

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

Agenda for Issue Specific Hearing 9 (ISH9): Environment & Biodiversity

Hearing	Date and Time	Location
Issue Specific Hearing 9 on Environment & Biodiversity	Monday 23 October 2023	
	Hearing Starts at 10am	
	Blended event	
	Venue Registration Process from 9:15am	Mercure Dartford Brands Hatch Hotel Dartford DA3 8PE
	Virtual Registration Process from 9:15am	By virtual means using Microsoft Teams

Agenda

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

The ExA will ask questions of the Applicant and (where indicated) of Natural England and the relevant local authorities on the following matters:

a)	Guidance and Methodology
i	What guidance was/should be followed by the Applicant in relation to the location, form, quantity and extent of ancient woodland replacement? <ul style="list-style-type: none"> • Is this methodology agreed by Natural England and other relevant IPs?
ii	Are the criteria used to determine whether a tree or woodland is classed as veteran or ancient employed for the project sufficiently clear and robust?
iii	Have physical surveys of woodland have been completed to show the full extent of affected habitat and has the level of importance assigned to trees been based on an agreed methodology with Natural England and other stakeholders? <ul style="list-style-type: none"> • Natural England has suggested using CIEEM good practice guidance. Is this approach justified and what additional work might be required?

iv	Possible means to improve the clarity of mapping and documentation on the location and size/ extent of ancient woodland will be discussed.
v	How will lost ancient woodland be replaced, taking the following issues into account: <ul style="list-style-type: none"> • the location(s) of source soil supplies; • the benefits of translocating soils; • how success will be monitored; • how any deficiencies in outcomes will be addressed?
vii	How effectively can equivalently biodiverse replacement habitat be provided and in what timescale? <ul style="list-style-type: none"> • Do relevant IPs agree that the measures proposed by the Applicant are appropriate and have a reasonable prospect of success?
b)	Removal of Ancient Woodland and Veteran Trees
i	NPSNN para 5.32 requires the Secretary of State to carefully consider loss and damage to ancient woodland and veteran trees. <ul style="list-style-type: none"> • Can the Applicant provide clarification about loss/ harm minimisation at: <ul style="list-style-type: none"> ○ The A2 /M2 /LTC intersection; ○ The M25 /LTC intersection; and ○ Other parts of the proposed alignment, work areas and compounds with woodland loss. • The Applicant will be asked to explain why it was decided to undertake work affecting wooded areas/ veteran trees and not to re-align, re-design, or substitute land use or construction techniques to protect the woodland/ veteran trees?

Other IPs will be welcome to participate.

The Applicant will be provided with a right of reply.

4. 'The Wilderness'

The ExA will ask questions of the Applicant and (where indicated) of Natural England and the relevant local authorities on the following matters:

a)	'The Wilderness'
i	There is disagreement over whether 'The Wilderness' (woodland located near The Grove, North Road, North Ockenden) should be regarded as ancient woodland subject to the policy set out in NNNPS paragraph 5.32. <ul style="list-style-type: none"> • What is Natural England's current position? • The Applicant and relevant IPs will be asked to confirm their position and highlight evidence to support their assessment.
ii	A retaining wall is proposed to the south of this area, apparently to limit the extent of woodland loss. <ul style="list-style-type: none"> • Will this meaningfully limit effects on the woodland during construction and operation?

iii	<p>At Accompanied Site Inspection 2 (ASI2) on 13 September 2023, the ExA was shown two watercourses within the area that also serviced ponds.</p> <ul style="list-style-type: none"> • What measures are expected to be required to prevent the loss of the waterside and water-based habitat during works in ‘The Wilderness’? • Are those measures in place and are they adequate?
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Other IPs will be welcome to participate.

The Applicant will be provided with a right of reply.

5. Shorne Woods SSSI Impact

The ExA will ask questions of the Applicant and (where indicated) of Natural England and the relevant local authorities on the following matters:

a)	Shorne Woods SSSI
i.	<p>Concerns have been raised that recreational facilities proposed at the Shorne Woods Country Park could have a negative effect on the SSSI.</p> <ul style="list-style-type: none"> • Have the effects of the proposed facilities been assessed within the submitted documentation? • Are the effects considered appropriate and to have been appropriately mitigated?
ii.	<p>Can Natural England and the Applicant confirm that the disputed boundary of the SSSI has been resolved and that all data relevant to an assessment in this location have also been provided in documents available to the Examination?</p>
iii	<p>Does the Applicant or any other relevant stakeholder/ land manager anticipate any further refinement of the use of SSSI during the detailed design stage?</p>

Other IPs will be welcome to participate.

The Applicant will be provided with a right of reply.

6. Coalhouse Fort

The ExA will ask questions of the Applicant relating to

a)	Habitat Provision
i	<p>As part of the mitigation for the loss of land used by species associated with the Thames Estuary and Marshes Special Protection Area (SPA) and Ramsar site, it is proposed to provide alternative land at Coalhouse Fort.</p> <ul style="list-style-type: none"> • What measures are proposed to reduce the potential effect to the existing species that utilise the existing non-designated habitat in the area? • Wetland habitat creation is proposed in an area that currently appears to be rough grassland. Is it possible that one ‘important’ habitat is being replaced by another?

ii	Are there locations where the loss of one valued habitat to facilitate the creation or replacement of another are suggested to arise? (Note in this context, the loss of cultivated agricultural land is not under consideration.)
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Other IPs will be welcome to participate.

The Applicant will be provided with a right of reply.

7. Hole Farm Community Woodland

The ExA will ask questions of the Applicant relating to:

a)	Habitat Creation
i	<p>Extensive open space and habitat creation is proposed at Hole Farm ¹.</p> <ul style="list-style-type: none"> • Which elements are required as mitigation or compensation for the Lower Thames Crossing and which elements are to meet the needs of the National Highways more general Environment Strategy? • What is the current status of the planning application for the Hole Farm project ²? • How will the expected programme of works at Hole Farm tie into the Lower Thames Crossing proposals? • Is the Hole Farm project contingent on the granting of development consent for the Lower Thames Crossing ². • Are community woodland creation (including recreational public access) and habitat creation objectives at Hole Farm compatible? How can compatibility be maximised?

Other IPs will be welcome to participate.

The Applicant will be provided with a right of reply.

8. Water Framework Directive

The ExA will ask questions of the Applicant and the Environment Agency relating to

a)	Culverting and Water Framework Directive (WFD)
i	Culverts are proposed. The ExA wishes to explore the degree to which the length and design of these will adequately respond to the maintained

¹ The following documents will be referred to: [REP4-241] Document 9.103 Hole Farm Appendix I.1 Planning Application Boundary; [REP4-251], Document 9.103 Hole Farm Appendix I.11 Proposed Overall Site Plan; and [REP5-016], Document 2.5 General Arrangement Plans Volume C (sheets 21 to 49) v4.0, sheet numbers 46 and 47.

² [REP4-216] Document 9.103 Hole Farm Appendix C Hole Farm Planning Statement includes a statement that '*[t]he initial capital costs for developing the Hole Farm Community Woodland scheme are expected to be funded by National Highways, through discretionary funding, regardless of whether the LTC Project proceeds.*'

	<p>or improved natural systems and biodiversity function of the affected watercourses ³.</p> <ul style="list-style-type: none"> • The Environment Agency (EA) has stated that it has “a formal policy against culverting of any watercourse because of the adverse ecological, flood risk, geomorphological, human safety and aesthetic impacts”. [REP1-255] • EA has suggested that the proposed culverting could damage the prospect of some water bodies obtaining the appropriate status under the WFD and be contrary to Thames River Basin Management Plan (RBMP) objectives. <p>The ExA seeks confirmation from the EA that this continues to be their position and seeks input to inform a recommendation on this point to the Secretary of State, should it remain in dispute between the Applicant and the EA.</p> <ul style="list-style-type: none"> • What specific WFD and RBMP objectives and progress would be impeded by the culvert designs that are currently proposed? • Whether any design amendments to culverting can be developed to address these concerns and; if not • What justification does that Applicant advance for the retention of its current design approach to culverting?
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Other IPs will be welcome to participate.

The Applicant will be provided with a right of reply.

9. Next Steps

10. Closing

³ The following document will be referred to: [APP-477] Document 6.3 Environmental Statement - Appendix 14.6 - Flood Risk Assessment - Part 10 in Table 4.10 Structural form of water crossings, proposed culverts are listed.

Purpose of this ISH

The purpose of this ISH is to inquire into aspects of the natural environment and biodiversity effects of the proposed development. It takes forward some agenda items deferred from ISH6 held on 8 September 2023, together with other related matters arising on specific sites. Opportunities have been taken to develop and refine elements of the deferred agenda items, having regard to responses to written questions and written evidence provided since ISH6 was held. It should be noted however that all elements of the previous Agenda relating to control documents or security in the draft Development Consent Order (dDCO) will be drawn out either orally in a dDCO ISH to be held from 20 November, or in writing in the ExA's dDCO Commentary, which is to be published on 14 November.

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
- Buglife
- The Environment Agency
- Essex Wildlife Trust
- Essex Badger Protection Group
- The Forestry Commission/ Forestry England
- Kent Downs AONB Unit
- Kent Wildlife Trust
- Natural England
- Thames Crossing Action Group (TCAG)
- West Kent Badger Group
- The Woodland Trust

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, 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

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 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.