



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**

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 <i>Framework</i>)
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



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 not " 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 Practice , 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 ‘rec <u>o</u> rding’
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 information¹.
- 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 form⁴. In the absence of an NPS regard must therefore be paid to⁵:
- 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-balanced⁶.

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 adverse 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 requirements⁷. 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 signalling 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 COBA⁹) 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:
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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 approval¹⁰ 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 Higgins

- 4.29 Mrs Higgins 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 software¹¹, 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 TEMPro¹² 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 enterprises¹³, 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 issues¹⁴:
- 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 authority¹⁵. 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 115,000m³ ^{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 20m³ 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 inbound 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

dwelling 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 not 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 South¹⁶. 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 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 area¹⁷, annual mean concentrations of NO₂, PM₁₀, PM₂₅ and the number of exceedances of the 24 hour PM₁₀ 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 tree 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 with 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 Powers¹⁸

- 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 land¹⁹ 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 so²⁰.

5.8 In balancing the public benefits against the loss of private rights, the considerations are essentially that²¹:

- 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 affected²².

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 seven²³ 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 LBC²⁵ 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 Order²⁶. 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. I 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 provisions²⁷. However, because of the linear nature and related characteristics of the scheme some articles are based on the associated model provisions for railways and Orders²⁸ or Transport and Works Act (TWA) model clauses²⁹ and Orders³⁰ or other NSIP DCOs which have been made by SST³¹ 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 provisions³². 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 adopted³³.
- 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 2013³⁴.

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 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 strategyhas 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 regulated³⁵, 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 12³⁶ 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 informally³⁷.
- 6.32 The applicant argues that this wording has been used before in other DCOs made by SST and SSECC³⁸, 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 LPA³⁹; and it now appears the decision-maker was not persuaded to do so in making another DCO⁴⁰. 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. Two⁴¹ 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:

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: <i>Written Representations by IPs</i> <i>Local Impact Report (LIR) from Local Planning Authorities (LPAs)</i> <i>Responses to ExA's First Written Questions</i> <i>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)</i> <i>Comments on Relevant Representations (RRs)</i>
6 February 2013	Deadline for receipt by the ExA of: <i>Comments on Written Representations (WRs)</i> <i>Comments on LIR</i> <i>Comments on Responses to Examining Authority's First Written Questions</i> <i>Statements of Common Ground (SOCG)</i> <i>Responses to Comments on RRs</i>

	<i>Notification of wish to cross-examine at IS or CA Hearing (one received)</i>
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: <i>Responses to Second Written Questions</i>
10 April 2013	Deadline for receipt by the ExA of: <i>Comments on Responses to Second Written Questions</i> <i>Initial revised proposed schedules or requirements for inclusion within the Draft DCO</i>
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: <i>Revised proposed schedules or requirements for inclusion within the Draft DCO</i>
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: <i>Comments on Final Draft DCO and any related material (none received)</i>
13 May 2013	Deadline for receipt by the ExA of: <i>Applicant's response to comments on Final Draft DCO and any related material (not required because no comments received)</i>

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

<i>References</i>	<i>Documents</i>
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
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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 Higgins
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
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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 Higgins (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)
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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
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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
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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)

Preliminary Meeting

EV-001	Preliminary Meeting – Recording (15 November 2012)
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Hearing on 13 February 2013

EV-002	Issue Specific Hearing on draft Development Consent Order – Recording (13 February 2013)
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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)
EV-009	Compulsory Acquisition Hearing – Recording – Session 2 (19 April 2013)

Hearings on 30 April 2013

EV-010	Resumed Hearings – Recording – Session 1 (30 April 2013)
EV-011	Resumed Hearings – Recording – Session 2 (30 April 2013)
EV-012	Resumed Hearings – Recording – Session 3 (30 April 2013)

Speaking Notes from Hearings

EV-013	Luton Borough Council - Speaking Notes (13 February 2013)
EV-014	Central Bedfordshire Council – Speaking Notes (17 April 2013)
EV-015	Central Bedfordshire Council – Archaeologist’s Speaking Notes (17 April 2013)
EV-016	8.14 Luton Borough Council – Speaking Notes (17 April 2013)
EV-017	Campaign to Protect Rural England - Speaking Notes (17 April 2013)
EV-018	8.17 Luton Borough Council – Speaking Notes (30 April 2013)

Hearing Documents

EV-019	Bircham Dyson Bell suggested agenda for Draft Development Consent Order Hearing (18 April 2013)
EV-020	8.18 Luton Borough Council – Requested Documents resubmitted
EV-021	8.16 Luton Borough Council – Additional Submissions arising from Hearings (17 – 19 April 2013) – Version 1
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
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Left the ASV at Newlands Farm

A Speirs	On behalf of Mr Gary Speirs (AP)
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Left the ASV at Front Street, Slip End

Michael Sanders	Interested Party
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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
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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 Netley	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

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 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](#) 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 be~~ 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 be~~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~~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~~do 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 apply~~ 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~~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(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 298 (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 watercourses, 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) ~~must~~~~shall~~, 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~~~~shall~~ 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 ~~shall~~~~must~~ not be unreasonably withheld.
- (5) The undertaker ~~must~~~~shall~~ 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](#)~~(4)~~, 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 ~~shall~~~~is 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), ~~except~~~~save~~ 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 1981 Act 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~~haves 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~~be 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~~be 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~~beare 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~~beis 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 ~~28~~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 apply~~iesy as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, ~~shall have~~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 1981 Act 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~~ inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) ~~shall be~~ 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~~ omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 ~~shall be~~ 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 be~~ 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 do~~ 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 be~~ entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation ~~shall be~~ 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 not ~~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) 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~~ ~~applies~~ ~~lies~~ to the temporary use of land ~~underpursuant 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 have~~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 287 (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 287, 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.

~~is~~~~shall 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 ~~shall~~~~does~~ not have effect in relation to apparatus to which article ~~29~~~~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

~~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 cause~~ unnecessary damage to any tree or shrub and ~~must~~~~shall~~ 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~~~~shall~~ 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 ~~must~~~~shall~~ pay compensation to any person for any loss or damage arising from such activity; and

(b) the duty ~~imposed by~~~~contained in~~ section 206(1) of the 1990 Act (replacement of trees) ~~shall~~~~does~~ 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~~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.

- ~~(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~~ ~~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 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) ~~shall~~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

~~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~~ have 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

[] 201[3]

/ [Designation]
[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

REQUIREMENTS

Article 3

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)~~ ~~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 commenced ~~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, nNone 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 commenced ~~and~~ 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~~ 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

~~(e)~~(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 its 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

<i>(1)</i> <i>Number</i>	<i>(2)</i> <i>Description</i>
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

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Description</i>
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 from 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.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New Street to be substituted</i>
	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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
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 M1 J10 Northbound Merge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development 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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
	<p>Capability Green Eastbound Diverge Slip Road</p> <p>Capability Green Westbound Merge</p> <p>A1081 London Road</p> <p>Newlands Road</p>	<p>Night-time closures will be required to facilitate the safe construction of the authorised development</p> <p>Night-time closures will be required to facilitate the safe construction of the authorised development</p> <p>Short term closures will be required to facilitate the safe construction of the authorised development.</p> <p>Short term closures will be required to facilitate the safe construction of the authorised development.</p>
Luton Borough Council	<p>London Road</p> <p>Public Footpath FP43</p> <p>Newlands Road</p>	<p>Short term closures will be required to facilitate the safe construction of the authorised development.</p> <p>Closure of the footpath for the duration of the works required to facilitate the safe construction of the authorised development</p> <p>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</p>

SCHEDULE 7

Article 15

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Reference on street plans, sheet 3</i>	<i>(3)</i> <i>Description of access</i>
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.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Reference on street plans, sheet 3</i>	<i>(3)</i> <i>Description of access</i>
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.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Reference on street plans,</i> <i>sheet 3</i>	<i>(3)</i> <i>Description of access</i>
	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

<i>(1)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(2)</i> <i>Purpose for which rights over the land may be acquired</i>
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.

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 apply~~^{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 be~~^{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 ~~shall be~~^{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 ~~shall be~~^{are} substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there ~~shall be~~^{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 ~~shall be~~^{are} substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there ~~shall be~~^{are} substituted the words “right or restrictive covenant is”.

Application of the 1965 Act

3.—(1) The 1965 Act ~~shall have~~^{is} 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 apply~~^{ies} 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~~ 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

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
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 from 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

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
	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

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
	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

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
	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

<i>(1)</i> <i>Type of tree</i>	<i>(2)</i> <i>Reference of trees on environmental context plans</i>	<i>(3)</i> <i>Work to be carried out</i>
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~~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,

(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 298 (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 3029 (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 387 (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 387, 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 387 (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 387 (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.

201[3] No. []

INFRASTRUCTURE PLANNING

HIGHWAYS

The M1 Junction 10a (Grade Separation) Development Consent
Order 201[3]

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

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;

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 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 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

^(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 1981 Act 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 1981 Act 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]
[Department]

[] 201[3]

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** 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 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 its 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

<i>(1)</i> <i>Number</i>	<i>(2)</i> <i>Description</i>
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

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Description</i>
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 from 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.

<i>(1)</i> Area	<i>(2)</i> Street to be stopped up	<i>(3)</i> Extent of stopping up	<i>(4)</i> 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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
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 M1 J10 Northbound Merge Slip Road	Night-time closures will be required to facilitate the safe construction of the authorised development 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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
	<p>Capability Green Eastbound Diverge Slip Road</p> <p>Capability Green Westbound Merge</p> <p>A1081 London Road</p> <p>Newlands Road</p>	<p>Night-time closures will be required to facilitate the safe construction of the authorised development</p> <p>Night-time closures will be required to facilitate the safe construction of the authorised development</p> <p>Short term closures will be required to facilitate the safe construction of the authorised development.</p> <p>Short term closures will be required to facilitate the safe construction of the authorised development.</p>
Luton Borough Council	<p>London Road</p> <p>Public Footpath FP43</p> <p>Newlands Road</p>	<p>Short term closures will be required to facilitate the safe construction of the authorised development.</p> <p>Closure of the footpath for the duration of the works required to facilitate the safe construction of the authorised development</p> <p>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</p>

SCHEDULE 7

Article 15

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Reference on street plans, sheet 3</i>	<i>(3)</i> <i>Description of access</i>
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.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Reference on street plans,</i> <i>sheet 3</i>	<i>(3)</i> <i>Description of access</i>
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.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Reference on street plans,</i> <i>sheet 3</i>	<i>(3)</i> <i>Description of access</i>
	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

<i>(1)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(2)</i> <i>Purpose for which rights over the land may be acquired</i>
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.

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 2013(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. 2013 []

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

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
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 from 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

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
	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

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans, sheet 1</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
	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

<i>(1) Location</i>	<i>(2) Number of land shown on land plans, sheet 1</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Relevant part of the authorised development</i>
	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

<i>(1)</i> <i>Type of tree</i>	<i>(2)</i> <i>Reference of trees on environmental context plans</i>	<i>(3)</i> <i>Work to be carried out</i>
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.

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,

(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.

201[3] No. []

INFRASTRUCTURE PLANNING

HIGHWAYS

The M1 Junction 10a (Grade Separation) Development Consent
Order 201[3]