

## **M25 junction 28 improvement scheme**

**TR010029**

### **9.131 Applicant's comments on the London Borough of Havering's Deadline 9 submissions**

Rule 8(1)(k)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

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# **Infrastructure Planning**

## **Planning Act 2008**

### **The Infrastructure Planning (Examination Procedure) Rules 2010**

### **M25 junction 28 scheme**

### **Development Consent Order 202[x ]**

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#### **9.131 Applicant's comments on the London Borough of Havering's Deadline 9 submissions**

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<b>Rule Number:</b>	Rule 8(1)(k)
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# 1. Purpose and structure of this response

- 1.1.1 This document provides the comments of the applicant, Highways England, in response to London Borough of Havering's Deadline 9 submissions submitted to the Examining Authority (ExA) on or before Deadline 9 (30 June 2021) namely:
- Response to the Applicant's updated draft Development Consent Order submitted at Deadline 8 (REP9-075)
  - Response to the Applicant's response to Action Point 4 from Issue Specific Hearing 3 (ISH3) Outline Community Engagement Plan submitted at Deadline 8 (REP9-076)
  - Response to the Applicant's comments on London Borough of Havering's Deadline 7 submissions (REP9-077)
  - Response to Savills (UK) on behalf of the Gardens of Peace Muslim Cemetery Deadline 8 submission (REP9-078)
- 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. REP9-075 London Borough of Havering response to the Applicant's Updated draft Development Consent Order submitted at Deadline 8

Response reference:	Representation Issue	Highways England Response
<b>REP9-080-03</b>	Havering is extremely disappointed that the Applicant has not taken on board the suggested wording in the ExA draft DCO and as a result the issues pertaining to the draft DCO that Havering has raised previously relating to the removal of the wording "substantially in accordance", the requirement for a Code of Construction Practice and the process for the Discharge of Requirements, remain.	Highways England maintains its position set out in paragraphs 2, 10 and 23 of Highways England's comments on the Examining Authority's proposed schedule of changes to the draft DCO (REP8-010).
<b>REP9-080-04</b>	Havering is very disappointed that the Applicant has not agreed with the ExA's recommendation for a 42 determination period for a number of Articles within the DCO. Local Authorities are, and will, for some time continue to be operating under severe pressure particularly with regards to resources and an additional 14 days assists local authorities greatly in undertaking this task.	Highways England maintains its position set out in paragraph 2 of Highways England's comments on the Examining Authority's proposed schedule of changes to the draft DCO (REP8-010).

### 3. REP9-076 London Borough of Havering's Response to the Applicant's response to Action Point 4 from Issue Specific Hearing 3 Outline Community Engagement Plan submitted at Deadline 8

Response reference:	Representation Issue	Highways England Response
<b>REP9-076-01</b>	<p>Thank you for the opportunity to comment on the Outline Community Engagement Plan (CEP) submitted by the Applicant. LB Havering would like to offer the following comments:</p> <p>LB Havering welcomes the submission of the Outline Community Engagement Plan into the Examination.</p>	<p>Highways England has submitted at Deadline 10, an updated Outline Community Engagement Plan (CEP)_contained within Appendix F of the Outline Construction Environmental Management Plan (TR010029/APP/7.2(5)).</p>
<b>REP9-076-02</b>	<p>In paragraph 3.1.4 the Council would request clarity on what the Applicant considers as "Vulnerable road users", does this include road users with mobility impairments for example?</p>	<p>Paragraph 3.4.1 of the Outline CEP submitted at Deadline 10 (TR010029/APP/7.2(5)) includes the elderly and disabled as some examples of vulnerable road users in addition to moped and motorcycle drivers and animals.</p>
<b>REP9-076-06</b>	<p>LB Havering would request clarity on how often the meetings identified in para 5.1.6 will be held. For example, the Applicant references to holding "regular meetings" but how often is regular for example? It is particularly important the local residents are kept informed but the table does not indicate how often this would be. In such circumstances Havering would expect regular meetings with the various stakeholder groups listed to be monthly.</p>	<p>Paragraph 5.1.6 of the Outline CEP submitted at Deadline 10 (TR010029/APP/7.2(5)) includes clarification on how often stakeholder engagement will take place through the identified forums.</p>

Response reference:	Representation Issue	Highways England Response
<b>REP9-076-07</b>	Engagement with Non-Motorised Users is welcome. LB Havering would expect Havering's Cycling Liaison Group and the Havering and East London Ramblers to be forms that the Applicant engages.	These have been added to Appendix A - Outline CEP Stakeholders list.
<b>REP9-076-08</b>	LB Havering would encourage a dedicated helpline to be set up by the contractor for residents and businesses to contact the contractor with any issues directly.	The Applicant will continue to use the Customer Contact Centre (0300 123 5000) as a dedicated helpline for all enquires, as well as the Scheme email address (M25j28@highwaysengland.co.uk).
<b>REP9-076-09</b>	<p><b>Evaluation</b></p> <p>It is noted in section6 that the Community Engagement Plan will be reviewed to ensure objectives are being met. However no further detail is provided as to who will be undertaking such a review and the methodology with which the review will be carried out.</p> <p>LB Havering would request that the Applicant clarifies if the appointed Contractor or the Applicant will be reviewing the CEP as it is being implemented. The Council would expect the Applicant to undertake such a review if the CEP is being implemented by the Principal Contractor as is suggested in section 2 of the outline CEP.</p> <p>There appears to be no detail as to how the CEP will be enforced by the Applicant</p>	<p>Paragraph 6.1.1 of the Outline CEP submitted at Deadline 10 (TR010029/APP/7.2(5)) specifies that the Principal Contractor will be responsible for reviewing progress towards the plan's objectives. The methodology which the Principal Contractor will follow to carry out the review is outlined in paragraphs 6.1.2 to 6.1.4 of the Outline CEP.</p> <p>The Principal Contractor will be heavily involved in the drafting of the final version of the CEP for submission to the Secretary of State for approval under requirement 4 of the DCO.</p> <p>Requirement 4 of the DCO requires the construction of the authorised development to be carried out in accordance with the approved CEMP of which the approved version of the CEP will form part.</p>

Response reference:	Representation Issue	Highways England Response
<b>REP9-076-10</b>	<p><b>Appendix A Community Engagement Plan Stakeholders</b></p> <p>Under the category <i>Communities</i> LB Havering would like to see the Havering Borough Resilience Forum, Havering Compact, and Havering Association for people with Disabilities (HAD) included.</p> <p>Under the category <i>Businesses</i> LB Havering would like to see the Romford Business Improvement District and London Riverside Business Improvement District included.</p> <p>Under the category <i>Health</i> LB Havering would like to see the Barking Havering and Redbridge University Hospitals NHS Trust included.</p> <p>Under the category <i>Non-motorised users (NMUs)</i> LB Havering would like to see the Havering and East London Ramblers included.</p>	<p>The table in Appendix A of the Outline CEP submitted at Deadline 10 (TR010029/APP/7.2(5)) includes all the groups mentioned.</p>
<b>REP9-076-11</b>	<p>It is noted that a final CEP will be submitted to the Secretary of State for approval. As with the other documents set out under Requirement 4 of the DCO, the Council will expect to be consulted on the final documents and for any comments made to be submitted in full to the Secretary of State.</p>	<p>London Borough of Havering will be consulted on the final CEP under requirement 4 of the DCO.</p>



#### 4. REP9-077 London Borough of Havering response to the Applicant's comments on London Borough of Havering's Deadline 7 submissions

Response reference:	Representation Issue	Highways England Response
REP9-077-02	Havering has recently entered into discussions with the Applicant concerning the drafting of the S106 agreement that would secure the provision of the NMU route. At present HE's initial draft S106 only deals with the provision of the central section of the NMU route. This leaves Havering with concern as to how the entire NMU route will be secured. Following discussions with Transport for London and Essex County Council, LB Havering has sent a revised version of the S106 agreement to the Applicant for their consideration. This includes some additional wording to the obligation that all authorities feel is an essential requirement to provide the surety that the respective local authorities need that the NMU route will be delivered in its entirety by March 2025.	Highways England is in discussions with London Borough of Havering, TfL, Brentwood Borough Council and Essex County Council regarding the NMU upgrade in its entirety and these discussions will continue. Highways England recognises that in due course it will be necessary for it to enter into an agreement or agreements with the relevant highway authorities for those parts of the route (being most of the route) for which Highways England is not the highway authority. Highways England has provided to the above-mentioned bodies and to the ExA, a draft s106 obligation in the form of a unilateral planning obligation for the central section of the NMU route for which Highways England is the highway authority (REP9-070). A requirement obligating Highways England to provide the route in its entirety would be inappropriate for the reasons mentioned below.
REP9-077-03	Given that the Examination will close on 7 July 2021 and the fact the Applicant has already stated to Havering that there is little time to secure a S106 for the entire NMU route, Havering requests that the ExA gives consideration to the	The NMU route comprises the conversion of 3.1km of existing walking route into a high-quality shared use cycle and walking route. This NMU route upgrade is being implemented by way of Highways England's Designated Funds and is separate

Response reference:	Representation Issue	Highways England Response
	<p>provision of a Requirement in the draft DCO to secure the entire NMU route.</p>	<p>to Highways England's central work of operating and maintaining the Strategic Road Network (SRN). The wider NMU scheme is outside the scope of the DCO application, is a substantial scheme in itself and with the exception of the central section of the route as it passes through junction 28, the wider NMS scheme has not been considered by the ExA as it has not formed part of the DCO application under examination. Accordingly, it would not be appropriate for the Secretary of State to require its delivery by way of a requirement.</p> <p>Also, to do so would be contrary to PINS Advice note 15 which states that <i>"the law and policy relating to planning conditions, imposed on planning permissions under the TCPA 1990, will generally apply when considering Requirements to be imposed in a DCO in relation to the terrestrial elements of a proposed NSIP. Requirements should therefore be precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects"</i></p> <p>Para 55 of the NPPF states that planning conditions must be <i>"relevant to the development to be permitted"</i>.</p> <p>Furthermore, Highways England is not in a position to deliver the entire NMU scheme at present because it does not have the necessary powers to do so and so it can only be delivered with the co-operation and agreement of others, namely the highway authorities. It would be unreasonable and inappropriate to impose a requirement obligating Highways England to enter into</p>

Response reference:	Representation Issue	Highways England Response
		<p>agreements with third parties to deliver the NMU scheme in its entirety..</p> <p>Highways England is finalising a short unilateral obligation under section 106 TCPA 1990 in respect of the central section only, as foreshadowed at Deadline 9 (REP9-070). It will very substantially follow that draft version.</p>
<b>REP9-077-04</b>	Havering notes that Applicant's response to REP7-033-12 that whilst the LB Havering embargo on roadworks in the lead up to Christmas is not specifically referred to in the Outline TMP it would be respected. LBH would prefer that specific reference to the LBH embargo is included in the Outline and Final TMPs	The Outline TMP has not been updated at Deadline 10 before the close of examination however the Final TMP will include specific reference to the LBH pre-Christmas embargo on roadworks and state that it will be respected.
<b>REP9-077-05</b>	LB Havering remains disappointed with the Applicant's response to the requirement for a CoCP. Havering would wish to see a requirement for the CoCP included in the draft DCO as per the dDCO issued by the ExA (PD-021).	Highways England has nothing further to add and remains of the view a CoCP is not necessary (paragraph REP8-028A-13 of REP9-062). See paragraph 23 of Highways England's comments on the Examining Authority's proposed schedule of changes to the draft DCO (REP8-010).
<b>REP9-077-08</b>	With regards to the Applicant's response to REP7-033-19, LB Havering notes the provision of an outline Community Engagement Strategy. Havering will provide comments on this document under separate cover. The Applicant in its response considers that Havering has made a "new ask" for the contributions for road safety education and active travel measures. This is not a "new ask", in fact LB Havering raised	Highways England maintains the position it has held through the examination that financial contributions are not needed to mitigate the impact of the Scheme. See paragraph REP7-033-19 of Highways England's response to London Borough of Havering Deadline 7 submission (REP8-013).

Response reference:	Representation Issue	Highways England Response
	<p>this issue in its Local Impact Report (REP1-031), REP1-033 and at Issue Specific Hearing 2.</p> <p>LB Havering continues to recommend that as part of the community engagement supporting the construction of the scheme that active travel and road safety education measures are developed and implemented for sensitive receptors along local routes that experience an increase in traffic during construction. LB Havering documented this issue of disruption during construction on local routes in its response to the Transport Assessment Supplementary Information Report. (REP1-033). These local routes are seen to experience increases in traffic flows due to traffic diverting to avoid either construction traffic or traffic management measures (lane narrowings).</p> <p>To support approach, upon commencement of construction, LB Havering seeks a contribution of £200k per annum over a three year period. This contribution will support the delivery of interventions and the work that is done on sustainable and active travel and road safety education. In addition to this contribution, LB Havering recommends that a financial contribution to support the continued delivery of free cycle training for the boroughs school children and wider residents in the vicinity of the construction routes.</p> <p>Upon the commencement of construction, LB Havering seeks £100k per annum over a three year period.</p>	

Response reference:	Representation Issue	Highways England Response
<b>REP9-077-09</b>	<p>Para 4.71 of the NPS states that The Secretary of State should expect the safety assessment to have considered the safety implications during the construction, commissioning and operational phases of the development. The Applicant has not carried out a safety assessment to consider safety implications during construction as it considers that the construction traffic impacts to be low but the Applicant has failed to take into account the redistribution of traffic onto school routes will have an impact on sensitive receptors during construction. LB Havering believes that the mitigation measures suggested above will ensure that the proposed scheme is policy compliant.</p>	<p>As presented in Section 6 of the Transport Assessment Supplementary Information Report (TASIR) (PDB-003), a minimal amount of traffic is forecast to divert onto alternative routes due to additional traffic delays caused by the temporary traffic management arrangement during construction of the Scheme. The additional traffic forecast to be diverted onto alternative routes is likely to represent less than the typical daily fluctuations in traffic volumes on the impacted roads and will be relatively short-term (over a few months). Consequently, the impact on road safety of the small amount of traffic diverted on to alternative routes during construction of the Scheme is likely to be negligible and a safety assessment is not therefore necessary.</p> <p>Accordingly, it is not appropriate for any financial contributions to be made on this account.</p>
<b>REP9-077-12</b>	<p>LB Havering notes that on several occasions, through the Applicant's responses, that HE state that if the final documents do not include the wording that LB Havering has suggested during the Examination (for example, the Outline CEMP etc) then LB Havering will have the opportunity to raise the same issues with the Secretary of State (SoS) when Havering is consulted on the final documents. LB Havering notes this position but would prefer that the suggested wording is included in the documents submitted to the ExA during the Examination. This would provide Havering with the confidence that the matters it has raised</p>	<p>Highways England maintains the position set out in its comments on the Examining Authority's proposed schedule of changes to the draft DCO (REP8-010).</p>

Response reference:	Representation Issue	Highways England Response
	have been addressed rather than having to reiterate its reasoning for a second time with the SoS.	

## 5. REP9-078 London Borough of Havering response to Savills (UK) on behalf of the Gardens of Peace Muslim Cemetery Deadline 8 submission

Response reference:	Representation Issue	Highways England Response
REP9-078-01	LB Havering welcomes the opportunity to comment upon the update with regards to the tripartite contract agreement. Havering notes that the agreement remains subject to contract. Once the agreement is signed and a planning application for the temporary car park is submitted, Havering will be in a position to remove its policy compliance concerns.	As previously stated in Highways England's response REP3B-006-2 (REP3B-003), the Scheme is not required to be in compliance with Policy CP8 Community Needs and DC27 Provision of Community Facilities which provides policy with regard to the development of community facilities as it is not proposing a burial ground but a highway improvement scheme.

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