

Your Ref: TR010032  
Our Ref: 43879AOC

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 the above letter reference, please find attached Thurrock Council, Gravesham Borough Council and London Borough of Havering's joint response to your letter dated 23<sup>rd</sup> October 2020. Individual letters from each Council will also be submitted picking up on more local issues.

Should you have any questions on this please do not hesitate to contact Anna Eastgate (Thurrock Council), Tony Chadwick (Gravesham Borough Council), or Daniel Douglas (London Borough of Havering).

Yours sincerely

**Anna Eastgate**

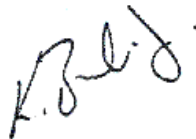
**Assistant Director Lower  
Thames Crossing & Project  
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Thurrock Council

**Kevin Burbidge**

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**Daniel Douglas**

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London Borough of Havering

# 1 Introduction

- 1.1.1 The Lower Thames Crossing (LTC) DCO was submitted to the Planning Inspectorate ('the Inspectorate') on the 23<sup>rd</sup> 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:
  - that it is an application for an order granting development consent,
  - that development consent is required for any of the development to which the application relates,
  - 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
  - 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—
  - the consultation report received under section 37(3)(c),
  - any adequacy of consultation representation received by the Secretary of State from a local authority consultee, and
  - 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’).
- 1.1.6 The applicant also has a duty to take account of responses to consultation and publicity, under section 49 of the PA 2008.
- 1.1.7 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.
- 1.1.8 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’).
- 1.1.9 The applicant also has a duty to take account of responses to consultation and publicity, under section 49 of the PA 2008.

- 1.1.10 This Adequacy of Consultation response prepared jointly by Thurrock Council, Gravesham Borough Council, and London Borough of Havering ('the Councils'), 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. This response also considers Highways England's compliance with the relevant guidance issued under section 50 of the PA 2008, the Infrastructure Environmental Impact Assessment Regulations 2017 (as amended) ('the Infrastructure EIA Regulations 2017'), the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the 'APFP Regulations') and other relevant guidance. Where the response sets out the Councils' positions as in representing their community and their role as technical authorities, references are made within the document to make this clear.
- 1.1.11 This response also provides an account of wider issues relating to the pre-application consultation process.
- 1.1.12 Please note that separate Adequacy of Consultations have been prepared by Thurrock Council, Gravesham Borough Council and London Borough of Havering which sets out Councils 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:
- their role in representing their community; and
  - their role as technical authority.

## 2 Compliance with the Planning Act 2008

### 2.1 Section 42 – Duty to consult

2.1.1 Section 42 of the PA 2008 requires the applicant to consult the following about the proposed application, where relevant to the application:

- such persons as may be prescribed,
- aa) the Marine Management Organisation, in any case where the proposed development would affect, or would be likely to affect, any of the areas specified in subsection,
- each local authority that is within section 43,
- the Greater London Authority if the land is in Greater London, and
- each person who is within one or more of the categories set out in section 44.

2.1.2 The persons prescribed for the purposes of Section 42(a) and the circumstances in which they must be consulted, are set out in 3 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

2.1.3 When consulting a person under section 42, section 45 of the PA 2008 requires the Applicant to notify the person of the deadline for the receipt of the person's response and this deadline must not be earlier than 28 days after the consultation documents are received.

### 2.2 Section 47 – Duty to consult local community

2.2.1 Section 47(1) of the PA 2008 requires the applicant to prepare a statement setting out how the applicant proposes to consult people living in the vicinity of the land, about the proposed application.

2.2.2 Before preparing the statement, Section 47(2) requires the applicant to consult each of the relevant local authorities about what is to be in the statement.

2.2.3 Section 47(3) requires the local authority to reply within 28 days of receiving the consultation documents. The 28 day period begins the day after the day on which the local authority receives the consultation documents.

2.2.4 Section 47(4) clarifies that the "consultation documents" referred to in 47(3) means the documents supplied to the local authority by the applicant for the purpose of consulting the local authority under 47(2).

2.2.5 Section 47(5) requires that in preparing the statement, the applicant must have regard to any response from the local authorities that is received by the applicant before the deadline. Paragraph 38 of the MHCLG Guidance explains that *"the role of the local authority in such discussions should be to provide expertise about the make-up of its area, including whether people in the area might have particular needs or requirements, whether the authority has identified any groups as difficult to reach and what techniques might be appropriate to overcome barriers to communication. The local authority should also provide advice on the appropriateness of the applicant's suggested consultation techniques and methods. The local authority's aim in such discussions should be to ensure that the people affected by the development can take part in a thorough, accessible and effective consultation exercise about the proposed project."*

2.2.6 Paragraph 41 of the MHCLG Guidance states that “where a local authority raises an issue or concern on the Statement of Community Consultation which the applicant feels unable to address, the applicant is advised to explain in their consultation report their course of action to the Secretary of State when they submit their application.”

2.2.7 Section 47(6) states “Once the applicant has prepared the statement, the applicant must—

- (za) make the statement available for inspection by the public in a way that is reasonably convenient for people living in the vicinity of the land,
- (a) publish, in a newspaper circulating in the vicinity of the land, a notice stating where and when the statement can be inspected, and
- (b) publish the statement in such manner as may be prescribed.

2.2.8 Section 47(7) states that the applicant must carry out the consultation in the manner set out in the statement.

## **2.3 Section 48 – Duty to publicise**

2.3.1 Section 48 of the PA 2008 requires the applicant to publicise the proposed application in the prescribed manners. The prescribed manners are set out in Section 4 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and are detailed below:

- (2) The applicant must publish a notice, which must include the matters prescribed by paragraph (3) of this regulation, of the proposed application—
- for at least two successive weeks in one or more local newspapers circulating in the vicinity in which the proposed development would be situated;
- once in a national newspaper;
- once in the London Gazette and, if land in Scotland is affected, the Edinburgh Gazette; and
- where the proposed application relates to offshore development—
  - once in Lloyd’s List; and
  - once in an appropriate fishing trade journal.

2.3.2 The matters which the notice must include are—

- the name and address of the applicant;
- a statement that the applicant intends to make an application for development consent to the Commission;
- a statement as to whether the application is EIA development;
- a summary of the main proposals, specifying the location or route of the proposed development;
- a statement that the documents, plans and maps showing the nature and location of the proposed development are available for inspection free of charge at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice;
- the latest date on which those documents, plans and maps will be available for inspection (being a date not earlier than the deadline in sub-paragraph (i));

- whether a charge will be made for copies of any of the documents, plans or maps and the amount of any charge;
- details of how to respond to the publicity; and
- a deadline for receipt of those responses by the applicant, being not less than 28 days following the date when the notice is last published.

## **2.4 Section 49 – Duty to take account of responses to consultation and publicity**

2.4.1 Section 49(2) of the PA 2008 states that the applicant must, when deciding whether the application that the applicant is actually to make should be in the same terms as the proposed application, have regards to any relevant responses.

2.4.2 Section 49(3) states that in subsection (2) “relevant response” means—

- a response from a person consulted under section 42 that is received by the applicant before the deadline imposed by section 45 in that person's case,
- a response to consultation under section 47(7) that is received by the applicant before any applicable deadline imposed in accordance with the statement prepared under section 47, or
- a response to publicity under section 48 that is received by the applicant before the deadline imposed in accordance with section 48(2) in relation to that publicity.

## 3 Compliance with relevant guidance and advice on pre-application process

### 3.1 Introduction

3.1.1 When deciding whether the applicant has complied with Chapter 2 of Part 5 of the PA 2008, the Secretary of State must consider the extent to which the applicant has had regard to any guidance issued under section 50 of the PA 2008. Guidance issued under section 50 includes guidance issued by the Secretary of State about the pre-application procedure, such as the Inspectorate's Advice Note 2 'The role of local authorities in the development consent process' (2015), the Inspectorate's Advice Note 14 (version 2) 'Compiling the consultation report' (2012) and the MHCLG Guidance (2015).

### 3.2 Consultation process guidance

3.2.1 Paragraph 20 of the MHCLG Guidance states *"Experience suggests that, to be of most value, consultation should be:*

- *based on accurate information that gives consultees a clear view of what is proposed including any options;*
- *shared at an early enough stage so that the proposal can still be influenced, while being sufficiently developed to provide some detail on what is being proposed; and*
- *engaging and accessible in style, encouraging consultees to react and offer their views."*

3.2.2 Paragraph 25 of the MHCLG Guidance states *"Consultation should be thorough, effective and proportionate. Some applicants may have their own distinct approaches to consultation, perhaps drawing on their own or relevant sector experience, for example if there are industry protocols that can be adapted. Larger, more complex applications are likely to need to go beyond the statutory minimum timescales laid down in the Planning Act to ensure enough time for consultees to understand project proposals and formulate a response. Many proposals will require detailed technical input, especially regarding impacts, so sufficient time will need to be allowed for this. Consultation should also be sufficiently flexible to respond to the needs and requirements of consultees, for example where a consultee has indicated that they would prefer to be consulted via email only, this should be accommodated as far as possible."*

3.2.3 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."*

3.2.4 Paragraph 68 of the MHCLG Guidance states *"To realise the benefits of consultation on a project, it must take place at a sufficiently early stage to allow consultees a real opportunity to influence the proposals. At the same time, consultees will need sufficient information on a project to be able to recognise and understand the impacts."*

3.2.5 Paragraph 72 of the MHCLG Guidance states *"The timing and duration of consultation will be likely to vary from project to project, depending on size and complexity, and the range and scale of the impacts. The Planning Act requires a consultation period of a minimum of 28 days from the day after receipt of the consultation documents. It is expected that this may be sufficient for projects which are straightforward and uncontroversial in nature. But many projects, particularly larger or more controversial ones, may require longer consultation periods than this. Applicants should therefore set consultation deadlines that are realistic and proportionate to the proposed project."*

- 3.2.6 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.”*
- 3.2.7 Paragraph 93 of the MHCLG Guidance states *“For the pre-application consultation process, applicants are advised to include sufficient preliminary environmental information to enable consultees to develop an informed view of the project. The information required may be different for different types and sizes of projects. It may also vary depending on the audience of a particular consultation. The preliminary environmental information is not expected to replicate or be a draft of the environmental statement. However, if the applicant considers this to be appropriate (and more cost-effective), it can be presented in this way. The key issue is that the information presented must provide clarity to all consultees. Applicants should be careful not to assume that non-specialist consultees would not be interested in any technical environmental information. It is therefore advisable to ensure access to such information is provided during all consultations. The applicant’s Statement of Community Consultation must include a statement about how the applicant intends to consult on preliminary environmental information.”*

### **3.3 Results of consultation exercise and Consultation Report**

- 3.3.1 As part of the documents submitted at the time of the DCO, the applicant must include a Consultation Report detailing how they have complied with the consultation requirements set out in the PA 2008.
- 3.3.2 Paragraph 80 of the MHCLG Guidance states that the consultation report should:
- *provide a general description of the consultation process undertaken, which can helpfully include a timeline;*
  - *set out specifically what the applicant has done in compliance with the requirements of the Planning Act, relevant secondary legislation, this guidance, and any relevant policies, guidance or advice published by Government or the Inspectorate;*
  - *set out how the applicant has taken account of any response to consultation with local authorities on what should be in the applicant’s statement of community consultation;*
  - *set out a summary of relevant responses to consultation (but not a complete list of responses);*
  - *provide a description of how the application was informed and influenced by those responses, outlining any changes made as a result and showing how significant relevant responses will be addressed;*
  - *provide an explanation as to why responses advising on major changes to a project were not followed, including advice from statutory consultees on impacts;*
  - *where the applicant has not followed the advice of the local authority or not complied with this guidance or any relevant Advice Note published by the Inspectorate, provide an explanation for the action taken or not taken; and*
  - *be expressed in terms sufficient to enable the Secretary of State to understand fully how the consultation process has been undertaken and significant effects addressed. However, it need not include full technical explanations of these matters.*
- 3.3.3 Paragraph 81 of the MHCLG Guidance states *“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.”*



- 3.3.4 The Inspectorate's Advice Note 14 states that it is particularly useful if applicants provide local authorities with early sight of the Consultation Report to inform their views, given the short 28-day timescale allowed for the acceptance stage and the 14 day timescale local authorities have to provide their Adequacy of Consultation response.

### **3.4 Statements of Common Ground**

- 3.4.1 Paragraph 47 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..."*

### **3.5 Development Consent Order**

- 3.5.1 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."*
- 3.5.2 The Inspectorate's Advice Note 13 proposes that, as well as sharing the draft order with the Inspectorate, the draft order 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.

### **3.6 EIA scoping**

- 3.6.1 Regulation 14(3)(a) of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017 No.572) states that *"...the environmental statement... must, where a scoping opinion has been adopted, be based on the most recent scoping opinion adopted (so far as the proposed development remains materially the same as the proposed development which was subject to that opinion)"*.
- 3.6.2 Paragraph 4.9 of the Inspectorate's Advice Note 7: Environmental Impact Assessment: Process, Preliminary Environmental Information and Environmental Statements (2020)('Advice Note 7'), states that *"..Applicants should consider carefully the best time to request a scoping opinion. In order to gain the most benefit, Applicants should consider requesting the opinion once there is sufficient certainty about the design of the Proposed Development and the main design elements likely to have a significant environmental effect."*

## **4 General comments on the adequacy of the consultation**

### **4.1 Section 42 – Duty to consult**

4.1.1 This section discusses the applicant's compliance with Section 42 of the PA 2008.

#### **42(a) Prescribed persons**

4.1.2 A list of the prescribed bodies consulted during the Statutory Consultation has been provided by Highways England in Appendix H of the Consultation Report. A copy of the letter sent to the prescribed bodies on the 4<sup>th</sup> October 2018 has been provided in Appendix K of the Consultation Report and they were given more than 28 days to respond. Highways England has therefore complied with that provision.

#### **42 (aa) Marine Management Organisation**

4.1.3 Highways England consulted the Marine Management Organisation (MMO) on the 4<sup>th</sup> October 2018. A copy of the letter sent to the MMO has been provided in Appendix K of the Consultation Report and they were given more than 28 days to respond. Highways England has therefore complied with that provision.

#### **42(b) Local Authorities**

4.1.4 Highways England has provided a list of the local authorities consulted on the project. The Councils can confirm that they were engaged by Highways England during the Statutory Consultation and were given more than 28 days to respond. Highways England has therefore complied with that provision.

#### **42(c) Greater London Authority**

4.1.5 Highways England consulted the Greater London Authority (GLA) on the 4<sup>th</sup> October 2018. A copy of the letter sent to the GLA has been provided in Appendix K of the Consultation Report and they were given more than 28 days to respond. Highways England has therefore complied with that provision.

#### **42(d) Categorised persons**

4.1.6 The phases of consultation that Highways England has undertaken under section 42(1)(d) have been provided in the Consultation Report and a list of these consultees is included in Appendix J of the Consultation Report. Copies of the letters sent to these consultees have been provided in Appendix K of the Consultation Report and they were given at least 28 days to respond. Highways England has therefore complied with this provision.

#### **Conclusion on Section 42(d)**

4.1.7 With regards to Section 42 of the PA 2008, the Councils consider that Highways England has complied with the appropriate tests.

### **4.2 Section 47 – Duty to consult local community**

4.2.1 Highways England's compliance with Section 47 of the PA 2008 is discussed in the separate Council response's to the Inspectorate letter dated 23<sup>rd</sup> October 2020.

### **4.3 Section 48 – Duty to publicise**

4.3.1 Section 48 of the PA 2008 requires the applicant to publicise the proposed application in the prescribed manners. The Regulations specify a deadline of not less than 28 days for responses.

4.3.2 The Statement of Community Consultation stated that the Section 48 notice would be publicised in the following sources:

- Essex Chronicle
- Kent Messenger
- Thurrock Gazette
- Yellow Advertiser (Romford, Hornchurch and Upminster)
- London Gazette
- The Times
- Fishing News
- Lloyd's List

4.3.3 The Consultation Report provides examples of the Section 48 notices which were published in all of the above sources.

4.3.4 The Councils consider that Highways England prepared and published the Section 48 notice in the manner prescribed by Regulation 4 of the APFP Regulations (which was then also issued to the consultation bodies under Regulation 13 of the Infrastructure EIA Regulations). The deadline for responses also satisfied the statutory requirements.

4.3.5 Therefore, with regards to Section 48 of the PA 2008, the Councils consider that Highways England has complied with the appropriate tests.

### **4.4 Section 49 – Duty to take account of responses to consultation and publicity**

4.4.1 Highways England's compliance with Section 49 of the PA 2008 is discussed in the separate Council responses to the Inspectorate letter dated 23<sup>rd</sup> October 2020.

# 5 Wider Consultation Issues

## 5.1 Introduction

5.1.1 This section sets out the Councils' wider consultation issues with regards to the three rounds of consultation and pre-application technical engagement.

## 5.2 Statutory Consultation - 10 October – 20 December 2018

5.2.1 Following the announcement of the Preferred Route in 2017, Highways England undertook its Statutory Consultation on the Consultation Scheme.

### Lack of adequate information

5.2.2 For adequate consultation to be carried out, sufficient information needs to be made available to those wishing to be involved in the process. Paragraph 68 of the MHCLG Guidance states that consultation must take place at a sufficiently early stage but, at the same time, consultees will need sufficient information on a project to be able to recognise and understand the impacts. The Councils, in their role as technical authority, consider there was a lack of adequate information within Highways England's Statutory Consultation and were not able to form reasonable conclusions of the likely effects of the scheme. This is the case for the following reasons.

- The Preliminary Environmental Information Report (PEIR) did not contain a standalone assessment of human health impacts. Whilst an overarching consideration of human health was provided in the People and Communities chapter, the context and background were not clear. Furthermore, a working definition of human health was not provided in the chapter, which made it unclear how determinants of health of relevance to the Consultation Scheme were identified. The assessment on human health included in the People and Communities chapter was inadequate in substance, for example and as stated in Thurrock Council's response to Statutory Consultation, *"There are limitations in data used to understand human health. Health Baseline data at the Local Authority level is not sufficiently detailed to understand nuances of the health baseline. Data should be provided at the Lower Layer Super Output Area (LSOA) level (as committed for the HIA) and the assessment should consider differential impact on specific groups. No deprivation data (key areas of deprivation in Tilbury, Chadwell St Mary, South Ockendon) or understanding of vulnerable groups to be considered is provided"*.
- The traffic modelling output available as part of the consultation materials did not include the results of any option testing and did not contain the level of detail that would reasonably have been required for consultees to develop an informed view of the likely significant environmental effects of the Consultation Scheme on the local networks as well as on residents, businesses, open countryside and designated environmental areas. In addition, no information was presented in the PEIR or the consultation material, which considered the likely significant effects of fear and intimidation, pedestrian amenity and delay. A fundamental basis of the EIA for such a road scheme is the transport modelling that underpins it and the justification of the preferred option against stated scheme objectives and reasonable alternatives. If the assumptions built into this modelling are not appropriate, the scheme will not meet its objectives and the environmental assessments will be unsound. The Councils therefore consider that the inputs to the transport model are not sufficiently robust and that a realistic worst-case scenario has not been tested and therefore, stakeholders were not provided enough traffic modelling information for an effective consultation to take place until late-April 2020 (although the Councils do acknowledge receipt of earlier traffic modelling data from Highways England in June 2019).
- No information was presented in the PEIR for consultees to develop an informed view of the likely significant cumulative effects of the Consultation Scheme, nor did the PEIR include an assessment on reasonable alternatives. At the time, a number of surveys were

still underway and were required as input to the EIA, these surveys related to ground investigation, ecological, archaeological, air quality and noise. For example, 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.

- Measures to mitigate adverse environmental effects during the construction phase were not described in the consultation documents. The consultation material placed a strong reliance on developing a Code of Construction Practice (CoCP) in order to control environmental impacts during construction. No information was provided regarding designing out construction impacts, which may have helped assure consultees that potentially adverse environmental effects were not only being mitigated but avoided entirely, where possible. Again, the Councils consider that this is a major defect in the consultation since in effect the Councils have not been consulted on measures to mitigate adverse environmental effects that will arise during the construction phase. Furthermore, the Councils have never been issued with an outline construction programme to understand what processes are concurrent or how long they will last, so as to understand the implications at least illustratively.

5.2.3 The Councils therefore consider that Highways England has not complied with Paragraph 68 of the MHCLG Guidance and the Councils, in their role, as technical authorities have been substantially prejudiced since they were not able to properly or effectively participate in the consultation.

### **Accessibility of the information**

5.2.4 The Councils, in their role in representing their communities, are concerned that it was not made clear in the consultation material how vulnerable or 'hard to reach' groups were engaged during the Statutory Consultation exercise; for example, the elderly, those with disabilities, those who may not be able to read, those for whom English is not their first language. It should be noted that, in relation to equalities and engaging with hard to reach (or Seldom Heard) groups, the volume of information being consulted upon, which runs to over a thousand pages, much of which is technical in nature, has proved a challenge for many sectors of the community to engage fully in the statutory consultation. This was compounded with the challenge for the public to understand the maps books which were confusing and difficult to decipher, with the North orientation arrow pointing in a different direction on each plan. Furthermore, it would have been beneficial if there was an overarching large scale plan to provide context to the smaller plans. The plans relating to the A13 junction were particularly difficult to read and the layout of roads could not be properly understood, therefore, it was extremely difficult for the public to engage in the consultation.

5.2.5 The Councils consider that Highways England has not complied with Paragraph 20 of the MHCLG Guidance which require consultation to be engaging and accessible in style to encourage consultees to react and offer their views, or Paragraph 54 of the MHCLG Guidance, which requires an inclusive approach when consulting on project proposals to ensure that different groups have the opportunity to participate and are not disadvantaged in the process. In fact, these groups have been substantially disadvantaged as a result of the way that the consultation has been carried out and as a result of errors in the presentation of the consultation material itself.

### 5.3 Supplementary Consultation - (29 January – 25 March (extended to 2 April 2020))

- 5.3.1 Elements of the proposed scheme evolved since Highways England's Statutory Consultation and a series of design changes were published and subject to a Supplementary Consultation exercise in early 2020. The Councils wish to make clear the inadequacies in this round of consultation.

#### Lack of adequate information

- 5.3.2 The high level and generic nature of the commentary provided by Highways England meant it was not possible for the Councils, in their role as technical authorities, to reach sufficiently detailed conclusions with the information provided or to be able to understand the true effects of the design changes or to make specific recommendations regarding possible mitigation measures, specifically:
- Assessment of air quality and related human health effects – The Councils raised the issue of needing to measure PM<sub>2.5</sub> within the assessment of air quality impacts at several meetings of the Community Impacts and Public Health Working Group (CIPHAG) during 2019. This is also a requirement in Section 4.1, item 1 on page 19 of the Scoping Report. Highways England declined to include this measure specifically and consequently the Councils are unable to properly assess impacts or any possible mitigation and cannot reach an informed opinion to enable proper engagement with Highways England. The Councils have accordingly been substantially prejudiced and the consultation has been ineffective.
  - Health Impact Assessment – no detail provided in order to consider the potential effects of the scheme and any associated mitigation. The Councils have accordingly been substantially prejudiced and the consultation has been ineffective.
  - Assessment of cumulative effects and interaction of effects – potential prolonged adverse effects on the communities and environment from major construction projects in the area. Inadequate information was provided in the consultation material to consider these effects. Although Highways England did share its Cumulative Assessment Methodology and Long Lists in early March 2020 during the Supplementary Consultation (but separately to it) and the pandemic and some Councils have been unable to comment until October 2020, leaving very little time for Highways England to account for comments or discuss the issues with Councils. Outstanding issues remain unresolved, Thurrock Council has not received feedback from Highways England that its comments and additional proposed developments added to Highways England Long List have been incorporated into the Cumulative Assessment Methodology and Long Lists. Due to the timing of Thurrock Council's response on the Cumulative Assessment Methodology and Long Lists, it is highly likely that Highways England were not able to incorporate these substantial comments prior to its DCO submission. Therefore, the assessment within the ES is likely to be unsound. The Councils have accordingly been substantially prejudiced and the consultation has been ineffective.
  - The supplementary consultation material puts a strong reliance on developing a CoCP and Construction Environmental Management Plan (CEMP) in order to control potential environmental impacts during construction, however, these documents were not shared as part of the consultation material, it was therefore difficult to review and comment on the adequacy of what is proposed. The CoCP was not shared with Councils until 3rd June and then it lacked the critical mitigation detail which is contained in the REAC which was not issued to the Councils until in mid-August. The Councils have accordingly been substantially prejudiced and the consultation has been ineffective.
  - The traffic modelling presented did not include the results of any option testing and was insufficient in detail to understand the impacts of the Supplementary Consultation Scheme on local road networks. The Councils therefore could not form reasonable conclusions of the likely effects on local road networks relating to various option tests. Furthermore, the

traffic modelling presented in the consultation material only assessed operational impacts and does not make reference to construction impacts. The Councils are yet to be presented with any information relating to construction traffic impacts. The Councils have accordingly been substantially prejudiced and the consultation has been ineffective.

- 5.3.3 The information presented by Highways England was deficient in the detail required for technical stakeholders to provide an informed response to the proposed design changes. Each design change was complex and, as set out in the Guide to Supplementary Consultation, gives rise to a number of subsequent revisions to the design and structure of the scheme. The expected effects and 'what we are doing and why' presented in the Environmental Impacts Update are not specific to receptors, or at times, to the effects anticipated to change. Therefore, it has not been possible for the Councils to reach an informed conclusion of the potential impacts of the scheme. The Councils have accordingly been substantially prejudiced and the consultation has been ineffective.
- 5.3.4 The Councils were disappointed that Highways England did not provide key stakeholders with technical information or adequate feedback from earlier consultation in a timely manner, as part of its programme of technical engagement, which may have allowed a greater level of detail to be included in the consultation exercise. Even at this stage, the Councils are not clear how their comments from each previous round of consultation were taken into consideration on the approach to subsequent consultations and the design and likely impacts of the scheme.
- 5.3.5 As stated above with regard to the Statutory Consultation, the Councils consider that Highways England has not complied with Paragraph 68 of the MHCLG Guidance.

### **Accessibility of the information**

- 5.3.6 Highways England did not provide any information for stakeholders to distill how vulnerable or 'hard to reach' groups were engaged in the process. The Consultation Report does not set out clearly in Sections 3.5.2, 3.5.28, 4.5.1, 5.2.57, 5.3.50 and Table 5.16 how 'hard-to-reach' groups were engaged or the results and conclusions of any such engagement. In addition, the engagement with vulnerable groups is given very little detail, even in Tables 7.16, 7.24 and 8.8.
- 5.3.7 The consultation events did not include certain areas that would be affected and should therefore have been given the opportunity of a local event. For example, East Tilbury which is likely to be greatly impacted by the scheme, did not receive a local event, only a mobile event, which consisted of a van, with limited staff and material.
- 5.3.8 Later consultation events for the Supplementary Consultation, in March 2020, were cancelled due to the Covid-19 pandemic (four in total out of 21 events), meaning it is likely that many missed the opportunity to attend an event. The Councils role in representing their communities, expressed their concerns to Highways England regarding the likely impacts of Covid-19 pandemic on the community, and that extending the consultation by one week was inadequate when there was likely higher priority matters and concerns affecting people's health, wellbeing and in many cases, their ability to work. The one-week extension was likely to have little benefit to the public at this time. Many stakeholders provided feedback on Highways England's (Lower Thames Crossing) Facebook page, claiming that the consultation should either be postponed further or cancelled and that higher priority matters in relation to the global pandemic are at hand.
- 5.3.9 The Councils raised concerns with regards to the arrangement of maps presented in Map Books at Statutory Consultation and the fact that the map books were found to be confusing and difficult to decipher, with the North orientation arrow pointing in a different direction on each plan. Highways England did not address the concerns of the Councils and amend the map books format in all subsequent consultations. In addition, non-technical language would have helped the public to understand technical terminology, such as, 'Land not included within the Order Limits'. These challenges would have discouraged the public from engaging with the consultation.

- 5.3.10 The Easy Read Guide to Supplementary Consultation was poor and did not give a true representation of the design and the likely effects of the scheme. For example, the Easy to Read Guide to Supplementary Consultation included one page for the environment and does not set out any of the potential environmental impacts. The consultation material could have been much clearer to engender a more meaningful response. Thurrock Council expressed its concerns to Highways England regarding the approach to the previous consultation and for the concerns to be taken on board, which were not.
- 5.3.11 Highways England have suggested that the much more limited response to Supplementary Consultation gives tacit acceptance, whereas the Councils think that the consultation was not a priority with the other challenges that respondents potentially faced. The focus from the public during this worrying time was looking after its community, ensuring children were properly schooled at home and sourcing food for the most vulnerable. More information is contained within the Gravesham Borough Council response
- 5.3.12 The leader of Thurrock Council wrote to Highways England (20<sup>th</sup> and 27<sup>th</sup> March 2020), requesting that the consultation be postponed and that a one-week extension, given the state of emergency, is of no benefit to any party. This critical comment did not change Highways England's approach or deadline for Supplementary Consultation. Furthermore, Highways England gave an expectation (in its response on the 27<sup>th</sup> March 2020 (extract below)) that there would be a further opportunity for consultation later in the year, which of course there was, but not on the elements within the Supplementary Consultation, which is considered misleading.

*"Therefore, we believe that the best course of action under the circumstances is to:*

- *close this consultation on the 2nd of April as now planned in order to respect the 5000 responses received to date;*
- *provide the public with a further opportunity to comment on the Lower Thames Crossing later in the year through an additional round of consultation."*

- 5.3.13 The Councils consider that Highways England has not complied with Paragraph 20 or 54 of the MHCLG Guidance.

## **5.4 Design Refinements Consultation (14 July – 12 August 2020)**

- 5.4.1 A further round of design refinements was presented at the Design Refinements Consultation, which was undertaken virtually only. The Councils consider that there were significant issues and challenges associated with a further consultation exercise, undertaken virtually, so soon after the Supplementary Consultation, during a global pandemic and in the summer holiday period. It is generally good practice, if undertaking a consultation exercise during an extended holiday period (Christmas, Easter or summer school holidays (mid-July to end August)), that the consultation period be extended to accommodate annual leave arrangements so as to seek to maximise stakeholder engagement. Furthermore, Thurrock Council took the decision to cancel all of its consultation events during the global pandemic as there were higher priority matters at hand.
- 5.4.2 Some Councils wrote to Highways England about the Design Refinements Consultation's shortcomings in June/July 2020 prior to its commencement, particularly commenting on the Highways England document entitled: 'Lower Thames Crossing: Design Refinement Consultation 2020 - Our Approach' and these comments were not fully accounted for in the final version. In addition, there were a number of Council Leadership briefings in July 2020 about the proposals for the Design Refinements Consultation and at these briefings comments/feedback made were not adequately taken these into consideration. Strong recommendations from many Councils to extend the consultation period did not change Highways England's proposals.
- 5.4.3 The consultation ran for 30 days. It is considered that this is insufficient time to enable an adequate level of meaningful review and response, compounded by the fact that Highways England undertook this round of consultation so soon after the completion of the Supplementary



Consultation (March 2020) which would not have allowed time to reflect on the feedback from the last round of consultation and incorporate stakeholder comments into the scheme or the consultation approach. This further round of consultation so soon after the Supplementary Consultation (ending in early-April 2020) gave rise to stakeholder 'consultation fatigue'. It is the Councils opinion that it would have been very difficult for Highways England to consider feedback and comments from Supplementary Consultation and take it into account prior to Design Refinement Consultation.

5.4.4 Whilst Highways England acknowledged stakeholder concerns regarding the length and timing of the consultation, the programme was not altered.

5.4.5 The Councils consider that this does not comply with Paragraph 25 of the MHCLG Guidance which states that "...Larger, more complex applications are likely to need to go beyond the statutory minimum timescales laid down in the Planning Act to ensure enough time for consultees to understand project proposals and formulate a response. Many proposals will require detailed technical input, especially regarding impacts, so sufficient time will need to be allowed for this. Consultation should also be sufficiently flexible to respond to the needs and requirements of consultees, for example where a consultee has indicated that they would prefer to be consulted via email only, this should be accommodated as far as possible...". The Councils also consider that it does not comply with Paragraph 72 of the MHCLG Guidance which requires applicants to set consultation deadlines that are realistic and proportionate to the proposed project.

### Lack of adequate information

5.4.6 At the time of the Design Refinement Consultation, the Councils, in their role as technical authorities, raised concerns in relation to the adequacy of the consultation materials and the ability of stakeholders to understand and influence the design proposals. Many of the comments provided above in relation to the Supplementary Consultation are also pertinent to the Design Refinement Consultation and the Councils would like to highlight the lack of adequate information in relation to the following:

- The design refinement consultation material focused on detailed design changes and did not address the wider issues, relating to strategic policy, supporting sustainable local development and encouraging regional economic growth.
- Several of the utility diversion proposals were not shown in the Map Books. For example, design refinement number 36 'Additional working area for multi-utility construction' (within Thurrock). Thurrock Council responded within its response to Design Refinement Consultation (July 2020) with the following statement: "*The location of Design Change 36 is unclear, this makes the review challenging and therefore the information provided is inadequate*". Thurrock Council did not receive any feedback from Highways England as to whether this was an omission or just inadequate. This prejudiced the ability of the Councils to adequately and effectively review these design refinements, particularly because it was not possible in some cases to understand the potential effects of the changes.
- No environmental assessment work was provided for many design changes, for example: Design Change 23: 'Tilbury watercourse'. The justification within the Environmental Impacts Update is limited and states: "Please refer to Map Book 1: General Arrangements to view this information in more detail.", however, no detail was provided. The consultation was defective in this respect since it did not enable the Councils to consider or respond to these matters.
- Map orientation – the North arrow in the Map Books did not generally point due north when viewing the map online as a pdf. This was compounded by the consultation exercise being carried out solely online which means that the public would have had limited means to print out plans and reorientate them to make them easier to view. This matter had been raised repeatedly in the past and whilst it has previously been acknowledged as an issue, it still was not addressed by Highways England. This impeded consultees' ability to properly

understand the consultation materials and means that the consultation has been ineffective.

- There are also concerns about the adequacy of the consultation materials and an over-reliance on the preliminary environmental information published for statutory consultation in December 2018 on which comments are provided above. This combines to make the whole consultation exercise a challenge for members of the public and other stakeholders.

5.4.7 The above comments regarding the materials presented are likely to have been exacerbated for members of the public and other non-technical stakeholders, a large number of whom would not have been familiar with reviewing plans or large technical documents.

5.4.8 The Councils consider that Highways England has therefore not complied with Paragraph 68 of the MHCLG Guidance.

### Accessibility of the information

5.4.9 The Councils, in their role as representing the community, expressed their concerns with regards to virtual only consultation. Directly affected residents and the wider community were at a disadvantage to meaningfully engage with the 'virtual' Design Refinement Consultation, for example, due to lack of ability to hold 'in person' exhibitions, view notices in public locations, inspect hard copies of vital, complex documents and plans. In addition, the Councils consider that the consultation was conducted in an unjustifiably truncated time frame by Highways England.

5.4.10 The public, once again were required to gain a rapid understanding of a highly complex scheme, and in a period when there were higher priority matters and concerns affecting people's health, wellbeing and, in many cases, their ability to work resulting in significant personal and financial challenges.

5.4.11 Given that the consultation was online only, the Councils are concerned that certain vulnerable groups were underrepresented, particularly those with limited access to the internet or with difficulties in downloading large documents, which was further exacerbated by the failure of Highways England to address the concerns previously raised about the Map Books. Highways England did state in its Guide to Design Refinement Consultation, "*If you do not have access to the internet, we can send a printed consultation pack*", however, this Guide was an online document, so consultees would have had to be online to view the statement. For stakeholders where internet access is only via a mobile phone means they are effectively excluded from the consultation, as it would likely be very difficult to understand the plans on a mobile phone.

5.4.12 Other concerns with a virtual only consultation, which were not accommodated by Highways England but were well documented with them in advance and at every stage of every consultation, were:

- the scale of the map books versus the scale of the scheme, for example it was extremely difficult to decipher the layout of works around the A13, due to the complexity of the junction alterations.;
- the feedback received from professionals as well as the resident community of the need to see hard copies of the plans in large scale to truly understand the effects;
- the format with changing north points on the plans on each sheet which makes it incredibly 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.

5.4.13 The Councils consider that Highways England has therefore not complied with Paragraph 20 or 54 of the MHCLG Guidance.

## **5.5 Highways England's response to Covid-19**

- 5.5.1 The Covid-19 pandemic emerged as an issue during the course of the Supplementary Consultation period and assumed critical significance in March 2020. In response to the Covid-19 pandemic, Highways England extended the Supplementary Consultation period by one week and cancelled the four remaining consultation events. Lockdown was announced on the 23<sup>rd</sup> March with little prior warning and this included advice that the clinically extremely vulnerable should stay at home for at least 12 weeks. Schools were shut and parents were asked to homework if possible and home school their children.
- 5.5.2 The leader of Thurrock Council wrote to Highways England on the 20<sup>th</sup> and 27<sup>th</sup> March 2020, requesting that the consultation be postponed and that a one-week extension, given the state of emergency, is of no benefit to any party. Highways England did not postpone the consultation.
- 5.5.3 Extending the consultation by one week was inadequate when there were higher priority matters and concerns affecting people's health, wellbeing and in many cases, their ability to work. The one-week extension was likely to have little benefit to the public at that time. 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 constraints presented by the lockdown and that the one-week period would appear to be wholly artificial or arbitrary
- 5.5.4 Highways England have suggested that the much more limited response to Supplementary Consultation gives tacit acceptance, whereas we think that it is clear, on the contrary, that the consultation was not a priority with the other challenges potential respondents faced and that the limited response demonstrates the consultation's fundamental inadequacy
- 5.5.5 The Design Refinements Consultation was undertaken in full knowledge of the Covid-19 pandemic, albeit in a period when restrictions had been relaxed. The consultation period was only 30 days and took place only virtually in the summer holiday period. The Councils consider that there were significant issues and challenges associated with a further consultation exercise, undertaken virtually, so soon after the Supplementary Consultation, during a global pandemic and in the summer holiday period and expressed these concerns to Highways England at that time. Whilst Highways England acknowledged stakeholder concerns regarding the length and timing of the consultation, the programme was not altered.
- 5.5.6 It is considered that 30 days is insufficient time to enable an adequate level of meaningful review and response, compounded by the fact that Highways England undertook this round of consultation so soon after the completion of the Supplementary Consultation (March 2020), which would not have allowed time to reflect on the feedback from the last round of consultation and incorporate stakeholder comments into the scheme or the consultation approach.

## **5.6 Technical Engagement**

- 5.6.1 The Councils have sought to actively engage with Highways England throughout the pre-application process. The 'Summary of Tier 1 LA Technical Engagement', which is updated periodically by Highways England, illustrates the volume of technical meetings, workshops and technical documents which Highways England has sought to engage the Councils with, albeit on tight timescales. This summary was last issued on 31<sup>st</sup> July 2020 and was inaccurate as there were a number of technical meetings not held and technical documents not issued.
- 5.6.2 It should be noted that during this time of intensive technical engagement, Highways England undertook two rounds of consultation (Supplementary Consultation (January 2020) and the Design Refinement Consultation (July 2020)). This is compounded by the fact that key Council officers and members have also been engaged in responding to matters in relation to the Covid-19 pandemic.
- 5.6.3 The timing of Highways England's technical engagement means that the Councils have been placed under the burden of a compressed programme. This has meant that the Councils have been unable to undertake informed analysis of the information in the time provided and respond quickly. There has also been a distinct lack of feedback from Highways England with regard to

the Councils' responses and only summary responses to issues raised are included in the Consultation Report. The Councils believe that many of their comments have therefore not been taken into consideration by Highways England. By withholding information which could have been reviewed and agreed upon earlier in the pre-application process, Highways England compressed the time in which the Councils could meaningfully inform the scheme prior to the submission of the DCO application.

- 5.6.4 For example, the draft ES chapters for 12 topics were issued to the Councils on 2<sup>nd</sup> and 14<sup>th</sup> July 2020, but were incomplete and contained very little information on mitigation, relying instead on the Code of Construction Practice (CoCP) and its accompanying Register of Environmental Actions and Commitments (REAC). The draft CoCP in 'skeleton' form (with only headings with no content) was shared with the Councils on 28<sup>th</sup> November 2019, in 'preliminary' form it was shared with Councils on 3<sup>rd</sup> June and then finally in its draft final form on 18<sup>th</sup> August together with the draft REAC for the first time. This late sharing of these key 'control plan-type' documents so late in the pre-application process has prevented the Councils from considering impacts or likely mitigation properly and limited the time available for Councils to respond or for Highways England to account of their key comments. In these respects, the consultation has therefore been defective.
- 5.6.5 Also, a number of the draft ES chapters were issued to the Councils for comment at the same time as the launch of Highways England's Design Refinements Consultation (14<sup>th</sup> July 2020) and the Health and Equalities Impact Assessment was issued during the course of the Design Refinements Consultation (3<sup>rd</sup> August 2020). Such requests for comments, of which there were a many, during a public consultation exercise, place an enormous strain on Councils.
- 5.6.6 Furthermore, as the Transport Assessment has still not been shared, no assessment could be made of construction impacts on local roads or the need for mitigation. The effect on local roads could not be assessed from any materials supplied within the three consultations (including the PEIR during Statutory Consultation) and has only been assessed from operational modelling information supplied by Highways England in late-April 2020. Highways England declined to share the draft Transport Assessment relating to construction transport impacts in its emails dated 21<sup>st</sup> September and 8<sup>th</sup> October 2020. The technical response from Thurrock Council was issued to Highways England on 19<sup>th</sup> October in three technical reports (with the later timing due to the Design Refinements Consultation and the effects of the pandemic). Gravesham Borough Council in concert with other local authorities met with Highways England on the 2<sup>nd</sup> October 2020 to discuss a consultant report on the LTAM traffic model. The assessment in that southern local authorities report identified that 7 local junctions south of the river that needed mitigation measures, quite apart from issues on M2 J1-J3 and A229 M2J3 to M20 J6; in addition the Thurrock assessment identified that three key junctions in Thurrock will be over-capacity as a result of the LTC and require mitigation. In view of the consultation process on technical matters being delayed, as indicated elsewhere in this representation, there has been no ability to discuss these local impacts and significant effects with Highways England or agree any mitigation measures. Gravesham Borough Council are of the view that Highways England should be tackling the Bluebell Hill traffic impact issue and if not part of the DCO there should be some form of explicit commitment to a process for a solution. In their email dated 8<sup>th</sup> October 2020, Highways England declined to meet with Thurrock Council to discuss these matters prior to DCO submission, therefore the Councils were unable to progress their collective concerns and attempt to resolve matters in the pre-application period.
- 5.6.7 Despite Highways England holding some 11 technical workshops with local authority and environmental stakeholders during 2019 and 2020, and circulating the outstanding issues from Scoping, technical and formal consultation engagement to each local authority in November 2019 and again in late July 2020 (as is set out in Highways England's 'Summary of Technical Engagement v6 dated 31<sup>st</sup> July 2020'), there remain, for each Council, many hundreds of outstanding issues that are either not yet resolved or not agreed.
- 5.6.8 During the last six months (since May 2020) prior to DCO submission almost 20 major technical documents have been shared with Councils. Councils have commented, wherever possible during the pandemic, on these technical documents, despite the lack of detail and missing vital accompanying documentation such as the appendices not being issued with the draft ES. It is

highly unlikely that such comments could have been accounted for in the DCO submission. Furthermore, many of the major documents shared by Highways England only requested significant and not detailed comments. Consequently, the pre-Examination and Examination period will be the only opportunity for Highways England and the Councils to resolve these many issues. The lateness of sharing technical documents (often missing the detail needed), coupled with a formal consultation and all during a pandemic has significantly compromised the Councils ability to comment, discuss and resolve issues and develop any draft Statement of Common Ground at this stage.

- 5.6.9 It is considered that Highways England should have taken into account Paragraph 25 of the MHCLG Guidance “...Larger, more complex applications are likely to need to go beyond the statutory minimum timescales laid down in the Planning Act to ensure enough time for consultees to understand project proposals and formulate a response. Many proposals will require detailed technical input, especially regarding impacts, so sufficient time will need to be allowed for this...” In this case the Councils consider that insufficient time has been afforded and that the consultation has been defective.
- 5.6.10 It has been Highways England’s continued emphasis on its DCO submission and delivery programme and not releasing detailed technical information until very late in the process throughout the last two years of formal consultations and technical engagement, that has caused the compressed timescales for Councils and other stakeholders. This has meant that Councils, during the latter two formal consultations, in undertaking technical reviews and in attempting to resolve issues in the pre-application period, have been unable to effect change or gain a proper understanding of significant effects or mitigation. Highways England’s compressed programme and volume of technical documents shared late in the process has also meant that there has not been an adequate amount of time for Highways England to consider and incorporate comments into its DCO. The Councils have been prejudiced and as a result the consultation has been defective. Furthermore, Gravesham Borough Council Adequacy of Consultation letter makes reference to the Planning Performance Agreement (PPA) to explain that no funding for additional resources was available until September 2020.

## 5.7 EIA Scoping Opinion

- 5.7.1 Whilst it is acknowledged that there is a need for flexibility, and the Scoping Opinion notes this, section 2.3.15 of the Opinion also notes that “...if the Proposed Development changes substantially during the EIA process and prior to submission of the application the Applicant may wish to consider requesting a new scoping opinion”. This point is particularly important given the recent changes to the EIA Regulations which place a greater emphasis on the content of Scoping Opinion. Regulation 14(3)(a) of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017 No.572) states that “...the environmental statement... must, where a scoping opinion has been adopted, be based on the most recent scoping opinion adopted (so far as the proposed development remains materially the same as the proposed development which was subject to that opinion)”.
- 5.7.2 As noted in Para 4.9 of the Inspectorate’s Advice Note 7 “...Applicants should consider carefully the best time to request a scoping opinion. In order to gain the most benefit, Applicants should consider requesting the opinion once there is sufficient certainty about the design of the Proposed Development and the main design elements likely to have a significant environmental effect.” Given the significant changes in the scheme design and significant increase in the application area since the adoption of the 2017 Scoping Opinion, it is considered that the EIA Scoping Exercise was undertaken prematurely.
- 5.7.3 Although the application area was reduced as part of the Design Refinement Consultation (July 2020), it is still considerably larger than that at the 2017 EIA scoping stage, as demonstrated below, using data generated from GIS data supplied by Highway England:
- 2017 EIA Scoping - 12.76 km<sup>2</sup>
  - 2019 Statutory Consultation (December 2018) - 20.08 km<sup>2</sup>

- 2020 Supplementary Consultation (January 2020) - 26.21 km<sup>2</sup>
- 2020 Design Refinement Consultation (July 2020) - 22.91 km<sup>2</sup>

5.7.4 A broad analysis of the Consultation Report 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) and are broadly (although the *text in bracketed italics provided 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. They are summarised below:

- Statutory Consultation:
  - Improved connectivity at the [*Marling Cross*] Gravesend East junction
  - Relocation of the South Portal, 350 metres further south
  - Landscaping proposals at the tunnel portals using materials excavated in the tunneling
  - Removal of the rest and service area, maintenance depot and Tilbury junction
  - Removal of one lane southbound between the M25 and A13/A1089 junction
  - Changes to the structures over the Mardyke River, Golden Bridge Sewer and the Orsett Fen Sewer
  - Provision of additional green bridges and changes to the design of those previously included
  - Modified proposals for walkers, cyclists and horse riders
- Supplementary Consultation:
  - Reducing [*Increased*] the land required for utility works [*and compensation planting areas*]
  - [*Ground stabilisation tunnel from Lower Higham Road into the North Kent Marshes*]
  - [*New electricity substation at one of three locations on the A226*]
  - Refinements to the design of utility diversions in some areas along the route
  - Updated paths for walkers, cyclists and horse riders
  - Relocating the Gammon Field Traveller site
- Design Refinement Consultation:
  - A revised proposal for the gas pipeline diversions under the Project near Thong [*along the northern edge of the A2 through the AONB, thereby reducing the area involved*].
  - Revised proposals for the overhead power line diversion near the Tilbury loop railway [*and at Thong*]
  - [*Selection of a site for the A226 substation and addition of a smaller switching station at the southern end of Thong Lane by A2*]

5.7.5 It does not appear that the scope of each EIA topic assessment has been reviewed and/or updated as a result of the changes in the application area and scheme. Certainly, no evidence has been presented in support of this. The Councils query whether Highways England discussed with PINS if the above changes required scoping in of additional topics. It is the Councils' opinion that an updated Scoping Opinion should have been sought. Highways England should have taken into consideration Paragraph 4.9 of the Inspectorate's Advice Note 7: Environmental Impact Assessment: Process, Preliminary Environmental Information and

Environmental Statements (2020)('Advice Note 7'), states that *"..Applicants should consider carefully the best time to request a scoping opinion. In order to gain the most benefit, Applicants should consider requesting the opinion once there is sufficient certainty about the design of the Proposed Development and the main design elements likely to have a significant environmental effect."*

5.7.6 The Councils consider that there are potential significant non-compliance matters in relation to Transport.

- Transport Modelling - The Scoping Opinion made comments about transport modelling and the Council would in particular direct attention to item 7 on page 40 of the Scoping Opinion which says, inter alia, *"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 LTC (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 Councils have not seen the submitted Transport Assessment with the DCO, even though the Councils were 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 Councils 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. It is considered that Highways England should re-run the LTAM with higher development numbers (to be agreed with local authorities) and follow through the logic of the results to both the ES and scheme design.
- The need for a Transport Assessment – The Scoping Opinion states at Section 3.3.5: *"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 this opportunity (Please refer to Section 5.6.6. above). Therefore, the Councils are prejudiced in that they have been unable to provide essential feedback in matters relating to traffic to affect the 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 Councils 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.
- Commitments to river transport – The Scoping Opinion states at Section 4.8, item 2: *"The Scoping Report identifies road, river or rail as being options for transporting excavated material. 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 these movements e.g. through the draft DCO. The Applicant should also have regard to the points raised by PLA on this matter.”* As above, the Councils 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 Councils (29<sup>th</sup> June 2020).

- 5.7.7 It is acknowledged that there is a need to retain flexibility in designing major infrastructure schemes, however the significant increase in application area, which has increased by some 55% since EIA scoping stage, compounded by the very significant material changes to the scheme which have taken place since scoping, lead to the conclusion that Highways England’s October 2017 EIA Scoping Report was submitted prematurely and at a point in time where there was considerable uncertainty about the design of the scheme. It should have been reviewed subsequently (but has not been) and, as a result of modifications to the scheme since it was submitted, it is no longer fit for purpose.

## **5.8 Adequacy of consultation on draft Environmental Statement (ES)**

- 5.8.1 Concerns have been raised previously over Highways England’s compressed programme and the lack of meaningful technical engagement. This has remained a considerable concern throughout the technical engagement, as it has resulted in limited time to explore and agree appropriate measures to mitigate the adverse effects of the scheme with Highways England. The Councils’ comments regarding the adequacy of consultation on the draft ES are as follows:

- It is considered that the consultation sections of the draft ES chapters present a selective account of discussions which have taken place. It is acknowledged that stakeholders have been consulted during the pre-application process, however, the level of engagement and the draft documents issued, often excluding appendices, have not enabled a meaningful review of the effects of the scheme to be undertaken to address stakeholder comments and explore and agree appropriate mitigation, prior to the submission of the DCO application.
- Health - over the course of the last 18 months the CIPHAG has met and, during this time, very limited information has been shared with members relating to the impacts identified and how this has shaped the scheme or informed mitigation. This has been compounded with the lack of technical appendices, consequently, it has been difficult to provide any meaningful input during this time period. Despite holding nine CIPHAG meetings during 2019 and 2020, there was no detail provided of the likely significant effects or potential mitigation until the late receipt of the draft ES chapter ‘Population and Human Health (shared on 2<sup>nd</sup> July 2020) and the draft Health and Qualities Impact Assessment (HEqIA) (shared on 3<sup>rd</sup> August 2020). Although these may have been commented on by some Councils during October 2020, the comments would not have been accounted for within the final DCO submission. The Gravesham Borough Council Adequacy of Consultation letter includes, in its appendices, comments from Bureau Veritas and other consultants in relation to health impacts. Therefore, the opportunity to resolve issues prior to DCO submission has been lost.
- There is a heavy reliance on the Code of Construction Practice (CoCP) and the Register of Environmental Actions and Commitments (REAC) to deliver appropriate mitigation during the construction phase. The REAC which forms a critical part of the CoCP in understanding the proposed mitigation was limited in information and should have been shared with the Councils providing enough time for meaningful engagement for Highways England to illustrate how comments have been incorporated into the mitigation package, it is unclear if the Councils comment have been incorporated into the scheme. The CoCP was not shared with Councils until 3<sup>rd</sup> June and then it lacked the critical mitigation detail which is contained in the REAC which was not issued to the Councils until in mid-August.
- The Cultural Heritage Desk Based Assessment was issued in June 2020. Significant concerns were raised with the quality of the DBA; the document did not meet the original aims of the document identified in the 2018 Methodology. The DBA:



- Failed to use all of the available data, with most of the information provided relying on list descriptions and the Historic Environment Record
  - Failed to identify the significance of the asset, or the contribution made by their setting
  - The values assigned to the assets are questionable in numerous cases
  - No considerations of how research aims within the various areas can be addressed
  - No clear identification of the assets which can be excluded from the Environmental Statement.
- Further concerns have been raised more recently, with how DMRB LA106 Cultural Heritage Assessment (Jan 2020, Rev 1) determines the "value" of individual heritage assets compared to the National Policy Statement for National Networks (NPSNN). It is considered that there is a fundamental problem with a methodology which considers Grade I, II\* and II Listed Buildings being of equal value.

5.8.2 The above comments are on the draft ES and the Councils are unable to comment on whether these comments have been carried forward into the final ES as they have not yet received it.

5.8.3 Consultation has been carried out in respect of a single NSIP, the road. The Councils understand that the DCO application may consist of five additional NSIPs, which includes, but not limited to, overhead line diversion and utility diversions. The Councils, therefore, reserve their position to determine the adequacy of how the other NSIPs have been dealt with in the ES

## 5.9 Lack of Key Documentation

5.9.1 Many of the technical documents issued by Highways England have not included the appendices or place which contain the detailed analysis of the EIA. The failure to include appendices means that key details could not be considered and the consultation has not been effective since many of the appendices either have not been consulted upon and the potential effects (and mitigation) of the scheme cannot be properly understood, Therefore, the adequacy of the assessment cannot be confirmed.

5.9.2 The Councils, including Kent County Council and Essex County Council, wrote to Highways England (7<sup>th</sup> October 2020) requesting early sight of the Consultation Report and other related application document prior to the DCO submission (Advice Note 14, paragraph 6) and whether Highways England intends to allow a soft copy of the application documents to be issued to the Councils as soon as is practicable following submission of the application to the Inspectorate (Advice Note 2, paragraph 15.1). Highways England responded (14<sup>th</sup> October 2020):

*"Firstly, I would like to thank you for your and all of your teams' time in the very extensive engagement over the course of the development of the project. Your input and feedback, particularly since our Preferred Route Announcement in April 2017, has been invaluable in developing and shaping the Lower Thames Crossing proposals.....". We have also sought to share much of our developing thinking as the design has progressed. This includes over 20 key documents ahead of submission – such as drafts of the Code of Construction Practice, Health Equalities Impacts Assessment, Environmental Masterplan, and the Environmental Statement Chapters."*

5.9.3 The Councils sent a subsequent letter (16<sup>th</sup> October 2020) expressing their concerns:

*"We note your comments about our contributions to shaping the LTC proposals, but we are unsure of what contributions we have made as we have had very little feedback from you regarding our comments and contributions, which continues to be the case in the lead up to DCO submission. With regard to your comments about 'doing things differently', our understanding is that the A303 was the first HE project to use a PPA with a local authority, although promoters such as Thames Water, National Grid and EDF were using PPA's in accordance with the Planning Inspectorate Advice Notes and Government Guidance, since the early introduction of the Planning Act 2008. We do agree that operational traffic modelling*

information has been shared early and has been helpful. However, you have told us that the construction traffic Transport Assessment will not be shared at all prior to DCO submission, despite the NPS requiring otherwise.

*“We also take issue with your assertion that key technical documents have been shared early, they have, but either just before/during a formal consultation or very late in the process that has presented us with a resource challenge and more importantly we are unsure how our comments will be accounted for, if at all. We set out below the documents and when they were shared (with Thurrock but presumably consistently with all of the affected local authorities simultaneously which has been the usual approach) to illustrate the point:*

- *CoCP - latest version with text shared on 18 August 2020 (largely for information only)*
- *HEqIA - first shared 3 August 2020*
- *EMP - shared on 14 July, but with no corresponding detail (the commencement date of the Design Refinements Consultation which closed on 12 August 2020)*
- *ES Chapters - 12 no. chapters shared on 2 and 14 July (again just prior and at the commencement date of the Design Refinements Consultation which closed on 12th August 2020)”*

5.9.4 Highways England responded on the 23<sup>rd</sup> October 2020 stating that there have been significant changes made to the scheme as a result of the stakeholder feedback but did not intend to list them in the letter, however, this may have been beneficial to the Councils to understand how stakeholder comments have been incorporated into the scheme. Highways England further noted the early sharing of documents and used the CoCP as an example, which was shared on the 3<sup>rd</sup> June 2020, however, the CoCP lacked the critical mitigation detail which is contained in the REAC and was not issued to the Councils until in mid-August.

5.9.5 The Consultation Report was shared with the Councils on the 22<sup>nd</sup> October, the day before submission of the DCO. This is clearly not in compliance with the Inspectorate’s Advice Note 14, which states that it is particularly useful if applicants provide local authorities with early sight of the Consultation Report to inform their views, given the short 28-day timescale allowed for the acceptance stage and the 14 day timescale local authorities have to provide their Adequacy of Consultation response. However, Highways England refused to provide a soft launch of DCO documents prior to the application being accepted.

5.9.6 Furthermore, the Councils have never been issued the LTC Business Case, which was promised to Gravesham Borough Council Members at a presentation from Highways England in February 2020.

## **5.10 Lack of public environmental information**

5.10.1 Regulation 12 of the Infrastructure EIA Regulations 2017 states:

- (2) In this regulation, “preliminary environmental information” means information referred to in regulation 14(2) which—
  - (a) has been compiled by the applicant; and
  - (b) is reasonably required for the consultation bodies to develop an informed view of the likely significant environmental effects of the development (and of any associated development).

5.10.2 Furthermore, Paragraph 93 of MHCLG Guidance states *“for the pre-application consultation process, applicants are advised to include sufficient preliminary environmental information to enable consultees to develop an informed view of the project.... The key issue is that the information presented must provide clarity to all consultees.”*

- 5.10.3 For adequate consultation to be carried out, sufficient environmental information needs to be made available. The information presented in the PEIR during the Statutory Consultation (December 2018) and the ES Update Reports during the Supplementary Consultation (January 2020) and the Design Refinement Consultation (July 2020), did little to provide the public with information to review and understand the baseline conditions and develop an informed view of the likely significant environmental effects.
- 5.10.4 The Councils consider that Highways England has therefore not complied with Paragraph 93 of the MHCLG Guidance.

## **5.11 Consultation Feedback**

- 5.11.1 Throughout all three rounds of formal consultation, the Councils have not received any feedback to demonstrate how their comments have been taken into consideration into the design of the scheme. Neither the Supplementary Consultation nor the Design Refinement Consultation contained substantive feedback on the results of the previous consultations. In Summer 2019 a project update was published which contained high level information on the responses to the Statutory Consultation, this was not considered an adequate response to the effort and resources from stakeholders in responding to the Statutory Consultation.
- 5.11.2 It should be noted, in Gravesham Borough Council's response on the proposed approach to the Supplementary Consultation, it pointed out that the general public would expect responses on issues raised at the previous consultation. Two years have elapsed since the Statutory Consultation and no feedback has been received.
- 5.11.3 Summary responses are now available in the Consultation Report, although the Councils full comments and Highways England's responses do not appear to be available for review.
- 5.11.4 Given that the DCO process was intended by Parliament to be front-loaded, the Council has found the stance adopted by Highways England, for example, in terms of transport scenario testing and the timely release of detailed technical information, to be frustrating. The request that cross sections of the A2 junction and 3D visualisation to provide a clearer overview of a 3-level interchange has never been responded to. Although Highways England has held numerous meetings with the Councils, and other parties, these have frequently been presentations of the latest position, not discussions about options or feedback.
- 5.11.5 The Councils have repeatedly and formally requested feedback to the comments and advice provided to Highways England on the three rounds of consultations and further technical engagement as to how their comments have been taken into consideration in the scheme. Most recently, the Councils issued a letter (16<sup>th</sup> October 2020) setting out their concerns that key documents have not been shared early enough in the process (further referenced above in Section 5.9.3).
- 5.11.6 An important 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 whereby, it does not appear to be the case that the substantial comments made by the Councils have been adequately or genuinely considered by Highways England and certainly have not been incorporated into the scheme.

## **5.12 Outstanding issues that may affect the Examination timetable**

- 5.12.1 Section 98(1) of the Planning Act 2008 imposes a duty on the Examination Authority to complete the examination within 6 months. There is serious concern that the quality of the application and the level of information presented during the pre-application stage will pose a challenge to be able to complete the examination within the statutory timescales. The number of outstanding issues has escalated in the lead up to the DCO submission. These outstanding issues are likely to result in a greater number of Examiner questions and hearings, which will add undue pressure

on all parties. Furthermore, there may be a need for requests for further information, i.e. under the Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 which could add undue pressure to all parties.

- 5.12.2 As an example to a delay to an examination, a recent procedural decision by the Inspectorate on Thurrock Power Limited DCO under Section 89 and The Infrastructure Planning (Examination Procedure) Rules 2010 - Rules 6, 9 and 17, requested further information in respect of the ES due to written submission and the oral submission at the Preliminary Meeting Part 1. The Inspectorate's reasoning was as follows:

*“one of the primary purposes of the Examination process is to resolve issues that arise from the ES as opposed to providing a mechanism for resolving numerous omissions and inadequacies. Indeed, the frontloading of project development in the PA2008 is, in part, intended to avoid such issues acting as an impediment to the examination of applications in the statutory timescales.”*

- 5.12.3 The Councils consider that Highways England has submitted its DCO despite the significant amount of outstanding issues to be resolved, resulting in a significant risk to the statutory timescales of the examination timetable.

- 5.12.4 Should the application be accepted for examination, there is a significant risk that the number of outstanding issues and concerns is so significant that it will consume a disproportionate amount of examination time. This is unacceptable. The application should only be accepted for examination if there can be a reasonable degree of confidence that it can be examined within the statutory period. The Councils do not consider that it can be, for all of the reason set out above. There are numerous outstanding issues arising from a number of defects in the consultation process that have significantly prejudiced the Councils, and other consultees, such that the application should not be accepted for examination at this stage without those matters being rectified.

## 6 Conclusion

- 6.1.1 Section 55(5) of the PA 2008 defines adequacy of consultation as “...a representation about whether the applicant complied, in relation to that proposed application, with the applicant’s duties under sections 42, 47 and 48.”
- 6.1.2 However the Councils wish to comment on Highways England’s compliance with section 49 of the PA 2008, which requires the applicant to take account of responses to consultation and publicity, and Section 50 of the PA 2008, which requires the applicant to have regard to relevant guidance issued under section 50 of the PA 2008, such as Advice Note 2 ‘The role of local authorities in the development consent process’ (2015), Advice Note 14 ‘Compiling the consultation report’ (2012) and MHCLG Guidance.
- 6.1.3 The applicant has sought to undertake pre-application consultation on the scheme in response to sections 42, 47 and 48 of the PA 2008. However, the Councils have serious concerns about the adequacy of consultation and is of the view that, in many respects, the defects of the consultation that Highways England has carried out have not been effective and have substantially prejudiced the Councils. It is therefore the Councils view that the applicant has not complied with the requirement of the PA 2008 or the associated guidance on the pre-application process which the applicant must have regard to.
- 6.1.4 Table 6.1 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).
- 6.1.5 The Council has previously raised concerns to Highways England’s with regards to the programme, the adequacy of technical engagement to date, lack of associated data, and the time available to enable a period of meaningful technical review and engagement to address stakeholder comments and explore and agree appropriate mitigation, prior to the submission of the DCO application.

Table 6.1 – Compliance Checklist

<b>Section 55 Checklist</b>		<b>Compliant</b>	<b>Paragraph reference</b>
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?	Yes	<b>4.1.2</b>
	Section 42(1)(aa) the Marine Management Organisation?	Yes	<b>4.1.3</b>
	Section 42(1)(b) each local authority within section 43 of the PA 2008?	Yes	<b>4.1.4</b>
	Section 42(1)(c) the Greater London Authority?	Yes	<b>4.1.5</b>
	Section 42(1)(d) each person in one or section 44 categories?	Yes	<b>4.1.6</b>
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?		Yes	<b>4.1.2 – 4.1.6</b>
Did Highways England prepare a SoCC on how it intended to consult people living in the vicinity of the land?		See individual Council AoC responses	<b>n/a</b>

<b>Section 55 Checklist</b>	<b>Compliant</b>	<b>Paragraph reference</b>
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?	See individual Council AoC responses	n/a
Did Highways England have regard to any responses received when preparing the SoCC?	See individual Council AoC responses	n/a
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?	See individual Council AoC responses	n/a
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?	See individual Council AoC responses	n/a
Did Highways England carry out the consultation in accordance with the SoCC, as per Section 47(7) of the PA 2008?	See individual Council AoC responses	n/a
Did Highways England publicise the proposed application in the prescribed manner set out in Regulation 4(2) of the APFP Regulations?	Yes	4.3.4
Did the section 48 notice include the required information set out in Regulation 4(3) of the APFP Regulations?	Yes	4.3.4
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?	Yes	4.3.4
Did Highways England have regard to the relevant responses to the section 42, section 47 and section 48 consultation?	Section 42 –No	5.11.1 – 5.11.6
	Section 47 – See individual Council AoC responses	n/a
	Section 48 –Yes	4.3.5
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.20 – No	5.2.4 - 5.2.5, 5.3.6 – 5.3.13, 5.4.9 – 5.4.14
	Para.25 – No	5.3.12, 5.4.1 - 5.4.5, 5.6.1 - 5.6.10, 5.8.1
	Para.44 – see See individual Council	n/a

Section 55 Checklist	Compliant	Paragraph reference
	AoC responses	
	Para.54 – No	<b>5.2.4 - 5.2.5, 5.3.6 - 5.3.13, 5.4.9 - 5.4.14</b>
	Para.68 – No	<b>5.2.2 - 5.2.3, 5.3.2 - 5.3.5, 5.4.6 - 5.4.8</b>
	Para.72 – No	<b>5.3.12, 5.4.1 - 5.4.5</b>
	Para.77 - See individual Council AoC responses	<b>n/a</b>
	Para.80 – See individual Council AoC responses	<b>n/a</b>
	Para.81 – See individual Council AoC responses	<b>n/a</b>
	Para.93 – No	<b>5.10.1 - 5.10.4</b>
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	<b>5.2.4, 5.8.1 (second bullet), 5.9.2, 5.11.5 - 5.11.6</b>
	Advice Note 7 – No	<b>5.7.1 - 5.7.7</b>
	Advice Note See Individual Council AoC responses	<b>n/a</b>
	Advice Note 14 – No	<b>5.9.2, 5.9.5</b>

6.1.6 The Councils recommend that the DCO application should not be accepted by the Inspector.