

Your Ref: TR010032

Our Ref: 43879AOCTC

05 November 2020

National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Dear Ms Church,

Application by Highways England for an Order Granting Development Consent for the Lower Thames Crossing – Adequacy of Consultation Response

Further to your letter dated 23rd October 2020 regarding the above, Thurrock Council ('the Council') wishes to make comments specific to the local authority, in respect of:

- Thurrock's role in representing its community;
- Whether Highways England has complied with their duties under Section 47 of the PA 2008;
- Whether Highways England has complied with their duties under Section 49 of the PA 2008; and
- Thurrock's role as technical authority.

Should you have any questions on this, please do not hesitate to contact Anna Eastgate (Thurrock Council).

Yours sincerely



Anna Eastgate
Assistant Director Lower Thames Crossing & Project Delivery

1 Introduction

- 1.1.1 The Lower Thames Crossing (LTC) DCO was submitted to the Planning Inspectorate ('the Inspectorate') on the 23rd October 2020. On receipt, the Inspectorate has 28 days to decide whether to accept the DCO.
- 1.1.2 Under Section 55(3) of the Planning Act 2008 ('PA 2008') the Secretary of State may accept an application for an order granting development consent only if the Secretary of State concludes
 - a. That it is an application for an order granting development consent,
 - b. that development consent is required for any of the development to which the application relates,
 - c. that the applicant has, in relation to a proposed application that has become the application, complied with Chapter 2 of Part 5 (pre-application procedure), and
 - d. that the application (including accompaniments) is of a standard that the Secretary of State considers satisfactory.
- 1.1.3 Under Section 55(4) of the PA 2008, the Secretary of State, when deciding whether the Secretary of State may reach the conclusion in subsection (3)(e), must have regard to-
 - a. the consultation report received under section 37(3)(c),
 - b. any adequacy of consultation representation received by the Secretary of State from a local authority consultee, and
 - c. the extent to which the applicant has had regard to any guidance issued under section 50.
- 1.1.4 Section 55(5)(b) of the PA 2008, states that the "adequacy of consultation representation" referred to in section 55(4)(b) means a representation about whether the applicant has complied with the applicant's duties under sections 42, 47 and 48.
- 1.1.5 The guidance referred to in section 55(4)(c) includes guidance issued by the Secretary of State about the pre-application procedure for major infrastructure applications. This includes MHCLG's 'Planning Act 2008: Guidance on the pre-application process' (2015)('the MHCLG guidance'), the Inspectorate's Advice Note 2 'The role of local authorities in the development consent process' (2015)('Advice Note 2') and the Inspectorate's Advice Note 14 (version 2) 'Compiling the consultation report' (2012)('Advice Note 14'). The Applicant also has a duty to take account of responses to consultation and publicity, under section 49 of the PA 2008.
- 1.1.6 Thurrock Council (the Council) has prepared a joint Adequacy of Consultation response along with Gravesham Borough Council and the London Borough of Havering ('the Councils'), which sets out the Councils' joint position in respect of whether Highways England has complied with its duties under Sections 42 and 48 of the PA 2008.
- 1.1.7 This response to the Inspectorate sets out the Council's position in respect of whether Highways England has complied with its duties under Section 47 and 49 of the PA 2008, as these are specific to the Council in:
 - its role in representing its community; and
 - its role as technical authority.

1.1.8 This response also provides an account of wider issues relating to the pre-application consultation process.

2 The Council's role in representing its community

2.1 Analysis of Highways England's consultation feedback

- 2.1.1 In reviewing the responsiveness of Highways England to the comments made by technical stakeholders and the public at the three formal consultations, a broad analysis has been undertaken using Sections 7.4, 8.4 and 9.4 of the Consultation Report. These long sections have summarised individual comments received into a series of summary themes and issues, but have not provided any back-up material with the detailed responses from consultees or their response to those issues, except the Traverse summary reports only in Appendix R. These themes and issues understandably vary with each consultation, but do reveal the variety of issues raised, the Highways England formal responses to each summary issue and if a project change has resulted from the summary issue.
- 2.1.2 A broad analysis has revealed that overall, over the three consultations only 14 key summary changes have been made to the scheme (refer to Sections 7.6.6, Section 8.5.6 and Section 9.5.6 of the Consultation Report (reproduced below in Table 1) and are broadly (although the text in bracketed italics provide further context and additions to the changes, but which were not included within the summary changes in the Consultation Report). This would appear to be an inaccurate representation of all the summary changes made by Highways England. This can be further explained by the following:
- Statutory Consultation – 2,178 summary issues raised in the main consultation, but only 4% resulted in a project change (notwithstanding the removal of the Rest and Service Area), with very little changes relating to the themes of environment, traffic modelling, utilities, construction, charging and land use.
 - Supplementary Consultation – 813 summary issues raised, but only 1.6% resulted in a project change, with most issues relating to the themes of environment, south of the river, traffic modelling, walking, cycling and horse riding and key design elements not resulting in any changes.
 - Design Refinements Consultation – 232 summary issues raised, but less than 1% resulted in a project change, with all issues resulting in only two changes overall.
- 2.1.3 It may be that drawing conclusions from such a broad analysis is difficult. But given the number, breadth and technical depth of the issues raised by many different and often knowledgeable stakeholders, there would be an expectation of more changes to the scheme than just 14 summary changes over a two-year period. This also needs to be seen in the light of our comments relating to technical engagement being 'too little, too late' and with little chance for our comments to affect change. The Council consider that if there were meaningful engagement it would have yielded more positive changes to the scheme. Given the absence of any such changes, the Council has a real concern that the consultation was treated and carried out as a box ticking exercise rather than a genuine and meaningful opportunity for consultees to influence the progress of the scheme. In fact it appears overwhelmingly to be the case that consultees have *not* influenced the progress of the scheme.

Table 1 – Summary of key changes as a result of stakeholder feedback

<p>Statutory Consultation</p> <p>The key changes made to the Project following Statutory Consultation that were informed by consultees' feedback were:</p>	<ol style="list-style-type: none"> 1. Improved connectivity at the [<i>Marling Cross</i>] Gravesend East junction 2. Relocation of the South Portal, 350 metres further south 3. Landscaping proposals at the tunnel portals using materials excavated in the tunneling 4. Removal of the rest and service area, maintenance depot and Tilbury junction 5. Removal of one lane southbound between the M25 and A13/A1089 junction 6. Changes to the structures over the Mardyke River, Golden Bridge Sewer and the Orsett Fen Sewer 7. Provision of additional green bridges and changes to the design of those previously included 8. Modified proposals for walkers, cyclists and horse riders.
<p>Supplementary Consultation</p> <p>The key changes made to the Project following Supplementary Consultation that were informed by consultees' feedback were:</p>	<ol style="list-style-type: none"> 9. Reducing [<i>Increased</i>] the land required for utility works [<i>Ground stabilisation tunnel from Lower Higham Road into the North Kent Marshes</i>] [<i>New electricity substation at one of three locations on the A226</i>] 10. Refinements to the design of utility diversions in some areas along the route 11. Updated paths for walkers, cyclists and horse riders 12. Relocating the Gammon Field Traveller site
<p>Design Refinement Consultation</p> <p>The changes made to the Project following the design refinement consultation that were informed by consultees' feedback were:</p>	<ol style="list-style-type: none"> 13. A revised proposal for the gas pipeline diversions under the Project near Thong [<i>along the northern edge of the A2 through the AONB, thereby reducing the area involved</i>]. 14. Revised proposals for the overhead power line diversion near the Tilbury loop railway [<i>and at Thong</i>] [<i>Selection of a site for the A226 substation and addition of a smaller switching station at the southern end of Thong Lane by A2</i>]

2.2 Section 47 – Duty to consult local community

Section 47(1)-(4)

2.2.1 Highways England issued an early draft Statement of Community Consultation (SoCC) to the Council in February 2018, to which the Council provided comments on the 30th April 2018. Following this, the formal draft SoCC consultation took place from 1st August to 2nd September 2018. The Council provided a draft response on the draft SoCC on the 17th August 2018 and committed to sending a final response by the 4th September 2018, this approach was agreed with Highways England by an exchange of emails. Highways England has complied with Section 47(1)-(4).

Section 47(5)

2.2.2 Paragraph 54 of the MHCLG Guidance states “...in consulting on project proposals, an inclusive approach is needed to ensure that different groups have the opportunity to participate and are not disadvantaged in the process. Applicants should use a range of methods and techniques to ensure that they access all sections of the community in question. Local authorities will be able to provide advice on what works best in terms of consulting their local communities given their experience of carrying out consultations in their area”.

2.2.3 Paragraph 77 of the MHCLG Guidance states that “Consultation should also be fair and reasonable for applicants as well as communities. To ensure that consultation is fair to all parties, applicants should be able to demonstrate that the consultation process is proportionate to the impacts of the project in the area that it affects, takes account of the anticipated level of local interest, and takes account of the views of the relevant local authorities”.

2.2.4 Appendix F of Highways England’s Consultation Report sets out the Council’s response to the draft SoCC and how Highways England amended the SoCC to respond to these comments. Table 2 below sets out the Council’s comments on the SoCC which were not implemented by Highways England.

Table 2: Council comments and Highways England’s response on the draft SoCC

Thurrock Council’s comments on Highway’s England’s draft SoCC	Highways England response and amendments to the SoCC
<p>The Council commented that a 10-week consultation period for a project of this magnitude and with significant impacts does not reflect best practice normally associated with this type of consultation. The Council wished to see 12 weeks as a minimum standard particularly given that Highways England were holding events over the duration of the October half term break when some local people may be on holiday, away from the area.</p> <p>The Council commented that community interest in the scheme is considerable and to afford people the best opportunity to participate warrants a minimum 12 weeks for consultation. This is consistent with the MHCLG Guidance which states at Paragraph 25 ‘consultation should be thorough, effective and proportionate.</p>	<p>No action from Highways England.</p> <p>Highways England responded “<i>there is a minimum 28-day period for Statutory Consultation. As public consultation is a key part of how the Project is developed, the Applicant is allowing 10 weeks for consultation, which will ensure people have sufficient time to understand and respond to the proposals.</i>”</p> <p><u>The Council’s response</u></p> <p>Despite the Council’s feedback on the approach to the Statutory Consultation, Highways England did not consider an extension of time to the consultation period. This would have been beneficial to stakeholders, namely members of the public, to enable further time to understand, what is, a large and complex scheme, and be able to undertake a proper analysis of the scheme and provide informed feedback. It does not appear that Highways England took into account the likely impacts of the October half term</p>

Thurrock Council's comments on Highway's England's draft SoCC	Highways England response and amendments to the SoCC
	period on stakeholder engagement.
<p>The Council stressed the need for communication prior to Statutory Consultation so that people would receive information and be prepared for the consultation. The Council asked that the leaflet and emails announcing the consultation and consultation events should be sent in advance to ensure there is sufficient notification and that the consultation would stand a chance of being viewed as an authentic and adequate exercise.</p>	<p>No action from Highways England</p> <p><u>The Council's response</u></p> <p>Advance communication would have helped stakeholders prepare for the Statutory Consultation, this is likely to have prejudiced hard to reach (or Seldom Heard) groups, in being prepared to review large volumes of technical documents, which runs to over thousand pages, much of which is technical in nature. In some cases (such as Seldom Heard groups who are unfamiliar with, and possibly intimidated by, consultation processes) the Council consider that early engagement would have been critical, i.e. a necessary condition, to ensuring the effectiveness of the consultation.</p>
<p>It was noted that different areas will have different outcomes and local engagement needs to reflect these differences. In addition, greater consideration of hard to reach groups needs to be given.</p> <p>The Council provided suggestions of how and where this could be achieved, which included:</p> <ul style="list-style-type: none"> ▪ Providing an easy read version, or poster inviting people to come and talk about the plans. ▪ Providing 12 weeks so that interest groups have sufficient time to make members aware, engage around key areas of support or concern and represent views – clarity on how these will be used as consultation responses needed. ▪ Ensuring groups know in advance they can invite Highways England to meetings – consider arranging a meeting with CVS (Thurrock Community for Voluntary Service) as they can ask voluntary sector organisation representatives to attend. ▪ A commitment from Highways England to braille or translation and exploring practical engagement alternatives if barriers to participate 	<p>The Consultation Report confirms that at the beginning of the consultation period, leaflets were posted to approximately 283,000 addresses (residential and non-residential) within 5km of the development boundary of the Project.</p> <p>Highways England provided an easy read version of the consultation guide and made it possible to request a braille version of the consultation guide. Requests could also be made for the consultation documents in alternative languages and formats by calling Highways England telephone line advertised on consultation materials or by email.</p> <p><u>The Council's response</u></p> <p>Highways England did not include all the suggestions provided by the Council, namely providing a 12-week consultation, which is discussed above. In addition, the following website (https://highwaysengland.citizenspace.com/ltc/consultation/) does not reveal any documents entitled 'easy read guide'. However, the Council believes the easy read guide equivalent which is inadequate (it was only 6 pages) to provide an overview of the schemes likely impacts – in comparison to the Easy Read guide at Supplementary Consultation, which was 23 pages and also inadequate for the reasons set out in Section 5.3.10 of the joint Adequacy of Consultation letter between Thurrock Council, Gravesham Borough Council and London Borough of Havering) did little to inform non-technical stakeholders the likely impacts of the scheme and was inadequate in the detail.</p>

Thurrock Council's comments on Highway's England's draft SoCC	Highways England response and amendments to the SoCC
<p>are identified.</p> <ul style="list-style-type: none"> ▪ Including venues that are near schools to engage young peoples and/ or presenting to the youth cabinet early in the process so they can promote the consultation period to peers. ▪ Ensuring outreach to traveller sites. 	
<p>The Council was concerned that only 31% of the consultation events were proposed in Thurrock, considering that 80% of the route passes through the Borough, and that this should be much higher. The event locations were not considered ideal, for example:</p> <ul style="list-style-type: none"> ▪ Lakeside is unlikely to capture a vast amount of Thurrock residents particularly on the last weekend of half term, as most visitors will be from outside the Borough. ▪ Linford Methodist Church is small and has very limited parking, given that residents from East Tilbury, West Tilbury and surrounding areas to the east of the Borough are likely to want to attend this meeting, this venue would not be able to cope with the number of attendees. The date also needs clarifying (14th October is a Sunday and not a Wednesday as stated). ▪ Orsett Hall Hotel cannot be accessed by public transport which will exclude a large number of people from attending. ▪ The Council would have expected to see an event in Tilbury however the nearest would be Chadwell or Linford – the transport links in place are inadequate to support residents in Tilbury, who have lower than average car ownership and experience higher inequalities to other parts of the Borough, to attend. <p>The Council provided details on alternative locations in the Borough, these were: Tilbury Community</p>	<p>Highways England's response was <i>"Arranging accessible and convenient events for stakeholders to attend is a priority for us. The Applicant recognises that Thurrock has around 50% of the route within its boundaries and this is reflected in the scheduling of events. Thurrock will host twice as many public information events as any other local authority. The events programme will reach the desired range of populations across the Project: Lakeside is a major shopping venue that is popular with local and non-local people; Linford is a smaller community but is at the heart of an affected community; and Orsett Hall was a popular public information event venue for consultation in 2016"</i>.</p> <p>In response to feedback, Highways England replaced one of the Orsett Hall events with one at the Tilbury Community Association.</p> <p><u>The Council's response</u></p> <p>The consultation events were not proportionate to the amount of scheme that is within the Borough. Despite the Council's comments in relation to holding a consultation event at Lakeside "Lakeside is unlikely to capture a vast amount of Thurrock residents particularly on the last weekend of half term", this was not taken into consideration. As, the Council's role in representing its community, the advice provided on alternative locations for consultation events should have been taken on board to maximise stakeholder engagement.</p>

Thurrock Council's comments on Highway's England's draft SoCC	Highways England response and amendments to the SoCC
<p>Association; East Tilbury Primary School, East Tilbury Village Hall or St Clere's School; Aveley Football Ground; and Purfleet High House.</p>	
<p>The Council was concerned that the Chadwell St Mary consultation event had been scheduled for 7 December, close to the end of the consultation period. Chadwell St Mary is one of the most affected areas in the Borough and so the Council asked that the event be brought forward to earlier in the consultation period to enable proper engagement from local people.</p>	<p>No action from Highways England.</p> <p>Highways England's response was that <i>"...the date of the Chadwell St Mary event was based on venue availability. This event takes place during the consultation period, with at least 10 days afterwards for consultees to consider any additional information and respond to the consultation"</i>.</p> <p><u>The Council's response</u></p> <p>Alternative venues should have been sought by Highways England to maximise stakeholder engagement. The timing of this consultation event prejudices the affected people of Chadwell St Mary in having an appropriate amount of time to digest the scheme and likely impacts and provide the required additional information.</p>
<p>The Council was concerned to note that a number of the Statutory Consultation events were taking place over the course of the October half term break and it felt this may result in local people being away from the area.</p>	<p>No action from Highways England.</p> <p>Of the events north and south of the River Thames, five were held during the October half term, including the two events at Lakeside Shopping Centre which were held on the last weekend of half term.</p> <p><u>The Council's response</u></p> <p>Consultation events held during periods of school holidays would have meant that anyone away would have been at a disadvantage to comment on the scheme. Highways England does not appear to have given any consideration to this issue.</p>
<p>The Council said that there needed to be additional deposit locations within Thurrock, and that consideration should be given to all libraries/hubs, Civic Offices and the Beehive, as all are known locally as key information points.</p>	<p>No action from Highways England.</p> <p>Two deposit locations were at Grays library and Tilbury Hub.</p> <p><u>The Council's response</u></p> <p>Additional deposit location would have significantly benefited local people in engaging with consultation. For example, the arrangement of Map Books presented in the consultation material was found to be confusing and difficult to decipher, with the north orientation arrow pointing in a different direction on each plan. Large versions of hard copies of the maps would have provided the opportunity for the public to better understand the scheme.</p>

- 2.2.5 Highways England has not taken into consideration the Council's comments on the draft SoCC in relation to extending the consultation period to ensure it is proportionate to the likely impacts of the scheme at specific locations in the Borough; to take account of the anticipated level of local interest; and to maximise stakeholder engagement by extending the consultation date and timing.
- 2.2.6 It is acknowledged that some efforts were made to consult with hard to reach groups, however the easy read version of the consultation guide was neither clear nor informative and did not provide an adequate representation of the likely impacts of the scheme.
- 2.2.7 The Council therefore consider that Highways England has not complied with Section 47(5) of the PA 2008 or Paragraphs 54 and 77 of the MHCLG Guidance and that a number of communities and individuals will have been substantially prejudiced as a result.

Section 47(6)

- 2.2.8 Highways England published the final Statement of Community Consultation (SoCC) on the 10th October 2018 at the start of the Statutory Consultation period. The Consultation Report confirms that the SoCC was provided at deposit locations in community venues, as well as being available in hard copy at all the public information events that were held throughout the consultation period.
- 2.2.9 The SoCC stated that the Section 47 notice would be publicised in the following sources:
- Essex Chronicle.
 - Kent Messenger;
 - Thurrock Gazette; and
 - Yellow Advertiser (Romford Hornchurch Upminster).
- 2.2.10 A copy of the notices required by section 47(6)(a) as they appeared in the newspapers listed above has been provided by Highways England in Appendix N of the Consultation Report. The SoCC was also published on the LTC consultation website. The Council can confirm that Highways England has complied with section 47(6).

Section 47(7)

- 2.2.11 Section 47(7) states that the applicant must carry out the consultation in the manner set out in the statement.
- 2.2.12 The Council has reviewed the Statement of Community Consultation and concludes that the consultations were carried out in the manner set out in the Applicant's Statement of Community Consultation.

2.3 Section 49 – Duty to take account of responses to consultation and publicity

- 2.3.1 Paragraph 80 of the MHCLG Guidance requires the Consultation Report to provide a description of how the application was informed and influenced by consultation responses, to outline any changes made as a result and to show how significant relevant responses will be addressed. The Consultation Report must also explain why responses advising on major changes to a project were not followed, including advice from statutory consultees on impacts.
- 2.3.2 Paragraph 81 of the MHCLG Guidance states that *“it is good practice that those who have contributed to the consultation are informed of the results of the consultation exercise; how the information received by applicants has been used to shape and influence the project; and how*

any outstanding issues will be addressed before an application is submitted to the Inspectorate.”

2.3.3 Chapters 7, 8 and 9 of the Consultation Report provide a summary of the key issues raised at the Statutory Consultation, Supplementary Consultation and Design Refinements Consultation, respectively, and how Highways England has had regard to the responses received. Whilst the Consultation Report summarises the comments received during the public consultations in accordance with the MHCLG Guidance and the Inspectorate's Advice Note 14, the Council does not consider that the summaries provide an adequate representation of the Council's principal areas of concern raised in response to the Consultation. For example, NR143 of Table 7.10 (page 642) of the Consultation Report, states *“A comment expressing concern about the proposed northern route on the grounds that it would impact on regional growth strategies and limit opportunities for residential developments.”* This representation made in the Consultation Report dilutes, and has therefore failed properly to understand and take account of, the principal concern in the Council's response to Statutory Consultation (December, 2018), which is *“the Consultation Scheme does not make provision for, and is inconsistent with, the housing and development potential for Thurrock and the aspirations for the Borough and for the wider South Essex area as set out in the emerging Local Plan..... The Consultation Scheme has direct impacts on three of these key components in terms of:*

- *prejudicing the delivery of strategic employment sites;*
- *compromising the ability to meet the need for new housing in Thurrock and the wider sub region in a sustainable manner; and*
- *not providing the quality of access infrastructure needed in Thurrock to support these economic ambitions (for example, see section 5.3 relating to the removal of the Tilbury Link Road from the LTC scheme).*

2.3.4 It would have been beneficial for the Council to have been able to review the original full copies of the consultation responses received from statutory bodies and for Highways England to specifically respond to the Council's consultation responses. The Council, therefore, do not consider that its consultation responses have been properly understood or taken into consideration in the DCO application, in particular in relation to the scheme design and proposed mitigation measures.

2.3.5 The Council consider that Highways England has not complied with Section 49 of the PA 2008 and Paragraph 80 and 81 of the MHCLG Guidance and the Council has, accordingly, been substantially prejudiced.

2.4 The Council's vulnerable and other community groups disadvantaged by Supplementary Consultation and Design Refinement Consultation

Virtual Consultation

2.4.1 Due to Covid-19, Highways England sought to extend the Supplementary Consultation to the 2nd April 2020 as a virtual consultation. This generated significant concern to the community, when there was undoubtedly higher priority matters and concerns affecting people's health, wellbeing and in many cases, their ability to work. The leader of the Council wrote to Highways England on the 27th March 2020, stating that a one-week extension was not beneficial to the community and requested that the consultation should be postponed, which Highways England did not take into consideration, nor did they set out the justification to extend the consultation period by only one week. There is no evidence that the decision to extend by one week was itself based on any evidence as to the likely effectiveness of the additional one week period, given the serious constraints presented by the lockdown. For example many individuals with school-age children assumed the responsibility of daily childcare and it is not clear to the Council that an additional seven days worth of virtual consultation will have been sufficient to have enabled such individuals to participate in the consultation. The Council consider that the one-week period was in effect a 'token' that was

not evidence based and was wholly arbitrary and was not sufficient to have rendered the consultation effective given the situation presented by the public health emergency.

- 2.4.2 The Council has raised concerns around the issues and challenges associated with Highways England's virtual only consultation during a global pandemic resulting in a public health emergency which resulted in a severe dislocation on daily life. The Council expressed its concerns in its Design Refinement Consultation response, noting that directly affected residents and the wider community were at a disadvantage in meaningfully engaging with the 'virtual' Design Refinement Consultation due to lack of ability to hold 'in person' exhibitions and display vital documents and notices in public locations.
- 2.4.3 The Council considers that the Design Refinement Consultation (July 2020) was unnecessarily rushed by Highways England and that there was a significant risk of consultation fatigue given higher priority matters posed by Covid-19 at the time of the consultation. As the consultation was online only, the Council consider that certain vulnerable groups were likely to have been underrepresented, particularly those with limited access to the internet or difficulties in downloading large documents. Self-evidently the consultation will not have been effective for these individuals and there were no deposit locations available for the stakeholders to view hard copies as all public buildings were closed. However, there was no recognition or accommodation of the issues posed by the pandemic in Highways England's consultation timescales. The public were required to gain a rapid understanding of what is a highly complex scheme, during a time when there were higher priority matters and concerns affecting people's health, wellbeing and in many cases, their ability to work.
- 2.4.4 The Council wrote to Highways England on the 9th June 2020 setting out its continued concerns with Highways England's approach to consultation, in particular the lack of consideration of how such consultations will be received by the varied communities who reside in Thurrock, as well as practical issues such as:
- the scale of the map books versus the scale of the scheme;
 - the feedback received from resident community of the need to see hard copies of the plans in large scale to truly understand the potential impacts;
 - a different orientation (north point position) on each plan which makes it confusing and difficult to understand the context;
 - extending the consultation period owing to the complexity of, and ability to understand, the scheme and the proposed changes.
- 2.4.5 Therefore, Highways England is not compliant with Paragraph 54 of the MHCLG Guidance which states that an inclusive approach is needed when consulting on project proposals, to ensure that different groups have the opportunity to participate and are not disadvantaged in the process. These groups and the individuals comprising the groups have therefore been substantially prejudiced.
- 2.4.6 Paragraph 54 of the MHCLG guidance also advises that local authorities will be able to provide advice on what works best in terms of consulting their local communities, given their experience of carrying out consultations in their area. However, the comments above were not addressed for either the Supplementary Consultation (January 2020) or Design Refinement Consultation (July 2020) exercises.

Interest Groups

- 2.4.7 Interest groups have not been supported to make a contribution to the online only consultation. Community interest groups are likely to represent their wider membership, it is noted that the majority of voluntary sector organisations active in Thurrock represent social care needs, including vulnerable residents and cross cutting protected characteristics (according to the Equalities Act 2010). The Office for National Statistics (ONS) reports that

those within this group of protected characteristics are typically a higher proportion of internet non-users who would therefore not have adequate access to a virtual consultation exercise.

- 2.4.8 As an example, there is an 'Easy Read Guide to Design Refinement Consultation' in the Design Refinement Consultation material which can only be accessed online. In order to submit a response to the consultation, this document navigates the reader to the standard online consultation which is not easy to read. Self-evidently someone who requires an easy read document would also require an easy read version of the consultation response questions. This is not available and would therefore discriminate against a protected group of residents/stakeholders. This is exacerbated by the problem that most within this group are typically within the high rate of internet non-users. For example: The ONS reported that in 2018 an average of 10% of the adult UK population were "internet non-users", though this number is in decline. Of these non-users adults over the age of 65 years make up the largest proportion of the adult internet non-users, with over half being aged 75+. It is also concerning that across all age groups, disabled adults make up a large proportion of adult internet non-users. ONS reports that 56% of these non-users were disabled, this is much higher than the proportion of disabled adults in the UK population – estimated at 22%. There are also wide disparities in internet usage among different ethnic groups and genders. Taking this into account there is a strong possibility that the online only consultation may exclude certain groups, particularly those considered vulnerable or with a protected characteristic as determined by the Equality Act 2010. There are also concerns that virtual only engagement may exclude the Travellers community within the Gammon Field site, who are adversely affected by this project.
- 2.4.9 Therefore, Highways England are not compliant with Paragraph 54 of the MHCLG Guidance which states that an inclusive approach is needed when consulting on project proposals, to ensure that different groups have the opportunity to participate and are not disadvantaged in the process. These groups and the individuals comprising the groups have therefore been substantially prejudiced.

Health and Equalities Impact Assessment

- 2.4.10 Health impacts remain a major concern for the Council and its community. During all three rounds of consultation, it has not been possible to effectively understand, or to comment on, the potential health impacts or any proposed mitigation measures. The draft Health and Equalities Impacts Assessment (HEqIA) was shared with the Council in August 2020. This is despite previous requests from the Council to Highways England to be able to provide input to the assessment scope and methodology. Over the course of the last 18 months the Community Impacts and Public Health Advisory Group (CIPHAG) has met and during this time very limited information has been shared with CIPHAG members on the impacts identified and how this has shaped the scheme or informed mitigation. Consequently, it has been difficult to provide any meaningful input during this time period. The Council's principal concerns with the HEqIA are:
- i. There is no reference to the timescales and/or duration of impacts for some of the topics;
 - ii. The draft assessment lacks clear recommendations against the impacts identified to either:
 - o prevent or mitigate potential negative impacts/unintended consequences; or
 - o maximise the benefits and opportunities for positive impacts.
 - iii. There is an over-reliance on signposting to other environmental assessments for mitigation. It needs to be clear how the health impacts identified and assessed will be specifically mitigated;
 - iv. There is no identification of the mechanisms for delivering and securing mitigation (unless included in the project design) within the DCO.

2.5 Comments from the Thames Crossing Action Group

- 2.5.1 The Thames Crossing Action Group (TCAG) has been set up by local residents to help campaign against the proposed scheme, it represents thousands of people who are opposed to the proposed scheme. The TCAG is also a member of the Council's LTC Task Force committee, which was established as a cross party LTC Task Force and includes representatives of local residents, the business community and TCAG. TCAG has made a representation to the Council regarding its concerns relating to Highways England's consultation, a summary of concerns is presented below.

Statutory Consultation

- 2.5.2 It is considered that the consultation events were disorganised and poorly promoted, not giving people a fair chance to attend. For example, Highways England listed the Upminster Information Point as being south of the river, and Gravesend Information Point as being north of the river; and the events were listed alphabetically rather than in date order, potentially causing further confusion from the public. Furthermore, certain events were not listed on consultation event promotional material or the official website until TCAG questioned Highways England, as they had seen them advertised on social media.
- 2.5.3 Due to the sheer volume and complexity of consultation materials, the length of the consultation period, 10 weeks, was inadequate. This was very intimidating and confusing to the public, definitely not clear or informative. Plan legends/keys/descriptions were often lacking in the materials, making it very difficult for people to understand.
- 2.5.4 In the Preliminary Environmental Information summary, page 11 states under Existing conditions "*There are areas that currently do not exceed UK Air Quality Strategy thresholds*" yet further down that section on the same page it states "*...this baseline information indicated that air quality is currently exceeding UK and EU limits across the study area*". This information is confusing and misleading and does not demonstrate the fact that areas affected by the proposed scheme already have very poor air quality.

Supplementary Consultation

- 2.5.5 There was inadequate information at consultation events and mobile events. The events did not include certain areas that would be affected and should therefore have not been given the opportunity of a local event.
- 2.5.6 The maps presented in the consultation material were difficult to decipher, legends were confusing and not easily understandable by the public. Non-technical language would have helped the public to understand technical terminology, such as, 'Land not included within the Order Limits'.
- 2.5.7 There was inadequate notification of the consultation, especially for residents in affected areas. This was raised with Highways England who claimed it was a Royal Mail error. This is unacceptable and Highways England should have mitigated for this issue. Once the issue had been notified to Highways England, it should have been immediately rectified.
- 2.5.8 Highways England issued letters to residents informing them that their property was within the application boundary when it was not. Highways England only admitted this error and issued apology letters after it was brought to their attention. It is not acceptable for such stress inducing mistakes to happen.
- 2.5.9 Requested hard copies of consultation materials were not delivered in time.
- 2.5.10 It is believed that Highways England has failed to take into account the very genuine and serious impact that Covid-19 has had on everyone's lives and how this has affected their ability to participate in the consultation during such unprecedented times.

Design Refinement Consultation

- 2.5.11 Issues already raised in relation to Covid-19 in the Supplementary Consultation were exacerbated with a further round of consultation during a global pandemic. With no physical consultation events this had a huge impact on people's ability to gather information and knowledge during the consultation. Members of the community with no access to internet were at a severe disadvantage in that it was impossible for them to participate in the consultation at all – let alone effectively.
- 2.5.12 The virtual only event meant that many who are not online missed out. Even those who are online which could be limited to small screens, such as phone screens, makes viewing maps and some documents very difficult. Given that the consultation was undertaken during the Covid-19 crisis, it is considered that the length of the consultation period was inadequate.
- 2.5.13 Other issues during this consultation were:
- Highways England did not allow adequate time during the webinar for Q&As and no opportunity to follow up for clarification of answers;
 - Leaflets were only sent to properties within 2km of route, which is not acceptable, a far greater area will be affected by the scheme and everyone needs to be aware of any consultation. Elected members in Stanford le Hope and Corringham expressed their concern that the notification was not broad enough to include their areas yet these areas are likely to be impacted by the scheme and
 - The Environmental Impacts Update frequently referenced the PEIR which was not available offline to view in a public location, this made it a challenge for the public to understand likely significant impacts. Furthermore, the PEIR should have been added to the Design Refinement Consultation Exhibition as a supporting document, for stakeholders to be able to review in conjunction with the Environmental Impacts Update.

3 The Council's role as technical authority

3.1.1 Whilst there is no statutory requirement for Highways England to provide a point by point response to the Council's Statutory Consultation response, the MHCLG Guidance makes clear at Paragraph 115 that "...*applicants should be able to demonstrate that they have acted reasonably in fulfilling the requirements of the Planning Act including in taking account of responses to consultation and publicity*" and at Paragraph 69 that consultation should be "...*followed up by confirmation of the approach as proposals become firmer*". The Council has set out below the following significant technical concerns which it feels have not been appropriately dealt with during all phases of consultation:

- i. **Passive Provision for Future Growth in the Borough** – in November 2019 the Council set out its position to Highways England with regard to passive provision and potential future growth in the Borough in a technical note. The Council still awaits formal comments on the study and confirmation as to whether Highways England will commit to the passive provision of two junctions. There has been on-going consultation regarding this matter, however, the Council is not satisfied that this matter has been appropriately considered, there has been a lack of feedback from consultation and the lack of clarity from Highways England has left the Council in the position of not knowing if the future proofing of the road by providing passive provision to support the emerging local plan is possible.
- ii. **Tilbury Link Road and Junction** - the EIA Scoping Report cited the purpose of the link road as being to "*improve traffic flow and provide an alternative route for HGVs*" (p. 38) as well as having the potential to offer substantial local benefits to the Borough. This removal of the road is considered to be material and likely to give rise to new or a change in significant environmental effects identified in the Scoping Opinion. The rationale for the removal of the Tilbury Link Road has not been clearly stated by Highways England and therefore the Council has not had an effective opportunity to be consulted on the reasoning for the removal of this element of the scheme. The Council has made detailed comments regarding this issue within its response to Statutory Consultation (December 2018), the Design Narrative (Aug 2019), Supplementary Consultation (January 2020) and Initial Review of Indicative Local Plan Model (October 2020). This remains a concern for the Council, it is acknowledged that the development cost may be provided for within Highways England's RIS2 programme, with its anticipated delivery is in RIS3. Nevertheless, the removal of the Tilbury Link Road junction and the lack of feedback from Highways England during the pre-application consultation period leaves the Council in the position of not knowing if the Tilbury Link Road or its junction can come forward and support the future economic growth of the borough.
- iii. **Scheme Design** - through the early part of 2019, Highways England dedicated several workshops to the design of the Mardyke Viaduct. At a Design Council meeting in March 2019, which the Council attended along with other stakeholders, it was expressed by the Design Council that the longer, taller structure for the viaduct was preferred over the shortened bundled solution. This was reflected in a letter from the Design Council, dated 9th April 2019. However, without any further discussion, the scheme reverted back to a broadly similar design to that presented at Statutory Consultation in spite of the fact that all parties recognised that there was a better alternative. The Council understands that, subsequently, Highways England has held a private meeting ('behind closed doors') with the Design Council without informing stakeholders. The Council understands that the outcome of this meeting is that the Design Council is now comfortable with the design changes as most recently presented. This is a complete about turn from the previous concerns raised by the Design Council. The Council has formally requested (email 22nd September 2020) a copy of any presentations that were given during the meeting and a copy of the minutes and any formal correspondence that was issued by the Design Council subsequently. Highways England's response to this request has been to refuse to send this information. The explanation given in Highways England's email 19th October 2020 (nearly a month after the Council formally requested to see the minutes), was: "*As we moved towards a final decision on the design of the structures we were seeking to submit at part of the DCO, we took the option of seeking informal advice from the HEDRP*".

[Highways England Design Review Panel], to inform our decision making process. Given the informal nature of this session, it was felt that this should be an internal discussion to facilitate an active debate within the Project team on the quality, value and priority of our proposals. We were also mindful of not wanting to raise undeliverable expectations with stakeholders.” The Council considers that the information from the subsequent Design Council meeting should have been shared with the Council so that they, as technical authority, could understand why the previously agreed better alternative was no longer being progressed. This is a new proposal which has not been seen or discussed with the Council or consulted upon. These are unexplained and significant changes without any proper engagement with the Council as the technical authority and no meaningful comment or feedback has been able to be provided. This is an entirely unacceptable state of affairs. The design of the Mardyke Viaduct was initially consulted upon and consensus was reached. This consensus was later rejected in the context of a ‘behind closed doors’ process of which the Council had no notice, was not given an opportunity to be involved with (despite having been involved in March 2019 and having a clear entitlement to be involved) and of which Highways England have refused to provide any details to enable the Council to understand the scope of the process and/or what was decided and the reasons for it. The suggestion that the process was informal only cannot be sustained since it is apparent that a decision on the design of the Mardyke Viaduct (i.e. to revert to a design which had previously, by consensus and in an open consultation, been rejected) was made. The Council has plainly been substantially prejudiced by being locked out of the decision-making process in relation to this element of the scheme.

- iv. **Noise Barriers:** Highways England proposes 15 new noise barriers in Thurrock, which range from 1 to 6m in height, eight of which are located in the A13/A1089 area. This is in spite the Council’s requests at Statutory Consultation (December 2018) and Supplementary Consultation (January 2020) that the height of the LTC scheme is kept as low as possible with cut and cover and false cuttings. Little information was provided within the design refinement consultation material for consultees to understand the extent and design proposals of the noise barriers to be able to reassure the Council (and stakeholders) of the efficacy, and potential visual impacts of, the noise barriers on those communities which will be directly affected.
- v. **Technical Engagement:** a critical part of the pre-application process is for local authorities to be able to influence the preparation of the developer’s application. The Inspectorate’s Advice Note 2, Section 6, states that the preparation of the application is an ‘iterative process’ which should have meant that the amount of detail should increase as the preparation proceeds. Highways England has instead proceeded to release high volumes of technical material in a short period of time which has involved the Council responding to approximately 35 technical documents, including 12 draft ES chapters, each some 200 pages long, and two rounds of consultation this year alone. Furthermore, technical document such as the draft ES Chapter were issued without the appendices and plans which sets out the detailed analysis. It is a challenge to consider the potential effects of the scheme (and mitigation) when the detail has not been provided and this did not facilitate meaningful engagement. This is also true of the Environmental Masterplan (EMP) which highlights the limited amount of landscape and ecology mitigation along much of the length with only false cutting and some planting being provided. The key lists the proposed landscape elements in only the most general terms at this point. The EMP and draft ES chapters were issued without the detailed results and mapping of the Landscape Visual Impacts Assessment (LVIA) and ecology surveys and it is difficult to review and comment on the adequacy of what is proposed. The Council is still unaware of how its comments have been taken into consideration and incorporated into the scheme (see below).
- vi. **Feedback on the Council’s comments:** the Council has yet to receive feedback from Highways England how its comments and observations on all the three rounds of consultation have been taken into consideration in the design of the scheme. The Chair of the Council’s Task Force set out in a letter to Highways England (23rd September 2020) this concern, asking Highways England to provide information on potential design changes and consultation feedback (amongst other technical queries relating to noise

barriers, biodiversity net gain, worker travel commitments (NPSNN Section 5.208 and 5.218), noise and air quality monitoring and reporting on scheme benefits). Highways England responded (10th October 2020):

“The scheme we submit to the Planning Inspectorate will be the result of several years of detailed design review and careful consultation with Thurrock and many other stakeholders. We have made changes following the design review feedback and we are in the process of completing this assessment.”

The Council has significant concerns with this statement and has not received any feedback to demonstrate how consultation comments have been taken into consideration. The Council consider that Highways England have therefore not complied with Paragraph 81 of the MHCLG Guidance which states that *“it is good practice that those who have contributed to the consultation are informed of the results of the consultation exercise; how the information received by applicants has been used to shape and influence the project; and how any outstanding issues will be addressed before an application is submitted to the Inspectorate.”* A further letter was issued to Highways England (13th October 2020) however, Highways England did not respond with any further information, only to re-issue its original letter (10th October 2020) to the Council. The Council has since responded to Highways England (22nd October 2020), expressing its concern and noting that to decline to answer what are reasonable technical questions is not ‘meaningful’ engagement and does not accord with both the Inspectorate’s Advice Notes or the MHCLG Guidance. The Council as a result has been substantially prejudiced.

EIA Scoping

- 3.1.2 A review of the EIA Scoping Opinion (December 2017) has been undertaken together with the draft ES Chapters that were shared by Highways England in July 2020 and it is considered that the following scoping opinion comments have not been considered in the draft ES (Table 3, below).

Table 3 –EIA Scoping Opinion comments not considered in the draft ES Chapters

Scoping Opinion ID	The Inspectorate’s EIA Scoping Opinion comments	Are Highways England compliant with the Inspectorate’s EIA Scoping Opinion?
Air quality ID 1	The Inspectorate considers that the ES should include an assessment of impacts associated with increased PM _{2.5} resulting from the Proposed Development	No – PM _{2.5} has not been assessed in the draft ES Chapter. The draft ES Chapter 5, Paragraph 5.4.58, states: <i>PM_{2.5} concentrations were not modelled as this is not a requirement of DMRB LA105. However, to address comments from the Planning Inspectorate, Gravesham Borough Council and Thurrock Council, the modelled PM₁₀ results have been utilised here (as they contain the PM_{2.5} fraction) to demonstrate that there will be no risk of PM_{2.5} exceeding statutory thresholds.</i>
Air quality ID 6	General methods of mitigation are set out in the scoping report; however, the ES should describe and justify any specific mitigation measures designed to address significant adverse effects.	No - The draft ES Chapter 5, does not contain any embedded mitigation, nor essential mitigation and instead relies on the good practice measures set out in the CoCP and the REAC

Scoping Opinion ID	The Inspectorate's EIA Scoping Opinion comments	Are Highways England compliant with the Inspectorate's EIA Scoping Opinion?
Cultural Heritage ID 1	The distance of 1km from the proposed boundary is not justified in the Scoping Report	No – The draft ES Chapter 6, Paragraph 1.1.37, states: A study area 1km from the Order Limits, supplemented by the Zone of Visual Influence (ZVI), noise assessment and professional judgement was used to identify the cultural heritage baseline.
Cultural Heritage ID 2	The baseline assessment in the ES should be established using all relevant data.	<p>No - The Desk Based Assessment (which was issued to the Council in May 2020) is considered to fail to satisfy its own aims and does not provide the necessary evidence base to allow for accurate conclusions to be drawn of what the levels of harm will be caused and what mitigation measures are available.</p> <p>The DBA fails to use all of the available data, with most of the information provided relying on list descriptions and the Historic Environment Record</p>
Cultural Heritage ID 2	The assessment in the ES should assess impacts to all relevant cultural heritage receptors.	No - There are serious concerns regarding the value of heritage assets identified in the Desk-Based Assessment (DBA) (March 2020) and how these have been assessed.
Noise ID 5	Receptors which are identified as sensitive to the impacts of barge loading should be represented in the ES.	No - It is unclear in draft ES Chapter 12, if sensitive receptors have been identified as a result of impacts from barge loading.
Noise ID 8	Noise barriers have been listed as potential mitigation measures to be used to reduce effects from noise. The effectiveness of noise barriers should be fully described and assessed. Any inter-relationships with other chapters such as the Landscape and Visual assessment or Ecology should also be considered. Details must be provided of how the mitigation design will be secured.	No – It is unclear in draft ES Chapter 12 on the effectiveness of the noise barrier; what attenuation is provided, and likely impacts of the noise barriers to the community, i.e. visual impacts.
People and communities ID 2	The ES should clearly set out the assumptions that have been made within the assessment of transportation impacts. A worst-case scenario should be assessed. Where transportation by river or rail is relied upon to mitigate road transportation impacts (as implied in paragraph 6.9.4 of the Scoping Report), the Inspectorate would expect to see commitments made to	No – the Council is are not in receipt of the draft Transport Assessment to validate where transportation by river is relied upon to mitigate road transportation impacts, nor is a commitment made in the draft DCO (issued to the Council on the 29th June 2020).

Scoping Opinion ID	The Inspectorate's EIA Scoping Opinion comments	Are Highways England compliant with the Inspectorate's EIA Scoping Opinion?
	these movements e.g. through the draft DCO	
People and communities ID 7	The Inspectorate notes that Medway Council (MC) have provided information on the predicted growth in Medway and the emerging development strategy, with respect to the Lower Thames Area Model for traffic modelling proposed in the Scoping Report. This information is also likely to be relevant to the Air Quality and Noise assessments. ECC have also provided advice regarding growth on the A127 corridor and emerging Local Plans. The assessment in the ES should take this information and any other relevant information of this sort into account.”	It is not the role of Highways England (or any other transport scheme) to solve the existing traffic issues in the local area, it is however, its duty to assess the impacts of the proposed scheme on the highway network, whether local or strategic. The same logic applies to transport impacts as any other subject, that if there are significant impacts they should be if possible avoided, then mitigated and finally compensated for if that is not possible. The Council has not seen the submitted Transport Assessment with the DCO, even though the Council was promised sight of it before submission, but as far as we are aware the central case is based on the WebTag approach, with high and low options around that. This is, however, not sufficient to address the requirements for a reasonable worst case under the EIA regulations. Without such analysis it is not possible for the Council or residents to form a proper view of the potential impacts of the scheme, or whether it is even fit for purpose in terms of its proclaimed objectives.
Cumulative ID 3	The cumulative assessment should be based on the most up to date information available regarding the other developments considered.	No - The Council has made substantial comments on Highways England Long list – but has not received a response from Highways England that the additional developments have been included within the assessment.
EIA Approach	While the structure of the ES remains for the Applicant to decide, the information that would be expected to appear in a Transport chapter must be provided in the ES. The ES must demonstrate where the information gathered as part of the traffic assessment has been applied to other assessments within the ES. The absence of a Transport chapter, supported by a Transport Assessment, has been noted by Essex County Council (ECC), the London Borough of Havering (LBH), and Thurrock Council (TC). The Inspectorate considers that these concerns should be addressed.	The Councils have repeatedly requested that a Transport chapter ought to be included in the ES (for example, within Thurrock Council's response to Supplementary Consultation (March 2020)). In the absence of a Transport Chapter, and the ability for the Councils to understand likely impacts of traffic (and its knock-on effects to air quality, noise and health), Highways England should have shared the draft Transport Assessment with the Council prior to the DCO submission. However, Highways England declined. Therefore, the Councils are prejudiced that they have been unable to provide essential feedback in matters relating to construction traffic to affect the

Scoping Opinion ID	The Inspectorate's EIA Scoping Opinion comments	Are Highways England compliant with the Inspectorate's EIA Scoping Opinion?
		scheme and likely mitigation at a time when the scheme was still at a formative stage. The consultation has therefore been defective and it is no answer to this to say that the Council will have the opportunity to articulate their concerns about these matters at a later stage, because it is essential for consultation to be carried out while proposals were still at a formative stage.

- 3.1.3 It is the Council opinion that not only is the draft ES chapter not compliant with the Inspectorate's Scoping Report, but Highways England should have undertaken a further scoping exercise to consider the changes to the scheme (as expressed in the joint Adequacy of Consultation with Thurrock Council, Gravesham Borough Council, and the London Borough of Havering).
- 3.1.4 Furthermore, the Council would like to draw the attention to the fact that many archaeological and utility trial trenching surveys undertaken by Highways England were delayed until late-2019 (and are still ongoing). Even now, very few results have been shared or any conclusions from those results, even from the draft Environmental Statement (ES) chapters, so the Councils, as technical authorities, cannot be informed or make informed judgements in their areas on likely impacts or the need for mitigation. This lack of sharing of technical data has prejudiced the Councils from engaging/consulting with Highways England on these matters since, in particular, the Councils have not been able to review (let alone provide consultation responses to Highways England) the likely significant cumulative effects of the Consultation Scheme or the reasonable alternatives to it. The Councils consider that this is a major defect in the consultation.

Development Consent Order

- 3.1.5 Paragraph 44 of the MHCLG Guidance states that "*Local authorities will be able to provide an informed opinion on a wide number of matters, including how the project relates to Local Plans. Local authorities may also make suggestions for requirements to be included in the draft Development Consent Order. These may include the later approval by the local authority (after the granting of a Development Consent Order) of detailed project designs or schemes to mitigate adverse impacts. It will be important that any concerns local authorities have on the practicality of enforcing a proposed Development Consent Order are raised at the earliest opportunity*".
- 3.1.6 The Inspectorate's Advice Note 13 proposes that, as well as sharing the draft Order with the Inspectorate, it should also be made available to other parties who may have useful comments on the operation of the Order. For example, the relevant local planning authorities should have sufficiently early sight of the DCO's proposed draft requirements.
- 3.1.7 The draft DCO was issued to the Council on 29th June 2020, two weeks prior to the launch date of Highways England's Design Refinement Consultation. The Council responded stating that it will focus on responding to the latest round of consultation but highlighted the important and critical point that it has no in-house expertise in this field and is therefore reliant on instructing external experts on something which is a very technical matter in which the detail is important. The ability of the Council to instruct external specialist legal advisors has presented a challenge given that Highways England has monopolised the market with its panel appointments and has taken an unreasonable approach with regard to potential conflicts of interest. It is the Council's view that this severely prejudices the Council. There has been very

little technical engagement from Highways England on the DCO, albeit one workshop on the 21st May 2020.

- 3.1.8 The Council has yet to receive a response on its query regarding the wording of Requirement 4 of the draft DCO, that it should be the Council who is the determining authority.

Register of Environmental Actions and Commitments (REAC)

- 3.1.9 The REAC forms a critical part of the CoCP in understanding the proposed mitigation. The REAC was issued to the Council in August 2020 and was limited in information and should have been shared with the Council with sufficient time to undertake meaningful engagement and for Highways England to illustrate how the Council's comments have been incorporated into the mitigation package. The Council made substantial comments on the REAC although it is unaware whether these have been taken into consideration and incorporated in the DCO application.

Statements of Common Ground (SOCG)

- 3.1.10 Paragraph 48 of the MHCLG Guidance states *“Local authorities are encouraged to discuss and work through issues raised by the proposed development with applicants well before an application is submitted. Agreements reached between an applicant and relevant local authorities can be documented in a statement of common ground. This will contain agreed factual information about the application and can accompany the application. The statement of common ground can also set out matters where agreement has not been reached. This can then be looked at during examination...”*
- 3.1.11 The Council has engaged with Highways England on matters relating to the SoCG since the end of 2019. It spent a significant amount of time refining and updating the status of these issues in the early part of 2020 and, at that time, there was a total of approximately 500 areas of concern for the Council.
- 3.1.12 The Issue Log has subsequently grown throughout 2020 as Highways England has sought to amend the design of the scheme and undertake two further rounds of consultation. Several 'Issue Log' meetings were held with Highways England through September and early October 2020. Many of these issues remain, despite the considerable amount of Council and Highways England time and resources. Paragraph 69 of the PA 2008 states that the proposal should become firmer as the applicant takes account of responses to consultation. This does not appear to be the case, as the Issue Log has grown to approximately 700 areas of concern.
- 3.1.13 The number of outstanding issues has grown in the lead up to the submission of the DCO application. This is likely to result in a greater number of Examiner questions and hearings which will add undue pressure on all parties. Should the application be accepted for examination, there is a significant risk that the volume of outstanding significant issues and concerns is so large that it will consume a disproportionate amount of examination time.

4 Conclusion

- 4.1.1 It is the view of the Council that Highways England has met the legal tests set by the PA 2008 with regard to Sections 42 and 48 of that Act, but not Section 47, specifically 47(5) and 47(6). The Council's response also addresses the wider issues of Highways England's consultation and compliance with relevant guidance.
- 4.1.2 Paragraph 15 of the MHCLG Guidance notes that *"effective pre-application consultation will lead to applications which are better developed and better understood by the public, and in which the important issues have been articulated and considered as far as possible in advance of submission of the application to the Secretary of State"*. However, important issues, such as the information reasonably required for consultation bodies to develop an informed view of the likely significant environmental effects of the development as well as proposed mitigation measures, were not adequately presented in the consultation materials (including the PEIR) meaning that consultees have been unable to develop an informed view about the proposals.
- 4.1.3 The Council has yet to be provided with the full ES or copies of other certified documents. It will only be at the point of acceptance that the Council, as well other statutory bodies and the public, will be given the opportunity to view the final application documents and be able to make an informed view about the proposals. The Council has raised concerns with Highways England and the Inspectorate in the past (the Council's response to Highways England Supplementary Consultation (April 2020) and letter dated 3rd September 2020 to the Inspectorate), in relation to the limited amount of meaningful pre-application technical engagement, as well as the adequacy of consultation and matters relating to DCO Requirements. This remains a considerable concern to the Council should the DCO application be accepted.
- 4.1.4 Table 4 below is provided as a schedule of compliance to demonstrate to the Inspectorate whether the Councils are satisfied that the application fulfills the conditions for acceptance required under section 55(3)(e) of the PA 2008 (Appendix 3 of Advice Note Six: Preparation and submission of application documents).

Table 4 – Compliance Checklist

Section 55 Checklist		Compliant	Paragraph reference
Did Highways England consult the applicable persons set out in section 42 of the PA 2008 about the proposed application?	Section 42(1)(a) persons prescribed as set out in Schedule 1 of the APFP Regulations?	See joint Councils AoC response	n/a
	Section 42(1)(aa) the Marine Management Organisation?	See joint Councils AoC response	n/a
	Section 42(1)(b) each local authority within section 43 of the PA 2008?	See joint Councils AoC response	n/a
	Section 42(1)(c) the Greater London Authority?	See joint Councils AoC response	n/a
	Section 42(1)(d) each person in one or section 44 categories?	See joint Councils AoC response	n/a
Did Highways England notify section 42 consultees of the deadline for receipt of consultation responses? If so, was the deadline notified by Highways England 28 days or more starting with the day after receipt of the consultation documents?		See joint Councils AoC response	n/a

Section 55 Checklist	Compliant	Paragraph reference
Did Highways England prepare a SoCC on how it intended to consult people living in the vicinity of the land?	Yes	2.2.1
Were 'B' and (where relevant) 'C' authorities consulted about the content of the SoCC; and if so, was the deadline for receipt of responses 28 days beginning with the day after the day that 'B' and (where applicable) 'C' authorities received the consultation documents?	Yes	2.2.1
Did Highways England have regard to any responses received when preparing the SoCC?	No	2.2.2 - 2.2.7
Was the SoCC made available for inspection in a way that is reasonably convenient for people living in the vicinity of the land; and was a notice published in a newspaper circulating in the vicinity of the land which states where and when the SoCC could be inspected?	Yes	2.2.8 - 2.2.10
Did the SoCC set out whether the development is EIA development and did it set out how Highways England intended to publicise and consult on the Preliminary Environmental Information?	Yes	n/a
Did Highways England carry out the consultation in accordance with the SoCC, as per Section 47(7) of the PA 2008?	Yes	2.2.11 - 2.2.12
Did Highways England publicise the proposed application in the prescribed manner set out in Regulation 4(2) of the APFP Regulations?	see joint Councils AoC response	n/a
Did the section 48 notice include the required information set out in Regulation 4(3) of the APFP Regulations?	see joint Councils AoC response	n/a
Was a copy of the section 48 notice sent to the EIA consultation bodies and to any person notified to Highways England in accordance with the Infrastructure EIA Regulations?	see joint Councils AoC response	n/a
Did Highways England have regard to the relevant responses to the section 42, section 47 and section 48 consultation?	Section 42 – No	2.1.1 - 2.1.3, 2.3.1 - 2.3.5, 3.1.1
	Section 47 - No	2.1.1 - 2.1.3, 2.2.1 - 2.2.7
	Section 48 – see joint Councils AoC response	n/a
Did Highways England have regard to the MHCLG Guidance? Note any cases where changes were made to the scheme, in spite of agreement at technical meetings for consideration of alternative designs, and no further explanation of changes	Para.19 – see joint Councils AoC response	n/a
	Para.25 – see joint Councils AoC response	n/a
	Para.54 – No	2.2.2 - 2.2.7, 2.4.1 - 2.4.6, 2.4.7 - 2.4.9
	Para.68 – see joint Councils AoC response	n/a
	Para.72 – see joint Councils AoC response	n/a

Section 55 Checklist	Compliant	Paragraph reference
	Para.77 - No	2.2.2 - 2.2.7
	Para.80 –No	2.3.1 – 2.3.5
	Para.81 – No	2.3.1 – 2.3.5, 3.1.1
	Para.93 – see joint Councils AoC response	n/a
Did Highways England have regard to relevant Inspectorate Advice Notes? Note any cases where changes were made to the scheme, in spite of agreement at technical meetings for consideration of alternative designs, and no further explanation of changes	Advice Note 2 – No	3.1.1
	Advice Note 7 – see joint Councils AoC response	n/a
	Advice Note 13 –No	3.1.5 – 3.1.8
	Advice Note 14 –No	2.3.1 - 2.3.5

- 4.1.5 The Council will register as an Interested Party and will provide representations should the application be accepted, detailing its principal areas of concern, through the examination process should the application be accepted.
- 4.1.6 However, the Council recommends that the DCO application should not be accepted by the Inspectorate.