

East Herts Council: Development Management Committee**Date: 22nd February 2022****Summary of further additional representations and updates received after completion of reports submitted to the committee, but received by 3pm on the date of the meeting.**

	Agenda No	Summary of representations/ amendments	Officer Comments
1.	4a 3/19/1046/FUL and 4b 3/19/1051/FUL	Additional Representations received: Pinsent Masons on behalf of Pope/Beaumont Family Consider that the committee reports unlawfully treat HIG funding as a material planning consideration, inappropriately emphasising the importance of it to the applications and the wider Gilston proposals and in relation to the timing of the determination of the proposals (for example on paras 3.3.1 and 3.3.2 of the report. Consider that it is irrational to refer to HIG in the detail given whilst claiming that the matter is not material.	As explained in the officer report the HIG funding is not a material consideration and is not weighed in the balance in any manner (paras 2.12 to 2.13). The existence of the HIG funding is a matter of public record, hence Officers considered it appropriate to clarify the context and guide members as to how they should approach it; -The Reports (paras 2.10 – 2.13) make it clear, as a matter of fact, that the timing of the HIG funding impacts early delivery of the Crossings infrastructure. This pragmatic consideration combined with PPG guidance to determine applications promptly is a factor which has influenced the need to promptly determine the Crossings but the report is clear not to the merits of the applications. - The grant funding arrangements between the Applicant, HCC as the administering authority and Homes England are not relevant matters to the planning merits of the Crossings applications in the same way that other funding or commercial

			<p>arrangements between a developer / applicant for permission and other third parties are usually not relevant to planning decisions;</p> <p>- HIG is not treated as a material consideration, and Officers do not consider deliverability and funding as part of the assessment of the planning merits. These matters are typically considered as part of any decisions relating to the exercise of compulsory purchase powers, including those of the Secretary of State.</p>
2.		<p>Failure to lawfully and properly assess the likely significant environmental effects of the development in the following ways:</p> <ul style="list-style-type: none"> - No or inadequate Environment Impact Assessment (EIA) in the event that Enabling Works (EW) restoration is required. There is no assessment of the likely significant effects of the EWs – which can be undertaken ahead of the grant of permission for Gilston Area Villages 1-6, in the event that planning permission is not granted. EWs include significant tree removal, significant site demolition and clearance and intrusive site surveys. Cond 40 does not cater for the scenario that the Land Restoration Scheme of Work is not 	<p>Enabling Works have not been subject to a separate EIA but the EIA has considered the full breadth of construction activities associated with the proposed development, which includes the activities that would be covered within a Construction Environment Management Plan.</p> <p>Officers have considered the likely impacts arising from the various types of Enabling Works and have tightly defined the scope of Enabling Works accordingly. As explained in paragraphs 13.6.46 to 13.6.48, the definition of 'Enabling Works' comprises "<i>site clearance and demolition; tree/vegetation removal (in accordance with the approved plans in Condition 2); soil investigations (including soakage testing, window sampling, boreholes, CBR's and gas monitoring); ecology surveys; archaeology surveys (including geo physical surveys, window samples and trenching); slip trenches to investigate existing services; drainage surveys (such as CCTV and jetting); river modelling; and topographical surveys</i>". The potential for impact</p>

		<p>permitted. No EIA screening out of the effect of the EWs nor consideration of the Land Restoration Scheme of Work.</p> <ul style="list-style-type: none"> - Flawed inadequate EIA cumulative assessment. In this respect, two of the wider Harlow and Gilston Garden Town (HGGT) development proposals, Latton Priory and West Sumners have been excluded from cumulative assessment. The Transport Assessment dealing with these sites and consequent EIA relying on it, is flawed. 	<p>or harm by reason of any 'Enabling Works' has been considered by Officers in the context of each condition and its purpose, and Officers consider that the appropriate balance has been struck between enabling progress and necessary surveys and ensuring that harmful works will not take place. The type of work that can be carried out under the term 'Enabling Works' is limited in nature, and which are of small scale, temporary and reversible (with the exception of vegetation removal) i.e. are not considered likely to have significant effects. The extent of any necessary tree removal required for undertaking any survey work is limited to that approved by virtue of the submitted plans, the impact of which has been assessed in the Environmental Statement. Where conditions require certain operations to be carried out prior to the commencement of the development, Officers have made a reasoned judgement in relation to the potential impacts of the operation and have excluded these works from the Enabling Works definition.</p> <p>It is unlikely that the Enabling Works will proceed unless the Applicant is confident that the Villages development will proceed, hence the needs for the crossings. The scenario of Enabling Works taking place with no Village development is not a likely effect of the Crossings development for which planning permission is sought. Moreover, any such effects will be capable of being satisfactorily addressed by way of the Restoration Scheme provided for under Condition 40.</p>
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3.		<p>Transport Assessment of the Crossing applications is flawed in a number of ways:</p> <ul style="list-style-type: none"> - Lack of justification for uniform mode share assumptions for cumulative developments despite their differing characteristics; - Prematurity ahead of scrutiny of Villages 1-6 quantum, internal configuration, parking strategy and modal shift assumptions which may have a material effect on the highway network; - Uncertainty of achievement of the wider Sustainable Transport Corridor (STC) network – no assessment of the reliability of other schemes in relation to funding and timescales. No sensitivity testing of scenarios of whether the proposed 	<p>The Councils are confident that the Village Schemes will deliver 20% modal shift and that this can be secured through the approval process. The assumption made therefore is a reliable one. The Highway modelling contained within the Environmental Statement assesses the growth based upon compliance with the Development Plan. It would not be appropriate for the applicant to be required to explore alternative scenarios that are contrary to the Development Plan or to provide justifications on behalf of other developments as to how they will meet their Policy requirements.</p> <p>Policies that establish the mode hierarchy and the approach of development across the Garden Town area are established through the East Herts District Plan. The Gilston Villages 1-6 application contains a detailed Development Specification and Parameter Plans. The premise of the transport strategy is not a predict and provide strategy but a vision and validate approach which establishes the vision for achieving the modal share and then each part of the development must be</p>

		<p>development is designed correctly if modal shift assumptions are not achieved;</p> <ul style="list-style-type: none"> - Uncertainty as to whether Gilston Area Villages 1-6 development will proceed and lack of policy support and adequate EIA and TA of the crossings proposals if it did not. The linking condition as proposed enables the crossing development proposals to proceed only on the grant of planning permission for Villages 1-6, rather than the actual carrying out of development. So, the crossings development may proceed if Villages 1-6 are granted planning permission but do not proceed. There is a lack of a policy basis for this outcome and no EIA or TA has been undertaken in relation to that scenario. 	<p>designed to meet those objectives. Appropriate S106 obligations relating to monitoring and achievement of the mode share target will be secured as part of the Outline application.</p> <p>The Environmental Statement has been provided in full with the Crossings applications, including the highway modelling, this has not been redacted or excluded and is available for public scrutiny and comment.</p> <p>This is not a scenario that is considered likely as the Applicant is unlikely to proceed with the Crossing in the absence of the village development. The Councils are satisfied that a condition limiting beginning of development gives sufficient confidence that the Village scheme will proceed to allow the Crossings development to be carried out. The EIA of the Development considers appropriately the worst case scenario of all three applications proceeding.</p>
4.		<p>No or inadequate EIA of the crossing development in the event that Gilston Villages does not proceed. Equally no assessment of the planning balance in that scenario.</p>	<p>This is not a scenario that is considered likely. The EIA of the Development considers appropriately the worst case scenario of all three applications proceeding.</p>
5.		<p>Incorrect EIA of Land Restoration. Para 13.6.48</p>	<p>Officers clarify that Condition 40 applies in the scenario that</p>

		<p>inaccurately reports that condition 40 applies in the event that Village 1-6 development does not commence within 18 months. That is incorrect and condition 40 only has effect if planning permission is not granted for Villages 1-6 within 18 months of the Eastern Stort Crossing (ESC) being granted.</p>	<p>within 18 months of the granting of the Crossings the Outline application is not granted, any works carried out under Enabling Works will need to be restored.</p> <p>Condition 40 seeks to safeguard against a scenario where the Outline Villages 1-6 is refused or otherwise delayed and does not progress. It is noted above that this it is a highly unrealistic scenario given the enabling nature and expense of the Crossings that the developer would proceed with the Crossings absent permission for the Outline. Nevertheless Condition 40 is now revised to include a method statement/phasing of restoration works. Officers also recommend an additional section to prevent any other material operations in the event that Enabling Works have taken place and outline permission is not granted, such that only approved restoration works can take place.</p> <p>“If at any period within 21 months of the date of this permission any Enabling Works have been carried out and planning permission has not been granted for the outline planning application EHDC Ref 3/19/1045/OUT, no further material operation shall be carried out on the application site except for restoration works in full accordance with the approved Land Restoration Scheme of Work.”</p>
6.		<p>No or inadequate EIA of the ESC due to lack of survey data as a result of constraint over access. Surveys from accessible land and desktop</p>	<p>As previously reported Officers consider that sufficient information is provided upon which to make a reasoned judgment as to the impacts of the Crossings on the</p>

		<p>surveys are not capable of amounting to an adequate assessment of the likely significant environmental effects of the development. This also has an impact in relation to the application of the Biodiversity Net Gain Metric. Dealing with this matter through the applications of conds (30 – 36) provides no cure.</p> <p>Cond 40 fails the NPPG test of conditions as there is no prospect of the landowner allowing access for the carrying out of site surveys. The same applies in relation to any other conds relating to pre-commencement and pre-Enabling Works.</p>	<p>environment. The prospect of a landowner refusing consent must be seen in the context of the prospect of the developer having to have gained control of the land to develop it so it may well to have control when the surveys are required (and use of CPO powers is available). As such, the conditions are reasonable. In any event, at this stage, we are satisfied that sufficient information is available to confidently reach a worst case basis for assessment.</p>
7.		<p>Failure to carry out the heritage impact assessment correctly. It is considered that the EIA does not carry out an adequate assessment of the impact of the ESC and LBC applications.</p>	<p>This has been addressed in Section 13.7 of the Officer Report. A Heritage Statement has been submitted with the EIA and it is considered that this provides sufficient information.</p>
8.		<p>Irrational assessment of very special circumstances (VSCs). The very high hurdle of VSCs cannot rationally be said to have been met:</p> <ul style="list-style-type: none"> - The policy basis that supports the provision of the crossings cannot be relied upon as neither Local Plan has removed 	<p>As set out in the Officer’s Report, Both Local plans identified the need for the Crossings in the Green Belt. This is a relevant consideration which contributes to constitute Very Special Circumstances, but is not sufficient on its own. It is appropriate within Planning Practice Guidance that the allocation of the Gilston Area development can on its own represent Very Special Circumstances.</p>

		<p>the ESC or CSC sites from the Green Belt;</p> <ul style="list-style-type: none"> - Conclusion that the delivery of the Gilston Villages 1-6 is a consideration of significant weight cannot be rational as no planning permission has been granted for Villages 1-6, the relative benefit and harms of the Villages 1-6 proposals are not known or scrutinised and there is no knowledge of the s106 benefits; condition 4 only requires for the grant of planning permission for Villages 1-6, not delivery; the allocation of the site for Villages 1-6 and 7 cannot count as providing VSCs as the allocation did not remove the land of the ESC and CSC from the Green Belt; there is no certainty of adequate funding for the ESC and CSC via HIG or otherwise and the re-worked viability assessment of V1-6 is yet to appear; there cannot be sufficient confidence that V1-6 will be delivered. - Delivery of V7 is equally uncertain, relative benefits and harms have not been assessed and there is no condition linking the crossings permissions to even the grant of permission in relation to V7; - No weight can be given to the wider STC 	
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		<p>Unlawful reliance on Gilston Area V1-6 coming forward to justify the ESC and IROPI for Habitats Regulation purposes</p>	<p>The Habitats Regulations Assessment assesses the Crossings and Outline Villages 1-6 applications as a single project/Development. HRA concludes that the Councils are satisfied beyond reasonable scientific doubt that the Development, alone or in combination with other plans and projects would not have an adverse effect on the integrity of National Network Site once mitigations have been considered following an Appropriate Assessment. The HRA does not rely on imperative reasons of overriding public interest (IROPI) in reaching that conclusion.</p>
9.	<p>5a 3/19/1046/FUL and 5b 3/19/1051/FUL</p>	<p>Additional representation received: MOMENTUM TRANSPORT CONSULTANCY (on behalf of Mr Roger Beaumont and Mrs Mary Pope) No justification for early determination of the Crossings applications and references to HIG within the Committee Report are inappropriate.</p>	<p>The NPPF requires that decisions on applications should be made as quickly as possible, the applications are considered ready to be determined. As explained in the officer report HIG is not considered a material consideration (paragraph 2.13). The HIG award is a matter of public record therefore it is considered appropriate to explain this context and guide Members to how to treat it.</p>

10.		The assessment of the highways modelling informing the Gilston Area (Villages) application, the EIA, the capacity and design of the Crossings will be 'by-passed' and 'meaningless' if the Crossings are determined first.	Each application will be judged against the Development Plan and other material considerations at the time of its determination and on its own merits. Determination of the Crossings applications first would not change the way that the Gilston Area Villages applications are assessed; these will be objectively considered on their own merits having regard to relevant development plan policies and other material considerations. See for further detail paragraph 20 of Late Reps Summary.
11.		Car Parking, strategies and realism of the justification of car modal share that inform the modelling have not been scrutinised and approved for the Gilston Area (Villages) applications.	The Crossings applications are assessed in accordance with the policies of the Development Plan and other material considerations, including the need to be designed to support the active, sustainable and highway mode hierarchy needs of development across the Garden Town area for which they were identified in the Council's Policies as necessary infrastructure. The Transport modelling contained within the Environmental Statement assesses the needs of the planned growth based upon them being compliant with the Development Plan. It would not be appropriate for the applicant to be required to explore alternative scenarios that are contrary to the Development Plan.
12.		Highways modelling supporting the EIA is not allowed to be scrutinised at this time. Substantive highways comments from the statutory consultees are absent from the Officer Report.	The Environmental Statement has been provided in full with the Crossings applications, including the highway modelling, this has not been redacted or excluded and is available for public scrutiny and comment. Comments on the applications have been received from

			statutory consultees associated with highways including ECC and HCC highway Authorities and National Highways (formerly Highways England). These comments are summarised within the Committee reports and are published in full for public view. Any necessary mitigation is secured by conditions and the appropriate consultees have commented upon the mitigation and are satisfied.
13.		It is 'inconceivable' that the ESC and CSC would represent the singular highways solution without the Gilston Area development.	The Crossings have been identified within the Development Plan as infrastructure necessary to support the growth allocated in the Development Plan. It would not be appropriate for the applicant to be required to explore alternative scenarios that are contrary to the Development Plan.
14.		The ESC in totality is needed as access into the Gilston Area and as such is absolutely essential for that development.	The Crossings have been identified within the Development Plan as infrastructure necessary to support the growth allocated in the Development Plans following relatively recent examinations in public for both Councils.
15.		Scrutiny is required of the concern from National Highways regarding the modelling and doubts regarding the mode share assumptions.	National Highways (formerly Highways England) confirmed on 16 February 2021 that they have no objection to the Crossings applications. Within the response reference is made to concern as to whether the predicted mode shift (for the Gilston Area Villages development) will be achieved and seeking clarity as to when the Crossings will be provided, noting the public transport link to Harlow town centre will be critical to the achievement of the mode shift. Officers consider both these matters to relate to the assessment of the Gilston Area Villages applications where the

			<p>proposed measures to achieve the required travel mode shift are to be judged and any triggers for the delivery of infrastructure and caps on development until infrastructure has been provided can be secured via a Section 106 Agreement on that application. In accordance with the response, no objection is recorded by National Highways that might prevent determination of the Crossings applications.</p>
16.		Evidence of assessment of the Highways modelling should be made available for public interrogation.	<p>The Environmental Statement has been provided in full with the Crossings applications, including the highway modelling, this has not been redacted or excluded and is available for public scrutiny and comment.</p> <p>Comments on the applications have been received from statutory consultees associated with highways including ECC and HCC highway Authorities and National Highways (formerly Highways England). These comments are summarised within the Committee reports and are published in full for public view. Any necessary mitigation is secured by conditions and the appropriate consultees have commented upon the mitigation.</p>
17.		The applicant has not demonstrated how other developments across the Garden Town will deliver the mode shares assumed within the highways modelling.	<p>The Highway modelling contained within the Environmental Statement assesses the growth based upon compliance with the Development Plan. It would not be appropriate for the applicant to be required to explore alternative scenarios that are contrary to the Development Plan or to provide justifications on behalf of other developments as to how they will meet their Policy requirements.</p>
18.		There is no policy basis cited to provide	<p>Policies that establish the mode hierarchy and the approach of</p>

		<p>confidence on the travel mode levels assumed in the highways modelling.</p>	<p>development across the Garden Town area are established through the East Herts District Plan, the Harlow Local Development Plan and the draft Epping Forest District Local Plan. Those related to the EHDC and HDC Development Plan are set out in Section 9 of the Officer Report.</p>
<p>19.</p>		<p>Latton Priory and West Sumners (part of the Water Lane area) allocations were not included in the cumulative development assessment within the highway modelling.</p>	<p>The Crossings applications are assessed in accordance with the policies of the Development Plan and other material considerations, including the need to be designed to support the active, sustainable and highway mode hierarchy needs of development across the Garden Town area for which they were identified in Policies as necessary infrastructure. The Crossings, once completed do not generate travel movements, they facilitate the distribution of those movements. Nevertheless, the highway modelling is included within the Environmental Statement that is used to assess the impacts of the Crossings developments, including in combination with other developments.</p> <p>The total growth travel movements generated through the growth within the Garden Town (and relevant other development sites across the area) are built into the Hertfordshire County Council COMET model on which the applicants model is based, this is evidenced in Tables 1 and 2 of the Forecasting report, Gilston Paramics Modelling Assessment (December 2018, Vectos) as submitted within the Environmental Assessment. All growth in the Garden Town, including the full draft allocations for growth in the Water Lane Area and at Latton Priory is therefore built into the highway</p>

			<p>modelling. The applicant’s highway modelling further refines the COMET model for the Garden Town through assigning portions of that growth to specific locations. The Gilston Park Estate ES Addendum, Volume 3: Appendices (Quod, November 2020) Appendix 3.5 set out updates to the cumulative development schemes that they have specifically assigned within the highways modelling, nevertheless the full scale of growth continues to be assessed, but on a distributed basis. ECC identified, in response to the Gilston Area Villages 1-6 application, that the cumulative developments scheme list excluded the full Water Lane and the Latton Priory development allocations. In response the applicant submitted further sensitivity testing as part of the Gilston Area Villages application that confirmed that the impact of removing that development from background growth and assigning it specifically to the allocation areas through a sensitivity test showed that the overall effects on the performance of the Harlow road network were similar. In respect to the Crossings applications, Officers are satisfied that the total scale of cumulative growth has been considered when assessing the Environmental Impacts of these applications.</p>
20.		<p>No evidence-led approach in considering the assumed mode shares for the developments not in the applicants control which are relevant to the Crossings applications.</p>	<p>The Highway modelling contained within the Environmental Statement assesses the growth based upon compliance with the Development Plan. It would not be appropriate for the applicant to be required to explore alternative scenarios that</p>

			<p>are contrary to the Development Plan or to provide justifications on behalf of other developments as to how they will meet their Policy requirements.</p> <p>The Crossings applications are assessed in relation to their accordance with the policies of the Development Plan and other material considerations, including to be designed to support the active, sustainable and highway mode hierarchy needs of development across the Garden Town area for which they were identified in Policies as necessary infrastructure.</p>
21.		<p>The Committee are being asked to consider developments for mitigating the impacts of other developments that are yet to be scrutinised and determined which may require re-design or altering as a result and should be refused as premature.</p>	<p>The Crossings applications are assessed in accordance with the policies of the Development Plan and other material considerations, including the need to be designed to support the active, sustainable and highway mode hierarchy needs of development across the Garden Town area for which they were identified in Policies as necessary infrastructure. The Crossings take account of the scale of movement modelled for the Garden Town based upon the Development Plan. They do however, also include features specific to the Gilston Area development in the form three access points. In designing the Crossings, material considerations including the Gilston Area Concept Framework and the outline application for the Gilston Area Villages 1-6 development have been taken into consideration. The design in front of the Committee as submitted must be assessed against the Development Plan on its merits.</p> <p>Should there be changes to these accesses when determining the Gilston Area Villages 1-6 application the planning system</p>

			and various legislative provisions provide the mechanism and flexibility to consider amendments to applications.
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