

Surrey Heath Borough Council Deadline 4 Submission

Written Response to the The Examining Authority's written questions and requests for information (ExQ2)



**Esso Petroleum Company Limited Southampton to London Pipeline Project
Application for a Development Consent Order**

Project reference no. EN070005

GQ 2.8 Surrey Heath Borough Council – Draft Statement of Common Ground

The applicant provided the Council with a revised Statement of Common Ground (SOCG) on the 25th October 2019. Further to this email, the applicant requested that 'all authorities let us have the signed SoCG by 7 November'. It was noted by the applicant that 'If you would like to make further edits, we can consider those and aim to integrate those into an updated version, if received by 5pm on 7 November'. For clarification, following a previous meeting with the project team, it was agreed that the best course of action was for the applicant to amend the SOCG and provide the updated version to the Council for comment. This was the first opportunity following this agreement that the Council had the opportunity to comment or edit the updated SOCG.

The Council provided a tracked changed SOCG with comments on the 7th of November 2019, as had been requested. The Council noted that there were a number of amendments and stated in the correspondence that 'Unfortunately due to the very tight turn around we have not been in the position to discuss the proposed changes to the document, but they should reflect comments raised in our previous discussion and matters raised in the SHBC Local Impact Report, with the exception of a few additional point. We request that this iteration of the SoCG, which has been signed off by the relevant Portfolio Holders, is not amended prior to submission of the document to the Planning Inspectorate. We note that whilst the Project may wish to make amendments to the draft, it is very unlikely that we would be in the position that we could obtain sign off for such amendments prior to the 14th November deadline. However, that said, we would be open to meeting with the Esso team as soon as is practical to discuss the next iteration of SoCG and matters of on-going discussion within this'. It is noted that the majority of amendments to the SOCG were in matters of ongoing discussion.

On the 14th January, the applicant provided the Council with a copy of the unsigned SOCG that they would be submitting and noted that 'As I am sure you will understand, we will not be in the position to review this in detail before it is submitted'. The applicant noted that the Statement of Commonality would state the following:

'The Parties have been in discussion with regards to the content of this SoCG. The Applicant is submitting a draft at Deadline 2 that represents the Applicant's current understanding of the matters'.

In response, that Council noted the following:

'As I am sure you will understand, we will not be in the position to review this in detail before it is submitted. However, that said, I have briefly read the document and we are surprised to see that there are sections in Matters Agreed that the Council has

clearly outlined (in the tracked changed document we provided to Esso) are matters which have not been agreed. We would request that any matters that the Council has removed from this section in our previous tracked changed version are removed prior to Esso submitting the document’.

As a result, it was considered important that the Council submit a SoCG that represents the Council’s current understanding of matters. The Council noted in paragraph 3 of its deadline 2 written representation that:

‘For the benefit of the Examining Authority, a draft Statement of Common Ground, which has been signed by the Council, but which has not been signed or agreed by Esso, is attached as Appendix 1. The Council will continue to engage with the applicant to agree a Statement of Common Ground which both parties can be in the position to sign during the DCO examination.’

The Council will continue to work with the applicant to progress the SOCG.

DCO.2.1 The dDCO at D3

The Council is concerned that changes have been made to the draft Order, without consultation with interested parties, which have the potential to result in substantial changes to how matters will be dealt with under the draft Order. An example of this is the removal of the REAC with an undertaking to deal with relevant matters as individual documents. Whilst there is no objection in principle to this, the application has continued to lack detail and clarity on what is to be included in documents referenced to date. Given that interested parties have sought further information, which to date has not been forthcoming, there is a concern about the submission of additional information later in the process. This is because, given the timescales that are being worked to, there would be insufficient time for interested parties to fully and robustly consider, in what would be expected to be, detailed documents. The Council would wish to ensure that outstanding issues are addressed and also to respond to the ExA with cogent responses for its consideration in line with the stated timescales.

It is also considered that the detail within requirement 6 (the Construction Environmental Management Plan, CEMP) has been removed prematurely in that information, that potentially would fulfil this requirement, would not be available until later in the examination process. Given the timescales which are being worked to, this lack of clarity and information could prejudice the Council’s ability to secure appropriate safeguards. It is also noted that the arboricultural management plan has been removed from this requirement but it is unclear whether this would be incorporated into the landscape and ecological management plan (LEMP). The Council would seek clarification on this point.

Notwithstanding this the Council will continue to work with the applicant to progress the CEMP and the LEMP

DCO.2.14 Schedule 2 Requirements 6, 7, 9, 12 and 15

The Council has concerns about the wording that now only requires matters to be “based upon” its outline versions. This lacks definition and clarity and could give rise to misinterpretation and uncertainty of what is being proposed/secured. The Council would seek the reinstatement/use of the wording “in accordance”.

DCO.2.15 Schedule 2 Requirement 3

The Council is concerned that the use of “may” has the potential to introduces an unintended level of flexibility, and thereby uncertainty, to the proposal. To this end the Council would therefore recommend the following amendment:

The authorised development ~~may~~ must not commence until a written scheme setting out all stages of the authorised development in the relevant ~~to it~~ local planning authority or highway authority area has been submitted to and approved in writing by the relevant planning and highways authorities.

At time of writing this wording has also been agreed with Rushmoor Borough Council.

DCO.2.17 Schedule 2 Requirement 5

The new requirement to provide an electronic register of requirements, new Requirement 20, is welcome. However there is lack of certainty and clarity as drafted. It is important that all interested parties know where the register may be viewed. Furthermore the proposed timeframe for the maintenance of the register should be extended to 5 years as there are ongoing obligations within the draft Order which extend beyond 3 years eg replacement of landscaping. Information should remain available and easily accessible until all obligations are discharged in full. The Council would therefore recommend the following amendment:

Requirement 20 - Register of requirements

(1) The undertaker must, ~~as soon as practicable following the making of~~ as soon as possible following the making of this Order and before the submission of requests for approval under this Order, establish and maintain ~~in an electronic form suitable on the Southampton to London Pipeline Project available~~ for inspection by members of the public, a register of requirements contained in this Part of this Schedule that provide for approvals to be given by a relevant authority.

(2) The register must set out in relation to each requirement the status of the requirement for each stage of the authorised development, in terms of whether any approval to be given by a relevant authority has been applied for or given in relation to that stage, providing an electronic link to any document containing any approved details.

(3) The register must be maintained by the undertaker for a period of 53 years following completion of the authorised development

At time of writing this wording has also been agreed with Rushmoor Borough Council.

DCO.2.24 Schedule 2 Requirement 14

The change in construction hours is welcome. However it is noted that start up and shut down activities may take place up to an hour either side of the core working hours. Given that some of the sites within Surrey Heath are within or in proximity to residential areas, the Council would wish to ensure that this requirement is drafted such that activities are restricted to those that do not generate noise or vibration impacts. Furthermore the Council has concerns about a lack of clarity concerning the wording “reasonably necessary” and “exceptional basis”. It is also unclear on how potential disagreements, on what these words mean in relation to what works, would be resolved between the applicant and the relevant planning authority.

DCO.2.25 Schedule 2 Requirements 15, 16 and 20

New Requirement 15 is welcome. However the Council is concerned that the detail within this requirement would not be available until later in the examination process. As such given the timescales which are being worked to, this lack of clarity and information could prejudice the Council’s and the applicant’s ability to set the parameters to consult effectively with local communities.

New Requirement 16 is welcome. However it lacks any detail of the method or timing of decommissioning the existing fuel pipeline to enable the Council to understand what will happen and when.

The Council’s comments on Requirement 20 are set out above in response to paragraph DCO.2.17 Schedule 2 Requirement 5.

DCO.2.28 Schedule 2 Requirement 21

The Council’s view remains as set out in part response to question DCO1.37 in the Council’s Deadline 2 submission, set out below for ease of reference:

“...It is recommended that a period of fifteen business days is specified, with “business days” defined expressly in Schedule 3 Part 1 Requirement 1: Interpretation of the draft DCO as follows:

“Business days” means days other than Saturday, Sundays, bank holidays or days on which General or Local Elections are held.

The logic of the latter provision is that many local authority members of staff are deployed to polling station duties on days when elections are held”

LV.2.1 New Tree Survey and Protection Assessment

At time of writing no additional information has been submitted to the Council in this regard. As such the Council continues to seek a new requirement as set out in the Local Impact Report dated October 2019 to ensure that the impact on trees within the Borough is appropriately assessed and mitigated.

LV.2.4 Tree replacement planting

Having regard to the Government’s objectives on climate change and biodiversity and the Emergency Tree Plan for the UK published by the Woodland Trust in January 2020, the Council would expect appropriate tree and vegetation planting to mitigate the loss of protected trees and removal of vegetation. In the interests of clarity it is the Council’s view that, to allow for growing periods and failure, a minimum of two replacement trees are proposed to replace each mature tree removed. In this regard replacement trees should be standard, root balled, of between 15 -20 years of age and broad leaf native species.

The Council recognises that it may not be possible to accommodate replacement planting within the Order Limits. To this end the Council would be prepared to enter into an agreement with the applicant to secure replacement planting within the Borough to compensate for trees and vegetation lost as a result of works associated with the proposed pipeline.

LV.2.6 Tree Protection Measures

It is the Council’s view that reference should be made to appropriately qualified specialists and this should include an arboriculturalist. However it is noted that the REAC has been removed and proposed to be replaced by topic specific documents. It is therefore important that reference to appropriately qualified specialists are retained within these emerging documents

LV.2.7 Tree Protection Measures

The Council would wish the applicant to provide tree protection measures in accordance with the British Standard 5837:2012. This is due to the potential length of time that the applicant will be on each site and the need to provide robust and maintained tree protection measures, particularly in sensitive areas, during the development period, to safeguard the trees to be retained.

LV.2.8 Planting mitigation

Given that the REAC has been removed and proposed to be replaced by topic specific documents, the Council would wish to ensure that appropriate vegetation clearance, retention, protection and replanting/reinstatement drawings are provided

as part of the Landscape and Ecological Management Plan. It is unclear what mechanism would be in place if there were to be a difference of opinion over whether measures were “practicable” and how this would be resolved.

PC.2.1 Noise Mitigation and the Use of Echo Fencing

The Council would wish to secure the use of Echo Fencing in relation to Briar Avenue. Its absence has the potential to create a gap between two fences which could create a noise environment detrimental to adjoining residents.

In Appendix 13.3 of the Environmental Statement the applicant has identified roads in Lightwater and Frimley where temporary acoustic fencing may be necessary to preserve the noise environment. There are properties on the roads adjacent to or between those identified that would suffer from the same noise issues and it seems incongruous that these have not been included. It is therefore recommended that where the pipeline work passes the following location the provision of temporary acoustic fencing is made on the site boundary unless a specific noise assessment determines that it is not necessary. In addition to those roads in Surrey Heath already identified as requiring the provision of temporary acoustic fencing at the site boundary, the Council seeks that the following roads be included in the Noise and Vibration Management Plan:

Lightwater

Briar Avenue
Broomfield
Spruce Drive
Colville Gardens
Herons Court
Lightwater Road
Guildford Road

Windlesham/Chobham

Windlesham Road/Woodcock Drive
Brock Cottage, Steep Hill
Oakfield House, Halebourne Lane

West End

Blackstroud Lane East

Heatherside Camberley

The Maultway
Buttermere Drive
Kendall Grove
Habershon Drive
Cheylesmore Drive

Yockley Close

Frimley

Raglan Close
St Catherine's Road
Broadlands
Windsor Way
Wansdyke Close
Henley Drive
Frimley Green Road

The justification is to prevent occupants of the properties suffering significant noise effects.

SANG 2.3 HRA and SANGS

In response to ExA WQ BIO.1.47 [PD-008] concerning the likely numbers of displaced visitors from the SANGs to the TBH SPA, the Applicant stated [REP2-040] that the HRA used information that was available to construct a reasoned case including that unaffected alternative spaces were available. Relevant planning authorities are asked to comment on the suitability of the Applicant's "unaffected alternative spaces".

In the response to ExA WQ BIO.1.47 [PD-008] concerning the likely numbers of displaced visitors from the SANGs to the TBH SPA, the Applicant states [REP2-040] that 'unaffected alternative open spaces (other than the SPA) suitable for recreational activities are present in the vicinity '.

Paragraph 1.10 applicants response to the ExA's written question BIO.1.43 states that Taking each SANG in turn, the HRA Report (Application Document APP-130) identifies the following:

- 'St Catherine's Road SANG (Clewborough). Within 1km of the SANG there is open access woodland at Frimley Fuel Allotments and Frith Hill. This extensive area of woodland would likely be a suitable alternative location for any small amount of recreational displacement from the SANG for the short duration of construction (See paragraph 5.8.22 of the HRA Report (Application Document APP-130)). The Environmental Statement Habitat Regulations Assessment (1 of 2) (application document 000250) also states that 'these extensive areas of woodland would likely be suitable alternative locations for any small amount of recreational displacement from the SANG for the short duration of construction'.
- 'Windlemere SANG. It is reasonable to assume that the unaffected area of SANG would be sufficient to absorb any displaced recreational activity. In addition, the 5.5ha West End Recreation Ground is an area of common land

approximately 410m from Windlemere SANG that may also act as a receptor for any displaced recreational activity for the short duration of construction (See paragraph 5.8.23 of the HRA Report (Application Document APP130))'

As outlined in the Council's Deadline 3 submission, Surrey Heath Local Impact Report (Application document 000721) and Written Representation (Application document 000874), the assessment in the HRA clearly relies on unverified assumptions. In respect of St Catherine's Road SANG, the open access woodland at Frith Hill does not present a viable unaffected alternative space to mitigate any displaced recreational pressure. The Frith Hill woodland is not a SANG and indeed existed prior to SANG being created. Notably, if the woodland was a viable mitigation for recreational displacement, then the St Catherine's Road SANG would have not been required for the Keaver Drive development. In any event, if another SANG within the vicinity of St Catherine's Road were to be identified as a receptor for any displaced recreational activity, the Council would require a proportionate contribution in order that this capacity could be allocated to such an alternative SANG.

Again, in the case of Windlemere, West End Recreation Ground is identified as an area that may act as a receptor for displaced recreational activity, despite the recreation ground not being a SANG and existing prior to Windlemere being created.

The Council notes that no visitor surveys were completed as part of the HRA and therefore it is difficult to quantify the number of visitors that could be displaced during the construction of the pipeline. In the applicants 8.23 Responses to Written Representations – Local Authorities, the applicant states that 'The Applicant wishes to highlight that they have asked the Council to produce evidence of visitor numbers for the St Catherine's SANG. The Council has confirmed that it does not have any up-to-date data on user numbers for this SANG'. Whilst it is true that the Council does not have up-to-date data on user numbers for the SANG, the Council is under no obligation to keep such a record, the applicant did not make a request that the Council produce evidence of visitor numbers for the St Catherine's SANG. In any event, it is for the applicant to provide evidence that clearly and robustly demonstrates that there will be no likely significant effects on the Thames Basin Heaths SPA. The Council would like to reiterate in this context that recreational activity arising from one additional residential unit is considered to give rise to the potential for adverse effects on the integrity of the Thames Basin Heaths SPA

SANG 2.4 HRA and SANGS

In response to ExA WQ BIO.1.49 [PD-008] the Applicant [REP2-040] states that the assumption is made that if visitors decide not to use an affected SANG during construction, they are likely to select a nearby SANG or other open access space for recreational activities. Evidence is provided by the Applicant that such alternative locations exist. The Applicant states that the Proposed Development would not generate any additional population and therefore, there is no requirement to provide

permanent SANG mitigation and the pipeline would have a temporary impact during construction only and this is reported in the HRA Report. Comment on this response

As stated in the Council's response to SANG2.3, the locations relied upon by the applicant do not constitute alternative sites for SANGs impacted by the proposal in Surrey Heath, primarily because the sites are not SANGs and existed prior to the implementation of the SANG Strategy. Whilst the Council recognises that the impacts of construction are not permanent, for St Catherine's Road SANG the impacts of construction activity could be up to two years. As outlined in the Council's Deadline 3 submission, a central requirement for SANG is that it is provided and funded in order that they can function in perpetuity (which is considered to be at least 125 years in accordance with relevant legislation) in advance of dwelling occupation to ensure that there is no likely significant effect on the Thames Basin Heaths SPA.

As such, and as outlined by Mr Turney during the Issue Specific Hearings, if you interfere with a SANG, you interfere with its quality and quantity and therefore generate the potential for displacing any additional recreational pressure that a SANG mitigates. Indeed, any works that impact on the function of a SANG must be seen to impact on the in perpetuity management of that SANG. Therefore, although the construction activities are 'short term', if there is potential for displaced recreational activity from impacted SANGs which mitigate the impacts of additional population (in this case the Keaver development), which the Council considers there is, this requires mitigation and therefore a proportionate provision or contribution to SANG is the only way to mitigate this impact.

Furthermore, as outlined in the Council's Deadline 3 submission, it is important to note that planning applications for temporary dwellings (such as mobile homes) are considered to give rise to the potential for adverse effects on the Thames Basin Heaths SPA. As set out in the Council's Thames Basin Heaths SPA Avoidance Strategy SPD, submitted as an appendix to the Council's LIR, paragraph 3.8 states that 'mobile or temporary dwellings may be required to contribute towards avoidance measures'. Therefore, although an impact may be temporary, there is none the less the potential for it to give rise to likely significant effects on the Thames Basin Heaths SPA.

The Council considers that it has provided practical and proportionate mitigation solutions to the applicant that could be secured through a Section 106 agreement. The proposed mitigation was proportionate to the Keaver Drive development that St Catherine's Road mitigates, and excluded the in perpetuity management cost that the Council levies as part of its SANGs charge.

SANG 2.5 Proposed requirement for Working in a SANG

The Council is in discussion with the applicant regarding mitigation for the impact of construction activities on St Catherine's Road SANG. However, at this stage and based on discussions with the applicant, it is unlikely that an agreement will be

reached on the adequacy of managing the St Catherine's Road SANG during construction of the Proposed Development. As noted in the Council's response to SANG2.4, the Council considers that it has provided practical and proportionate mitigation solutions to the applicant that could be secured through a Section 106 agreement.