



Norwich To Tilbury

Nationally Significant Infrastructure Project (NSIP) (“the NSIP”)

Braintree District Council (FD86D0C6F)

Submission:

- ISH2 Post Hearing Submissions including
Action Points

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Glossary of Abbreviations

BDC – Braintree District Council
BPM – Best Practicable Means
B2T – Bramford to Twinstead
BNG – Biodiversity Net Gain
CEMP – Construction Environmental Management Plan
CIL – Community Infrastructure Levy
CoCP – Code of Construction Practice
CTMP – Construction Traffic Management Plan
DCO – Development Consent Order
dDCO – Draft Development Consent Order
EIA – Environmental Impact Assessment
ES – Environmental Statement
ECC – Essex County Council
ExA – Examining Authority
ExQ – Examining Authority Question
ISH – Issue Specific Hearing
LAeq,T – Equivalent Continuous Sound Level (over time period T)
LEMP – Landscape and Ecological Management Plan
LIR – Local Impact Report
LoD – Limit of Deviation
LPA – Local Planning Authority
LVIA – Landscape and Visual Impact Assessment
NSIP – Nationally Significant Infrastructure Project
OAMS-OWSI – Outline Archaeological Mitigation Strategy – Outline Written Scheme of Investigation
OCoCP – Outline Code of Construction Practice
OLEMP – Outline Landscape and Ecological Management Plan
PRF – Potential Roost Feature
PRoW – Public Rights of Way
REP – Representation (Examination Library reference)
RVAA – Residential Visual Amenity Assessment
SoCG – Statement of Common Ground
WSI – Written Scheme of Investigation

2 **Introduction**

2.1 **Purpose of Report**

2.1.1 This report comprises Braintree District Council's ("the Council") post hearing submissions for ISH2 including the Action Points listed by the ExA.

2.2 **Format and Content of Response**

2.2.1 This report will focus on responding (as appropriate) to comments made by the Applicant and the ExA in the hearings across ISH2.

2.2.2 The report will respond to the relevant Action Points to assist the ExA, while also providing any comments on other matters discussed at the hearings.

2.2.3 This will focus on matters relating to topics across the Tuesday and Wednesday hearings.

2.2.4 The Council will defer to Essex County Council on highway and PROW matters discussed at the Friday hearing.

2.3 **Summary**

2.3.1 The Council hope that the post hearing submissions are useful to the ExA. The Council respectfully requests that the ExA gives careful consideration to the responses contained within this document when determining how the examination should proceed and what matters should be taken into account.

3 Comments on Action Points from ISH2

3.1 Introduction

3.1.1 This section of the report specifically reviews each relevant action point in turn and provides a response.

3.2 Action Point 2 - Use of term 'where practicable'

3.2.1 The Council would like to note that the use of 'where practicable' or other similar phraseology in the DCO and in any control documents is unacceptable. Such phrasing lacks precision and is unenforceable. It is simply not possible for the enforcing authority to take action where the test is 'where practicable' as the response from the Applicants or their contractors will be 'in that instance compliance was not practicable in our opinion'. Terms with ambiguity wholly undermine the relevant section of the DCO or control document and therefore render that document unenforceable and undermines the underlying purpose of the document.

3.2.2 NV23 states that 'For the construction of pylon foundations, non-percussive piling methods will be used where practicable'. As above, this is wholly unacceptable and could result in percussive piling being used in all foundations for all pylons if the Applicants decided this was the most practical option for them. This is not a satisfactory solution and does not provide LPAs with the certainty that they need to protect the amenity of their residents.

3.3 Action Point 10 – Discharge Period

3.3.1 Action Point 10 requests that local authorities provide further justification for seeking extended determination periods for the discharge of Requirements, including reference to experience from other NSIPs (notably Sea Link and Bramford to Twinstead). It also invites a response to the suggestion that a validation checklist be secured within the DCO.

Requesting Additional Days for Discharge

- 3.3.2 The Council has previously set out its detailed justification for an extended determination period within its response to ExQ1 DCO 1.A2 (REP3-091), including a breakdown of the stages involved in discharging Requirements and the practical constraints encountered. To avoid repetition, those points are summarised and supplemented below in light of matters raised at the hearing.
- 3.3.3 The Council's position is informed by direct experience of discharging Requirements under the Bramford to Twinstead DCO. That Order provides for a 35-day determination period, supported by a Planning Performance Agreement, including provision for pre-application engagement. Notwithstanding these measures, the Council has found that this timeframe is consistently challenging to achieve in practice.
- 3.3.4 That experience has demonstrated that the statutory processes of validation, consultation, technical review, and internal sign-off cannot, in all cases, be undertaken robustly within a shortened determination period without placing undue pressure on the local planning authority, its consultees, and the Applicant's project team (including contractors).
- 3.3.5 In practice, the inclusion of a deemed consent mechanism has led to repeated requests for extensions of time in order to resolve matters that cannot reasonably be addressed within the prescribed 35-day period. This approach reduces procedural efficiency and introduces uncertainty for all parties, particularly where extensions are not agreed.
- 3.3.6 At ISH 2, a number of host authorities raised similar concerns, noting that the scale, technical complexity, and volume of documentation associated with NSIPs necessitate realistic determination periods in order to ensure lawful, robust and defensible decision-making. The Council concurs with those submissions.

- 3.3.7 In response to the Applicant's reference to the Hinkley Point C DCO as a precedent, the Council notes that that Order provides for materially longer determination periods, allowing up to 8 weeks for major submissions and 5 weeks for minor submissions. This demonstrates that extended timescales are both reasonable and established practice for projects of this scale and complexity.
- 3.3.8 The Council acknowledges the Applicant's emphasis on the importance of timely delivery of nationally significant energy infrastructure and will continue to engage proactively to support this objective. However, this must be balanced against the need for proportionate scrutiny, meaningful consultation, and sound decision-making. These processes rely on input from consultees who are frequently engaged across multiple NSIPs. Unrealistic determination periods risk undermining the quality and robustness of decisions and may increase the likelihood of refusals where matters cannot be adequately resolved within the prescribed timeframe.
- 3.3.9 For these reasons, and consistent with its previous submissions, the Council maintains that a minimum 56-day determination period (or 40 business days), with flexibility to extend where necessary, remains appropriate and justified.
- 3.3.10 Notwithstanding the above, it should be noted that the Council have no objection to the use of business days and have previously advocated for this.

Validation Checklist in DCO

- 3.3.11 The Council supports the inclusion of a validation checklist within the DCO. Experience of the Bramford to Twinstead project indicates that submissions have, on occasion, been deficient in terms of either the quality or completeness of information, including reliance on documents that were not provided at the point of submission.

3.3.12 The inclusion of a clear validation framework would assist in ensuring that applications to discharge Requirements are accompanied by all necessary information at the outset. This would improve efficiency in the determination process, reduce the need for subsequent information requests and provide greater certainty for all parties.

3.4 Action Point 11 - ExQ1 DCO 1.A6 and 'maintain'

3.4.1 Action Point 11 requests that Local Authorities comment on the Applicant's position in response to ExA question DCO 1.A6. It was subsequently clarified that this should refer to DCO 1.A7.

3.4.2 As set out in the Council's Local Impact Report (REP1-148), the definition of "maintain" encompasses a wide range of activities in relation to the authorised development. These activities are permitted on the basis that they do not give rise to any materially new or materially different environmental effects from those identified in the Environmental Statement. The Council's concern is that this approach relies on a broad and untested assumption, without sufficient clarity as to how such effects would be assessed, controlled or enforced in practice.

3.4.3 The Applicant has referred to precedent and considers that external oversight is neither necessary nor appropriate in determining whether effects would be materially new or different. The Applicant also refers to its statutory duty to maintain a safe and efficient transmission network. However, the Council does not consider that either precedent or statutory duty addresses the core issue of how potential environmental effects arising from maintenance activities are to be transparently assessed or appropriately controlled.

3.4.4 The Council acknowledges that certain activities within the definition of "maintain", such as inspection, repair, dismantling, removal, clearance, refurbishment, painting, surface treatment and decommissioning, are unlikely to give rise to materially new or materially different environmental

effects. However, other activities, including alteration, improvement, reconstruction and replacement, retain clear potential to result in new or materially different effects, particularly given the scale and nature of the authorised development.

3.4.5 The Council therefore maintains its position, as set out in the Local Impact Report (REP1-148), that the inclusion of the wording “in the opinion of the relevant planning authority” is necessary to ensure appropriate oversight in determining whether maintenance activities could give rise to materially new or materially different environmental effects.

3.4.6 Without prejudice to its primary position, the Council recognises the Applicant’s concern regarding potential delay arising from additional oversight. Should the Examining Authority be minded to support the inclusion of Local Planning Authority oversight in this matter, the Council considers that this could be appropriately balanced through the inclusion of a deemed consent mechanism (for example, after 20 working days), to ensure that decisions are made in a timely manner and that no undue delay is introduced to the delivery of the project.

3.4.7 In addition, the Council considers that the DCO should include a clear obligation on the undertaker to maintain the authorised development and to remove any equipment or infrastructure that becomes obsolete, in order to avoid unnecessary long-term impacts on landscape, heritage and residential amenity.

3.5 Action Point 16 - Schedule 3 - Requirements 1 (Interpretations)

3.5.1 Action Point 16 requests that Local authorities comment on the Applicants response to ExQ1 DCO 1.S5 regarding the discharging authority and the revised wording, including in relation to local government reform as set out in the Devolution and Community Empowerment Bill 2025. Both the applicant and local authorities to provide further comments on the definition of ‘stage’

3.5.2 The Council defers to ECC's detailed response and supports its overall position that, while the Applicant's revised wording is a positive step and broadly workable in principle, it does not yet fully address the implications of local government reorganisation. In particular, the drafting needs to more clearly and explicitly cater for the transition to unitary authorities and the potential for functions to pass to multiple successor bodies. As such, further refinement, along the lines suggested by ECC, including clearer "successor or successors" provisions and a mechanism to identify the appropriate authority by area, is required before the wording can be considered sufficiently robust for the DCO.

3.6 Action Point 17 - Schedule 3 - Requirement 5 (Archaeology)

3.6.1 Action Point 10 requests that local authorities provide comments on the Applicant's answer to ExQ1 DCO 1.S8 and the document now provided [AS-090].

3.6.2 The Council's Archaeological advisor has reviewed the Applicants answer as well as the additional document provided. The Council understand that the Archaeological advisor is also acting for Essex County Council and has provided a substantive response for submission.

3.6.3 The Council would therefore not seek to repeat these comments verbatim, but instead offer a summary of the position, which is that the current drafting of Requirement 5 is insufficient to ensure effective archaeological control, as it relies on outline documents (the OAMS-OWSI) which remain unagreed and are not yet adequate to function as control documents. In the absence of an agreed and robust strategy, the archaeological advisor considers that intrusive pre-commencement works should not proceed until detailed, site-specific Written Schemes of Investigation have been approved, reflecting a precautionary approach to safeguarding archaeological assets. This position is informed by experience on the Bramford to Twinstead project, where failure to secure agreement pre-

consent resulted in delays, and it is therefore not appropriate to assume timely agreement in this case.

3.6.4 Notwithstanding these concerns, the archaeological advisor is content with the Applicant's proposed approach to post-excavation assessment, analysis and publication, provided it is appropriately secured within the DCO.

3.7 Action point 18 - Schedule 3 Requirement 9: Reinstatement Planting Plan

3.7.1 Action Point 18 asks that a response is provided to the ExA question regarding interpretation of what exactly the Applicant is proposing as 'mitigation', 'enhancement', 'compensation' or 'biodiversity net gain' (BNG) as separate entities. In addition, signpost to where, in the submitted application documentation, it specifically explains what elements of the proposed development will constitute 'mitigation', 'enhancement', 'compensation' and 'BNG' and where these different elements are shown in their own right on the submitted plans.

3.7.2 The Council defers to the Applicant to clearly identify and distinguish these elements within the application documentation. The Council will review the response by the applicant and if appropriate, comment on this at Deadline 5.

3.8 Action Point 20 - Article 60 and Schedule 19 - Certified Documents

3.8.1 This Action Point requires local authorities to respond to the matters raised at the hearing.

3.8.2 The question was directed to the Council during ISH 2. The Examining Authority (ExA) referred to the Applicant's response to ExQ DCO 1.G3 and sought confirmation as to whether that response addresses concerns regarding the list of documents to be certified by the dDCO (as provided in Schedule 19 and secured by Article 60).

3.8.3 By way of context, ExQ DCO 1.G3 requested that the Applicant:

Explain why the outline Code of Construction Practice (oCoCP), outline Construction Traffic Management Plan (CTMP), outline Landscape and Ecological Management Plan (LEMP), outline Materials and Waste Management Plan, outline Public Rights of Way (PRoW) Management Plan, and outline Written Scheme of Investigation (WSI) are not identified as certified control documents, as is the case in the made Bramford to Twinstead DCO. It also sought justification for the absence of a Construction Environmental Management Plan (CEMP), Materials Management Plan, and Waste Management Plan within the Norwich to Tilbury dDCO.

- 3.8.4 The Council has had regard to the Applicant's response to ExQ DCO 1.G3 (REP3-075).
- 3.8.5 In respect of the certification of documents, the Council has no substantive comments to make.
- 3.8.6 However, as set out in the Council's Local Impact Report (REP1-148), concerns were previously raised regarding the omission from Article 2 of certain control documents that were included within the Bramford to Twinstead DCO, in particular a CEMP and a Materials and Waste Management Plan.
- 3.8.7 Following the Applicant's response to ExQ DCO 1.G3, and having considered this issue in light of subsequent submissions, the Council has reviewed its position.
- 3.8.8 In relation to the absence of a standalone CEMP, the Council's concern centred on whether adequate controls would be secured in respect of construction-phase environmental effects. The Applicant has set out that the oCoCP, together with its appendices, incorporates the measures typically contained within a CEMP, thereby negating the need for a separate document.

- 3.8.9 The Council has sought and received clarification on a number of technical matters within the oCoCP, in order to verify that it secures the mitigation measures and controls ordinarily expected to be delivered through a CEMP, and that it is sufficiently robust and fit for purpose.
- 3.8.10 On the basis of this further review, the Council's technical specialists in Air Quality, Geology and Hydrogeology, and Noise and Vibration are satisfied that the oCoCP adequately addresses the necessary construction-phase controls within their respective disciplines. While some concerns remain in relation to other matters, including working hours, the Council is satisfied in principle that the oCoCP can operate as an appropriate substitute for a standalone CEMP.
- 3.8.11 In relation to ecological matters, the Council's Ecological Advisor considers that the outline Code of Construction Practice (oCoCP) broadly addresses the range of issues that British Standard BS 42020:2013 Biodiversity – Code of practice for planning and development advises should be encompassed within a Construction Environmental Management Plan (CEMP).
- 3.8.12 The Council also notes that there is a degree of overlap between the oCoCP and the outline Landscape and Ecological Management Plan (LEMP), the latter providing additional detail relevant to the construction phase. However, it is acknowledged that BS 42020:2013 anticipates a greater level of specificity than is currently presented within the outline oCoCP and LEMP.
- 3.8.13 In any case, the Council recognises that both documents are, at this stage, outline in nature, and therefore certain detailed measures may not yet be capable of being fully specified.
- 3.8.14 The Council will defer to Essex County Council regarding the omission of a Materials and Waste Management Plan.

3.9 Action Point 22 - ExQ1 GEN 1.21 and Appendix E

3.9.1 This Action Point requires the local authorities, highway authorities, police forces and statutory undertakers named in Appendix E of [REP3-074] to provide a further response to ExQ1 GEN 1.21 and Appendix E, having regard to the criteria set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

3.9.2 The Council have been mentioned in Appendix E on Page 6 and Page 10, both in relation to skills and employment.

3.9.3 Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 provides that a planning obligation (including a section 106 agreement) may only constitute a reason for granting development consent if it meets all of the following tests:

(a) Necessary to make the development acceptable in planning terms

(b) Directly related to the development

(c) Fairly and reasonably related in scale and kind to the development

3.9.4 These statutory tests are reinforced in national policy and guidance, which make clear that planning obligations must mitigate the impacts of development and should not be used to secure general benefits or wider aspirations.

3.9.5 The Council has had regard to the requirements of Regulation 122(2) in considering whether a Skills and Employment Plan, and any associated funding, could appropriately be secured through a planning obligation.

3.9.6 The Council considers that, where appropriately framed, such measures are capable of meeting the statutory tests. In particular, having regard to the scale, duration and geographic extent of the construction phase,

together with the cumulative effects arising from other similar projects in the area, the Proposed Development would give rise to identifiable socio-economic effects within the District. These include disruption to existing businesses, agricultural operations and local labour markets.

- 3.9.7 A Skills and Employment Plan, targeted at supporting local workforce participation and responding to construction-related labour demands, would therefore be necessary to make the development acceptable in planning terms, directly related to the development, and proportionate in scale and kind, subject to it being appropriately scoped and evidenced.
- 3.9.8 The Council does not agree with the Applicant's position that such measures fall solely within the scope of wider "community benefits". Rather, where they are directed at addressing the socio-economic effects arising from the construction and delivery of the Proposed Development, they constitute legitimate mitigation which may be secured either through a Requirement within the DCO or, where appropriate, a separate legal agreement.
- 3.10 Action Point 25 - Limits of Deviation 1
- 3.10.1 This Action Point requires local authorities to identify sensitive locations and specific viewpoints where additional visualisations of pylons within the Limits of Deviation (LoD) would assist in illustrating a realistic worst-case scenario.
- 3.10.2 It also requires the list of viewpoints to be agreed with the Applicant as soon as possible, for submission at Deadline 4, with the resulting visualisations to be provided by Deadline 5.
- 3.10.3 The Council has engaged with the Applicant following publication of the Action Points in an effort to agree appropriate additional viewpoints.
- 3.10.4 In doing so, the Council has sought to adopt a proportionate and pragmatic approach, recognising the limited timescales available for the Applicant to

produce additional visualisations. As such, the Council has focused on identifying only those viewpoints which are considered critical to understanding the likely worst-case impacts of the scheme, rather than requesting a wider suite of additional visual material.

- 3.10.5 In this regard, the Council has requested that the Applicant provide worst-case visualisations in respect of those residential receptors identified in the Local Impact Report under the Residual Visual Amenity Assessment (West Ford Farm Cottage (E7) and Whiteheads Farm (E8)). The Council considers it important that the potential worst-case positioning of pylons, taking into account the Limits of Deviation, is clearly illustrated for these properties, given the identified risk that impacts could appear “unpleasantly encroaching” and “inescapably dominant” and that actual effects may be greater than those presented.
- 3.10.6 This request reflects the Council’s broader concern that the current assessment does not robustly demonstrate the full worst-case scenario arising from flexibility in siting and height of pylons, particularly in relation to these sensitive residential receptors.
- 3.10.7 Notwithstanding the Council’s significant concerns regarding landscape and visual effects, which are considered to be substantial, widespread and long-term, the Council has adopted a proportionate and pragmatic approach in limiting its requests for additional visualisations. Given the scale and nature of the identified impacts, the Council considers that further worst-case visualisations at a wider landscape level are unlikely to materially alter the overall conclusions of significant adverse effect. As such, the Council does not consider it necessary to request additional viewpoints beyond those critical locations identified above.

4 Other Post Hearing Submissions from ISH2

4.1 Introduction

4.1.1 This section of the report provides further submissions, beyond the action points, where the Council either made oral representations at the hearing, or wish to respond in writing to any points that the Applicant made.

4.2 Item 4 – Noise and Vibration – Piling

4.2.1 The Local Authorities were asked by the ExA whether the use of the words “where practicable” are appropriate for piling in CoCP commitment NV23. The Council’s noise consultant suggested that the wording could be appropriate as they should have already considered the worst case. However, upon further reflection, the Council share the ExA’s concerns with the wording and agree with other Local Authorities that it is not robust enough to be enforceable. Please see comments above in relation to Action Point 2 for further information.

4.2.2 The Council also wishes to respond directly to the Applicant’s comments regarding the impact of piling and its approach to mitigation. The Council has previously set out its concerns regarding construction noise, particularly during more sensitive periods, within its Local Impact Report (REP1-148) and Deadline 3 Response (REP3-090). These concerns are directly relevant to piling activities, which represent one of the dominant noise sources associated with pylon construction.

4.2.3 At the hearing, the noise impacts associated with piling were discussed. The Applicant confirmed that the assessment considered a worst-case scenario based on percussive piling techniques and acknowledged that a number of receptors could experience significant adverse effects in the absence of mitigation. The Applicant further indicated that predicted exceedances of relevant thresholds would be relatively limited (typically in the order of 1–2 dB), and that the application of Best Practicable Means (BPM) would avoid significant effects.

- 4.2.4 The Council acknowledges that, during typical construction hours defined in BS5228-1 (i.e. 07:00–19:00 Monday to Friday and 07:00–13:00 on Saturdays), exceedances of the 65 dB LAeq,T ‘ABC’ threshold may in some cases be relatively small. However, this position does not account for the extended construction hours sought by the Applicant, which go beyond those standard periods.
- 4.2.5 The construction hours sought through the DCO would allow piling activities to occur on Saturdays between 07:00 and 17:00. BS5228-1 is clear that periods outside 07:00–13:00 on Saturdays should be treated as more sensitive, with a corresponding lower threshold of 55 dB LAeq,T. On this basis, noise levels which may only marginally exceed thresholds during standard hours would result in materially greater exceedances during these more sensitive periods and should therefore be regarded as giving rise to significant adverse effects.
- 4.2.6 This issue reinforces the Council’s wider concerns, as set out in its Local Impact Report and Deadline 3 response, that the Applicant’s assessment does not robustly demonstrate a true worst-case scenario, particularly given the flexibility afforded by the Limits of Deviation and the reliance on assumed noise reductions through BPM which are not secured at DCO stage. The Council is not satisfied that the application of BPM alone provides sufficient certainty that significant adverse effects would be avoided, particularly during extended or more sensitive working periods.
- 4.2.7 In light of the above, the Council considers that, without appropriately defined and enforceable temporal restrictions on piling activities at sensitive locations, nearby residents would be afforded insufficient respite during more sensitive periods. The Council therefore maintains that additional controls are required through the DCO to restrict piling activities at specific pylon locations and during sensitive times, in order to adequately protect residential amenity.

4.3 Item 8 - Landscape and Visual Effects - Residential Visual Amenity Assessment

- 4.3.1 With regard to Hearing Agenda Item 8, the Applicant was asked by the Examining Authority to confirm the methodology used in undertaking the Residential Visual Amenity Assessment (RVAA). The Applicant confirmed that assessments were undertaken from the nearest publicly accessible locations, and that individual residential properties were not visited. The Council has concerns that this approach does not fully align with Landscape Institute Technical Guidance Note 2/19 (Residential Visual Amenity Assessment), which states that “where access to private property cannot be obtained, and having employed best endeavours to do so, assessment may then be undertaken from appropriate publicly accessible locations” (Paragraph 4.21). The Applicant has not demonstrated that such best endeavours were undertaken in this case.
- 4.3.2 The Council has previously identified potential breaches of residential visual amenity at E7 West Ford Farm Cottage and E8 Whiteheads Farm. These properties were specifically identified for detailed consideration within the RVAA, yet it appears that no property-level assessment has been carried out. In the absence of direct assessment from within the residential curtilage, there remains uncertainty as to the magnitude of effects, particularly when the Limits of Deviation are taken into account.
- 4.3.3 This uncertainty directly relates to Action Point 25, which seeks to secure additional visualisations to illustrate realistic worst-case scenarios for these properties.