

M25 junction 28 improvement scheme TR010029

3.3 Consents and agreements position statement

APFP Regulation 5(2)(q)
Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009



Infrastructure Planning

Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

M25 Junction 28 Development Consent Order 202[x]

3.3 CONSENTS AND AGREEMENTS POSITION STATEMENT

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1. Introduction

1.1 Purpose and objectives

- 1.1.1 This statement sets out Highway England's strategy for obtaining any consents, licences, permits or other agreements that may be necessary to construct, operate and maintain the proposed M25 junction 28 (the "Scheme"). It is submitted in accordance with regulation 5(2)(q) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure Regulations) 2009.
- 1.1.2 This document is intended to identify, at a high level, which consents are expected to be required to construct and operate the Scheme, together with details of how those consents will be obtained.
- 1.1.3 In preparing this statement consideration has been given to the former Department of Communities and Local Government (DCLG) Application Form guidance (paragraphs 45-46)¹ and as required this statement summarises the Applicant's understanding on the likelihood of the relevant consents being granted.

1.2 The proposed scheme

- 1.2.1 The Scheme comprises the following key works elements. These should be read in conjunction with Works plans (application document TR010029/APP/2.3) and Schedule 1 of the Development Consent Order (application document TR010029/APP/3.1). Further details are provided in Chapter 2 of the Environmental Statement (ES) (application document TR010029/APP/6.1):
- Highways works:
 - The creation of a new two lane loop road with hard shoulder, for traffic travelling from the M25 northbound carriageway onto the A12 eastbound carriageway, including the provision of three new bridges (Alder Wood bridge, Duck Wood bridge and Grove bridge) and an underpass (Grove Farm underpass) to carry the new loop road over a proposed access track (Work No. 14)
 - Realignment of the existing A12 eastbound exit (off-slip) road (Work No. 2) to accommodate the new loop road including the provision of a new bridge (Maylands bridge) and the extension of the existing Grove culvert
 - Improvements to the existing A12 eastbound and westbound carriageways and A12 eastbound entry (on-slip) road (Work Nos. 1, 3 and 4)
 - Realignment of the existing M25 northbound on-slip (Work No. 8)
 - Improvements to the existing junction 28 roundabout, the existing M25 northbound carriageway and the M25 northbound off-slip (Work Nos. 5, 7 and 12)
 - New gantries over the M25 carriageway (Work Nos. 9, 10 and 11)

¹ Planning Act 2008: Application form guidance, Department for Communities and Local Government, June 2013
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/204425/Planning_Act_2008_-_application_form_guidance.pdf.

- Alterations of existing private access and egresses and the provision of new private means of access to accommodate the new loop road (Work Nos. 13, 14, 15 and 16)
- Earthworks and drainage works:
 - Earthworks including the creation of an environmental bund (Work No 18)
 - Three new attenuation ponds and associated drainage and access roads (Works Nos. 19A, 19B, 20A, 20B, 21A and 21B) and a new drainage outfall pipe (Work No. 22)
- Realignment of watercourses:
 - Realignment of the Weald Brook and the Ingrebourne River (Work Nos. 23A, 23B, 23C and 23D)
- Environmental mitigation:
 - Two new flood compensation areas (Work Nos. 24A and 24B) and the provision of new ecological compensation and mitigation areas (Work Nos. 25 and 26) and two new environmental ponds (Work Nos. 27 and 28)
- Utilities:
 - Diversion of an already underground high pressure gas pipeline and diversion underground of an existing overhead electric line (Work Nos. 29 and 30)
- Accommodation works:
 - Accommodation works to provide replacement facilities for Maylands Golf Course (Work No. 32)

1.2.2 This document has been informed by other application documents. A Water Framework Directive Assessment Report has been submitted as part of the DCO application (application document TR010029/APP/6.7), detailing how the requirements of the Water Framework Directive (Directive 2000/60/EC of the European Parliament) have been met. A Habitats Regulations Assessment (application document TR010029/APP/6.9) has also been submitted, alongside an ES (application document TR010029/APP/6.1).

2. The Applicant's Consents Strategy

2.1 Background to the consenting regime under the Planning Act 2008

- 2.1.1 It is possible for a wide range of matters to be included within the scope of a DCO. Section 120 of the Planning Act 2008 ("the Act") provides that a DCO may make provision for, or relate to, any matters listed in Schedule 5 of the Act, including the application, modification or disapplication of certain relevant statutory provisions where necessary or expedient for the purposes of giving full effect to the Order. In addition, there are specific sections within the Act, which provide that a DCO may include certain other provisions.
- 2.1.2 There are however some limitations, most notably in Section 150 of the Act, which stipulates that certain prescribed non-planning consents may only be included within a DCO with the agreement of the relevant consenting body.

2.2 Consents strategy

2.2.1 The basis of the Applicant's consents strategy is that:

- A Development Consent Order (DCO) must be sought as the principal consent for the works under the Act including to provide the necessary land acquisition and temporary possession powers
- The intent of the Act and Government policy is to enable development and construction-related consents to be included within the DCO; therefore, where possible and practicable, additional consents have been included within the DCO
- The Scheme benefits from the intent of the Act and Government policy as most of the consents required for the construction of the Scheme will be in place at the point of the making of the DCO; this minimises the need for any further approvals before the works covered by the DCO can commence
- The proposed Scheme has and will be developed based on strong collaboration between the key stakeholders, and any additional consents and agreements will be secured at key stages of project development as necessary. The progress on these items will be reported to the Examining Authority. An overview of the current situation is provided in Appendix A of this document. Details of discussions which have taken place with statutory and consenting bodies are provided in the Consultation report (application document TR010029/APP/5.1) and relevant draft Statement of Common Ground (application document TR010029/APP/8.1).

3. Consents

3.1 Introduction

- 3.1.1 The principal consent for the proposed Scheme will be the DCO itself. The DCO would grant development consent for the works and enable land acquisition. Further consents and powers would be secured through the DCO enabling these to be addressed at the same time as development consent and land acquisition.
- 3.1.2 The DCO application may, however, need to be supplemented by other consent applications because:
- a specific consent cannot be contained in the DCO
 - a consenting authority declines to allow a consent to be contained in the DCO, or
 - it is not desirable or it is inappropriate to include a consent within the DCO due to the stage of design development and thus the level of detail available.

3.2 Consents and authorisations to be included within the DCO

- 3.2.1 At this point (i.e. at submission of the DCO application) the majority of consents and all of the powers required, have been included, or addressed, within the DCO as permitted by various provisions of the Act. These fall into the following categories:
- the authorisation of all permanent and temporary works required (the equivalent of planning permission). *None of the following consents need to be addressed on this scheme: scheduled monument consent, listed building consent, common land consents or SSSI consents*
 - powers for the compulsory acquisition of land (including subsoil) and of rights over land such as easements, restrictive covenants and rights to use land temporarily
 - powers for the compulsory acquisition of rights over open space land
 - consent to carry out street works and to stop up highways and accesses permanently or temporarily
 - highway matters (such as the classification of roads)
 - traffic regulation matters (such as the imposition of speed limits and the creation of clearways and restrictions on use)
 - powers to stop up, divert and create public and private rights of way
 - consent to carry out works to trees (including works to trees subject to a Tree Preservation Order)
 - consent to erect structures in, over or under a main river
 - consent to obstruct ordinary watercourses
 - rights to use or make connections with watercourses and public sewers or drains for the drainage of water (the equivalent of consents under the Water Industry Act 1991)
 - consent to discharge to sewers

m. consent and powers to remove any apparatus belonging to statutory undertakers and /or carry out utility diversions (subject to protective provisions).

3.2.2 In addition, the DCO (article 49 (amendment of local legislation)) makes provision to disapply the following local legislation, insofar as they are inconsistent with the Scheme:

- Byelaw 4 of the Essex County Council byelaws for the Good Rule and Government 1938
- Byelaws 1 and 3 of the London Borough of Havering byelaws for the Good Rule and Government 1983
- Byelaws of the Urban District Council of Hornchurch as to removal through streets of offensive or noxious matter or liquid 1938
- Byelaws 4, 6 and 7 of the Urban District of Hornchurch byelaws for Nuisances 1938
- Byelaws of the Rural District Council of Romford with respect to the Drainage of Buildings 1908
- Byelaws of the Rural District Council of Romford as to the nuisances in connection with the removal of offensive noxious matters 1899
- Byelaws 4, 6, 7, 9, 14, 16 and 17 of the Thames Region Land Drainage Byelaws 1981
- Essex Act 1987, sections 6 and 8
- Essex River and South Essex Water Act 1969, sections 7 and 11
- British Transport Commission Act 1952, section 15
- Brentwood Gas Act 1905, section 53
- South Essex Waterworks Act 1861, sections 13 and 15
- Great Warley and Shenfield (Essex) Inclosure Act 1838, section 25
- Hornchurch, Romford and Havering Inclosures Act 1811, sections 20, 22 and 25. Consents subject to the limitations of section 150 of the PA 2008

3.2.3 Section 150 of the Act allows for certain consenting requirements to be disapplied by a DCO, provided that this has been agreed by the relevant consenting body. The consents which fall under Section 150 are prescribed in Schedule 2, Part 1 of The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015.

3.2.4 The Applicant is seeking to include the following Section 150 consents within the scope of the DCO for the Scheme:

- Environmental Standard Rules Permit (Flood Risk Activity) to construct an outfall on a Main River (under the Environmental Permitting (England and Wales) Regulations 2016).

3.2.5 The Environment Agency, has agreed to the disapplication of the legislation, associated with the Environmental Standard Rules Permit (Flood Risk Activity) to construct an outfall on a Main River, based upon the protective provisions included in the draft DCO (application document TR010029/APP/3.1).

- Sections 23, 30 and 32 of the Land Drainage Act 1991 (for which the London Borough of Havering and Essex County Council will be the relevant consenting bodies as the Lead Local Flood Authorities).

3.2.6 The London Borough of Havering has agreed to the disapplication of Section 23, 30 and 32 of the Land Drainage Act 1991 within the DCO. Consultation is still ongoing with Essex County Council.

3.3 Other consents to be obtained

3.3.1 The permits, consents and agreements that may need to be sought separately to the DCO are identified in Appendix A.

3.3.2 The requirement for the consents identified in Appendix A will be largely dependent on finalisation of the detailed design, the detailed construction site set up and methodologies, and discussions with stakeholders (e.g. the EA and the Local Authorities). These are not sufficiently developed as this stage to confirm the requirements and therefore it is not practicable to include them within the DCO.

3.4 Agreements

3.4.1 Agreements between the Applicant and a number of third parties are likely to be required in parallel to the DCO process and may take a variety of forms.

3.4.2 A fundamental part of the DCO process is the preparation and agreement of Statements of Common Ground (“SoCG”) with third parties to identify the matters on which parties are in agreement, or working towards that, to narrow the focus for examining the application concerned and to make the examination process more efficient. These will be progressed by Highways England as required.

3.4.3 In addition to SoCGs, legal agreements regulating land and works powers, undertakings and memoranda of understanding and letters of comfort are likely to be required.

3.4.4 Progress on finalising any SoCG or other forms of agreement, along with updated/final documents, will be reported to the Examining Authority during and before the close of the examination.

Appendix A. Other consents and agreement table

Issue:	Consent/Licence/Agreement & Legislation:	Consenting Authority:	Requirement:	Status of negotiations:
Protected species licensing	Regulation 55 of the Conservation of Habitats and Species Regulations 2017, a European Protected Species mitigation licence from Natural England (in respect of Great Crested Newts and Bats)	Natural England (NE)	Ecology surveys have identified that the Scheme may have an impact upon bats and great crested newts. This consent is therefore likely to be required prior to commencement of construction activities.	NE have issued a Letter of No Impediment to a great crested newt licence being granted. The Principal Contractor is to gain this consent and liaise with NE. Discussions with NE are ongoing.
	A license under section 10 of the Protection of Badgers Act 1992		Badgers setts have been identified within the DCO boundary and may require relocation. This consent is therefore likely to be required prior to commencement of construction activities.	The Principal Contractor is to gain this consent and liaise with NE. Badger activity may alter before construction commences. No relocation of a badger sett is required, therefore, it is not envisaged that this licence is required.
	A mitigation licence (from Natural England) under the Conservation of Habitats and Species Regulations 2017, in relation to the identified European protected species or other protected species.		It is possible that further protected species are identified in future ecology surveys due to the natural movement of wildlife. Further mitigation licences may therefore be required.	It is not yet known, and there is currently no evidence to suggest, whether further mitigation licences will be required.
Hazardous substance	Revocation of hazardous substances consent on change of control of land Determination of applications for continuation of hazardous substances consent Any consignment note or notification under the	Environment Agency	The consents are applicable if the disposal of hazardous waste is required.	Further site investigations are necessary to determine whether the excavations include hazardous substances. Discussions with the EA are ongoing.

Issue:	Consent/Licence/Agreement & Legislation:	Consenting Authority:	Requirement:	Status of negotiations:
	Hazardous Waste (England and Wales) Regulations 2005			
Waste	Materials Management Plan (MMP)	Environment Agency	A MMP is required for the reuse of materials defined as non-waste or end-of-waste and greater than exemption limits. The MMP will be the responsibility of the Principal Contractor once detailed design and construction methodology details are finalised.	Further site investigations and the assessment of potential surplus material reuse is required. Specific deposit sites are identified within Schedule 1 of the DCO, Work No. 18. The use of an MMP, under CL:AIRE Definition of Waste Code of Practice, has been discussed and agreed in principle with the EA. See the SoCG with the Environment Agency (REP7-004).
	Any waste carrier licences or transfer licences that may be required under the Control of Pollution (Amendment) Act 1989		The Principal Contractor is required to ensure that the waste contractor holds a Waste Carrier Licence.	
Regulation 12 consents	Environmental Permitting (England and Wales) Regulations 2016 Mobile plant permit Waste exemption permit Environmental permit for waste operation Environmental permit: Discharge to surface water or groundwater	Environment Agency and local authorities	A variety of environmental permits will be required to support the Scheme. They are to be gained by the Principal Contractor who will be responsible for their acquisition and works associated with them. This includes a Deposit for Recovery Permit for re-use of Grove Farm controlled wastes within the Scheme.	To enable the reuse of controlled wastes from Grove Farm area the Principal Contractor will need to obtain a permit from the Environment Agency. A Waste Recovery Plan was submitted to the Environment Agency as a pre-application advice application. The EA have agreed that the proposed operation is a recovery operation and have approved the M25 J28 Improvements Waste Recovery Plan. The Principal Contractor will need to make a formal application to the Environment Agency to obtain

Issue:	Consent/Licence/Agreement & Legislation:	Consenting Authority:	Requirement:	Status of negotiations:
				<p>the Deposit for Waste Recovery Permit.</p> <p>Discussion regarding the use of waste permits are ongoing with the EA and are documented within the SOCG. See the SoCG with the Environment Agency (REP7-004).</p>
Noise Pollution	Section 61 consent (Control of Pollution Act 1974)	Local authority	It is possible that a Section 61 consent may be sought due to the creation of noise related to construction.	This consent is usually gained immediately prior to or during construction when a detailed description of the construction programme is available.
Invasive species	<p>Consent under the Control of Pesticides Regulations 1986 (as amended) for the use of any pesticides within 8m of a watercourse (e.g. if Himalayan Balsam is found and requires to be sprayed)</p> <p>Notification to the Environment Agency of any Japanese Knotweed, Goldenrod, Himalayan Balsam or Giant Hogweed removal or burial under the Waste (England and Wales) Regulations 2011</p>	Environment Agency and Natural England	<p>Consent required for disposal of invasive species to a waste facility, if required.</p> <p>Consent for associated storage of pesticides.</p>	It has yet to be determined whether invasive species are present or will require removal.
Transport and highway consents	Transport and highways consents/permissions under Highways Act 1980, which are not included within the DCO.	Highways England and Local Authority	Additional consents required to support temporary highways works such as hoardings and crane oversail.	Consents to be gained by the Principal Contractor as the detailed construction programme is required to inform the application process.

Issue:	Consent/Licence/Agreement & Legislation:	Consenting Authority:	Requirement:	Status of negotiations:
Health and Safety	Notification to the Health and Safety Executive about the commencement of construction in accordance with the Construction (Design and Management) Regulations 2015 (F10 Notification)	Health and Safety Executive, Local Authority, Fire and Rescue Authority, Fire Inspector	Consents required to demonstrate compliance with fire safety duties and site safety legislation.	Consents to be gained by the Principal Contractor, following its preparation of associated documentation.
	Approvals under the Health and Safety at Work Act 1974			
	Compliance with duties under The Regulatory Reform (Fire Safety) Order 2015			

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