

M25 junction 28 improvement scheme

TR010029

9.73 Applicant's response to the Gardens of Peace's written summary of hearings

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Table of contents

Chapter	Pages
1. Purpose and structure of this response	4
2. REP4-034 Savills on behalf of the Gardens of Peace Muslim Cemetery Written summary of oral submission put at the Hearings and response to action points arising from CAH1	5

1. Purpose and structure of this response

- 1.1.1 This document provides the comments of the applicant, Highways England, in response to Savills' on behalf of the Gardens of Peace Muslim cemetery's Written summary of oral submission put at the Hearings and response to action points arising from Compulsory Acquisition Hearing 1 (CAH1) submitted to the Planning Inspectorate at Deadline 4 (17 March 2021) (REP4-034).
- 1.1.2 Highways England has sought to provide comments where it is helpful to the Examination to do so, for instance where a representation includes a request for further information or clarification from Highways England or where Highways England considers that it would be appropriate for the Examining Authority (ExA) to have Highways England's views in response to a matter raised by an Interested Party in its representations. Where issues raised within a representation have been dealt with previously by Highways England, for instance in response to a question posed by the ExA in its first round of written questions or within one of the application documents submitted to the Examination, a cross reference to that response or document is provided to avoid unnecessary duplication. The information provided in this document should, therefore, be read in conjunction with the material to which cross references are provided.
- 1.1.3 Highways England has not provided comments on every point made within the representation (for instance, Highways England has not responded to comments made about the adequacy of its pre-application consultation given that Highways England has already provided a full report of the consultation it has undertaken as part of its application for the Development Consent Order (DCO)) and the Planning Inspectorate has already confirmed the adequacy of the pre-application consultation undertaken when the application was accepted for Examination. In some cases, no comments have been provided, for instance, because the written representation was very short, or because it expressed objections in principle to the Scheme or expressions of opinion without supporting evidence.
- 1.1.4 For the avoidance of doubt, where Highways England has chosen not to comment on matters raised by Interested Parties, this is not an indication Highways England agrees with the point or comment raised or opinion expressed.

2. REP4-034 Savills on behalf of the Gardens of Peace Muslim Cemetery written summary of oral submission put at the hearings and response to action points arising from CAH1

Response reference:	Representation Issue	Highways England Response
REP4-034-01	<p>1. Written Summaries of Oral Submission put at any Hearing</p> <p>Please note, within the below written summaries or oral submission, we refer to some matters arising post hearings and thus has superseded the oral submission put at any hearing.</p> <p>a. No Formal Confirmation of Mitigating Works</p> <p>Gardens of Peace has had site and virtual meetings with Highways England and Cadent Gas since 2019. However, to date Highways England, for whatever reason, has not engaged with Gardens of Peace to formally confirm how the concerns of Gardens of Peace as a result of the Scheme are to be mitigated. This is despite the fact that the concerns (which are summarised under point 'b' below) have been provided, in detail, within the Written Representation, the Examining Authority's Written Questions 1, and the recent Non-statutory Consultation and during meetings with Highways England, Cadent Gas, Atkins and the Valuation Office.</p>	<p>Draft Heads of Terms were submitted to the Trustees of the Gardens of Peace (the Trustees) and their land agent prior to Deadline 4. Highways England is seeking to move forward with the draft Heads of Terms and to settle an agreement as soon as possible. The Trustees' detailed comments on the Heads of Terms are awaited. Nonetheless Highways England is drafting a full version of the agreement for discussion with all parties namely Highways England, Cadent Gas Limited ("Cadent") and the Trustees.</p> <p>Highways England understands that the Trustees have instructed lawyers and they are currently looking through the documents, with a view to progressing matters.</p>

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REP4-034-02	<p>Cadent Gas has however engaged and a meeting was held between Cadent, Atkins, Gardens of Peace and its professional advisors subsequent to the hearings on 15th March 2021. The meeting concerned mitigating matters and whilst encouraging and moving in the right direction, there continues to be uncertainty surrounding some of the mitigating measures, for example location of soil storage. After further consideration from Cadent Gas, it has been proposed that this can now be situated in the originally proposed location within the cemetery, with soil collection being via the service entrance (with access being control by Cadent Gas). This new option has been welcomed by Gardens of Peace. This new proposal will mitigate many of the previous concerns, however the proposal is subject to final confirmation and if not adopted, the issue of soil storage remains as originally stated within the written representation. This option is still subject to confirmation that the proposed soil storage area provides sufficient space for Gardens of Peace. However, it is now clear that with careful consideration from Highways England contractors, other less impacting options can be found. Given the limited input from Highways England during this critical period of the Development Consent Order (DCO) process, further time should be given to exploring less harmful options.</p>	<p>Highways England is pleased that the Trustees welcome the location of the soil storage being via the service entrance (with access being controlled by Cadent). This can be formalised in the agreement being progressed provided Cadent give its confirmation that this arrangement is acceptable.</p>

Response reference:	Representation Issue	Highways England Response
REP4-034-03	<p>It was confirmed during the meeting that draft Heads of Terms concerning the permanent and temporary concerns will be provided shortly. We confirm the draft Heads of Terms were received on the 15th March 2021, two days before the forthcoming deadline. However, until these Heads of Terms are formalised and reviewed by Gardens of Peace legal representative, there is no confirmation that the less impacting options will be adopted. This stage of the process could have been reached months before had there been meaningful engagement from Highways England</p>	<p>Highways England disagrees with the view that there has not been meaningful engagement as Highways England has been in discussions with the Trustees since well before the DCO application was made. As explained at the CAH1 held on 1 March 2021, Highways England intends to progress with an agreement, following submission of draft Heads of Terms, and considers meaningful and appropriate engagement has been undertaken throughout the preliminary design and pre-examination stages and into the examination. Highways England is hopeful that an agreement, to formalise the issues outlined in Savills representations at Deadline 4 (REP4-034-11 below) to satisfy the Trustees, will be reached by the end of the examination in parallel with the detailed design of the gas pipeline based on the productive discussions to date.</p>
REP4-034-04	<p>Accordingly, and in light of Highways England not engaging with Gardens of Peace and until a formal agreement has been completed, Gardens of Peace continue to remain anxious that such concerns will not be resolved prior to the potential confirmation of the DCO. This is especially concerning given the cemetery will be open and operational in less than 12 months' time and prior to the construction works of the Scheme commencing.</p>	<p>Highways England is hopeful that an agreement, to formalise the issues outlined in Savills representations at Deadline 4 (REP4-034-11 below) to satisfy the Trustees, will be reached by the end of the examination in parallel with the detailed design of the gas pipeline based on productive discussions to date.</p> <p>Highways England is drafting a full version of the agreement for discussion with all parties namely Highways England, Cadent and the Trustees.</p>
REP4-034-05	<p>Prior to the hearings, the only correspondence Savills or Gardens of Peace has received is from the Valuation Office Agency specifically concerning Section 7 of Gardens of Peace</p>	<p>Highways England has been dealing with the Trustees for some considerable time including the period prior to Savills being engaged by the Trustees. Plainly the Trustees could have involved Savills in</p>

Response reference:	Representation Issue	Highways England Response
	Written Representation and the lack of engagement with the Valuation Office Agency. The issue concerning professional's fees is not one of compensation, but a matter concerning conduct of Valuation Office Agency, Highways England's professional advisor. Subsequent to the hearings, the Valuation Office had also provided a draft easement document (received on Monday 15th March).	those discussions, once Savills had been appointed, had they chosen to do so. The question of Savills' fees is dealt with elsewhere in this response.
REP4-034-06	In regards to the reimbursements of Savills fees, the Valuation Office Agency is making the reimbursement of any Savills fees conditional on Savills reducing its hourly rates, a matter which is not in the gift of Gardens of Peace, being a separate organisation.	<p>Please see Highways England's response REP4-028 of additional representation from Savills on behalf of Gardens of Peace (GoP).</p> <p>Highways England wrote to Savills on 17 March 2021 where the VoA, on behalf of Highways England, agreed to pay interim fees for costs incurred between 1 December 2020 and 5th March 2021, but only at rates approved by Highways England on the recommendation of the VOA as regards Director level fees.</p> <p>As Highways England has explained (REP4-028) it does not consider the fee rate claimed by Savills at Director level to be reasonable, which is why the matter remains unresolved. Highways England (acting on the recommendation of the VOA) is not disputing the amount of time spent by the Trustees' professional team up to 30 November 2020, just a particular fee rate. As regards the period from 30 November 2020 onwards, the time spent by Savills' team is yet to be approved by the VOA which has requested further information from Savills, which is awaited.</p>
REP4-034-07	It is worrying that the Valuation Office Agency is effectively ransoming the reimbursement of Gardens of Peace's	Please see the response to REP4-034-06 above.

Response reference:	Representation Issue	Highways England Response
	<p>professional fees on a matter that Gardens of Peace has no control. Whether intentional or not, this approach has led to reduced input from Garden of Peace's professional advisors at a critical period within the DCO process. This opportunity to properly engage has now been missed, and the results of this approach can now be seen as Highways England's contractor teams and the Garden of Peace's professional teams rush (and struggle) to resolve the issues within the available time left in the DCO process.</p>	<p>The question of not being prepared to reimburse professional fees at a level considered excessive, particularly in relation to fees agreed with others on the same scheme, cannot reasonably be characterised as ransoming.</p> <p>As outlined in Highways England's response at Deadline 4 (REP4-012) Draft Heads of Terms were submitted to the Trustees and their land agent prior to Deadline 4. Highways England is seeking to move forward with the draft Heads of Terms and has drafted an agreement and hopes to settle an agreement as soon as possible.</p>
REP4-034-08	<p>Of the £46,100 + VAT of professional fees (Architects, Quantity Surveyors, Highways Consultant and Savills fees up to mid-February) incurred by Gardens of Peace, Highways England has not agreed to or made a single payment to Gardens of Peace.</p>	<p>Please see the response to REP4-034-06 above.</p>
REP4-034-09	<p>Whether or not this approach was intentional, the result of Highways England's failure to explore all options and restrict Gardens of Peace access to professional advice is that if the DCO is confirmed, Highways England will be in very strong position to control any further negotiations.</p>	<p>Highways England is not restricting the Trustees' access to professional advice as documented a number of times in emails and deadline submissions. Please see the answer above (REP4-034-06) in respect of professional fees.</p>
REP4-034-10	<p>With the above in mind, we reiterate our view that to allow for proper and reasonable engagement with Highways England, the current application should be rejected and the DCO process repeated.</p>	<p>There has been proper and reasonable engagement. Please see the response to REP4-034-03 above.</p>

Response reference:	Representation Issue	Highways England Response
REP4-034-11	<p>b. Concerns of Gardens of Peace</p> <p>We reiterated the concerns of Gardens of Peace during the hearings and have previously provided these, in detail, within the Written Representation, the response to the Examining Authority's Written Questions 1, the response to Highways England's Non-Statutory consultation and during meetings with Highways England, Atkins, Cadent Gas and Valuation Office. However, for the purpose of this submission, we summarise these below.</p> <p>As referred to in point 'a' above, we have now received the draft Heads of Terms. Firstly, as these Heads of Terms have just been received, it provides very little time to review and to determine whether the Heads of Terms reflect meaningful progress ahead of forthcoming deadlines. The draft Heads of Terms are in a very brief form and accordingly will require substantial time in reviewing, fleshing out and amending the document to reflect the mitigating matters verbally agreed in a meeting between Gardens of Peace and Cadent Gas (15th March 2021).</p> <p>Furthermore, it is irregular for Heads of Terms relating to such matters to state that professional fees incurred in relation to the Heads of Terms are "subject of a separate agreement between the Trustees and Valuation Office Agency", as these draft Heads of Terms do. This has not been the arrangement on other recent Highways England agreements relating to DCOs</p>	<p>Please see REP4-028, Highways England's response to the additional representation from Savills on behalf of Gardens of Peace.</p> <p>Highways England has no objection to the reimbursement of professional fees being a matter dealt with in the agreement if that is the Trustees' preference.</p>

Response reference:	Representation Issue	Highways England Response
	<p>that Savills has been involved in, where reasonable professional fees were included within the agreement.</p> <p>Inserting unusual and contentious clauses into the Heads of Terms will only make reaching agreement more challenging. This condition is, coincidentally or otherwise, one that will strengthen Highways England's negotiating position. It also brings into question Highways England's intent on reaching agreement prior to the end of the DCO process. This is typical of the nature of the engagement experience since initial engagement commencement.</p> <p>Until a formal agreement is completed, these continue to be of concern;</p>	
REP4-034-12	<p>i) Loss of Service Entrance – causing disruption to the daily cemetery operations and bringing rise to safety concerns in light of all cemetery traffic and service vehicles being restricted to the same entrance.</p>	<p>See Highways England's response to the Gardens of Peace's Deadline 3b submission (REP4-012) on each of the points raised in REP4-034-12 to REP4-034-16 of this document. Discussions are ongoing with all parties including a meeting on site on 24 March 2021, to reach an agreement and Highways England is hopeful this will be resolved by the end of the examination.</p> <p>Subject to Cadent's approval, which Highways England hopes will be forthcoming shortly, service vehicles used for soil storage in connection with the operation of the cemetery will be able to use the service entrance. This can be covered in the prospective agreement.</p>

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REP4-034-13	ii) Soil Storage – the need to relocate the soil storage area which brings rise to temporary loss of burials, compaction to land prepare for burial plots, the need for heavy good vehicles and plant machinery to access the soil storage area and the impact this will have on the internal roads, which were only designated for the use on congregations members and the effects on the aesthetic appearance of the cemetery when congregations members enter the cemetery.	At a site meeting on 24 March 2021 and subsequent to a revised site layout plan being circulated to all parties regarding the interface between the gas diversion works and the operation of the cemetery, a location for the temporary soil storage adjacent to the existing shed has been agreed. This location can be stated in the prospective agreement alongside the final interface layout plan. This will resolve the concern by the Trustees, subject to Cadent's approval, as there will be no movement of heavy goods vehicles and plant and machinery associated with the cemetery on the internal cemetery roads. Accordingly burial services will not be disturbed and the aesthetic appearance of the cemetery will not be harmed.
REP4-034-14	iii) Parking – the temporary loss of visitor parking requires the need to have a temporary car park located on land prepared for burial use. This will cause disruption to traffic management, aesthetics of the cemetery, and also bring rise to safety concerns. Whilst the proposal of aluminium tracking has been proposed, the concerns surrounding safety, requirement for traffic control and loss of additional burial plots remains.	The location of the temporary car parking has been agreed by all parties as set out in Highways England's response at Deadline 4 to the Gardens of Peace response at Deadline 4 (REP4-012).
REP4-034-15	iv) Loss of Internal Road – The loss of internal road providing access to the car park, workshop and store will bring rise to the need for a temporary road. As with the temporary car park, this will cause traffic management disruption, damage to land prepared for	The position has not changed since the submission at Deadline 4. REP4-012. Further discussion with all parties it has been agreed that the temporary aluminium trackway on the internal roads will be an anti-slip aluminium surface

Response reference:	Representation Issue	Highways England Response
	burial use and further effects on aesthetics. Whilst the proposal of aluminium tracking has been proposed, the concerns surrounding safety, requirement for traffic control and loss of additional burial plots remains.	
REP4-034-16	v) Disruption to Utility and Site Infrastructure – As a result of the presence of the new gas main, Gardens of Peace is required to relocate existing infrastructure (underground services). This will likely need to be in the soft landscaping adjoining the internal road, which sterilises land prepared for burial use.	The position has not changed since the submission at Deadline 4. REP4-012.
REP4-034-17	vi) Loss of Burial Plots – Despite the amendment to Plot 1/8 and the reduction in area subject to acquisition of permanent rights, there is still concern there will be a permanent loss of burial plots.	<p>At Deadline 4 Highways England submitted a plan overlay of Plot 1/8a on the burial ground site layout plan (REP4-020) which showed there would be no loss of burial plots as a result of the gas pipeline diversion and easement. This plan was shared at a meeting with all parties on 15 March 2021.</p> <p>An amended drawing showing the latest burial plot layout was provided by GoP and the same exercise was done which showed that with plot 1/8, the gas pipeline and limits of deviation (LoD) overlain, there is no conflict between the burial plots and the proposed gas pipeline. The LoD shown represents the Cadent easement. As discussed with Cadent, this has reduced below the 6.1m half width where the pipeline is closest to the proposed burial plots. And the Plot 1/8 width similarly reduced to avoid a conflict however, there is still space for a full 12.2m easement width within Plot 1/8.</p>

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		<p>There is also a commitment in the Statement of Common Ground with Cadent Gas to ensure that burial plots will not be lost (based on the latest burial layout provided by the Trustees on 17 March 2021). This commitment is set out in, point 1.7 of the draft SoCG between Cadent and Highways England (REP1- 009).</p>
REP4-034-18	<p>vii) Easement - Gardens of Peace requested a draft Easement document in August 2020 which would outline the land use restrictions in light of the gas main. The easement was provided on 15th March 2021. This will be reviewed by Gardens of Peace to ensure it does not prohibit it from undertaking the intended use of the land with Plot 1/8 (although this is unlikely as Highways England had confirmed in its response to Gardens of Peace's Written Questions that there "will be no future land restrictions over Plot 1/8" (see TR010029/EXAM/9.36 - REP2- 029-45)).</p>	<p>For the avoidance of doubt the existence of the gas main ought not prevent the Trustees operating the cemetery as intended. Plainly there are some limitations upon what could be built or done in the vicinity of the gas pipeline. The same applies to the existing gas pipeline. As outlined in REP4-034-17 above, the Cadent easement has reduced below the 6.1m half width where the pipeline is closest to the proposed burial plots. And the Plot 1/8 width similarly reduced to avoid a conflict however, there is still space for a full 12.2m easement width within Plot 1/8.</p>
REP4-034-19	<p>viii) Viewpoints / Photomontage – Concerns surrounding the visual impact of the Scheme on the cemetery have been raised. Within its response to Gardens of Peace's Written Questions 1, Highways England confirm "it is also noted that there is an existing mature tree belt which runs along between the A12 and Gardens of Peace which provides a visual screening belt. There is no intention to remove this screening belt as part of the construction of the Scheme and therefore this will provide visual screen to Gardens of Peace" (see</p>	<p>As stated in their response, the tree belt which runs along between the A12 and the Gardens of Peace that provides a visual screening belt will not be affected by the construction of the Scheme. the tree belt is maintained by TfL, as highway authority, and therefore any assurance needed by the Trustees should be sought from TfL.</p>

Response reference:	Representation Issue	Highways England Response
	<p>TR010029/EXAM/9.36 - REP2-029-17). However this tree belt is under the management of TfL and there has been no formal confirmation from TfL that it will retain this tree belt to act as a visual screen.</p>	
<p>REP4-034-20</p>	<p>c. Amendments to Plot 1/8</p> <p>As referred to within the hearings, Gardens of Peace welcome the change to Plot 1/8 (Change 4 / Work Number 29), however there continues to be concern surrounding the potential loss of a some burial plots and the mitigating measures required to reduce the effect of the Scheme on the cemetery whilst the construction works are being undertaken. The Architect acting on behalf of Gardens of Peace has provided an additional drawing to support these concerns and as confirmed during the hearing, Savills has sent this onto Thomas Selby, M25 Junction 28 Project Manager, at the Highways Agency. During the meeting with Cadent Gas and Atkins on Monday 15th March, these concerns were eliminated as it was clarified (and as per the plans shared by Simon Harris) that there will be no overlap between the easement and burial land.</p> <p>As the plans were only shared during a virtual meeting, Gardens of Peace look forward to receiving from Highways England the additional and larger scale drawings illustrating the extent of Plot 1/8, and as shown on the land plans at Deadline 3a. We note these are to be received by Gardens of Peace by Deadline 4 (Wednesday 17th March).</p>	<p>At Deadline 4 Highways England submitted a plan overlay of Plot 1/8a on the burial ground site layout plan (REP4-020) which shows there would be no loss of burial plots as a result of the gas pipeline diversion and easement. An amended drawing showing the latest burial plot layout was provided by GoP and the same exercise was done which showed that with Plot 1/8, the gas pipeline and LoD overlain, there is no conflict between the burial plots and the proposed gas pipeline. Please see revised plan submitted at Deadline 5 (This plan has been revised at Deadline 5 (TR010029/EXAM/9.59_). The LoD shown represents the Cadent easement. As discussed with Cadent, this has reduced below the 6.1m half width where the pipeline is closest to the proposed burial plots. And the Plot 1/8 width similarly reduced to avoid a conflict however, there is still space for a full 12.2m easement width within Plot 1/8. All as discussed and agreed with Cadent and as published as Proposed Change 4.</p> <p>The land plans (TR01009/EXAM/2.2 (1)) have been revised at Deadline 5 and they include the change to Plot 1/8 and Plot 1/8a.</p>

Response reference:	Representation Issue	Highways England Response
REP4-034-21	<p>2. Response to Action Point 4 within the Action Points arising from the Compulsory Acquisition Hearing – <i>“Gardens of Peace Muslim Cemetery (Gardens of Peace) to confirm their position on the accepted Change Request no.4 received at D3a”</i></p> <p>Whilst the deadline for this submission is Tuesday 13 April (Deadline 5), we provide our response within this submission following a meeting with Cadent Gas and Atkins on Monday 15th March.</p> <p>As referred to in point ‘c’ above, Gardens of Peace welcome the changes to Plot 1/8 and work number 4. This will eliminate the concerns surrounding loss of burial plots as there will not be an overlap between the easement and burial land.</p> <p>This said, matters do need to be formally agreed in regards to mitigating measures as a result of the Scheme on the cemetery. For the purpose of this response, we reiterate the comments made in point ‘b’ above.</p>	<p>Draft Heads of Terms were submitted to the Trustees and their land agent prior to Deadline 4 which has been acknowledged. Highways England is seeking to move forward with the draft Heads of Terms into an agreement and discussions are ongoing.</p> <p>Highways England propose a tri-party agreement with Cadent, Highways England and the Trustees.</p>
REP4-034-23	<p>4. Response to Action Point 7 of the Action Points arising from the Compulsory Acquisition Hearing – <i>“Gardens of Peace and the Applicant to respond on need for additional requirement in DCO to secure the extent of works proposed on Gardens of Peace land”</i></p> <p>In response to the Examining Authority’s request at ‘Action 7’ following the Compulsory Acquisition Hearing, Gardens of Peace confirm the need for additional requirement in the DCO</p>	<p>Please see the response to REP4-034-21 above.</p>

Response reference:	Representation Issue	Highways England Response
	<p>to secure the extent of works proposed on Gardens of Peace land. It is requested that the additional requirement should form an agreement outlining all the mitigating measures to be adopted by Highways England in order to minimise and eliminate the effects of the Scheme of the cemetery. We have now received draft Heads of Terms on this matter, but will require substantial time in reviewing and fleshing out the very basic terms provided.</p>	

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