the south of M54 junction 1. Therefore, having crossed the Proposed Development to the south there would be non-car linkages to other facilities.

12.5.25. Councillor Cope supports the provision of a weight restriction on the A460 to the south of the M6 Diesel site to prevent HGVs continuing towards Featherstone. He is concerned about the cumulative traffic impacts identified by SCC and set out in paragraph 12.5.8.

12.5.26. He is also concerned about design of the created cul-de-sacs at the southern end of Cannock Road and on Dark Lane to prevent fly-parking and fly-tipping.

D Williams

12.5.27. Mr Williams wrote extensive correspondence and critiques of the evidence of the Applicant on traffic and transport matters. They are set out in full in his representations [RR-032], [REP2-014], [REP5-013], [REP7-040] and [REP9-007]. In essence, these relate to traffic and transport issues along the A449 between M54 junction 2 and the A5 at Gailey.

12.5.28. Mr Williams notes that the Applicant has set the reduction of congestion on the A449 as an objective of the Proposed Development. However, he considers that the TAR misrepresents the number of dwellings which would be affected on this corridor, and that the modelling has not been undertaken comprehensively, particularly at night. He considers that there were deficiencies in data collection, particularly in relation to this length of road.

12.5.29. Given the opportunities which could be achieved by the Proposed Development Mr Williams considers that the A449 should be 'de-trunked' north of M54 junction 2 to reduce effects (and in particular noise effects) on residents in the vicinity. The existing signage, which makes this the *"official"* route from this section of the M54 to M6 north, should be revised. That the Applicant has not considered this as part of the overall project shows that the scope of the project was misconceived, and if it does not result in relocated traffic then the Proposed Development would have failed in its objectives of *"putting the right traffic on the right road"* and would not create significant local benefits.

12.5.30. Mr Williams has queried asserted discrepancies between the data put forward in support of the WMI, and responded to by HE, and that put

forward in support of the Proposed Development and the *"holistic relationship"* between the two. (The queries on the traffic data was the subject of ExQ2.10.2 [PD-017]). He also considers that the assessment fails to fully take account of the consented WMI development.

12.5.31. He considers that traffic travelling between the M54 junction 2 and M6 junction 12 or 13 would be as likely to use the A449 as the Proposed Development. He maintains that the Applicant considers that those on transregional journeys (passing through the West Midlands) are likely to use the Proposed Development rather than the A449, but those on interregional (within the West Midlands) would use the A449 and finds this illogical.

12.5.32. He considers that as an absolute minimum, speed restrictions should be introduced on the A449 between M54 junction 2 and A5 at Gailey along with sections of single carriageway[59] so that it would act as a low speed, high volume transport link between the WMI and the West Midlands conurbation. He also considers that the Applicant has failed to assess a potential route from M54 junction 2 to M6 junction 12 via the new WMI Link Road proposed as part of that scheme.

M6 Diesel

12.5.33. M6 Diesel took an active part in the discussions within the Examination and were represented at Issue Specific Hearing 2 (ISH2) on Traffic and Transport.

12.5.34. It agrees with the Applicant in relation to the current lack of a weight restriction on Cannock Road and objects to such an imposition. This is principally in socio-economic terms and the potential effect on its business, but it provided information on traffic generation from the site and that is reported here.

12.5.35. In October 2019 M6 Diesel undertook a traffic count from its site. The results are set out in the table at paragraph 2.2 of [REP1-018]. Out of 570 movements in a day some 333, or 58%, utilised the A460 south of the M6 Diesel site, with the remaining 237 (42%) travelling to and from M6 junction 11.

12.5.36. At ISH2 the representatives of M6 Diesel and those of the Applicant agreed that the survey results put in by M6 Diesel were broadly comparable with those put in by the Applicant (see 13:00 to 14:00 of [EV-017]).

12.5.37. M6 Diesel does however wish to see changes to the Proposed Development as follows.

12.5.38. Firstly, it wishes to see the preferred DCO [REP8-005] amended so that a weight restriction could not be imposed under its provisions. If,

[59] Mr Williams does not suggest how this could be achieved, but we consider that this could be done by additional white lining to result in single carriageways.

subsequent to the Proposed Development being operational, SCC considers such a limit to be desirable it should make a Traffic Regulation Order in the normal way.

12.5.39. Secondly, it maintains that signage to M6 Diesel (identified as "Saredon Filling Station") should be installed at M6 junction 11. This signage would seek to avoid confusion within the gyratory and consequential potential highway risks. Details are set out in [REP4-054] with the figures showing this graphically. Such provision should be included within the DCO, with drafting provided at [REP4-055].

I and A Simkin

12.5.40. Messrs I and A Simkin [RR-033] object to the diversion of the Saredon 13 bridleway as it is a 'dead end' and is not used, and has not been for several years. They consequently consider it does not need to be re-provided and should be closed.

Allow Limited (Allow)

12.5.41. In the SoCG between the Applicant and Allow [REP8-011] it is reported that Allow are requesting an access point to Dark Lane from plot 4/20g as shown on the Land Plans [REP6-004]. This is to continue a one-way system through this area which is proposed to be shut by the Proposed Development.

Pramesh Chandra

12.5.42. Pramesh Chandra [AS-122] objected to the October application changes, in particular to the non-diversion of Shareshill 5 footpath which *"… currently runs through the side of a residential property and a commercial business … and then continues onto the field"*. The objection is based on his contention that the footpath is not maintained and poses a safety risk.

Other IPs

12.5.43. Mr Lacey [RR-003] supports the Proposed Development on the basis it will improve his commute.

12.5.44. Mr N Harris [RR-013] would like to see an improvement to the pedestrian arrangements at the western end of Hilton Lane at its junction with Cannock Road.

12.5.45. The St Francis Group [RR-029] supports the overall scheme but wishes to ensure that the traffic generation from the Royal Ordnance Factory (ROF) Featherstone redevelopment is factored into the assessment. This is because the ROF Featherstone traffic would principally utilise M54 junction 2.

12.5.46. The Staffordshire Chambers of Commerce [RR-030] support the Proposed Development on the basis that it would help to reduce traffic on local roads including Cannock Road around Featherstone and also along

the A449 through Penkridge and as far north as its junction with the M6 near Stafford. The Chambers of Commerce suggest that it should continue to the M6 Toll.

12.5.47. Nurton Developments (Hilton) Ltd (Nurton) [RR-038] raised concerns that the accommodation bridge south of Brookfields Farm was of insufficient width to allow for agricultural machinery and use as a bridleway. As a result of the October application changes the design of the bridge was made wider to resolve this request, however, this is not agreed as Nurton consider the bridge should be made wider still. Nurton also considered that TAR is insufficient but agreed the cordon model provided to it in October 2020 was sufficient for its purpose. These points are set out in the signed SoCG [REP8-019].

12.6. PLANNING ISSUES

Introduction

12.6.1. The above section sets out the traffic and transport issues raised by IPs during the Examination particularly in RRs and WRs, which were discussed in the relevant ISH2. In summary the main issues in dispute are:

- whether, in principle terms, the Proposed Development would meet its defined objectives;
- whether the TAR sufficiently assesses the Proposed Development, including whether by omitting consideration of a wider scope, such as whether the A449 should be de-trunked, the application is not properly justified;
- whether a weight limit should be imposed on Cannock Road, and if so what implications flow from that, in particular to deal with signage;
- whether the Shareshill layby should be closed, and if so what implications flow from that;
- whether the Proposed Development makes appropriate provision for NMUs in respect of:
    - links between Featherstone and the employment areas to the south of M54 junction 1;
    - any necessary diversion of Shareshill 5 footpath;
    - the stopping up of Saredon 13 bridleway;
    - other PRoWs within the application site;
- the provision of an access to Dark Lane from Plot 4/20g; and
- whether the Proposed Development would give rise to ‘fly-parking’ or ‘fly-tipping’.

12.7. ExA CONSIDERATIONS

General comments

12.7.1. There is effectively no opposition to the principle of the Proposed Development from any participant to the Examination. All the evidence shows, and we agree, the current A460 is unsuited for the purpose it is having to undertake in linking traffic that wishes to travel between

Wolverhampton, Telford and Shrewsbury and the north. It mixes local and longer distance traffic and puts pedestrians and other more vulnerable road users in close proximity to traffic. As there is a high proportion of HGVs that utilise the route this adds to risks.

12.7.2. We therefore agree that local residents are subject to delays, finding difficulties in turning across the A460, even with traffic lights at the junction of Dark Lane/New Road and the A460 and a 'yellow box' at the junction of the A460 with The Avenue. This also leads to severance of the community either side of the A460 as there are few, safe places to cross.

12.7.3. It is also not in dispute, and we agree, that following the Proposed Development users of both the Strategic Road Network and local roads would have more reliable journey times. The most straightforward route analysed in the TAR [REP3-036] is Route 1 which includes the existing alignment. Comparing the journey times for Route 1 using the existing alignment and Route 1 using the link road shows noticeable time savings. These are set out in Appendix 3.10.6 to [REP6-039] and show that there would be time savings for using both Cannock Road and the link road for the majority of times analysed.

12.7.4. Mr Williams general objections are effectively that the Proposed Development is not bold enough in its scope and that it should have included further measures to reduce the effect of traffic on local communities, in his case particularly those which lie either side of the A449 between M54 junction 2 and A5 at Gailey.

12.7.5. It will always be the case that it might have been possible to extend the scope of the project, but what needs to be considered is whether within the terms set for the project, in this case the objectives set out in the Case for the Scheme [AS-037] and described in paragraph 12.3.2, is what is proposed reasonable.

12.7.6. In that regard, the information is clear that if implemented the Proposed Development would reduce traffic on the existing A460, A449 and A5 than would have otherwise been the case had the Proposed Development not been implemented. In respect of the latter two roads it might not be as much as Mr Williams would consider appropriate, but it will reduce traffic in comparing the DS with the DM scenarios. This is set out in Table 7: AADT Flows on selected links.

Table 7: AADT Flows on selected links[60]

	2015	2039 (DM)	2039 (DS)	DS less DM
A449 south of Gailey (NB)	5930	8350	4570	-3780
A449 south of Gailey (SB)	5910	6810	4000	-2810
A5 west of Gailey (EB)	6970	9000	7310	-1690
A5 west of Gailey (WB)	8290	8920	7280	-1640

12.7.7. The Applicant does include the effects of the WMI (shown as "Gailey Development") and identified in paragraph 4.3 11 of the TAR [REP3-036]. The effects of that development on the highway network are outside the consideration of this Proposed Development having been considered when the SoST granted the DCO for that development. The cumulative effects have been included in the assessments.

12.7.8. The reduction of traffic (two-way) along Cannock Road would be in the order of 88% while that on the A449 would be 43% and that on the A5 between the A449 and M6 junction 12 would be 19%. While we agree that the Proposed Development would meet the objective of reducing traffic on the A5 and A449 this would be less successful when compared to that on the A460.

12.7.9. In respect of the A460 the Proposed Development would clearly meet the objectives of keeping the right traffic on the right roads, improving safety by separating local community traffic from long distance and business traffic, and reducing volumes of through-traffic in villages, improving local community access.

12.7.10. The A449 is a different case. At present it is a trunk road and notwithstanding the Proposed Development would continue to provide a strategic, and more direct, route between M54 junction 2 and M6 at either junctions 12 or 13. Journey times along this route (Route 2 as shown in Figure 3) would be largely unaffected by the Proposed Development (a maximum time saving in 2039 being 47 seconds in the 08:00 hour to 09:00 hour and 17:00 hour to 18:00 hour peaks) in a journey of between 20 and 30 minutes (depending on the time of day).

12.7.11. The distance between M54 junction 2 and M6 junction 12 or 13 via the A449 and A5 would be less than via the new road and M6 junction 11. This is set out in paragraph 2.23 of the TAR [REP3-036] which notes that it is approximately 1.6km longer via the new road than the signed route via the A449, A5, M6 junction 12. While the route via the new road will

[60] Sources: TAR [REP3-036] Figures 3.13 and 4.10

result in less junctions for a vehicle to manoeuvre, this additional distance will be a factor in route decision making.

12.7.12. The A449 is a dual-carriageway over its length between M54 junction 2 and the Gailey roundabout junction with the A5. There are two roundabouts and two signal controlled junctions, but this provides good connectivity between these two points and good capacity.

12.7.13. With the Proposed Development in operation, it is clear that only some drivers travelling will chose to use the new link road between M54 junction 2 and M6 junction 12 or 13. However, we consider that, overall, the Proposed Development would encourage drivers to use the Proposed Development so that most traffic would be kept on the right roads thereby improving safety.

12.7.14. The villages along the A449 are in a different relationship to that road when compared with the villages along Cannock Road due to the dual carriageway nature of the A449. With the exception of the community at Coven Heath on either side of the A449 immediately north of M54 junction 2, the communities are not separated in the same way as those on either side of the A460. Because of the proximity of M54 junction 2 to Coven Heath changing the status of the A449 would make no material difference to severance in that community. In the meantime, there is nothing in front of us to indicate that as a consequence of the Proposed Development the A449 north of M54 junction 2 will not continue to be part of the Strategic Road Network. Therefore, we do not agree with Mr Williams that there should be any change to its status at this time.

12.7.15. It may be that with the link road in operation that Highways England considers that the A449 north of M54 junction 2 no longer in reality forms part of the Strategic Road Network and it should be de-trunked. That is for the future and we express no opinion as to whether that would be appropriate.

12.7.16. Consequently, in general terms we consider that the Proposed Development would meet its objectives.

The Transport Assessment Report (TAR)

12.7.17. The TAR [REP3-036] in general terms follows a reasonable approach in that it sets out to understand current road conditions in the area which may be affected by the Proposed Development, but with particular emphasis on the more local area where the most significant effects of the Proposed Development are likely to take place.

12.7.18. From this, in our view, it makes a reasonable comparison between the DM and DS scenarios to identify the effects of the Proposed Development, based on reasonable future assumptions. As set out in section 4.4 of this report the traffic modelling takes no account of the COVID-19 pandemic. We are satisfied that it is based on reasonable assumptions and to take account of any long term effects resulting from changes either caused or influenced by the COVID-19 pandemic which have not been evaluated would be conjecture.

12.7.19. Mr Williams does point out apparent inconsistencies between the traffic assessments on the A449 for the WMI and the Proposed Development. This was subject to ExQ2.10.2 of [PD-017]. The Applicant's response [REP4-033] is that, having gone back to the original survey data, the traffic reported in the TAR is within an acceptable tolerance, and if anything underestimates the daily flows on the A449.

12.7.20. We consider that the Applicant's explanation is reasonable and does not invalidate the TAR. We also consider that the TAR analyses a sufficient area to allow the significant effects of the Proposed Development to be assessed and overall represents a robust analysis of the Proposed Development.

Weight restriction on Cannock Road

12.7.21. The local community representatives reported above consider that there should be weight restriction post-development as set out above. Some of these are not controversial, effectively redefining the areas of existing restrictions in the vicinity of the application site.

12.7.22. What is controversial is whether such a restriction would be justified on Cannock Road. The Applicant points out that traffic on Cannock Road would be reduced by approximately 88%.

12.7.23. The Applicant considers that post-development there would be some 279 two-way HGV movements along Cannock Road, and the survey from M6 Diesel shows 333 two-way HGV movements south of M6 Diesel at present. However, all parties considered that these two figures are "broadly comparable" and we have no reason to disagree. While the M6 Diesel site would be by-passed by the link road, alternative provision at the motorway service area at Hilton Park between M6 junctions 10A and 11 is also by-passed.

12.7.24. Although the Applicant considers that the site is not a 'destination in its own right' we consider that the nature of the facility is that it is and would be just that. This is because effectively the vast majority of the HGV traffic post-development on Cannock Road south of M6 Diesel would be travelling to or from the M6 Diesel site in Saredon.

12.7.25. While there would be an increase in distance for traffic travelling via the M6 Diesel site from M6 junction 11 to M54 junction 1 and vice versa from that having to return to M6 junction 11, we consider that this would not be excessive. It also considers the benefits to the local community of further significantly reducing HGV traffic south of the M6 Diesel site in terms of safety, convenience, noise reduction and air quality improvements, and reductions in severance to local communities is such that a weight restriction is appropriate. We therefore recommend as such and recommend appropriate changes to the preferred DCO to this effect.

12.7.26. The Applicant considers [REP5-004] that the imposition of a weight restriction could result in HGV traffic driving to the outer limits of the restriction and not being able to turn. However, we consider that with appropriate advance signage this would be unlikely to happen. In any

event, traffic travelling from the south would be able to continue west along The Avenue, which does not have an existing weight restriction, and from the north would be able to turn through the M6 Diesel site.

12.7.27. In the same point the Applicant states *"the Weight Restriction … would be challenging to enforce and is unlikely to be supported by the Police"*. However, the enforcement would be no different from any other weight restriction, and which there are already existing in the area. We have no evidence, even anecdotal, that the existing restrictions are not complied with or enforced. Further, there is no evidence that the Police would object to (as opposed to not support) such a proposal.

Signage relating to M6 Diesel and weight restriction

12.7.28. There are two elements relating to this. Firstly, manoeuvring around M6 junction 11 for those wishing to visit the M6 Diesel site, and secondly to provide advance warning of the proposed weight restriction.

12.7.29. In its Written Submission of Oral Case (ISH2) [REP4-054] M6 Diesel explain why HGVs (in particular) travelling to the site from M6 southbound could lead to conflicts on the M6 junction 11 gyratory. It therefore considers that additional signage is appropriate. M6 Diesel also highlights [REP9-008] that in making the DCO for the A303 Sparkford to Ilchester, the SoST amended the preferred DCO to ensure signage for a to be bypassed service area, albeit that was on socio-economic grounds alone.

12.7.30. The Applicant points out [REP1-043] that M6 Diesel is not a motorway truckstop or service area and cannot be signed from the mainline of either motorway; M6 Diesel is not requesting this, but only on the gyratory. Although M6 junction 11 would be maintained by HE following the implementation of any consent, and technically form part of the Strategic Road Network, we consider that this would not be a part of the Strategic Road Network in the same way as the main lines of motorways. The advice in DfT Circular 02/13 'The Strategic Road Network', which the Applicant cites, relating to signage from the strategic road network is only advice. We have not been appraised of anything that would legally prevent such signage.

12.7.31. We consider that providing signage on the M6 junction 11 gyratory would result in more convenience for all users of the gyratory, and if included within the overall signage design would not lead to visual clutter or harm. Consequently, we recommend as such and recommend appropriate changes to the preferred DCO to this effect.

12.7.32. Introducing a weight restriction as recommended on Cannock Road could lead to HGV traffic inadvertently using this route and being prevented, legally, from travelling further, and causing traffic hazards when turning around. We consider that additional advance warning signing at M6 junction 11 and the Featherstone west roundabout would reduce such problems to acceptable levels. Consequently, we recommend as such and recommend appropriate changes to the preferred DCO to this effect.

Shareshill layby

12.7.33. This layby is located to the south of Hilton Lane on the east side of Cannock Road. It has a '1-hour' parking restriction. SCC requests that the layby is closed.

12.7.34. The changes to Cannock Road, including the weight restriction proposed, would be likely to result in less traffic passing the layby. Therefore, it is less likely to be used as a parking area. In addition, the one hour parking arrangements will continue to restrict use. Consequently, we do not see the need as part of the Proposed Development to close the layby.

12.7.35. This is different to the weight restriction since we consider that is required to ensure the objectives of the Proposed Development are met, while this would not be case for the closure of the Shareshill layby.

Non Motorised User (NMU) Routes

Links between Featherstone and the employment areas to the south of M54 junction 1

12.7.36. SSC and Councillor Cope both wished to see enhancements to the NMU routes between Featherstone and the south of M54 junction 1. We agree with them that the original arrangements requiring pedestrians, in particular, to travel effectively in the 'wrong direction' would be counter intuitive to most users who would therefore be more likely to utilise vehicles.

12.7.37. While a direct link would reduce the distances to be travelled, such a route needs to have the appearance of being safe for any users and also convenient. The alternative bridge and underpass routes that the Applicant investigated are considered not to be appropriate for these reasons.

12.7.38. We consider that the ultimate solution proposed by the Applicant of a pedestrian route to the Featherstone west roundabout from, effectively, opposite the junction of The Avenue with Cannock Road, would be an effective compromise and would appropriately mitigate the effects of the Proposed Development on pedestrians in this area.

12.7.39. While this route would not be suitable for cyclists, cyclists are less susceptible to short distance changes in travel distance and traveling via the originally promoted route would still be available to them and represent an appropriate solution.

Shareshill 5 footpath

12.7.40. Shareshill 5 footpath currently predominantly travels through an agricultural field. The proposal would divert part of its length around the link road cutting and across the Hilton Lane bridge. The western extent of the footpath would not be affected.

12.7.41. The western end of the footpath travels through the side of a residential garden, past a dwelling with a window in the side elevation and anybody

traversing it is required to go through two gates and climb a height of approximately 900mm via a step to exit into the field.

12.7.42. The original proposal of re-routing the footpath on the side of Hilton Lane would have avoided the conflicts with the occupier and these difficulties. However, it would have resulted in the loss of mature vegetation as a new footway on the south side of Hilton Lane would have been required, and the crossing of Hilton Lane twice.

12.7.43. As a general principle, we consider that if a PRoW is not directly affected by a proposal then it should remain in situ unless there are exceptional reasons why it should be diverted as part of the proposal. We do not consider that there are exceptional reasons in this case. Consequently the routing of Shareshill 5 footpath as set out in the amended application as the Proposed Development, which utilises the existing alignment at its western end, is acceptable.

Saredon 13 bridleway

12.7.44. This bridleway connects the A460 to the north of M6 junction 11 and local roads in Saredon. From the south it starts from adjacent to the motorway junction, runs parallel to the A460, before travelling along a vegetated route, adjacent to the M6, initially under a bridge carrying the M6 Toll being separated by an approximately 1.8m close boarded fence, then slightly further from the M6 by vegetation.

12.7.45. The surveys undertaken by the Applicant (Table 12.7 of [APP-051]) did not show that the route was used. Further, it is a cul-de-sac in that there are no routes away from a main carriageway from the southern end for NMUs. The landowners request, therefore, it be stopped up.

12.7.46. The NPSNN makes clear in paragraph 5.216 *that "there is a very strong expectation that impacts on accessibility for non-motorised users should be mitigated"*. The corollary of this must be that routes for non-motorised users should not be affected unless there is a very good reason. That it is a cul-de-sac is not, of itself, material as it provides an 'out and back' route over a reasonable distance from Great Saredon north of M6 junction 11A. Consequently, the amount that a route is used is of little materiality and therefore this route should be maintained as in the Proposed Development.

Other PRoWs

12.7.47. While other PRoWs are affected, for example the Shareshill 1 bridleway, the Proposed Development makes appropriate provision for its diversion, and as amended would be of sufficient width to allow agricultural machinery and those on horses to pass safety. Consequently, the Proposed Development makes adequate provision, and there is no need to 'upgrade' footpaths to bridleways as part of the Proposed Development.

Access to Dark Lane

12.7.48. Under the Proposed Development the existing wall and fence on the south side of Dark lane is to be replaced by an open metal fence and a hedgerow (Plot 4/20d of the Lands Plans [REP6-004]). Access to the excluded triangle of land to the south of this would be provided to Cannock Road via Plots 4/20a, 4/20b and 4/20c.

12.7.49. While providing a one-way system through this area from Cannock Road to Dark Lane may be more convenient to the landowner, such an access would reduce the improvements to the street scene along Dark Lane from the provision of the fence, which was agreed by all parties as being appropriate, and would lead to the loss of established woodland. Further there is nothing to show that utilising the existing entrance to Cannock Road for access and egress would not be acceptable. We therefore conclude that the proposed arrangements are appropriate.

Other matters

12.7.50. M6 Diesel has expressed concern about traffic being able to easily exit its site, as it would have to turn right across the flow of traffic. At present this can cause delays both to those exiting the site and on the A460 when HGVs slowly exit (see video at [REP6A-001]). However, with the significant reduction in traffic on Cannock Road, we consider that this would not be a problem post-development, as conflicts would infrequently occur.

12.7.51. We consider the Environmental Mitigation Plans [REP7-016 to REP7-022], together with appropriate consultation mechanisms in the preferred DCO [REP8-005] and OEMP [REP7-026], would ensure that undesirable fly-parking and fly-tipping would be unlikely to take place. They would provide a process whereby these issues could be discussed and addressed by the Applicant with the input of SSC. The two identified areas as being at risk, at the end of the new cul-de-sacs at Dark Lane and Cannock Road, would be overlooked by existing residential properties reducing the likelihood that fly-tipping would take place as perpetrators may be seen.

12.8. CONCLUSIONS

12.8.1. Taking all relevant documents and policies into account, we conclude as follows:

- The Applicant's analysis of the base situation and the effects of the Proposed Development are reasonable and use standard methodologies.
- The Proposed Development would, subject to the recommended changes set out below, meet its traffic and transport objectives, and provide substantial benefits for those around Cannock Road through reductions in traffic, less congestion and improved reliability, and significant benefits for those living close to the A449 and A5 through reductions in traffic and improved reliability.

- A weight restriction on Cannock Road should be made to link in with existing weight restrictions and ensure the objectives of the Proposed Development are fully realised.
- Associated changes to signage are necessary, including the addition of signage around M6 junction 11 to the Saredon filling station.
- The question of closure of the Shareshill layby should be considered comprehensively with any other beneficial changes to Cannock Road post development.
- The revised NMU routes between the north and south of M54 junction 1 would provide a reasonable solution to ensure connectivity.
- There are no other changes required to NMU routes to make the Proposed Development acceptable.

13. FINDINGS AND CONCLUSIONS IN RELATION TO THE WATER ENVIRONMENT

13.1. INTRODUCTION

13.1.1. This chapter deals with the effects of the Proposed Development in relation to the water environment. In particular it deals with whether the Proposed Development would:

- be at risk of flooding or increase the flooding risk off-site;
- result in adverse effects on the water quality and resources.

13.2. POLICY

National Policy Statement for National Networks

13.2.1. The National Policy Statement for National Networks (the NPSNN) paragraphs 5.90 to 5.115 deal with flood risk considerations and paragraphs 5.219 to 5.231 deal with water quality and resources.

13.2.2. Paragraph 5.98 of the NPSNN states *"… where flood risk is a factor in determining an application for development consent, the SoS should be satisfied, where relevant,*

- *the application is supported by a [Flood Risk Assessment] (FRA);*
- *the Sequential Test (see the National Planning Policy Framework) has been applied as part of site selection, and if required, the Exception Test".*

13.2.3. When determining the application, paragraph 5.99 of the NPSNN states, that the Secretary of State (SoS) should be satisfied *"… flood risk will not be increased elsewhere and only consider development appropriate in areas at risk of flooding where it can be demonstrated that … development is appropriately flood resilient and any residual risk can be safely managed"*.

13.2.4. Paragraph 5.102 sets out circumstances where linear infrastructure may be required in areas at risk of flooding, while paragraph 5.103 of the NPSNN states *"… the design of linear infrastructure and the use of embankments in particular can reduce the risk of flooding for the surrounding area. In such cases the SoS should take account of any positive benefit to placing linear infrastructure in a flood-risk area"*.

13.2.5. In terms of mitigation, paragraph 5.112 of the NPSNN indicates *"… site layout and surface water drainage systems should cope with events that exceed the design capacity of the system, so that excess water can be safely stored on or conveyed from the site without adverse impacts"*. Paragraph 5.113 of the NPSNN states *"… the surface water drainage arrangements for any project should be such that the volumes and peak flow rates of surface water leaving the site are no greater than the rates*

prior to the proposed project, unless specific off-site arrangements are made and result in the same net effect".

13.2.6. Paragraph 5.114 of the NPSNN advises *"… it may be necessary to provide surface water storage and infiltration to limit and reduce both the peak rate of discharge from the site and the total volume discharged from the site. There may be circumstances where it is appropriate for infiltration attenuation storage to be provided outside the project site, if necessary, through the use of a planning obligation"*.

13.2.7. Turning to water quality and resources paragraph 5.222 of the NPSNN states *"… for those projects that are improvements to the existing infrastructure, such as road widening, opportunities should be taken, where feasible, to improve upon the quality of existing discharges where these are identified and shown to contribute towards Water Framework Directive commitments"*.

13.2.8. In terms of decision making, paragraph 5.226 of the NPSNN states the SoS *"… should be satisfied that a proposal has had regard to the River Basin Management Plans and the requirements of the Water Framework Directive … and its daughter directives, including those on priority substances and groundwater"*.

13.2.9. Paragraph 5.227 of the NPSNN states the Examining Authority (ExA) and SoS *"… should consider proposals put forward by the applicant to mitigate adverse effects on the water environment and whether appropriate requirements should be attached to any development consent and/or planning obligations"*.

13.2.10. In terms of mitigation, paragraph 5.230 of the NPSNN states *"… the project should adhere to any National Standards for sustainable drainage systems (SuDs). The National SuDs Standards introduce a hierarchical approach to drainage design that promotes the most sustainable approach but recognises feasibility, and the use of conventional drainage systems as part of a sustainable solution for any given site given its constraints".*

National Planning Policy Framework and Planning Practice Guidance

13.2.11. The National Planning Policy Framework (the Framework) sets out various planning policies to meet the challenge of climate change and flooding in paragraphs 148 to 165. This provides detail on the Sequential and Exception Tests as does the Flood risk and coastal change section of the Planning Practice Guidance (the PPG).

River Basin District Management Plan

13.2.12. The Proposed Development is located in the Humber River Basin District and therefore the Humber River Basin District River Basin Management Plan is relevant. Its purpose is to provide a framework for protecting and enhancing the benefits provided by the water environment. To achieve

this, and because water and land resources are closely linked, it also informs decisions on land-use planning. It sets out statutory objectives for water bodies and a programme of measures to achieve statutory objectives.

Local Plan

13.2.13. Staffordshire County Council's (SCC's) Local Flood Risk Management Strategy (LFRMS) guides the flood risk management in the county. The strategy sets out the approach used by SCC as the Lead Local Flood Authority (LLFA) to limit the impacts of local flooding. SCC has also published a Sustainable Drainage Systems (SuDS) Handbook which sets out the role of SuDS in achieving sustainable development across nine LLFAs in the West Midlands of which SCC is one.

13.2.14. The South Staffordshire Local Plan Core Strategy (the Core Strategy) contains Strategic Objective 7 which is to reduce the effect of society on the environment and adapt to the impacts of climate change. Within this objective Core Policy 2 seeks to protect and enhance the natural and historic environment, including protecting and improving water and air quality. Policy EQ1, as part of Core Policy 2 advises that in line with the objectives of the Water Framework Directive (WFD), development proposals must not adversely affect the ecological status of a water body and wherever possible take measures to improve ecological value in order to help meet the required status.

13.2.15. Core Policy 3 addresses sustainable development and climate change and includes requirements to ensure the use of SuDs in all new development and promoting the retrofitting of SuDs where possible; and ensure that all development includes pollution prevention measures where appropriate to prevent risk of pollution to controlled waters. This is further developed in Policy EQ7 which advises development will be permitted where proposals do not have a negative impact on water quality and that all applications must include a suitable SuDs Scheme.

13.3. THE CASE FOR THE APPLICANT

13.3.1. Chapter 13 of the Environmental Statement (ES) [APP-052] along with the associated figures and appendices set out the Applicant's case in respect of Road Drainage and the Water Environment. In particular Appendix 13.1 [APP-200] provides a Flood Risk Assessment (FRA), Appendix 13.2 [APP-201] a Drainage Strategy, Appendix 13.3 [APP-202] an Assessment of Routine Road Runoff and Accidental Spillage Risk (using Highways England Water Risk Assessment Tool (HEWRAT)) and Appendix 13.4 [APP-203] provides the Water Framework Directive Assessments (WFDa).

13.3.2. The Applicant sets out that the methodology for the assessment of road drainage and the water environment follows that set out in the Design Manual for Roads and Bridges (DMRB) Volume 11, Section 3, Part 10, LA 113 Road Drainage and the Water Environment. It includes impacts on water quality, the potential for increased surface water runoff from new

impervious areas leading to an impact on flood risk, potential for changes in surface water drainage patterns, and impacts on hydraulic processes and hydromorphology of the watercourses in the study area.

13.3.3. A WFDa has also been undertaken and is presented in Appendix 13.4 [APP-203] which considers specifically the impact on relevant WFD objectives for designated waterbodies in the study area. An assessment of the potential impacts of routine runoff on surface waters has also been undertaken following HEWRAT version 2.0.4, 2019 methodology as described within DMRB LA 113 Road Drainage and the Water Environment. Furthermore a FRA has been prepared for the Proposed Development in accordance with NPSNN and the Framework requirements.

Baseline

13.3.4. For the purposes of the water resource (flow and quality) assessment, a study area of approximately 1 kilometre (km) around the Proposed Development boundary has been considered. The flood risk study area comprises the Environment Agency Flood Zones, 1-3, along the watercourses that may be affected by the Proposed Development. The flood risk study area includes the extents of watercourses 1 to 6, 1km upstream and 1km downstream of the crossing locations.

13.3.5. The Applicant identifies the key surface waterbodies within the 1km study area which are illustrated on Figure 13.1 of the ES [APP-151] and then identifies those receptors which have been scoped out of the assessment. The remaining water bodies are:

- Watercourses 1 to 4; unnamed ordinary watercourses;
- Watercourse 5 (Latherford Brook), an ordinary watercourse and WFD designated watercourse. Tributary to the WFD designated Saredon Brook (GB 104028046740);
- Watercourse 6 and 7, unnamed ordinary watercourses;
- River Penk, a main river and WFD designated;
- Saredon Brook a main river and WFD designated;
- Tower House Farm Pond (near Old Ride);
- Kings Pools Fishery Ponds;
- Lower Pool;
- Chubb Angling Club Fishing Ponds;
- Hilton Hall Pond; · Brookfield Fishery; and
- Fishing Ponds east of Brookfield Farm;

13.3.6. In terms of flood risk the baseline shows that Watercourses 1, 2, 3 and 6 are located within Flood Zone 1. The land around Watercourse 4 and Watercourse 5 (Latherford Brook) is classified as Flood Zone 2 and 3 although the Applicant explained that FRA modelling shows a lesser Flood Zone 2 and 3 extent to the modelling used to create the Environment Agency's flood mapping. The Applicant confirms that although Watercourse 7, Watercourse 8 and the Staffordshire and Worcestershire Canal are located within the study area, they would not be impacted or altered by the construction of the Proposed Development.

13.3.7. The Applicant confirms the study area is at very low risk of surface water flooding and that there is no risk of flooding from reservoirs and any risk from ponds would be low. In terms of ground water level information this shows that apart from the areas in close proximity to the existing watercourses, the groundwater is generally more than 3 metre (m) below ground level and it is considered unlikely that the groundwater level would naturally rise sufficiently to cause groundwater flooding across most of the Proposed Development boundary.

Drainage Strategy

13.3.8. The Drainage Strategy (Appendix 13.2 [APP-201]) has been designed to ensure no surcharge for a 1 in 1 year return period and no flooding in a 1 in 5 year return period. The network has been designed, including a 40% increase in rainfall intensity, to consider the effects of climate change. The number of new surface water outfalls has been minimised where possible and the drainage strategy makes use of existing outfalls from the M54, M6 and A460, in order to prevent construction of unnecessary structures along the riverbank.

13.3.9. A new bridge is proposed for the crossing of Water course 5 (Latherford Brook), with a 10m clear-span, reflecting the need to minimise any impact on channel flow and sediment processes, as well as riparian habitat. Other than this, new culverts are proposed on some of the smaller and more minor watercourses in the study area, including on Watercourses 2, 3 and 4. Watercourses 2, 3, 4 and 5 are proposed to be realigned/diverted, the detailed design of which would be undertaken within the detailed design stage, as detailed in the Outline Environmental Management Plan (OEMP).

Assessment of likely significant effects

Construction

13.3.10. In terms of water quality, for construction the Applicant notes the construction of the Proposed Development would require two construction compounds, one located to the north-west of M6 junction 11, and a secondary compound located to the east of Featherstone. Satellite welfare facilities may also be established at two locations, close to Hilton Lane and Ride Lane. Surface water drainage from temporary compounds would be directed to the existing land drainage system and outfall to a local watercourse. For the main compound this would likely be Watercourse 5 (Latherford Brook), and for the satellite compound this would likely be Watercourse 2 or 3. The Applicant confirms that during construction, areas of temporary topsoil/earthworks storage would be required in close proximity to the Proposed Development, but the implementation of standard mitigation measures defined within the OEMP would avoid or reduce the potential for adverse surface water quality impacts from the compound areas.

13.3.11. During construction the Applicant anticipates that there would be a negligible effect on Watercourse 1, slight adverse effect (not significant) on Watercourses 2, 3 and 4. For Watercourse 5 (Latherford Brook) the

Proposed Development would cross the brook on a 10m wide clear span structure, which would allow the existing course to be maintained. Whilst construction works would take place at the margins of the primary channel with appropriate measures in place there would be a negligible temporary impact. The Applicant predicts that there may be a need to discharge treated foul wastewater from welfare facilities to Watercourses 2 and 5 which may result in a minor adverse impact on water quality for the duration of the compounds use; this is a slight adverse temporary effect which is considered not significant.

13.3.12. In terms of ground water a large portion of the Proposed Development is in cutting and it is assumed that construction level is 1m below final road level. The Applicant concludes that the construction of the cutting for the mainline of the Proposed Development through the new M54 junction 1 would have no impact on groundwater flow.

13.3.13. At the Hilton Lane Overbridge the groundwater level would be above the assumed construction level and construction dewatering would be required during the construction of the cutting. The dewatering associated with the construction of the cutting has potential to reduce baseflow discharge to Watercourse 4, and therefore mitigation measures will be required. With implementation of the proposed mitigation, the significance of the effect of dewatering on groundwater flow and on baseflow discharge to the surface water system is reduced, in the Applicant's view, to neutral (not significant).

13.3.14. In the cutting to the northeast of Brookfields Farm the groundwater level is approximately 3m to 6m below the assumed construction level; no dewatering would therefore be required.

13.3.15. The Applicant draws attention to the borrow pit adjacent to Dark Lane which would cover a maximum area of 59,800 square metres (m^2) and be up to 10m deep. The Applicant predicts that the extrapolated groundwater level is shallow, within 2m of the ground surface, and hence significant dewatering would be required to maintain a dry operational area irrespective of natural seasonal variations in the groundwater level. It is likely that dewatering of up to 8m may be required. The Applicant concludes that with the implementation of mitigation measures, it is considered that the magnitude of the impact of dewatering of the borrow pit on water resources is reduced to minor and the residual significance of the effect is reduced to moderate for groundwater and slight (not significant) for surface water.

13.3.16. In terms of flood risk during construction the Applicant assesses risk from a variety of sources including fluvial, surface water sources, artificial sources, ground water sources and drainage infrastructure. From all of these sources the Applicant concludes that with appropriate mitigation during works the Proposed Development would not be at risk of flooding nor would the works have an adverse effect on flood risk in the surrounding area during the construction of the Proposed Development. The effects would be negligible, resulting in a neutral effect (not significant).

Operation

13.3.17. In terms of operational effects on surface water quality from routine road runoff the Applicant undertook a HEWRAT assessment (Appendix 13.3 [APP-202]. The Applicant's overall conclusion is that there are considered to be no significant adverse effects on receiving watercourses from routine runoff from new outfalls from the Proposed Development, or worsening of the current situation for existing outfalls, with the application of the proposed treatment measures. In terms of ground water, the impact of routine road runoff from the Proposed Development is predicted to be negligible for groundwater waterbodies with the application of mitigation as has been described in the Drainage Strategy [APP-201].

13.3.18. In terms of accidental spillages the Applicant considers the potential impact on the receiving watercourses is negligible, resulting in a slight effect on Watercourses 2, 3 and 5, and a neutral effect on the remaining Watercourses 1, 4, 6 and 7.

13.3.19. In addressing the effects of de-icing of the carriageways on water quality the Applicant concludes that a minor magnitude of impact would result in a neutral or slight adverse effect (not significant) for the low importance Watercourses 1 and 4. However, given the temporary, intermittent nature of the impact this is considered to be a slight adverse effect (not significant). For the high importance watercourses (Watercourses 2, 3 and 5) and medium importance watercourses (Watercourses 6 and 7) the Applicant predicts a minor adverse magnitude of impact which would give a slight adverse effect (not significant). Therefore, the Applicant considers that this aspect would give a not significant effect on the receiving watercourses as a whole.

13.3.20. The Proposed Development design includes four new culverts, and one clear-span bridge. The Applicant contends that the detailed design for the culverts/ watercourse crossings aim to minimise changes in river alignment and length as much as is feasible. Overall, the Applicant concludes that new culverts would be installed on Watercourse 2, 3 and 4, all of which are considered to be of low importance for morphology. With the embedded mitigation measures this results in a slight adverse effect (not significant). Watercourse 5 (Latherford Brook) would be crossed by a 10m wide clear span structure. Latherford Brook is a WFD waterbody and is considered to be of high importance for some attributes, and medium importance for hydromorphology. The additional width on the crossing would allow the watercourse to maintain river processes without significant impact. Based on the 10m clear span bridge, the Applicant considered there would be a minor adverse impact on the watercourse morphology. In terms of the ES this is considered by the Applicant to result in a slight adverse effect (not significant) due to the presence of bridge abutments, loss of a secondary high flow channel, and some constriction of the primary channel.

13.3.21. The Proposed Development includes the excavation of three cuttings. The invert of both the southern and northern cuttings are considered by the Applicant to be above the groundwater level in the sandstone aquifer.

Accordingly, it is concluded that no groundwater control would be required in these two cuttings and hence there would be no change in groundwater flow, resulting in a neutral effect (not significant).

13.3.22. The cutting beneath Hilton Lane Overbridge would be up to 5.8m below ground level. This is in the vicinity of Watercourse 4 and the Applicant considers that the impact on the flow in the stream would be minor. As Watercourse 4 is of low importance, the significance of the effect is slight (not significant). Other than Watercourse 4, there are no other groundwater receptors in the vicinity of the cutting.

13.3.23. Twelve new ecology ponds would be constructed as part of the Proposed Development. It is the Applicant's view these would mitigate for the loss of the two ponds during construction, and the partial loss of Lower Pool. Therefore, on balance is the Applicant considers there would be a negligible impact on pond morphology and habitat provision. This would result in a neutral effect (not significant).

Flood Risk

13.3.24. In terms of Watercourses 1 - 4, and 6 - 8 the Applicant concludes that the change in fluvial flood risk is negligible, resulting in a neutral effect (not significant). In respect of Watercourse 5 (Latherford Brook) the Applicant's conclusion is that the FRA has shown that the depths and extents of flooding are largely unchanged in the higher frequency events (50% and 5% Annual Exceedance Probability (AEP)), therefore the impact of flooding is considered to have a minor adverse impact, resulting in a neutral effect (not significant). In terms of Watercourse 2 the Applicant highlights that the baseline model predicts that there is flood risk to the A460 during the 1% AEP plus 50% climate change storm, indicating that a flood depth of 4 centimetres (cm) could occur on the Cannock Road road surface. However, according to the Applicant, the Proposed Development has been designed to not worsen flood risk to the Cannock Road keeping flood depths to the same as the baseline scenario (there is no change to the size of the existing culvert).

13.3.25. The Applicant confirms the application site is generally at low risk from surface water flooding, although there are some areas of medium and high risks associated with watercourses. The Proposed Development alignment is predominantly on undeveloped (greenfield) land currently used for agricultural purposes. Given that the Proposed Development would increase the impermeable area along the entirety of its length, there would be the potential for the surface water flood risk, both to the highway alignment and surrounding area, to increase. With the implementation of the Drainage Strategy (Appendix 13.2 [APP-201]) the Applicant contends there should be no increase in surface water flood risk from the Proposed Development.

13.3.26. The Applicant notes that groundwater level monitoring shows that the groundwater level is generally below the base levels of the Proposed Development and hence there is a negligible risk that the groundwater level would rise to intercept the Proposed Development. During operation

groundwater control would be required in the cutting beneath Hilton Lane Overbridge to maintain the groundwater level below road level, as this level would be below the existing groundwater level. The Applicant notes the drainage from the cutting would be discharged to surrounding surface watercourses and thus concludes the impact on groundwater flooding mechanisms due to the Proposed Development is considered to be minor in the operational phase. Overall, a negligible magnitude of impact is predicted resulting in a neutral effect (not significant).

WFD Assessment

13.3.27. The Applicant notes the WFDa indicates that only localised temporary and permanent impacts to WFD relevant bodies are expected providing the mitigation measures embedded in the design are implemented. This would include the design of drainage systems, new watercourse crossings, and outfalls, and implementation of construction phase mitigation measures. The future design of the clear-span bridge across Watercourse 5 (Latherford Brook) and any minor watercourse diversions to new culverts will be informed by appropriate hydromorphological and ecological surveys. Where possible, the diversion of minor watercourses will deliver enhancement on the existing artificially modified channel form. The Applicant confirms mitigation measures including those to be adopted during construction to manage all pollution risks are outlined in the OEMP.

13.4. REQUIREMENTS (R)

13.4.1. R4 requires the submission of a Construction Environmental Management Plan (CEMP), substantially in accordance with the OEMP, and its approval by the SoS. Amongst other matters the CEMP must reflect the mitigation measures set out in the Register of Environmental Actions and Commitments (REAC) and include various management plans including a Water Management Plan. A Handover Environmental Management Plan (HEMP) must be completed by the end of the construction period to address matters set out in the CEMP and must contain long term commitments to aftercare monitoring and maintenance.

13.4.2. R8 addresses surface and foul water drainage and requires details of the drainage system to be submitted and approved. The details must reflect the mitigation measures in the Register of Environmental Actions and Commitments (REAC) including means of pollution control. The system must be constructed in accordance with the approved details.

13.5. THE POSITION OF THE INTERESTED PARTIES (IPs)

Staffordshire County Council (SCC)

13.5.1. SCC's initial comments at the start of the Examination included its Local Impact Report (LIR) [REP1-007] submitted at Deadline (D) 1 and in which matters related to Flood Risk and the Drainage Strategy were raised.

13.5.2. SCC noted that the FRA identifies six ordinary watercourses that intersect the route alignment. Of these, five have upstream catchments of less than 3 square kilometres (km^2) so have no associated modelled Flood Zones. Watercourse 5 (Latherford Brook) has an upstream catchment greater than $3km^2$, so has associated Flood Zones for which the Environment Agency (EA) is responsible.

13.5.3. SCC highlights that the Proposed Development was found to have no impact on Watercourses 1 and 6, and to produce negligible changes in flood extents and depths at Watercourse 4. Watercourse 2 was found to pose an existing risk to the A460, which the Proposed Development would not increase. The potential to reduce the risk here would be beneficial but was deemed not significant enough to include in the detailed design.

13.5.4. SCC further notes that at Watercourse 3, it was found that Lower Pool has a significant impact on the flood risk downstream at the Dark Lane culvert and A460 culvert. The Proposed Development would reshape and reduce the area of Lower Pool, but it was found that the Proposed Development would not impact the fluvial flood risk provided that the pool is retained as an online pond. It is recommended that Lower Pool is retained as an online feature, as it provides flood protection downstream, and that further sensitivity testing concerning the pond size and weir design should be considered at the detailed design stage. The detailed design should ensure that flood risk downstream is not increased, and preferably include measures to reduce it. The detailed design of Lower Pool and weir could provide an opportunity for improvement.

13.5.5. SCC notes that the risk of blockage or build-up of sediment is highlighted as a residual risk. A maintenance plan will need to be developed at detailed design stage to describe the ownership, frequency of and techniques for site drainage maintenance. In the event of failure through either blockage or exceedance, the detailed design is to include landscaping of the topography to ensure no flooding to third party land and reducing flood risk to the road.

13.5.6. In relation to the drainage strategy SCC note that a sustainable drainage strategy is required to ensure that surface water discharge from the site is attenuated to greenfield runoff rates, and that adequate water quality treatment is provided to protect downstream watercourses from increased pollution. The submitted Drainage Strategy [APP-201] outlines the key parameters and standards to be followed in the detailed drainage design to achieve these requirements:

- attenuation within Sustainable Drainage System (SuDS) features to be provided to ensure no flooding in a 1 in 100 year + 40% return period event, with a 300 millimetre (mm) freeboard included in the proposed design;
- discharge of surface water runoff to be restricted to a greenfield rate of 5l/s/ha for all events up to the 1 in 100 year + 40% return period event; and

- drainage design to be in accordance with the SuDS Manual 2015, CIRIA C753, with water quality treatment in accordance with DMRB LA113, to be assessed using HEWRAT.

13.5.7. SCC draws attention to the strategy noting that preliminary hydraulic modelling has been undertaken to establish approximate attenuation volumes required, but detailed modelling will be required for the detailed design of the network and structures, and to demonstrate compliance with the design standards for the full range of critical storm events and that ongoing maintenance will be key to managing flood risk for the lifetime of the development.

13.5.8. Another potential source of flood risk from the strategy to which SCC points is where surface water is discharged via existing systems, and it is vital that replacements or upgrades identified at the detailed design stage are fully implemented.

13.5.9. By the end of the Examination a signed Statement of Common Ground (SoCG) [REP7-027] between SCC and the Applicant was provided. In respect of matters related to the water environment, including any permits required from SCC as LLFA all matters were agreed.

13.5.10. This included, amongst other matters, the following points.

- The LLFA is content that the ES appropriately assesses the effect of the Proposed Development on road drainage and the water environment and that impacts would be managed through adherence to mitigation measures detailed in the OEMP.
- In principle the LLFA is content with the design proposals of proposed ordinary watercourse crossings.
- The LLFA is content that the FRA appropriately assesses the flood risk associated with the Proposed Development with the exception of the following points on fluvial flood risk.
    - The following text has been added to the FRA Report to clarify:
      "*The baseline model predicts that the first instance of flood risk to the A460 is as a result of a 1% AEP plus 50% climate change storm. The application of the Scheme design to the baseline model shows that there is no change in the return period of the first instance of flood risk, as flood risk in the vicinity of the scheme first occurs during the 1% AEP plus 50% climate change storm event".*
      The parties agree that this resolves SCC's query.
    - The LLFA queries whether there was any potential to reduce the flood risk at the A460 by providing additional floodplain storage upstream/downstream of the new culverts? The Applicant's response was that this was considered as part of the option design development; however, it was not explicitly stated in the FRA as it was discounted from the proposed Development early on. Additional text was added to the FRA as follows:
      "The baseline model predicts that the first instance of flood risk to the A460 is as a result of a 1% AEP plus 50% climate change storm. The application of the Scheme design to the

baseline *model shows that* there *is no change in the return period of the first instance of flood risk, as flood risk in the vicinity of the scheme first occurs during the 1% AEP plus 50% climate change storm event"*

This was agreed between the parties.

- Matters related to Lower Pool its reduction in size and whether it would be on-line. Changes to the FRA and Hydraulic model were made by the Applicant and the SoCG records that the parties agreed that this resolves the queries.

13.5.11. SCC asked whether there is potential to optimise the pond/weir design to reduce flood risk downstream. The Applicant agreed that further sensitivity testing concerning the pond size and weir design will be undertaken at the detailed design stage to minimise flood risk downstream. This is secured through commitment DWAT8 of the OEMP [REP4-011] (this was updated during the Examination and the latest version was submitted at D7 [REP7-026]). In light of this commitment, the point was agreed.

13.5.12. The LLFA is content that the Drainage Strategy [APP-201] as outlined in Appendix 13.2 of the ES is appropriate and that the requirement to implement this design is captured through adherence to the OEMP.

13.5.13. The LLFA is content that the WFDa as reported in Appendix 13.4 of the ES [APP-203] appropriately assesses the impact of the Proposed Development in line with the Water Framework Directive and that impacts would be managed through adherence to mitigation measures detailed in the OEMP.

South Staffordshire Council (SSC)

13.5.14. In the LIR SSC states flooding and drainage details along with mitigation has been assessed by the County Council. SSC therefore have no comments to make and supports SCC's judgement.

Environment Agency

13.5.15. The Applicant and the EA have completed and signed a SoCG [REP8-027] (attached to which is a WFDa Summary Report) and which confirms all matters in relation to road drainage and the water environment are agreed. This includes consideration of the Applicant's FRA (Appendix 13.1 to the ES) [APP-200], the Drainage Strategy (Appendix 13.2 to the ES) [APP-201] and the WFDa (Appendix 13.4 to the ES) [APP-203], amongst other supporting documents. The SoCG records the EA's conclusions and final position and responses from the Applicant that has enabled the EA to reach those conclusions.

13.5.16. The SoCG records that the EA is content that the ES appropriately assesses the effect of the Proposed Development on road drainage and the water environment and that impacts would be managed through adherence to mitigation measures detailed in the OEMP.

13.5.17. It Records that the EA have no objection to the assessment of flood risk in relation to Watercourse 5 (Latherford Brook), which is the only one they have assessed as it has a mapped floodplain, subject to the land acquisition agreement proposed.

13.5.18. The SoCG records that the EA considers the drainage strategy utilises an appropriate discharge rate and is content with the climate change allowance.

13.5.19. In relation to the WFDa the SoCG records that the EA is content that the mitigation and enhancement measures set out in the OEMP [REP4-010] (this was updated during the Examination [REP7-026]) are appropriate and that these measures are appropriately secured through the Development Consent Order (DCO). It also records in respect of the River Penk that the submission of a revised WFD Summary Report (attached to the SoCG) and with discussions at a meeting on 25 March 2021, the EA is content that the Proposed Development would be WFD compliant.

13.5.20. In terms of the WFDa the EA raised a number of issues around the treatment of mitigation and enhancement measures. The SoCG records that the EA is content that these enhancements are appropriately secured and that the amendment to the WFDa, that ditches are not being considered as enhancement measures, that mitigation measures are not being considered as enhancement measures, that mitigation measures are listed in the main body of the report, that appropriate mitigation measures, in respect of Watercourse 5 (Latherford Brook) for over-pumping are outlined in the ES and OEMP and that the bridge span has been justified, is appropriate, and that the impacts on Latherford Brook are reflected in the WFDa.

13.5.21. Following further clarification, the EA is content that sufficient hydromorphology assessment has been undertaken. The SoCG also records that the EA is content that the Proposed Development would not impact on mitigation measures identified for Saredon Brook under WFD.

The Canal and River Trust

13.5.22. The Canal and River Trust provided a RR [RR-007] which stated that it has previously confirmed to the promoter that the proposal is unlikely to have an adverse impact on any of their assets, unless the proposal or limits of development significantly alters. As the proposal and limits of development had not altered it considers the earlier response is still applicable. The Canal and River Trust took no active part in the Examination.

13.6. PLANNING ISSUES

13.6.1. There were no outstanding areas of dispute in respect of drainage and the water environment by the end of the Examination. The conclusion of issues which were considered during the Examination and are important for the SoS's decision are used to identify the main issues are:

- Whether the Proposed Development results in increased flood risk on the A460 at Featherstone.
- Whether the reduction in size of Lower Pool has the potential to increase flood risk downstream.
- Whether the proposed bridge at Watercourse 5 (Latherford Brook) would result in increased flood risk or adversely affect the watercourse.
- Whether the Proposed Development is appropriate in the area, given its flood risk level, and whether overall it results in increased flood risk elsewhere.
- Whether the proposed drainage strategy is appropriate.
- Whether the Proposed Development would be compliant with the WFD.

13.7. ExA CONSIDERATIONS

General approach and analysis

13.7.1. The ES chapter was supported by comprehensive documentation which provided a FRA, a Drainage Strategy, an Assessment of Routine Road Runoff and Accidental Spillage Risk (HEWRAT), and a WFDa. Overall, we are satisfied with the general approach, baseline and analysis of the FRA, drainage strategy, potential for contamination and WFDa. There have been no substantive matters left unresolved between the Applicant and main IPs in this regard. The LLFA and EA confirm, in their respective SoCG's with the Applicant, that the issues or clarifications that were raised or sought were provided and resolved and that they were content with the approach, conclusions and mitigation measures proposed. There was no substantive or conflicting evidence which required further resolution or judgement to reach a conclusive position.

Flood Risk at A460

13.7.2. Watercourse 2 is described as a small, unnamed tributary to the River Penk (from Source to Saredon Brook) WFD water body, set between existing culverts beneath the A460 downstream and the M54 upstream, of the Proposed Development. It is located to the south of Featherstone. The Proposed Development significantly reshapes the watercourse, diverting the watercourse approximately 80m north of its current position. In addition, a culvert of 182m length is included in the design but the design does not include any changes to the existing A460 culvert.

13.7.3. The baseline model predicts that there is a flood risk to the A460 during the 1% AEP plus 50% climate change storm, indicating that a flood depth of 4cm could occur on the A460 road surface. The LLFA queried whether the frequency of flooding would be increased here by the Proposed Development. In other words the LLFA wished to identify the lowest return period that flooding is seen at the A460 in the baseline and Proposed Development scenarios. The ES notes that the Proposed Development has been designed to not worsen flood risk to the A460 keeping flood depths the same as the baseline scenario. It confirms that the baseline model predicts that the first instance of flood risk to the A460 is as a result of a 1% AEP plus 50% climate change storm.

13.7.4. The Applicant in the ES further confirms that different alignments of the watercourse were tested as part of the development of the design. Iterations of this included the testing of a pond storage area between the main and minor culvert. Whilst this did have a minor impact on water levels at the existing A460 culvert, it was not significant enough to include in the design given the physical constraints, required alterations and increase in Proposed Development costs. It was further noted that the existing A460 culvert throttles flows during larger magnitude events, holding flows upstream and consequently providing some flood risk benefits to properties downstream in the Featherstone area. Improvements to the A460 culvert such as increasing diameter or conveyance would allow more flows to pass forward through the A460 culvert, which could put properties to the south of the Featherstone area at risk of flooding during a 1% AEP plus 50% climate change storm. Therefore, no significant changes to the existing A460 culvert were proposed as part of the Proposed Development, to avoid this risk.

13.7.5. The LLFA in its SoCG agreed to this position and did not seek further improvement. The Proposed Development does not therefore increase the risk of flooding elsewhere for receptors in the region of the A460 culvert on Watercourse 2. We are satisfied that the residual risk has been minimised, there is no worsening of the situation elsewhere and that the Proposed Development would not be affected by the residual risk.

Lower Pool

13.7.6. Watercourse 3 is a small, unnamed tributary to Saredon Brook (from source to River Penk) WFD water body. Watercourse 3 is an outflow from a sequence of impounded online small ornamental lakes/ponds upstream of the Proposed Development, including Lower Pool, which then flows through two culverts that are downstream of the Proposed Development, one beneath Dark Lane, and the other beneath the A460.

13.7.7. The Proposed Development reshapes the outline of Lower Pool and includes a culvert underneath the new carriageway. The dissection of Lower Pool will reduce its area from, approximate values, 13,200m^2 to 8,723m^2. The Applicant contends that despite the reduction in the size of Lower Pool, the Proposed Development does not impact the fluvial flood risk for this watercourse if the pool is retained as an online pond. Water levels within the channel are increased in the section of watercourse between the culvert crossing and the Dark Lane culvert, as a result of reprofiling the upstream river reach. However, retaining part of the Lower Pool protects properties at Dark Lane, as well as the existing A460 from potential flood risk.

13.7.8. The LLFA noted that the model is predicated on Lower Pool remaining on-line. As the model sensitivity testing demonstrated the importance of Lower Pool, and a section of Lower Pool will be lost as a result of the Proposed Development SCC requested confirmation of the necessary storage capacity to be retained, or whether the detailed design would need further modelling to confirm no increase in flood risk. The Applicant confirmed that it is important that the Lower Pool is retained as an online

feature, as it provides flood protection downstream. The LLFA were content with this response but queried whether the pond/weir design could be optimised during detailed design to reduce flood risk downstream. Following further discussion the Applicant provided a firmer commitment in the REAC in the OEMP to ensure the pond size and weir design will be tested and considered at the detailed design stage to minimise flood risk downstream. Again, the LLFA were content with this commitment. R4 secures that a CEMP is produced and R8 a detailed drainage design, both to be in line with the OEMP and REAC and this matter has therefore been secured.

Crossing of Watercourse 5 (Latherford Brook)

13.7.9. Watercourse 5 (Latherford Brook) is located to the south of junction 11 of the M6. It is an Ordinary Watercourse and principal tributary to the Saredon Brook (from Source to River Penk) WFD water body. The proposed crossing is downstream of an existing culvert beneath the M6, and upstream of a culvert beneath the A460. The Proposed Development would cross the water course. The proposed crossing, at this stage, is a 30m long bridge (with a 10m span) for the new carriageways, and that there would be no embankment footprint on the watercourse.

13.7.10. The FRA confirms that Watercourse 5 (Latherford Brook) overtops its banks and floods in the 1% AEP event. The Proposed Development changes the shape and depth of the floodplain in this location in the vicinity of the proposed river crossing of the Latherford Brook. The Applicant contends that despite the change in flood extents and depth, there is no significant change in flood risk.

13.7.11. The Applicant contends that the areas at risk of inundation are open fields and woodland, which are already at risk of flooding under existing conditions. There is no change in flood risk to any vulnerable receptors, such as property and the road. The only receptor, identified by the Applicant, to the change in flood risk is woodlands adjacent to the watercourse. The change in flood depths during the return periods modelled has been assessed as a minor impact to the existing woodland. During a 1% AEP event with a 50% climate change allowance, peak channel flood depths in this area are predicted to increase by 12cm, with flood extents widened.

13.7.12. The impact of a 1% AEP event with 50% climate change allowance, according to the Applicant, may impact a wider area. However, the Applicant contends that a woodland receptor is generally resilient to the impacts of flooding. The impact of a high magnitude event is unlikely to significantly change the nature of the woodland, once recovery has taken place.

13.7.13. Notwithstanding this, the impact of frequent events is very likely to change the habitat of the woodland over time. The Applicant highlights that simulations show that there is very little out of bank flooding during this high frequency event, and extents and depths between the baseline and Proposed Development events are similar, with no new areas

experiencing flooding. Therefore, the Applicant concludes that the impacts of the Proposed Development on flood risk to these woodlands is predicted to be minimal.

13.7.14. The EA in its SoCG confirmed it had no objection to the assessment of flood risk in relation to this watercourse, subject to the land acquisition agreement proposed within paragraph 4.2.8 of the FRA [APP-200] going ahead. The Applicant confirmed that the land referred to in paragraph 4.2.8 affected by the change in floodplain is within the Proposed Development boundary (it includes areas of plots 5/11i, 5/22 and 5/23, as shown on the Land Plans [AS-065] (these are now [REP6-004]) and is to be purchased to allow other environmental mitigation and compensation measures to be implemented, including the woodland planting proposed to compensate for the impact on ancient woodland). This position was agreed by the parties in the SoCG. The LLFA raised no concerns about this aspect of the Proposed Development.

13.7.15. We conclude that whilst the Proposed Development would increase the area and extent of inundation this would not affect any properties or the road. The only receptors that would be affected would be the woodland adjacent and, given the simulation modelling, this would not be significant. In terms of flooding there is not an increase in the sensitivity of receptor or the actual risk, albeit that there may be a small increase in the extent of inundation. The area of woodland is already a woodland which is affected by flooding and there is no significant harm arising. The biodiversity issues are dealt with in the Chapter 6 of this report, but no significant impact is identified.

13.7.16. We are satisfied that there would be no increased risk of flooding elsewhere as a result of this part of the Proposed Development.

Flood Risk

13.7.17. Albeit the majority of the Proposed Development site is within Flood Zone 1 there are a number of water courses where the Proposed Development crosses and the Applicant's FRA acknowledges that the Proposed Development alignment passes through Flood Zone 2 and Flood Zone 3 areas. The NPSNN paragraph 5.105 advises that there is a preference for locating projects in Flood Zone 1, then in Flood Zone 2. It further advises that if there is no reasonable available sites in these Flood Zones then national networks infrastructure projects can be located in Flood Zone 3, subject to the Exception Test. This is the Sequential Test. In this case the project is for a linear infrastructure connecting two points. The majority of the Proposed Development is across Flood Zone 1 but there are a number of water bodies and which includes Flood Zone 2 and 3 areas, these include areas located close to junction 11 of the M6 and which cannot be avoided by the Proposed Development. The Proposed Development is therefore acceptable in the context of the Sequential Test if it meets the Exception Test.

13.7.18. The Proposed Development is classed as a Nationally Significant Infrastructure Project (NSIP), it proposes to connect two national

motorways and bring substantial benefits to the wider community as is assessed and addressed in other chapters of this report. The evidence of the wider sustainability benefits to the community is provided as part of the wider DCO submission. The information presented within the FRA further demonstrates that mitigation measures have been incorporated into the design to ensure that the new road will be at a low risk of flooding and would be safe for the lifetime of the development. Given the limited effect on flood risk, this risk is significantly outweighed by the sustainability benefits to the community. There are no areas where the Proposed Development is at risk from flooding identified in the modelling.

13.7.19. On this basis we are satisfied that the Proposed Development would meet the two elements of the Exception Test as set out in paragraph 5.108 of the NPSNN.

13.7.20. The FRA has assessed the Proposed Development and considered the effect and risk from all sources of flooding including fluvial, surface water, ground water, sewer and water supply infrastructure and artificial sources. In all cases the FRA concludes that risk to and from the Proposed Development is low. Mitigation is identified as required in terms of surface and ground water due to the increase in the permeable area of the road and the cuttings etc. that are created. The mitigation measures are identified in the surface water drainage plan which is secured through the OEMP and through commitments in the REAC within the OEMP. These are secured through R4 and R8.

13.7.21. In areas identified where flooding may occur, addressed above, those associated with Watercourse 5 (Latherford Brook) and Watercourse 2, the FRA confirms that the Proposed Development would remain operational and safe for users in times of flood. We have no evidence to the contrary.

Drainage Strategy

13.7.22. The Drainage Strategy [APP-201] is provided as an appendix to the ES chapter. It sets out how the use of SuDS would be implemented as part of the Proposed Development to manage surface water runoff and accidental spillages, where necessary, that may drain to watercourses. SuDS are the preferred solution as they provide a number of functions, including a way to minimise the risk and impact of flooding in addition to potentially providing a degree of treatment for pollutants. A number of wet ponds, filter drains, swales, new highway ditches and vortex flow separators have been incorporated into the overall water management strategy. These have been designed to mimic natural drainage as far as practicable, and to provide a number of other benefits to ecological habitat creation.

13.7.23. The EA considers that the drainage strategy utilises an appropriate discharge rate and is content with the climate change allowance provided for attenuation features as outlined in it. The LLFA is content that the Drainage Strategy is appropriate and that the requirement to implement this design is captured through adherence to the OEMP. The LLFA is

further content that the submitted Drainage Strategy outlines the key parameters and standards to be followed in the detailed drainage design to achieve these requirements.

13.7.24. We have been provided with no substantive concerns or issues that the Drainage Strategy is not reasonable and appropriate. The overall surface water drainage details are required to be submitted and approved and are secured through R8 and R4 requires the production of a CEMP in accordance with the OEMP and the REAC. The OEMP includes the requirement to include a Water Management Plan and the REAC contains a number of specific commitments required to be undertaken during and after the Proposed Development is constructed and becomes operational.

13.7.25. We are satisfied that the Proposed Development would be satisfactorily drained, and the Drainage Strategy is appropriate.

Water Framework Directive (WFD)

13.7.26. The WFD aims to protect and enhance the quality of the water environment and is transposed into legislation in England by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (as amended 2015 and 2016). Under the WFD, 'waterbodies' are the basic management units, defined as all or part of a river system or aquifer. Waterbodies form part of a larger 'river basin district', for which 'River Basin Management Plans' are used to summarise baseline conditions and set broad improvement objectives.

13.7.27. The application site is located within the Humber River Basin District. In the context of this application the Applicant has assessed seven water courses that are part of the catchment of two water bodies designated under the WFD, the River Penk from Source to Saredon Brook and Saredon Brook from Source to River Penk. Watercourses 1 and 2 are within the River Penk from Source to Sarendon Brook and Watercourses 3 to 7 are within the Saredon Brook Source to River Penk water bodies.

13.7.28. In terms of the works affecting Watercourse 2 at junction 1 of the M54 and Watercourses 3, 4 and 5 around junction 11 of the M6, Brookfields Farm and Lower Pool the conclusion is that the Proposed Development would result in some loss of existing open channel habitat. The existing watercourses are highly modified and disconnected from the rest of the catchment, so the importance of protecting the local habitat that remains is recognised. However, it also means that local impacts are unlikely to affect the rest of the water bodies. The impacts of the Proposed Development are judged by the Applicant as unavoidable and unlikely to have significant detriment to the overall condition and value of the River Penk (from Source to Saredon Brook) water body and the Saredon Brook (Source to River Penk) WFD water body. In terms of Watercourse 5 it is concluded that it is unlikely that the new bridge would have a significant detrimental impact on Watercourse 5 (Latherford Brook) as a whole, or on the overall condition and value of the Saredon Brook (from Source to River Penk) WFD water body.

13.7.29. The EA is content that the mitigation and enhancement measures set out in the OEMP [REP4-010] (this has been updated to [REP7-026]) are appropriate and that these measures are secured through the DCO. The EA further agreed in the SoCG that it is content that the Proposed Development would be WFD compliant. Following clarification, the EA is satisfied that mitigation measures were not being considered as enhancements. The Drainage Strategy OEMP and REAC provide satisfactory assurances and secure the required mitigation along with R8 which requires detailed design of the drainage.

13.7.30. The LLFA is content that the WFD Assessment appropriately assesses the impact of the Proposed Development in line with the Water Framework Directive and that impacts would be managed through adherence to mitigation measures detailed in the OEMP.

13.7.31. The EA and LLFA are satisfied with the assessment and that the Proposed Development would be WFD compliant. We have no evidence before us to reach a different conclusion and therefore are satisfied that the Proposed Development would be WFD compliant.

13.8. CONCLUSIONS

13.8.1. Taking all the relevant documents and policies into account and on the basis of the above, we conclude as follows:

- The Proposed Development would meet the Sequential and Exception Tests and as essential infrastructure and it would be appropriately located, even given that some of it would be within Flood Zones 2 and 3.
- The Proposed Development would be safe for its lifetime and its operation and would not be affected by flooding.
- The Proposed Development would not increase the risk of flooding elsewhere.
- We are satisfied that the Proposed Development would meet the appropriate tests in the NSPNN with regard to flood risk, having particular regard to the works at Watercourse 2, Lower Pool and Watercourse 5 (Latherford Brook) and would not conflict with the policies of the Core Strategy.
- We are satisfied that the Proposed Development is supported by an appropriate Drainage Strategy and contains appropriate mitigation secured through R4 and R8 and through the OEMP and REAC.
- We are satisfied that the Proposed Development would be WFD compliant and that it would not result in significant detriment to the overall condition and value of the potentially affected water bodies and would not conflict with the Core Strategy.
- Overall, we are satisfied that the Proposed Development would not be at risk of flooding or increase the flooding risk off-site or result in adverse effects on water quality and resources in the study area.

14. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

14.1. INTRODUCTION

14.1.1. This chapter sets out the analysis and conclusions reached relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State for Transport (the SoST), as the Competent Authority, in performing their duties under the Habitats Regulations[61].

14.1.2. Consent for the Proposed Development may only be granted if, after having assessed the potential adverse effects the Proposed Development could have on European Sites[62] , the Competent Authority considers it acceptable in light of the requirements stipulated in the Habitats Regulations.

14.1.3. We have been mindful throughout the Examination of the need to ensure that the SoST has sufficient information required to carry out their duties as the Competent Authority. Evidence was sought from the Applicant and the relevant Interested Persons (IPs), including Natural England (NE) as the Statutory Nature Conservation Body (SNCB), through Written Questions and Issue Specific Hearings (ISHs).

14.1.4. Regulation 63 of the Habitats Regulations states that if an application proposal is likely to have a significant effect (either alone or in combination with other plans or projects), then the Competent Authority must undertake an Appropriate Assessment of the implications for that site in view of its conservation objectives.

14.1.5. The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 which came into force on Implementation Period Completion Day, 31 December 2020. These amendment regulations reflect the arrangements in light of the UK's departure from the EU, as discussed in section 3.3 of this report, including the introduction of new terminology with reference to the National Site Network rather than the Natura 2000 network (which remains the collective term for sites in the European Union).

[61] The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations)

[62] The term European sites in this context includes Special Areas of Conservation (SAC), Sites of Community Importance (SCI), candidate SACs (cSAC), possible SACs (pSAC), Special Protection Areas (SPA), potential SPAs (pSPA), Ramsar sites and proposed Ramsar sites for which the United Kingdom UK is responsible. For a full description of the designations to which the Habitats Regulations apply, and/ or are applied as a matter of Government policy, see the Planning Inspectorate's Advice Note 10.

14.1.6. Consent for the Proposed Development may only be granted if, having assessed the potential adverse effects of the Proposed Development on European Sites, the Competent Authority considers it passes the relevant tests in the Habitats Regulations.

14.1.7. A Report on the Implications for European Sites (RIES) was produced for the Proposed Development [PD-026] on 26 February 2021 in accordance with the process set out in Planning Inspectorate Advice Note 10 (AN10). The RIES documents and signposts information provided within the Development Consent Order (DCO) application, and the information submitted throughout the Examination by both the Applicant and relevant IPs, up to Deadline (D) 6 of the Examination (12 February 2021) in relation to potential effects on European Sites.

14.1.8. The RIES was issued to ensure that that IPs, including NE as the SNCB, had been consulted formally on Habitats Regulations matters and so that we could be satisfied that it had correctly understood HRA-relevant information and the position of the IPs in relation to the effects of the Proposed Development on European sites at that point in time. Consultation on the RIES took place between 26 February 2021 and 7 April 2021. No comments were received and therefore, the consultation raised no new, relevant, important issues or concerns. This process may be relied upon by the SoST for the purposes of Regulation 63(3) of the Habitats Regulations.

14.1.9. Our recommendation is that the RIES, and consultation on it, represents an appropriate body of information to enable the SoST to fulfil their duties of consultation under regulation 63(3) of the Habitats Regulations.

14.1.10. A final version of the Statement of Common Ground (SoCG) with NE was submitted at D8 [REP8-028] which included those issues relating to the HRA and European sites which NE had concern over during the Examination. The SoCG concluded that there are no longer any outstanding matters of concern for NE. This is discussed below in Section 14.4.

14.2. PROJECT LOCATION

14.2.1. As described in Chapter 2 of this report, the Proposed Development comprises a new link road between the M54 junction 1, and the M6 junction 11, and would be located to the east of the existing A460.

14.2.2. The Order Limits of the Proposed Development do not overlap with any European site or Ramsar site.

14.2.3. The European sites of Cannock Extension Canal Special Area of Conservation (SAC) and Cannock Chase SAC are located 5.9 kilometres (km) east and 6.5km north, respectively, from the Proposed Development.

14.2.4. No other European sites or features were identified by NE or any other IP.

14.2.5. The Applicant did not identify any effects on European sites in any other European Economic Area (EEA) State.

14.2.6. We are satisfied that the Applicant has correctly identified all the relevant European sites and qualifying features/interests for consideration within the HRA.

14.3. HRA IMPLICATIONS OF THE PROJECT

14.3.1. The Applicant provided an HRA No Significant Effects Report (NSER) [APP-216] as part of the application. In response to Section 51 advice issued by the Planning Inspectorate on 28 February 2020 the Applicant provided an updated HRA NSER as an additional submission [AS-035] on 29 May 2020. The only change in the updated version was the addition of a screening consultation response from NE to the Applicant, dated 22 November 2019, which had been omitted from the application version of the HRA NSER. All references in this report to the HRA NSER should be construed as reference to the updated version unless otherwise stated.

14.3.2. The HRA NSER indicates that the Proposed Development would not fall within the boundary of any European or Ramsar sites and is not connected with or necessary to the management for nature conservation of any of the European sites considered within the Applicant's assessment.

14.3.3. The Applicant did not identify any potential impacts on European sites in other EEA states in its HRA NSER [APP-216] and [AS-035], or within its Environmental Statement (ES) (ES Chapter 4) [APP-043]. No such impacts were raised for discussion by any parties during the Examination.

14.3.4. As the Applicant did not identify any European sites in an EEA State that may be affected, only European sites within the national site network and Ramsar sites are addressed in this Report.

14.3.5. The HRA NSER includes Screening Matrices for the identified European sites in accordance with the Inspectorate's Advice Note 10. Section 3.1 of the NSER identified the following European sites as being relevant considerations in terms of the Habitats Regulations which are located 5.9km east and 6.5km north, respectively, of the Proposed Development site and were screened into the assessment on the basis that they are susceptible to changes in air quality:

- The Cannock Extension Canal (SAC); and
- Cannock Chase (SAC).

14.3.6. A map showing the locations of these sites relative to the location of the DCO red line boundary was provided in Annex A of the HRA Report [AS-035].

14.3.7. Summary information for these European sites, including their qualifying features is provided in Table 3.1 and Annexes B and C of the NSER

[AS-035]. Table 3.1 of the HRA NSER summarises the conservation objectives of the two European sites.

14.3.8. The qualifying features of the Cannock Extension Canal SAC are:

- An anthropogenic, lowland habitat supporting floating water-plantain *Luronium natans* at the eastern limit of the plant's natural distribution in England.

The qualifying features of the Cannock Chase SAC are:

- European dry heaths, the largest area of lowland heath in the Midlands; and
- Northern Atlantic wet heaths with *Erica tetralix*.

14.3.9. The Applicant concluded within their DCO application that there would be no likely significant effects on any of the European sites screened. The HRA NSER and screening matrices contained in Appendix C were provided by the Applicant in support of this conclusion.

14.3.10. In response to the ExA's First Written Question (ExQ1) [PD-010] during the Examination, ExQ1.3.26, NE stated that it was satisfied that the Applicant had identified the correct sites in the HRA NSER and that the features that are the primary reason for selection of the sites had been identified [REP1-012]. NE did not identify any other European site or features that could be affected by the Proposed Development.

14.4. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE)

14.4.1. Under Regulation 63 of the Habitats Regulations, the Competent Authority must consider whether a development will have LSE on a European site, either alone or in-combination with other plans or projects. The purpose of this test is to identify any LSE on European sites that may result from the project and to record the ExA's conclusions on the need for an appropriate assessment and its reasons for including activities, sites or plans and projects for further consideration.

14.4.2. The Applicant considered whether there were any European Sites within 2km of the route corridor and application site boundary and any SACs within 30km of the route corridor and application site boundary where bats are one of the qualifying features. The Applicant also considered whether the Proposed Development crosses or lies adjacent to, upstream or downstream of a watercourse which is designated in part or wholly as a European site, or might have a potential hydrological or hydrogeological linkage to a European site containing a groundwater dependent terrestrial ecosystem. The Applicant determined that there were no such European sites.

14.4.3. The Cannock Extension Canal SAC and Cannock Chase SAC are 5.9km east and 6.5km north, respectively, of the application site and were screened into the assessment on the basis that they are susceptible to

changes in air quality which may occur as a result of the Proposed Development.

14.4.4. NE noted that the Cannock Chase SAC includes an Annex I habitat, Northern Atlantic wet heaths with *Erica tetralix* (a qualifying feature, but not a primary reason for selection), and that this had been omitted from the key features of the SAC listed in Table 3.1 (Screening Matrix) of the HRA NSER but was referred to elsewhere in the HRA NSER. The Applicant, in their comments [REP2-009] on the responses from IPs to the First Written Questions, acknowledged the omission and stated that this feature had been included in the Cannock Chase SAC Screening Matrix in Appendix C of the HRA NSER and therefore its omission from Table 3.1 had not changed the conclusions of the HRA NSER.

14.4.5. We consider that the correct European sites and qualifying features have been identified for the purposes of assessment.

14.4.6. The Applicant has described how it has determined what would constitute a 'significant effect' within its HRA NSER [AS-035]. The potential impacts identified are described in paragraph 2.3.1 of the HRA NSER and are:

- the likelihood that a qualifying feature of a European Site (habitat or species) would be present in the Zone of Influence of the Proposed Development;
- the ability of the qualifying feature to avoid or adapt to impacts, the availability of alternative, suitable habitat and the likelihood that the qualifying feature would access it; and
- the conservation objectives for the designated species and other information that supports the determination of the importance of the area around the Proposed Development to the qualifying feature.

14.4.7. Decommissioning impacts were not assessed, with justification provided by the Applicant that, due to the nature of the M54 to M6 Link as part of the SRN, it is not envisaged that the Proposed Development will be subject to decommissioning [AS-035]. We are satisfied with this approach.

14.4.8. The Applicant has addressed potential in-combination effects in Section 2.4 of their HRA NSER. Table 3.1 and Annexes C and D summarise the in-combination assessment for each European site.

14.4.9. NE, in its Relevant Representation (RR) [RR-037], stated that satisfactory information had been submitted to allow them to advise the SoST that the Proposed Development would have no Likely Significant Effects (LSE) on the Cannock Chase SAC.

14.4.10. NE agreed that there would be no LSE on the Cannock Chase SAC but raised concerns about the conclusion of no LSE on the Cannock Extension Canal SAC and its qualifying features on the basis of potential effects arising from indirect impacts on air quality.

14.4.11. The Examination focussed on NE's concerns about potential effects on the Cannock Extension Canal SAC arising from indirect impacts on air quality

resulting from the Proposed Development. NE considered that insufficient information had been provided in the application about potential indirect impacts arising from an increase in nitrogen deposition on the Chasewater and the Southern Staffordshire Coalfield Heath Site of Special Scientific Interest (SSSI), which is hydrologically linked to the SAC, and that further information was required before they could conclude on the matter.

14.4.12. The draft Statement of Common Ground (dSoCG) between the Applicant and NE submitted with the application [APP-221] set out NE's advice on the impacts to be assessed and states the agreement reached with NE on the potential impacts included. The dSoCG was revised during the Examination with subsequent versions of the dSoCG between the Applicant and NE submitted at D1 [REP1-028], D4 [REP4-031], D6 [REP6-022] and D8 [REP8-028]. The dSoCG at D1 [REP1-028] recorded that NE's concerns about air quality impacts on the Cannock Chase Canal SAC were still outstanding but highly likely to be agreed. NE had also submitted a letter at D4 [REP4-040] confirming that the conclusions of the HRA NSER were correct.

14.4.13. Both the Applicant and NE considered the likelihood of agreement on this remaining issue was high. We asked the Applicant in the ExA's Third Written Questions (ExQ3) ExQ3.3.5 [PD-023] to provide an update on all HRA matters that were outstanding through a later version of the SoCG with NE. The Applicant responded [REP7-036] confirming that this matter had been resolved between both parties as shown in the dSoCG submitted at D6. The Applicant and NE also provided an update on the outstanding matters in a signed SoCG at D8 [REP8-028].

14.4.14. Representations were made by NE during the Examination on the methodologies applied to the assessment of air quality effects and the nature of effects from potential habitat loss. However, no party raised any additional, novel, impacts to be assessed and we are satisfied that all potential impacts which could give rise to significant effects have been identified.

14.4.15. NE considered that further discussion was needed between NE and the Applicant on air quality impacts before they could advise the SoST that the Proposed Development would have no likely significant effect upon the Cannock Extension Canal SAC and questioned the Applicant's approach to the assessment of in-combination effects, particularly the decision to screen it out.

14.4.16. NE disputed the Applicant's conclusions during the Examination in relation to the effects on the Cannock Extension Canal SAC. In their Written Representations (WR) [REP1-012] NE stated their view that indirect impacts on the SAC required scrutiny, and noted that the Cannock Extension Canal SAC is hydrologically linked to the Chasewater and the Southern Staffordshire Coalfield Heath SSSI, which is within 200m of the Affected Road Network (ARN) and would see an increase in nitrogen deposition resulting from the Proposed Development. It stated

that this indirect impact on air quality needed to be assessed alone and in combination.

14.4.17. As set out in the RIES, we issued Written Questions (ExQ1) [PD-010] ExQ1.3.26 to 1.3.30 related to HRA issues, and were either directed to the Applicant, NE or both. NE's [REP1-012] and the Applicant's responses at D1 [REP1-036] provide evidence of the scrutiny given to the issue of the potential effects on the Cannock Extension Canal SAC arising from indirect impacts on air quality from the Proposed Development.

14.4.18. In its D2 comments [REP2-009] on the responses from IPs to ExQ1 the Applicant acknowledged that, as Unit 13 of the Chasewater and the Southern Staffordshire Coalfield Heaths SSSI tops up the SAC, and Chasewater is partially within 200 metres (m) of the M6 Toll, it was possible that the water quality could be influenced by any increase in nitrogen deposition from changes in traffic in that location as a result of the Proposed Development. However, the Applicant stated that overall only a very small change in nitrogen deposition across a small portion of the Chasewater was predicted, and this was unlikely to result in any significant change in the nitrogen concentration of the Chasewater, so the effect on the Cannock Extension Canal SAC was not anticipated by the Applicant to be significant.

14.4.19. We noted in our Second Written Questions (ExQ2) ExQ2.3.2 [PD-017] that the Applicant had not included an updated HRA NSER with the revised documents submitted in respect of the Applicant's change request made on 9 October 2020 [AS-117], and requested confirmation of whether the Applicant considered the existing HRA NSER to be up-to-date. In their response [REP4-033] the Applicant drew attention to Section 5.2 of the 'Environmental Statement Addendum: Proposed Scheme Changes October 2020' [AS-118] which set out the Applicant's view that the design changes would not change the findings of the HRA NSER as both SACs remained screened out of further assessment due to their distance from the Proposed Development and the ARN. The Applicant did not therefore consider it was necessary to amend the HRA NSER following the acceptance of the design change by the ExA in October 2020.

14.4.20. At the Biodiversity and Cultural Heritage Issue Specific Hearing 1 (ISH1), held on 8 December 2020, following discussion on whether significant effects on the Cannock Extension Canal SAC could be excluded, NE stated that after further meetings with the Applicant it had agreed that there would be no LSE on the Cannock Extension Canal SAC resulting from air quality impacts. It also confirmed that it would submit written confirmation of this for D4 (ISH Action Point 6 [EV-023]). The NE's changed position is stated in its letter submitted at D4 in response [REP4-040]. NE stated that it had seen the draft revised HRA Report dated December 2020 and noted that this had screened the Proposed Development to check for the likelihood of significant effects on European protected sites, and the assessment concluded that the Proposed Development could be screened out from further stages of assessment

because significant effects are unlikely to occur, either alone or in combination. NE agreed with this view.

14.4.21. With question ExQ3.3.5 [PD-023] we asked the Applicant and NE to provide an update on the outstanding HRA matters in the SoCG. ExQ3.3.6 [PD-023] raised an apparent contradiction between the Applicant's statement made in their response to ExQ2.3.2 [REP4-033] that it was not necessary to update the HRA NSER following our acceptance of their design changes, and NE's reference in their D4 submission [REP4-040] to a December 2020 version of the HRA NSER. The Applicant was asked to clarify the position and to submit a revised version if one existed.

14.4.22. In its D6 response [REP6-039] to ExQ3.3.35 the Applicant confirmed that NE's concerns had been resolved and that this was reflected in the dSoCG [REP6-022] submitted for D6. In response to ExQ3.3.36, the Applicant reiterated that the HRA NSER [AS-035] was unaffected by the design change. It stated that NE's concerns relating to potential effects on the Cannock Extension Canal SAC from increased nitrogen deposition resulting from the Proposed Development had been resolved and reported within the dSoCG submitted at D6.

14.4.23. With respect to NE's concerns over potential effects to the Cannock Extension Canal SAC, the Applicant summarised the information that was agreed with NE in their SoCG at D6 [REP6-022]. The information provided to us and NE at D2 [REP2-009] by the Applicant had considered whether a change in nitrogen deposition over a small percentage of Unit 13 (The Chasewater) could be transported to the SAC via an 8km length of canal system. The Applicant stated that the Cannock Extension Canal has only a limited inflow of water from the Wryley and Essington Canal to offset leakage and evaporation. Air quality modelling undertaken for the Proposed Development had predicted an increase in nitrogen deposition associated with an increase in traffic using the M6 Toll road with the operation of the Proposed Development within Unit 14, connected via Wryley and Essington Canal to the Cannock Extension Canal SAC by 7.5km of canal, and which the Applicant considered would have little or no effect because of dilution effects. Overall, the Applicant stated that the assessment of nitrogen deposition to the Chasewater (Unit 13) and Wryley and Essington Canal (Unit 14) and its contribution to the Cannock Extension Canal SAC had been demonstrated to be nugatory. In the absence of an identified effect pathway, the impact of the Proposed Development on Cannock Extension Canal SAC was not anticipated to result in or to introduce uncertainty around likely significant effects. NE agreed with this conclusion in the dSoCG [REP6-022].

14.4.24. On the basis of the information provided to us at D2 [REP2-009] and further information included in the SoCG with NE, the Applicant considered that the conclusions of the HRA NSER were correct and that it

was not necessary to update it[63]. The Applicant did not make any reference to a December 2020 version of the HRA NSER. The dSoCG submitted by the Applicant for D6 [REP6-022] reflected that all HRA matters were agreed between NE and the Applicant and the Applicant submitted a final SoCG with NE for D8 [REP8-028] also reflects this.

14.4.25. We asked a number of HRA-related questions during the Examination, which were addressed to the Applicant and NE. Both parties provided additional information, in response to our questions and also as a result of ongoing discussion between them. It was confirmed by NE at D4 [REP4-040] that they agreed with the Applicant's conclusion that there would not be any LSE on the Cannock Extension Canal SAC, and this was reiterated in the dSoCG submitted by the Applicant at D8 [REP8-028].

14.4.26. Having given careful consideration to all relevant evidence and tested the position on HRA in written questions, we are satisfied that there are no likely significant effects of the Proposed Development on any European sites or their qualifying features.

14.5. CONSERVATION OBJECTIVES

14.5.1. The conservation objectives for the sites and features of the two European sites identified above are summarised in Table 3.1 of the HRA NSER.

14.6. ExA's HRA CONCLUSIONS

14.6.1. We conclude as follows in relation to the HRA process:

- There are no likely significant effects of the Proposed Development on any European Sites or their qualifying features.
- No mitigation relevant to HRA has been proposed and none is required.
- The Proposed Development can proceed without an Appropriate Assessment being undertaken by the SoS.

[63] The Applicant referenced the application version of the HRA NSER [APP-216] in this statement; the ExA assumes that this was an error and was intended to refer to the updated version [AS-035].

15. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

15.1. INTRODUCTION

15.1.1. This chapter sets out our reasoning and conclusions on the planning merits of the Proposed Development and whether there is a case for the making of a Development Consent Order (DCO) for the Proposed Development.

15.1.2. The legal and policy context is set out in Chapter 3 with Chapter 4 setting out the planning issues that arose from the application and during the Examination. Chapters 5 to 13 address the potential effects of the Proposed Development with Chapter 14 addressing Habitats Regulation Assessment (HRA) considerations.

15.1.3. The matters to be taken into account in decision making are set out below, following which the remainder of this chapter provides a summary of the main planning issues and conclusions reached in respect of the individual matters before moving to the overall conclusions in which the heritage balance, Green Belt balance and overall planning conclusions are set out.

15.1.4. Matters in relation to the Compulsory Acquisition (CA) and Temporary Possession (TP) of land and/or rights and the creation of new rights over land are discussed in Chapter 16, with Chapter 17 addressing the implications of the matters arising for the DCO and finally Chapter 18 summarises all relevant considerations and sets out the Examining Authority's (ExA's) recommendation to the Secretary of State for Transport (SoST).

15.2. MATTERS TO BE TAKEN INTO ACCOUNT

15.2.1. Section (s) 104 of the Planning Act 2008 (PA2008) sets out at subsection (2) the matters to which the Secretary of State (SoS) must have regard where there is a relevant National Policy Statement (NPS). In particular s104(3) provides that: "The Secretary of State must decide the application in accordance with any relevant National Policy Statement, except to the extent that one or more of subsections (4) to (8) applies."

15.2.2. Given the Proposed Development is highway infrastructure and a Nationally Significant Infrastructure Project (NSIP) the designated National Policy Statement for National Networks (NPSNN) provides the primary basis for making decisions on development consent applications for national networks NSIPs in England by the Secretary of SoST.

15.2.3. Our conclusions on the case for making a DCO are therefore reached within the context of the policies contained in the NPSNN. Also, as indicated in Chapters 3 and Chapters 5 to 14 dealing with the main planning issues, we have taken all other relevant law and policy into account. We have had regard to the Public Sector Equality Duty (PSED) as addressed in Chapter 11 of this report.

15.2.4. Section 4 of the NPSNN addresses assessment principles. Paragraph 4.2 states: *"Subject to the detailed policies and protections in this NPS, and the legal constraints set out in the Planning Act, there is a presumption in favour of granting development consent for national networks NSIPs that fall within the need for infrastructure established in this NPS"*.

15.2.5. In considering any proposed development, and in particular when weighing its adverse impacts against its benefits, paragraph 4.3 of NPSNN expects the following to be taken into account:

- *"its potential benefits, including the facilitation of economic development, including job creation, housing and environmental improvement, and any long-term or wider benefits; and*
- *its potential adverse impacts, including any longer-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts."*

15.2.6. Our conclusions follow from our consideration of all evidence presented to the Examination, including the application documents, the Environmental Statement (ES), the HRA, the Local Impact Reports (LIR), Statements of Common Ground (SoCG), Relevant and Written Representations, oral submissions at the hearings, answers to questions, responses to requests for information and our Unaccompanied Site Inspections and including all matters which we consider are both important and relevant to the Secretary of State's decision.

15.3. SUMMARY OF THE MAIN PLANNING ISSUES

The need for the Proposed Development

15.3.1. The need for a new link road between the M54 and the M6/M6 Toll Road was identified in the West Midlands Area Multi Modal study in 2001, when need for a strategic network link between the M54 and M6 northbound was identified. There has been ongoing recognition and support for such a link since with, amongst other strategies, Road Investment Strategy: 2015/16 – 2019/20 Road Period (RIS1) committing to deliver such a link. A Preferred Route Announcement was made following a full appraisal process and which was then further refined. The commitment to the provision of a link has more recently been further confirmed with commitment included in Road Investment Strategy 2: 2020 - 2025 (RIS2). The Proposed Development is the first formal application to achieve the conclusion of this strategic aim. These details are confirmed in Section 4.6 above as part of the Consideration of Alternatives.

15.3.2. The objectives of the Proposed Development have been identified as:

- Relieve traffic congestion on the A460, A449 and A5 and provide more reliable journey times.
- Keep the right traffic on the right roads and improve safety by separating local community traffic from long distance and business traffic.
- Reduce volumes of through-traffic in villages, improving local community access.

- Support local economic growth for Telford, Shrewsbury, Wolverhampton, Cannock and Tamworth by improving traffic flow and enhancing access to east-west and north-south routes.

15.3.3. With the Applicant also identifying the benefits of the Proposed Development as including:

- Economic benefits relating to transport economic efficiency improvements, road safety improvements and Indirect Taxation Revenue (ITR) increase.
- More reliable and faster trips compared to the existing capacity provision on the A460, A5 and A449.
- Local air quality benefits.
- Reliability benefits from reductions in congestion and incidents.

15.3.4. We have concluded in Chapter 12 on Traffic and Transportation that the Proposed Development would, subject to the recommended changes set out below, meet its traffic and transport objectives, and provide substantial benefits for those within the communities of Featherstone, Shareshill and Little Saredon around Cannock Road and those using the A460 to travel between M54 junction 1 and M6 junction 11 and significant benefits for those living close to the A449 and A5 as well as providing more reliable journey times for those on both the strategic and local road networks.

15.3.5. Staffordshire County Council (SCC) strongly supports the new link road (paragraph 6.1 of the Local Impact Report (LIR) [REP1-007]) as it will take pressure off the strategic and local highway network, both in the immediate vicinity, but also potentially wider afield. While in its LIR South Staffordshire Council (SSC) [REP1 097] confirms it supports the Proposed Development in order to relieve congestion, improve journey time reliability and support economic growth. The Proposed Development is identified in Core Policy 11 of the Core Strategy as one of the national and regional transport infrastructure schemes which may be delivered in the plan period and would therefore meet one of the strategic objectives of Policy CP11.

15.3.6. The Proposed Development would conform with the Government's vision and strategic objective set out in the NPSNN to delivery national networks that meet the country's long term needs, supporting a prosperous and competitive economy and improving overall quality of life, as part of a wider transport system. It would meet the critical need to improve the national networks to address road congestion. These are consistent with the Proposed Development objectives and we conclude the Proposed Development would meet these objectives.

15.3.7. Accordingly, we attach substantial weight to the contribution the Proposed Development would make towards the need set out in the NPSNN to deliver national networks that meet the country's long term needs as part of a wider transport system.

Air Quality, including Carbon Emissions (Chapter 5)

15.3.8. In accordance with paragraph 5.10 of the NPSNN, the application has adequately considered air quality impacts over the wider area likely to be affected, as well as in the near vicinity of the Proposed Development.

15.3.9. We have concluded that whilst the construction phase of the Proposed Development has the potential for adverse effects to arise from dust these can be appropriately mitigated and the mitigation is secured through DCO Requirement (R) 4, the Outline Environmental Management Plan (OEMP) and Construction Environmental Management Plan (CEMP). There are no other significant air quality effects resultant from the construction of the Proposed Development.

15.3.10. We are satisfied that there would be a net benefit of the Proposed Development to air quality receptors within the study area. Whilst there would be some locations where there would be increases in pollutant levels these increases would be small or imperceptible and would not result in concentrations exceeding objective levels or relevant statutory air quality thresholds. The Proposed Development therefore is in compliance with paragraph 5.9 and 5.10 of the NPSNN.

15.3.11. We conclude that the proposed development is estimated to cause a net increase (between the Do-Something (DS) – Do-Minimum (DM)) of 206,860 tonnes of carbon dioxide equivalent (tCO2e) which, split across the prevailing carbon budgets, would contribute to 0.0013% of the Third carbon budget period, 0.0048% of the Fourth Carbon Budget period and 0.0043% of the Fifth Carbon Budget period. In our view this would not lead to an increase in carbon emissions so significant that it would materially impact on the ability of the Government to meet its carbon reduction targets.

15.3.12. The SoS may wish to satisfy themselves as to the impact of the publication of the Sixth Carbon Budget, which was announced at the end of the Examination period, the Carbon Budget Order 2021 and consider the impact of the CO_2 equivalent emissions for the operational phase in relation to the relevant carbon budget now that it is available and the cumulative impact of emissions for the NPSNN in the context of the revised net carbon target and other projects and programmes, namely RIS1/RIS2. The SoS may also wish to consider the effect of 'Decarbonising transport: a better, greener Britain' in this regard.

15.3.13. Subject to this matter, taking all matters into consideration, we conclude that air quality and carbon emission matters do not weigh against the Order being made.

Biodiversity, Ecology and the Natural Environment (Chapter 6)

15.3.14. We conclude that there would be no significant adverse effects on nationally designated sites (in this case Sites of Special Scientific Interest (SSSIs)). However, there would be direct and indirect loss of locally

designated wildlife sites, which would be compensated for within the Proposed Development to an appropriate level and an appropriate precautionary approach has been taken as regards great crested newts, with appropriate mitigation provided. Moreover, there are no significant geological effects. These are neutral factors in addressing whether the Order should be made. However, the effects on bats would, in our opinion, be greater than identified by the Applicant this would, in our view, only be of moderate significance.

15.3.15. We are of the opinion that moderate positive weight should be given to the net gains for biodiversity as evidenced in the Biodiversity matrix. Overall, in our view, the Proposed Development would accord with Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010 relating to the United Nations Environmental Programme Convention on Biological Diversity of 1992.

15.3.16. We further conclude that there would be indirect effects on ancient woodland that could not be avoided; therefore, development consent should not be granted unless the need for and benefits of the development, in that location, clearly outweigh the loss. In addition, we conclude there would be effects of moderate adverse significance on bats. Again, development consent should be refused unless the benefits of the development (including need) clearly outweigh the harm. In themselves, these matters weigh against the Order being made and we give them significant weight.

Cultural Heritage, including Archaeology (Chapter 7)

15.3.17. We have had regard to the desirability of preserving designated heritage assets, including listing buildings and their settings. We consider that the information provided in the ES is sufficiently comprehensive for us to take account of the significance of heritage assets and to understand the impacts of the Proposed Development on their significance.

15.3.18. We have concluded that the Proposed Development would result in less than substantial harm to the following designated heritage assets: Hilton Hall (Grade I), The Conservatory (Grade I), The Coach House and Stable Block (Grade II), The Gate Piers (Grade II) and the Portobello Tower (Grade II) through harm to Hilton Park which contributes to their setting. Moreover, we have also identified that the Proposed Development would result in less than substantial harm to Hilton Park, an Historic Landscape that is a non-designated heritage asset.

15.3.19. Great weight should be given to any heritage asset's conservation, with the more important the asset the greater the weight, in accordance with Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, Paragraph 5.131 of the NPSNN and 193 of the National Planning Policy Framework (the Framework), great weight and importance should be given to any harm to a heritage asset in the overall balance.

15.3.20. Where we have found that harm would arise to designated heritage assets, we consider this would be less than substantial in each instance.

We have not identified any instances, during construction or operation where the Proposed Development is likely to result in substantial harm to or loss of significance of any designated heritage asset. The NPSNN requires that the harm we have identified should be weighed against the public benefit of the development, recognising that the greater the harm the greater the justification that will be needed. We go on to consider this within our overall conclusions later in this Chapter.

15.3.21. We conclude that the Proposed Development would result in some limited damage to undesignated archaeological assets including crop marks, ditches and other features but overall, the effect would be limited and not significant. There is no substantial evidence to conclude that the Proposed Development would result in damage or destruction of Kettle Holes within the Order Limits. The Proposed Development would provide for the re-use of materials salvaged from the Mile Wall, a feature of local interest. None of these matters therefore weigh significantly against the Order being made.

Green Belt (Chapter 8)

15.3.22. We conclude that the Proposed Development represents inappropriate development in the Green Belt and is not covered by any of the exceptions in paragraphs 145 or 146 of the Framework. Moreover, the Proposed Development would result in significant harm to the spatial qualities and moderate harm to the visual qualities of the openness of the Green Belt and it would conflict with one of the five purposes of including land within the Green Belt, namely, to assist in safeguarding the countryside from encroachment. The Proposed Development would therefore conflict with the fundamental aim of Green Belt Policy to prevent urban sprawl by keeping land permanently open, and their essential characteristics which are openness and permeance.

15.3.23. Inappropriate development is, by definition, harmful to the Green Belt. We attach substantial weight to the harm that would result to the Green Belt. We go on to consider the question of whether very special circumstances exist to clearly outweigh the harm by reason of inappropriateness below.

Landscape and Visual Effects (Chapter 9)

15.3.24. We conclude that given the overall nature of the landscape and visual effects in the context of the Proposed Development and the general area it would not be possible to avoid harm to either the landscape or visual receptors and the Proposed Development incorporates reasonable mitigation measures. We also consider that the overall value of the landscape is low and that it is reasonable to judge the effects against this baseline.

15.3.25. We consider that the Applicant has sought to minimise harm to the landscape and provided reasonable mitigation where possible, the Proposed Development would therefore be in accordance with paragraph 5.149 of the NPSNN.

15.3.26. We accept that the proposed Development would result in harm to the landscape character of the area, albeit this would at most amount to a slight adverse effect and that there would be harmful visual effects for highway users and local residents of the area which will be mitigated to some extent by DCO R4 and R5.

15.3.27. Notwithstanding that there would be some harm to the landscape and visual receptors, given the nature and scale of that harm, we consider that this should be given limited weight in the overall balance and does not weigh significantly against the Order being made.

15.3.28. We conclude that the proposed tree planting and mitigation measures for screening purposes identified in the Environmental Masterplan are necessary, reasonable and appropriate.

15.3.29. We agree that the replacement of the Dark Lane fence would result in a minor beneficial effect for Dark Lane residents and should be supported.

Noise and Vibration (Chapter 10)

15.3.30. We conclude that the Applicant's approach to noise and vibration assessment is generally acceptable and in line with the NPSNN.

15.3.31. We conclude that the Proposed Development would result in construction and operational noise and vibration effects which would result in significant adverse environmental effects on a number of sensitive receptors.

15.3.32. The proposed embedded and other mitigation secured through R4 and the CEMP would reduce and mitigate further some of the significant effects associated with construction but not remove them. Given the nature and scale of the Proposed Development the short term nature of the significant effects during construction and the mitigation overall we conclude that the effects of noise and vibration are minimised.

15.3.33. We also note that the Proposed Development contributes to improvements to a significant number of receptors and there is further potential through the secured mitigation measures to improve this situation.

15.3.34. Overall, we conclude that whilst significant effects remain, the significant effects above Significant Observed Adverse Effect level (SOAEL) are minimised and effective mitigation is proposed such that the Proposed Development meets the aims and aspirations of the NPSNN in respect of the aims and objectives of this scheme.

15.3.35. There would be adverse effects from noise and vibration and these weigh against the Order being made but, given the short term nature during construction and the proposed mitigation, not significantly so.

Socio-Economic Effects (Chapter 11)

15.3.36. We are satisfied that the findings of the ES are reasonable and that, where necessary, mitigation measures could be secured through the recommended DCO which are proportionate to any adverse effects that would result.

15.3.37. We note that the Proposed Development would result in direct loss of employment opportunities on the application site, but these effects would be more than off-set by the enhancement of business opportunities from the improved connectivity in the area. We therefore find that significant economic benefits would result from the Proposed Development due to the likely reduction in congestion on the surrounding road network and the improved journey times and improved reliability. There would also be temporary economic benefits that would result from the construction phase, both locally and outside the region.

15.3.38. We note the loss of social facilities provided by the fishing ponds and car boot sale site but consider this should be given limited weight in the overall balance. The loss of Best and Most Versatile land (BMV) land is also recognised, and this should be given moderate weight against the order being made.

15.3.39. The non-prior use of minerals in this Minerals Safeguarding Area is neutral in the consideration of the Proposed Development. This is because the land affected within the Minerals Safeguarding Area would be used for the environmental mitigation and drainage ponds which would not sterilise development of the area should it be necessary for it to come forward in due course.

15.3.40. Overall, the positive economic and social benefits would weigh in favour of the Order being made.

Traffic and Transportation (Chapter 12)

15.3.41. We conclude that the Proposed Development would deliver a significant benefit to the strategic road network to which we attach significant weight.

15.3.42. The Applicant's analysis of the base situation and the effects of the Proposed Development are reasonable. The Proposed Development would, subject to the recommended changes set out below, meet its traffic and transport objectives, and provide substantial benefits for those around Cannock Road and significant benefits for those living close to the A449 and A5.

15.3.43. A weight restriction on Cannock Road should be made to link in with existing weight restrictions and ensure the objectives of the Proposed Development are fully realised particularly for local communities. Associated changes to signage are necessary, including the addition of signage around M6 junction 11 directing to the Saredon filling station.

15.3.44. The revised non-motorised user (NMU) routes between the north and south of M54 junction 1 would provide a reasonable solution to ensure connectivity and there are no other changes required to NMU routes to make the Proposed Development acceptable.

15.3.45. The question of closure of the Shareshill layby should be considered comprehensively with any other changes to Cannock Road post development.

15.3.46. Taking all these matters into consideration we conclude that traffic and transportation matters weigh substantially in favour of the Order being made.

Water Environment (Chapter 13)

15.3.47. We are satisfied that the Proposed Development would meet the Sequential and Exception Tests and as essential infrastructure it would be appropriately located, even given that part would be within Flood Zones 2 and 3. Moreover the Proposed Development would be safe for its lifetime and its operation and would not be affected by flooding and it would not increase the risk of flooding elsewhere.

15.3.48. We are satisfied that the Proposed Development would meet the appropriate tests in the NSPNN with regard to flood risk, having particular regard to the works at Watercourse 2, Lower Pool and Watercourse 5 (Latherford Brook) and would not conflict with the policies of the Core Strategy.

15.3.49. We are satisfied that the Proposed Development is supported by an appropriate Drainage Strategy and contains appropriate mitigation secured through DCO R4 and R8 and through the OEMP and Record of Environmental Actions and Commitments (REAC).

15.3.50. We are satisfied that the Proposed Development would be Water Framework Directive (WFD) compliant and that it would not result in significant detriment to the overall condition and value of the potentially affected water bodies and would not conflict with the Core Strategy.

15.3.51. Overall, we are satisfied that the Proposed Development would not be at risk of flooding or increase the flooding risk off-site or result in adverse effects on water quality and resources in the study area. Taking all matters into consideration we conclude that water environment matters do not weigh against the Order being made.

Habitats Regulations Assessment (Chapter 14)

15.3.52. We have found that there would be no likely significant effects of the Proposed Development on any European sites or their qualifying features. No mitigation relevant to HRA has been proposed and none is required. We are satisfied that the Proposed Development can proceed without an appropriate assessment being undertaken by the SoS.

15.4. FINDINGS AND OVERALL CONCLUSIONS:

Heritage conclusions

15.4.1. We consider that the need for and the benefits of the Proposed Development outlined above (most notably as set out in paragraphs 15.3.1, 15.3.4, 15.3.7, 15.3.15, 15.3.28, 15.3.35, 15.3.36, 15.3.40 and 15.3.41 above) would outweigh, in each case, the harm that we have identified in relation to designated heritage assets. We also consider that the harm to the undesignated heritage assets, including the harm to archaeological assets, would be outweighed by the public benefits of the Proposed Development.

15.4.2. We are also satisfied that an appropriate balance has been struck with regard to the provision of tree planting to the west of the mainline in the vicinity of Hilton Hall and the potential effect in terms of the effect on bats. Had an alternative strategy been adopted with a greater quantum of mitigation on the eastern side of the mainline this would have had a greater effect on the settings of the designated heritage assets and on the non-designated heritage asset that is Hilton Park, and would not have provided sufficient mitigation to ameliorate the landscape and visual effects of the Proposed Development on the western side of the link road.

15.4.3. Taking account of the public benefits, we are satisfied that there is clear and convincing justification for the harm that would result, both individually and collectively, upon designated and undesignated heritage assets. Overall, therefore, we consider that matters concerning the historic environment would accord with the relevant policy provisions of the NPSNN.

Green Belt conclusions

15.4.4. We set out above that the Proposed Development would be inappropriate within the Green Belt. It would result in significant harm to the openness and moderate harm to the visual qualities of the Green Belt and it would conflict with one of the five purposes of including land within the Green Belt, namely, to assist in safeguarding the countryside from encroachment. We attach substantial weight to the harm that would result to the Green Belt.

15.4.5. To accord with the NPSNN (paragraph 5.178), the SoS will need to assess whether there are very special circumstances to justify inappropriate development. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. We go on to carry out this assessment below.

15.4.6. We have recorded where harm is likely to arise in Chapters 5 to 14 of this report with the relevant conclusions set out above. In summary, the non-Green Belt harm that we consider would arise is listed below (this list is provided irrespective of whether each issue would conform with the relevant NPSNN policy tests notwithstanding the harm resulting):

- Some increases in pollutant levels, albeit these would be, at most, small increases and below objectives levels;
- Indirect effects on ancient woodland that could not be avoided;
- A moderate adverse effect on bats;
- Harm to designated and non-designated heritage assets during construction and operation;
- Landscape and visual harm during construction and operation;
- Small direct loss of employment opportunities;
- Short term temporary harm to traffic during the closure and re-routing of traffic during the closure of the M54 for a three week period;
- Short term temporary harm to health and quality of life during construction, including from noise and vibration; and
- Temporary harm to users of public rights of way during construction.

15.4.7. We have set out previously in this report the need for and benefits that would be likely to arise from the Proposed Development. These include:

- The delivery of Government policy and programmes;
- Benefits from a decrease in congestion and improved journey times, enhanced highway safety, and alleviating traffic on Cannock Road;
- The conformity with local Development Plan policy and allocations for delivery of transport infrastructure; and
- Economic and social benefits from improved connectivity and improved reliability of journeys.

15.4.8. We have given each of the above benefits significant weight in our assessment. We have also taken into consideration the consideration of alternatives to achieving the connection between the M54 and M6; all of the options considered would fall within the Green Belt.

15.4.9. We also acknowledge that several of the structures which would impact on Green Belt openness would replace existing structures (for example the replacement junctions at M54 junction 1 and M6 junction 11) that already impact to varying degrees upon Green Belt openness.

15.4.10. Overall, we consider that the potential harm to the Green Belt, and the other harm we have found would result, would be clearly outweighed by these other considerations set out above, and that they amount to very special circumstances. Consequently, we are satisfied that the very special circumstances exist to justify the approval of inappropriate development in the Green Belt. The Proposed Development would therefore accord with the Green Belt policy set out in paragraph 5.178 of the NPSNN and the Framework.

Overall conclusions

15.4.11. Paragraph 4.2 of the NPSNN states, subject to the detailed policies and protections within it, and the legal constraints set out in the PA2008, there is a presumption in favour of granting development consent for national networks NSIPs that fall within the need for infrastructure established within the NPSNN.

15.4.12. In reaching conclusions on the case for the Proposed Development, we have had regard to s104 of the PA2008, that the NPSNN as the relevant NPS, the NPPF, the LIR and all other matters which we consider are both important and relevant to the SoS's decision. We have also considered whether the determination of this application in accordance with the relevant NPS would lead the United Kingdom (UK) to be in breach of any of its international obligations where relevant. Subject to consideration of the implications arising from the publication of the Sixth Carbon Budget, the Carbon Budget Order 2021 and the 'Decarbonising transport: a better, greener Britain' and the cumulative effects of carbon emissions as set out we are satisfied, in all respects, this would not be the case.

15.4.13. The Proposed Development would make an important contribution to the improvement and enhancement of the existing strategic road network, meeting one of the key objectives of the NPSNN and local planning policy. The need and benefits are summarised previously in this Chapter but include relieving traffic congestion on the A460, A449 and A5 and provide more reliable journey times, keeping the right traffic on the right roads and improving safety by separating local community traffic from long distance and business traffic, reducing volumes of through-traffic in villages, improving local community access and supporting local economic growth for Telford, Shrewsbury, Wolverhampton, Cannock and Tamworth by improving traffic flow and enhancing access to east-west and north-south routes. Accordingly, we attach very significant weight to the benefits of the Proposed Development and compliance with a key policy objective of the NPSNN. We have found that significant economic benefits would result from the Proposed Development, along with other benefits in terms of overall improvements for air quality.

15.4.14. Paragraph 3.4 of the NPSNN recognises that some developments will have some adverse local impacts including on noise, emissions, landscape/visual amenity, biodiversity and cultural heritage. It states that whilst applicants should deliver developments in accordance with Government policy and in an environmentally sensitive way, including considering opportunities to deliver environmental benefits, some adverse local effects of development may remain.

15.4.15. Whilst harm would arise from the Proposed Development, both during the construction and operation phases, we are satisfied that the Applicant has taken a reasonable and proportionate approach in seeking to minimise such harm. The OEMP and consequent CEMP includes a comprehensive list of mitigation and management measures during the construction process to minimise the harm arising. A final OEMP was submitted at Deadline 7 [REP7-025].

15.4.16. We have considered the impacts based on the worst-case scenario as assessed in the ES. In the case of the effects on the designated heritage assets we are satisfied that the Proposed Development would result in less than substantial harm and that this would be further minimised by the alignment and proposed mitigation planting. It is acknowledged that there was a tension between planting in respect of protecting the setting of the listed buildings and the Historic Landscape of Hilton Park and that

which would have been most appropriate for bat conservation (see paragraphs 6.7.32 and 7.8.1 of this report). However, we are satisfied that an appropriate balance has been struck which safeguards the importance of the openness of the park on the eastern side of the mainline, acknowledges that there would be an adverse effect on bats and ensures appropriate visual mitigation is provided. Consequently, the Proposed Development would provide a reasonable compromise between the competing interests.

15.4.17. We list below the issues where we conclude that any adverse impacts would be moderate, minor or where we are satisfied that the impacts would be sufficiently minimised and/ or mitigated, such that they would not weigh significantly against the Order being made, albeit that in respect of harm to listed buildings that is still attributed great weight and importance:

- Biodiversity, ecology and the natural environment;
- Economic and social effects (limited to temporary effects during construction);
- Historic environment (including less than substantial harm to designated assets);
- Landscape and visual effects;
- Noise and vibration (limited to temporary effects during construction); and
- Traffic and transport (during construction).

15.4.18. In the case of Green Belt considerations, we have concluded that harm would result, to which we have given substantial weight. However, we conclude that the Green Belt and other harm would be clearly outweighed by other considerations such as the need for and benefits of the Proposed Development.

15.4.19. The increase in carbon emissions resulting from the Proposed Development would be unlikely to be so significant to have a material impact on the ability of the Government to meet its carbon reduction targets. However, the SoST may wish to consider the impact of the carbon dioxide (CO_2) equivalent emissions for the operation phase in relation to the Sixth Carbon Budget, which was only made available towards the end of the Examination, the Carbon Budget Order 2021, the 'Decarbonising transport: a better, greener Britain' and the cumulative impact of emissions for the NPSNN in the context of the revised net carbon target.

15.4.20. Although some harmful impacts are likely to result, we consider them overall to be within the scope of the relevant policy provisions of the NPSNN. We are satisfied that the Proposed Development would be generally in conformity with the NPSNN.

15.4.21. In conclusion, we find that the benefits of the Proposed Development, particularly in terms of addressing existing congestion, improving safety and promoting economic benefits for the region, would outweigh the impacts we have identified in relation to the construction and operation of the Proposed Development. Consequently, the potential harm is

substantially outweighed by the benefits of the Proposed Development in meeting the law and Government policy as set out in s104 of the Planning Act 2008 as amended (PA2008) and the NPSNN.

15.4.22. We conclude overall that, on the basis of all these considerations, subject to consideration of the effect on the Sixth Carbon Budget, the Carbon Budget Order 2021, the 'Decarbonising transport: a better, greener Britain' and the cumulative effects of carbon emissions, there is a convincing case for development consent to be granted.

16. COMPULSORY ACQUISITION AND RELATED MATTERS

16.1. INTRODUCTION

16.1.1. The application subject to examination included proposals for the Compulsory Acquisition (CA) and Temporary Possession (TP) of land and imposition of Permanent Rights over land. Notwithstanding our conclusion on the merits of the application this Chapter records the examination of those proposals and related issues.

16.2. THE REQUEST FOR CA AND TP POWERS

16.2.1. The request for CA and TP powers is made through the inclusion of Part 5 Powers of Acquisition and Possession in the Applicant's final draft Development Consent Order (dDCO) [REP8-005] (the preferred DCO). The following provisions are included:

- Article 20: Compulsory Acquisition of Land
- Article 21: Compulsory acquisition of land – incorporation of the mineral code
- Article 23: Compulsory acquisition of rights and imposition of restrictive covenants
- Article 24: Private rights over land
- Article 27: Acquisition of subsoil or airspace only
- Article 28. Rights under or over streets
- Article 29: Temporary use of land for carrying out the authorised development
- Article 30: Temporary use of land for maintaining the authorised development

16.2.2. If made, the DCO would also confer on the Applicant other rights and powers that may interfere with property rights and private interests. These additional powers include:

- Article 12: Temporary stopping up and restriction of use of streets
- Article 13: Permanent stopping up and restriction of use of streets, public rights of way and private means of access
- Article 18: Protective works to buildings
- Article 19: Authority to survey and investigate the land
- Article 31: Statutory undertakers
- Article 34: Felling or lopping of trees and removal of hedgerows

16.2.3. As finally submitted the application was accompanied by:

- Book of Reference (BoR) [REP6-015];
- Land Plans [REP6-004];
- Works Plans [REP7-004];
- Streets, Rights of Way and Access Plans [REP7-006]
- Special Category Land Plans [AS-011];
- Statement of Reasons (SoR) [REP7-015]; and
- Funding Statement [APP-022].

16.2.4. Taken together these documents set out the land and rights sought by the Applicant, together with the reasons for their requirement and the basis under which compensation would be funded. References to the BoR and the Land, Works and Streets, Rights of Way and Access Plans in this Chapter from this point should be read as references to the latest revisions cited above.

16.2.5. Land over which CA and TP powers are sought is referred to in this Chapter as the Order Land.

Compulsory Acquisition

16.2.6. The CA powers sought under Article 20 are for the acquisition of land within the Order Lands where it is required to carry out or facilitate the Proposed Development. Article 24 provides for the extinguishment of private rights over land that is subject to compulsory acquisition under the Order.

Temporary Possession and Rights Acquired Permanently

16.2.7. In addition to the CA of land Article 23(1) provides for the Compulsory Acquisition of rights and the imposition of restrictive covenants. Article 23(2) provides that in the case of Schedule 5 land only new rights may be acquired, rather than the land itself. It also allows for the imposition of such restrictive covenants, as may be required for the purposes set out in Schedule 5. Article 23(3) restricts the imposition of restrictive covenants to Schedule 5 land, whilst Article 23(4) provides that where the undertaker only needs to acquire rights over land it is not obliged to acquire any greater interest in that land.

16.2.8. Under Article 29(1)(a)(ii) the undertaker may enter any Order land not land only required for TP of which no notice of entry has been service and no declaration made and, under Article 29(1)(d) construct any works on that land as are mentioned in Schedule 1. As the works in Schedule 5 are also mentioned in Schedule 1, this allows the undertaker to take temporary possession of the land set out in Schedule 5 and then construct the works in question. In other words, as it says in the key on the Land Plans [REP6-004], *"Land to be used temporarily and rights to be acquired permanently"* (the land coloured blue).

Temporary Possession

16.2.9. Article 29 provides for the temporary use of land for carrying out the authorised development. As set out in the previous paragraph it also allows for the temporary occupation of any of the land intended for permanent acquisition that has not yet been acquired. Article 29(1)(c) permits the construction of temporary works and sub-paragraph (d) provides for the construction of permanent works specified in Schedule 1, or any other mitigation works in connection with the authorised development. Article 29(3) sets out the time limits for remaining in possession of land under Article 29, unless it has the agreement of the

owners. Article 29(4) makes provision for the restoration of the land and 29(5) sets out the provision for compensation.

16.2.10. As drafted Article 29(9) prevents the Applicant from Compulsorily Acquiring land set out in Article 29(1)(a)(i) (land in Schedule 7) except for that where it would acquire new rights under Article 23 (Compulsory Acquisition of rights and restrictive covenants and imposition of new rights) or where it would acquire subsoil or airspace only under Article 27.

16.2.11. Article 24(4) provides that all private rights over land which the undertaker takes TP of under the Order will be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

16.2.12. Article 30 allows the Undertaker to take TP of land within the Order Limits, at any time within a period of five years from the date on which that part of the authorised development is first opened for use where required, for the purpose of maintaining the authorised development.

Crown Land

16.2.13. The original application had been accompanied by Crown Land Plans [APP-008] which related to land held on behalf of the Secretary of State (SoS) for Business, Energy and Industrial Strategy by the Coal Authority. However, correspondence from the Coal Authority [AS-040] indicated that interests that the Coal Authority holds in land *"are not categorised as Crown Land for the purposes of the 2008 Act"* and these plans were withdrawn. No land within the Order land therefore represents "Crown Land" for the purposes of the Planning Act 2008 as amended (PA2008).

Special Category Land

Statutory Undertakers

16.2.14. Statutory Undertakers' land and Electronic Communications Code Operators' land is extensively involved along the route and CA powers are sought to acquire land, interfere with interests, override interests and remove apparatus. All the land involved is included in Part 1 and Part 3 of the BoR.

16.2.15. Article 31 allows the Undertaker, subject to the Protective Provisions in Parts 1 to 5 of Schedule 9, to acquire compulsorily, acquire new rights, or impose restrictive covenants over any Order land belonging to Statutory Undertakers and to remove or reposition apparatus belonging to Statutory Undertakers. Article 31(2) provides that the power in relation to apparatus does not apply if the streets in question are to be stopped up as part of the authorised development. In that situation then the provisions of Article 32 will apply.

16.2.16. Article 32 governs what happens to Statutory Undertakers' apparatus (pipes, cables etc.) under streets that are stopped up by the Order. Under Article 32(2) the Applicant may require a Statutory Undertaker to

remove and relocate the apparatus (or apparatus provided in substitution) elsewhere.

16.2.17. The Statutory Undertakers and utility providers with interests in the Order land are:

- British Telecommunications plc;
- Vodafone Limited;
- Zayo Group Ltd;
- Cadent Gas Limited;
- Severn Trent Water;
- South Staffordshire Water Plc; and
- Western Power Distribution Plc.

16.2.18. Schedule 9 to the preferred DCO has Protected Provisions for the following undertakers:

- Part 1: Electricity, gas, water and sewage for undertakers not covered in Parts 3 to 5;
- Part 2: Electronic Communications Code Networks;
- Part 3: Cadent Gas Ltd as gas undertaker;
- Part 4: National Grid as electricity undertaker; and
- Part 5: Western Power Distribution Limited (West Midlands) Plc as electricity undertaker

16.2.19. Disputes between the parties in respect of Protective Provisions will be discussed in Chapter 17 of this report.

The National Trust

16.2.20. Section 130 of the PA2008 applies to land belonging to the National Trust which is held by the Trust inalienably. There is a single plot of land within the application site which is so held; plot 3/7b (the main car park for Moseley Old Hall). No specific provisions are made within the preferred DCO in respect of this land.

16.3. PROPOSED DESIGN CHANGES AND ADDITIONAL LAND

16.3.1. The PA2008 requires that if changes are sought to the application, the changes, whether material or non-material, must be considered and accepted or otherwise by the ExA. If the changes accepted into the Examination involve CA of additional land and the consent to the provision in the DCO authorising such CA of all persons with an interest in that land is not obtained by the Applicant, then the provisions of the Infrastructure Planning (CA) Regulations 2010 (CA Regulations) will apply.

16.3.2. Paragraphs 2.3.2 to 2.3.20 detail the October application changes which were considered to be material. These, however, did not include additional land, but rather in some locations changed requests for the CA to TP of land, or the imposition of rights or non-inclusion. In no cases were land which had been identified for TP or the imposition of rights

following the proposed changes were to be subject to CA. Equally, some land where CA or TP had previously been requested was excluded from such a request.

16.3.3. However, as set out in paragraph 2.3.21 this change included an error in relation to land to the southeast of M6 junction 11. This change had altered this land so that instead of being the subject of CA it was to be subject of TP. However, this was incorrect, in that the Applicant wished to utilise CA powers in respect of part of that plot. As a result of this the Applicant sought to further change the land covered by CA and 're-include' as a new Plot 6/38 on the Land Plans for CA. This change would have represented "additional land" for the purposes of the CA Regulations. We accepted this change in [PD-019].

16.3.4. Regulation 4 of the CA Regulations sets out the procedure to be followed. However, this Regulation only applies where the person(s) with an interest in the additional land do not consent to the inclusion of the provision. Where they do consent, there is no requirement to undertake additional procedures.

16.3.5. The landowners confirmed [AS-135] *"their agreement to the changes set out … and confirm their consent to the permanent acquisition of new Plot 6/38"*. In light of this there was no need to undertake any additional procedures.

16.3.6. The final non-material changes agreed in March 2021 (see paragraphs 2.3.24 to 2.3.26) did not involve any additional land.

16.4. THE PURPOSES FOR WHICH LAND IS REQUIRED

16.4.1. The purposes for which the CA and TP powers are required are set out in the BoR and the SoR.

16.4.2. In general terms, CA is sought for land that would be required permanently for the construction and operation of the main proposal namely the M54 to M6 Link Road and the reconstruction of M54 junction 1 and M6 junction 11, alterations to the local road network, the associated drainage works, landscaping, and habitat compensation. CA of rights is sought to accommodate the diversion of statutory undertakers' apparatus over a number of plots (as identified in Schedule 5). The Applicant states *"… whilst these rights are shown as applying to whole plots, following the completion of the detailed design by the contractor and through engagement with the Statutory Undertakers, the final areas for these works will be in defined corridors"*.

16.4.3. The Applicant also seeks powers to take TP of land to carry out and thereafter maintain the Proposed Development. Articles 33 and 34 make provision for these powers. The SoR explains that this is land which is required during construction of the Proposed Development which is not required permanently. The authorisation of TP prevents the Applicant having to permanently acquire land that is required to construct the Proposed Development, but which is not needed permanently. The

Applicant states that this approach helps to minimise effects on landowners.

16.5. LEGISLATIVE REQUIREMENTS

16.5.1. CA powers can only be granted if the conditions set out in s122 and s123 of PA2008 are met, and the relevant guidance in "Guidance Related to Procedures for the Compulsory Acquisition of Land", DCLG, September 2013 (the Former Department for Communities and Local Government (DCLG) (the CA Guidance) sets out the purpose for which CA may be authorised.

16.5.2. S122(2) of the PA2008 requires that land subject to CA must be required for the development to which the development consent relates, or must be required to facilitate, or be incidental to that development. In respect of land required for development the land to be taken must be no more than is reasonably required and proportionate[64].

16.5.3. S122(3) of the PA2008 requires that there must be a compelling case in the public interest to acquire the land compulsorily, which means the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected.

16.5.4. An order granting development consent may include provision authorising the CA of land only if the SoS is satisfied that one of the conditions in s123(2) to (4) is met. These are:

- The application includes a request for CA to be authorised.
- All persons with an interest in the land consent to the inclusion of the provision.
- The prescribed procedure is followed.

16.5.5. We are satisfied that the condition in s123(2) is met because the application for development consent includes a request for CA of the land to be authorised and thus one of the conditions is met.

16.5.6. A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with the legal duties on decision-makers:

- All reasonable alternatives to CA must have been explored;
- The Applicant must have a clear idea of how it intends to use the land subject to CA powers and to demonstrate that adequate funds are likely to be available to meet the compensation liabilities that might flow from the exercise of CA powers; and
- The decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with Human Rights of those affected.

[64] DCLG CA guidance.

16.5.7. These matters were tested in the Examination and are reported on below.

16.5.8. S127 of PA2008 applies to land acquired by a Statutory Undertaker for the purposes of their undertaking where a representation is made about the application for the DCO and not withdrawn. S127(5) states that an order granting development consent may include provision authorising the creation of a new right over statutory undertaker's land providing that it can be done without serious detriment to the carrying out of the undertaking or any detriment can be made good by undertakers.

16.5.9. S130 of the PA2008 applies to land which is held inalienably by the National Trust. As set out in paragraph 6.3.31 although the National Trust owns four plots within the Order lands, only one, plot 3/7b (the main car park for Moseley Old Hall), is held inalienably.

16.5.10. S138 of PA2008 provides for an order to include provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus of statutory undertakers only if the SoS is satisfied that such actions are necessary for the purposes of carrying out the development to which it relates.

16.5.11. Further to s120 and Part 1 of Schedule 5 to PA2008 at paragraph 2, TP powers are capable of being within the scope of a DCO. PA2008 and the associated CA Regulations do not contain the same level of specification and tests as for CA to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or permanently interfere with a person's interests in land. The need for the powers and their implications for Human Rights are considered below.

16.6. EXAMINATION OF THE CA AND TP CASE

16.6.1. The Examination of the Proposed Development included consideration of all submitted written material relevant to CA and TP. All relevant guidance and legislation is taken into account in the reasoning below and relevant conclusions are drawn at the end of this Chapter in relation to both CA and TP.

16.6.2. Written Questions were posed to the Applicant and Affected Persons (APs) in respect of CA and TP in our First Written Questions [PD-010], and two sets of Second Written Questions [PD-017] and [PD-023].

16.6.3. The Applicant was asked about the justification for the powers sought. A request for a Compulsory Acquisition Hearing (CAH) was made on behalf of Allow Ltd (Allow) [PDC-001]. A CAH was held on 10 December 2020 [EV-021] and [EV-022]. This hearing was not attended by any Statutory objectors but was attended by representatives of South Staffordshire Council (SSC), Allow and Nurton Developments (Hilton) Limited (Nurton), and I and A Simkin.

16.6.4. The documents set out in paragraph 16.2.3 taken together form the basis of the analysis in this Chapter. References to these documents from this point should be read as references to the latest revision cited above.

It should be particularly noted that all Land Plan plot references employed in this Chapter are correct as per the most recently submitted Land Plans.

16.6.5. The Land subject to powers of CA and TP required in order to enable the Applicant to construct, operate and maintain the Proposed Development comprises approximately 198 hectares (ha). Of this, approximately 159ha would be permanently acquired, approximately 32ha would be temporarily possessed for construction and approximately 1ha would be subject to TP with acquisition of permanent rights.

16.7. THE APPLICANT'S CASE FOR CA AND TP

General Case

16.7.1. The Applicant's case is set out in the SoR. It considers that the land subject to CA requests is either needed for the development, or is needed to facilitate the development, or is incidental to the development.

16.7.2. The Applicant considers that the land the subject to CA and TP is the minimum necessary to construct, operate, maintain and mitigate the Proposed Development necessary to achieve its objectives (paragraph 5.3.4 of the SoR [REP7-015]). The Applicant confirms that if less land proves necessary to be required at a later stage in the process, the Applicant will only seek to acquire that part of the land that is required. This would also apply in situations where it transpires that land is only required temporarily rather than permanently (paragraphs 5.3.5 and 5.3.7 of the SoR [REP7 015]).

16.7.3. The Applicant confirms that all land for which TP applies will be restored to its original condition once the work is completed, unless otherwise agreed with the landowner (paragraph 5.3.8 of the SoR [REP7-015] and Article 29(4) of the dDCO [REP8-005]).

16.7.4. Where provision has been made for the creation and acquisition of new rights to accommodate the diversion of statutory undertakers' apparatus (as identified in Schedule 5 of the dDCO [REP8-005]) this has been shown for the whole plot. Following detailed design final areas of works will be in defined corridors (paragraph 5.3.9 of the SoR [REP7-015]).

16.7.5. The Applicant maintains that the environmental mitigation is all essential to mitigate the impacts of the Proposed Development. It was drawn up in collaboration with statutory bodies, including Natural England (NE), to agree methodologies and ensure that environmental mitigation is well designed, reasonable and proportionate (paragraph 5.3.9 of the SoR [REP7-015]).

16.7.6. Even where the Applicant already holds an interest in land, the Applicant is seeking CA or the imposition of rights to ensure the implementation of the Proposed Development should an unidentified owner later assert a previously unidentified interest. This is the minimum required to ensure that the Proposed Development could be constructed.

16.7.7. In general terms the Applicant considers that there is a compelling case in the public interest for CA. The need and benefits of the Proposed Development are set out in the Case for the Scheme [AS-037]. The Applicant notes that the NPSNN identifies a "critical need" to improve national networks and address the impact on quality of life and environmental factors. The Proposed Development has been identified in the National Infrastructure Plan and the Government's Road Investment Strategy for 2020 – 2025 period (RIS2) published in 2020.

16.7.8. The objectives for the Proposed Development are set out in the Case for the Scheme [AS-037] and are said to be:

- Relieve traffic congestion on the A460, A449 and A5 and provide more reliable journey times.
- Keep the right traffic on the right roads and improve safety by separating local community traffic from long distance and business traffic.
- Reduce volumes of through-traffic in villages, improving local community access.
- Support local economic growth for Telford, Shrewsbury, Wolverhampton, Cannock and Tamworth by improving traffic flow and enhancing access to east-west and north-south routes.

16.7.9. The Applicant maintains that there would be substantial public benefits as identified in the Case for the Scheme [AS-037] which include:

- Economic benefits relating to transport economic efficiency improvements, road safety improvements and Indirect Taxation Revenue increase.
- More reliable and faster trips compared to the existing capacity provision on the A460, A5 and A449.
- Local air quality benefits.
- Reliability benefits from reductions in congestion and incidents.

16.7.10. Consequently, the Applicant considers that there is a clear and justified case in the public interest for the Proposed Development.

Early entry

16.7.11. Article 29(1) of the draft DCO [REP8-005] allows the undertaker to take TP of the land listed in the first column of Schedule 7. Article 29 (1)(a)(ii) extends this to *"any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the [Compulsory Purchase Act 1965] (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the [Compulsory Purchase (Vesting Declaration) Act 1981]"*. Effectively, this allows the undertaker to gain early entry of land which is to be the subject of CA before having undertaken the appropriate procedures set out in those Acts or to take TP when the full extent of CA has yet to be determined through the detailed design.

16.7.12. In respect of the latter provision this is explained in the Explanatory Memorandum (EM) (paragraph 5.84 b) of [REP7-013]) that if the detailed design reduces the amount of land that is required to be subject to outright acquisition then the whole of the plot does not need to be the subject of CA. We can appreciate that this may be the case as detailed design is undertaken.

16.7.13. The explanation of this provision was clearly set out in the EM [REP7-013] and no AP has raised objection. We conclude that this approach would facilitate the earlier completion of the Proposed Development and would also allow for matters to be resolved as the detailed design is finalised, allowing for the quantum of land that is needed to be Compulsorily Acquired to be minimised.

Relationship between Temporary Possession with Permanent Rights and Temporary Possession (Articles 23 and 29)

16.7.14. In looking in detail at the drafting of the relationship between Articles 23(1), 27(1) and 29(1)(a) it has come to our attention that there is a conflict between the provisions so that APs may not be fully aware of the extent of rights that the Applicant is seeking.

16.7.15. As drafted, in the preferred DCO [REP8-005] Article 23(1) enables the creation of undefined new rights on a permanent basis in the land described as being for TP only (being the land in schedule 7). This would go beyond that shown on the Land Plans [REP6-004] for the land coloured green ("land to be used temporarily") and thus could lead to unfairness for those affected. This issue does not arise in relation to the acquisition of subsoil or airspace under Article 27 as the Applicant is seeking CA/CA with permanent rights not TP.

16.7.16. It is clear that this is an unintentional error on behalf of the Applicant in that this is not something that the Applicant has given any arguments to support or any indication that they consulted landowners on that basis. On this basis we conclude that there is no need to reconsult on this point.

16.7.17. To resolve this issue, it is recommended that the exceptions set out in Article 29(9)(a) are deleted as this creates the route to allow for the imposition of permanent rights on land, which was only identified for TP. It is also recommended that Article 29(9)(b) is also deleted as it is redundant given that the Applicant is not seeking TP over subsoil or airspace. There then needs to be related changes to this paragraph to deal with this deletion. These changes are set out in Table 9: Recommended changes to preferred DCO.

16.7.18. We have considered whether those whose land would be subject of temporary possession with permanent rights would have been fully aware of this proposal. In each case, the BoR [REP6-015] the description of land, which also sets out the right sought, commences with the phrase *"Temporary possession and acquisition of rights over land*

comprising …"[65]. Reading this, together with Schedule 5 of the draft DCO [REP8-005], which sets out the purpose for which rights over land may be acquired, ensures that any party so affected would be able to ascertain the situation and, had they so wished, make representations on this matter. We therefore conclude that no party would have been disadvantaged by this approach.

Consideration of Alternatives

16.7.19. The SoR [REP7-015] sets out the Applicant's case in relation to the consideration of alternatives. It refers to the pre-application consultation exercise, involving engagement with stakeholders, to identify the preferred route, which became the Proposed Development, and the changes proposed (and accepted into the Examination) during the Examination process.

Funding

16.7.20. The Funding Statement [APP-022] sets out that funding had been agreed for the Proposed Development in the Road Infrastructure Strategy 1 2015 – 2020, and confirmed in response to ExQ1.0.1 [PD-010] at [REP1-036] that the Proposed Development is categorised as committed for the Second Road Period. This means construction of this project is expected to start by 1 April 2025. Highways England Delivery Plan 2020 - 2025 was published on 21 August 2020 following the publication of RIS2 and gives details of specific funding, activities and projects Highways England will deliver over the five years from 2020 to 2025. The Proposed Development is included in this document.

Acquisition by Agreement

16.7.21. The Applicant has set out in Annex B to the SoR a summary of the discussions between the Applicant and landowners seeking to acquire the relevant land by agreement. However, it acknowledges that in order to deliver the Proposed Development in a timely manner, or in the event that it does not prove possible or practical to acquire all the land by agreement, that CA powers should be granted.

ExA Conclusions on the General Case for CA and TP

16.7.22. We agree with the Applicant's conclusions on the generality of the case, including its approach to dealing with Alternatives and ensuring that there are no outstanding interests that have not been previously identified in land that the Applicant already owns. We also agree that in order to ensure delivery of the Proposed Development is not delayed by negotiations that CA, TP with Permanent Rights or TP would be appropriate. However, the overarching conclusion on CA and TP cannot

[65] The text in the BoR for Plot 3/2c omits the word "of", but we consider this to be a typographic error rather than one of substance.

be reached until individual objections and all other relevant and important considerations have been addressed.

16.8. CONSIDERATION OF INDIVIDUAL OBJECTIONS AND ISSUES

16.8.1. Annex B to the SoR [REP7-015] sets out in the table the status of objections with the individual owners and others with an interest in land. These are then considered individually below. Annex B had been updated throughout the Examination and the final version was submitted at Deadline 7. During the course of the Examination there was little change in that objections were still maintained, although as set out below in relation to plot 6/38 the owners agreed to the land being compulsorily acquired.

16.8.2. The following represents the situation at the close of the Examination. Through the changes, principally those in October 2020 [AS-117], there were alterations to the interests sought (see paragraphs 2.3.2 to 2.3.20 of this report). In setting out the various APs positions, we have not included those objections where, as a result of the changes, the Applicant no longer seeks CA, TP with Permanent Rights or TP of land. We may refer to earlier, and now resolved, objections to ensure clarity.

Category 1 objectors

Allow Limited (Allow) [RR-031].

16.8.3. Allow set out its final position at [REP9-005], and written submissions in support or oral case at CAH1 [REP4-048] along with other representations throughout the Examination.

Locations:	Land to west of Hilton Hall and south of Hilton Lane extending to Cannock Road Land to east and west of M6 north of M6 junction 11
Interests:	CA of plots: 4/20a, 4/20b, 4/20c, 5/2, 5/4, 6/16, 6/21 TP with Permanent Rights plots: 4/20f, 4/20g TP of plots: 4/20d, 5/25, 6/13, 6/20
Status Summary:	Unresolved in respect of whether CA and TP of land is justified both generally and, in respect of plots 4/20a, 4/20b, 4/20c, 5/2 and 5/4 and of permanent rights over plot 4/20g, in relation to the appropriate legal and policy tests. There is a signed Statement of Common Ground (SoCG) between the Applicant and this objector [REP8-011].

Objector's case:	Allow's general case, is that in overall terms, the location of the environmental mitigation for the effects on the Lower Pool Site of Biological Importance (SBI) should be located in proximity to the SBI, and that the alternative land that it has promoted is preferable, so that a compelling case in the public interest has not been demonstrated for the land for which rights is sought. Specific objections in the Relevant Representation (RR) are given to plots 4/20a, 4/20b, 4/20c, 5/2 and 5/4 and of permanent rights over plot 4/20g. In respect of these plots the legal and policy tests are not met as follows: Not necessary, because other land is available and preferable from an environmental perspective. CA is a measure of last resort; since other land is available, a compelling case in the public interest has not been demonstrated. Scant justification for ecological mitigation to the west of the mainline – therefore there is no clear evidence to support case (see paragraph 13 of the DCLG Guidance) The Applicant failed to justify consideration of alternatives, not in the generality but in respect of the specificity of individual plots, and this was not assessed by the Applicant. The Court of Appeal in *R (FCC Environment (UK) Ltd) v Secretary of State for Energy and Climate Change* [2015] EWCA Civ 55[66] at paragraph 10 indicated that the need for the development alone cannot amount to a compelling case in the public interest to compulsory acquire land. In the alternative, if mitigation did need to go to the west of the mainline then CA is not justified; the mitigation could be secured through TP with imposition of rights (see [REP5-009]).
Applicant's response:	The Applicant maintains that the environmental mitigation is multi-faceted, not

[66] A copy of the judgement can be found at [REP4-047]

just required for ecology, but also in landscape and visual terms and to minimise effects on the setting of listed buildings and the Historic Landscape Area (HLA). Considered holistically, the preferred solution is the most appropriate and this provides a compelling case in the public interest.

The plots are required as follows:

- Plot 4/20a for accommodating drainage attenuation;
- Plot 4/20b for construction of the highway and the Featherstone Junction Northbound slip road;
- Plot 4/20c for environmental mitigation and construction of a culvert;
- Plot 4/20g for the Hilton Park access track– permanent rights are required to ensure this route is maintained.
- Plot 5/2 for (in respect of the objection) environmental works;
- Plot 5/4 for the mainline, a culvert, Hilton Lane bridge, Public Right of Way (PRoW) between Dark Lane and Hilton Lane and associated works. (Note: This area has been reduced in size in the October application changes from that originally sought.)

In respect of the cited Court of Appeal case, the Applicant agrees that there is a distinction between the 'need for a development' as may be supported by a National Policy Statement (NPS) and whether there is a compelling case for CA as required by S122(2) and (3) of the PA2008 of land to deliver that development. The Applicant considers that there are four occasions where there may be a need for the development in planning policy terms but not a case for CA of particular plots. These are:

- The extent of the land requested for CA powers is excessive, in the sense the land is not necessary for the development to be constructed;
- The acquisition of a right, rather than CA, might suffice;
- The owner may agree to sell the land willingly; and
- In the scenario that an NPS did not require consideration of alternative sites for a particular piece of infrastructure, but

where the existence of alternative land would be relevant for the purpose of deciding whether there was a compelling case in the public interest for CA.

It is the Applicant's view that none of these occasions apply to the case for CA of Allow's land in general, or the specific plots in the 4/20 series or plot 5/2.

In relation to the alternative of TP with the imposition of Permanent Rights, the Applicant notes that mitigation for biodiversity purposes must be retained and will require maintenance over a 30-year period. The Applicant considers that it must have the ability to secure this as it would be required in the terms of a DCO, if made. Whilst Allow has expressed an interest in retaining the land and maintaining future mitigation, their interest is caveated by the need to understand in detail what retention, management and maintenance of the mitigation would entail and any financial arrangements for it, including compensation. The Applicant cannot provide this information until the detailed design has been undertaken post-consent, and there is no certainty that this can be agreed (see REP6-039].

ExA Reasoning and Conclusion:

16.8.4. In respect of the Court of Appeal decision, it is clear that just because a need for the development has been identified in a National Policy Station (NPS) does not mean that there is a compelling case in the public interest for the CA (or TP) of any particular plot of land. Such a case needs to be made in respect of each plot of land. In respect of the fourth reason set out above, this does not apply because the NPS does not specifically identify the application site.

16.8.5. In our conclusions on the planning merits of the Proposed Development as set out in Chapter 15 we have concluded that the environmental mitigation on the west side of the mainline (in the case of Allow's objection being the plots as set out above) is necessary as it provides the appropriate balance between the necessary ecological mitigation and visual screening for local residents, in this context in Dark Lane, while minimising the effect on the significance of the heritage assets in Hilton Park and of the Park itself, particularly as great weight should be given to the conservation of heritage assets (see paragraph 5.131 of the National Policy Statement for National Networks (NPSNN)).

16.8.6. We are also satisfied that the quantum and location of woodland planting, is the minimum necessary to ensure that significant harm to biological conservation interests is avoided (see paragraph 6.7.23 of this

report and paragraph 5.25 of the NPSNN) and to ensure that the visual effects on local residents are appropriately mitigated (paragraph 5.158 of the NPSNN).

16.8.7. Allow's objection in respect of plot 5/4 has been, in our view, resolved through the October application changes since it removed the land take from that part of the plot where Allow were specifically objecting ([AS-117] and specifically the most southerly of the three areas identified "EM10" in the plan entitled "Changes to the Environmental Masterplan"[67] on the last page).

16.8.8. We are therefore satisfied that in respect of the plots to which Allow has made specific objection, including for the avoidance of doubt the remaining area of plot 5/4, that each plot is required for the development to which the development consent relates or to facilitate or be incidental to that development.

16.8.9. We consider it an academic argument as to whether any mitigation is required for the Proposed Development for which the development consent relates or is to facilitate or is incidental to that development since in all three cases it would comply with the test set out in S122 of the PA2008 which sets out the conditions under which land can be compulsorily acquired under a DCO.

16.8.10. In respect of the case that powers of TP with Permanent Rights should be utilised instead of CA, we accept the case of the Applicant that until the detailed design has been agreed the precise details of what would be required cannot be concluded. It may also be that negotiations thereafter are unsuccessful, and it is, of course, necessary to ensure that the environmental mitigation is provided for the life of the development. Given the nature of the development this is effectively in perpetuity.

16.8.11. Whilst "temporary" does not necessarily need to be short term, it does imply a limited duration defined by either a date or an event. Under Article 29(3) of the preferred DCO [REP8-005] the undertaker would be required to hand back any land subject to TP within one year of the opening of the Proposed Development (subject to various exceptions including the agreement of the landowner to an extension, which could be refused) and under Article 30(11) of the preferred DCO [REP8-005] the time limit for maintenance thereafter is five years. It is clear that management of the mitigation will be required for more than five years from when the Proposed Development is completed to ensure that it fulfils its functions. Equally, to rely on a landowner agreeing to an extension may well put securing the mitigation at an unacceptable risk of not being managed for an appropriate period. A date as an end date would therefore not be appropriate.

16.8.12. The only other option would be to identify an event. However, given the long term nature of the maintenance regime necessary, any event, such as the land being able to be self-maintaining, is likely to be a significant

[67] Drawing number HE515565-ACM-ELS-M54-SW-R-0001 Rev P15

time in the future, if at all, and it would be difficult, if not impossible, to define. This would, effectively, mean that there is little realistic prospect of the land being offered back to the owners in the future. In practice the owner would have no increased right to use the land than any member of the public and would effectively be dispossessed of it. The use of CA, therefore, is the correct approach.

16.8.13. We therefore conclude that the use of TP with Permanent Rights would not be appropriate as an alternative to CA.

16.8.14. Taking the above together, we conclude that there is a compelling case in the public interest for the CA of the plots of land in question and the tests set out in s122 of the PA2008 would be satisfied.

16.8.15. Similarly, the two plots for TP with permanent rights (plots 4/20f and 4/20g) are required to re-provide a high pressure gas main for Cadent Gas Limited. This is needed to ensure that the position of a statutory undertaker is in no worse position and to ensure the provision of gas to the local community. The mechanism of TP with permanent rights would represent the least intrusive manner in which this could be provided and thus there is a compelling case in the public interest.

16.8.16. In respect of the four plots for TP:

- Plot 4/20d is required to replace the existing Dark Lane fence, a visual enhancement sought by the local community; this was agreed as part of the negotiations between the Applicant, the community and Allow as landowners. The Applicant requires rights to ensure this would be delivered.
- Plot 5/25 is required as a Borrow Pit and temporary construction area to facilitate permanent works. This would minimise the need to transport materials to and from the application site and facilitate the construction of the Proposed Development.
- Plots 6/13 and 6/20 are situated on either side of the M6 north of junction 11. These are required to facilitate the construction of permanent works.

16.8.17. In each case we consider that TP is required to ensure the delivery of the Proposed Development and that this is required for purposes ancillary to the development being sought (see s120 of the PA2008).

Barry Jones and Valerie Jones [RR-020, RR-021, RR-035]

Location:	Land to southwest of M6 junction 11
Interests:	CA of plot: 6/9
Status Summary:	Unresolved. There is an unsigned SoCG between the Applicant and these objectors [REP8-016].
Objectors' case:	Land is not required for drainage purposes, the existing stream (Latherford Brook) would suffice.

Excessive mitigation is being provided, and this particular plot is not necessary.

Lack of engagement by Applicant.

Would affect possible future development.

Compensation would not be to an appropriate level.

Applicant's response: The land is required to ensure the delivery of the Proposed Development.

The stream forms part of the overall drainage strategy, but it is necessary to ensure that drainage ponds provide attenuation to ensure drainage flows are appropriate.

Proper engagement took place.

ExA Reasoning and Conclusion:

16.8.18. We are satisfied that due to the increased hard-surfaced area, the new highways, it would be necessary to collect pluvial water and attenuate it at greenfield rates to ensure that there was no harm to the water environment. Thus, the provision of said pond is incidental to the Proposed Development. The location needs to be at a low point close to an existing watercourse in order to act efficiently and effectively. We therefore are satisfied that the location is appropriate and the proposed pond of an appropriate size. Consequently the plot needs to be acquired permanently to allow the Proposed Development to function appropriately.

16.8.19. In relation to engagement, we consider that the engagement as recorded in the unsigned SoCG between the parties [REP8-016] was sufficient. It is in the public interest that the Proposed Development is brought forward expeditiously.

16.8.20. While we would hope that there would be a negotiated agreement between the parties such negotiations could continue indefinitely. This could put the delivery of the Proposed Development at risk. Therefore, for the reasons set out in paragraph 16.7.21 of this report it is considered that CA powers should be granted.

16.8.21. We conclude that there is a compelling case in the public interest for the CA of the plot of land in question and the tests set out in s122 of the PA2008 would be satisfied.

16.8.22. Compensation issues fall outside the matters for consideration in deciding whether to grant a DCO (see s106 PA2008).

Danielle Leigh Killingworth [RR-022]

Location:	Land to west of M6 junction 11
Interests:	CA of plots: 6/15
Status Summary:	Unresolved
Objector's case:	Would like land swap, redesign or early acquisition to allow relocation of animals.
Applicant's response:	Plot 6/15 is required for multiple works including the construction of the realigned Cannock Road and its connection with M6 junction 11, and improvements to that junction. HE would not be able to acquire alternative land using compulsory purchase powers, so any alternative provision by HE would have to be from its own estate. The Applicant is continuing to discuss matters with the objector.

ExA Reasoning and Conclusion:

16.8.23. We agree with the Applicant that this plot is necessary to ensure the delivery of the Proposed Development. Without this plot acquired on a permanent basis the Proposed Development would not be able to achieve its objectives and thus there is a compelling case in the public interest for the land to be compulsorily acquired and the tests set out in s122 of the PA2008 would be satisfied.

16.8.24. While it would be more convenient to the objector to be re-provided with suitable land elsewhere, this falls outside the remit of an application for a DCO.

16.8.25. The level of compensation falls outside the remit of this Examination (s106 PA2008).

Elizabeth Stella Whitehouse & Stella Arblaster [RR-016, RR-036]

Locations:	Land to south M6 junction 11 Land to north of A460 north of M6 junction 11
Interests:	Mrs Whitehouse: CA of plots: 5/23, 6/6, 6/32b, 6/32c TP of plots: 6/32a, 6/36 Ms Arblaster: CA of plots: 5/23, 6/6
Status Summary:	Unresolved.

There is an unsigned SoCG between the Applicant and these objectors [REP8-018].

Objectors' case: In relation to plots 5/23 and 6/6:

- The tree planting is excessive; to compensate for un-registered Ancient Woodland on other land.
- Requires a replacement access after development to ensure non-acquired land can be farmed.
- Would limit farming activities due to lack of agricultural land in area for sale.
- Would prejudice future development of land in conjunction with other for commercial development.

In relation to plots 6/32a and 6/36:

- Needs to ensure stock fencing and maintenance of access.
- Lack of engagement by Applicant.
- Compensation would not be to an appropriate level.

Applicant's response: The nature of environmental mitigation is that compensation often has to be in another location as the original site is directly affected by the Proposed Development. In this case the compensation works need to be located elsewhere, and compensation works on plots 5/23 and 6/6 would link with existing habitats.

Evidence to demonstrate the existence of ancient woodland has been shown and it is an irreplaceable asset. However, this still needs to be compensated for.

In relation to plots 6/32a and 6/36 suitable fencing would be provided; this would be agreed post consent. Access would be maintained throughout the development process.

Proper engagement took place and will continue with those promoting the land for commercial development.

Compensation is assessed independently and would be proportionate.

ExA Reasoning and Conclusion:

16.8.26. A significant proportion of the land sought by the Applicant would be used for permanent works, particularly the mainline and for the

realignment of the northbound off-slip road from the M6 at junction 11. CA is therefore the only appropriate mechanism for this.

16.8.27. We concur with the Applicant when it states the nature of compensation works is that inevitably they occur away from where the direct impacts take place. In this case we are satisfied that the woodland lost through proximity should be considered as ancient woodland. The use of the area adjacent to the Brookfield Farm SBI is appropriate and will allow biodiversity to migrate into this area. Given the location of the Brookfield Farm SBI the land sought (plot 6/6) would be the only suitable location to allow the necessary mitigation to happen. Mitigation needs to be considered as a whole.

16.8.28. We are satisfied with the Applicant's intentions in relation to plots 6/32a and 6/36 would overcome the objections.

16.8.29. In relation to engagement, we consider that the engagement recorded in the unsigned SoCG [REP8-018] was sufficient. It is in the public interest that the Proposed Development is brought forward expeditiously.

16.8.30. While we would hope that there would be a negotiated agreement between the parties such negotiations could continue indefinitely. This could put the delivery of the Proposed Development at risk. Therefore, for the reasons set out in paragraph 16.7.21 of this report it is considered that CA powers should be granted.

16.8.31. We conclude that in order to ensure that the Proposed Development is delivered as designed there is a compelling case in the public interest for the CA and TP of the plots of land in question and the tests set out in s120 and s122 of the PA2008 would be satisfied.

16.8.32. Compensation issues fall outside the matters for consideration in deciding whether to grant a DCO (see s106 PA2008).

Ian Simkin and Adrian Simkin [RR-033]

Locations:	Land to west of A460 north of M6 junction 11, and Land to between A462 and M6 south of M6 junction 11
Interests:	CA of plots: 6/23, 6/29, 6/30, 6/38 TP with Permanent Rights plots: 6/31 TP of plots: 6/37, 6/25
Status Summary:	Unresolved, although following the October application changes some of the plots originally sought (pots 5/26, 5/27 and 6/25) are no longer required, and plot 6/25 would be used under TP.

The objector confirmed their consent to the permanent acquisition of plot 6/38 [AS-135].

There is a signed SoCG between the Applicant and these objectors [REP8-017].

Objectors' case: Objections are raised in respect of:

- Plot 6/25, the loss of Grade 3a Agricultural Land which is contrary to NPSNN and Framework.
- Plots 6/25 and 6/23, the environmental mitigation is excessive and would be better located elsewhere.
- Plot 6/31, as a bridleway as this is not used.
- Would represent an 8% loss of arable land across holding.
- Plots 6/23, 6/31 and 6/37, would prevent the use of the remaining part of the field for arable and would only be suitable for grazing.
- Plots 6/29 and 6/30 are not being acquired for the Proposed Development, or incidental to, the construction of the highway. The area acquired for species rich grassland will be impractical (and virtually impossible) to manage.
- Compensation for hope value will be sought for plot 6/25 which is being promoted for development.

Applicant's response: Plot 6/23 is required for works connected to the realignment of M6 junction 11 and is required for these purposes. The Applicant will seek to ensure that there is an access from the layby to match the current arrangement.

The replacement of the bridleway is required by policy and legislation to retain connectivity of PRoWs where possible. Lack of use, by itself, is not sufficient reason to extinguish a PRoW.

Plots 6/29 and 6/30 are required for for Work 39, the realignment and widening of the A460 southbound by a single lane from the M6 toll merge to M6 junction 11 and the widening of the A460 northbound carriageway by a single lane from M6 junction 1, tapering back down to two lanes ahead of the M6 Toll overbridge. None of this land is required for environmental mitigation.

Following the October application changes no land held by these landowners would be subject to CA solely for environmental mitigation.

ExA Reasoning and Conclusion:

16.8.33. We are satisfied that plots 6/23, 6/29 and 6/30 are required for the provision of highway, which, depending on how considered, is either the development to which development consent relates or is required to facilitate that development. If the view is taken that as the A460 north of M6 junction 11 already exists it is being altered to tie-in to the reconfiguration of M6 junction 11. Without these plots the Proposed Development would not be able to achieve its objectives.

16.8.34. We agree with the Applicant in stating that lack of use, by itself, is not sufficient reason to extinguish a PRoW. Consequently, the PRoW needs to be re-provided and the Proposed Development would secure this appropriately. This is most appropriately secured by TP with the imposition of rights.

16.8.35. The plots sought for CA would be utilised for the delivery of the revised M6 junction 11, and consequently the use of CA powers would represent the least level of intrusion to deliver the Proposed Development.

16.8.36. The two plots sought for TP are both required to allow for the construction of the Proposed Development, and it would not be possible to deliver the Proposed Development without them.

16.8.37. We conclude that there is a compelling case in the public interest for the CA, TP with Permanent Rights and TP of the plots of land in question in each case to ensure that the Proposed Development is successfully delivered. Consequently in respect of the tests set out in s120 and s122 of the PA2008 would be satisfied

16.8.38. Compensation issues fall outside the matters for consideration in deciding whether to grant a DCO (see s106 PA2008); this would include whether land was still capable of arable use or could only be used for grazing.

Mark Commins & Tracy Claire Commins [RR-023]

16.8.39. This RR was submitted by Leslie Commins[68] on behalf of himself. However, he is not referred to in the BoR [REP6-015] or any of its previous iterations. It is clear that the correspondence relates to the plots cited and we consider, as within most planning matters, the matters under Examination do not relate to an individual and can be dealt with on that basis.

[68] The address given by Leslie Commins is the same as that for Mark Commins.

Locations:	Land to east, south and northwest of Brookfields Farm, Shareshill
Interests:	CA of plots: 5/19, 5/20, 6/3
	TP with Permanent Rights plots: 5/16, 5/17
Status Summary:	No objection cited.
Objectors' case:	Concerned to ensure that the Proposed Development minimises effects on Brookfield Farm.
Applicant's response:	Thanks the parties for their assistance to date.

ExA Reasoning and Conclusion:

16.8.40. We consider that the plots in question all relate to land to form the mainline or in close proximity, and in respect of the two plots where Rights are requested would be utilised for drainage or the provision of a diversion of an overhead electricity cable; in both cases this would be the most appropriate mechanism to provide delivery. It is not in dispute that they are all necessary for the Proposed Development to achieve its objectives.

16.8.41. While we would hope that there would be a negotiated agreement between the parties such negotiations could continue indefinitely. This could put the delivery of the Proposed Development at risk. Therefore, for the reasons given at paragraph 16.7.21 we consider that CA is necessary to ensure that a failure in negotiations does not prevent the Proposed Development from taking place expeditiously.

16.8.42. We conclude that there is a compelling case in the public interest for the CA and TP with Permanent Rights of the plots of land in question and the tests set out in s120 and s122 of the PA2008 would be satisfied.

Michael John Alfred Byard [RR-026]

Locations:	Land west of Mill Lane, Shareshill
Interests:	CA of plots: 6/10
Status Summary:	Unresolved. There is an unsigned SoCG between the Applicant and this objector [REP8-015].
Objector's' case:	Object to CA but would be content to *"agree means of facilitating HE requirements without the need for HE to use powers to acquire"*.
Applicant's response:	Plot 6/10 is required for re-alignments of Cannock Road and Mill Lane woodland, and species rich grassland, as well as for a temporary construction compound. The Applicant states it will continue to work with the objector, and is agreeable, in

principle and subject to suitable terms, that the land for environmental mitigation will be retained by or returned to the landowner for future management or maintenance.

ExA Reasoning and Conclusion:

16.8.43. We note plot 6/10 is required for the realignment of Cannock Road for environmental mitigation in the form of species rich grassland or woodland as highway verge. This land is either the development to which development consent relates or is required to facilitate that development, if the view is taken that as the A460 south of M6 junction 11 already exists, it is being altered to tie in to the reconfiguration of M6 junction 11. Without this plot the Proposed Development would not be able to achieve its objectives.

16.8.44. For the reasons set out in paragraphs 16.8.10 to 16.8.12 we consider that TP would not be sufficient to ensure that the Proposed Development including its long term mitigation was delivered.

16.8.45. We conclude that there is a compelling case in the public interest for the CA of the plot of land in question and the tests set out in s122 of the PA2008 would be satisfied.

Nigel Simkin and Paul Simkin [RR-027 and RR-034]

Location:	Land east of Brookfields Farm between Hilton Lane and Latherford Brook
Interests:	CA of plots: 5/8, 5/11b, 5/11c, 5/11d, 5/11h, 5/11i, 5/11j, 5/12, 5,15, 5/18, 5/20, 5/22, 6/4, 6/5 TP with Permanent Rights plots: 5/7, 5/11e, 5/11f, 5/13, TP of plots: 5/6, 5/10, 5/11a, 5/11g, 5/14
Status Summary:	Unresolved. There is an unsigned SoCG between the Applicant and these objectors [REP8-014].
Objectors' case:	The land is not required as the road is not required and would have a devastating effect on the farm. Catastrophic effect on lives, home and business. Lack of consultation with objectors. Excessive ecological mitigation exacerbates effects on land: Loss of good quality agricultural land/severed fields/access routes (not all identified). Impact on fishing and clay pigeon businesses.

Impact on riding routes from equestrian business.

Loss of income/increased costs.

Design would result in small areas of land that could not be farmed effectively.

Bridge crossing the mainline would be of insufficient width.

Lack of positive engagement over future commercial development.

Applicant's response: The Applicant empathises with the objectors to CA, but the land is required to facilitate the Proposed Development.

Discussions have taken place between the Applicant and objectors and engagement took place prior to submission of the application.

The quantum of mitigation is the minimum necessary to ensure that the Proposed Development is properly mitigated for its effects.

The Applicant considers that the resulting fields could still be farmed effectively, if the remainder of the holding becomes unviable this is a matter for compensation.

Appropriate access arrangements would be delivered, and the accommodation bridge would be of an appropriate size (ExA Note: the width of the bridge was increased following the RR.) Sufficient visibility would allow users to wait for each other to eliminate risk of conflicts.

The Applicant has been engaging with the land promoter.

ExA Reasoning and Conclusion:

16.8.46. We note that this objection predominantly relates to land which would be utilised for the mainline and is therefore directly required for the development. That which is beyond the mainline is either to facilitate this or incidental, for example the provision of the accommodation bridge.

16.8.47. In our conclusions on the Planning merits of the Proposed Development as set out in Chapter 15 we have concluded that, when considered overall, the environmental mitigation on the west side of the mainline is necessary as it provides the appropriate balance to provide the necessary ecological mitigation and visual screening for local residents, in this context in Dark Lane, while minimising the effect on the significance of

the various heritage assets, particularly as great weight should be given to the conservation of heritage assets (see paragraph 5.131 of the NPSNN).

16.8.48. We are also satisfied that the quantum and location of woodland planting is the minimum necessary to ensure that significant harm to biological conservation interests is avoided (see paragraph 6.7.23 and paragraph 5.25 of the NPSNN) and to ensure that the visual effects on local residents do not outweigh the benefits of the development (paragraph 5.158 of the NPSNN).

16.8.49. This has to be considered holistically over the whole of the Proposed Development.

16.8.50. The Applicant has shown that the accommodation bridge would facilitate the largest road legal vehicles under the Road Vehicles (Authorisation of Special Types) (General) Order 2003. While this would not then allow other vehicles or users to use the bridge at the same time, the survey data set out in Table 2.5 of Appendix 12.2 of the Environmental Statement (ES) [APP-199] does not show a high level of use for the Shareshill 1 bridleway so conflicts would be infrequent, and sufficient visibility would be available to allow users to avoid collision risks. While there would be an effect on the equestrian business, this falls as a compensation issue.

16.8.51. In relation to engagement, we consider that the engagement recorded in the unsigned SoCG [REP8-014] was sufficient. It is in the public interest that the Proposed Development is brought forward expeditiously.

16.8.52. The objectors have not set out in detail why they consider the remaining land would be difficult to farm post-development. In looking at the eastern boundary of the Order lands in this vicinity (north of Hilton Lane) the boundary would be effectively straight. On the western side there are smaller areas south and west of a balancing pond and the ramp to the accommodation bridge at Brookfield Farm. These may have some effect on the farming of this area, but if the Proposed Development is to be delivered then these effects will be unavoidable.

16.8.53. While we would hope that there would be a negotiated agreement between the parties such negotiations could continue indefinitely. This could put the delivery of the Proposed Development at risk. Therefore, for the reasons set out in paragraph 16.7.21 of this report it is considered that CA powers should be granted.

16.8.54. In respect of the land where TP with permanent rights is sought this relates to a strip of land to the east of the mainline which would be utilised for maintenance access to the accommodation bridge. This approach is considered to have the least effect on landowners' rights and still deliver and maintain the Proposed Development.

16.8.55. The land where TP alone is sought would be utilised to allow for the construction of the permanent development and is considered necessary

and appropriate in all cases to allow the Proposed Development to be constructed.

16.8.56. We conclude that there is a compelling case in the public interest for the CA, TP with permanent rights and TP of the plots of land in question and the tests set out in s120 and s122 of the PA2008 would be satisfied.

16.8.57. Compensation issues, including resulting effects on agricultural and other businesses, fall outside the matters for consideration in deciding whether to grant a DCO (see s106 PA2008).

William Bibbey [RR-024]

Locations:	Land to north M54 between M54 junctions 1 and 2 Land to north west of M54 junction 1
Interests:	CA of plots: 3/2b, TP with Permanent Rights plots: 3/2c, 3/2d, 3/6, 4/17a TP of plots: 4/17b, 4/18
Status Summary:	Unresolved. There is an unsigned SoCG between the Applicant and this objector [REP8-012].
Objector's case:	In relation to plot 4/17a this covers land with development potential, and thus would like CA kept to a minimum to avoid sterilisation of the land.
Applicant's response:	In relation to: • Plot 4/17a would be required for TP with Permanent Rights for diversion of a high-pressure gas main operated by Cadent Gas. Such a main exists on this plot, so this is a re-provision and to allow for flexibility. • Plots 4/17b and 4/18 are sought for TP to allow construction. • Plot 3/2b would be required as a drainage pond treating highway runoff in a Sustainable Drainage System, with a buffer of species rich grassland. All plots are essential to the delivery of the Proposed Development. Any development potential would be dealt with in the considering compensation.

ExA Reasoning and Conclusion:

16.8.58. We agree with the Applicant that the Plots here are all essential for the delivery of the Proposed Development, being either to facilitate or would be incidental to that development.

16.8.59. The plot proposed for CA is required to ensure that the Proposed Development is appropriately drained on a permanent basis; therefore the use of CA powers is appropriate and is the minimum necessary based on the evidence submitted.

16.8.60. The plots proposed for TP with permanent rights are all required to facilitate the diversion of existing equipment for statutory undertakers. This therefore provides the most appropriate way to achieve this.

16.8.61. The plots where TP is sought would provide access to allow the diversion of a high pressure gas pipeline. Given the constraint of the M54 and the eastbound off-slip road access from the north is effectively the only way that this could be achieved.

16.8.62. We conclude that there is a compelling case in the public interest for the CA, TP with Permanent Rights and TP of the plots of land in question and the tests set out in s120 and s122 of the PA2008 would be satisfied.

16.8.63. Compensation issues fall outside the matters for consideration in deciding whether to grant a DCO (see s106 PA2008).

Special category land

16.8.64. The National Trust has agreed in a land agreement with the Applicant and confirmed in a Planning Obligation under s106 of the Town and Country Planning Act 1990 (as amended) that it is content for its land to be utilised for compensation planting.

16.8.65. No representations from the National Trust indicate it has an objection in relation to plot 3/7b and consequently the provisions of s130(2) of the PA2008 do not apply.

16.8.66. There is one plot, 1/2, which is north of M54 west of Coven Lane, which is owned by a Statutory Undertaker, Severn Trent Water Limited. If granted, the DCO would authorise the erection of a verge mounted advance directional sign along the M54 carriageway (Work 1C). This would not affect Severn Trent's statutory function and we are therefore satisfied that it can therefore be acquired and not replaced without the serious detriment to the carrying out of the undertaking (see s127(3) of the PA2008).

Land to which no objection has been received

16.8.67. There are a number of other Category 1 landowners in the Order lands whose land would be subject to CA, TP with Permanent Rights or TP who have not raised objections to the Proposed Development.

16.8.68. Some of these are public bodies, in particular Staffordshire County Council (SCC) and SSC, which have indicated their general support for the Proposed Development. The issues of concern raised do not relate to land matters. Similarly, there is land in the control of the Secretary of State for Transport (SoST), which would not represent an impediment to the delivery of the Proposed Development. As the Applicant explains, the comprehensive approach to CA is to ensure 'clean title' and no unexpected delays.

16.8.69. There are a number of other plots of land where land rights would be interfered with, and where no correspondence has been received to indicate that there is an objection to the CA, TP with Permanent Rights or TP of the relevant plots.

16.8.70. In all cases we conclude that the land is required for the development to which the development consent would relate, or is required to facilitate or is incidental to that development and there is a compelling case in the public interest for the land to be acquired compulsorily. The same considerations apply to that land, which is sought to be acquired for TP, whether or not with Permanent Rights thereafter.

Category 2 Objector

16.8.71. In addition, the following objection relates to CA and TP in respect of the following party who has Category 2 interests in the Order Lands.

Nurton Developments (Hilton) Limited (Nurton) [RR-038]

16.8.72. Nurton played an active part in the Examination and made a number of other representations throughout the Examination.

Locations:	Land between Hilton Lane and M6 junction 11
Interests:	CA of plots: 5/8, 5/11b, 5/11c, 5/11d, 5/11h, 5/11i, 5/11j, 5/12, 5/15, 5/18, 5/22, 5/23, 6/4, 6/5, 6/6, 6/9 TP with Permanent Rights plots: 5/7, 5/11e, 5/11f, 5/13, TP of plots: 5/6, 5/10, 511a, 5/11g, 5/14,
Status Summary:	Unresolved. There is a signed SoCG between the Applicant and this objector [REP8-019].
Objector's case:	The Environmental Impact Assessment (EIA) has not been adequately prepared in respect of alternatives, and in particular as to the design of the accommodation bridge and in respect of any future development of the interest land.

Insufficient information has been provided to justify the proposed ponds, both for drainage and environmental mitigation, on the interest land.

Further, the environmental mitigation is excessive, in particular the great crested newt (GCN) mitigation ponds, the provision of which is determined through assumed populations. The proposed ecological ponds at Brookfields Farm would introduce an artificial constraint on future development.

There has been a lack of engagement.

Additional reassurance should be given over a potential further bridge over the mainline.

Applicant's response: The Applicant considers that alternatives have been adequately explored and in line with appropriate legislation and guidance. This includes the location and design of the accommodation bridge. Alternative locations would involve additional carriageway and environmental effect.

The location of the attenuation ponds is at low points adjacent to existing ditches to allow for drainage, with the locations dictated by topography and location of ditches and they are of an appropriate size.

NE advised on the appropriate mitigation strategy in relation to ponds for GCN mitigation [AS-002]. NE advised on the appropriate mitigation strategy in relation to ponds for GCN mitigation [AS-002]. They would be surrounded by species rich grassland the woodland so as to be optimal for their purpose. The design was arrived at as being fitting to the character of the area. The ponds are required for long-term habitat for GCNs.

The land is not subject to any allocation for development and is in the Green Belt. Consequently, no specific provision needs to be made to facilitate any future development.

To agree, in principle, to a future bridge would fetter HE's discretion if and when an application was to be submitted, particularly as details of what the bridge would need to accommodate are not clear.

There was appropriate engagement with Nurton but *"the answers [the Applicant] has provided are not the responses Nurton Developments wanted to hear".*

The accommodation bridge design is such to allow the largest road legal vehicles. It is sufficiently wide to allow vehicles and other users to pass, or at least see so that conflicts are avoided.

ExA Reasoning and Conclusion:

16.8.73. A significant proportion of the land sought by the Applicant would be used for permanent works, particularly the mainline and for the realignment of the northbound off-slip road from the M6 at junction 11. CA is therefore the only appropriate mechanism for this.

16.8.74. As set out in paragraphs 4.6.19 to 4.6.21and 16.7.22 of this report we are satisfied with the Applicant's overall approach to the consideration of alternatives and thus the EIA has been adequately prepared.

16.8.75. The site is in the Green Belt and we have found in paragraph 8.6.20 of this report that the Proposed Development would represent inappropriate development in the Green Belt. However, we have concluded in paragraph 15.4.10 of this report that that there are very special circumstances to justify the Proposed Development. This does not mean that such a situation would pertain for any other development in the area.

16.8.76. As set out in paragraph 3.10.3 of this report SSC is undertaking a review of its Local Plan which will consider whether or not the Green Belt boundary should be altered. Such a review is for that process and would be able to take account of the implications, if any, of the SoST's decision on this Proposed Development.

16.8.77. We therefore concur with the Applicant that as the area is not allocated for development it would be premature at this stage to give any assurance as to whether an additional bridge could be accommodated. To require a new bridge or ensure its future provision should it be necessary could in some way be seen to provide support for redevelopment proposals of the area. At this point in time this would be premature as there is no development plan allocation, permission in principle or any extant permission of any sort that would facilitate any development.

16.8.78. We are satisfied that due to the increased hard surfaced area, the new highways, it would be necessary to collect pluvial water and attenuate it at greenfield rates to ensure that there was no harm to the water environment or risk of flooding. Thus, the provision of said pond is incidental to the Proposed Development. The location needs to be at a low point close to an existing watercourse in order to act efficiently and effectively; in locational terms to ensure appropriate function this would

be the only suitable location. We are therefore satisfied that the location is appropriate, and the proposed pond would be of a satisfactory size.

16.8.79. In respect of GCN mitigation we note that there are uncertainties about this, particularly due to a lack of survey information (see paragraph 6.3.108 of this report). However, NE has issued a revised Letter of No Impediment [REP9-004] in light of the current proposals.

16.8.80. The proposed location of the ecological ponds would be located close of the edge of the range of Metapopulation 6 (see [AS-094]) with alternative locations within the application site not available due to the route of the mainline. Alternative locations would require a greater area of land to be Compulsorily Acquired than is currently proposed.

16.8.81. Therefore, the proposed location is appropriate and would be in proximity to the proposed habitats. Given that the ponds would be in close proximity to the Brookfields Farm SBI, which is designated for being wet woodland, it is considered that this would optimise its function for biological mitigation; in locational terms to ensure appropriate compensation this would be the only suitable location. Any effects that this location may have on future development is a matter for compensation which falls outside this Examination (s106 PA2008).

16.8.82. We consider that the design of the accommodation bridge is appropriate in that it allows for the largest road legal vehicles under the Road Vehicles (Authorisation of Special Types) (General) Order 2003. While this would not then allow other vehicles or users to use the bridge at the same time the survey data set out in Table 2.5 of Appendix 12.2 of the ES [APP-199] does not show a high level of use for the Shareshill 1 bridleway so conflicts would be infrequent, and sufficient visibility would be available to allow users to avoid collision risks.

16.8.83. In relation to engagement we are satisfied that adequate engagement took place both prior to the submission and post-submission.

16.8.84. While negotiations could continue indefinitely to allow the Applicant to purchase the land by agreement for the reasons set out in paragraph 16.7.21 of this report it is considered that CA powers should be granted.

16.8.85. In respect of the land where TP with permanent rights is sought this relates to a strip of land to the east of the mainline which would be utilised for maintenance access to the accommodation bridge. This approach is considered to have the least effect on landowners' rights and still deliver and maintain the Proposed Development.

16.8.86. The land where TP alone is sought would be utilised to allow for the construction of the permanent development and is considered necessary and appropriate in all cases to allow the Proposed Development to be constructed.

16.8.87. We conclude that there is a compelling case in the public interest for the CA, TP with Permanent Rights and TP of the plots of land in question.

Consequently, the tests set out in s120 and s122 of the PA2008 would be satisfied.

Other matter

16.8.88. In correspondence received from the Applicant at Deadline 9 [REP9-001] it is stated that it received information from the Planning Inspectorate to the effect that 1 Park Road, Featherstone has been sold, the proprietor has moved out and the property is vacant. The former proprietor held a Category 3 interest and was notified of the application at the relevant stages. The Applicant explained it had not been provided with details of the new owner nor were the details expected to be discoverable from the Land Registry before the close of the Examination. The Applicant asserts it will continue to make diligent enquiries as to the new owner, and we would expect the Applicant to continue to do so and then ensure that any new proprietor was fully aware of the situation.

16.9. THE ExA's RECOMMENDATIONS ON THE GRANTING OF COMPULSORY ACQUISITION POWERS

16.9.1. Our approach to the question as to whether and what CA powers it should recommend to the Secretary of State (SoS) to grant has been to seek to apply the relevant sections of the PA2008, notably s122 and s123, the DCLG Guidance, and the Human Rights Act 1998; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.

16.9.2. The preferred DCO [REP8-005] deals with both the Proposed Development itself and CA powers. We conclude above that when the adverse effects of the Proposed Development are weighed against its public benefits the DCO should be confirmed, albeit with modifications. The consideration of the CA issues must be consistent with that view

16.9.3. We are satisfied that if development consent were to be granted for the Proposed Development there would be a need to acquire the rights and interests in the CA land. On this basis the Proposed Development would comply with s122(1) and s122(2).

16.9.4. We are also satisfied that the Applicant has sought to acquire land by negotiation, and has modified the Proposed Development by way of the material and non-material changes to reduce the extent of land for which it seeks CA or TP in accordance with paragraph 8 of the DCLG Guidance.

Funding

16.9.5. In accordance with DCLG Guidance the Applicant submitted a Funding Statement [APP-022] with the application and reiterated that it was still valid in the last version of the SoR [REP7-015]. The Funding Statement estimates that the cost of the Proposed Development would be about £198.26 million. This estimate includes an allowance for compensation payments relating to the CA of land interests in, and rights over, land

and the TP and use of land. It also takes into account potential claims under Part 1 of the Land Compensation Act 1973, Section 10 of the Compulsory Purchase Act 1965 and Section 152(3) of the 2008 Act.

16.9.6. The Proposed Development would be fully funded by the Department for Transport (DfT) and it is not dependent on funding contributions from other parties. On the basis of the evidence submitted by the Applicant no changes to the Funding Statement have been requested. We are satisfied that should the DCO be confirmed there would be adequate funding in place to ensure its delivery.

16.9.7. Consistent with previous SoS decisions on Orders relating to Highways England and having regard to the DCLG Guidance in respect of the adequacy and security of financial resources, we are satisfied that there are adequate funds for CA and TP compensation and no additional or special steps are required to secure or guarantee those funds.

16.10. HUMAN RIGHTS ACT 1988 CONSIDERATIONS

16.10.1. The Applicant acknowledges in the SoR [REP7-015] that the DCO engages a number of the articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) as brought into UK Law by the Human Rights Act but submits that such interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest.

16.10.2. It would affect Article 1 of the First Protocol (rights of those whose property is to be Compulsorily Acquired and whose peaceful enjoyment of their property is to be interfered with).

16.10.3. Article 6 entitles those affected by CA powers sought for the project to a fair and public Hearing of their objections. The provision of a CAH [EV-014][69] enabled any AP who wished to be heard to be heard fully, fairly and in public. The Applicant states that all owners and occupiers of land affected by the Proposed Development have been contacted and that representations could be made in response to notice under s56 PA2008 or at any CAH advertised or held in public by the ExA.

16.10.4. Article 8 protects private and family life, home and correspondence. No public authority can interfere with these interests except if it is in accordance with the law and is necessary in the interests of national security, public safety or the economic well-being of the country.

16.10.5. In each of these cases while Rights would be interfered with, we consider that the interference would be proportionate and justified in the public interest, and consequently the CA, TP with Permanent Rights and TP would be compatible with the Human Rights Act and the ECHR.

[69] With the Recording available at [EV-021 and EV-022].

16.11. CONCLUSIONS

16.11.1. We conclude as follows:

- The CA powers sought would accord with Sections 122(2) and (3) and 123 of the PA2008;
- There are no Crown interests;
- We are satisfied that in all cases relating to individual objections and issues that CA, CA with Permanent Rights and TP is justified to enable implementation of the Proposed Development and a compelling case in the public interest has been made out;
- The TP of National Trust land that is held inalienably has the agreement of the National Trust and consequently Section 130 of the PA2008 is not engaged;
- In relation to Statutory Undertakers, we are satisfied there are no outstanding objections which are not addressed by recommended changes to the preferred DCO (see Chapter 17);
- There is adequate funding in place for the Proposed Development;
- The Proposed Development would be compatible with the Human Rights Act in terms of being a proportionate interference with property and family life. The Public Sector Equality Duty issues are considered in section 11.8 of this Report.
- Overall, the SoS can be satisfied:
    - the tests in s122(2)(a) and (b) and s122(3) PA2008 are met and recommend acceptance of the CA and TP powers proposed in the DCO; and
    - that the conditions in s123(2) and s123(4) PA2008 are met.

17. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

17.1. INTRODUCTION

17.1.1. A draft Development Consent Order (dDCO) [APP-018] and Explanatory Memorandum (EM) [APP-019] were submitted by the Applicant as part of the application for development consent. The EM describes the purpose of the dDCO as originally submitted, with each of its articles and schedules.

17.1.2. The submission version dDCO was broadly based on the now-repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009) along with other DCOs that have been made up to the date of the application. The original draft DCO [APP-018] and subsequent iterations are in the form of a Statutory Instrument as required by s117(4) of the Planning Act 2008 as amended (PA2008).

17.1.3. This Chapter starts by providing an overview of the dDCO, the changes made to the dDCO during the Examination process between the original application draft DCO and the final dDCO submitted by the Applicant at Deadline 8 [REP8-005]. This final dDCO will be referred to as "the preferred DCO" as it is the version preferred by the Applicant at the end of the Examination.

17.1.4. A final EM was submitted at Deadline 7 [REP7-013] which incorporated changes to that date. This Chapter then considers changes which should be made to the preferred dDCO in order to arrive at the Examining Authority's (ExA's) Recommended DCO in Appendix D to this Report in the event that the Secretary of State for Transport (SoST) is minded to make the Development Consent Order (DCO).

17.1.5. The sections of this Chapter describe:

- The DCO as applied for;
- Changes during the Examination;
- Wording of Requirements (Rs); and
- Matters in contention.

17.2. THE DCO AS APPLIED FOR

17.2.1. The first version of the dDCO [APP-018] included a number of provisions to enable the construction, operation and maintenance of the Proposed Development. As explained, it was modified during the Examination. Its final general structure is set out below:

- Part 1 (Preliminary): Articles 1 and 2 set out how the DCO may be cited, when it would come into force and the meaning of various terms used in the Order;
- Part 2 (Principal Powers): Article 3 to 5 provide development consent for the Proposed Development, allow it to be carried out and maintained. Article 6 deals with limits of deviation. Articles 7 and 8

set out who has the benefit of the Order and how that benefit can be transferred;

- Part 3 (Streets): Articles 9 to 16 provide powers in relation to street works. These include the ability for the undertaker to construct and maintain new, altered or diverted streets and other structures, provides for the classification of roads, powers for temporary and permanent stopping up and restriction of streets, ensures access to works and deals with traffic regulation, including the use of clearways;
- Part 4 (Supplemental Powers): Articles 17 to 19 relate to discharge of water, protective works to buildings and authority to survey and investigate land;
- Part 5 (Powers of Acquisition and Possession): Articles 20 to 33 provide powers in relation to the Compulsory Acquisition (CA) and Temporary Possession (TP) of land, along with powers in relation to Statutory Undertakers;
- Part 6 (Operations): Articles 34 and 35 contain powers in relation to trees and hedgerows, including those trees protected by Tree Preservation Orders; and
- Part 7 (Miscellaneous and General): Articles 36 to 42 relate to the application of landlord and tenant law, operational land under the Town and Country Planning Act 1990, defence to proceedings in respect of statutory nuisance, protection of interests, document certification, the serving of notices and arbitration.

17.2.2. There are ten schedules to the dDCO providing for:

- The description of the Authorised development (Schedule 1);
- The requirements applying to it (Schedule 2);
- Classification of roads (Schedule 3);
- Permanent stopping up of streets, public rights of way and private means of access (Schedule 4);
- Land in respect of which only new rights etc. may be acquired (Schedule 5);
- Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants (Schedule 6);
- Land of which TP may be taken (Schedule 7);
- Trees and hedgerows (Schedule 8);
- Protective Provisions (Schedule 9); and
- Documents to be certified (Schedule 10).

17.2.3. Although there were numerous changes made to the dDCO during the Examination, as described below, including moving provisions from one part to another, its broad structure did not change.

17.3. CHANGES DURING EXAMINATION

17.3.1. During the Examination the Applicant sought to make various changes to the dDCO. These changes were in relation to the Proposed Changes to the design submitted in October 2020 [AS-075], in response to the ExA's First Written Questions (ExQ1) [PD-010], Second Written Questions (ExQ2) [PD-017] Third Written Questions (ExQ3) [PD-023], agreements

between parties (particularly to deal with Protective Provisions) and our Proposed Changes to the draft DCO [PD-025].

17.3.2. As part of the Examination process, we published our Consultation Draft Consent Order, or more accurately a list of proposed changes to the dDCO existing at that time, version 5, which we considered were likely to be necessary.

17.3.3. In setting out these Proposed Changes [PD-025], we made clear that these did not include all those matters where it might need to recommend a change to the SoST. These were most likely to be in situations where it was clear that there were fundamental differences between parties.

17.3.4. At each iteration of the dDCO the Applicant submitted a "clean" and "tracked change" version of the dDCO. There were seven versions of the dDCO up to the close of the Examination. The Table 8 sets out the version number, dates of the submission and Examination event, along with the Examination Library numbers of the clean and tracked change versions.

Table 8: History of draft DCOs

Version	Date	Event	Clean version reference	Tracked change version reference
1	January 2020	Application	[APP-018]	
2	October 2020	To accompany Proposed Changes	[AS-075]	[AS-074]
3	November 2020	Deadline 2	[REP2-006]	[REP2-005]
4	January 2021	Deadline 4	[REP4-005]	[REP4-006]
5	February 2021	Deadline 6	[REP6-006]	[REP6-007]
6	March 2021	Deadline 7	[REP7-011]	[REP7-010]
7	April 2021	Deadline 8	[REP8-005]	[REP8-004]

17.3.5. As these various changes often flowed from discussions between the Applicant and Interested Parties (IPs) to address concerns raised, we

consider that they are justified and can be recommended for inclusion in the DCO if the SoST concludes that development consent should be granted.

17.4. PROVISION OUTSIDE APPLICATION SITE

17.4.1. There is one provision of the dDCO which provides for effect outside the application site. As set out in paragraph 12.3.13 it was agreed between Applicant and Staffordshire County Council (SCC) that a new 40 miles per hour (mph) speed limit would be imposed on a section of Hilton Lane some 629 metres (m) long to the east of the proposed 30mph speed limit. The vast majority of this 40mph section falls outside the site. This would be secured in Article 11(8) and Part 7 of Schedule 3 to the preferred DCO [REP8-005] and is shown on Sheet 5 of the Traffic Regulation Measures [REP7-007] in the green dashed line along Hilton Lane.

17.4.2. Section 120 of the PA2008 sets out what may be included in an order granting development consent. Under subsection (3) an order may make provision relating to, or to matters ancillary to, the development for which consent is granted, with subsection (4) setting out *"the provision that may be made under subsection (3) includes in particular provision for or relating to any of the matters listed in Part 1 of Schedule 5"*. The setting of speed limits is not included in this Part. In paragraph 5.35 of the EM [REP7-013] the Applicant takes the view that these matters are ancillary and thus fall within the provision of sub-section (3). No contrary view was expressed.

17.4.3. In our view none of the drafting in s120 of the PA2008 limits the scope of a development consent order to the extent of the application site. The drafting of subsection (3) provides that the matters listed in Part 1 of Schedule 5 of the PA2008 is not a closed list. Consequently, while this is a matter of law and thus is a matter for the SoS, we take the view that such a provision would be lawful.

17.4.4. The provision of a speed limit as proposed would seek to ensure that traffic from the east reduced in speed prior to arriving at dwellings on Hilton Lane, which is required in the interests of highway safety and would have slight beneficial (not significant) effect in terms of noise. We therefore conclude that this provision is appropriate subject to a point about timing which is considered in paragraph 17.5.56 of this report.

17.5. MATTERS IN CONTENTION

17.5.1. This section of the Report addresses the outstanding matters where IPs did not agree with the Applicant as to the substance of the draft DCO. This will be dealt with by topic area.

17.5.2. A number of these were considered in the relevant chapter of this report and we will not repeat our reasoning why we consider that the preferred DCO should be amended, since that was set out above.

17.5.3. As part of the Examination, we asked those promoting such changes to set out how they considered that the provisions should be drafted. These promoted changes were then the subject of comment, if on a without prejudice basis. This Chapter will consider these and set out our conclusions.

17.5.4. There were also disputes between the Applicant and various Statutory Undertakers as to how the relevant Protective Provisions, as set out in Schedule 9 of the preferred DCO, should be drafted. This Chapter will also consider these and set out our conclusions.

17.5.5. Having concluded on each matter, Table 9: Recommended changes to preferred DCO, then sets out the proposed changes to the preferred DCO. This includes changes considered appropriate through consideration of the planning issues in Chapters 5 to 14. All are cross-referenced from where the recommendation is considered in the Table.

Archaeology

17.5.6. As set out in Chapter 7, as originally submitted the application did not include a Written Scheme of Investigation (WSI) or the results from trial archaeological trenching.

17.5.7. A WSI was submitted at D4 [REP4-032] and was agreed with SCC and a Report on Archaeological Trial Trenching was submitted at D7 [REP7-035]. This concluded there was a lack of archaeological evidence for activity other than post-medieval and modern agricultural practices. It also recommended that no further work was necessary. As set out in paragraph 7.7.33 no representations were submitted following the submission of the Report on Archaeological Trial Trenching to indicate that any party considered that further archaeological work was necessary.

17.5.8. As drafted in the preferred DCO, R9 requires the submission of a Written Scheme of Investigation (WSI), that the Proposed Development takes place in accordance with the WSI and the final Report is added to the Historic Environment Record. Further, R4(2)(d) also requires that the Construction Environmental Management Plan (CEMP) includes an Archaeological Management Plan and an Archaeological Mitigation Strategy. The latter of these is set out as Appendix B of the Outline Environmental Management Plan (OEMP) [REP7-026] and there are provisions within the OEMP (provisions PW-CH1 and PW-CH2) which also deal with trenching and the provision of an Archaeological Management Plan.

17.5.9. As a result of the archaeological trenching some of these provisions are effectively redundant having been completed. For the OEMP this is of little import since D4 only requires the CEMP to be *"substantially in accordance with the OEMP"*. However, for R9 some elements are no longer necessary.

17.5.10. In the unlikely event that archaeological remains not identified are revealed when carrying out the Proposed Development, then the

measures set out in the sub-paragraphs (4), (5) and (6) of the submission draft of R9 need to take place. Consequently, R9 needs to be redrafted. This revised drafting is set out in Table 9: Recommended changes to preferred DCO.

Weight restriction on Cannock Road and surrounding highways

17.5.11. The application does not provide for a weight restriction on Cannock Road following the Proposed Development. For the reasons set out in paragraphs 12.7.21 to 12.7.50 we consider that such a restriction is necessary. In addition, this would need to tie into the existing weight restrictions that are in place at present (see submission at [REP4-042]).

17.5.12. This submission also set out provisions for the delivery of such a weight limit, to which the Applicant responded [REP5-004] on a 'without prejudice' basis. In simple terms SCC suggests amending Article 16 (Traffic Regulation) while the Applicant considers that this should be done by amending Article 11 (Classification of Roads).

17.5.13. The new speed limit on Hilton Lane is being included within Article 11 and it would be more consistent for the addition of this weight restriction to be dealt with under the same Article. Therefore, we consider that the drafting set out by the Applicant is to be preferred, subject to drafting changes to take account of changes to the preferred DCO following the Deadline 5 submission and to ensure that the traffic regulation comes into force.

17.5.14. In light of our conclusions the discussion between M6 Diesel and the Applicant as to whether Article 16 of the preferred DCO should be time limited to prevent a weight restriction subsequent to the opening of the Proposed Development becomes academic. However, in the event that the SoS does not agree with us regarding the imposition of the weight restriction, we are of the view that the provision of Article 16(3) would be sufficient to alleviate M6 Diesel's concerns. This is a 'sunset clause' on the ability of the undertaker to impose any Orders 12 months after the opening of the authorised development. This would ensure that any later imposition would have to be considered independently from the delivery of the Proposed Development.

Signage relating to M6 Diesel and weight restriction

17.5.15. As set out in paragraphs 12.7.28 to 12.7.32 we consider that the DCO should be amended to allow for additional signage at:

- M6 junction 11 to direct traffic around the gyratory to the M6 Diesel site and to give advance notice of the weight restriction on Cannock Road; and
- the proposed Featherstone West roundabout to give advance notice of the weight restriction on Cannock Road.

17.5.16. As a result of the discussions at Issue Specific Hearing (ISH) 2 on Traffic and Transport, M6 Diesel submitted Protective Provisions in its favour in

respect of signage at Deadline 4 [REP4-055]. The Applicant responded to these at [REP5-004] but only to say that it did not consider such signage was necessary or appropriate. For the reasons set out in paragraphs 12.7.28 to 12.7.32 we disagree. Following a Further Written Question from the ExA at ExQ3.5.9 [PD-023], the Applicant responded at [REP6-039]. M6 Diesel responded further at [REP7-041] and the Applicant, finally, at [REP8-029]

17.5.17. The Applicant took the view that, rather than Protective Provisions, any *"signage would more appropriately be secured through the inclusion of a new works description within Schedule 1 of the draft DCO (with appropriate changes to the Works Plans to show the proposed location of the signage) or the inclusion of a new requirement within Schedule 2 of the draft DCO"*. The Applicant considered that any signage should be agreed by the SoS following consultation with the local highway authority and that it would not be appropriate for approval to be via a private company. The Applicant also considered that any signage should be subject to on-going review as necessary, rather than for as long as the M6 Diesel site continues to operate.

17.5.18. We consider that as M6 Diesel is not a Statutory Undertaker it would not be appropriate for this matter to be dealt with by Protective Provisions, and equally M6 Diesel should not be the approval body. All other approvals are by the SoST and we consider for consistency and ease of operation that should be the case in relation to this matter. However, this does not mean that M6 Diesel (and for that matter the local highway authority) should not be consulted, so that the SoST would be aware of their views.

17.5.19. In the preferred DCO the reconstruction of M6 junction 11, including portal gantries, falls within Work No. 36 of Schedule 1. The rubric at the end of that Schedule provides for, inter alia, in items (k) *"works to place … road furniture"* and (o) *"provision of other works including … signing"*.

17.5.20. Including specific wording in Work 36 to ensure signage to M6 Diesel would not be appropriate since this would be anomalous, as other destinations are not specified in that Work. We therefore conclude that the most effective way to deal with this matter would be the provision of an additional Requirement in Schedule 2 and recommend to this effect.

17.5.21. We, however, consider that provided that signage is displayed, which can be secured in the wording of the Requirement, then to require it to be maintained in perpetuity would not be appropriate since circumstances may change.

17.5.22. In addition, so that drivers of Heavy Goods Vehicle (HGV) traffic are advised of the proposed weight restriction before reaching it, we consider that two warning signs should be displayed at the junction of Cannock Road with the Featherstone west roundabout and the junction of Cannock Road with the M6 junction 11 gyratory. Neither of these locations is shown on the Traffic Regulation Measures Plans [REP7-007], although the approximate location for the southern sign is shown at the end of the

identification line for the “Featherstone West Roundabout” on Sheet 4 of those Plans. The northerly sign would be located to the south of the slip road from the M6 junction 11 gyratory to the Cannock Road.

17.5.23. These two signs should be of the type shown in diagram 818.4 (S12-28-22) as shown in Figure 5-3 of Chapter 3 of the Traffic Signs Manual (Regulatory Signs 2019 Edition) and indicate *“Weight limit [x distance] ahead”*.

17.5.24. In order to secure these signs, we recommend, for the reasons given above in respect of the signage to the Saredon Filling Station, an additional Requirement in Schedule 2.

Protective Provisions

17.5.25. During the Examination representations were made over the form of Protective Provisions to be made under Schedule 9 of the preferred DCO.

17.5.26. In particular there were Relevant Representations (RR) from Cadent Gas Limited (Cadent) [RR-010], South Staffordshire Water plc (SSW) [RR-015], Severn Trent Water Limited (STW) [RR-002] and Western Power Distribution Ltd (WPD) [RR-008] which need to be further considered.

Cadent

17.5.27. Cadent explains it has a medium pressure and a high pressure (major accident hazard) gas pipeline and associated above or below ground apparatus within the application site which would be affected.

17.5.28. Cadent does not object in principle to the Proposed Development but has objections to the relevant Protective Provisions. These are set out in various documents [REP1-079], [REP3-042], [REP4-049], [REP6-050], [REP7-039], [REP8-032] and [REP9-006]. There is also an unsigned Statement of Common Ground (SoCG) between the Applicant and Cadent [REP8-020]. The Applicant’s specific final response is provided in Table 3.4 of [REP8-029] although it also made comment at D9 [REP9-001].

17.5.29. The preferred DCO [REP8-005] includes Protective Provisions in favour of Cadent as Gas Undertaker, but these are not agreed, although it must be noted that there has been considerable progress on agreement since the original submission. There remain three areas of dispute between the parties (references are to paragraph numbers in Schedule 9 of the preferred DCO [REP8-005]).

Paragraph 20 (on-street apparatus)

17.5.30. While the wording of most of this paragraph is agreed, there is a dispute over sub-paragraph (3).

17.5.31. Cadent is of the view that it should not be liable for any expenses associated with works wherever located, while the Applicant considers that the costs sharing arrangements for major highway works, major

bridge works or major transport works under S85 of the New Roads and Street Works Act 1991 should apply. The Applicant takes this view because it is a publicly funded body and should be able to benefit from the statutorily permitted cost sharing provisions for major works.

17.5.32. We consider that whether the Proposed Development is publicly funded or not is not a relevant consideration. Rather it should be whether, as a matter of public policy, there should be such cost sharing arrangements. This is a matter for the SoST. However, we take the view that as the New Roads and Street Works Act 1991 does have this provision, and this represents the view of Parliament as set out in law, in the absence of a specific reason these provisions should apply.

17.5.33. Consequently, we consider that the drafting provided in the preferred DCO should apply.

Paragraph 27 (expenses)

17.5.34. The parties have utilised the term "betterment", but we consider that this is not a good term in respect of the science and art of planning since this has a specific definition relating to increases in the value of land by the grant of a planning permission. In respect of the matters in hand a better word would be "enhancement" since what is referred to is the situation where Cadent would be in an enhanced position as a result of the Proposed Development.

17.5.35. Cadent takes the view that were it not for the Proposed Development there would be no need for it to replace or renew its apparatus. Therefore, any enhancement is caused by the Applicant as part of the development and Cadent should not make provision towards this. Such matters could put Cadent in breach of its statutory duty under Section 9 of the Gas Act 1986 to *"develop and maintain an efficient and economical pipe-line system for the conveyance of gas"*.

17.5.36. The Applicant wishes to include three elements where it would be able to off-set benefits against cost:

- Scrap value from removed apparatus;
- Where determined in arbitration that the replacement apparatus represents an enhancement, the additional value from this, with specified exclusions; and
- Where the existing equipment is more than 7 years 6 months old the value of this should be removed, on the basis of depreciation from age.

17.5.37. In each case the Applicant considers that the benefit that the undertaker may receive would be self-evident. Similar provisions have been included in other made DCOs including A585 Windy Harbour to Skippool Improvement (the A585WHtS) and A1 Birtley to Coal House Improvement (the A1BtC).

17.5.38. We are of the view that it is reasonable for the Applicant to receive the benefit of the scrap value of any apparatus removed. By definition it

would be scrap and no longer of use to Cadent. This would only be equitable given that the Applicant would be paying for the new (replacement) apparatus under paragraph 27(1). In our view sub-paragraph (2) should be retained.

17.5.39. While only applying where arbitration is involved, we consider that any increased value from enhanced provision should be excluded. Such enhanced provision would only be incidental to works required by the Proposed Development and would be unlikely to be at the behest of Cadent given the overall de-carbonisation of energy supply. Consequently, we consider that sub-paragraphs (3) and (4) should be deleted.

17.5.40. In respect of the depreciation by age, there is no information in front of us as to the length of the 'life cycle' of Cadent's equipment. While such equipment will have a life span, to exclude this arbitrarily on the basis of an unjustified date would not be appropriate. In our view sub-paragraph (5) should therefore be deleted.

Paragraph 28 (Indemnity)

17.5.41. Cadent makes clear that it would prefer for the whole of sub-paragraph 3(c) to be deleted relating to indirect or consequential loss but accepts that in light of SoS decisions in other DCO applications that this is unlikely to be agreed to. We agree with this proposition.

17.5.42. Cadent makes the point that in two made DCO's, Protective Provisions relating to the A585WHtS and the A1BtC, consequential liability was allowed for, but accepts that in the two other schemes, the A38 Derby Junctions[70] and the M42 Junction 6, such provisions were not provided. Cadent notes that the A1BtC scheme was the only one of the four where this matter was expressly considered by the SoST.

17.5.43. Cadent notes that it has contractual obligations to landowners where it would be put at risk by and because of the Proposed Development only. It therefore seeks to ensure that it is not put in the position of a loss by the actions of the undertaker. This would only *"apply in respect of landowners in whose land apparatus is situated so is a narrow exclusion to a broad carve-out to the indemnity which Cadent is otherwise content to accept"*.

17.5.44. The Applicant notes that the SoST has previously considered this in respect of Cadent (as opposed to National Rail in the A1BtC provisions which were in dispute) in the M42 Junction 6 DCO and, most recently, in the A38 Derby Junctions DCO. In the latter case the ExA and SoS concluded that there was no serious detriment to Cadent as a statutory

[70] We are aware that the High Court has quashed the decision in respect of the A38 Derby Junctions DCO so that the decision of 8 January 2021 no longer stands. However, we believe the quashing does not relate to this matter and consequently we consider that in this matter we can still rely on the SoS's reasoning.

undertaker, the test in S127 of the PA2008. The Applicant concludes *"the exclusion of indirect and consequential losses was held to be entirely consistent with Highways England's position as a publicly funded body and Highways England respectfully requests that the ExA and the Secretary of State uphold this position."*

17.5.45. S127 of the PA2008 sets out the test as being one of "serious detriment", which will be a matter of judgement. Again, we consider that whether the Proposed Development would be publicly funded is not material. Notwithstanding this, given that Cadent's interests in this respect only relate to land in which its equipment is situated, we consider that would not result in serious detriment. Consequently we consider that the drafting put forward by the Applicant is appropriate, noting that this does include direct or indirect loss which is not reasonably foreseeable. This drafting allows Cadent to seek to mitigate its risk by undertaking any appropriate surveys and communicating the results to the undertaker.

17.5.46. Therefore, we consider that the drafting provided by the Applicant should be retained.

Other matters

17.5.47. We note that the Applicant's cover letter to Deadline 9 [REP9-001] makes reference to a meeting being held on 20 April 2021 between the Applicant and Cadent to discuss outstanding points, and of the ExA being updated after that meeting. No such update has been received. However, there may be post-Examination correspondence provided to the SoST on this, which takes forward the matters set out above.

17.5.48. We have noted two typographic errors in this part of the preferred DCO in paragraphs 22 and 33. The specific recommendation set out below deals with them both.

SSW

17.5.49. SSW wrote at Deadline8 [REP8-033] to confirm it had reached agreement with the Applicant *"which is now just subject to formal documentation"*. Notwithstanding that there is no signed SoCG between the Applicant and SSW, we have no reason to believe that the drafting in the preferred DCO [REP8-005] does not meet this agreement.

STW

17.5.50. In both its RR [RR-002] and Deadline 2 [REP2-015] submissions, STW explain that is has assets in the application site which need to be protected. In the latter correspondence it explains that discussions are continuing between it and the Applicant.

17.5.51. The unsigned SoCG [REP8-021] between the Applicant and STW indicates that there is agreement on the Protective Provisions, which would be covered under the general provisions set out in Part 1 of Schedule 9. In that unsigned SoCG there are no matters set out as still to be discussed.

17.5.52. In the absence of any information to the contrary we are satisfied that STW's status as a Statutory Undertaker is protected.

WPD

17.5.53. In both its RR [RR-008] and Deadline1 [REP1-001] submission, WPD explain that it has assets in the application site which need to be protected. In the latter correspondence it explains that discussions are continuing between it, particularly over the imposition of rights and the Applicant and also that it considers that a SoCG is unnecessary.

17.5.54. The unsigned SoCG [REP8-023] between the Applicant and WPD indicates that there is agreement on the Protective Provisions, which would be covered under the general provisions set out in Part 5 of Schedule 9. In that unsigned SoCG there are no matters set out as still to be discussed.

17.5.55. In the absence of any information to the contrary we are satisfied that WPD's status as a Statutory Undertaker is protected.

Other Changes

17.5.56. As set out in paragraph 17.5.13 there needs to be certainty that the relevant traffic regulations are to be brought into force. The drafting of Article 11(9) set out below allows for this, and to ensure consistency the drafting of Article 11(8) should also be changed in like manner. This is recommended below.

17.5.57. In Article 2 the definition of "maintain" is very widely drawn and, is not limited as in other made DCOs to the extent of that which has been assessed in the Environmental Statement (ES). An example of drafting including such a limitation to the effects which have been assessed is set out in the A1BtC DCO. To not include this limitation would be contrary to the relevant legal and policy principles and, consequently, we recommend a change to this effect.

17.5.58. Further, within the preferred DCO there are a small number of typographic errors. In addition to the more substantive changes considered above, we have included these in Table 9: Recommended changes to preferred DCO.

Table 9: Recommended changes to preferred DCO

Provision	Examination Issue	Recommendation
Cover	Typographic	Delete
Contents	Typographic and to cover recommended change	In contents of Schedules, at end of Schedule 3 add:

Provision	Examination Issue	Recommendation
		"PART 7 – CREATION OF NEW TRAFFIC REGULATION ORDERS. PART 8 – VARIATION OF EXISTING TRAFFIC REGULATION ORDERS"
Article 2	To ensure later maintenance does not exceed current assessment.	In the definition of "maintain" after the word "includes" insert ", to the extent assessed in the environmental statement,".
Article 11	Certainty as to provision of speed limit to east of application site in Hilton Lane.	In sub-paragraph (8) after "by the undertaker," insert "which shall be no later than three months after the authorised development is open for traffic,".
Article 11	Provision of Weight limit on Cannock Road	After sub-paragraph (8) insert: (9) On such day as the undertaker may determine, which shall be no later than three months after the authorised development is open for traffic, the order specified in column (3) of Part 8 (variation of existing traffic regulation orders) of Schedule 3 is to be varied as specified in the corresponding row of column (4) of that Part in respect of the lengths of roads specified in the corresponding row of column (2) of that Part.

Provision	Examination Issue	Recommendation
		Renumber sub-paragraph (9) as (10) and replace "(8)" with "(9)".
Article 20	Typographic	In paragraph (2) replace "(compulsory acquisition of rights and restrictive covenants)" with "(compulsory acquisition of rights and imposition of restrictive covenants)"
Article 29	To ensure the imposition of permanent rights on land does not extend to land only identified for TP.	Replace paragraph (9) with: "The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i)."
Article 31	Typographic	In paragraph (1) replace "(compulsory acquisition of rights and restrictive covenants)" with "(compulsory acquisition of rights and imposition of restrictive covenants)"
Article 40(4)(b)	Typographic	Replace "contain" with "contained".
Schedule 2, Requirement 9	Archaeology	Delete sub-paragraphs (1), (2) and (3). Renumber sub-paragraphs (4), (5) and (6) as (1), (2) and (3) respectively. In newly numbered sub-paragraph (2) replace "sub-paragraph (4)" with "sub-paragraph (1)" each time it occurs.
Schedule 2	Signage to Saredon Filling Station.	After Requirement 10 add:

Provision	Examination Issue	Recommendation
		Signage to Saredon Filling Station 11. No part of the authorised development constituting Work No. 36 in Schedule 1 shall take place unless the undertaker has first consulted with the local highway authority and the proprietors of the Saredon Filling Station regarding a scheme for the signage of this Work, including provision of directional signage to the Saredon Filling Station. The submission to the Secretary State must include directional signage to the Saredon Filling Station and the approved signage must be installed in full before the relevant part of the authorised development becomes fully operational.
Schedule 2	Advance warning signs of weight restriction	After new Requirement 11 add: *Weight Restriction Warning Signs* 12. Before the authorised development is operational, two warning signs, of a type shown in diagram 818.4 (S12-28-22) as shown in Figure 5-3 of Chapter 3 of the Traffic Signs Manual (Regulatory Signs 2019 Edition) (or any equivalent sign in a subsequent edition) shall be installed at the junction of Cannock Road with the

Provision	Examination Issue	Recommendation
		Featherstone west roundabout and at the junction of Cannock Road with the M6 junction 11 gyratory indicating warning of the weight restriction imposed pursuant to sub-paragraph (9) of Article 11 of this Order and these signs shall thereafter be maintained.
Schedule 2	Consequent typographic changes	After new Requirement 12 re-number Requirements thereafter.
Schedule 3	Provision of Weight limit on Cannock Road	Add new Part 8 as follows.

Provision	Examination Issue	Recommendation

PART 8

VARIATION OF EXISTING TRAFFIC REGULATION ORDERS

(1) *Parish(es)*	*(2)* *Road name and number*	*(3)* *Title of Order*	*(4)* *Variation*
Hilton	A460 Cannock Road between points 4/37 and 5/8 as shown on the classification of roads plans.	The Staffordshire County Council (Hilton Lane, Dark Lane and Old Warstone Lane, Hilton) (Prohibition of Heavy Commercial Vehicles or over 7.5 Tonnes (Gross) Order 1991.	Shown as 4/37and 5/8 on sheets 4 and 5 of the classification of roads plans.

ExA Note:

As a result of this recommended change, the Classification of Roads Plans will need to be amended. Point 4/37 is shown but Point 5/8 will need to be added. This change is provided for in Article 40(2) of the preferred DCO so further drafting alterations should not be necessary.

Schedule 7	Typographic.	In line relating to Plot 4/8 replace “utilities” with “utilities’”.
Schedule 7	Typographic	For entry “5/11(g)” replace with “5/11g”.
Schedule 9	Typographic	Paragraph 22 – delete “(1)”.
Schedule 9	Protective Provisions	Paragraph 27 – delete sub-paragraphs (3), (4) and (5).
Schedule 9	Typographic	Paragraph 33 – replace “LE10 ONAor” with “LE10 ONA or”.

Provision	Examination Issue	Recommendation
Schedule 9	Typographic	Paragraph 38 – delete "(1)".

17.6. CONCLUSIONS

17.6.1. We have considered all the iterations of the draft DCO submitted by the Applicant set out in Table 8, and have noted the significant number of changes made during the Examination made in response to the material and non-material changes, responses to representations made and our Proposed Changes [PD-025].

17.6.2. In light of the evidence submitted and heard we have recommended a number of changes to the Applicant's preferred DCO submitted at Deadline 8 [REP8-005] which are set out in Table 9. These are incorporated into the recommended DCO (rDCO) which is set out in Appendix D.

17.6.3. We are satisfied that the rDCO (Appendix D) adequately defines the scope of the consent being granted and that it secures the necessary controls and mitigation measures that are consistent with the assessments provided in the ES.

17.6.4. We consider that the rDCO (Appendix D) only includes requirements that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects. On that basis we are of the view that paragraph 4.9 of the National Policy Statement for National Networks (NPSNN) is satisfied.

17.6.5. If the SoST is minded to make the DCO, we recommend that it is made in the form set out in Appendix D subject to the SoST being satisfied with the Conclusion on the Case for Development Consent in Chapter 15:

- The SoST's consideration of the adoption of the Sixth Carbon Budget and the Carbon Budget Order 2021 and the 'Decarbonising transport: a better, greener Britain' policy statement in relation to the Proposed Development.

18. SUMMARY OF FINDINGS AND CONCLUSIONS

18.1. INTRODUCTION

18.1.1. This Chapter summarises our conclusions arising from the Report as a whole and sets out a recommendation to the Secretary of State for Transport (SoST).

18.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

18.2.1. In relation to section (s) 104 of the Planning Action 2008 as amended (the PA2008) we conclude that making the recommended Development Consent Order (DCO) would be in accordance with the National Policy Statement for National Networks (the NPSNN) and would not substantially conflict with relevant development plan policy and other relevant policy, all of which have been taken into account in our Report. We have also had regard to the Local Impact Reports from Staffordshire County Council and South Staffordshire Council in reaching our conclusions.

18.2.2. Whilst the SoST is the competent authority under the Habitats Regulations, and will make the definitive assessment under those Regulations, we are satisfied that the Proposed Development would be likely to have no significant effects on European sites and this finding has been taken into account in reaching our recommendation.

18.2.3. With regard to all other matters and representations received, we are satisfied that there are no important and relevant matters that would individually or collectively lead to a different recommendation from that set out below.

18.2.4. We accepted a number of changes to the Proposed Development during the Examination. These are set out in more detail in Chapter 2 and were:

- A series of changes submitted in October 2020 [AS-117];
- A further change in January 2021, which was effectively to resolve an error in the October 2020 application changes, but did include "additional land" [AS-125]; and
- A series of changes in March 2021 [REP7-001].

18.2.5. While the October 2020 application changes represented a material change both the January and March 2021 application changes only represented non-material changes. None of the changes either individually or cumulatively fundamentally changed the Proposed Development to the extent that a new application would have been necessary.

18.2.6. We have considered whether the determination of this application in accordance with the relevant National Policy Statement (NPS) would lead the United Kingdom (UK) to be in breach of any of its international obligations where relevant. Subject to consideration of the implications

arising from the publication of the Sixth Carbon Budget, the Carbon Budget Order 2021, 'Decarbonising transport: a better, greener Britain' policy statement and the cumulative effects of carbon emissions as set out we are satisfied this would not be the case. Again, subject to the same point, neither would it lead to the SoST being in breach of any duty imposed on the SoST by or under any enactment, or be otherwise unlawful by virtue of any enactment.

18.2.7. The Proposed Development would deliver a number of benefits which are specific to this proposal. These include:

- Benefits from a decrease in congestion and improved journey times, enhanced highway safety, and alleviating traffic on Cannock Road, together with associated benefits in noise and air quality in its immediate vicinity.
- Economic and social benefits from improved connectivity, both regionally and in the immediate vicinity of the Proposed Development, and improved reliability of journeys.

The Proposed Development would also comply with local Development Plan policy and allocations for delivery of transport infrastructure

18.2.8. With the mitigation proposed through the recommended DCO (rDCO) in Appendix D of this Report, taking into account s104(7) of the PA2008 there are no adverse impacts arising from the Proposed Development that would outweigh its benefits. There is nothing to indicate that the application should be decided, other than in accordance with the relevant NPS, the NPSNN.

18.2.9. We have considered the case for Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights in order to implement the Proposed Development and are satisfied that the CA and TP powers sought by the Applicant are justified and should be granted. They are necessary to enable the Applicant to complete the Proposed Development. In addition, there is a compelling case in the public interest for land and interests to be compulsorily acquired. The Applicant has a clear idea of how it intends to use the land, and funds are available for the implementation of the Proposed Development.

18.2.10. We have also had regard to the provisions of the Human Rights Act 1998. We consider that the opportunity for objectors to make their cases through the CA Hearing fully, fairly and in public has ensured compliance with Article 6. In some cases, there would be interference with private and family life and home in contravention of Article 8, and interference in the peaceful enjoyment of possessions in contravention of Article 1 of the First Protocol of the Human Rights Act 1998.

18.2.11. However, with the weight of national policy in favour of the Proposed Development, the wider public interest qualifies any interference with the human rights of the owners and occupiers affected by CA and TP. The interference in their human rights would be proportionate and justified in the public interest.

18.2.12. We have had regard to the Public Sector Equality Duty (the PSED). The Proposed Development does not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. It may enhance provision for those with protected characteristics of age and disability. On that basis, there would be no breach of the PSED.

18.2.13. As required by Regulation 3(1) of the Infrastructure Planning (Decisions) Regulations 2010, we have had regard to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they possess.

18.2.14. Where we have found that there would be harm to the significance of designated heritage assets (as set out in Chapter 7 of this report), we consider that this would be less than substantial in each instance. In Chapter 15 we conclude that, taking account of the public benefits of the Proposed Development, there is clear and convincing justification for the harm that would result, both individually and collectively, upon designated heritage assets.

18.2.15. Overall, in our view, the Proposed Development would accord with Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010 relating to the United Nations Environmental Programme Convention on Biological Diversity of 1992.

18.2.16. The application site is in the Green Belt and the Proposed Development would represent inappropriate development. We are of the view that even giving substantial weight to the harm to Green Belt, and appropriate weight as identified to other harms, these harms would be clearly outweighed by the benefits and other considerations so that they amount to very special circumstances to justify the approval of inappropriate development in the Green Belt.

18.2.17. We are satisfied that the Proposed Development meets the tests in s104 of PA2008.

18.3. MATTERS FOR FURTHER CONSIDERATION

18.3.1. As highlighted in Chapter 5 the Government published its Sixth Carbon Budget (the greenhouse gases emitted over a 5-year period from 2033-2037) towards the very end of the Examination. This did not allow time for us to consult upon the implications, if any, of this. In addition, the Carbon Budget Order 2021 came into force on 24 June 2021. The overall recommendation is therefore set out on the basis that the SoST may wish to consider the implications of this in making their final decision.

18.3.2. Also, the SoST published 'Decarbonising transport: a better, greener Britain' on 14 July 2021 as part of the government response to the Sixth Carbon Budget. As this was after the close of the examination it has not formed part of the reasoning for the recommendation set out here but the SoST may wish to consider the impact of the proposals in it when making their final decision on the DCO.

18.4. RECOMMENDATION

18.4.1. For all of the above reasons, and in the light of our findings and conclusions on important and relevant matters set out in the Report, we recommend that, subject to the SoST satisfying themselves in respect of:

- The impact of the publication of the Sixth Carbon Budget, which was announced at the end of the Examination period, the Carbon Budget Order 2021 and the impact of the CO_2 equivalent emissions for the operational phase in relation to the relevant carbon budget now that it is available and the cumulative impact of emissions for the NPSNN in the context of the revised net carbon target and other projects and programmes, namely RIS1/RIS2, and the 'Decarbonising transport: a better, greener Britain' policy statement.

the SoST makes The M54 to M6 Link Road DCO in the form recommended at Appendix D of this Report.

APPENDICES

APPENDIX A: THE EXAMINATION II
APPENDIX B: EXAMINATION LIBRARY III
APPENDIX C: LIST OF ABBREVIATIONS IV
APPENDIX D: THE RECOMMENDED DCO V

APPENDIX A: THE EXAMINATION

APPENDIX A: THE EXAMINATION

The table below lists the main events that occurred during the Examination and the procedural decisions taken by the Examining Authority

Date	Examination Event
16 June 2020	ExA's unaccompanied site inspection
20 July 2020	Issue by the ExA of written questions and requests for information (ExQ1)
10 September 2020	Procedural Deadline A Deadline for receipt by the ExA of: • Confirmation as to wish to participate in or observe Preliminary Meeting (Part 1) • Submission of written comments or questions on the proposed procedural arrangements for the Examination • Submission by Applicant of suggested Accompanied Site Inspection (ASI) itinerary
1 October 2020	Preliminary Meeting (Part 1)
12 October 2020	Procedural Deadline B Deadline for receipt by the ExA of: • Submission of written responses to matters discussed at the Preliminary Meeting (Part 1) • Confirmation as to wish to participate in or observe Preliminary Meeting (Part 2) • Confirmation as to wish to participate in or observe Open Floor Hearing 1 (OFH1)
20 October 2020	Preliminary Meeting (Part 2)
21 October 2020	Start of Examination

21 October 2020	Open Floor Hearing 1 (OFH1)
3 November 2020	Deadline 1 Deadline for receipt by the ExA of: • Responses to Written Questions, issued on 20 July 2020 [PD-010] • Comments on Applicant's change application of 29 May 2020 [AS-004], accepted on 20 July 2020 [PD-005] • Comments on Additional Documents submitted by the Applicant and other parties since the application was accepted [AS-001] to [AS-059] • Comments on Relevant Representations (RRs) • Summaries of all RRs exceeding 1500 words • Written Representations (WRs) • Summaries of all WRs exceeding 1500 words • Applicant's submission of Integrity matrices as to effects on European sites • Post Hearing submissions including written summaries following PM and OFH1 • Interested Party comments on Applicant's suggested ASI itinerary • Local Impact Reports (LIRs) (Annex B) • Statements of Common Ground (SoCG) requested by the ExA (Annex B) • Responses to any further information requested by the ExA for this deadline
3 November 2020	Procedural Deadline C Deadline for receipt by the ExA of: • Notification by Statutory Parties of their wish to be considered as an IP by the ExA • Notification of wish to speak at an Open Floor Hearing (OFH2) • Notification of wish to make oral representations at an Issue Specific Hearings (ISH) together with indication of specific topics that the party wishes the ExA to discuss • Notification of wish to speak at a Compulsory Acquisition Hearing (CAHs) • Notification of wish to have future correspondence received electronically

17 November 2020	Deadline 2 Deadline for receipt by the ExA of: • Comments on responses to the ExA's Written Questions • Applicant's first revised draft DCO • Responses to comments on RRs • Comments on any additional information/submissions received by D1 • Responses to any further information requested by the ExA for this deadline including the question relating to publicity
17 November 2020	Procedural Deadline D Deadline for receipt by the ExA of: • Confirmation as to wish to participate or observe at Hearings scheduled for December 2020 • Notification of wish to attend, or part attend, an ASI should this be possible
24 November 2020	Deadline 3 Deadline for receipt by the ExA of: • Comments on WRs • Comments on SoCGs • Comments on LIRs • Comments on Applicant's first revised draft DCO • Comments on Integrity matrices as to effects on European sites • Submission by the Applicant of low resolution documents (see Annex F) • Comments on any additional information/submissions received by D2 • Responses to any further information requested by the ExA for this deadline
1 December 2020	Deadline 3A Deadline for the receipt by the ExA of: • Comments on the Changes accepted on 29 October 2020
4 December 2020	Issue by the ExA of further written questions and requests for information (ExQ2)

8 December 2020	Issue Specific Hearing 1 (Biodiversity and Cultural Heritage)
8 December 2020	Issue Specific Hearing 2 (Traffic and Transport)
9 December 2020	Issue Specific Hearing 3 (Draft Development Consent Order)
10 December 2020	Compulsory Acquisition Hearing 1
18 December 2020	Procedural Deadline EA • Confirmation as to wish to participate or observe at Hearings scheduled for January 2021 (should they take place)
8 January 2021	Deadline 4 Deadline for receipt by the ExA of: • Post December 2020 Hearing submissions including written submissions of oral case • Any revised/updated SoCG • Responses to the ExA's Further Written Questions (if issued) • Applicant's revised draft DCO (if required) • Comments on any additional information/submissions received by D3 and D3A • Responses to any further information requested by the ExA for this deadline
18 January 2021	Publication of ExA's Site Inspection Timetable for Site Inspections identified for 9 and 10 February 2021
20 January 2021	Deadline 5 (D5) Deadline for receipt by the ExA of: • Comments on any revised/updated SoCG (if any) • Comments on Applicant's revised draft DCO (if any)

	• Comments on responses to ExA's further written questions (if issued) • Comments on any additional information/submissions received by D4 • Responses to any further information requested by the ExA for this deadline
27 January 2021	Deadline 5A Deadline for receipt by the ExA of: Comments on the suitability of virtual site inspection methods and necessary lead-in
29 January 2021	Issue by the ExA of further written questions and requests for information (ExQ2)
12 February 2021	Deadline 6 Deadline for receipt by the ExA of: • Responses to the ExA's Third set of Written Questions (if required) • Comments on any additional information/submissions received by D5 • Responses to any further information requested by the ExA for this deadline
26 February 2021	Publication of the RIES and ExA's proposed schedule of changes to the draft DCO
12 March 2021	Deadline 6A Submission by the Applicant of the 360° photography and video footage requested by the ExA on 29 January 2021.
16 & 17 March 2021	The Examining Authority's Site Inspection
26 March 2021	Deadline 7 Deadline for receipt by the ExA of: • Comments on responses to the ExA's further Written Questions (if required) • Comments on the RIES (if issued) • Comments on the ExA's proposed schedule of changes to the draft DCO (if issued)

	• Comments on any additional information/ submissions received by D6 • Comments on the 360° photography and video footage received by D6A • Responses to any further information requested by the ExA for this deadline
7 April 2021	Deadline 8 Deadline for receipt by the ExA of: • Responses to comments on the RIES (if issued) • Responses to comments on the ExA's proposed schedule of changes to the draft DCO (if issued) • Final DCO to be submitted by the Applicant in the SI template with the SI template validation report (MS Word) • Final updated Book of Reference • Final SoCGs • Final Statement of Commonality of SoCG • Final Compulsory Acquisition Schedule • Final updated Guide to the Application • Comments on any additional information/ submissions received by D7 • Responses to any further information requested by the ExA for this deadline
16 April 2021	Deadline 9 Deadline for receipt by the ExA of: • Comments on any additional information/submissions received • Responses to any further information requested by the ExA for this deadline • Statements of Final Position in respect of matters examined
21 April 2021	Examination closed

APPENDIX B: EXAMINATION LIBRARY

M54 to M6 Link Road Examination Library

Updated – 11/05/2021

This Examination Library relates to the M54 to M6 Link Road application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

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Adequacy of Consultation responses	AoC-xxx
Relevant Representations	RR-xxx
Procedural Decisions and Notifications from the Examining Authority Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
Additional Submissions Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination including responses to Rule 6 and Rule 8 letters	AS-xxx
Events and Hearings Includes agendas for hearings and site inspections, audio recordings, responses to notifications and applicant's hearing notices	EV-xxx
Representations – by Deadline	
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AoC-003	Cheshire West and Chester Council
AoC-004	City of Wolverhampton Council
AoC-005	Herefordshire County Council
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AoC-007	South Staffordshire Council
AoC-008	Staffordshire County Council
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RR-001	Arrow County Supplies
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RR-003	Steven Lacey
RR-004	Historic England
RR-005	Four Ashes Limited
RR-006	Staffordshire County Council
RR-007	The Canal and River Trust
RR-008	Osborne Clarke LLP on behalf of Western Power Distribution (West Midlands) PLC (Western Power Distribution (West Midland) PLC
RR-009	Public Health England
RR-010	Ardent Management on behalf of Cadent Gas Limited
RR-011	Hilton Parish Council
RR-012	BWB Consultating Ltd on behalf of M6 Diesel Services
RR-013	Nick Harris
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RR-015	CT Planning on behalf of South Staffordshire Water Plc
RR-016	Elizabeth Whitehouse
RR-017	Telent (NRTS)
RR-018	City of Wolverhampton Council
RR-019	Sarah Plant on behalf of South Staffordshire District Council
RR-020	B G Jones
RR-021	V Jones
RR-022	Hinson Parry on behalf of Messrs Killingworth
RR-023	Leslie Commins
RR-024	TDP (Property Development) Ltd
RR-025	Featherstone and Shareshill
RR-026	Atchams on behalf of Mr and Mrs Byard
RR-027	Paul Simkin
RR-028	Roythornes Solicitors on behalf of Persimmon Homes Limited (FAO Alastair Stewart)
RR-029	i – Transport LLP on behalf of St Francis Group
RR-030	Staffordshire Chambers of Commerce
RR-031	FieldFisher LLP on behalf of Allow Limited
RR-032	Daniel Williams
RR-033	Bagshaws LLP on behalf of Messrs I & A Simkin
RR-034	Bruton Knowles LLP on behalf of Messrs Nigel and Paul Simkin
RR-035	Bruton Knowles LLP on behalf of Mr and Mrs B Jones
RR-036	Bruton Knowles LLP on behalf of Mrs E Whitehouse and Mrs S L M Arblaster
RR-037	Natural England
RR-038	Shoosmiths LLP on behalf of Nurton Developments (Hilton) Limited
RR-039	Gavin Williamson MP
RR-040	BNP Paribas Real Estate on behalf of Royal Mail Group Limited
RR-041	Ruth Shepherd
RR-042	Staffordshire Wildlife Trust
RR-043	Telford and Wrekin Council
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PD-003	Notification of Decision Letter
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PD-005	Rules 5 and 17 The Examining Authority has issued a Progress Note which set out requests for information, an assessment of principal issues, requests to parties and response to a change request from the Applicant
PD-006	Annex A to the Progress Note - Frequently Asked Questions
PD-007	Annex B to the Progress Note - Principal Issues
PD-008	Annex C to the Progress Note - Statement of Common Ground List
PD-009	Annex D to the Progress Note - Tasks
PD-010	The Examining Authority's written questions and requests for information (ExQ1) Issued on 20 July 2020
PD-011	Examining Authority's response to the notification of proposed scheme changes
PD-012	Rule 4, Rule 6, Rule 9, Rule 13 - Invitation to the Preliminary Meeting, draft Examination Timetable and notification of hearings
PD-013	Procedural Decision - Rule 6
PD-014	Rule 8 letter - notification of timetable for the examination
PD-015	Rule 8(3), 9 and 17 Notification
PD-016	Rules 9 and 13 - Notification of Hearings
PD-017	The Examining Authority's further written questions and requests for information (ExQ2) Issued on 4 December 2020
PD-018	Rule 8(3) and 9 Notification
PD-019	ExA Letter Accepting Changes to Land Plans Notification of decision to accept as part of the Application the proposed design changes submitted on 17 December 2020
PD-020	Rule 8 (3) and 9 Notification
PD-021	Rules 8(3) and 9 Notice of Postponement of Site Inspection and Change to Timetable
PD-022	Rule 8(3) and 9 Notification
PD-023	The Examining Authority's further written questions and requests for information (ExQ3) Issued on 29 January 2021
PD-024	Rule 8(3) and 9 Notification
PD-025	Examining Authority's Consultation Draft Development Consent Order Schedule of Recommended Amendments to the Applicant's draft Development Consent Order (DCO) submitted at Deadline 6
PD-026	Report on the Implications for European Sites (RIES) Issued by the Examining Authority - 26 February 2021
PD-027	Request for Further Information - Rule 17
PD-028	Rule 9 Notification
PD-029	Rule 9 Notification
PD-030	Request for Further Information - Rule 17
PD-031	Notification of completion of the Examining Authority's Examination
Additional Submissions	
AS-001	Ministry of Defence (MOD)

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	Additional Submission – Accepted at the discretion of the Examining Authority
AS-002	Natural England Additional Submission – Accepted at the discretion of the Examining Authority
AS-003	Nurton Developments (Hilton) Limited Additional Submission – Updated representations on behalf of Nurton Developments (Hilton) Limited - Accepted at the discretion of the Examining Authority
AS-004	Highways England Additional Submission - Cover Letter - Response to Section 51 Advice Letter Dated 28th February and Application Errata - Accepted at the discretion of the Examining Authority
AS-005	Highways England Additional Submission - 1.5 Guide to the Documents to be Certified - Volume 1 -Accepted at the discretion of the Examining Authority
AS-006	Highways England Additional Submission - 2.1 Location Plan - Volume 2 - Accepted at the discretion of the Examining Authority
AS-007	Highways England Additional Submission - 2.2 Land Plans - Volume 2 - Accepted at the discretion of the Examining Authority
AS-008	Highways England Additional Submission - 2.3 Crown Land Plans - Volume 2 - Accepted at the discretion of the Examining Authority
AS-009	Highways England Additional Submission - 2.4 Works Plans - Volume 2 - Accepted at the discretion of the Examining Authority
AS-010	Highways England Additional Submission - 2.5 General Arrangement Plans - Volume 2 - Accepted at the discretion of the Examining Authority
AS-011	Highways England Additional Submission - 2.6 Special Category Land Plans - Volume 2 - Accepted at the discretion of the Examining Authority
AS-012	Highways England Additional Submission - 2.7 Streets, Rights of Way and Access Plans - Volume 2 - Accepted at the discretion of the Examining Authority
AS-013	Highways England Additional Submission - 2.8 Traffic Regulation Measures Plans - Volume 2 - Accepted at the discretion of the Examining Authority
AS-014	Highways England Additional Submission - 2.9 Classification of Roads Plans - Volume 2 - Accepted at the discretion of the Examining Authority
AS-015	Highways England Additional Submission - 2.11 Outline Drainage Works - Volume 2 - Accepted at the discretion of the Examining Authority
AS-016	Highways England Additional Submission - 4.1 Statement of Reasons (Clean) - Volume 4 - Accepted at the discretion of the Examining Authority
AS-017	Highways England

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	Additional Submission - 4.1 Statement of Reasons (Tracked Changes) - Volume 4 - Accepted at the discretion of the Examining Authority
AS-018	Highways England Additional Submission - 4.3 Book of Reference (Clean) - Volume 4 - Accepted at the discretion of the Examining Authority
AS-019	Highways England Additional Submission - 4.3 Book of Reference (Tracked Changes) - Volume 4 - Accepted at the discretion of the Examining Authority
AS-020	Highways England Additional Submission - 5.1 Consultation Report - Volume 5 (Clean) - Accepted at the discretion of the Examining Authority
AS-021	Highways England Additional Submission - 5.1 Consultation Report - Volume 5 (Tracked Changes) - Accepted at the discretion of the Examining Authority
AS-022	Highways England Additional Submission - 5.2 Consultation Report Annex P (Clean) - Volume 5 - Accepted at the discretion of the Examining Authority
AS-023	Highways England Additional Submission - 5.2 Consultation Report Annex P (Tracked Change) - Volume 5 - Accepted at the discretion of the Examining Authority
AS-024	Highways England Additional Submission - 6.1 Environmental Statement Chapter 8 – Biodiversity (Tracked Changes) -Volume 6 - Accepted at the discretion of the Examining Authority
AS-025	Highways England Additional Submission - 6.1 Environmental Statement Chapter 8 – Biodiversity (Clean) - Volume 6 Accepted at the discretion of the Examining Authority
AS-026	Highways England Additional Submission - 6.2 Environmental Statement Figure 2.8 The Scheme - Accepted at the discretion of the Examining Authority
AS-027	Highways England Additional Submission - 6.2 Environmental Statement Figure 13.1 - Accepted at the discretion of the Examining Authority
AS-028	Highways England Additional Submission - 6.2 Environmental Statement Figure 13.1A - Accepted at the discretion of the Examining Authority
AS-029	Highways England Additional Submission - 6.2 Environmental Statement Figure 13.1B - Accepted at the discretion of the Examining Authority
AS-030	Highways England Additional Submission - 6.2 Environmental Statement Figure 13.1C - Accepted at the discretion of the Examining Authority
AS-031	Highways England Additional Submission - 6.3 Environmental Statement Appendices - Appendix 8.2 Biodiversity Metric Calculations (Clean) - Volume 6 - Accepted at the discretion of the Examining Authority
AS-032	Highways England Additional Submission - 6.3 Environmental Statement Appendices - Appendix 8.2 Biodiversity Metric Calculations (Tracked Changes) - Volume 6 - Accepted at the discretion of the Examining Authority

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AS-033	Highways England Additional Submission - 6.3 Environmental Statement Appendices - Appendix 9.2 Agricultural Land Classification and Soil Resources (Clean) - Volume 6 - Accepted at the discretion of the Examining Authority
AS-034	Highways England Additional Submission - 6.3 Environmental Statement Appendices - Appendix 9.2 Agricultural Land Classification and Soil Resources (Tracked Changed) - Volume 6 - Accepted at the discretion of the Examining Authority
AS-035	Highways England Additional Submission - 6.9 Habitats Regulations Assessment - No Significant Effects Report (Clean) - Volume 6 - Accepted at the discretion of the Examining Authority
AS-036	Highways England Additional Submission - 6.9 Habitats Regulations Assessment - No Significant Effects Report (Tracked Changes) - Volume 6 - Accepted at the discretion of the Examining Authority
AS-037	Highways England Additional Submission - 7.2 Case for the Scheme and National Policy Statement Accordance Table - Volume 7 - Accepted at the discretion of the Examining Authority
AS-038	Highways England Additional Submission - 7.4 Transport Assessment Report (Clean) - Volume 7 - Accepted at the discretion of the Examining Authority
AS-039	Highways England Additional Submission - 7.4 Transport Assessment Report (Tracked Version) - Volume 7 - Accepted at the discretion of the Examining Authority
AS-040	The Coal Authority Additional Submission – Accepted at the discretion of the Examining Authority
AS-041	Highways England Additional Submission - 6.11 Outline Environmental Management Plan (Tracked Changes) - Volume 6 - Accepted at the discretion of the Examining Authority
AS-042	Highways England Additional Submission - 6.11 Outline Environmental Management Plan (Clean) - Volume 6 - Accepted at the discretion of the Examining Authority
AS-043	Highways England Additional Submission: Applicant's notification of proposed scheme changes. Accepted at the discretion of the Examining Authority
AS-044	Highways England Additional Submission - 1.5 Guide to the Application - Amended following DMRB update - Accepted at the discretion of the Examining Authority
AS-045	Highways England Additional Submission - 6.1 Environmental Statement Chapter 11 – Noise and Vibration (Tracked Changes) (Rev 2) - Amended following DMRB update - Accepted at the discretion of the Examining Authority
AS-046	Highways England Additional Submission - 6.1 Environmental Statement Chapter 11 – Noise and Vibration (Clean) (Rev 2) - Amended following DMRB update - Accepted at the discretion of the Examining Authority

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AS-047	Highways England Additional Submission - 6.3 Environmental Statement Appendices Appendix 4.5 Changes to Scope and Methodology (Clean) (Rev 2) - Amended following DMRB update - Accepted at the discretion of the Examining Authority
AS-048	Highways England Additional Submission - 6.3 Environmental Statement Appendices Appendix 4.5 Changes to Scope and Methodology (Tracked Changes) (Rev 2) - Amended following DMRB update - Accepted at the discretion of the Examining Authority
AS-049	Highways England Additional Submission - 6.3 Environmental Statement Appendices Appendix 11.3 Construction Phase Noise Predictions Monitoring (Clean) (Rev 2) - Amended following DMRB update -Accepted at the discretion of the Examining Authority
AS-050	Highways England Additional Submission - 6.3 Environmental Statement Appendices Appendix 11.3 Construction Phase Noise Predictions Monitoring (Tracked Changes) (Rev 2) - Amended following DMRB update - Accepted at the discretion of the Examining Authority
AS-051	Highways England Additional Submission - 6.3 Environmental Statement Appendices Appendix 11.4 Noise Modelling Details (Clean) (Rev 02) - Amended following DMRB update - Accepted at the discretion of the Examining Authority
AS-052	Highways England Additional Submission - 6.3 Environmental Statement Appendices Appendix 11.4 Noise Modelling Details (Tracked Changes) (Rev 02) - Amended following DMRB update - Accepted at the discretion of the Examining Authority
AS-053	Highways England Additional Submission - 6.3 Environmental Statement Appendices Appendix 11.5 Affected Routes Beyond 600 m - Amended following DMRB update - Accepted at the discretion of the Examining Authority
AS-054	Highways England Additional Submission - Figure 11.1 Noise Location Plan - Amended following DMRB update - Accepted at the discretion of the Examining Authority
AS-055	Highways England Additional Submission - Figure 11.2 Noise Affected Routes - Amended following DMRB update - Accepted at the discretion of the Examining Authority
AS-056	Highways England Additional Submission - Figure 11.3 Long Term Change In Traffic Noise Levels (DM2024 TO DM2039) - Amended following DMRB update - Accepted at the discretion of the Examining Authority
AS-057	Highways England Additional Submission - Figure 11.4 Short Term Change In Traffic Noise Levels (DM2024 TO DM2024) - Amended following DMRB update - Accepted at the discretion of the Examining Authority
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	Additional Submission - Figure 11.5 Long Term Change In Traffic Noise Levels (DM2024 TO DM2039) - Amended following DMRB update - Accepted at the discretion of the Examining Authority
AS-059	Highways England Additional Submission - 8.2 DMRB Updates and the Impact on the DCO Application - Amended following DMRB update - Accepted at the discretion of the Examining Authority
AS-059a	Highways England (Applicant's draft Accompanied Site Inspection Itinerary - Additional Submission – Response to Procedural Deadline A
AS-059b	Report of procedural submissions from persons attending the Preliminary Meeting Additional Submission - Response to Procedural Deadline A
AS-060	Report of additional procedural comments from persons attending the preliminary meeting Additional Submission -Supplementary report – Comments - Accepted at the discretion of the Examining
AS-061	Written Responses to Matters Discussed at Preliminary Meeting Part 1 Response to Procedural Deadline B
AS-062	Highways England Additional Submission - Request for a change to the accepted Application
AS-063	Highways England) Additional Submission - 1.5 Guide to the Application (Tracked Changes) (Ver P06) - Accepted at the discretion of the Examining Authority
AS-064	Highways England Additional Submission - 1.5 Guide to the Application (Clean) (Ver P06) - Accepted at the discretion of the Examining Authority
AS-065	Highways England Additional Submission - 2.2 Land Plans (Ver P03) - Accepted at the discretion of the Examining Authority
AS-066	Highways England Additional Submission - 2.4 Works Plans (Ver P03) - Accepted at the discretion of the Examining Authority
AS-067	Highways England Additional Submission -2.5 General Arrangement Plans (Ver P03) - Accepted at the discretion of the Examining Authority
AS-068	Highways England Additional Submission - 2.7 Streets, Rights of Way and Access Plans (Ver P03) - Accepted at the discretion of the Examining Authority
AS-069	Highways England Additional Submission - 2.8 Traffic Regulation Measures Plans (Ver P03) - Accepted at the discretion of the Examining Authority
AS-070	Highways England Additional Submission - 2.9 Classification of Roads Plans (Ver P03) - Accepted at the discretion of the Examining Authority
AS-071	Highways England Additional Submission - 2.10 Engineering Section Drawings (Ver P02) - Accepted at the discretion of the Examining Authority
AS-072	Highways England (Additional Submission - 2.11 Outline Drainage Works (Ver P03) - Accepted at the discretion of the Examining Authority

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AS-073	Highways England Additional Submission - 3.1 Draft Development Consent Order Validation Report - 08.10.20 - Accepted at the discretion of the Examining Authority
AS-074	Highways England Additional Submission - 3.1 Draft Development Consent Order (Tracked) (Ver 2) - Accepted at the discretion of the Examining Authority
AS-075	Highways England Additional Submission - 3.1 Draft Development Consent Order (Clean) (Ver 2) - Accepted at the discretion of the Examining Authority
AS-076	Highways England Additional Submission - 3.2 Explanatory Memorandum (Tracked) (Ver 2) - Accepted at the discretion of the Examining Authority
AS-077	Highways England Additional Submission - 3.2 Explanatory Memorandum (Clean) (Ver 2) - Accepted at the discretion of the Examining Authority
AS-078	Highways England Additional Submission - 4.1 Statement of Reasons (Tracked) (Ver P05) - Accepted at the discretion of the Examining Authority
AS--079	Highways England Additional Submission - 4.1 Statement of Reasons (Clean) (Ver P05) - Accepted at the discretion of the Examining Authority
AS-080	Highways England Additional Submission - 4.3 Book of Reference (Tracked) (Ver P06) - Accepted at the discretion of the Examining Authority
AS-081	Highways England Additional Submission - 4.3 Book of Reference (Clean) (Ver P06) - Accepted at the discretion of the Examining Authority
AS-082	Highways England Additional Submission - 6.1 Environmental Statement Chapter 8 – Biodiversity (Tracked) (Ver 3) - Accepted at the discretion of the Examining Authority
AS-083	Highways England Additional Submission - 6.1 Environmental Statement Chapter 8 – Biodiversity (Clean) (Ver 3) - Accepted at the discretion of the Examining Authority
AS-084	Highways England Additional Submission - 6.1 Environmental Statement Chapter 11 – Noise and Vibration (Tracked) (Ver 3) - Accepted at the discretion of the Examining Authority
AS-085	Highways England Additional Submission - 6.1 Environmental Statement Chapter 11 – Noise and Vibration (Clean) (Ver 3) - Accepted at the discretion of the Examining Authority
AS-086	Highways England Additional Submission - 6.2 Environmental Statement Figure 2.1 (Ver P15) - Accepted at the discretion of the Examining Authority
AS-087	Highways England Additional Submission - 6.2 Environmental Statement Figure 2.2 (Ver P15) - Accepted at the discretion of the Examining Authority
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	Additional Submission - 6.2 Environmental Statement Figure 2.3 (Ver P15) - Accepted at the discretion of the Examining Authority
AS-089	Highways England Additional Submission - 6.2 Environmental Statement Figure 2.4 (Ver P15) - Accepted at the discretion of the Examining Authority
AS-090	Highways England Additional Submission - 6.2 Environmental Statement Figure 2.5 (Ver P15) - Accepted at the discretion of the Examining Authority
AS-091	Highways England Additional Submission - 6.2 Environmental Statement Figure 2.6 (Ver P15) - Accepted at the discretion of the Examining Authority
AS-092	Highways England Additional Submission - 6.2 Environmental Statement Figure 2.7 (Ver P15) - Accepted at the discretion of the Examining Authority
AS-093	Highways England Additional Submission - 6.2 Environmental Statement Figure 2.9 (Ver P03) - Accepted at the discretion of the Examining Authority
AS-094	Highways England) Additional Submission - 6.2 Environmental Statement Figure 8.35 (Ver P01) - Accepted at the discretion of the Examining Authority
AS-095	Highways England Additional Submission - 6.2 Environmental Statement Figure 11.1 (Ver P05) - Accepted at the discretion of the Examining Authority
AS-096	Highways England Additional Submission - 6.2 Environmental Statement Figure 11.2 (Ver P05) - Accepted at the discretion of the Examining Authority
AS-097	Highways England Additional Submission - 6.2 Environmental Statement Figure 11.3 (Ver P05) - Accepted at the discretion of the Examining Authority
AS-098	Highways England Additional Submission - 6.2 Environmental Statement Figure 11.4 (Ver P05) - Accepted at the discretion of the Examining Authority
AS-099	Highways England Additional Submission - 6.2 Environmental Statement Figure 11.5 (Ver P05) - Accepted at the discretion of the Examining Authority
AS-100	Highways England Additional Submission - 6.3 Environmental Statement Appendix 7.1 Arboricultural Impact Assessment Report (Tracked) (Ver 2) - Accepted at the discretion of the Examining Authority
AS-101	Highways England Additional Submission - 6.3 Environmental Statement Appendix 7.1 Arboricultural Impact Assessment Report (Clean) (Ver 2) - Accepted at the discretion of the Examining Authority
AS-102	Highways England Additional Submission - 6.3 Environmental Statement Appendix 8.2 Biodiversity Metric Calculations (Tracked) (Ver 3) - Accepted at the discretion of the Examining Authority
AS-103	Highways England Additional Submission - 6.3 Environmental Statement Appendix 8.2 Biodiversity Metric Calculations (Clean) (Ver 3) - Accepted at the discretion of the Examining Authority

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AS-104	Highways England Additional Submission - 6.3 Environmental Statement Appendix 8.15 Great Crested Newt (2020) (Ver 1) - Accepted at the discretion of the Examining Authority
AS-105	Highways England Additional Submission - 6.3 Environmental Statement Appendix 8.16 Ancient Hedgerow Assessment (Ver 1) - Accepted at the discretion of the Examining Authority
AS-106	Highways England Additional Submission - 6.3 Environmental Statement Appendix 11.3 Construction Phase Noise Predictions Monitoring (Tracked) (Ver 3) - Accepted at the discretion of the Examining Authority
AS-107	Highways England) Additional Submission - 6.3 Environmental Statement Appendix 11.3 Construction Phase Noise Predictions Monitoring (Clean) (Ver 3) - Accepted at the discretion of the Examining Authority
AS-108	Highways England Additional Submission - 6.3 Environmental Statement Appendix 11.4 Noise Modelling Details (Tracked) (Ver 3) - Accepted at the discretion of the Examining Authority
AS-109	Highways England Additional Submission - 6.3 Environmental Statement Appendix 11.4 Noise Modelling Details (Clean) (Ver 3) - Accepted at the discretion of the Examining Authority
AS-110	Highways England Additional Submission - 6.8 TPO Impact/ Removal Plans (Tracked) (Ver 2) - Accepted at the discretion of the Examining Authority
AS-111	Highways England Additional Submission - 6.8 TPO Impact/ Removal Plans (Clean) (Ver 2) - Accepted at the discretion of the Examining Authority
AS-112	Highways England Additional Submission - 6.11 Outline Environmental Management Plan (Clean) (Ver 3) - Accepted at the discretion of the Examining Authority
AS-112a	Highways England Additional Submission - 6.11 Outline Environmental Management Plan (Tracked) (Ver 3) - Accepted at the discretion of the Examining Authority
AS-113	Highways England Additional Submission - 7.4 Transport Assessment Report (Tracked) (Ver P05) - Accepted at the discretion of the Examining Authority
AS-114	Highways England) Additional Submission - 7.4 Transport Assessment Report (Clean) (Ver P05) - Accepted at the discretion of the Examining Authority
AS-115	Highways England Additional Submission - 7.5 Outline Traffic Management Plan (Tracked) (Ver P04) - Accepted at the discretion of the Examining Authority
AS-116	Highways England Additional Submission - 7.5 Outline Traffic Management Plan (Clean) (Ver P04) - Accepted at the discretion of the Examining Authority
AS-117	Highways England Additional Submission - 8.5 Formal Request for Scheme Changes (Ver 1) - Accepted at the discretion of the Examining Authority

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AS-118	Highways England Additional Submission - 8.6 Environmental Statement Addendum: Proposed Scheme Changes October 2020 (Ver 1) - Accepted at the discretion of the Examining Authority
AS-119	Highways England Additional Submission - 8.7 Consultation Statement – Proposed Scheme Changes Appendices Part 1 (B and C) (Ver P02) - Accepted at the discretion of the Examining Authority
AS-120	Highways England Additional Submission - 8.7 Consultation Statement – Proposed Scheme Changes Main report and Appendix A (Ver P02) - Accepted at the discretion of the Examining Authority
AS-121	Highways England Additional Submission - 8.7 Consultation Statement – Proposed Scheme Changes Appendices Part 2 (D and E) (Ver P02) - Accepted at the discretion of the Examining Authority
AS-122	Pramesh Chandra Additional Submission accepted at the discretion of the Examining Authority
AS-123	Shoosmiths LLP on behalf of Nurton Developments (Hilton) Limited Letter dated 4 December 2020. Additional Submission accepted at the discretion of the Examining Authority
AS-124	Shakespeare Martineau LLP on behalf of South Staffordshire Water plc Letter dated 4 December 2020. Additional Submission accepted at the discretion of the Examining Authority
AS-125	Highways England Additional Submission - Request for a change to the accepted application
AS-126	Forestry Commission England Additional Submission accepted at the discretion of the Examining Authority
AS-127	Highways England Additional Submission - 2.2 Land Plans (Ver P04) - Accepted at the discretion of the Examining Authority
AS-128	Highways England Additional Submission - 4.1 Statement of Reasons - Clean (Ver P07) - Accepted at the discretion of the Examining Authority
AS-129	Highways England Additional Submission - 4.3 Book of Reference - Tracked (Ver P08) - Accepted at the discretion of the Examining Authority
AS-130	Highways England Additional Submission - 1.5 Guide to the Application - Tracked (Ver P10) - Accepted at the discretion of the Examining Authority
AS-131	Highways England Additional Submission - 4.1 Statement of Reasons - Tracked (Ver P07) - Accepted at the discretion of the Examining Authority
AS-132	Highways England Additional Submission - 1.5 Guide to the Application - Clean (Ver P10) - Accepted at the discretion of the Examining Authority
AS-133	Highways England Additional Submission - 4.3 Book of Reference - Clean (Ver P08) - Accepted at the discretion of the Examining Authority
AS-134	Highways England

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	Additional Submission - Accepted at the discretion of the Examining Authority
AS-135	Highways England Response to the ExA's Acceptance of Change Request 7 January 2021 and Agreement with Landowner
AS-136	Highways England Additional Submission - Request for a change to the accepted application
AS-137	Highways England Plan showing the General Arrangement for the Scheme overlaid on the revised Land Plans to illustrate why the 'additional land' is required - Accepted at the discretion of the Examining Authority
Events and Hearings	
Accompanied, Unaccompanied Site Inspections, Preliminary Meeting and Hearings	
EV-001	Note of Unaccompanied Site Inspection - 16 June 2020
EV-002	Reference not in use
EV-003	Highways England Open Floor Hearing Press Notice
EV-004	Recording of Preliminary Meeting Part 1 - Session 1 - 01 October 2020
EV-005	Recording of Preliminary Meeting Part 1 - Session 2 - 01 October 2020
EV-006	Agenda for Open Floor Hearing 1
EV-007	Agenda for Preliminary Meeting Part 2
EV-008	Recording of Preliminary Meeting Part 2 - 20 October 2020
EV-009	Recording of Open Floor Hearing 1 – 21 October 2020
EV-010	Preliminary Meeting Note
EV-011	Agenda for Issue Specific Hearing 1 Biodiversity and Cultural Heritage
EV-012	Agenda for Issue Specific Hearing 2 Traffic and Transport
EV-013	Agenda for Issue Specific Hearing 3 Draft Development Consent Order
EV-014	Agenda for Compulsory Acquisition Hearing 1 Compulsory Acquisition and Temporary Possession
EV-015	Recording of Issue Specific Hearing 1 (Biodiversity and Cultural Heritage) - Tuesday 8 December 2020 Part 1 of 2
EV-016	Recording of Issue Specific Hearing 1 (Biodiversity and Cultural Heritage) - Tuesday 8 December 2020 Part 2 of 2
EV-017	Recording of Issue Specific Hearing 2 (Traffic and Transport) - Tuesday 8 December 2020 Part 1 of 2
EV-018	Recording of Issue Specific Hearing 2 (Traffic and Transport) - Tuesday 8 December 2020 Part 2 of 2
EV-019	Recording of Issue Specific Hearing 3 (Draft Development Consent Order) - Wednesday 9 December 2020 Part 1 of 2
EV-020	Recording of Issue Specific Hearing 3 (Draft Development Consent Order) - Wednesday 9 December 2020

	Part 2 of 2
EV-021	Recording of Compulsory Acquisition Hearing 1 - Thursday 10 December 2020 Part 1 of 2
EV-022	Recording of Compulsory Acquisition Hearing 1 - Thursday 10 December 2020 Part 2 of 2
EV-023	Action Points from Issue Specific and Compulsory Acquisition Hearings held Tuesday 8, Wednesday 9 and Thursday 10 December 2020 (PDF, 101 KB) Issue Specific Hearing 1 (Biodiversity and Cultural Heritage), Issue Specific Hearing 2 (Traffic and Transport), Issue Specific Hearing 3 (Draft Development Consent Order) and Compulsory Acquisition Hearing 1
EV-024	Note of the ExA's Unaccompanied Site Inspection Tuesday 16 and Wednesday 17 March 2021
Representations	
Procedural Deadline C – 3 November 2020 • Notification by Statutory Parties of their wish to be considered as an IP by the ExA • Notification of wish to speak at an Open Floor Hearing (OFH2) • Notification of wish to make oral representations at an Issue Specific Hearings (ISH) together with indication of specific topics that the party wishes the ExA to discuss • Notification of wish to speak at a Compulsory Acquisition Hearing (CAHs) • Notification of wish to have future correspondence received Electronically	
PDC-001	Field Fisher LLP on behalf of Allow Limited Procedural Deadline C Submission
PDC-002	CT Planning on behalf of South Staffordshire Water plc Procedural Deadline C Submission
PDC-003	Shoosmiths LLP on behalf of Nurton Developments (Hilton) Limited Procedural Deadline C Submission
Procedural Deadline D – 17 November 2020 • Confirmation as to wish to participate or observe at Hearings scheduled for December 2020 • Notification of wish to attend, or part attend, an ASI should this be possible	
PDD-001	CT Planning on behalf of South Staffordshire Water plc Procedural Deadline D Submission
PDD-002	Haywood Planning Services on behalf of South Staffordshire Council Procedural Deadline D Submission
PDD-003	Shoosmiths LLP on behalf of Nurton Developments (Hilton) Limited Procedural Deadline D Submission
PDD-004	Bagshaws LLP on behalf of I & A Simkin Procedural Deadline D Submission
PDD-005	Fieldfisher LLP on behalf of Allow Ltd

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	Procedural Deadline D Submission - Email from Fieldfisher regarding Allow Ltd attending Hearings
PDD-006	Bagshaws LLP on behalf of Allow Ltd Procedural Deadline D Submission
PDD-007	Staffordshire Wildlife Trust Procedural Deadline D Submission - Accepted as a late Procedural Deadline D submission at the discretion of the Examining Authority
PDD-008	Natural England Procedural Deadline D - Accepted as a late Procedural Deadline D submission at the discretion of the Examining Authority
PDD-009	BWB Consulting on behalf of M6 Diesel Procedural Deadline D Submission - Accepted as a late Procedural Deadline D submission at the discretion of the Examining Authority
Procedural Deadline EA – 18 December 2020 • Confirmation as to wish to participate or observe at Hearings scheduled for January 2021 (should they take place)	
PDEA-001	Highways England Procedural Deadline EA Submission
Deadline 1 – 3 November 2020 • Responses to Written Questions, issued on 20 July 2020 [PD-010] • Comments on Applicant's change application of 29 May 2020 [AS- 004], accepted on 20 July 2020 [PD-005] • Comments on Additional Documents submitted by the Applicant and Other parties since the application was accepted [AS-001] to [AS-059] • Comments on Relevant Representations (RRs) • Summaries of all RRs exceeding 1500 words • Written Representations (WRs) • Summaries of all WRs exceeding 1500 words • Applicant's submission of Integrity matrices as to effects on European sites • Post Hearing submissions including written summaries following PM and OFH1 • Interested Party comments on Applicant's suggested ASI itinerary • Local Impact Reports (LIRs) (Annex B) • Statements of Common Ground (SoCG) requested by the ExA (Annex B) • Responses to any further information requested by the ExA for this deadline	
REP1-001	Western Power Distribution (West Midlands) plc Deadline 1 Submission - Responses to ExA's first written questions
REP1-002	Staffordshire County Council Deadline 1 Submission - Cover Email including information for Procedural Deadline C
REP1-003	Not Used
REP1-004	Staffordshire County Council Deadline 1 Submission - Draft SoCG
REP1-005	Staffordshire County Council Deadline 1 Submission - Written Representation
REP1-006	Staffordshire County Council

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	Deadline 1 Submission - Responses to ExA first written questions
REP1-007	Staffordshire County Council Deadline 1 Submission - Local Impact Report
REP1-008	Not Used
REP1-009	Not Used
REP1-010	Shoosmiths LLP on behalf of Nurton Developments (Hilton) Limited Summary of Relevant Representations
REP1-011	Shoosmiths LLP on behalf of Nurton Developments (Hilton) Limited Deadline 1 Submission - Response to ExA's first written questions
REP1-012	Natural England Description: Deadline 1 - Written Representation and responses to ExA's first written questions - Re-published at the discretion of the ExA as original file corrupted
REP1-013	Natural England Deadline 1 Submission - Summary of Written Representations
REP1-014	National Trust Deadline 1 Submission - Response to ExA's first written questions
REP1-015	National Grid Deadline 1 Submission - Written Representation
REP1-016	National Grid Deadline 1 Submission - Responses to ExA first written questions
REP1-017	Mann & Hummel Deadline 1 Submission - Written Reps Mann & Hummel
REP1-018	BWB Consulting Ltd on behalf of M6 Diesel Deadline 1 Submission - Covering email
REP1-019	BWB Consulting Ltd on behalf of M6 Diesel Deadline 1 Submission - Response to ExA's first written questions
REP1-020	Bagshaws LLP on behalf of I & A Simkin Deadline 1 Submission - Written Representation
REP1-021	Bagshaws LLP on behalf of I & A Simkin Deadline 1 Submission - Response to ExA's first written questions
REP1-022	Bagshaws LLP on behalf of I & A Simkin Deadline 1 Submission - Comments on the Statement of Common Ground (SoCG)
REP1-023	Bagshaws LLP on behalf of I & A Simkin Deadline 1 Submission - Draft Statement of Common Ground
REP1-024	Highways England Deadline 1 Submission - 8.8 P(D) Draft Statement of Common with Hilton, Featherstone & Brinsford and Shareshill Parish Councils (Version 2 (P05)). Accepted at the discretion of the ExA as original file corrupted
REP1-025	Highways England Deadline 1 Submission - M54 to M6 Link Road Scheme – Deadline 1 and Procedural Deadline C Cover Letter
REP1-026	Highways England Deadline 1 Submission - 8.8 P(A) Draft Statement of Common Ground with Environment Agency (Version 3 (P05))
REP1-027	Highways England Deadline 1 Submission - 4.1 Statement of Reasons - Clean (Version P06)
REP1-028	Highways England Deadline 1 Submission - 8.8 P(B) Draft Statement of Common Ground with Natural England (Version 4 (P05))

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REP1-029	Highways England Deadline 1 Submission - 8.8 LIU(O) Draft Statement of Common Ground with Severn Trent Water Limited (Version 2 (P02))
REP1-030	Highways England Deadline 1 Submission - 8.8 O(A) Draft Statement of Common Ground with M6 Diesel Services Limited (Version 2 (P03))
REP1-031	Highways England Deadline 1 Submission - 8.8 LIU(R) Draft Statement of Common Ground with Zayo (Version 1 (P01))
REP1-032	Highways England Deadline 1 Submission - 8.8 LIU(P) Draft Statement of Common Ground with South Staffordshire Water (Version 2 (P02))
REP1-033	Highways England Deadline 1 Submission - 8.8 O(D) Draft Statement of Common Ground with Staffordshire Wildlife Trust (Version 2 (P03))
REP1-034	Highways England Deadline 1 Submission - 8.8 LIU(L) Draft Statement of Common Ground with The National Trust (Version 2 (P03))
REP1-035	Highways England Deadline 1 Submission - 8.8 LIU(J) Draft Statement of Common Ground with Elizabeth Whitehouse & Stella Arblaster (Version 2 (P04))
REP1-036	Highways England Deadline 1 Submission - 8.10 Applicant responses to ExAs 1st Written Questions (Version 1)
REP1-037	Highways England Deadline 1 Submission - 8.8 O(C) Draft Statement of Common Ground with St Francis Group (Version 1 P03))
REP1-038	Highways England Deadline 1 Submission - 8.8 LIU(M) Draft Statement of Common Ground with Openreach Ltd (Version 1 (P01))
REP1-039	Highways England Deadline 1 Submission - 8.8 LIU(D) Draft Statement of Common Ground with Nigel Simkin & Paul Simkin (Version 2 (P03))
REP1-040	Highways England Deadline 1 Submission - 6.2 Environmental Statement Figure 7.19D (Rev P03 S8)
REP1-041	Highways England Deadline 1 Submission - 8.8 LIU(E) Draft Statement of Common Ground with Mark Commins & Tracey Commins (Version 2 (P03))
REP1-042	Highways England Deadline 1 Submission - 8.8 LA(A) Draft Statement of Common Ground with Staffordshire County Council (Version 1 (P02))
REP1-043	Highways England Deadline 1 Submission - 8.9 Applicant Response to Relevant Representations (Version 1)
REP1-044	Highways England Deadline 1 Submission - 6.2 Environmental Statement Figure 9.1 (Rev P02)
REP1-045	Highways England Deadline 1 Submission - 8.8 LIU(K) Draft Statement of Common Ground with Nurton Developments (Hilton) Limited (Version 2 (P04))
REP1-046	Highways England

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	Deadline 1 Submission - 8.8 LIU(C) Draft Statement of Common Ground with Robert Edward Rowe (Version 2 (P03))
REP1-047	Highways England Deadline 1 Submission - 8.8 LA(D) Draft Statement of Common Ground with Shropshire Council (Version P01)
REP1-048	Highways England Deadline 1 Submission - 8.8 O(B) Draft Statement of Common Ground with Four Ashes Limited (Version 2 (P02))
REP1-049	Highways England Deadline 1 Submission - 8.10 Response to First Written Questions Appendices (Version 1)
REP1-050	Highways England Deadline 1 Submission - 8.8 LIU(N) Draft Statement of Common Ground with Cadent Gas Limited (Version 1 (P01))
REP1-051	Highways England Deadline 1 Submission - 8.8 LIU(I) Draft Statement of Common Ground with Ian Simkin & Adrian Simkin (Version 1 (P02))
REP1-052	Highways England Deadline 1 Submission - 8.8 P(C) Draft Statement of Common Ground with Historic England (Version 3 (P04))
REP1-053	Highways England Deadline 1 Submission - 8.8 LA(C) Draft Statement of Common Ground with City of Wolverhampton Council (Version 2 (P03))
REP1-054	Highways England Deadline 1 Submission - 8.12 Outline Arboricultural Mitigation Strategy (Version 1)
REP1-055	Highways England Deadline 1 Submission - 8.8 LIU(G) Draft Statement of Common Ground with Michael Byard (Version 1 (P03))
REP1-056	Highways England Deadline 1 Submission - 4.1 Statement of Reasons - Tracked changes (Version P06)
REP1-057	Highways England Deadline 1 Submission - 8.11 Environmental Mitigation Approach (Version 1)
REP1-058	Highways England Deadline 1 Submission - 8.8 LIU(H) Draft Statement of Common Ground with Barry & Valerie Jones (Version 2 (P04))
REP1-059	Highways England Deadline 1 Submission - 8.8 LA(B) Draft Statement of Common Ground with South Staffordshire Council (Version 2 (P02))
REP1-060	Highways England Deadline 1 Submission - 8.8 LIU(B) Draft Statement of Common Ground with William Bibbey (Version 2 (P03))
REP1-061	Highways England Deadline 1 Submission - 1.5 Guide to the Application - Tracked (Version P07)
REP1-062	Highways England Deadline 1 Submission - 8.8 Draft Statement of Commonality for Statements of Common Ground (Version 1)
REP1-063	Highways England

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	Deadline 1 Submission - 8.13 Habitats Regulations Assessment - Integrity Matrices (Version 1)
REP1-064	Highways England Deadline 1 Submission - 8.8 LIU(S) Draft Statement of Common Ground with Vodafone Limited (Version 1 (P01))
REP1-065	Highways England Deadline 1 Submission - 8.8 LIU(Q) Draft Statement of Common Ground with Western Power Distribution (Version 1 (P01))
REP1-066	Highways England Deadline 1 Submission - 8.8 LIU(A) Draft Statement of Common Ground with Allow Limited (Version 2 (P03))
REP1-067	Highways England Deadline 1 Submission - 1.5 Guide to the Application - Clean (Version P07)
REP1-068	Highways England Deadline 1 Submission - 6.2 Environmental Statement Figure 7.22C (Rev P03 S8)
REP1-069	Not Used
REP1-070	Gavin Williamson CBE MP Deadline 1 Submission - G Williamson CBE MP Representation
REP1-071	Not Used
REP1-072	Environment Agency Deadline 1 Submission - Responses to ExA's first written questions
REP1-073	Environment Agency Deadline 1 Submission – Cover Email and information for Procedural Deadline C
REP1-074	CT Planning on behalf of South Staffordshire Water plc Deadline 1 Submission - Covering email
REP1-075	CT Planning on behalf of South Staffordshire Water plc Deadline 1 Submission - Response to ExA's first written questions
REP1-076	CT Planning on behalf of South Staffordshire Water plc Deadline 1 Submission - Written Representation
REP1-077	Cllr Robert Cope Deadline 1 Submission
REP1-078	City of Wolverhampton Council Deadline (D1) Submission - Response to ExA's first written questions
REP1-079	Cadent Gas Deadline 1 Submission - Response to ExA's first written questions
REP1-080	BWB Consulting Ltd on behalf of M6 Diesel Deadline 1 Submission - Written Representation
REP1-081	BWB Consulting Ltd on behalf of M6 Diesel Deadline 1 Submission - Request for ASI & USI
REP1-082	Bagshaws LLP on behalf of Allow Ltd Deadline 1 Submission - Written Representations - Appendix 2
REP1-083	Bagshaws LLP on behalf of Allow Ltd Deadline 1 Submission - Accompanied Site Inspection Itinerary Comments
REP1-084	Bagshaws LLP on behalf of Allow Ltd Deadline 1 Submission - Written Representations - Appendix 4 (Photomontage Junction 1 M54 roundabout)
REP1-085	Bagshaws LLP on behalf of Allow Ltd Deadline 1 Submission - Written Representation - Appendix 5 (including information for Procedural Deadline C)

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REP1-086	Bagshaws LLP on behalf of Allow Ltd Deadline 1 Submission - Written Representations - Appendix 3 (Figure 1, 1816 OSD)
REP1-087	Bagshaws LLP on behalf of Allow Ltd Deadline 1 Submission - Comments on SoCG
REP1-088	Bagshaws LLP on behalf of Allow Ltd Deadline 1 Submission - Written Representations - Appendix 1
REP1-089	Allow Ltd Deadline 1 Submission - Summary of Relevant Representations
REP1-090	Bagshaws LLP on behalf of Allow Ltd Deadline 1 Submission - Responses to ExA's first written questions
REP1-091	Bagshaws LLP on behalf of Allow Ltd Deadline 1 Submission - Written Representation
REP1-092	Bagshaws LLP on behalf of Allow Ltd Deadline 1 Submission - Written Representations - Appendix 3 (RPS Review of land acquisition at Hilton Park)
REP1-093	Bagshaws LLP on behalf of Allow Ltd Deadline (D1) Submission - Summary of Written Representations
REP1-094	Bagshaws LLP on behalf of Allow Ltd Deadline 1 Submission - Cover Email
REP1-095	Not Used
REP1-096	South Staffordshire Council Deadline 1 Submission - Covering email
REP1-097	South Staffordshire Council Deadline 1 Submission - Local Impact Report
REP1-098	South Staffordshire Council Deadline 1 Submission - responses to ExA's first written questions
Deadline 2 – 17 November 2020 • Comments on responses to the ExA's Written Questions • Applicant's first revised draft DCO • Responses to comments on RRs • Comments on any additional information/submissions received by D1 • Responses to any further information requested by the the ExA for this deadline including the question relating to Publicity	
REP2-001	Highways England Deadline 2 Submission - Deadline 2 Cover Letter
REP2-002	Highways England Deadline 2 Submission - 1.5 Guide to the Application - Tracked (version P08)
REP2-003	Highways England Deadline 2 Submission - 1.5 Guide to the Application - Clean (version P08)
REP2-004	Highways England Deadline 2 Submission - 3.1 Draft Development Consent Order Validation Report - 16.11.20
REP2-005	Highways England Deadline 2 Submission - 3.1 Draft Development Consent Order - Tracked (version 3)
REP2-006	Highways England

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	Deadline 2 Submission - 3.1 Draft Development Consent Order - Clean (version 3)
REP2-007	Highways England Deadline 2 Submission - 3.2 Explanatory Memorandum - Tracked (version 3)
REP2-008	Highways England Deadline 2 Submission - 3.2 Explanatory Memorandum - Clean (version 3)
REP2-009	Highways England Deadline 2 Submission - 8.14 Applicant Responses to Written Question Responses from Interested Parties
REP2-010	Bagshaws LLP on behalf of Allow Ltd) Deadline 2 Submission - comments on the Applicants Responses to Relevant Representations and additional comments in relation to the ExA's first Written Question
REP2-011	Bagshaws LLP on behalf of I & A Simkin Deadline 2 Submission - Comments on the Applicants Responses to Relevant Representations
REP2-012	BWB Consulting Ltd on behalf of M6 Diesel Deadline 2 Submission
REP2-013	CT Planning on behalf of South Staffordshire Water plc Deadline 2 Submission - Responses to Highways England Answers to ExAs First Written Questions
REP2-014	Daniel Williams Deadline 2 Submission
REP2-015	DWF Law LLP on behalf of Severn Trent Water Limited Deadline 2 Submission
REP2-016	Haywood Planning Services on behalf of South Staffordshire Council Deadline 2 Submission - Response to Examining Authority Written Questions
Deadline 3 – 24 November 2020 • Comments on WRs • Comments on SoCGs • Comments on LIRs • Comments on Applicant's first revised draft DCO • Comments on Integrity matrices as to effects on European sites • Submission by the Applicant of low resolution documents (see Annex F) • Comments on any additional information/submissions received by D2 • Responses to any further information requested by the ExA for this deadline	
REP3-001	Highways England Deadline 3 Submission - Covering Letter
REP3-002	Highways England Deadline 3 Submission - 1.5 Guide to the Application – Tracked (Version P09)
REP3-003	Highways England Deadline 3 Submission - 1.5 Guide to the Application - Clean (Version P09)
REP3-004	Highways England Deadline 3 Submission - 2.2 Land Plans - Key Sheet (Version P03) - Low Resolution
REP3-005	Highways England

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	Deadline 3 Submission - 2.2 Land Plans sheets 1 to 10 (Version P03) - Low Resolution
REP3-006	Highways England Deadline 3 Submission - 2.4 Works Plans - Key Sheet (Version P03) - Low Resolution
REP3-007	Highways England Deadline 3 Submission - 2.4 Works Plans sheets 1 to 10 (Version P03) - Low Resolution
REP3-008	Highways England Deadline 3 Submission - 2.5 General Arrangement Plans - Key Sheet (Version P03) - Low Resolution
REP3-009	Highways England Deadline 3 Submission - 2.5 General Arrangement Plans sheets 1 to 10 (Version P03) - Low Resolution
REP3-010	Highways England Deadline 3 Submission - 2.6 Special Category Land Plans - Key Sheet (Version P02) - Low Resolution
REP3-011	Highways England) Deadline 3 Submission - 2.6 Special Category Land Plans sheets 1 to 10 (Version P02) - Low Resolution
REP3-012	Highways England Deadline 3 Submission - 2.7 Streets, Rights of Way and Access Plans - Key Sheet (Version P03) - Low Resolution
REP3-013	Highways England Deadline 3 Submission - 2.7 Streets, Rights of Way and Access Plans sheets 1 to 10 (Version P03) - Low Resolution
REP3-014	Highways England Deadline 3 Submission - 2.8 Traffic Regulation Measures Plans - Key Sheet (Version P03) - Low Resolution
REP3-015	Highways England Deadline 3 Submission - 2.8 Traffic Regulation Measures Plans sheets 1 to 10 (Version P03) - Low Resolution
REP3-016	Highways England Deadline 3 Submission - 2.9 Classification of Roads Plans - Key Sheet (Version P03) - Low Resolution
REP3-017	Highways England Deadline 3 Submission - 2.9 Classification of Roads Plans sheets 1 to 10 (Version P03) - Low Resolution
REP3-018	Highways England Deadline 3 Submission - 2.10 Engineering Section Drawings (Version P02) - Low Resolution (part 1 of 2)
REP3-019	Highways England Deadline 3 Submission - 2.10 Engineering Section Drawings (Version P02) - Low Resolution (part 2 of 2)
REP3-020	Highways England Deadline 3 Submission - 2.11 Outline Drainage Works - Key Sheet (Version P03) - Low Resolution
REP3-021	Highways England Deadline 3 Submission - 2.11 Outline Drainage Works Sheets 1 to 10 (Version P03) - Low Resolution
REP3-022	Highways England

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	Deadline 3 Submission - 4.3 Book of Reference - Tracked (Version P07)
REP3-023	Highways England Deadline 3 Submission - 4.3 Book of Reference - Clean (Version P07)
REP3-024	Highways England Deadline 3 Submission - 6.2 Environmental Statement - Figure 2.8 The Scheme (version P03) - Low Resolution
REP3-025	Highways England Deadline 3 Submission - 6.2 Environment Statement - Figure 5.2 Air Quality Baseline - Page 1 to 10 (Version P02) - Low Resolution
REP3-026	Highways England Deadline 3 Submission - 6.2 Environment Statement - Figure 5.3 Air Quality Modelling (Operational) page 1 to 10 (Version P02) - Low Resolution
REP3-027	Highways England Deadline 3 Submission - 6.2 Environment Statement - Figure 6.7: Hilton Park 1796 (Version P02) - Low Resolution
REP3-028	Highways England Deadline 3 Submission - 6.2 Environmental Statement - Figure 8.1: Locations of European Sites (Version P04) - Low Resolution
REP3-029	Highways England Deadline 3 Submission - 6.2 Environmental Statement - Figure 13.1: Water Bodies and their Attributes (Version P04) - Low Resolution
REP3-030	Highways England Deadline 3 Submission - 6.2 Environmental Statement - Figure 13.1A: Water: Bodies and their Attributes Groundwater Resources (Version P01) - Low Resolution
REP3-031	Highways England Deadline 3 Submission - 6.2 Environmental Statement - Figure 13.2: Q95 Low Flow Estimation Locations (Version P01) - Low Resolution
REP3-032	Highways England Deadline 3 Submission - 6.2 Environmental Statement - Figure 15.1: Cumulative Zones of Influence and Other Developments (Version P04) - Low Resolution
REP3-033	Highways England Deadline 3 Submission - 6.7 Equality Impact Assessment - Tracked (Version 2)
REP3-034	Highways England Deadline 3 Submission - 6.7 Equality Impact Assessment – Clean (Version 2)
REP3-035	Highways England Deadline 3 Submission - 7.4 Transport Assessment Report - Tracked (Version P06)
REP3-036	Highways England Deadline 3 Submission - 7.4 Transport Assessment Report – Clean (Version P06)
REP3-037	Highways England Deadline 3 Submission - 8.15 Applicant Responses to Documents Received at Deadlines 1 and 2
REP3-038	Highways England Deadline 3 Submission - 8.16 Review of Woodland Mapping, Impact Assessment and Compensation - (Version 1)
REP3-039	Highways England

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	Deadline 3 Submission - 8.17 HGV Flows on Existing A460 - (Version 1)
REP3-040	BWB Consulting Ltd on behalf of M6 Diesel Deadline 3 submission - Comments on Written Representations from other parties, SoCGs from other parties, the Applicant's first revised draft DCO, and the Applicant's responses to the first written questions
REP3-041	Cadent Gas Limited Deadline 3 Submission - Comments on Statement of Common Ground (SoCG) (Amendments to Highways England's version of 5 November 2020)
REP3-042	Cadent Gas Limited Deadline 3 Submission - Comments on Statement of Common Ground (SoCG) (Clean)
REP3-043	Fieldfisher LLP on behalf of Allow Ltd Deadline 3 Submission - Comments on Applicant's first revised draft DCO
REP3-044	i-Transport LLP on behalf of St Francis Group Deadline 3 Submission - Comments on Statement of Common Ground (SoCG)
Late Submission	
REP3-045	Ministry of Defence (MOD) Deadline 3 Submission - Late submission accepted at the discretion of the Examining Authority
Deadline 3A – 01 December 2020 • Comments on the Changes accepted on 29 October 2020	
REP3A-001	Bagshaws LLP on behalf of Allow Ltd) Deadline 3A Submission - Comments on the Changes accepted on 29 October 2020
REP3A-002	Bagshaws LLP on behalf of I & A Simkin Deadline 3A Submission - Comments on the Changes accepted on 29 October 2020
REP3A-003	CT Planning on behalf of South Staffordshire Water plc Deadline 3A Submission - Comments on the Changes accepted on 29 October 2020
Deadline 4 – 08 January 2021 • Post December 2020 Hearing submissions including written submissions of oral case • Any revised/updated SoCG • Responses to the ExA's Further Written Questions • Applicant's revised draft DCO • Comments on any additional information/submissions received by D3 and D3A • Responses to any further information requested by the ExA for this deadline	
REP4-001	Highways England Deadline 4 Submission - Cover Letter
REP4-002	Highways England Deadline 4 Submission - 1.5 Guide to the Application - Clean (version P11)
REP4-003	Highways England Deadline 4 Submission - 1.5 Guide to the Application - Tracked (version P11)
REP4-004	Highways England

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	Deadline 4 Submission - 2.10 Engineering Section Drawings (version P03)
REP4-005	Highways England Deadline 4 Submission - 3.1 Draft Development Consent Order - Clean (version 4)
REP4-006	Highways England Deadline 4 Submission - 3.1 Draft Development Consent Order - Tracked (version 4)
REP4-007	Highways England Deadline 4 Submission - 3.1 Draft Development Consent Order Validation Report (version 4)
REP4-008	Highways England Deadline 4 Submission - 3.3 Consents and Agreements Position Statement - Clean (version P03)
REP4-009	Highways England Deadline 4 Submission - 3.3 Consents and Agreements Position Statement - Tracked (version P03)
REP4-010	Highways England Deadline 4 Submission - 6.11 Outline Environmental Management Plan - Clean (version 4)
REP4-011	Highways England Deadline 4 Submission - 6.11 Outline Environmental Management Plan - Tracked (version 4)
REP4-012	Highways England Deadline 4 Submission - 7.5 Outline Traffic Management Plan - Clean (Version P05)
REP4-013	Highways England Deadline 4 Submission - 7.5 Outline Traffic Management Plan - Tracked (Version P05)
REP4-014	Highways England Deadline 4 Submission - 8.8 Statement of Commonality for Statements of Common Ground - Clean (version P02)
REP4-015	Highways England Deadline 4 Submission - 8.8 Statement of Commonality for Statements of Common Ground - Tracked (version P02)
REP4-016	Highways England (Deadline 4 Submission - 8.8 LIU(B) Draft Statement of Common Ground with William Bibbey (version 3 (P04))
REP4-017	Highways England Deadline 4 Submission - 8.8 LIU(C) Draft Statement of Common Ground with Robert Edward Rowe (version 3 (P04))
REP4-018	Highways England Deadline 4 Submission - 8.8 LIU(E) Draft Statement of Common Ground with Mark Commins & Tracey Commins (version 3 (P04))
REP4-019	Highways England Deadline 4 Submission - 8.8 LIU(G) Draft Statement of Common Ground with Michael Byard (version 2 (P04))
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REP6A-002	Highways England Deadline 6A Submission - 360° photography requested by the ExA
Deadline 7 – 26 March 2021 • Comments on responses to the ExA's further Written Questions • Comments on the RIES • Comments on the ExA's proposed schedule of changes to the draft DCO • Comments on any additional information/submissions received by D6 • Comments on the 360° photography and video footage received by D6A • Responses to any further information requested by the ExA for this deadline	
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REP7-039	Cadent Gas Limited Deadline 7 Submission
REP7-040	Daniel Williams Deadline 7 Submission - Comments on response to Deadline 6
REP7-041	BWB Consulting Ltd on behalf of M6 Diesel Deadline 7 Submission - Comments on Response to Deadline 6 and responses to the Examining Authority's Further Written Questions
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REP7-043	CT Planning on behalf of South Staffordshire Water plc Deadline 7 Submission - Comments on Response to Deadline 5 and responses to the Examining Authority's Further Written Questions

Deadline 8 – 7 April 2021

- Responses to comments on the RIES
- Responses to comments on the ExA's proposed schedule of changes to the draft DCO
- Final DCO to be submitted by the Applicantin the SI template with the SI Template validation report (MS Word)
- Final updated Book of Reference
- Final SoCGs
- Final Statement of Commonality of SoCG
- Final Compulsory Acquisition Schedule

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REP8-004	Highways England Deadline 8 Submission - 3.1 Draft Development Consent Order - Tracked (version 7)
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REP8-006	Highways England Deadline 8 Submission - 7.5 Outline Traffic Management Plan - Tracked (version P06)
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REP8-020	Highways England Deadline 8 Submission - 8.8 LIU(N) Statement of Common Ground with Cadent Gas Limited (version 2 (P03))
REP8-021	Highways England Deadline 8 Submission - 8.8 LIU(O) Statement of Common Ground with Severn Trent Water Limited (version 2 (P03))
REP8-022	Highways England Deadline 8 Submission - 8.8 LIU(P) Statement of Common Ground with South Staffordshire Water (version 4 (P04))
REP8-023	Highways England Deadline 8 Submission - 8.8 LIU(Q) Statement of Common Ground with Western Power Distribution (version 2 (P02))
REP8-024	Highways England Deadline 8 Submission - 8.8 LIU(S) Statement of Common Ground with Vodafone Limited (version 2 (P02))
REP8-025	Highways England Deadline 8 Submission - 8.8 O(A) Statement of Common Ground with M6 Diesel Services Limited (version 6 (P07))
REP8-026	Highways England Deadline 8 Submission - 8.8 O(B) Statement of Common Ground with Four Ashes Limited (version P05 (5))
REP8-027	Highways England Deadline 8 Submission - 8.8 P(A) Statement of Common Ground with Environment Agency (version 7 (P09))
REP8-028	Highways England Deadline 8 Submission - 8.8 P(B) Statement of Common Ground with Natural England (version 10 (P14))
REP8-029	Highways England Deadline 8 Submission - 8.28 Applicant Responses to Deadline 7 Representations and Examining Authority Requests (version 1)
REP8-030	Highways England Deadline 8 Submission - 8.29 Draft Planning Obligation relating to Whitgreave's Wood (version 1)
REP8-031	Highways England Deadline 8 Submission - Validation Report
REP8-032	Cadent Gas Limited Deadline 8 Submission
REP8-033	CT Planning on behalf of South Staffordshire Water plc Deadline 8 Submission - Response to information requested by the ExA (letter of 19 March 2021)
REP8-034	Staffordshire County Council Deadline 8 Submission - Response to information requested by the ExA (letter of 19 March 2021)

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REP8-035	The Coal Authority Deadline 8 Submission - Comments on the Proposed Changes and Publication of 360 photography
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REP9-003	Highways England Deadline 9 Submission - 1.5 Guide to the Application - Clean (version P16)
REP9-004	Highways England Deadline 9 Submission - 8.30 Letter of No Impediment for Great Crested Newt. (version 1)
REP9-005	Bagshaws LLP on behalf of Allow Limited Deadline 9 Submission - Final position in respect of matters examined
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OD-002	54M6 Regulation 32 Transboundary Screening
OD-003	Highways England Applicant's s56 notice of accepted application
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OD-005	Highways England Section 56 Certificate
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APPENDIX C: LIST OF ABBREVIATIONS

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
A1BtC	A1 Birtley to Coal House Improvements
A585WHtS	A585 Windy Harbour to Skipool Improvement
AEP	Annual Exceedance Probability
Air Quality Regulations	The Air Quality Standards Regulation 2010 (as amended)
ALC	Agricultural Land Classification
Allow	Allow Limited (Ltd)
AP	Affected Person
APIS	Air Pollution Information System
AQMA	Air Quality Management Area
AQS	UK National Air Quality Strategy
ARN	Affected Road Network
ASI	Accompanied Site Inspection
ASR	South Staffordshire 2019 Air Quality Annual Status Report
ATC	Automatic Traffic Counter
BGS	British Geological Survey
Biodiversity Convention	United Nations Environmental Programme Convention on Biological Diversity 1992
BMV	Best and most versatile agricultural land
BoR	Book of Reference
CA	Compulsory Acquisition
CA Regulations	the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 as amended
Cadent	Cadent Gas Limited
CAH	Compulsory Acquisition Hearing
CEMP	Construction Environmental Management Plan
CftS	Case for the Scheme
CH_4	Methane

CL	Critical Load
cm	Centimetres
CNG	WHO Guidelines for Community Noise 1999
CO	Carbon monoxide
CO_2	carbon dioxide
Core Strategy	The South Staffordshire Local Plan Core Strategy, adopted 11 December 2012.
CRTN	Calculation of Road Traffic Noise
cSAC	Candidate Special Area of Conservation
CWC	City of Wolverhampton Council
D	Deadline
dB	Decibels
DCO	Development Consent Order
dDCO	Draft Development Consent Order
Decisions Regulations	Infrastructure Planning (Decisions) Regulations 2010 (as amended)
Defra	Department for Environment, Food and Rural Affairs
DfT	Department for Transport
DM	Do-Minimum
DMRB	Design Manual for Roads and Bridges
DoS	Degree of Saturation
DS	Do-Something
dSoCG	Draft Statement of Common Ground
EA	Environment Agency
ECHR	European Convention or the Protection of Human Rights and Fundamental Freedoms
EEA	European Economic Area
EIA	Environmental Impact Assessment
EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended)
EL	Examination Library
EM	Explanatory Memorandum

ENG	WHO Environmental Noise Guidelines for the European Region 2018
EPR	the Infrastructure Planning (Examination Procedure) Rules 2010
EqIA	Equality Impact Assessment
EqIA	Equality Impact Assessment
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
ExQ1	First Written Questions
ExQ2	Second Written Questions
ExQ3	Third Written Questions
FRA	Flood Risk Assessment
Framework	National Planning Policy Framework
FY	Future Year (15 years after opening)
GAC	Generic Assessment Criteria
GCN	Great Crested newt
GHG	Greenhouse Gas
GLVIA3	Guidelines for Landscape and Visual; Impact Assessment third edition
ha	hectare
Habitats Regulations	Conservation of Habitats and Species Regulations 2017 (as amended)
HBMCE	Historic Buildings and Monuments Commission for England (commonly known as 'Historic England')
HDV	Heavy Duty Vehicle
HE	Highways England
HEDP	Highways England Delivery Plan
HEMP	Handover Environmental Management Plan
HESBP	Highways England Strategic Business Plan
HEWRAT	Highways England Water Risk Assessment Tool
HFCs	hydroflourocarbons
HGV	Heavy Goods Vehicle
HLA	Historic Landscape Area
HPI	Habitats of Principal Importance
HRA	Habitats Assessment Regulations

IAN	Interim Advice Note (associated with DMRB)
IEMA	Institute of Environmental Management and Assessment
IP	Interested Party
ISH	Issue Specific Hearing
ITR	Indirect Taxation Revenue
ITS	Integrated Transport Strategy
km	kilometres
km	kilometres
km²	square kilometre
L_{Aeq}	Equivalent Continuous Sound Pressure
LCT	Landscape Character Types
LEDs	Light Emitting Diodes
LEMP	Landscape and Ecology Management Plan
LFRMS	Local Flood Risk Management Strategy
LIR	Local Impact Report
LLFA	Lead Local Flood Authority
LNR	Local Nature Reserve
LOAEL	Lowest Observed Adverse Effect Level
LoD	Limits of Deviation
LSE	Likely Significant Effect
LV	Limit Value
LVIA	Landscape and Visual Impact Assessment
LWS	Local Wildlife Site
m	metre
m^2	square metres
m^3	cubic metres
MCC	Manual Classified Count
MHCLG	Ministry of Housing, Communities and Local Government
mm	millimetre
mph	miles per hour
MRTM	Midlands Regional Highway Model
MtCO2e	metric tonnes of carbon dioxide equivalent
N_2O	Nitrous oxide
National Trust	National Trust for Places of Historic Interest or Natural Beauty

NCA	National Character Area
NE	Natural England
NECRA	Natural Environment and Rural Communities Act 2006
NMU	Non-Motorised User (includes Walkers Cyclists and Horse riders)
NNG	WHO Night-time Noise guidelines for Europe 2009
NO_2	Nitrogen Dioxide
NOEL	No Observed Effect Level
NOx	Mono-nitrogen oxides
NPS	National Policy Statement
NPSE	Noise Policy Statement for England
NPSNN	National Policy Statement for National Networks
NRMM	Non-road mobile machinery
NSER	No Significant Effects Report
NSIP	Nationally Significant Infrastructure Project
Nurton	Nurton Developments (Hilton) Limited
OEMP	Outline Environmental Management Plan
OFH	Open Floor Hearing
OY	Opening Year
PA2008	Planning Act 2008 as amended
Parish Councils	Hilton, Featherstone & Brinsford and Shareshill Councils
PFCs	perfluorocarbons
PM	Preliminary Meeting
PM_{10}	Particulate matter of 10 micrometres or less in diameter
$PM_{2.5}$	Particulate matter of 2.5 micrometres or less in diameter
PPG	Planning Practice Guidance
PPV	Peak Particle Velocity
Proposed Development	M54 to M6 Link Road
PRoW	Public Right of Way
pSAC	Possible Special Area of Conservation
PSED	Public Sector Equality Duty
pSPA	Potential Special Protection Area

R	Requirement
Ramsar Convention	The Convention on Wetlands of International Importance
rDCO	Recommended DCO
REAC	Register of Environmental Actions and Commitments
REAC	Register of Environmental Actions and Commitments
RIES	Report on Implications for European Sites
RIG	Regionally Important Geological Site
RIS1	Road Investment Strategy: 2015/16-2019/20 Road Period
RIS2	Road Investment Strategy 2: 2020-2025
ROF Featherstone	Royal Ordnance Factory Featherstone
RP2	Second Road Period in RIS2
RR	Relevant Representation
s	section
SAC	Special Area of Conservation
SAD	Local Plan Site Allocations document, adopted 2018
SATURN	Simulation and Assignment of Traffic to Urban Road Networks developed by the Institute of Transport Studies, University of Leeds.
SBI	Site of Biological Importance
SCC	Staffordshire County Council
SCI	Sites of Community Importance
SF_6	Sulphur hexafluoride
SNCB	Statutory Nature Conservation Body
SO_2	Sulphur Dioxide
SOAEL	Significant Observed Adverse Effect Level
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SoST	Secretary of State for Transport
SPA	Special Protection Area
SPG	Supplementary Planning Guidance
SPZ	Source Protection Zone

SRN	Strategic Road Network
SSC	South Staffordshire Council
SSSI	Site of Special Scientific Interest
SSW	South Staffordshire Water Plc
STW	Severn Trent Water Ltd
SuDs	Sustainable Drainage Systems
SWT	Staffordshire Wildlife Trust
TAG	DfT's Transport Analysis Guidance
TAR	Transport Assessment Report
tCO_2e	tonnes of carbon dioxide equivalent
the Guide	The Guide to the Application [OD-009]
TP	Temporary Possession
UK	United Kingdom
UK Air Quality Strategy	Air Quality Strategy for England, Scotland, Wales and Northern Ireland
UNEP	United Nations Environment Programme
USI	Unaccompanied Site Inspection
VP	Viewpoint
vpd	Vehicles per day
VSC	Very Special Circumstances
Water Environment Regulations	Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (as amended)
WCA	Wildlife and Countryside Act 1981 (as amended)
WebTAG	Web Based Transport Analysis Guidance issued by DfT
WFD	Water Framework Directive (Council Directive 2000/60/EC)
WFDa	Water Framework Directive Assessment
WHO	World Health Organisation
WMI	West Midlands Interchange
WPD	Western Power Distribution Ltd
WR	Written Representations

WSI	Written Scheme of Investigation
ZoI	Zone of Influence
ZTV	Zone of Theoretical Visibility

APPENDIX D: THE RECOMMENDED DCO

STATUTORY INSTRUMENTS

[] No.

INFRASTRUCTURE PLANNING

The M54 to M6 Link Road Development Consent Order 20[ ]

Made

Coming into force

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An application has been made to the Secretary of State, in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**a**) for an Order under section 37 of the Planning Act 2008(**b**) ("the 2008 Act").

The application was examined by a panel (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**).

The panel, having considered the representations made and not withdrawn and having examined the application together with the accompanying documents, in accordance with section 74(2) of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the panel, has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application].

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120, 122 and 123 of, and paragraphs 1 to 3, 10 to 15, 17, 19 to 23, 26, 33, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the M54 to M6 Link Road Development Consent Order 20[ ] and comes into force on [ ] 20[ ].

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**d**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**e**);

"the 1980 Act" means the Highways Act 1980(**f**);

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**g**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**h**);

"the 1990 Act" means the Town and Country Planning Act 1990(**i**);

(**a**) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755, SI. 2014/469, S.I. 2014/2381, S.I.2015/377, S.I. 2015/1682, S.I. 2017/524 and S.I. 2017/572.
(**b**) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).
(**c**) S.I. 2010/103, amended by S.I. 2012/635.
(**d**) 1961 c. 33.
(**e**) 1965 c. 56.
(**f**) 1980 c. 66.
(**g**) 1981 c. 66.
(**h**) 1984 c. 27.
(**i**) 1990 c. 8.

"the 1991 Act" means the New Roads and Street Works Act 1991(**a**);

"the 2004 Act" means the Traffic Management Act 2004(**b**);

"the 2008 Act" means the Planning Act 2008(**c**);

"address" includes any number or address for the purposes of electronic transmission;

"apparatus" has the same meaning as in Part 3 of the 1991 Act;

"authorised development" means the development described in Schedule 1 (authorised development) or any part of it, which is development within the meaning of section 32 (meaning of development) of the 2008 Act;

"the book of reference" means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

"British Telecommunications Plc" means the company registered in England and Wales, company number 01800000, whose registered address is 81 Newgate Street, London EC1A 7AJ);

"building" includes any structure or erection or any part of a building, structure or erection;

"Cadent Gas Ltd" means the company registered in England and Wales, company number 10080864, whose registered address is Ashbrook Court, Prologis Park, Central Boulevard, Coventry CV7 8PE;

"carriageway" has the same meaning as in the 1980 Act and includes part of a carriageway;

"classification of roads plans" means the plans of that description referred to in Schedule 10 (documents to be certified) certified by the Secretary of State as the classification of road plans for the purposes of this Order;

"commence" means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations and mitigation works, ecological surveys and mitigation works, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment, diversion and laying of underground apparatus and site clearance, and the temporary display of site notices or advertisements, and "commencement" is to be construed accordingly;

"cycle track" has the same meaning as in the 1980 Act and includes part of a cycle track(**d**);

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

"the engineering drawings and sections" means the drawings and sections listed in Schedule 10 (documents to be certified) and certified as the engineering drawings and sections by the Secretary of State for the purposes of this Order;

"environmental statement" means the document of that description submitted with the application for this Order and certified as the environmental statement by the Secretary of State for the purposes of this Order;

"footway" and "footpath" have the same meaning as in the 1980 Act and include part of a footway or footpath;

"highway", "highway authority" and "local highway authority" have the same meaning as in the 1980 Act and "highway" includes part of a highway;

(**a**) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26).
(**b**) 2004 c.18.
(**c**) 2008 c. 29.
(**d**) The definition of "cycle track" (in section 329(1) of the 1980 Act) was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

"the land plans" means the plans listed in Schedule 10 (documents to be certified) and certified as the land plans by the Secretary of State for the purposes of this Order;

"limits of deviation" means the limits of deviation referred to in article 6 (limits of deviation);

"maintain" in relation to the authorised development includes, to the extent assessed in the environmental statement, to inspect, repair, adjust, alter, remove or reconstruct and any derivative of "maintain" is to be construed accordingly;

"Order land" means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily, and described in the book of reference;

"the Order limits" means the limits of lands to be acquired or used permanently or temporarily shown on the land plans and works plans within which the authorised development may be carried out;

"owner", in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(**a**);

"relevant planning authority" means in any given provision of this Order, the planning authority for the area to which the provision relates;

"Secretary of State" means the Secretary of State for Transport;

"Severn Trent Water Ltd" means the company registered in England and Wales, company number 02366686, whose registered office address is Severn Trent Centre, 2 St John's Street, Coventry, CV1 2LZ;

"South Staffordshire Plc" means the company registered in England and Wales, company number 04295398, whose registered office address is Green Lane, Walsall, West Midlands, WS2 7PD;

"special road" means a highway which is a special road in accordance with section 16 (general provisions as to special roads) of the 1980 Act or by virtue of an order granting development consent;

"statutory undertaker" means any statutory undertaker for the purposes of section 127(8), of the 2008 Act;

"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"streets, rights of way and access plans" means the plans listed in Schedule 10 (documents to be certified) and certified as the streets, rights of way and access plans by the Secretary of State for the purposes of this Order;

"traffic authority" has the same meaning as in Section 121A (traffic authorities) of the 1984 Act (**b**);

"tree preservation order/impact removal plans" means the drawings referenced in Schedule 10 (documents to be certified) and certified as the tree preservation order/impact removal plans by the Secretary of State;

"trunk road" means a highway which is a trunk road by virtue of—

(a) section 10 or 19(1) of the 1980 Act; or

(b) an order or direction under section 10 of that Act; or

(c) an order granting development consent; or

(d) any other enactment;

"undertaker" means Highways England Company Limited (Company No. 09346363) of Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

(**a**) 1981 c. 67. The definition of "owner" was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c.34). There are other amendments to section 7 which are not relevant to the Order.

(**b**) As inserted by paragraph 70 of Schedule 8 to the 1991 Act, and subsequently amended by paragraphs 70 and 95 of Schedule 1 to the Infrastructure Act 2015 (c.7)

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

"Western Power Distribution Plc" means the company registered in England and Wales, company number 09223384 whose registered address is Avonbank, Feeder Road, Bristol, Avon, BS2 0TB;

"the works plans" means the plans listed in Schedule 10 (documents to be certified) and certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the streets, rights of way and access plans or the classification of road plans.

(6) References in this Order to numbered works are references to works as numbered in Schedule 1 (authorised development).

(7) The provisions of the Neighbourhood Planning Act 2017(**a**), insofar as they relate to temporary possession of land under articles 29 and 30 of this Order, do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within the maintenance period defined in article 30(11), any maintenance of any part of the authorised development.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

(3) Nothing in this Order prevents the carrying out of operations consisting of archaeological investigations, non-intrusive investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements immediately upon this Order coming into force.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

(**a**) 2017 c. 20.

Maintenance of drainage works

5.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article "drainage" has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(**a**).

Limits of deviation

6. In carrying out the authorised development the undertaker may—

(a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and

(b) deviate vertically from the levels of the authorised development shown on the engineering drawings and sections to—

(i) in respect of the construction of any noise barrier, a maximum of 1 metre upwards or downwards; and

(ii) in respect of any other work comprised in the authorised development, to a maximum of 0.5 metres upwards or 0.5 metres downwards,

except that these maximum limits of vertical deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.

Benefit of Order

7.—(1) Subject to paragraph (2) and article 8 (consent to transfer benefit of Order), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

8.—(1) Subject to paragraph (4), the undertaker may—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(**a**) 1991 c.59.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to—

(a) Western Power Distribution Plc for the purposes of undertaking Work Nos. 67(i) and 70;

(b) Severn Trent Water Ltd for the purposes of undertaking Work Nos. 67(iii) and 69(i);

(c) South Staffordshire Plc for the purposes of undertaking Work No. 69(i);

(d) British Telecommunications Plc (or a related or subsidiary company) for the purposes of undertaking Work No. 67(ii); and

(e) Cadent Gas Ltd for the purposes of undertaking Work No. 68.

PART 3

STREETS

Application of the New Roads and Street Works Act 1991 and the Traffic Management Act 2004

9.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of the 1991 Act as major highway works if—

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or

(b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 (dual carriageways and roundabouts)(**a**) of the 1980 Act or section 184 (vehicle crossings over footways and verges)(**b**) of that Act.

(2) In Part 3 of the 1991 Act, in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the undertaker.

(3) The following provisions of Part 3 the 1991 Act (street works in England and Wales) do not apply in relation to any works executed under the powers of this Order—

section 56 (directions as to timing)(**c**);

section 56A (power to give directions as to placing of apparatus)(**d**);

section 58 (restrictions following substantial road works)(**e**);

section 58A (restriction on works following substantial street works)(**f**);

section 73A (power to require undertaker to re-surface street)(**g**);

section 73B (power to specify timing etc. of re-surfacing)(**h**);

section 73C (materials, workmanship and standard of re-surfacing)(**i**);

section 78A (contributions to costs of re-surfacing by undertaker)(**j**); and

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(**a**) Section 64 was amended by section 102 of Schedule 17 to the Local Government Act 1965 (c. 51) and Schedule 9 to the 1991 Act.

(**b**) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c.48), section 4 of, and Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and Schedule 8 to the New Roads and Street Works Act 1991 (c. 22).

(**c**) Section 56 was amended by sections 40 and 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(**d**) Section 56A was inserted by section 44 of the Traffic Management Act 2004 (c. 18).

(**e**) Section 58 was amended by sections 40 and 51 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(**f**) Section 58A was inserted by section 52 of the Traffic Management Act 2004 (c. 18).

(**g**) Section 73A was inserted by section 55 of the Traffic Management Act 2004 (c.18).

(**h**) Section 73B was inserted by section 55 of the Traffic Management Act 2004 (c.18).

(**i**) Section 73C was inserted by section 55 of the Traffic Management Act 2004 (c.18).

(**j**) Section 78A was inserted by section 57 of the Traffic Management Act 2004 (c.18).

Schedule 3A (restriction on works following substantial street works)(**a**).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 12 (temporary stopping up and restriction of use of streets), whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(**b**) referred to in paragraph (4) are—

section 54 (advance notice of certain works)(**c**), subject to paragraph (6);

section 55 (notice of starting date of works)(**d**), subject to paragraph (6);

section 57 (notice of emergency works)(**e**);

section 59 (general duty of street authority to co-ordinate works)(**f**);

section 60 (general duty of undertakers to co-operate);

section 68 (facilities to be afforded to street authority);

section 69 (works likely to affect other apparatus in the street);

section 75 (inspection fees);

section 76 (liability for cost of temporary traffic regulation); and

section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 10 (construction and maintenance of new, altered or diverted streets)—

(a) affects the operation of section 87 of the 1991 Act (prospectively maintainable highways) and means that the undertaker is by reason of any duty under that article to maintain a street or to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or

(b) has effect in relation to maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 of the 1991 Act apply

(8) No consent pursuant to any scheme made under Part 3 of the 2004 Act is required for any works executed under the powers of this Order.

Construction and maintenance of new, altered or diverted streets and other structures

10.—(1) Any street (other than a special road or a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the street lies and, unless otherwise agreed with the local highway authority, the street including any culverts or other structures laid under it, must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a street (other than a special road or a trunk road) is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority in whose area the street lies and, unless otherwise agreed with the local

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(**a**) Schedule 3A was inserted by Schedule 4 to the Traffic Management Act 2004 (c. 18).
(**b**) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
(**c**) As also amended by section 49(1) of the Traffic Management Act 2004 (c. 18).
(**d**) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004 (c. 18).
(**e**) As also amended by section 52(3) of the Traffic Management Act 2004 (c. 18).
(**f**) As amended by section 42 of the Traffic Management Act 2004 (c. 18).

street authority, that part of the street, including any culverts or other structures laid under it, must be maintained by and at the expense of the local street authority from its completion.

(3) In the case of—

(a) a bridge constructed under this Order to carry a highway (other than a special road or a trunk road) over a special road or a trunk road, the highway surface (being those elements over the waterproofing membrane), must be maintained by and at the expense of the local highway authority and the remainder of the bridge, including the waterproofing membrane and structure below, must be maintained by and at the expense of the undertaker; and

(b) the drainage attenuation and treatment systems to be constructed pursuant to Work No. 58 those works must be maintained by and at the expense of the local highway authority;

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street or other structure under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), the court must in particular have regard to the following matters—

(a) the character of the street or structure and the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a street or structure of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the street or structure;

(d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street or structure to which the action relates was likely to cause dangers to users of the street or structure; and

(e) where the undertaker could not reasonably have been expected to repair that part of the street or structure before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street or structure to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

(6) The power of the undertaker to maintain the authorised development pursuant to article 4 (maintenance of authorised development) shall cease to apply to any streets and other structures which when completed must be maintained by and at the expense of the local highway authority pursuant to this article.

Classification of roads etc.

11.—(1) The roads described in Part 1 (special roads) of Schedule 3 (classification of roads etc.) are to be—

(a) classified as special roads for the purposes of any enactment or instrument which refers to highways classified as special roads; and

(b) provided for the use of traffic of Classes I and II of the classes of traffic set out in Schedule 4 of the 1980 Act.

(2) From the date on which the undertaker notifies the Secretary of State that the roads described in Part 1 (special roads) of Schedule 3 have been completed and are open for traffic—

(a) the undertaker is the highway authority for those roads; and

(b) they are classified as trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads.

(3) From the date on which the authorised development is open for traffic the roads described in Part 2 (trunk roads) of Schedule 3 are to become trunk roads as if they had become so by virtue of an order under section 10(2) (general provisions as to trunk roads) of the 1980 Act specifying that date as the date on which they were to become trunk roads.

(4) From the date on which the authorised development is open for traffic the roads described in Part 3 (classified roads) of Schedule 3 are to become classified roads for the purposes of any enactment or instrument which refers to highways classified as classified roads as if such classification has been made under section 12(3) (general provisions as to principal and classified roads) of the 1980 Act.

(5) From the date on which the authorised development is open for traffic the roads described in Part 4 (unclassified roads) of Schedule 3 are to become unclassified roads for the purpose of any enactment or instrument which refers to unclassified roads.

(6) From the date on which the roads specified in Part 5 (speed limits) of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (2) of that part along the lengths of the road identified in the corresponding row of column (1) of the Part.

(7) The public rights of way described in Part 6 (public rights of way) of Schedule 3 and identified in the streets, rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from—

(a) the date on which the authorised development is open for traffic; or

(b) such date as soon as reasonably practicable after the construction of the public right of way as may be agreed by the undertaker and the local highway authority.

(8) On a date to be determined by the undertaker, which shall be no later than three months after the authorised development is open for traffic, the order specified in column (3) in Part 7 (creation of new traffic regulation orders) of Schedule 3 is to be in force and no person is to drive a motor vehicle at a speed exceeding the limit in miles per hour specified in column (4) of that Part along the lengths of road identified in the corresponding row of column (2) of that Part.

(9) On such day as the undertaker may determine, which shall be no later than three months after the authorised development is open for traffic, the order specified in column (3) of Part 8 (variation of existing traffic regulation orders) of Schedule 3 is to be varied as specified in the corresponding row of column (4) of that Part in respect of the lengths of roads specified in the corresponding row of column (2) of that Part.

(10) The application of paragraphs (1) to (9) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters, including by an instrument made under the 1984 Act where the matter in question could have been included in an order made under that Act.

Temporary stopping up and restriction of use of streets

12.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter, divert or restrict the use of any street and may for any reasonable time—

(a) divert the traffic from the street; and

(b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up or restricted under the powers conferred by this article and which is within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) The undertaker must not temporarily stop up, alter or divert any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

Permanent stopping up and restriction of use of streets, public rights of way and private means of access

13.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets, public rights of way and private means of access specified in column (1) of Parts 1, 2, 3, 4, 5, 6 and 7 of Schedule 4 (permanent stopping up of streets, public rights of way and private means of access) to the extent specified and described in column (2) of those parts of that Schedule.

(2) No street, public rights of way or private means of access specified in column (1) of Parts 1, 3 and 6 of Schedule 4 is to be wholly or partly stopped up under this article unless—

(a) the new street, public right of way or private means of access to be constructed and substituted for it, which is specified in column (3) of those Parts of that Schedule, is open for use and, in the case of a street has been completed to the reasonable satisfaction of the street authority; or

(b) a temporary alternative route for the passage of such traffic as could have used the street, public right of way or private means of access to be stopped up is first provided and, in the case of a street, is subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street, public right of way or private means of access until the completion and opening of the new street, public right of way or private means of access in accordance with sub-paragraph (a).

(3) No street or public right of way specified in column (1) of Part 2 and 4 of Schedule 4 is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street or public right of way to be stopped up.

(4) The condition referred to in paragraph (3) is that—

(a) the undertaker is in possession of the land; or

(b) there is no right of access to the land from the street or public right of way concerned; or

(c) there is reasonably convenient access to the land otherwise than from the street or public right of way concerned; or

(d) the owners and occupiers of the land have agreed to the stopping up.

(5) Where a street or private means of access has been stopped up under this article—

(a) all rights of way over or along the street or private means of access so stopped up are extinguished; and

(b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street or private means of access as is bounded on both sides by land owned by the undertaker.

(6) The undertaker may, in connection with the carrying out of the authorised development, alter the public right of way specified in column (1) of Part 5 of Schedule 4 as specified in column (2) of that Part.

(7) The undertaker may, in connection with the carrying out of the authorised development, provide or alter the private means of access specified in column (1) of Part 7 of Schedule 4 as specified in column (2) of that Part.

(8) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(9) This article is subject to article 32 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

14. The undertaker may, for the purposes of the authorised development, form and layout means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Clearways

15.—(1) From the date on which the roads described in Part 1 of Schedule 3 (classification of roads, etc.) are open for traffic, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of those roads except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(2) Nothing in paragraph (1) may apply—

(a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—

(i) the removal of any obstruction to traffic;

(ii) the maintenance, improvement, reconstruction or operation of the road;

(iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 3A to the Communications Act 2003(**a**); or

(iv) any building operation or demolition;

(b) in relation to a vehicle being used—

(i) for police, ambulance, fire and rescue authority or traffic officer purposes;

(ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;

(iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(**b**); or

(iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000(**c**); or

(c) in relation to a vehicle waiting when the person in control of it is—

(i) required by law to stop;

(ii) obliged to stop in order to avoid an accident; or

(iii) prevented from proceeding by circumstances outside the person's control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in Part 1 of Schedule 3 for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(4) Paragraphs (1), (2) and (3) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

(**a**) 2003 c. 21. Schedule 3A was inserted by section 4 of, and Schedule 1 to the Digital Economy Act 2017 (c.30).
(**b**) 1991 c. 56.
(**c**) 2000 c. 26.

(5) In this article "traffic officer" means an individual authorised to carry out assigned duties connected with, or intended to facilitate or to be conducive or incidental to the management of traffic on the relevant road network, or a person authorised by the Secretary of State in accordance with section 2 of the 2004 Act.

Traffic regulation

16.—(1) This article applies to roads in respect of which the undertaker is not the traffic authority.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

(a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;

(b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;

(c) authorise the use as a parking place of any road;

(d) make provision as to the direction or priority of vehicular traffic on any road; and

(e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(3) The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraph (2) unless it has—

(a) given not less than—

(i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or

(ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated; and

(b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the undertaker under paragraph (2)—

(a) has effect as if duly made by, as the case may be–

(i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking spaces)(**a**) of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and

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(**a**) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

(b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(**a**).

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (2) within a period of 24 months from the opening of the authorised development.

(8) Before exercising the powers of paragraph (2) the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

(9) Expressions used in this article and in the 1984 Act shall have the same meaning in this article as in that Act.

(10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

(11) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

17.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991 (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016(**b**).

(7) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

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(**a**) 2004 c. 18.
(**b**) S.I. 2016/1154.

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(**a**) have the same meaning as in that Act.

(8) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application that person will be deemed to have granted consent or given approval, as the case may be.

Protective work to buildings

18.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

(a) enter the building and any land within its curtilage; and

(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

(a) a right under paragraph (1) to carry out protective works to a building;

(b) a right under paragraph (3) to enter a building and land within its curtilage;

(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or

(d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

(a) protective works are carried out under this article to a building; and

(b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears

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(**a**) 1991 c. 57.

that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (**a**) of the 2008 Act (compensation in case where no right to claim in nuisance).

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article "protective works" in relation to a building means—

(a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and

(b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

19.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

(a) survey or investigate the land (including any watercourses, ground water, static water bodies or vegetation on the land);

(b) without limitation to the scope of sub-paragraph (a), make any excavations or trial holes and boreholes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and groundwater and remove soil and water samples and discharge water samples onto the land;

(c) without limitation to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes and boreholes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

(a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and

(b) may take onto the land such vehicles and equipment as are necessary to carry out the surveyor investigation or to make the trial holes and boreholes.

(4) No trial holes or boreholes are to be made under this article—

(a) in land located within a highway boundary for which the local highway authority is the highway authority without the consent of the local highway authority; or

(b) in a private street without the consent of the street authority, but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(**a**) As amended by S.I. 2009/1307.

(6) If either a local highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

(a) under paragraph (4)(a) in the case of a local highway authority; or

(b) under paragraph (4)(b) in the case of a street authority,

that authority will be deemed to have granted consent.

PART 5

POWERS OF ACQUISITION AND POSSESSION

Compulsory acquisition of land

20.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or is incidental to it.

(2) This article is subject to paragraph (2) of article 23 (compulsory acquisition of rights and imposition of restrictive covenants) and paragraph (9) of article 29 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

21. Part 2 of Schedule 2 to the Acquisition of Land Act 1981(**a**) (minerals) is incorporated in this Order subject to the modification that for "the acquiring authority" substitute "the undertaker".

Time limit for exercise of authority to acquire land compulsorily

22.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

(a) no notice to treat is to be served under Part 1 of the 1965 Act as modified by article 25 of this Order; and

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 26 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 29 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights and imposition of restrictive covenants

23.—(1) Subject to paragraphs (2) to (4) of this article, the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, as may be required for any purpose for which that land may be acquired under article 20 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(**a**) 1981 c. 67.

(3) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in column (1) of Schedule 5.

(4) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act, as substituted by paragraph 5(8) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), where the undertaker acquires a right over land or the benefit of a restrictive covenant affecting land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(6) The undertaker's power to create rights under paragraph (1) includes the power to create rights for the benefit of third parties. Where a right is for the benefit of a third party that right shall on the exercise of the power of compulsory acquisition have effect for that party's benefit and be treated for all purposes as though it was vested in the third party directly.

Private rights over land

24.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

(a) from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry)(**a**),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

(a) as from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker that are within the Order limits are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138(**b**) of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 31 (statutory undertakers) applies.

(**a**) Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981, section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1) and sections 186(1) and (2), 187 and 188 of the Housing and Planning Act 2016 (c.22).

(**b**) Section 138 was amended by section 23(1) and (4) of the Growth and Infrastructure Act 2013 (c.27) and S.I. 2017/1285.

(7) Paragraphs (1) to (4) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Modification of Part 1 of the Compulsory Purchase Act 1965

25.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125(**a**) (application of compulsory acquisition provisions) of the 2008 Act is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge)(**b**)—

(a) for "section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order)" substitute "section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)"; and

(b) for "the three year period mentioned in section 4" substitute "the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the M54 to M6 Link Road Development Consent Order 20[ ]".

(3) In section 11A (powers of entry; further notice of entry)(**c**) —

(a) in subsection (1)(a), after "land" insert "under that provision";

(b) in subsection (2), after "land" insert "under that provision".

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for "section 4 of this Act" substitute "article 22 (time limit for exercise of authority to acquire land compulsorily) of the M54 to M6 Link Road Development Consent Order 20[ ]".

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute "But see article 27(3) (acquisition of subsoil and airspace only) of the M54 to M6 Link Road Development Consent Order 20[ ], which excludes the acquisition of subsoil or airspace only from this Schedule"; and

(b) after paragraph 29, insert a new paragraph:

(**a**) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c.22).

(**b**) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(**c**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 18 (protective work to buildings), 29 (temporary use of land for carrying out the authorised development) or 30 (temporary use of land for maintaining the authorised development) of the M54 to M6 Link Road Development Consent Order 20[ ]."

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

26.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as so applied, has effect with the modifications set out in this article.

(3) In section 1 (application of act) for subsection 2 substitute—

"(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.".

(4) In section 5 (earliest date for execution of declaration)(**a**), in subsection (2), omit the words from ", and this subsection" to the end.

(5) Omit section 5A (time limit for a general vesting declaration)(**b**).

(6) In section 5B(1) (extension of time limit during challenge)(**c**)—

(a) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)" substitute "section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)"; and

(b) for "the three year period mentioned in section 5A" substitute "the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the M54 to M6 Link Road Development Consent Order 20[ ]".

(7) In section 6 (notices after execution of declaration) in subsection (1)(b)(**d**) for "section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981" substitute "section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008".

(8) In section 7 (constructive notice to treat) in subsection (1)(a)(**e**), omit "(as modified by section 4 of the Acquisition of Land Act 1981)".

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration)(**f**), omit paragraph 1(2).

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 25 (modification of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

27.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or of the airspace over the land referred to in paragraph (1) of article 20 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(**a**) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016 (c. 22).
(**b**) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).
(**c**) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).
(**d**) Section 6 was amended by paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22) and section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).
(**e**) Section 7(1) was substituted by Schedule 18 to the Housing and Planning Act 2016 (c. 22).
(**f**) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the Compulsory Purchase Act 1965 as modified by article 25 of this Order;

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the Compulsory Purchase (Vesting Declarations) Act 1981; and

(c) Section 153(4A)(**a**) (blighted land; proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over streets

28.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, will be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

29.—(1) The undertaker may, in connection with the carrying out of the authorised development—

(a) enter on and take temporary possession of—

(i) the land specified in column (1) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and

(ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;

(b) remove any buildings and vegetation from that land;

(**a**) Subsection (4A) of section 153 was inserted by section 200(1) and (2) of the Housing and Planning Act 2016 (c.22).

(c) construct temporary works (including the provision of means of access) and buildings on that land; and

(d) construct any works on that land as are mentioned in Schedule 1 (authorised development).

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 7, or

(b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section (4) of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the condition it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land; but the undertaker is not required to—

(a) replace a building removed under this article;

(b) restore the land on which any permanent works have been constructed under paragraph (1)(d);

(c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or

(d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13 (refusal to give possession to acquiring authority)(**a**) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory

(**a**) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining the authorised development

30.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

(a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and

(b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the condition it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article "the maintenance period", in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

31.—(1) Subject to the provisions of Schedule 9 (protective provisions), article 23 (compulsory acquisition of rights and imposition of restrictive covenants) and paragraph (2), the undertaker may—

(a) acquire compulsorily, or acquire new rights or impose restrictive covenants over any Order land belonging to statutory undertakers; and

(b) extinguish the rights of, and remove or reposition apparatus belonging to, statutory undertakers over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

(a) Part 3 (street works in England and Wales) of the 1991 Act; and

(b) article 32 of this Order (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped up streets

32.—(1) Where a street is stopped up under article 13 (permanent stopping up and restriction of use of streets, public rights of way and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 13 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

(a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the statutory utility may reasonably determine and have power to place it; or

(b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the statutory utility in or in connection with—

(a) the execution of the relocation works required in consequence of the stopping up of the street; and

(b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

(a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory utility any financial benefit

by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

(a) the allowable costs of the relocation works are to be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and

(b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

"apparatus" has the same meaning as in Part 3 of the 1991 Act;

"relocation works" means work executed, or apparatus provided, under paragraph (2); and

"statutory utility" means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(**a**).

Recovery of costs of new connections

33.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 31, any person who is—

(a) the owner or occupier of premises the drains of which communicated with that sewer; or

(b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 32 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this article—

"public communications provider" has the same meaning as in section 151(1) of the Communications Act 2003(**b**); and

"public utility undertaker" means a gas, water, electricity or sewerage undertaker.

PART 6

OPERATIONS

Felling or lopping of trees and removal of hedgerows

34.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(**a**) 2003 c. 21. There are amendments to this Act which are not relevant to this Order.
(**b**) 2003 c. 21. There are amendments to this Act which are not relevant to this Order.

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow described in Part 1 of Schedule 8 (Hedgerows).

(5) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow which is not described in Part 1 of Schedule 8 (Hedgerows) with the prior consent of the local authority.

(6) In carrying out any activity authorised by paragraph (4) and (5), the undertaker must pay compensation to any person for any loss or damage arising from such activity.

(7) In this article "hedgerow" has the same meaning as in the Hedgerow Regulations 1997(**a**) and includes important hedgerows.

Trees subject to tree preservation orders

35.—(1) The undertaker may fell or lop any tree described in Part 2 of Schedule 8 (Trees subject to tree preservation orders) or cut back its roots or undertake such other works if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or

(b) from constituting a danger to passengers or other persons using the authorised project.

(2) In carrying out any activity authorised by paragraph (1)—

(a) the undertaker shall do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and

(b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

36.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it, so far as

(**a**) S.I. 1997/1160.

any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the Town and Country Planning Act 1990

37. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) of the 1990 Act (cases in which land is to be treated as not being operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

38.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**a**) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(**b**); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

39. Schedule 9 (protective provisions) to the Order has effect.

(**a**) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

(**b**) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 c. 43. There are other amendments to the 1974 Act which are not relevant to this Order.

Certification of documents, etc.

40.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 10 (documents to be certified) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 10 (documents to be certified) is required to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

(3) A plan or document so certified will be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(4) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public:

(a) a copy of each of the documents listed in Schedule 10 (documents to be certified) as may be amended in accordance with paragraph (2); and

(b) a register of those requirements contained in Part 1 of Schedule 2 of this Order (requirements) that provide for further approvals to be given by the Secretary of State.

(5) The register pursuant to sub-paragraph (4)(b) must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

(6) The electronic record set out in paragraph (4) must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

Service of notices

41.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(**a**) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and

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(**a**) 1978 c. 30.

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement will be taken to be fulfilled only where—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

(d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender will provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation will be final and will take effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article will not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

42. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the Lands Chamber of the Upper Tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed
Title
Date Department

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

In the administrative areas of South Staffordshire and Wolverhampton

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, and associated development as defined in section 115 of the 2008 Act, comprising:

Work No.1A – shown on sheet number 1 of the works plans and being the alteration of verge mounted advance directional signage along the M54 carriageway.

Work No.1B – shown on sheet number 1 of the works plans and being the alteration of verge mounted advance directional signage along the M54 carriageway.

Work No.1C – shown on sheet number 1 of the works plans and being the alteration of verge mounted advance directional signage along the M54 carriageway.

Work No.1D – shown on sheet number 2 of the works plans and being the alteration of verge mounted advance directional signage along the A449 carriageway.

Work No.1E – shown on sheet numbers 3 and 4 of the works plans and being the improvement of the eastbound carriageway of the M54 Motorway at the Junction 1 diverge (approximately 480 metres in length).

Work No.2 – shown on sheet number 4 of the works plans and being the construction of a free-flowing two lane carriageway from the M54 eastbound at Junction 1 to the link road (approximately 1,200 metres in length).

Work No.3 – shown on sheet numbers 3 and 4 of the works plans and being the improvement of the westbound carriageway of the M54 at the Junction 1 merge (approximately 600 metres in length).

Work No.4 – shown on sheet number 4 of the works plans and being the construction of a free-flowing two lane carriageway link from the link road to the M54 westbound at Junction 1 (approximately 1,270 metres in length).

Work No.5 – shown on sheet number 4 of the works plans and being the construction of a slip road from the M54 Junction 1 south roundabout to the M54 westbound merge slip road (approximately 340 metres in length).

Work No.6 – shown on sheet number 4 of the works plans and being the construction of a slip road from the M54 eastbound slip road at Junction 1 to the Featherstone Junction West Roundabout (approximately 475 metres in length).

Work No.7 – shown on sheet number 4 of the works plans and being the realignment of the A460 into the M54 Junction 1 south roundabout (approximately 185 metres in length).

Work No.8 – shown on sheet number 4 of the works plans and being the demolition of the existing M54 Junction 1 circulatory carriageway and the construction of the M54 Junction 1 south roundabout.

Work No.9 – shown on sheet number 4 of the works plans and being the realignment of the M54 Junction 1 westbound diverge slip road into the M54 Junction 1 south roundabout (approximately 315 metres in length).

Work No.10 – shown on sheet number 4 of the works plans and being the construction of a dual carriageway connector road between the Featherstone Junction east roundabout and M54 Junction 1 south roundabout (approximately 370 metres in length).

Work No.11 – shown on sheet number 4 of the works plans and being the stopping up of the existing A460 at M54 Junction 1 including the construction of a turning head facility and improvements at the junction between the A460 and The Avenue.

Work No.12 – shown on sheet number 4 of the works plans and being the realignment of the M54 Junction 1 eastbound merge slip into the Featherstone Junction east roundabout (approximately 845 metres in length).

Work No.13 – shown on sheet number 4 of the works plans and being the construction of the Featherstone Junction east roundabout.

Work No.14 – shown on sheet number 4 of the works plans and being the construction of a carriageway dumbbell link between the Featherstone Junction east roundabout and the Featherstone Junction west roundabout passing over the link road via a structure (approximately 100 metres in length).

Work No.15 – shown on sheet number 4 of the works plans and being the construction of the Featherstone Junction west roundabout.

Work No.16 – shown on sheet number 4 of the works plans and being the realignment of the existing A460 to the Featherstone Junction west roundabout (approximately 460 metres in length).

Work No.17 – shown on sheet number 4 of the works plans and being the realignment of the existing A460 and construction of a T-Junction on the realigned existing A460 (approximately 110 metres in length).

Work No.18 – works number no longer in use.

Work No.19 – works number no longer in use.

Work No.20 – shown on sheet number 4 of the works plans and being the construction of an access for Tower Hill Farm connecting to the Featherstone Junction east roundabout (approximately 100 metres in length).

Work No.21 – shown on sheet number 4 of the works plans and being the construction of a Hilton Park Access Track connecting to the Featherstone Junction east roundabout (approximately 390 metres in length).

Work No.22 – shown on sheet number 4 of the works plans and being the construction of the Featherstone Junction southbound diverge slip road (approximately 520 metres in length).

Work No.23 – shown on sheet number 4 of the works plans and being the construction of the Featherstone Junction northbound merge slip road (approximately 490 metres in length).

Work No.24 – shown on sheet numbers 4 and 5 of the works plans and being the closure of Dark Lane between the final property along Dark Lane and the Junction between Dark Lane and Hilton Lane including the construction of a turning head facility.

Work No.25 – shown on sheet numbers 4 to 6 of the works plans and being the construction of the link road northbound dual carriageway to M6 Junction 11 (approximately 1650 metres in length).

Work No.26 – shown on sheet numbers 4 to 6 of the works plans and being the construction of the link road southbound dual-carriageway from M6 Junction 11 (approximately 1600 metres in length).

Work No.27 – shown on sheet number 5 of the works plans and being the construction of a realigned Hilton Lane including a structure over the link road (approximately 300 metres in length).

Work No.28 – shown on sheet number 5 of the works plans and being the construction of an accommodation overbridge and realignment of access tracks to the south of Brookfield Farm (approximately 575 metres in length).

Work No.29 – shown on sheet number 6 of the works plans and being the realignment of the existing A460 to M6 Junction 11 (approximately 330 metres in length).

Work No.30 – shown on sheet number 6 of the works plans and being the realignment of Mill Lane (approximately 200 metres in length).

Work No.31 – shown on sheet number 4 of the works plans and being the construction of a new structure on the M54 at Junction 1 to facilitate the new junction arrangement under the motorway.

Work No.32 – shown on sheet numbers 5 and 6 of the works plans and being the realignment of the M6 Junction 11 northbound diverge slip road (approximately 320 metres in length).

Work No.33 – shown on sheet number 6 of the works plans and being the realignment of the M6 Junction 11 northbound merge slip road (approximately 620 metres in length).

Work No.34 – shown on sheet numbers 5 and 6 of the works plans and being the realignment of the M6 Junction 11 southbound merge slip road (approximately 610 metres in length).

Work No.35 – shown on sheet number 6 of the works plans and being the realignment of the M6 Junction 11 southbound diverge slip road (approximately 380 metres in length).

Work No.36 – shown on sheet number 6 of the works plans and being the demolition of the two existing structures at M6 Junction 11, removal of redundant sections of the existing circulatory carriageway and the construction of a new M6 Junction 11 circulatory carriageway, including the construction of two overbridges over the M6 and installation of five portal gantries around the circulatory carriageway and associated infrastructure works along the M6 carriageway to facilitate construction.

Work No.37 – shown on sheet number 6 of the works plans and being the realignment of the A462 to M6 Junction 11 (approximately 150 metres in length).

Work No.38 – shown on sheet number 6 of the works plans and being the realignment of the adjoining Wolverhampton Road to the realigned A462.

Work No.39 – shown on sheet number 6 of the works plans and being the realignment and widening of the A460 southbound by a single lane from the M6 Toll merge to M6 Junction 11 and widening of the A460 northbound by a single lane from M6 Junction 11 tapering back down to two lanes ahead of the M6 Toll overbridge.

Work No.40 – shown on sheet number 6 of the works plans and being the realignment of the adjoining Wolverhampton Road to the realigned A460.

Work No.41 – shown on sheet number 2 of the works plans and being the installation of a cantilever gantry at M54 Junction 2 in the eastbound verge and associated infrastructure works to facilitate construction.

Work No.42 – shown on sheet number 3 of the works plans and being the installation of a cantilever gantry in the existing M54 eastbound verge and associated infrastructure works to facilitate construction.

Work No.43 – shown on sheet number 3 of the works plans and being the installation of a cantilever gantry in the existing M54 eastbound verge and associated infrastructure works to facilitate construction.

Work No.44 – shown on sheet number 4 of the works plans and being the installation of a cantilever gantry on the M54 eastbound diverge slip road and associated infrastructure works to facilitate construction.

Work No.45 – shown on sheet number 4 of the works plans and being the construction of a culvert and realignment of Watercourse 2 in the vicinity of M54 Junction 1.

Work No.46 – shown on sheet number 4 of the works plans and being the construction of a culvert and realignment of Watercourse 3 adjacent to Dark Lane and associated works required to the existing drainage pools.

Work No.47 – shown on sheet number 5 of the works plans and being the construction of a culvert on Watercourse 4 adjacent to Brookfield Farm.

Work No.48 – shown on sheet number 6 of the works plans and being the construction of a structure under the link road on Watercourse 5 (Latherford Brook).

Work No.49 – shown on sheet number 6 of the works plans and being the alteration of a portal gantry across the M6 Junction 11 southbound merge and northbound diverge slip roads.

Work No.50 – shown on sheet number 6 of the works plans and being the alteration of a portal gantry over the M6 Junction 11 southbound diverge slip road.

Work No.51 – shown on sheet number 7 of the works plans and being the alteration of a portal gantry along the M6 southbound.

Work No.52 – shown on sheet number 7 of the works plans and being the alteration of a portal gantry along the M6 southbound.

Work No.53 – shown on sheet number 7 of the works plans and being the alteration of a portal along the M6 southbound.

Work No.54 – shown on sheet number 8 of the works plans and being the alteration of a portal gantry along the M6 southbound.

Work No.55A – shown on sheet number 9 of the works plans and being the alteration of a cantilever gantry along the M6 southbound.

Work No.55B – shown on sheet number 10 of the works plans and being the alteration of a cantilever gantry along the M6 southbound.

Work No.55C – shown on sheet number 10 of the works plans and being the alteration of a cantilever gantry along the M6 southbound.

Work No.56 – shown on sheet number 3 of the works plans and being the installation of drainage attenuation and treatment systems to the north west of M54 Junction 1. Works to include the installation of a balancing pond to provide attenuation and treatment with a new outfall connection to the existing ditch. Access for maintenance to be constructed off Brookhouse Lane.

Work No.57 – shown on sheet number 4 of the works plans and being the installation of drainage attenuation and treatment systems to the north east of M54 Junction 1. Works to include the installation of a balancing pond to provide attenuation and treatment with a new outfall connection to Watercourse 2. Access for maintenance to be constructed off the dual carriageway connector road.

Work No.58 – shown on sheet number 4 of the works plans and being the installation of drainage attenuation and treatment systems to the east of the existing A460. Works to include the installation of a balancing pond to provide attenuation and treatment with a new outfall connection to the existing drainage network. Access for maintenance to be constructed off the existing A460.

Work No.59 – shown on sheet number 5 of the works plans and being the installation of drainage attenuation and treatment systems to the south of Brookfield Farm. Works to include the installation of a balancing pond to provide attenuation and treatment with a new outfall connection to Watercourse 4. Access for maintenance to the balancing pond to be along existing track that connects to Hilton Lane and via new accommodation bridge.

Work No.60 – shown on sheet number 6 of the works plans and being the installation of drainage attenuation and treatment systems to the south of M6 Junction 11. Works to include the installation of a balancing pond to provide attenuation and treatment with new outfall connection into Watercourse 5 (Latherford Brook). Access for maintenance to be constructed off the realigned existing A460.

Work No.61 – shown on sheet number 4 of the works plans and being works to realign the existing Public Right of Way (bridleway) Featherstone 3 due to the construction of the new M54 Junction 1 (approximately 250 metres in length).

Work No.62 – shown on sheet numbers 4 and 5 of the works plans and being the construction of a new Public Right of Way (bridleway) connection between Dark Lane and Hilton Lane (approximately 320 metres in length).

Work No.63 – shown on sheet number 5 of the works plans and being works to realign the existing Public Right of Way (footway) Shareshill 5 due to the construction of the link road (approximately 260 metres in length).

Work No.64 – shown on sheet number 5 of the works plans and being works to realign the existing Public Right of Way (bridleway) Shareshill 1 due to the construction of the link road (approximately 750 metres in length).

Work No.65 – shown on sheet number 6 of the works plans and being works to realign the existing Public Rights of Way (footway) Shareshill 4, Saredon 8 and Saredon 1R/2214 due to the construction of the link road (approximately 270 metres in length).

Work No.66 – shown on sheet number 6 of the works plans and being works to realign the existing Public Right of Way Saredon 13 due to the realignment of the existing A460 (approximately 250 metres in length).

Work No.67 – shown on sheet number 4 of the works plans and being the diversion of utilities and associated infrastructure (including (i) electrical, (ii) telecommunications and (iii) potable water) to a new utilities corridor to the west of M54 Junction 1 (approximately 130 metres in length).

Work No.68 – shown on sheet number 4 of the works plans and being the diversion of a high pressure gas main and associated infrastructure due to the construction of the link road (approximately 1000 metres in length).

Work No.69 – shown on sheet numbers 4 and 5 of the works plans and being the diversion of a (i) water main, (ii) sewer, (iii) communications ducts and associated infrastructure due to the construction of the link road (approximately 500 metres in length).

Work No.70 – shown on sheet number 5 of the works plans and being the diversion of an overhead electricity cable and associated infrastructure due to the construction of the link road (approximately 220 metres in length).

Work No.71 – shown on sheet number 4 of the works plans and being the construction of a temporary site compound situated on land to the east of the existing A460 and the establishment of permanent environmental mitigation areas to the west of the link road including habitat creation (species rich grassland, woodland planting and individual trees) to mitigate for biodiversity loss.

Work No.72 – shown on sheet number 6 of the works plans and being the construction of a temporary site compound situated on land to the north west of M6 Junction 11 and establishment of permanent environmental mitigation areas including species rich grassland, species rich hedgerow, ecology pond and individual trees to mitigate for biodiversity loss.

Work No.73 – shown on sheet numbers 4 and 5 of the works plans and being the modification of the junction between the existing A460, New Road and Dark Lane and associated infrastructure including the removal of the right turn prohibition in to Dark Lane.

Work No.74 – shown on sheet number 5 of the works plans and being the construction of a borrow pit including the excavation, working and restoration to win material required for the construction of the authorised development.

Work No.75 – shown on sheet number 3 of the works plans and being the establishment of environmental mitigation areas. Habitat creation (hedgerow and species rich grassland) to mitigate for biodiversity loss.

Work No.76 – shown on sheet numbers 3 and 4 of the works plans and being the establishment of ancient woodland enhancement measures to compensate for ancient woodland loss.

Work No.77 – shown on sheet number 4 of the works plans and being the establishment of environmental mitigation areas between the free flow links. Habitat creation (woodland planting) to integrate the authorised development into the surrounding landscape and to mitigate for biodiversity loss.

Work No.78 – shown on sheet number 4 of the works plans and being the establishment of environmental mitigation. Habitat creation (ecology ponds and species rich grassland) to mitigate for biodiversity loss.

Work No.79 – shown on sheet number 4 of the works plans and being the establishment of environmental mitigation areas, habitat creation (woodland planting) for visual screening and to mitigate for biodiversity loss.

Work No.80 – shown on sheet number 4 of the works plans and being the establishment of environmental mitigation areas to the west of the link road. Habitat creation for visual screening and to mitigate for biodiversity loss and integrate the authorised development into the surrounding landscape. Woodland planting to screen views of the authorised development. Replacement of existing fence along Dark Lane.

Work No.81 – shown on sheet number 5 of the works plans and being the establishment of environmental mitigation to the west of the link road including habitat creation (woodland planting and ecology ponds) to mitigate for biodiversity loss.

Work No.82 – shown on sheet number 5 of the works plans and being habitat creation (woodland planting) to the east of the link road to provide visual screening and to mitigate for biodiversity loss.

Work No.83 – shown on sheet numbers 5 and 6 of the works plans and being the establishment of environmental mitigation to the east of the link road. Habitat creation (woodland planting and ecology ponds) to mitigate for biodiversity loss and compensate for the loss of ancient woodland.

Work No.84 – shown on sheet numbers 5 and 6 of the works plans and being the establishment of woodland planting south of the M6 Junction 11 to compensate for the loss of ancient woodland.

Work No.85 – works number no longer in use.

Work No.86 – shown on sheet numbers 4 and 5 of the works plans and being the establishment of woodland enhancement measures to compensate for biodiversity loss.

Work No.87 – shown on sheet numbers 5 and 6 of the works plans and being the establishment of woodland enhancement measures to compensate for biodiversity loss.

Work No.88 – shown on sheet number 5 of the works plans and being the establishment of woodland planting south of the M6 Junction 11 to compensate for the loss of ancient woodland.

Work No.89 – shown on sheet number 6 of the works plans and being the establishment of ancient woodland enhancement measures to compensate for ancient woodland loss.

Work No.90 – shown on sheet number 4 of the works plans and being the construction of an access from the realigned existing A460 to the petrol station and local businesses situated on the existing A460.

Work No.91 – shown on sheet number 4 of the works plans and being the construction of a new public right of way (footpath) connection between the existing A460 and the Featherstone Junction West Roundabout (approximately 150 metres in length).

In connection with the construction of any of those works, further development within the Order limits consisting of—

(a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footpath, footway, cycle track or verge; and reducing the width of the carriageway of the street;

(b) works required for the strengthening, improvement, maintenance, or reconstruction of any street;

(c) works for the strengthening, alteration or demolition of any building;

(d) ramps, means of access, non-motorised links, footpaths, footways, bridleways, cycle tracks and crossing facilities;

(e) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, outfalls, ditches, ponds, pollution control devices, wing walls, highway lighting, fencing and culverts;

(f) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;

(g) works to place, alter, divert, relocate, remove or maintain the position of apparatus, services, plant and other equipment in a street, or in other land, including mains, sewers, drains, pipes, lights and cables;

(h) works to alter the course of, or otherwise interfere with a watercourse;

(i) landscaping, noise barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;

(j) works for the benefit or protection of land affected by the authorised development;

(k) works to place, alter, remove or maintain road furniture;

(l) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soils stripping and storage, site levelling);

(m) the felling of trees and hedgerows;

(n) establishment of site construction compounds, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting, haulage roads and other machinery, apparatus, works and conveniences;

(o) provision of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and

(p) such other works, working sites storage areas, works of demolition or works of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the authorised development which do not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement.

SCHEDULE 2

Article 3

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1.—(1) In this Schedule—

"bank or public holiday" means Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(**a**);

"contaminated land" has the same meaning as that given in section 78A of the Environmental Protection Act 1990(**b**);

"CEMP" means the construction environmental management plan;

"European protected species" has the same meaning as in regulation 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017(**c**);

"HEMP" means the handover environmental management plan;

"lead local flood authority" has the same meaning as in the Flood and Water Management Act 2010;

"nationally protected species" means any species protected under the Wildlife and Countryside Act 1981(**d**);

"Natural England" means the body created by the National Environment and Rural Communities Act 2006 or any successor in function to it;

"OEMP" means the outline environmental management plan submitted with the application for this Order and certified as the OEMP by the Secretary of State for the purposes of this Order; and

"REAC" means the record of environmental actions and commitments (contained in the OEMP).

(2) With respect to any requirement which requires the authorised development to be carried out in accordance with the details or schemes or plans approved under this Schedule, the approved details or schemes or plans are taken to include any amendments that may subsequently be approved in writing.

Time limits

2. The authorised development must commence no later than the expiration of 5 years beginning with the date that this Order comes into force.

Detailed design

3.—(1) The authorised development must be designed in detail and carried out in accordance with the preliminary scheme design shown on the works plans and engineering drawings and sections unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and the relevant local highway authority on matters related to its functions, provided that the Secretary of State is satisfied that any amendments to the works plans and engineering drawings and sections showing departures from the preliminary scheme design

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(**a**) 1971 c.80.
(**b**) 1990 c. 43 as amended by section 86(2) of the Water Act 2003 c. 37.
(**c**) S.I. 2017/1012.
(**d**) 1981 c. 69.

would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.

(2) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding works plans and engineering drawings and sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.

Construction and handover environmental management plans

4.—(1) No part of the authorised development is to commence until a CEMP, substantially in accordance with the OEMP, for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and, to the extent that it relates to a matter relevant to its function, the relevant local highway authority, Natural England and the Environment Agency.

(2) The CEMP must be written in accordance with ISO14001 and must—

(a) reflect the mitigation measures set out in the REAC;

(b) contain a record of all sensitive environmental features that have the potential to be affected by the construction of the proposed development;

(c) require adherence to working hours of 07:00–19:00 Mondays to Fridays and 08:00–16:00 on Saturday with no working on Sundays and bank or public holidays except for—

(i) 24 hours a day 7 days a week working to carry out the works at the M54 Junction 1 for a period of up to 3 weeks whilst the motorway is closed;

(ii) deliveries, movements to work, maintenance and general preparation works but not including running plant and machinery for a period of one hour either side of the above times;

(iii) night-time closures for road crossings and final surfacing tie-ins, and bridge demolition and installation;

(iv) any oversize deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation;

(v) junction works;

(vi) repair or maintenance of construction equipment;

(vii) removal of overhead power lines;

(viii) overnight traffic management measures;

(ix) works associated with traffic management and signal changes;

(x) cases of emergency; and

(xi) as otherwise agreed by the local authority in advance;

(d) include the following management plans—

(i) Biosecurity Management Plan;

(ii) Site Waste Management Plan;

(iii) Emergency Preparedness and Response Plan;

(iv) Archaeological Management Plan;

(v) Archaeological Mitigation Strategy;

(vi) Arboricultural Mitigation Strategy;

(vii) Fire Rescue and Translocation Strategy;

(viii) Landscape and Ecology Management Plan;

(ix) Noise and Vibration Management Plan;

(x) Soil Management Strategy (including a Soil Management Plan and Soil Handling Strategy);

(xi) Materials Management Plan;

(xii) Asbestos Management Plan;

(xiii) Water Management Plan;

(xiv) Traffic Management Plan (including a Site Access Plan, Site Travel Plan and Construction Workforce Travel Plan).

(3) The construction of the authorised development must be carried out in accordance with the approved CEMP.

(4) A HEMP must be developed and completed by the end of the construction, commissioning and handover stage of the authorised development, in accordance with the process set out in the approved CEMP.

(5) The HEMP must address the matters set out in the approved CEMP that are relevant to the operation and maintenance of the authorised development, and must contain—

(a) the environmental information needed for the future maintenance and operation of the authorised development;

(b) the long-term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and

(c) a record of the consents, commitments and permissions resulting from liaison with statutory bodies.

(6) The authorised development must be operated and maintained in accordance with the HEMP.

Landscaping

5.—(1) The authorised development must be landscaped in accordance with a landscaping scheme which sets out details of all proposed hard and soft landscaping works and which has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.

(2) The landscaping scheme must reflect the mitigation measures set out in the REAC and must be based on the illustrative environmental masterplan annexed to the environmental statement (application document 6.2).

(3) The landscaping scheme prepared under sub-paragraph (1) must include details of—

(a) location, number, species mix, size and planting density of any proposed planting;

(b) cultivation, importing of materials and other operations to ensure plant establishment;

(c) existing trees to be retained, with measures for their protection during the construction period;

(d) proposed finished ground levels; and

(e) implementation timetables for all landscaping works.

(4) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(5) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the Secretary of State, following consultation with the relevant planning authority on matters related to its function, gives consent to a variation.

Contaminated land and groundwater

6.—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the environmental

statement, it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning authority and the Environment Agency, and the undertaker must complete a risk assessment of the contamination in consultation with the relevant planning authority and the Environment Agency.

(2) Where the undertaker determines that remediation of the contaminated land is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function and the Environment Agency.

(3) Remediation must be carried out in accordance with the approved scheme and programme.

Protected species

7.—(1) No part of the authorised development is to commence until for that part final pre-construction survey work has been carried out to establish whether European or nationally protected species are present on any of the land affected or likely to be affected by any part of the relevant works, or in any of the trees and shrubs to be lopped or felled as part of the relevant works.

(2) Following pre-construction survey work or at any time when carrying out the authorised development, where—

(a) a protected species is shown to be present, or where there is a reasonable likelihood of it being present;

(b) application of the relevant assessment methods used in the environmental statement show that a significant effect is likely to occur which was not previously identified in the environmental statement; and

(c) that effect is not addressed by any prior approved scheme of protection and mitigation established in accordance with this paragraph,

the relevant parts of the relevant works must cease until a scheme of protection and mitigation measures has been submitted to and approved in writing by the Secretary of State.

(3) The undertaker must consult with Natural England on the scheme referred to in sub-paragraph (2) prior to submission to the Secretary of State for approval, except where a suitably qualified and experienced ecologist, holding where relevant and appropriate a licence relating to the species in question, determines that the relevant works do not require a protected species licence.

(4) The relevant works under sub-paragraph (2) must be carried out in accordance with the approved scheme, unless otherwise agreed by the Secretary of State after consultation with Natural England, and under any necessary licences.

Surface and foul water drainage

8.—(1) No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the mitigation measures set out in the REAC including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation with the relevant lead local flood authority and the Environment Agency on matters related to their functions.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details, unless otherwise agreed in writing by the Secretary of State following consultation with the relevant lead local flood authority and the Environment Agency on matters related to their functions, provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.

Archaeological remains

9.—(1) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported by way of a notice to the relevant planning authority as soon as reasonably practicable from the date they are identified.

(2) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (1) for a period of 14 days from the date of any notice served under sub-paragraph (1) unless otherwise agreed in writing by the relevant planning authority.

(3) If the relevant planning authority determines in writing that the archaeological remains require further investigation, no construction operations are to take place within 10 metres of the remains until provision has been made for the further investigation and recording of the remains in accordance with details to be submitted in writing to, and approved in writing by, the relevant planning authority.

Fencing

10. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the OEMP except where any departures from the OEMP are agreed in writing by the Secretary of State in connection with the authorised development.

Signage to Saredon Filling Station

11. No part of the authorised development constituting Work No. 36 in Schedule 1 shall take place unless the undertaker has first consulted with the local highway authority and the proprietors of the Saredon Filling Station regarding a scheme for the signage of this Work, including provision of directional signage to the Saredon Filling Station. The submission to the Secretary State must include directional signage to the Saredon Filling Station and the approved signage must be installed in full before the relevant part of the authorised development becomes fully operational.

Weight Restriction Warning Signs

12. Before the authorised development is operational, two warning signs, of a type shown in diagram 818.4 (S12-28-22) as shown in Figure 5-3 of Chapter 3 of the Traffic Signs Manual (Regulatory Signs 2019 Edition) (or any equivalent sign in a subsequent edition) shall be installed at the junction of Cannock Road with the Featherstone west roundabout and at the junction of Cannock Road with the M6 junction 11 gyratory indicating warning of the weight restriction imposed pursuant to sub-paragraph (9) of Article 11 of this Order and these signs shall thereafter be maintained.

Details of consultation

13.—(1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule following consultation with another party, the undertaker must provide such other party with not less than 14 days for any response to the consultation and thereafter the details submitted to the Secretary of State for approval must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker's response to that consultation.

(2) At the time of submission to the Secretary of State for approval, the undertaker must provide a copy of the summary report referred to under sub-paragraph (1) to the relevant consultees referred to in the requirement in relation to which approval is being sought from the Secretary of State.

(3) The undertaker must ensure that any consultation responses are reflected in the details submitted to the Secretary of State for approval under this Schedule, but only where it is appropriate, reasonable and feasible to do so, taking into account considerations including, but not limited to, cost and engineering practicality.

(4) Where the consultation responses are not reflected in the details submitted to the Secretary of State for approval, the undertaker must state in the summary report referred to under sub-paragraph (1) the reasons why the consultation responses have not been reflected in the submitted details.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

14.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

(a) the day immediately following that on which the application is received by the Secretary of State;

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 13; or

(c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraphs (3) and (4), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification at the end of that period).

(3) Where the Secretary of State requests further information pursuant to paragraph 13, and no further information has been submitted eight weeks from that day immediately following that on which the application was received by the Secretary of State, the application or (if applicable) the part of the application to which the request for further information relates is taken to have been refused by the Secretary of State.

(4) Where—

(a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;

(b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and

(c) the application is accompanied by a report from a body required to be consulted by the undertaker under the requirement that considers it likely that the subject matter of the application would give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement,

the application is taken to have been refused by the Secretary of State at the end of that period.

Further information

15.—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the Secretary of State does not give such notification within that 21 business day period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as a separate application from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 12 (applications made under requirements) and in this paragraph.

(4) In this paragraph, "business day" means a day other than Saturday, Sunday or bank or public holiday.

Anticipatory steps towards compliance with any requirement

16. If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

SCHEDULE 3

Articles 11 and 15

CLASSIFICATION OF ROADS, ETC.

PART 1

SPECIAL ROADS

(1) *Road*	*(2)* *Extent*
Proposed M54 Junction 1 free-flowing eastbound link	Between points 3/2 on sheet 3 and point 4/35 on sheet 4 of the classification of roads plans
Proposed M54 Junction 1 free-flowing westbound link	Between points 3/1 on sheet 3 and point 4/36 on sheet 4 of the classification of roads plans
Proposed Featherstone Junction northbound diverge slip road	Between points 4/1 on sheet 4 and point 4/2 on sheet 4 of the classification of roads plans
Proposed M54 Junction 1 westbound merge slip road	Between points 4/4 on sheet 4 and point 4/3 on sheet 4 of the classification of roads plans
Proposed realigned M54 Junction 1 westbound diverge slip road	Between points 4/8 on sheet 4 and point 4/9 on sheet 4 of the classification of roads plans
Proposed realigned M54 Junction 1 eastbound merge slip road	Between points 4/14 on sheet 4 and point 4/15 on sheet 4 of the classification of roads plans
Proposed realigned M6 Junction 11 northbound merge slip road	Between points 6/10 on sheet 6 and point 6/11 on sheet 6 of the classification of roads plans
Proposed realigned M6 Junction 11 southbound diverge slip road	Between points 6/12 on sheet 6 and point 6/13 on sheet 6 of the classification of roads plans
Proposed realigned M6 Junction 11 southbound merge slip road	Between points 5/8 on sheet 5 and point 6/14 on sheet 6 of the classification of roads plans
Proposed realigned M6 Junction 11 northbound diverge slip road	Between points 6/8 on sheet 6 and point 6/9 on sheet 6 of the classification of roads plans

PART 2

TRUNK ROADS

(1) *Road*	*(2)* *Extent*
Proposed Featherstone Junction west roundabout	Reference point 4/23 on sheet 4 of the classification of roads plans
Proposed Featherstone Junction overbridge	Between points 4/21 on sheet 4 and point 4/22 on sheet 4 of the classification of roads plans
Proposed Featherstone Junction northbound merge slip road	Between points 4/31 on sheet 4 and point 4/32 on sheet 4 of the classification of roads plans
Proposed Featherstone Junction southbound diverge slip road	Between points 4/33 on sheet 4 and point 4/34 on sheet 4 of the classification of roads plans
Proposed realigned A460 south	Between points 4/5 on sheet 4 and point 4/6 on sheet 4 of the classification of roads plans
Proposed M54 Junction 1 south roundabout	Reference point 4/7 on sheet 4 of the classification of roads plans
Proposed south-east roundabout connector	Between points 4/10 on sheet 4 and point 4/11 on sheet 4 of the classification of roads plans
Proposed Featherstone Junction east	Reference point 4/18 on sheet 4 of the

roundabout	classification of roads plans
Proposed dual-carriageway mainline link – northbound carriageway	Between points 4/35 on sheet 4 and point 6/1 on sheet 6 of the classification of roads plans
Proposed dual-carriageway mainline link – southbound carriageway	Between points 4/36 on sheet 4 and point 6/2 on sheet 6 of the classification of roads plans
Proposed Junction 11 roundabout	Reference point 6/7 on sheet 6 of the classification of roads plans
Proposed realigned A460	Between points 6/15 on sheet 6 and point 6/16 on sheet 6 of the classification of roads plans
Proposed realigned A462	Between points 6/17 on sheet 6 and point 6/18 on sheet 6 of the classification of roads plans

PART 3

CLASSIFIED ROADS

(1) *Road*	*(2)* *Extent*
Proposed realigned A460 north	Between points 4/24 on sheet 4 and point 4/25 on sheet 4 of the classification of roads plans
Existing A460	Between points 4/25 on sheet 4 and point 6/3 on sheet 6 of the classification of roads plans
Proposed realigned Hilton Lane	Between points 5/1 on sheet 5 and point 5/2 on sheet 5 of the classification of roads plans
Proposed realigned A460	Between points 6/3 on sheet 6 and point 6/4 on sheet 6 of the classification of roads plans

PART 4

UNCLASSIFIED ROADS

(1) *Road*	*(2)* *Extent*
Connection from proposed realigned A460 north to existing A460	Between points 4/26 and point 4/27 and 4/28 on sheet 4 of the classification of roads plans
Link between proposed realigned A460 north and connection from proposed realigned A460 north to existing A460	Between points 4/39 and point 4/40 on sheet 4 of the classification of roads plans
Dark Lane	Between points 4/37 on sheet 4 and point 4/38 on sheet 4 of the classification of roads plans
Realigned Mill Lane	Between points 6/5 on sheet 6 and point 6/6 on sheet 6 of the classification of roads plans
Proposed connection to Wolverhampton Road	Between points 6/19 on sheet 6 and point 6/20 on sheet 6 of the classification of roads plans
Proposed connection to A460 north of Junction 11	Between points 6/21 on sheet 6 and point 6/22 on sheet 6 of the classification of roads plans

PART 5

SPEED LIMITS

(1) *Road name and description*	*(2)* *Speed Limit*
Proposed M54 Junction 1 free-flowing eastbound link From the M54 along its length to where it meets the proposed dual-carriageway mainline link for a total distance of 915m As shown on sheet 3 and 4 of the traffic regulation measures plans	70 miles per hour
Proposed M54 Junction 1 free-flowing westbound link From the proposed dual-carriageway mainline link along its length to where it meets the M54 for a total distance of 1560m As shown on sheet 3 and 4 of the traffic regulation measures plans	70 miles per hour
Proposed Featherstone Junction northbound diverge slip road From the proposed dual-carriageway mainline link along its length to where it meets the M54 for a total distance of 585m As shown on sheet 3 and 4 of the traffic regulation measures plans	70 miles per hour
Proposed M54 Junction 1 westbound merge slip road From the Proposed M54 Junction 1 free-flowing eastbound link along its length to where it meets the proposed Featherstone Junction west roundabout for a total distance of 333m As shown on sheet 4 of the traffic regulation measures plans	70 miles per hour
Proposed realigned M54 Junction 1 westbound diverge slip road From the proposed M54 Junction 1 south roundabout along its length to a point 285m from where it meets the M54 for a total distance of 327m As shown on sheet 4 of the traffic regulation measures plans	70 miles per hour
Proposed Realigned M54 Junction 1 eastbound merge slip road From the proposed Featherstone Junction east roundabout along its length to where it meets the M54 for a total distance of 825m As shown on sheet 4 of the traffic regulation measures plans	70 miles per hour
Proposed Featherstone Junction west roundabout As shown on sheet 4 of the traffic regulation measures plans	40 miles per hour
Proposed Featherstone Junction overbridge From the proposed Featherstone Junction east roundabout along its length to where it meets the proposed Featherstone Junction west	40 miles per hour

roundabout for a total distance of 100m As shown on sheet 4 of the traffic regulation measures plans	
Proposed Featherstone Junction northbound merge slip road From the proposed Featherstone Junction west roundabout along its length to where it meets the proposed dual-carriageway mainline link for a total distance of 480m As shown on sheet 4 of the traffic regulation measures plans	70 miles per hour
Proposed Featherstone Junction southbound diverge slip road From the proposed Featherstone Junction east roundabout along its length to where it meets the proposed dual-carriageway mainline link for a total of 515m As shown on sheet 4 of the traffic regulation measures plans	70 miles per hour
Proposed realigned A460 south From the proposed M54 Junction 1 south roundabout along its length to a point 70m from the Hilton Cross roundabout for a total distance of 190m As shown on sheet 4 of the traffic regulation measures plans	40 miles per hour
Proposed M54 Junction 1 south roundabout As shown on sheet 4 of the traffic regulation measures plans	40 miles per hour
Proposed south-east roundabout connector From the proposed Featherstone Junction east roundabout along its length to where it meets the proposed M54 Junction 1 south roundabout for a total distance of 380m As shown on sheet 4 of the traffic regulation measures plans	40 miles per hour
Proposed Featherstone Junction east roundabout As shown on sheet 4 of the traffic regulation measures plans	40 miles per hour
Proposed realigned A460 north From the proposed Featherstone Junction west roundabout along its length to where it meets the junction with Dark Lane and The Avenue for a total distance of 462m As shown on sheet 4 of the traffic regulation measures plans	30 miles per hour
Connection from proposed realigned A460 north to existing A460 From the point of stopping up/turning head along its length to where it meets the proposed realigned A460 north for a total distance of 340m As shown on sheet 4 of the traffic regulation measures plans	30 miles per hour

Link between proposed realigned A460 north and connection from proposed realigned A460 north to existing A460 Along its length being a total distance of 90m As shown on sheet 4 of the traffic regulation measures plans	30 miles per hour
Proposed dual-carriageway mainline link – northbound carriageway From the proposed M54 Junction 1 free-flowing eastbound link along its length to where it meets the proposed M6 Junction 11 roundabout for a total distance of 2415m As shown on sheet 4, 5 and 6 of the traffic regulation measures plans	70 miles per hour
Proposed dual-carriageway mainline link – southbound carriageway From the proposed M54 Junction 1 free-flowing westbound link along its length to where it meets the proposed M6 Junction 11 roundabout for a total distance of 1890m As shown on sheet 4, 5 and 6 of the traffic regulation measures plans	70 miles per hour
Proposed realigned Hilton Lane From the Hilton Lane/existing A460 junction along its length to a point 816m east of the Hilton Lane/existing A460 junction for a total distance of 816m As shown on sheet 5 of the traffic regulation measures plans	30 miles per hour
Proposed realigned M6 Junction 11 northbound merge slip road From the proposed M6 unction 11 roundabout along its length to where it meets the M6 for a total distance of 610m As shown on sheet 6 of the traffic regulation measures plans	70 miles per hour
Proposed realigned M6 Junction 11 southbound diverge slip road From the proposed M6 Junction 11 roundabout along its length to where it meets the M6 for a total distance of 375m As shown on sheet 6 of the traffic regulation measures plans	70 miles per hour
Proposed realigned M6 Junction 11 southbound merge slip road From the proposed M6 Junction 11 roundabout along its length to where it meets the M6 for a total distance of 606m As shown on sheet 5 and 6 of the traffic regulation measures plans	70 miles per hour
Proposed realigned M6 Junction 11 northbound diverge slip road From the proposed M6 Junction 11 roundabout along its length to where it meets the M6 for a total distance of 247m	70 miles per hour

As shown on sheet 6 of the traffic regulation measures plans	
Proposed M6 Junction 11 roundabout As shown on sheet 6 of the traffic regulation measures plans	50 miles per hour
Proposed realigned A460 (north of M6 Junction 11) From the proposed M6 Junction 11 roundabout along its length to point 200m south-east of M6 Junction 11 for a total distance of 390m As shown on sheet 6 of the traffic regulation measures plans	50 miles per hour
Proposed realigned A462 From the proposed M6 Junction 11 roundabout along its length to a point 200m south-east of M6 Junction 11 for a total distance of 200m As shown on sheet 6 of the traffic regulation measures plans	60 miles per hour
Proposed realigned A460 (south of M6 Junction 11) From the proposed M6 Junction 11 roundabout along its length to a point 350m west of M6 Junction 11 for a total distance of 350m As shown on sheet 6 of the traffic regulation measures plans	50 miles per hour
Realigned Mill Lane From the junction with the proposed realigned A460 (south of M6 Junction 11) along its length for a total distance of 200m As shown on sheet 6 of the traffic regulation measures plans	60 miles per hour
Proposed connection to Wolverhampton Road From the Junction with the proposed realigned A460 (north of M6 Junction 11) along its length for a total distance of 30m As shown on sheet 6 of the traffic regulation measures plans	30 miles per hour
Proposed connection to Wolverhampton Road From the junction with the proposed realigned A462 along its length for a total distance of 50m As shown on sheet 6 of the traffic regulation measures plans	30 miles per hour

PART 6

PUBLIC RIGHTS OF WAY

(1) *Public right of way*	*(2)* *Extent*
Dark Lane (proposed Bridleway)	Between point 4/4 on sheet 4 and point 5/1 on sheet 5 of the streets, rights of way and access plans
Cannock Road (proposed footpath)	Between point 4/14 and point 4/15 on sheet 4 of

	the streets, rights of way and access plans

PART 7

CREATION OF NEW TRAFFIC REGULATION ORDERS

(1) *Area*	*(2)* *Road name and description*	*(3)* *Title of Order*	*(4)* *Speed limit*
Staffordshire County Council	Proposed realigned Hilton Lane From a point 816m east of the Hilton Lane/existing A460 junction to a point 1445m east of the Hilton Lane/existing A460 junction for a total distance of 629m As shown on sheet 5 of the traffic regulation measures plans	Hilton Lane Speed Order (40mph Speed Limit)	40 miles per hour

PART 8

VARIATION OF EXISTING TRAFFIC REGULATION ORDERS

(1) *Parish(es)*	*(2)* *Road name and number*	*(3)* *Title of Order*	*(4)* *Variation*
Hilton	A460 Cannock Road between points 4/37 and 5/8 as shown on the classification of roads plans.	The Staffordshire County Council (Hilton Lane, Dark Lane and Old Warstone Lane, Hilton) (Prohibition of Heavy Commercial Vehicles or over 7.5 Tonnes (Gross) Order 1991.	Shown as 4/37 and 5/8 on sheets 4 and 5 of the classification of roads plans.

SCHEDULE 4

Article 13

PERMANENT STOPPING UP OF STREETS, PUBLIC RIGHTS OF WAY AND PRIVATE MEANS OF ACCESS

PART 1

STREETS TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) *Street to be stopped up*	*(2)* *Extent of stopping up*	*(3)* *New street to be substituted or provided*
A460 Cannock Road west of M6 Junction 11	Existing section of public road, to be stopped up between points A/7 and A/8 shown on sheet 6 of the streets, rights of way and access plans	Between points A/9 and point A/10 on sheet 6 of the streets, rights of way and access plans
Mill Lane	Existing section of public road, to be stopped up between points A/11 and A/12 shown on sheet 6 of the streets, rights of way and access plans	Between points A/13 and point A/14 on sheet 6 to point 6/6 on sheet 6 of the streets, rights of way and access plans

PART 2

STREETS TO BE STOPPED UP AND FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) *Streets to be stopped up*	*(2)* *Extent of stopping up*
Existing M54 Junction 1 eastbound merge slip road	Existing section of public road, to be stopped up between points A/1 and A/2 shown on sheet 4 of the streets, rights of way and access plans
Existing A460 connecting to north of existing M54 Junction 1 roundabout	Existing section of public road, to be stopped up between points A/3 and A/4 shown on sheet 4 of the streets, rights of way and access plans
Dark Lane	Existing section of public road, to be stopped up between points A/5 on sheet 4 and A/6 shown on sheet 5 of the streets, rights of way and access plans

PART 3

PUBLIC RIGHTS OF WAY TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) *Public right of way to be stopped up*	*(2)* *Extent of stopping up*	*(3)* *New highway to be substituted or provided*
Shareshill 5 Footpath adjacent	Existing public right of way	A new footpath between points

to Hilton Lane	between point 5/2 and 5/4 on sheet 5 of the streets, rights of way and access plans	5/2 and 5/12 on sheet 5, footpath to utilise Hilton Lane footway between points 5/12 and 5/3 on sheet 5 and a new footpath between points 5/3 and 5/4 on sheet 5 of the streets, rights of way and access plans

PART 4

PUBLIC RIGHTS OF WAY TO BE STOPPED UP AND FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) *Public right of way to be stopped up*	*(2)* *Extent of stopping up*
Saredon 1R/2214 Footpath	Full length of 70m between points 6/4 and 6/6 on sheet 6 of the streets, rights of way and access plans

PART 5

ALTERATIONS TO PUBLIC RIGHTS OF WAY

(1) *Public Rights of Way to be altered*	*(2)* *Extent of alteration*
Featherstone 3 Bridleway south west of M54 Junction 1 between points 4/1 and 4/3 on sheet 4 of the street, rights of way and access plans	To be altered between points 4/1 and 4/2 on sheet 4 of the streets, rights of way and access plans
Shareshill 1 Bridleway adjacent Brookfield Farm between points 5/5 and 5/6 on sheet 5 of the streets, rights of way and access plans	To be diverted across the proposed Brookfield Farm overbridge between points 5/5 and 5/6 on sheet 5 of the streets, rights of way and access plans
Shareshill 4 Footpath at the south west corner of M6 Junction 11 between points 6/1 and 6/2 on sheet 6 of the streets, rights of way and access plans	To be diverted up the proposed link road embankment between points 6/1 and 6/3 on sheet 6 of the streets, rights of way and access plans
Saredon 8 Footpath at the south west corner of M6 Junction 11 between points 6/2 and 6/4 on sheet 6 of the streets, rights of way and access plans	To be diverted up the proposed link road embankment between points 6/3 and 6/5 on sheet 6 of the streets, rights of way and access plans
Saredon 13 Bridleway at the north east corner of M6 Junction 11 between points 6/7 and 6/8 on sheet 6 of the streets, rights of way and access plans	To be diverted adjacent to the A460 north east of M6 Junction 11 between points 6/8 and 6/9 on sheet 6 of the streets, rights of way and access plans

PART 6

PRIVATE MEANS OF ACCESS TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1)	*(2)*	*(3)*

Private means of access to be stopped up	*Extent of stopping up*	*New private means of access to be substituted or provided*
Access track to Tower Hill Farm	Existing access track shown between points 4/5, 4/6 and 4/7 on sheet 4 of the streets, rights of way and access plans	Proposed new access from Featherstone Junction east roundabout from point 4/8 to point 4/9 on sheet 4 of the streets, rights of way and access plans
Access track to Hilton Park	Existing access track shown between points 4/10 and 4/11 on sheet 4 of the streets, rights of way and access plans	Proposed new access from Featherstone Junction east roundabout from point 4/11 to point 4/12 on sheet 4 of the streets, rights of way and access plans
Proposed Brookfield Farm overbridge access track	Between points 5/8 and 5/10 on sheet 5 of the streets, rights of way and access plans	Proposed new access from 5/8 to 5/9 and heading east from 5/9 to 5/7 and heading west from 5/9 to 5/10 on sheet 5 of the streets, rights of way and access plans

PART 7

PROVISION OR ALTERATIONS TO PRIVATE MEANS OF ACCESS

(1) *Private means of access to be provided or altered*	*(2)* *Extent of provision or alteration*
Existing access from the A460 identified at point 4/10 on sheet 4 of the streets, rights of way and access plans	Provide new means of access between points 4/10 and 4/13 shown on sheet 4 of the streets, rights of way and access plans

SCHEDULE 5

Article 23(2)

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) *Plot Reference Number shown on Land Plans*	*(2)* *Purpose for which rights over land may be acquired*
Land Plans – Sheet 3	
3/2c, 3/2d, 3/6	To construct, operate, access and maintain a balancing pond to provide attenuation and treatment systems and a new outfall connection to the existing ditch. Maintenance access off Brookhouse Lane (Work No. 56)
Land Plans – Sheet 4	
4/17a	To construct, operate, access, maintain, protect and decommission a diversion to an existing high pressure gas main and associated infrastructure (Work No. 68)
4/20f	To construct, operate, access, maintain, protect and decommission a diversion to an existing high pressure gas main and associated infrastructure (Work No. 68)
4/20g	To construct the Hilton Park access track and to construct, operate, access and maintain a diversion of an existing high pressure gas main and associated infrastructure (Works No. 21 and 68)
Land Plans – Sheet 5	
5/7, 5/11e, 5/11f and 5/13	To construct, operate, access and maintain a balancing pond to provide attenuation and treatment systems to the south of Brookfield Farm and a new outfall connection to Watercourse 4. Maintenance access along an existing track that connects to Hilton Lane and via a new accommodation bridge (Work No. 59)
5/16	To construct, operate, access and maintain a culvert on Watercourse 4 adjacent to Brookfield Farm, a balancing pond to provide attenuation and treatment systems to the south of Brookfield Farm and a new outfall connection to Watercourse 4 as well as diversion of an overhead electricity cable and associated infrastructure. Maintenance access along an existing track that connects to Hilton Lane and via a new accommodation bridge. (Works No. 47, 59 and 70)
5/17	To construct, operate, access and maintain a diversion of an overhead electricity cable and associated infrastructure (Work No. 70)
Land Plans – Sheet 6	
6/31	To access land for works to realign the existing public right of way Saredon 13 (Work No. 66)

SCHEDULE 6

Article 23

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply in respect of compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limiting paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, after "if" substitute—

"(a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 6 of the M54 to M6 Link Road Development Consent Order 20[ ]);

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 of the M54 to M6 Link Road Development Consent Order 20[ ]) to acquire an interest in the land; and

(c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.".

3.—(1) Without limiting paragraph 1, the Land Compensation Act 1973(**a**) has effect subject to the modifications set out in sub-paragraphs (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 5(3)—

(a) for "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from"; and

(b) for "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

Application of the 1965 Act

4.—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 29 (modifications of Part 1 of the 1965 Act)) to the acquisition of land under article 24 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 27 (compulsory acquisition of rights and restrictive covenants)—

(a) with the modifications specified in paragraph 5; and

(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(**a**) 1973 c. 26.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (accordingly to the requirements of that context) as referring to, or as including references to—

(a) the right acquired or to be acquired, or the restrictive covenant imposed to be imposed; or

(b) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

(3) For section 7 (measure of compensation) of the 1965 Act substitute—

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.".

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11(**a**) (powers of entry) of the 1965 Act is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12(**b**) (penalty for unauthorised entry) and 13(**c**) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20(**d**) (protection for interests of tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act is modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

(**a**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1) and S.I. 2009/1307.

(**b**) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

(**c**) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**d**) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(**a**) as applied by article 26 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) in respect of the land to which the notice to treat relates.

2. In this Schedule, "house" includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory ("the owner") may serve a counter-notice requiring the acquiring authority to purchase the owner's interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

(a) withdraw the notice to treat,

(b) accept the counter-notice, or

(c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served ("the decision period").

7. If the acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the acquiring authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

(a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

(**a**) 1981 c. 66, as amended by Part 7 of the Housing and Planning Act 2016 (c. 22).

(a) the effect of the acquisition of the right or the imposition of the covenant,

(b) the use to be made of the right or covenant proposed to be acquired or imposed, and

(c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal."

SCHEDULE 7

Articles 29 and 30

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) *Plot Reference Number shown on Land Plans*	*(2)* *Purpose for which temporary possession may be taken*	*(3)* *Relevant part of the authorised development*
Land Plans – Sheet 3		
3/7a, 3/7b and 3/7c	Required to deliver ancient woodland enhancement measures	Work No. 76 as shown on sheets 3 and 4 of the works plans
Land Plans – Sheet 4		
4/1e and 4/9a	Required for alignment of the existing A460 into the M54 Junction 1 south roundabout	Work No. 7 as shown on sheet 4 of the works plans
4/1i	Required for the stopping up of the existing A460 and construction of a turning head facility	Work No. 11 as shown on sheet 4 of the works plans
4/2	Required to deliver ancient woodland enhancement measures	Work No. 76 as shown on sheets 3 and 4 of the works plans
4/8	Required for the diversion of utilities and association infrastructure to a new utilities' corridor	Work No. 67 as shown on sheet 4 of the works plans
4/13, 4/14a and 4/14c	Required for the alignment of the M54 Junction 1 eastbound merge slip road and the construction of an access for Tower Hill Farm connecting to the Featherstone Junction east roundabout	Work No. 12 and 20 as shown on sheet 4 of the works plans
4/14i	Required for the construction of a free-flowing two lane carriageway, the Featherstone Junction east roundabout, a dual carriageway dumbbell link, new private means of access, the Featherstone Junction southbound diverge slip road and the diversion of a high pressure gas main	Work No. 2, 4, 13, 14, 20, 21, 22, 68 as shown on sheet 4 of the works plans
4/17b, 4/18	Required for the diversion of a high pressure gas main	Work No. 68 as shown on sheet 4 of the works plans
4/20d	Required for habitat creation for visual screening and to mitigate for biodiversity loss and the installation of a replacement fence	Work No. 80 as shown on sheet 4 of the works plans
4/22	Required for the modification of an existing junction and removal of a right turn prohibition into Dark Lane	Work No. 73 as shown on sheets 4 and 5 of the works plans
Land Plans – Sheet 5		

5/1	Required for the modification of an existing junction and removal of a right turn prohibition into Dark Lane	Work No. 73 as shown on sheets 4 and 5 of the works plans
5/6	Required for the construction of new northbound and southbound dual carriageways to M6 Junction 11 the realignment of Hilton Lane and construction of an accommodation overbridge and realignment of access tracks to the south of Brookfield Farm	Work No. 25, 26, 27 and 28 as shown on sheets 4 to 6 of the works plans
5/10	Required for the construction of new northbound and southbound dual carriageways to M6 Junction 11, realignment of Hilton Lane and the realignment of public right of way Shareshill 5	Work No. 25, 26, 27 and 63 as shown on sheets 4 to 6 of the works plans
5/11a	Required for the construction of new northbound and southbound dual carriageways to M6 Junction11, realignment of Hilton Lane, construction of an accommodation overbridge and realignment of access tracks to the south of Brookfield Farm, installation of a new balancing pond and works to realign public right of way Shareshill 5	Work No. 25, 26, 27, 28, 59 and 63 as shown on sheet 5 of the works plans
5/11g	Required for the construction of a new northbound and southbound dual carriageways to M6 Junction 11, construction of an accommodation overbridge and realignment of access tracks to the south of Brookfield Farm and the diversion of an overhead electricity cable and associated infrastructure	Work No. 25, 26, 28 and 70 as shown on sheet 5 of the works plans
5/14	Required for the construction of northbound and southbound dual carriageways to M6 Junction 11 and an accommodation overbridge and realignment of access tracks	Works No. 25, 26 and 28 as shown on sheets 4 to 6 of the works plans
5/25	Required for the construction of new northbound and southbound dual carriageways to M6 Junction 11,	Work No. 25, 26, 27 and 74 as shown on sheet 4, 5 and 6 of the works plans

	realignment of Hilton Lane and the modification of the junction between the existing A460, New Road and Dark lane and the construction of a borrow pit including the excavation, working and restoration to win material required for the construction of the authorised development	
Land Plans – Sheet 6		
6/11b, 6/13, 6/18 and 6/19	Required to realign the M6 Junction 11 northbound merge slip road	Work No. 33 as shown on sheet 6 of the works plans
6/11k, 6/11l, 6/11m, 6/11n, 6/17r, 6/17q and 6/27	Required for the demolition and removal of existing M6 Junction 11 structures and redundant sections of existing circulatory carriageway. Also required for the construction of a new M6 Junction 11 circulatory carriageway and associated infrastructure, the realignment of Wolverhampton Road and the realignment and widening by a single lane of the A460 southbound and northbound	Work No. 36, 38, 39 and 40 as shown on sheet 6 of the works plans
6/12	Required to realign Mill Lane	Work No. 30 as shown on sheet 6 of the works plans
6/17f	Required for the demolition of existing structures at M6 Junction 11, and construction of new M6 Junction 11 circulatory carriageway including overbridges and portal gantries	Work No. 36 as shown on sheet 6 of the works plans
6/17g, 6/20 and 6/22a	Required for the realignment of the M6 Junction 11 southbound diverge slip road	Work No. 35 as shown on sheet 6 of the works plans
6/17h, 6/17i, 6/17j, 6/17k, 6/17m, 6/32a and 6/36	Required for the realignment and widening by a single lane of the A460 southbound and northbound	Work No. 39 as shown on sheet 6 of the works plans
6/25	Required for the realignment of the M6 Junction 11 southbound merge slip road, the demolition and removal of existing M6 Junction 11 structures and redundant sections of existing circulatory carriageway. Also required for the construction of a new M6 Junction 11 circulatory carriageway and associated infrastructure. Required for the	Work No. 34, 36 and 37 as shown on sheet 5 and 6 of the works plans

	realignment of the A462 to M6 Junction 11.	
6/37	Required for the realignment of the M6 Junction 11 southbound diverge slip road. Required for the demolition and removal of existing M6 Junction 11 structures and redundant sections of existing circulatory carriageway. Also required for the construction of a new M6 Junction 11 circulatory carriageway and associated infrastructure. Also required for the realignment and widening by a single lane of the A460 southbound and northbound and the realignment of the existing public right of way Saredon 13	Work No. 35, 36, 39 and 66 as shown on sheet 6 of the works plans

SCHEDULE 8

Articles 34 and 36

HEDGEROWS AND TREES

PART 1

HEDGEROWS

The hedgerow identifications in the table below are taken from Chapter 8: Biodiversity and Figure 8.3 of the environmental statement (application document 6.1)

(1) *Hedgerow*	*(2)* *Relevant part of the authorised development*	*(3)* *Important Hedgerow*
TN1 – Intact Hedge – Native Species – Rich	Work No. 66	No
TN8 – Intact Hedge – Native Species – Poor	Work No. 35	No
TN10 – Intact Hedge – Native Species – Rich	Work No. 35	No
TN11 – Intact Hedge – Native Species – Poor	Work No. 30	No
TN14 – Intact Hedge – Native Species – Rich	Work No. 30	No
TN20 – Defunct Hedge – Native Species -	Work No. 72	No
TN22 – Defunct Hedge – Native Species – Rich	Work No. 72	No
TN23 – Intact Hedge – Native Species – Rich	Work No. 72	Yes
TN29 – Intact Hedge – Native Species – Poor	Work No. 29	No
TN35 – Intact Hedge – Native Species – Poor	Work Nos. 36 and 37	No
TN37 – Defunct Hedge – Native Species – Poor	Work Nos. 34 and 85	No
TN39 – Intact Hedge – Native Species – Poor	Work Nos. 25, 26, 32 and 36	No
TN40 – Intact Hedge – Native Species – Poor	Work Nos. 25, 26, 32, and 36	No
TN41 – Intact Hedge – Native Species – Rich	Work Nos. 25, 26 and 48	Yes
TN68– Defunct Hedge – Native Species – Rich	Work Nos. 27 and 59	No
TN71 – Intact Hedge – Native Species – Poor	Work Nos. 25, 26 and 27	No
TN75 – Defunct Hedge – Native Species – Rich	Work Nos. 71	No

PART 2

TREES SUBJECT TO TREE PRESERVATION ORDERS

The tree plan references in the table below are taken from the tree preservation order impact/removal plans (application document 6.8)

(1) *Type of tree*	*(2)* *Relevant part of the authorised development*	*(3)* *TPO reference*
T168 – Ash (Fraxinus excelsior)	Work No. 86	TPO – 3/1957
T46 – Ash (Fraxinus excelsior)	Work No. 11	TPO – 3/1957
T60 – Ash (Fraxinus excelsior)	Work No. 17	TPO – 3/1957
T237 – Atlantic Cedar (Blue) (Cedrus libani atlantica Glauca)	Work Nos. 27 and 69	TPO – 3/1957
T146 – Beech (Fagus sylvatica)	Work No. 16	TPO – 3/1957
T222 – Beech (Fagus sylvatica)	Work No. 69	TPO – 3/1957
T94 – Beech (Fagus sylvatica)	Work No. 16	TPO – 3/1957
G369 – Common Alder (Alnus glutinosa)	Work Nos. 25 and 48	TPO – 56 and 58/1981
T152 – Common Alder (Alnus glutinosa)	Work Nos. 22 and 26	TPO – 3/1957
W342 – Common Alder (Alnus glutinosa), Ash (Fraxinus excelsior), Crack Willow (Salix fragilis), Common Oak (Quercus robur)	Work Nos. 25, 26, 48 and 65	TPO – 56 and 58/1981
G346 – Common Alder (Alnus glutinosa), Crack Willow (Salix fragilis), Hawthorn (Crataegus monogyna) Common Oak (Quercus robur)	Work No. 26	TPO – 56 and 58/1981
G119 – Common Alder (Alnus glutinosa), Sycamore (Acer pseudoplatanus), Downy Birch (Betula pubescens)	Work Nos. 2 and 23	TPO – 3/1957
T101 – Common Lime (Tilia X europaea)	Work No. 16	TPO – 3/1957
T102 – Common Lime (Tilia X europaea)	Work No. 16	TPO – 3/1957
T113 – Common Lime (Tilia X europaea)	Work No. 16	TPO – 3/1957
T120 – Common Lime (Tilia X europaea)	Work No. 16	TPO – 3/1957
T110 – Common Oak (Quercus robur)	Work No. 16	TPO – 3/1957
T130 – Common Oak (Quercus robur)	Work No. 16	TPO – 3/1957
T145 – Common Oak (Quercus robur)	Work Nos. 4, 22 and 46	TPO – 3/1957
T242 – Common Oak	Work Nos. 24, 26 and 27	TPO – 3/1957

(Quercus robur)		
T367 – Common Oak (Quercus robur)	Work Nos. 25 and 48	TPO – 56 and 58/1981
T72 – Common Oak (Quercus robur)	Work No. 17	TPO – 3/1957
T75 – Common Oak (Quercus robur)	Work No. 17	TPO – 3/1957
T77 – Common Oak (Quercus robur)	Work No. 17	TPO – 3/1957
T78 – Common Oak (Quercus robur)	Work No. 17	TPO – 3/1957
T79 – Common Oak (Quercus robur)	Work Nos. 16 and 17	TPO – 3/1957
T81 - Sycamore (Acer pseudoplatanus)	Works Nos. 17 and 18	TPO – 3/1957
T84 – Common Oak (Quercus robur)	Work Nos. 4 and 22	TPO – 3/1957
T87 – Common Oak (Quercus robur)	Work Nos. 16 and 18	TPO – 3/1957
T88 – Common Oak (Quercus robur)	Work Nos. 4 and 22	TPO – 3/1957
T90 – Common Oak (Quercus robur)	Work Nos. 16 and 18	TPO – 3/1957
T91 – Common Oak (Quercus robur)	Work Nos. 4 and 22	TPO – 3/1957
T92 – Common Oak (Quercus robur)	Work Nos. 16 and 18	TPO – 3/1957
W512 – Common Oak (Quercus robur), Ash (Fraxinus excelsior), Sycamore (Acer pseudoplatanus), Lime (Tilia Sp.), Beech (Fagus sylvatica)	Work Nos. 16, 17, 18, 19 and 71	TPO – 3/1957
G234 - Common Oak (Quercus robur), Sycamore (Acer pseudoplatanus), Hawthorn (Crataegus monogyna)	Work Nos. 24, 25, 26 and 27	TPO – 3/1957
T183– Common Oak (Quercus robur)	Works Nos. 24 and 69	TPO – 3/1957
G184 - Common Oak (Quercus robur), Sycamore (Acer pseudoplatanus), Holly (Ilex aquifolium), other	Work Nos. 24, 25, 26 and 62	TPO – 3/1957
T140 – Downy Birch (Betula pubescens)	Work Nos. 2, 23 and 46	TPO – 3/1957
G374 – Hawthorn (Crataegus monogyna), Common Alder (Alnus glutinosa)	Work No. 36	TPO – 56 and 58/1981
G240 – Hawthorn (Crataegus monogyna), Holly (Ilex aquifolium)	Work Nos. 24, 26 and 27	TPO – 3/1957
T95 – Sessile Oak (Quercus petraea)	Work Nos. 4 and 22	TPO – 3/1957

T209 – Sweet Chestnut (Castanea sativa)	Work No. 86	TPO – 3/1957
G153 – Sycamore (Acer pseudoplatanus)	Work No. 16	TPO – 3/1957
T111 – Sycamore (Acer pseudoplatanus)	Work No. 16	TPO – 3/1957
T112 – Sycamore (Acer pseudoplatanus)	Work No. 16	TPO – 3/1957
T195 – Sycamore (Acer pseudoplatanus)	Work No. 86	TPO – 3/1957
T197 – Sycamore (Acer pseudoplatanus)	Work No. 86	TPO – 3/1957
T225 – Sycamore (Acer pseudoplatanus)	Work No. 69	TPO – 3/1957
T239 – Sycamore (Acer pseudoplatanus)	Work No. 25	TPO – 3/1957
T257 – Sycamore (Acer pseudoplatanus)	Work No. 74	TPO – 3/1957
T44 – Sycamore (Acer pseudoplatanus)	Work Nos. 45 and 68	TPO – 3/1957
T81 – Sycamore (Acer pseudoplatanus)	Work Nos. 17 and 18	TPO – 3/1957
T98 – Sycamore (Acer pseudoplatanus)	Work Nos. 16 and 19	TPO – 3/1957
T99 – Sycamore (Acer pseudoplatanus)	Work No. 16	TPO – 3/1957
T138 – Sycamore (Acer pseudoplatanus)	Work Nos. 2, 23 and 46	TPO – 3/1957
G74 – Sycamore (Acer pseudoplatanus), Common Alder (Alnus glutinosa)	Work No. 17	TPO – 3/1957
G265 – Sycamore (Acer pseudoplatanus), Common Oak (Quercus robur), Ash (Fraxinus excelsior), Holly (Iles aquifolium)	Work Nos. 24, 25, 26, 27 and 62	TPO – 3/1957
W212 – Sycamore (Acer pseudoplatanus), Common Oak (Quercus robur), Holly (Iles aquifolium), Scots Pine (Pinus sylvestris)	Work Nos. 62 and 69	TPO – 3/1957
W159 - Sycamore (Acer pseudoplatanus), Downy Birch (Betula pubescens), Common Alder (Alnus glutinosa), Beech (Fagus sylvatica)	Work Nos. 2, 4, 22, 23, 24, 25, 26, 46 and 62	TPO – 3/1957
G232 - Sycamore (Acer pseudoplatanus), Holly (Ilex aquifolium), Yew (Taxus baccata), Common Oak (Quercus robur)	Work Nos. 24 and 27	TPO – 3/1957
T122 – White Poplar (Populus alba)	Work No. 4, 22 and 46	TPO – 3/1957
T201 – Whitebeam (Sorbus aria)	Work No. 86	TPO – 3/1957

T180 – Willow (Salix sp.)	Work No. 86	TPO – 3/1957
W96 – Yew (Taxus baccata), Sycamore (Acer pseudoplatanus), Silver Birch (Betula pendula), Common Oak (Quercus robur)	Work Nos. 2, 4, 22 and 23	TPO – 3/1957
G36 – Silver Birch (Betula pendula), Common Oak (Quercus robur), Hawthorn (Crataegus monogyna)	Work Nos. 6 and 68	TPO – 3/1957
W516 - Sycamore (Acer pseudoplatanus), Birch (Betula sp.), Common Oak (Quercus robur), Common Beech (Fagus sylvatica), Sweet Chestnut (Castanea sativa),	Works No. 3	TPO – 3/1957
T97 - *Scots Pine (Pinus sylvestris)*	Works Nos. 2 and 22	TPO – 3/1957
T135 - *Common Oak (Quercus robur)*	Work No. 16	TPO – 3/1957

SCHEDULE 9

Articles 31 and 39

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS

1.—(1) For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise identified in another Part of this Schedule or agreed in writing between the undertaker and the utility undertaker concerned.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and the utility undertaker concerned, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of Order), any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between the utility undertaker concerned and the transferee or grantee (as the case may be).

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to the utility undertaker concerned (but see paragraph 11(3)(b)).

2. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(**a**)), belonging to or maintained by that undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(**b**) for the purposes of gas supply;

(c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the undertaker under the Water Industry Act 1991(**c**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreement to adopt sewers, drains or sewage disposal works at a future date) of that Act(**d**),

and includes a sludge main, disposal main (within the meaning of section 219 (general inspection) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties;

(**a**) 1989 c. 29.

(**b**) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

(**c**) 1991 c. 56.

(**d**) Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c.37). Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c.29) and section 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 7 to the Water Act 2014 (c.21).

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

"utility undertaker" means—

(e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(f) a gas transporter within the meaning of Part 1 of the Gas Act 1986;

(g) a water undertaker within the meaning of the Water Industry Act 1991; and

(h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

On street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 13 (permanent stopping up and restriction of use of streets, public rights of way and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 12 (temporary stopping up and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

9.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

Expenses and costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

(c) by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to –

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents, or

(b) any part of the authorised development carried out by a utility undertaker in the exercise of any functions conferred by this Order pursuant to a transfer or grant under article 8 (consent to transfer benefit of Order).

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Co-operation

12. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

14. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

15. In this Part of this Schedule—

"the 2003 Act" means the Communications Act 2003(**a**);

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"the electronic communications code" has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(**b**);

"electronic communications code network" means—

(a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the undertaker is providing or proposing to provide;

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

"infrastructure system" has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with Schedule 3A Part 1 paragraph 7 of the 2003 Act;

"operator" means the operator of an electronic communications code network.

16. The exercise of the powers conferred by article 31 (statutory undertakers) is subject to Schedule 3A part 10 (undertaker's works affecting electronic communications apparatus) of the electronic communications code in the 2003 Act.

17.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

(5) This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or

(b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(**a**) 2003 c. 21.
(**b**) See section 106.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF CADENT GAS LTD AS GAS UNDERTAKER

Application

18. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

19. In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the reasonable satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of Cadent's undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent's undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"Cadent" means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"Cadent's undertaking" means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995);

"commence" has the same meaning as in article 2(1) of the Order and commencement shall be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground conditions, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions,;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"facilities and rights" for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" for the purposes of this Part of the Schedule shall have effect as if Cadent's existing apparatus was authorised development and as if the term maintain includes protect and use, improve, landscape, preserve, decommission, refurbish or replace;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"rights" includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

"specified works" means any of the authorised development or activities (including maintenance) undertaken in association with the authorised development which:

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 24(2) (removal of apparatus) or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 24(2) (removal of apparatus) or otherwise; or

On Street Apparatus

20.—(1) This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act except for—

(a) paragraphs 21 (apparatus of Cadent in stopped up streets), 26 (retained apparatus: protection of Cadent), 27 (expenses) and 28 (indemnity); and

(b) where sub-paragraph (2) applies, paragraphs 24 (removal of apparatus) and 25 (facilities and rights for alternative apparatus).

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing adopted public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) Paragraph 27 (expenses) does not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

(a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and

(b) the allowable costs are to be borne by the undertaker and Cadent in such proportions as may be prescribed by any such regulations.

Apparatus of Cadent in stopped up streets

21.—(1) Where any street is stopped up under article 13 (*permanent stopping up and restriction of use of streets, public rights of way and private means of access*), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway,

but nothing in this paragraph shall affect any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 24 (removal of apparatus).

(2) Notwithstanding the temporary stopping up, alteration, diversion or restriction of use of any street under the powers of article 12 (*temporary stopping up and restriction of use of streets*), Cadent will be at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary stopping up, alteration, diversion or restriction of use in respect of any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

22.— The undertaker, must exercise the powers conferred by article 18 (*protective work to buildings*) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent such consent not to be unreasonably withheld or delayed.

Acquisition of land

23.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised development (or in such other timeframe as may be agreed between Cadent and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development or maintenance thereof.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 26 (retained apparatus: protection of Cadent) or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 24 (removal of apparatus) do not apply, the undertaker must, unless Cadent agrees otherwise:

(a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and

(b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

Removal of apparatus

24.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 23 (acquisition of land), the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account sub-paragraph 25(1) (facilities and rights for alternative apparatus) below) the necessary facilities and rights:

(a) for the construction of alternative apparatus; and

(b) subsequently for the maintenance of that apparatus.

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

25.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to

Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed then the terms and conditions to which those facilities and rights are subject in the matter may be referred to arbitration in accordance with paragraph 33 (*arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

26.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of Cadent given under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) ; and

(b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).

(5) Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

(a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and

(b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 18 to 20 and 23 to 25 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 24(2) (removal of apparatus).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan (and ground monitoring scheme if required), instead of the plan previously submitted,

and having done so the provisions of this paragraph will apply to and in respect of the new plan (and ground monitoring scheme if required).

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development (including such an event attributable to its maintenance)—

(a) the undertaker must implement an appropriate ground mitigation scheme; and

(b) Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 27 (expenses).

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.

(12) In this paragraph, "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

27.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;

(i) using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 24(3) (removal of apparatus) if it elects to do so; or

(ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;

(g) any watching brief pursuant to sub-paragraph 26(6) (retained apparatus: protection of Cadent).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

Indemnity

28.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised development (including works carried out under article 18 (protective work to buildings)) by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and

(b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs properly incurred by, paid by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

(a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents;

(b) any part of the authorised development carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 8; and

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable at the commencement of the relevant works referred to in sub-paragraph (1).

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

Enactments and agreements

29. Except where in this Part of this Schedule provides otherwise or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

30.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent requires the removal of apparatus under sub-paragraph 24(2) (removal of apparatus) or Cadent makes requirements for the protection or alteration of

apparatus under paragraph 26 (retained apparatus: protection of Cadent), the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

Access

31. If in consequence of any agreement reached in accordance with sub-paragraph 23(1) (acquisition of land) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

32. Save for differences or disputes arising under sub-paragraphs 24(2) 24(4) (removal of apparatus) and 26(11) (retained apparatus protection of Cadent) any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 43 (*arbitration*).

Notices

33. Notwithstanding article 41 (service of notices) the plans submitted to Cadent by the undertaker pursuant to sub-paragraph 26(1) (retained apparatus protection of Cadent) must be sent to Cadent Gas Limited Plant Protection via email to **plantprotection@cadentgas.com** as well as by post to Plant Protection Limited, Cadent Gas limited, Brick Kiln Street, Hinckley, Leicestershire, LE10 0NA or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 4

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY UNDERTAKER

Application

34.—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 44(3)(b)).

Interpretation

35. In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the reasonable satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"commence" and "commencement" in paragraph 42 (*retained apparatus: protection*) of this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment,

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Grid" means National Grid Electricity Transmission Plc or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which:

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 40(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 40(2) or otherwise.

36. Except for paragraphs 37 (*apparatus in stopped up streets*), 42 (*retained apparatus: protection*), 43 (*expenses*) and 44 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in stopped up streets

37.—(1) Where any street is stopped up under article 13 (*permanent stopping up, restriction of use and construction of streets, public rights of way and private means of access*), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 40 (*removal of apparatus*) or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 42 (*retained apparatus: protection*).

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 12 (*temporary stopping up and restriction of use of streets*), National Grid is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

38.— The undertaker must exercise the powers conferred by article 18 (*protective work to buildings*) so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld)

Acquisition of land

39.—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any interest in land or apparatus or override any easement or other interest of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by National Grid under paragraph 42 (*retained apparatus: protection*) or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

40.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its reasonable satisfaction (taking into account paragraph 41(1)) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of, or secured by, the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

41.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker under paragraph 41(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 48 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of electricity undertaker

42.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes; and

(g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraphs (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,

(b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in

accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 34 to 36 and 39 to 41 apply as if the removal of the apparatus had been required by the undertaker under paragraph 40(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11) "emergency works" means works whose execution at the time when they are executed is required in order to put an end to or to prevent the occurrence of circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

43.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 40(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 48 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

44.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in

consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of-

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;

(b) any part of the authorised works carried out by National Grid in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 8 (consent to transfer benefit of Order).

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

Enactments and agreements

45. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

46.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 40(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 42 (*retained apparatus: protection*), the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the undertaker's or National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted under this schedule, or agreement is required to be reached between the parties under this schedule, it must not be unreasonably withheld or delayed.

Access

47. If in consequence of the agreement reached in accordance with paragraph 39(1) (*acquisition of land*) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will

enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

48. Save for differences or disputes arising under paragraph 40(2), 40(4) and 41(1), any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 42 (*arbitration*).

Notices

49. Notwithstanding article 41 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 42 must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 5

FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION LIMITED (WEST MIDLANDS) PLC AS ELECTRICITY UNDERTAKER

Application

50. For the protection of Western Power Distribution Limited (West Midlands) plc the following provisions, unless otherwise agreed in writing between the undertaker and Western Power Distribution Limited (West Midlands) plc, have effect.

Interpretation

51. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable WPD to fulfil its statutory functions in a manner not less efficient than previously and where the context requires includes any part of such alternative apparatus;

"alternative rights" means all and any necessary legal easements, leases, consents, or permissions required by WPD in order to permit or authorise a diversion and to permit or authorise WPD to lay, keep, operate, maintain, adjust, repair, alter, relay, renew, supplement, inspect, examine, test and remove the alternative apparatus;

"apparatus" means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by WPD;

"diversion" means an alteration to the WPD Network in order to enable or facilitate the authorised development;

"functions" includes powers and duties;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

"plan" or "plans" includes all designs, drawings, specifications, method statements, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

"specified work" means so much of any of the authorised development that is carried out within 6 metres of any apparatus;

"WPD" means Western Power Distribution (West Midlands) plc (company number 03600574) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB;

"WPD Network" means WPD's distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the 1989 Act; and

other terms have the meaning given in article 2 (interpretation).

Precedence of 1991 Act in respect of apparatus in streets

52. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and WPD are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

No acquisition except by agreement

53. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

54.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of WPD to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, alternative rights acquired or granted for the alternative apparatus and the alternative apparatus is in operation and access to it has been provided if necessary to the reasonable satisfaction of WPD in accordance with sub-paragraphs (2) to (10) or with such alternative or supplementary provisions as the undertaker and WPD may agree between them.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to WPD written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(3) If as a consequence of the exercise of any of the powers conferred by this Order WPD reasonably needs to remove or divert any of its apparatus and the removal of that apparatus has not been required by the undertaker under sub-paragraph (2) then WPD must give to the undertaker written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and this Part has effect as if the removal or diversion of such apparatus had been required by the undertaker under sub-paragraph (2).

(4) If as a consequence of the removal or diversion of apparatus under sub-paragraph (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to WPD the necessary facilities and alternative rights for the construction of alternative apparatus in the other land owned or controlled by the undertaker.

(5) If the undertaker or WPD requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then WPD shall use its reasonable endeavours to obtain alternative rights in the land in which the alternative apparatus is to be constructed.

(6) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and WPD is unable to obtain such alternative rights as are mentioned in sub-paragraph (5), the undertaker and WPD shall consider whether there is an alternative engineering solution that can achieve the diversion without the need for the use of compulsory powers. Should such an alternative engineering solution not be practicable and deliverable in a reasonable timescale and at a reasonable cost (which shall be determined by the undertaker acting reasonably), WPD shall on the transfer of the benefit of the necessary provisions of this Order to WPD use the powers of compulsory acquisition set out in this Order or the Electricity Act 1989 to obtain the necessary

facilities and rights in the land in which the alternative apparatus is to be constructed in accordance with a timetable agreed between WPD and the undertaker.

(7) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between WPD and the undertaker or in default of agreement settled in accordance with paragraph 59 (expert determination).

(8) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 59 (expert determination), and after the acquisition by or grant to WPD of any such facilities and alternative rights as are referred to in sub-paragraphs (2) to (6), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required to be removed under the provisions of this Part of this Schedule.

(9) Regardless of anything in sub-paragraph (8), if the undertaker gives notice in writing to WPD that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by WPD, must be executed by the undertaker—

(a) in accordance with plans and specifications and in such line or situation agreed between the undertaker and WPD, or, in default of agreement, determined in accordance with paragraph 59 (expert determination); and

(b) without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WPD.

(10) Nothing in sub-paragraph (9) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or alternative apparatus, or execute any filling around the apparatus or alternative apparatus (where the apparatus or alternative apparatus is laid in a trench) within 600 millimetres of the point of connection or disconnection.

Facilities and rights for alternative apparatus

55.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WPD facilities and alternative rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and alternative rights are to be granted upon such terms and conditions as may be agreed between the undertaker and WPD or in default of agreement settled in accordance with paragraph 59 (expert determination).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

(a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker;

(b) have regard to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted;

(c) have regard to WPD's ability to fulfil its service obligations and comply with its licence conditions; and

(d) have regard to the standard form rights WPD ordinarily secures for the type of alternative apparatus to be constructed in the circumstances similar to the authorised development.

(3) If the facilities and alternative rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and alternative rights are to be granted, are in the opinion of the expert less favourable on the whole to WPD than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the expert must make such provision for the payment of compensation by the undertaker to WPD as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

56.—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work where the removal of the apparatus in question has not been required under paragraph 54 (removal of apparatus), the undertaker shall submit to WPD a plan of the works to be executed. Any submission must note the time limits imposed on WPD under sub-paragraph (3) below.

(2) Subject to sub-paragraph (3) below the undertaker shall not commence any works to which sub-paragraph (1) applies until WPD has identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.

(3) If by the expiry of 60 days beginning with the date on which a plan under sub-paragraph (1) is submitted WPD has not advised the undertaker in writing of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it shall be deemed not to have any such requirements and the undertaker shall be at liberty to proceed with the works.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by WPD and WPD shall be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out the authorised development the undertaker shall comply with WPD's Avoidance of Danger from Electricity Overhead Lines and Underground Cables (2014), the Energy Network Association's A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines (undated), the Health and Safety Executive's GS6 Avoiding Danger from Overhead Power Lines and the Health and Safety Executive's HSG47 Avoiding Danger from Underground Services (Third Addition) (2014) as the same may be replaced from time to time.

(6) If WPD, in accordance with sub–paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal or diversion of any apparatus and gives written notice to the undertaker of that requirement, this Part of this Schedule applies as if the removal or diversion of the apparatus had been required by the undertaker under paragraph 54(2).

(7) Nothing in this paragraph 56 precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub–paragraph (1) in a case of emergency but in that case it must give to WPD notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by WPD under sub-paragraph (2) and with sub–paragraphs (4) and (5) in so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents WPD from exercising its rights under sub-paragraph (6).

Expenses and costs

57.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to WPD the proper and reasonable expenses reasonably incurred by WPD in, or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus, the construction of any alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus, arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule WPD requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth is necessary in substitution for existing apparatus which for WPD's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development, WPD shall reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

(4) For the purposes of sub–paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

58.—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any specified work or any subsidence resulting from any of those works any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of WPD the undertaker is to—

(a) bear and pay the cost reasonably incurred by WPD in making good such damage or restoring the supply; and

(b) reimburse WPD for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by WPD, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of WPD, its officers, servants, contractors or agents.

(3) WPD must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) WPD's liability to the undertaker for negligence or breach of contract, in respect of each diversion, shall be limited to the value of that diversion and WPD shall not otherwise be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

Expert determination

59.—(1) Article 42 (arbitration) shall apply to any difference as to the legal interpretation of this Schedule and as provided for in sub–paragraph (7).

(2) Save as provided for in sub–paragraph (1) or sub–paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between WPD and the undertaker, both acting reasonably and without delay).

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The costs and fees of the expert and the costs of WPD and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and

(d) give reasons for the decision.

(6) The expert must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;

(e) WPD's service obligations and licence conditions; and

(f) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.

SCHEDULE 10

Article 40

DOCUMENTS TO BE CERTIFIED

(1) *Document*	*(2)* *Document Reference*	*(3)* *Revision*
Book of Reference	TR010054/APP/4.3	P09
Environmental Statement	TR010054/APP/6.1, with updated Biodiversity Chapter 8 and Noise and Vibration Chapter 11	1
Environmental Statement Addendum	TR010054/APP/8.6	1
Outline Environmental Management Plan	TR010054/APP/6.11	5
Location Plan – Regulation 5(2)(o)	TR010054/APP/2.1	P04
Land Plans – Regulation 5(4)	TR010054/APP/2.2	P05
Works Plans – Regulation 5(4)	TR010054/APP/2.4	P04
General Arrangement Scheme Layout – Regulation 5(2)(o)	TR010054/APP/2.5	P04
Streets, Rights of Way and Access Plans – Regulation 5(4)	TR010054/APP/2.7	P05
Classification of Roads Plans	TR010054/APP/2.9	P04
Engineering Drawings and Sections – Regulations 5(2)(o), 5(4) and 6(2)	TR010054/APP/2.10	P03
Tree Preservation Order/Impact Removal Plans	TR010054/APP/6.8	3
Habitats Regulations Assessment	TR010054/APP/6.9	2
Statutory Nuisance Statement	TR010054/APP/6.10	1

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Highways England to undertake works to provide a new road to link the M54 at junction 1 and M6 at junction 11 Hilton Park, Wolverhampton, Staffordshire and carry out all associated works.

The Order permits Highways England to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also includes provisions in connection with the maintenance of the authorised development.

A copy of the plans, engineering drawings and sections, the book of reference, the environmental statement and the OEMP mentioned in this Order and certified in accordance with article 40 (certification of documents, etc.) of this Order may be inspected free of charge during normal working hours at Highways England. The Cube, 199 Wharfside Street, Birmingham, B1 1RN.

STATUTORY INSTRUMENTS

20[ ] No. [ ]

INFRASTRUCTURE PLANNING

The M54 to M6 Link Road Development Consent Order 20[ ]