

**Application by National Highways for an Order Granting Development Consent for the Lower Thames Crossing**

**Agenda for Issue Specific Hearing 6 (ISH 6): Mitigation, Compensation & Land Requirements**

<b>Hearing</b>	<b>Date and Time</b>	<b>Location</b>
<b>Issue Specific Hearing 6 on Mitigation, Compensation &amp; Land Requirements</b>	<b>Friday 8 September 2023</b> <b>Hearing Starts at 10am</b> Blended event: Venue Registration Process from 9:15am  Virtual Registration Process from 9:15am	Orsett Hall Hotel Prince Charles Ave, Orsett, Grays RM16 3HS  By virtual means using Microsoft Teams

**Agenda**

- 1. Welcome, introductions, arrangements for the Hearing**
- 2. Purpose of the Issue Specific Hearing**

This Issue Specific Hearing will focus primarily on the impact of the Project on terrestrial biodiversity. However, there may be some crossover into landscaping and landscape impacts. The ExA will ask questions of the Applicant and relevant Interested Parties (IPs) relating to the following matters in agenda Items 3 - 9. Other IPs will be welcome to participate.

The Applicant will always be provided with a right of reply.

- 3. Mitigation, Compensation and Enhancement**

a)	<b>Distinctions between Mitigation, Compensation and Enhancement</b>
i	The ExA would like to understand how the three terms have been applied to the EIA biodiversity assessment and whether the assessment is explicitly clear about the amount and location of mitigation, compensation and enhancement areas proposed.
ii	Are there any notable disparities in the application material around what constitutes mitigation, compensation or enhancement that could have implications for the ExA's assessment?
b)	<b>Extent and Type of Landscaping</b>
i	There is a "landscape scale" strategy proposed for mitigating and compensating the loss of habitats, but the ExA would like to explore if this is the most appropriate method for mitigating and compensating for impact.

ii	Whilst the type of species planting will be developed between all relevant parties during the development of the Landscape and Ecology Management Plan post consent, the Applicant will be asked to explain where it proposes to use non-native species and why this decision has been taken, especially if it includes designated/ protected areas?
c)	<b>Biodiversity Net Gain (BNG)</b>
i	The Applicant will be asked to explain why, albeit not policy at present, it cannot commit to a minimum of 10% net gain.
ii	Following comments from IPs, can the Applicant provide an update on whether it is considering a greater percentage of BNG, and what the implications are for increasing the BNG, e.g. to the land requirements, to the scheme cost, etc?
iii	Can the Applicant clarify if when calculating BNG it included in the metric any biodiversity mitigation proposed for this Project or that is currently in place for any other development (thus double counting)? Furthermore, do any of the change requests made by the Applicant so far impact the BNG calculations?
iv	The Applicant will be requested to discuss whether the metric used for BNG could be re-run using the latest metric (4.0) as requested by Natural England.

#### 4. Green Bridges

a)	<b>Purpose of Green Bridges</b>
i	What is the overall purpose of the Green Bridges in this Project and what determined their location?
ii	The ExA wants to understand what best practice design guidance has been used to inform the size, design and functionality of the green bridges and whether that guidance has been effectively deployed to this Project.
iii	What is the target species for each of the green bridges and how are they specifically provided for?
b)	<b>Maintenance and Monitoring</b>
i	The ExA needs to understand how realistic the longevity/robustness of the planting is on the green bridges for biodiversity purposes given the restriction on landscaping growth and the proximity of vehicles.
ii	What monitoring is expected to occur / be required and by whom to determine the effectiveness of the Green Bridges for biodiversity enhancement purposes and how is this secured in the DCO?

#### 5. Ancient Woodland Impact

a)	<b>Methodology</b>
i	What criteria is used to determine whether a tree is classed as veteran or ancient and are the criteria used robust?
ii	The ExA would like clarity on whether physical surveys of woodland have been completed to show the full extent of affected habitat or has the level of importance assigned to trees been based on an agreed methodology with Natural England.
iii	The ExA will ask the Applicant to explain how it intends to create the replacement for lost ancient woodland, noting issues such as the benefits of translocating soils, and whether it has considered how success would be monitored and any deficiencies addressed.

b)	<b>'The Wilderness'</b>
i	There is some conflict over whether The Wilderness should be regarded as ancient woodland. The ExA would like to hear from the Applicant and relevant IPs who have a view on this and what evidence they have to support their case either way.
ii	Clarity is to be provided by the Applicant on the decision process to introduce a retaining wall to the south of this area and its potential impact to the area during construction and during the operation period?
c)	<b>Calculation of Replacement Woodland</b>
i	What guidance was/should be followed in relation to the quantity, form and location of ancient woodland replacement?

## 6. Nitrogen Deposition Compensation

a)	<b>Mitigation Hierarchy and Site Selection</b>
i	The ExA needs to understand how the Nitrogen Deposition compensation approach aligns with the mitigation hierarchy?
ii	The Applicant will be asked to clarify how the size of the Nitrogen Deposition compensation area(s) has been determined and what their criteria were for selecting sites?
iii	What site surveys have been carried out on the proposed Nitrogen Deposition compensation sites to determine their suitability?
iv	The Applicant will be asked to set out where and why areas of land for Nitrogen Deposition have been reduced.
v	The ExA would like to hear from Stakeholders about whether the Applicant's approach to Nitrogen Deposition is robust.
b)	<b>Habitat Make-Up</b>
i	It is reported that the mosaic of habitats for nitrogen deposition sites is expected to achieve a ratio of approximately 70% woodland to 30% other associated habitats. Is this approach well founded?

## 7. Shorne Woods SSSI Impact

a)	<b>Shorne Woods SSSI</b>
i.	The ExA notes the concerns raised in representations that recreational facilities proposed at the Shorne Woods Country Park could have a negative effect on the SSSI. Have the effects of the proposed facilities been assessed?
ii.	What can be done to further minimise the effect on the SSSI during the detailed design period?
iii.	Can the Applicant explain its understanding in relation to the boundary of the SSSI and any implications for the assessment should the boundary not be where the Applicant has assumed it to be in the assessment?

## 8. Habitats Regulations Assessment

a)	<b>Update on the Position</b>
i	The ExA is aware of the current views of IPs on the HRA conclusions for Internationally Protected Sites but would like the Applicant and any other IP to provide a succinct update for each site as to where progress may have been made in agreeing conclusions and mitigation and compensation.

## 9. Delivery

a)	<b>Delivery, Maintenance, Management and Monitoring</b>
i	How will/should mitigation, compensation and enhancements be secured in the DCO?
ii	Who will be responsible for implementing maintenance, monitoring and management (short or long term) of the range of measures along the length of the Proposed Development and how will associated funding for the responsible authority be secured? The ExA is of a view that the person or people involved should be suitably qualified in maintenance of species.
b)	<b>Post Consent Surveys</b>
i	<p>The EIA sets out a number of surveys which are to be undertaken post consent but prior to construction, to inform the level and design of biodiversity mitigation.</p> <p>There are concerns raised about the time delay between surveys being undertaken, construction commencing, mitigation being delivered and in some cases mitigation maturing to a level of being effective. The ExA wants to explore the implications of this with the Applicant and relevant IPs.</p>
ii	The ExA also wants to explore the potential risks of a harmful effect being discovered in post consent surveys that cannot be mitigated or there is a requirement for mitigation which would be beyond the worst-case scenario assessment in the EIA or even beyond the order limits.

## 10. Next Steps

## 11. Closing

## **Purpose of this ISH**

The purpose of this ISH is to inquire into the approach towards ecological mitigation, specifically the creation of new landscaping, new woodland and new habitats and the basis for the land requirement for these measures.

## **Attendees**

The ExA would find it helpful if the following parties could attend this Hearing.

- The Applicant, specifically ecological and landscape specialists of the Applicant who are in a position to discuss the matters on the agenda
- The host local authorities in respect of their functions for enforcement, maintenance, and management of ecological and landscaping areas
- Any other public authority or charitable trust with a function for enforcement, maintenance, and management of ecological and landscaping areas
- Natural England
- Kent Downs AONB Unit
- The Woodland Trust
- Essex Wildlife Trust
- Kent Wildlife Trust
- Buglife
- The Thames Action Crossing Group
- Essex Badger Protection Group
- West Kent Badger Group
- Thames Crossing Action Group (TCAG)

However, this does not indicate that other parties will not be able to contribute. All IPs are invited to attend and make oral representations on the matters set out in the Agenda, subject to the ExA's ability to control the Hearing. Anyone wishing to attend the Hearing who has not already advised the Case Team of this, should do so as soon as possible.

The Applicant is requested to have people with the following expertise available to assist the hearing:

- Ecology – habitats and species
- Air quality (relevant to Nitrogen deposition)
- Arboriculture
- Mitigation design and management
- Land management
- Habitats Regulations Assessment (HRA)

This list may also assist other IPs who are able to draw on staff or advisors to support them.

The ExA has sought to provide sufficient detail to assist the parties to prepare for the Hearing. The details set out above are indicative and the ExA may find it necessary to include additional Agenda items or to amend the order in which the items are dealt with.

The event will be livestreamed and a link for watching the livestream will be posted on the [project webpage of the National Infrastructure Planning website](#) closer to the Hearing date. IPs and members of the public who wish to observe the Hearing can view and listen to the

Hearing using the livestream, or view and listen to the recording, after it has concluded. For the avoidance of doubt, you are advised that the recordings that we make are retained and published and form a public record that can contain your personal information and to which the UK General Data Protection Regulation applies.

## **Registration Process**

### *Registering as a speaker*

The speakers invited to this hearing are listed above. If you are invited, please register at **9-15am**. This enables arrangements to be explained and hearings to make a prompt start.

You can register in person at the venue. If you are attending virtually though, you will receive joining and registration instructions in a separate email, shortly in advance of the event. This email will also explain what to do if you have difficulties getting connected.

### *Observing the hearing*

Hearings are held in public. If you are not speaking, public seating at the venue will be open from **9-15am**. If you are observing on-line, please go to the [project landing page](#) on the National Infrastructure Planning website where you will find:

- on the day - a link to a livestream to watch the hearing in real time; and
- after the event has closed - a link to the recordings of the hearing

All Interested Parties (IPs) are welcome to submit observations in writing by the deadline following the hearing.

## **Procedure at an ISH**

Guidance under the Planning Act 2008 and the Infrastructure Planning (Examination Procedure) Rules 2010 provides that it is for the ExA to probe, test and assess the evidence through direct questions of persons making oral representations at Hearings. Questioning at the Hearing will be led by the ExA. Cross questioning of a person giving evidence by another person will only be permitted if the ExA decides it is necessary to ensure representations are adequately tested or that an IP has had a fair chance to put its case.

Parties attending an ISH for the first time are encouraged to view parts of previous ISH1 held at the start of this Examination, using the recordings held online. Whilst the matters to be examined in this hearing – identified in this Agenda – will be different, the approaches taken to hearing management and involvement by parties will be similar. Introductory and advisory material included in the opening stages of that hearing will not be set out in full in later hearings and so the ISH1 recording of the opening session on Day 1 will assist those who are not familiar with this type of hearing.

- ISH1 Recordings ([Day 1 – 21 June 2023](#))
- ISH1 Recordings ([Day 2 – 23 June 2023](#))

Participants at the hearing are reminded of the importance of respecting all other participants and allowing everyone here to have their say. Please do not interrupt the other speakers. If the ExA needs to clarify something that is being said, then the ExA will intervene.

Unnecessary interruptions that disrupt the hearing can be viewed as unreasonable behaviour for which awards of costs can be sought by other interested parties; they can also lead to a party being removed from the hearing.

Every effort will be made to ensure that the issues will be discussed on the day that they are scheduled for. The hearing will finish as soon as the ExA deems that all those present have had their say and that all matters have been covered. If there are additional matters to be dealt with or there are submissions that take a considerable amount of time at any hearing, it may be necessary to prioritise matters and defer others to written responses to actions, to written questions or to a subsequent hearing.

Please contact the Case Team if you have any questions regarding the arrangements for the hearing or how to participate.

Email: [Lowerthamescrossing@planninginspectorate.gov.uk](mailto:Lowerthamescrossing@planninginspectorate.gov.uk)

Tel: 0303 444 5000

### **Contingencies**

If this hearing is unable to proceed or continue, then the ExA will adjourn incomplete business to hearing times in October or November 2023 that have been reserved in the Examination Timetable. Notice of any adjournments will be provided in the banner on the National Infrastructure Planning Website.